Subject :

Code of Civil Procedure and Limitation Law

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Scope of Civil Procedure Code:

The **Code of Civil Procedure 1908** governs the procedure of the Courts of Civil Judicature. The Code is composed of 158 Sections and 51 Orders. 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.

Historical Perspective 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.

In the case of Balraj Taneja vs Sunil Madan (1999) 8 SCC 396 THE Supreme Court held that a Judge cannot merely say "Suit Decreed" or "Suit Dismissed".

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.

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.

It has been held in the case of Deepchand vs Land Acquisition Officer 1994 SCR (1) 530 that the adjudication should be made by the Officer of the Court and if it is not passed by an officer of the Court, it is not decree.

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.

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.

   In C I T vs Bombay Trust Corporation (1919-20) 57 IA 49 the Privy Council stated that When a person is deemed to be something, the only meaning possible is that whereas he is not inreality that something, the Act of Parliament or the Legislature requires him to be treated as if he were.

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.

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.

<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.**

In the case of Sangram Singh vs Election Tribunal AIR 1955 SC 425 the Supreme Court hgeld that the efficacy of the so-called "ex parte" order can be challenged in the appellate court where he would urge the very matters he was prevented from urging in the trial court.

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

- **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.

In the case of *Ganesh Trading Co. v. Moji Ram* AIR 1978 SC 484 it was held by the Supreme Court that the object of provisions of pleading is to provide both the parties with an understanding of each other's case, enabling the Court to identify the real issues in dispute.

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 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 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)
- 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

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:

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.

In Kuldeep Singh vs Ganpat Lal (1996) 1 SCC the Supreme Court stated that the plaint shall contain the particular about the facts constituting the cause of action.

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:

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.

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.

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:

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.

Counter-claim {Order 8 Rule 6A}:

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:

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 agains
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

JUDGMENT AND DECREE

Section 2 (9)- Judgment means the statement given by the judge of the grounds of decree or order.

ORDER XX JUDGMENT AND DECREE

1. Judgment when pronounced. -1[(1) The Court, after the case has been heard, shall pronounce judgment in an open Court, either at once, or as soon thereafter as may be practicable and when the judgment is to be pronounced on some future day, the court shall fix a day for that purpose, of which due notice shall be given to the parties or their pleaders:

Provided that where the judgment is not pronounced at once, every endeavor shall be made by the Court to pronounce the judgment within thirty days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of the exceptional and extraordinary circumstances of the case, the Court shall fix a future day for the pronouncement of the judgment, and such day shall not ordinarily be a day beyond sixty days from the date on which the hearing of the case was concluded, and due notice of the day so fixed shall be given to the parties or their pleaders.]

2[(2) Where a written judgment is to be pronounced, it shall be sufficient if the findings of the Court on each issue and the final order passed in the case are read out and it shall not be necessary for the Court to read out the whole judgment.[***]3

(3) The judgment may be pronounced by dictation in open Court to a shorthand writer if the Judge is specially empowered by the High Court in this behalf:

Provided that, where the judgment is pronounced by dictation in open Court, the transcript of the judgment so pronounced shall, after making such correction therein as may be necessary, be signed by the Judge, bear the date on which it was pronounced, and form a part of the record].

Case: 1. In Surendra Singh v. State of U.P. AIR 1954 SC 194. Justice Vivian Bose defined a judgment as "the final decision of the court intimated to the parties and to the world at large by formal 'pronouncement' or 'delivery' in open court."

2. Power to pronounce judgment written by Judge's predecessors.- [A judge shall]4 not pronounce a judgment written, but not pronounce by his predecessors.

3. Judgment to be signed.- The judgment shall be dated and signed by the Judge in open Court at time of pronouncing it and, when once signed, shall not afterwards be altered or added, to save as provided by section 152 or on review.

1. Subs. by Act 22 of 2002, Section 13, (w.e.f. 1-7-2002).

2. Ins. by Act 104 of 1976, Section 70 (w.e.f. 1-2-1977).

3 The words "but a copy of the whole judgment shall be made available for the perusal of the parties or the pleaders immediately after the judgment is pronounced" omitted by Act 46 of 1999, Section 28 (w.e.f. 1-7-2002).

4 Ins. by Act 104 of 1976, Section 70 (w.e.f. 1-2-1977).

Case: 1. Balgees Begum v. Govt. of A. P. AIR 1994 A.P. 316. A. P. High Court said that "From a joint reading of the provision of the rules 1, 2 and 3 of Order XX it appears to be clear that once the judgment is dictated and pronounce by the judge in open Court after hearing the argument in the presence of the Counsel, is a valid, effective and operative judgment even though the learned judge dies before signing the same.

4. Judgment of Small Cause Courts.- (1) Judgment of a Courts Small Causes need not contain more than the points for determination and the decision thereon.

(2) Judgments of other Courts.- Judgments of other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and reason for such decision.

Rule 4 deals with the contents of a judgment. The content of a judgment other than a Court of Small Causes must have the following:

(i) a concise statement of the case;

(ii) the points for determination;

(iii) the decision thereon; and

(iv) the reason for such decision.

(v) the relief granted

A judgment of a court of Small. Causes should, however, not contain more than:

(i) points for determination and

(ii) the decision thereon.

Case: 1. Alok Kumar v. S.N. Sharma, AIR 1968 SC 453. a) Where a Judge is inclined to criticise other Judges or subordinate Court, the 'language to be used should be dignified' and restrained.

b) While deciding a case, it is not desirable on the part of the Judges to make remarks against the character of a person who is neither a party nor the witness in the proceedings before them.5

Case2. A. M. Mathur v.Pramod Kumar, AIR 1990 SC 1737.SC said, " No disparaging or defamatory remarks must be made either against a party or against any other person."

Case 3. Atar Singh v. District Judge Jhansi AIR 1994 All 295.Allahbad H. C. said," Even an ex parte decree must satisfy the requirements of a judgment as provided in Order XX, Rule 4. Ex parte decree unsupported by reasons is not a judgment.

5. Court to state its decision on each issue.—In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefore, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

[5-A. Court to inform parties as to where an appeal lies in cases where parties are not represented by pleaders.—Except where both the parties are represented by pleaders, the Court shall, when it pronounces its judgment in a case subject to appeal, inform the parties present in Court as to the Court to which an appeal lies and the period of limitation for the filing of such appeal and place on record the information so given to the parties.]

Judgment and decree

33. Judgment and decree.—The Court, after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow.

Case 1. R.C. Sharma v. Union of India, AIR 1976 SC 2037 In order to avoid inordinate delay in the delivery of the judgments after the conclusion of the hearing of cases a time limit for the same has been fixed. If the judgment is not pronounced at once after the case has been heard, every effort is to be made by the court to pronounce the judgment within 30 days from the date on which the hearing of the case was concluded.

However, if it is not practicable to do so on the ground of "exceptional and extraordinary circumstances" of the case, the court shall fix a future day for the pronouncement of the judgment and such day shall not ordinarily be beyond sixty (60) days from the date on which the hearing of the case was concluded,

Case 2. In Vinod Kumar Singh v. Bananas Hindu University.AIR 1988 SC 371. In this case High Court of Allahabad pronounced a judgment in a writ petition in favour of the appellant but the judgment was not signed. Thereafter the case was posted for further hearing and finally dismissed. On the question of the legality of the dismissal the Supreme Court, setting aside the order laid down the following guidelines regarding correction in judgments:

(i) Under Order 20, Rule 3 in a judgment which has not been signed alteration and additions can be made. Where it has been pronounced and signed alterations are permissible only under Sections 114, 151 and 152.

(ii) But even under Order 20, Rule 3, the power should be exercised sparingly and for good reasons.

(iii) When the judgment has been pronounced it becomes operative and signature is not necessary except in exceptional cases such as :

(a) where a judgment is dictated in court and counsel brings to the notice of the court some feature or where the court itself discovers such a feature from the record. In such a case, the court may direct the case to be reheard and that the judgment just delivered would not be effective;

(b) a court discovers a feature which should have been taken into account when the judgment is to be signed. In such a case also the court may set down the case for further hearing and the court shall give reasons why the judgment already delivered would be operative.

Case3. Where a Judge has vacated office after pronouncing and dictating the judgment but without signing it, the question is whether a successor Judge can sign it? The Bombay High Court answered this question in Darayas Cawasji Balsara v. Shenaz Darayas Balsara AIR 1992 Born 175. and held that a successor Judge is entitled to sign the judgment on behalf of the Judge who dictated it in open court and direct the Registrar to prepare the decree.

Case 4. Anil Rai v. State of Bihar AIR 2001 SC 3173. In this case after the conclusion of arguments by the counsels, the judgment was reserved by the court which was pronounced after two years. The court observed:

"In a country like ours where people consider the Judges, second to God, efforts are made to

strengthen that belief of the common man. Delay in disposal of cases facilitates the people to raise eyebrows, sometimes genuinely which, if not checked, may stake the confidence of the people in judicial system."

Case 5. The Supreme Court of India held in Balraj Taneja v. Sunil Madan AIR 1999 SC 3381 that

1. a Judge cannot merely say "suit decreed" or "suit dismissed". The whole process of reasoning has to be set out for deciding the case one way or the other.

2. A judgment must be based on the grounds and points in the pleadings and not outside the case put forward by the parties in their pleadings. Further, it should not decide any question which does not arise from the pleadings of the parties or is unnecessary.

3. Again, the language of the judgment should be dignified and restrained. It should not contain intemperate comments, undignified banter or scathing criticism of counsel, parties or witnesses.

4. It is a general principle of highest importance to the proper administration of justice that derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case.

DECREE

Section 2(2).- Decree means the formal expression of an adjudication which so for regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within [***]1 Section 144, but shall not include

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation.—A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;

Section 2(3) "Decree-holder" means any person in whose favour a decree has been passed or an order capable of execution has been made;

Essential Elements of a Decree:

Following are the essential elements of a decree:

(i) There must be anadjudication;

(ii) Adjudicationmust beinasuit;

(iii) It must have determined (decided) the right of the parties with respect to all or any of the matters in controversy. Such determination must be conclusive determination; and

(v) There must be formal expression of the adjudication.

Case1.- Adinarayan v. Narsimha, AIR 1931 Mad. 471. The judicial determination (decision) of a court is either in the shape of a decree or an order. Whether a judicial determination amounts to a decree or order is a matter of substance. A judicial determination (decision) in order to be a decree must fulfill the conditions laid down under Section 2 (2) of the Civil Procedure Code.

Case2.- Des Raj v. Om Prakash AIR 1986 P & H 3. Said, " an order rejecting the memorandum of appeal after dismissing an application under Section 5, Limitation Act, 1963 for condonation of delay is not a decree."

Case 3.-Deep Chand v. Land Acquisition Officer, AIR 1994 SC 1901 said, "a decision of a Court amounts to a decree there must be an adjudication. In other words, if there is no judicial determination of the dispute between the parties, there cannot be a decree. Thus, for example an appeal dismissed in default, or an order dismissing a suit for non-appearance of the parties does not amount to a decree for there is no judicial determination of the matter in controversy."

Case 4.-in the of Hansraj v. Dehradiin-Mtissoorie Electric Tramways Co. Ltd AIR 1935 P. C., The term suit has not been defined in the Code. But their Lordship of the Privy Council have defined the term of suit in the following words :

"The word suit ordinarily means and apart from some context must be taken to mean, a civil proceeding instituted by the presentation of a plaint."

1. Thus, a contentions probate proceeding though begins by presentation of an application yet it amounts to a Civil suit.

2. a proceeding in which an application is made to file an agreement to refer to arbitration under Arbitration Act, 1940 may be treated as a civit suit.4

3. proceedings under Hindu Marriage Act, 19555

4. Land Acquisition Act,6 may also be treated a civil suit.

5. P. Mustafali v. N. Subair, AIR 1992 Ker 295 A recent decision of the Kerala High Court says that proceedings under Section 110-A of Motor Vehicles Act (commenced by an application) is in the nature of a suit under the Code of Civil Procedure.

6. Balram Singh v. Dudh Nath, AIR 1949 All 100. So also a proceeding started on an application made under the U.P. Agriculturist Act was also treated as a suit.

These proceedings apart, no other proceeding in any other Act may be treated as civil suit and therefore, no adjudication made there under will amount to a decree within the meaning of Section 2 (2) of the Civil Procedure Code.

(iii) Right of Parties as to matters in controversy

a) The rights of the parties is referred to here are rights relating to status, limitation, jurisdiction, frame of the suit and accounts etc. Again such rights are substantive rights and not procedural rights.

b) But where the question is whether summons has been duly served on a particular party or not is a question not relating to substantive rights but procedural rights.

Following have been held to be decrees:

(i) Order of abatement of suit.

(ii) Compromise or consent decree.1

(iii) Holding a particular defendant liable for mesne profits.

(iv) Dismissal of appeal as time barred.

(v) Dismissal of appeal for deficiency in Court-fee.

(vi) Rejection of plaint for non-payment of extra Court-fee.

(vii) Dismissal of suit or appeal for want of evidence or proof.

(viii) Order dissolving partnership.

(ix) Order directing surety to pay debt of judgment debtor.

(x) Refusing or granting instalment.

(xi) Admission of execution application.

(xii) Modification of scheme under Section 92 of C.P.C.

(xiii) Order under Section 25 of Hindu Marriage Act.

(xiv) Remand order conclusively determining the rights of the parties.

(xv) Order rejecting plaint in pre-emption suit.

(xvi) In a suit against two sets of defendants in alternative, finding that since one set was liable and other set was not liable, the finding is indivisible finding and amounted to decree?

(xvii) An award by a Court under amended Section 28 (2) of Land Acquisition Act, 1894.3

Following have been held not to be decrees:

(i) Order permitting withdrawal of suit.

(ii) Appeal dismissed for default.

(iii) Appointment of Commissioner to take accounts.

(iv) Order on res judicata and limitation.

(v) Order directing decree to be drawn up.

(vi) Order of remand for framing additional issues by Appellate Court.

(vii) Order granting interim relief under Section 24, Hindu Marriage Act, 1955.

(viii) Order refusing stay of sale.

(ix) Dismissal of suit as withdrawn under Order 23, Rule 1.

(x) Any determination under Section 49, Land Acquisition Act, 1894.4

(xi) Order rejecting memorandum of appeal under Order 41, Rule 3.

(xii) Dismissal of application under Order 34, Rule 8.

(xiii) Rejection of appeal for insufficient Court-fee.

(xiv) Order refusing to windup a company.

(xv) Order of dismissal for default.

(xvi) Return of plaint for presentation to proper court.

(xvii) An award under Motor Vehicles Act.1

(xviii) Award rendered under the provisions of Arbitration and Conciliation Act, 1996 is not 'decree' for the purpose of Section 9 (2) of Presidency

Towns Insolvency Act, (1909). Kandapazha Nadar v. Chitraganiammal, AIR 2007 SC 1575.

(xix) Withdrawal of suit without liberty to file a fresh suit and without any adjudication order allowing withdrawal is not a decree.

Classes of Decrees

(i) Preliminary decree.

(ii) Final decree.

(iii) Decree partly final and partly preliminary.

(iv) Order rejecting plaint.

(v) Decision of a question under Section 144.

(i) Preliminary decree

a) A preliminary decree is a decree which does not completely dispose of the suit and further proceedings are still required in the matter. An adjudication which finally decides the rights of the parties but does not completely dispose of the suit is a preliminary decree. Venkata Reddy v. Pethi Reddy, AIR 1963 SC 992.

b) It is only a stage in the working out the rights of the parties which are finally adjudicated by the final decree.5 Till then the suit continues. Shankar v. Chandrakant, AIR 1995 SC 1211.

In other words, a preliminary decree is one which determines the rights and liabilities of the parties leaving the actual result to be worked out in further proceedings.

The Code contemplates passing of preliminary decree in the following cases:

1. **Suit for possession of immovable property and for rent or mesne profits-Order 20, Rule 12.**
2. **Administration suits-Order 20, Rule 13.**
3. **Suit for pre-emption-Order 20, Rule 14.**
4. **Suit for dissolution of Partnership-Order 20, Rule 15.**
5. **Suit for accounts between Principal and Agent-Order 20, Rule 16.**
6. **Suit for partition of property or separate possession therein-Order 20, Rule 18.**
7. **Suit for foreclosure of a mortgage-Order 34, Rules 2 and 3.**

General Costs under Civil Procedure Code: Section 35 of Civil Procedure Code

Section 35 of the CPC deals with general costs, which are awarded to litigants to cover the expenses incurred during litigation. The primary objective of awarding costs under this section is to ensure that the successful party is compensated for the legal expenses they have borne.

rinciples Governing General Costs Civil Procedure Code

Discretion of the Court: The award of general costs is at the discretion of the court. However, this discretion must be exercised judiciously, based on sound legal principles, rather than capriciously or arbitrarily.

Costs Follow the Event: Typically, costs should follow the event, meaning that the successful party is entitled to costs. This principle ensures that the winning party is not financially burdened by the litigation. However, the court may deviate from this rule if there are valid reasons.

Recording Reasons: If the court decides that costs should not follow the event, it must record the reasons for such a decision as per sub-section (2) of Section 35. This provision ensures transparency and accountability in the awarding of costs.

Miscellaneous Costs under Civil Procedure Code: Order 20A

Order 20A of the CPC specifically addresses the power of the court to award costs for certain expenses incurred during litigation. These expenses include:

Giving notices

Typing charges

Inspection of records

Producing witnesses

Obtaining copies

The inclusion of miscellaneous costs under Order 20A aims to cover specific, often overlooked, expenses that parties incur in the process of litigation. By doing so, the CPC ensures that parties are adequately compensated for all legitimate expenses.

Compensatory Costs under Civil Procedure Code: Section 35A

Section 35A provides for compensatory costs, which serve as an exception to the general rule of costs under Section 35. This section is designed to address situations where Section 35 does not offer sufficient compensation, particularly in cases involving false or vexatious claims or defences.

Conditions for Awarding Compensatory Costs

For Section 35A to apply, the following conditions must be met:

False or Vexatious Claim/Defense: The claim or defence must be false or vexatious, brought with malicious intent.

Objection by the Other Party: The other party must have raised an objection that the claim or defence was false or vexatious, to the knowledge of the party raising it.

Disallowed, Withdrawn or Abandoned Claim: The claim must have been disallowed, withdrawn or abandoned, either in whole or in part.

The maximum amount that can be awarded under Section 35A is Rs. 3,000. It is important to note that this section applies only to suits, not to appeals or revisions. This provision empowers the court to impose compensatory costs on parties who misuse the legal process for vexatious purposes.

Costs for Causing Delay: Section 35B

Section 35B addresses costs for causing delays during litigation. This section empowers the court to impose costs on parties who cause unnecessary delays at any stage of the litigation process, regardless of the ultimate outcome of the case.

Grounds for Awarding Costs for Delay

Costs for causing delay may be awarded under the following circumstances:

Failure to Take

equired Steps: If a party fails to take a step required by or under the code on a specified date.

Obtaining Adjournments: If a party obtains an adjournment for taking such a step or for producing evidence or on any other ground.

In such cases, the court may order the party responsible for the delay to pay costs to the other party. This provision ensures that the litigation process is not unduly prolonged and that parties act diligently and in good faith.

Suits of Civil Nature under CPC

Meaning and Scope of Suits of Civil Nature

The CPC defines a suit as a civil proceeding initiated by the presentation of a plaint or a written statement before a court of law. A "suit of civil nature" refers to a legal action that falls within the realm of civil law and is governed by the CPC. Civil law encompasses a wide range of disputes, including those related to property, contracts, torts, family law, etc.

he scope of suits of civil nature under the CPC is extensive and covers various types of civil disputes. These may include suits for recovery of money, suits for specific performance of contracts, suits for declaration of rights, suits for injunctions, suits for partition of property, suits for damages, and many others. The CPC provides a procedural framework for conducting these suits, ensuring that civil disputes are resolved through a systematic and fair legal process.

Types of Suits of Civil Nature

The CPC classifies suits of civil nature into different categories based on the nature of the dispute. Some of the common types of suits of civil nature under the CPC are as follows:

a) Suits for Recovery of Money: These are suits where a party seeks to recover a sum of money due to them from another party. It may arise out of a contract, loan, or any other legal obligation.

b) Suits for Specific Performance of Contracts: These are suits where a party seeks to enforce the performance of a contract by the other party. Specific performance is a discretionary remedy, and the court may grant it in certain circumstances.

c) Suits for Declaration of Rights: These are suits where a party seeks a declaration from the court affirming their legal rights or status. For example, a suit for a declaration of ownership of a property.

d) Suits for Injunctions: These are suits where a party seeks an order from the court restraining another party from doing a certain act or compelling them to do a certain act. Injunctions can be temporary (interim) or permanent, depending on the circumstances.

e) Suits for Partition of Property: These are suits where co-owners of a property seek a division of the property among themselves.

f) Suits for Damages: These are suits where a party seeks compensation for the loss or harm suffered due to the wrongful act of another party.

Provisions Governing Suits of Civil Nature under CPC

The CPC contains several provisions that govern the filing, procedure, and disposal of suits of civil nature. Some of the key provisions related to suits of civil nature under the CPC include:

Jurisdiction: The CPC defines the jurisdiction of courts to entertain and try civil suits. It specifies territorial jurisdiction, pecuniary jurisdiction (based on the value of the claim), and subject-matter jurisdiction (based on the nature of the dispute).

Pleadings: The CPC lays down the rules for filing of plaints (the document by which a suit is initiated) and written statements (the response to the plaint) in civil suits. It prescribes the essential contents of a plaint, such as the parties involved, facts of the case, and relief sought.

Evidence: The CPC sets out the rules for the production and admissibility of evidence in civil suits. It includes provisions related to examination of witnesses, production of documents, and burden of proof.

Interim Orders: The CPC provides for the grant of interim orders in civil suits to safeguard the rights of parties during the pendency of the suit. This includes temporary injunctions, appointment of receivers, and attachment of property.

Appeals: The CPC outlines the procedure for filing and disposing of appeals against the orders and decrees passed in civil suits. It sets out the rules related to the appellate jurisdiction of higher courts, grounds of appeal, and limitations on the power of appellate courts.

Execution of Decrees: The CPC provides for the enforcement of decrees passed in civil suits. It includes provisions related to the execution of decrees for payment of money, delivery of property, and other reliefs granted by the court.

Importance and Significance of Suits of Civil Nature

Suits of civil nature play a crucial role in the Indian legal system as they provide a legal mechanism for resolving civil disputes between parties. They are important for several reasons:

rotecting Rights and Interests: Suits of civil nature allow parties to assert their legal rights and seek appropriate reliefs from the court. They provide a forum for resolving disputes related to property, contracts, torts, family law, and other civil matters, ensuring that parties have an opportunity to present their case and obtain a fair resolution.

Ensuring Adherence to Legal Procedures: The CPC lays down a comprehensive procedural framework for conducting civil suits, including provisions related to jurisdiction, pleadings, evidence, interim orders, appeals, and execution of decrees. This ensures that civil disputes are resolved in a systematic and orderly manner, maintaining the integrity and fairness of the legal process.

Facilitating Access to Justice: Suits of civil nature under the CPC are designed to provide access to justice for parties who may have suffered a legal wrong. They provide an avenue for parties to seek redressal for their grievances through a formal legal process, irrespective of their socio-economic status or background.

Setting Legal Precedents: Decisions and judgments passed in suits of civil nature often serve as legal precedents that guide the interpretation and application of law in future cases. These legal precedents help in developing and evolving the legal jurisprudence, ensuring consistency and predictability in the legal system.

Resolving Disputes Amicably: Civil suits also provide an opportunity for parties to resolve their disputes amicably through alternative dispute resolution mechanisms such as mediation, conciliation, and arbitration, which are encouraged and facilitated by the CPC. This helps in reducing the burden on the courts and promotes timely and cost-effective resolution of disputes.

Upholding the Rule of Law: Suits of civil nature under the CPC are essential in upholding the rule of law in the Indian legal system. They provide a mechanism for resolving disputes in a fair, impartial, and transparent manner, ensuring that parties are held accountable for their actions and legal rights are protected.

Section 9 of CPC

Section 9 of the Code of Civil Procedure (CPC) is a provision in the civil procedure laws of India that pertains to the jurisdiction of courts to entertain a suit. Section 9 of the CPC reads as follows:

“9. Courts to try all civil suits unless barred.- The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.”

Section 9 of the CPC establishes the general principle that civil courts in India have jurisdiction to entertain and try all civil suits, unless the cognizance of a particular suit is expressly or impliedly barred by law. This means that, by default, civil courts in India have the authority to hear and decide civil suits, unless there is a specific legal provision that explicitly or implicitly prohibits them from doing so.

The expression “expressly or impliedly barred” in Section 9 of the CPC means that the prohibition on the court’s jurisdiction may be explicitly stated in a law or legal provision, or it may be inferred or implied from the nature of the suit, the parties involved, or the legal relationship between them.

For example, if there is a specific statute or law that prohibits a court from hearing a particular type of suit, such as a suit involving a matter that falls under the exclusive jurisdiction of a specialized tribunal, then the court’s jurisdiction may be expressly barred. On the other hand, if there is a legal principle or doctrine that suggests that a court should not entertain a certain type of suit, even if there is no explicit provision, then the court’s jurisdiction may be impliedly barred.

Section 9 of the CPC is an important provision that establishes the general rule of jurisdiction for civil courts in India and serves as a basis for determining whether a court has the authority to hear a particular civil suit or not.

Suits expressly barred – A suit is said to be expressly barred when it is barred by any enactment for the time being in force. In the development of adjudication of civil disputes, statutes provided alternative mode of resolution of civil disputes with less expensive but expeditious disposal.

Suits impliedly barred – A suit is said to be impliedly barred when it is barred by general principles of law. Where, both right and remedy having been created uno flatu then, even if there is no express provision excluding the jurisdiction of civil courts, its jurisdiction stands impliedly barred. It is also established that where an Act creates an obligation, and enforces its performance in a specified manner, that performance cannot be enforced in any other manner. Similarly, certain civil matters are barred from civil courts on the principles of public policy and public weal”.

Doctrine of Res Sub Judice

Meaning of Res Sub Judice

The principle of res sub judice concerns the suspension of suits that involve the same matter and cause of action, whether they are pending in the same court or in different courts. If a new suit is filed with the same issue and cause of action, and involves the same parties and title as a previously instituted suit, the new suit will be deemed stayed if the earlier one is under consideration by a court. This stay can only be ordered by courts with competent jurisdiction and inherent powers. The term sub judice is Latin for "under judgment," reflecting this principle.

This rule aims to prevent duplicate litigation by ensuring that only one court addresses the matter in dispute.

This principle specifically pertains to the trial phase of a suit and does not affect the initiation of a new suit. It allows for interim orders, such as injunctions or stays, and applies to appeals and revisions as well.

Object of Res Sub Judice

The primary goal of res sub judice is to avoid multiple lawsuits over the same issue, thereby preventing conflicting judgments and ensuring consistent resolutions.

It helps manage judicial resources efficiently, reduces unnecessary litigation, and protects parties from undue legal harassment. By consolidating disputes into a single forum, the principle promotes fairness and judicial efficiency.

To apply Section 10, the following conditions must be fulfilled:

i. There must be two suits: one that has been previously instituted and another that is subsequently filed.

ii. The matter in issue in the subsequent suit must be directly and substantially the same as in the previously instituted suit.

ii. The suits must involve the same parties or their successors.

iv. The earlier suit must be pending in the same court where the subsequent suit is brought, or in any other court in India, or before a Central Government authority or the Supreme Court.

v. The court handling the earlier suit must have the jurisdiction to grant the relief sought in the subsequent suit.

vi. The parties must be litigating under the same title in both suits.

Res Judicata and Res Sub Judice:

The doctrines of res judicata and res sub judice address different aspects of legal proceedings. Res judicata applies to matters that have already been adjudicated (res judicatum), effectively barring the trial of an issue or suit that has been decided in a prior case. In contrast, res sub judice pertains to matters currently pending trial (sub-judice), preventing the trial of a suit if the same issue is being considered in a previously instituted suit.

Case laws:

In **Indian Bank v. Maharashtra State Cooperative Marketing Federation Ltd., AIR 1998 SC 1952**, the Supreme Court clarified that Section 10 does not apply to summary suits under Order 37 until the trial begins after a leave to contest is granted. The Court overturned the High Court's stay order, allowing the summary suit to proceed.

In **Guru Prasad v. Bijay Kumar AIR 1984 ORI 209**, the court ruled that the principle of res sub judice does not permit courts to adopt alternative procedures for adjudicating a suit in a way that serves the interests of justice. It is essential to understand that res sub judice is a procedural rule that courts must follow; it does not grant an inherent legal right to the parties. Consequently, obtaining a stay of the suit is not an absolute right of the party involved.

In the case of **Ragho Prasad Gupta v. Shri Krishna Poddar (1969)**, the Supreme Court determined that the Doctrine of Res Sub Judice does not apply when the issue in a subsequent lawsuit is entirely different from the issue in the initial lawsuit.

In **Pukhraj D Jain v. G. Gopalakrishna, AIR 2004 SC 3504**, the court held that the purpose of Section 10 is to prevent a court from simultaneously adjudicating two parallel suits.

Doctrine of Res Judicata

Introduction

The doctrine of res judicata originates from the English Common Law System and is fundamentally rooted in the concept of judicial consistency.

Derived from Latin, "res" means "subject matter" and "judicata" means "adjudged" or "decided," thus together translating to "a matter adjudged." In simpler terms, res judicata prevents the re-litigation of a matter that has already been adjudicated by a competent court.

This principle applies to both civil and criminal cases, ensuring that no suit or case that has been directly or indirectly tried in a prior proceeding can be tried again.

Principle of Res Judicata

The principle of res judicata is intended to ensure fairness in the legal process, prevent the misuse of law, and avoid revisiting issues already settled by the courts. It comes into play when a party attempts to bring a new lawsuit on a matter that has already been decided in a prior case involving the same parties. In many jurisdictions, this principle applies not only to claims that were actually made in the first case but also to those that could have been raised.

Section 11 of the Civil Procedure Code (CPC) incorporates this principle, often referred to as the "rule of conclusiveness of judgment." According to this section, once a court has conclusively settled an issue, it cannot be the basis for another lawsuit. Courts are barred from handling cases where the matter directly and substantially at issue has already been conclusively decided in a previous case.

The 1976 Amendment Act expanded the scope of Section 11 to include execution proceedings, although the definition of res judicata under Section 11 is not exhaustive.

Judicial Maxims Supporting Res Judicata

The doctrine of res judicata is underpinned by three primary judicial maxims that highlight its foundational principles:

i. Nemo debet lis vexari pro eadem causa: This maxim translates to "No man should be vexed twice for the same cause." It reflects the idea that individuals should not be subjected to multiple lawsuits for the same issue, emphasizing fairness and the avoidance of repetitive litigation.

ii. Interest republicae ut sit finis litium: This means "It is in the interest of the state that there should be an end to litigation." It underscores the public policy goal of providing finality to legal disputes to prevent the legal system from being overwhelmed by endless litigation.

iii. Res judicata pro veritate occipitur: This translates to "A judicial decision must be accepted as correct." This maxim reflects the principle that once a matter has been decided by a competent court, the decision is presumed to be correct and should not be questioned or revisited.

Nature of Res Judicata.

Res judicata is a fundamental rule of law applied universally to prevent the relitigation of issues that have already been settled. The doctrine is firmly established in public policy and aims to:

• Prevent Multiple Litigations: By barring the re-litigation of issues already decided, res judicata avoids the strain on judicial resources and provides stability and certainty in the legal system.

• Protect Individuals from Repeated Litigation: It prevents the hardship and harassment of repeatedly defending oneself against the same claims.

Essentials of Res Judicata

For the doctrine of res judicata to apply, several conditions must be met:

1. Directly and Substantially in Issue: The issue in the subsequent suit must be directly and substantially the same as that in the former suit. This means that the core issue must be identical, not just similar or related.

2. Same Parties: The parties involved in the current litigation must be the same as those in the previous suit, or be parties who claim through those who were involved in the prior case.

3. Same Title: The parties must have been litigating under the same title in both the previous and current suits. This ensures that the legal standing and relationships between the parties are consistent.

4. Competent Court: The court that rendered the previous judgment must have been competent to adjudicate the issues involved. If the earlier court lacked jurisdiction or authority, the doctrine of res judicata does not apply.

5. Final Decision: The matter must have been conclusively decided by the previous court. This means the court issued a final judgment on the issue, resolving it definitively.

Scope of Res Judicata

The scope of res judicata as per Section 11 of the Civil Procedure Code (CPC) is broad but not all-encompassing. It aims to:

• Achieve Finality in Litigation: Ensuring that once an issue is resolved, it is not reopened, which contributes to the stability and predictability of legal outcomes.

• Prevent Repeated Harassment: Safeguarding individuals from facing repeated lawsuits on the same issues, which protects against undue legal burden.

When evaluating whether a subsequent proceeding is barred by res judicata, it is essential to consider:

• Forum Competence: The jurisdiction and authority of the court in both the original and subsequent proceedings.

• Parties: The identity of the parties involved and their representation in both cases.

• Matters in Issue: Whether the issues in the current suit were directly and substantially resolved in the earlier suit.

• Final Decision: Whether the earlier decision was final and conclusive.

The doctrine emphasizes that once an issue has attained finality, it cannot be re-agitated in subsequent suits.

Exceptions to Res Judicata

While res judicata is a critical doctrine aimed at ensuring the finality of judgments and preventing the reopening of settled matters, there are specific exceptions where it does not apply:

1. Judgment Acquired by Fraud If a judgment in the original case was obtained through fraudulent means—such as deceit or misrepresentation—the doctrine of res judicata does not apply. Fraud undermines the fairness of the judicial process, and a decision based on fraudulent actions is considered void. Therefore, the affected party can seek to relitigate the issue to rectify the injustice caused by the fraudulent judgment.

2. Dismissal of Special Leave Petition (SLP) When a Special Leave Petition (SLP) is dismissed without a decision on the merits, it does not carry the same res judicata effect as a final judgment. An SLP is a request for the Supreme Court to review a lower court's decision, and its dismissal may not address the substantive issues of the case. Consequently, a dismissal of an SLP without a detailed judgment does not preclude further litigation on the same issues.

3. Different Cause of Action Res judicata does not bar new lawsuits that arise from a different cause of action. If the issues in the subsequent case are distinct from those in the original suit, the doctrine does not apply. This means that even if the parties are the same, if the basis for the new suit differs from the previous one, the new action is not precluded by res judicata.

4. Interlocutory Orders Interlocutory orders are temporary or provisional decisions made during the course of litigation. These orders address procedural or interim matters and do not constitute a final resolution of the issues at hand. Since they are not conclusive judgments, they do not create res judicata. They can be modified or challenged in subsequent proceedings, so they do not prevent further litigation.

5. Waiver The plea of res judicata must be raised explicitly by the opposing party. If the party fails to assert this defence, the case may proceed without the doctrine being applied. It is the responsibility of the party invoking res judicata to inform the court about the previous decision and its relevance. If this defence is not raised, the case may continue as if res judicata does not apply.

6. Court Competence Res judicata does not apply if the former suit was decided by a court that lacked jurisdiction to hear the matter. If the earlier court did not have the authority to adjudicate the case, its decision does not preclude further litigation. The principle relies on the assumption that the original court had the proper jurisdiction to make a final determination.

7. Change in Law If there is a change in the law or new legal rights arise after the original decision, res judicata may not bar a subsequent suit based on these new developments. The introduction of new laws or changes in legal rights that were not available at the time of the original decision can provide grounds for a new lawsuit. This exception ensures that evolving legal standards are considered, allowing for litigation based on current legal contexts.

Constructive Res Judicata

Constructive res judicata extends the doctrine of res judicata to include issues that were not explicitly raised in a previous suit but could have been. This principle prevents a party from initiating a second suit based on a new claim that arises from the same set of facts, provided that the party had a fair opportunity to address the new issue in the original suit.

Key Elements of Constructive Res Judicata

1. Same Parties or Privies: As with traditional res judicata, constructive res judicata requires that the parties in the second suit be the same as, or in privity with, those involved in the first suit. This ensures that the same parties are bound by the principle of finality.

2. Same Factual Basis: The second suit must stem from the same factual circumstances as the first. While the legal theories behind the claims can differ, the factual allegations must be related, ensuring consistency in how disputes arising from the same facts are handled.

3. Fair Opportunity to Raise the New Issue: For constructive res judicata to apply, the party must have had a fair chance to raise the new issue during the initial proceedings. This means that the issue should have been ripe for adjudication meaning sufficiently developed for a court to decide at the time of the first suit.

Effect of Constructive Res Judicata

Constructive res judicata has a preclusive effect similar to traditional res judicata. It bars the relitigation of any issues that could have been raised in the initial suit, regardless of whether they were actually brought up. This ensures that disputes are comprehensively resolved and prevents repeated litigation on the same factual foundation.

Case laws:

State of Uttar Pradesh v. Nawab Hussain (1977)

The Supreme Court ruled that if a party had the chance to raise a particular plea in previous suit but did not, they cannot bring that plea in a later suit. This case reinforced the concept of constructive res judicata, emphasizing that parties must present all relevant arguments in a single proceeding to avoid future litigation on the same issues.

Daryao v. State of Uttar Pradesh (1961)

This case established that res judicata applies not only to regular court cases but also to writ petitions under Article 32 of the Indian Constitution. The Court clarified that if a matter is resolved by a High Court under Article 226, it cannot be re-addressed in the Supreme Court under Article 32. This decision affirmed the broad reach of res judicata across different judicial levels.

Mathura Prasad v. Dossabai N.B. Jeejeebhoy (1970)

The Supreme Court clarified that while res judicata applies to legal issues related to the facts of a case, it does not cover new causes of action or changes in law that arise after the initial judgment. This case highlighted that res judicata does not bar claims based on new legal developments or entirely different factual scenarios from those considered in the original case.

Satyadhyan Ghosal v. Deorajin Debi (1960)

The court emphasized that the principle of res judicata is founded on the necessity of ensuring finality in judicial decisions. This principle asserts that once a matter is adjudicated and deemed res judicata, it cannot be re-litigated. It primarily applies to situations involving past and future litigation. When a matter, whether a question of fact or law, has been conclusively decided between two parties in one suit or proceeding, and that decision is final either because no appeal was pursued, the appeal was dismissed, or no appeal is permissible neither party can revisit the matter in a future suit or proceeding between the same parties.

Place of Suing under Code of Civil Procedure 1908

When a legal dispute arises, the first crucial step is determining where the lawsuit should be filed. The place of suing refers to the appropriate court where a case must be initiated. This ensures that the case is heard by a court with the right jurisdiction, leading to an efficient and fair resolution. The Code of Civil Procedure (CPC) provides clear guidelines on where legal actions should be instituted, preventing unnecessary delays and improper filings.

Court of Proper Jurisdiction (Section 15 of Code of Civil Procedure 1908)

Under Section 15 of the CPC, every lawsuit should be filed in the court of the lowest grade that is competent to handle it. This provision ensures that higher courts are not burdened with cases that can be resolved at a lower level, allowing them to focus on more complex matters.

Section 16: Where to File a Lawsuit Involving Immovable and Movable Property

This section specifies that cases concerning immovable property (real estate) must be filed in the court where the property is located. These cases include:

Recovering property

Partition of property

Mortgage-related claims

Disputes over property rights or interests.

Compensation claims for damage to immovable property.

Recovering movable property under attachment or seizure.

Key Exception:

If the lawsuit seeks a remedy against property held by the defendant, and that remedy can be obtained solely through the defendant's compliance, the case can be filed:

In the court where the property is located, or

In the court where the defendant lives, works, or conducts business.

Case Laws:

Anand Bazaar Patrika v. Biswanath Prasad **AIR1986 PAT 57**: A suit for specific performance of a sale contract must be filed in the court where the property is located, not where the cause of action arose.

Section 17: When Property is in Different Court Jurisdictions

If a case involves immovable property spread across multiple court jurisdictions, the plaintiff can file in any court where part of the property is located. On condition that the chosen court must have the authority to handle the entire claim based on its monetary limit.

Section 18: What Happens When Jurisdiction is Uncertain?

This section deals with situations where it is unclear which court's jurisdiction a property falls under.

Two Main Provisions:

Court Declaration: If multiple courts may have jurisdiction and uncertainty exists, any of those courts can record a statement acknowledging the confusion and proceed with the case. The court's decision is considered valid.

Objections in Appeals: If a case is later challenged on jurisdictional grounds, an appellate court cannot reject it unless:

At the time of filing, there was no reasonable doubt about jurisdiction.

The error led to a failure of justice.

Section 19: Suits for Compensation for Wrongs to Person or Movables

This section explains where a person can file a lawsuit when they seek compensation for harm caused to their body or to their movable property.

Key Points

If the wrongful act happened in one place, but the person being sued (defendant) lives or works in another place, the person filing the suit (plaintiff) has a choice:

They can file the case where the wrongful act happened.

Or they can file it where the defendant lives, works, or conducts business.

Section 20: Other suits to be instituted where defendants reside or cause of action arises

This section applies to cases that do not fall under specific jurisdiction rules. It determines where a lawsuit should be filed.

Key Points:

A lawsuit must be filed in a court within whose jurisdiction:

The defendant (or all defendants, if there is more than one) resides, works, or does business at the time the lawsuit is started.

If there are multiple defendants, and at least one of them meets the above criteria, the suit can be filed there if either:

The court gives permission, or

The other defendants do not object.

The lawsuit can also be filed where the cause of action (the event leading to the dispute) took place, either fully or partially.

Special Rule for Corporations: A company is considered to be doing business at:

Its main office.

Any branch office, if the dispute is related to activities at that branch.

Case Laws: -

ABC Laminart Pvt. Ltd. vs. A.P. Agencies AIR 1989 SC 1239

In contractual disputes, the jurisdiction of the court is determined by either the place where the contract was signed or where the cause of action, such as a breach or failure of delivery, occurred. If both parties agree to confer exclusive jurisdiction to a particular court, such an agreement is legally valid only if it is explicitly clear, precise, and unambiguous. Additionally, the clause must not contravene Sections 23 and 28 of the Indian Contract Act, which prohibit unlawful agreements and restrictions on legal proceedings.

Understanding Jurisdiction: The Foundation of Civil Litigation under the CPC

In the realm of civil litigation, the concept of 'jurisdiction' is paramount. It serves as the bedrock upon which the authority of a court to hear and decide a case rests. Without proper jurisdiction, any decree or order passed by a court is a nullity, void ab initio, and legally unenforceable. The Civil Procedure Code, 1908 (CPC) meticulously delineates the various facets of jurisdiction, ensuring that every court operates within its defined legal boundaries, thereby safeguarding fairness and preventing arbitrary judicial action.

Concept of Jurisdiction

At its simplest, jurisdiction refers to the authority or power of a court to entertain, try, and determine a suit, application, or other proceeding. It is derived from the law and defines the limits within which a court can exercise its judicial functions. No court can assume jurisdiction beyond what is expressly or impliedly conferred upon it by law.

Importance of Jurisdiction

The significance of jurisdiction cannot be overstated:

• Validity of Decree: A decree passed by a court without jurisdiction is a nullity, meaning it has no legal effect whatsoever.

• Rule of Law: It upholds the rule of law by ensuring that judicial power is exercised only by competent authorities.

• Preventing Overreach: It prevents courts from overreaching their powers and encroaching upon the domain of other courts or tribunals.

• Fair Trial: It contributes to a fair trial by ensuring that disputes are heard by the appropriate forum with the necessary legal competence.

Types of Jurisdiction under CPC:

The CPC classifies jurisdiction into several distinct categories:

1. Subject-Matter Jurisdiction (Peculiar Jurisdiction / Competency of Court):

o This refers to the court's power to hear a particular class of cases or the inherent power to try suits of a particular nature. Section 9 of the CPC states that courts shall have jurisdiction to try all suits of a civil nature, excepting suits of which their cognizance is either expressly or impliedly barred. If a court lacks jurisdiction over the subject matter, no amount of consent or waiver by parties can confer it.

o Example: A Civil Court cannot try a case exclusively falling under the jurisdiction of a Rent Control Tribunal or a Family Court, unless specifically empowered.

2. Pecuniary Jurisdiction (Section 6, Section 15 of CPC):

o This relates to the monetary value or valuation of the subject matter of the suit. Different courts are empowered to hear cases up to a certain financial limit.

o **Section 15** states that "Every suit shall be instituted in the Court of the lowest grade competent to try it." This principle implies that a suit must be filed in the court having the lowest pecuniary limits but capable of trying the suit based on its value.

o **Section 6** reaffirms that no court shall have jurisdiction over suits whose value exceeds the pecuniary limits of its ordinary jurisdiction.

o Example: A Civil Judge (Junior Division) might have jurisdiction for suits up to Rs. 5 lakhs, while a Civil Judge (Senior Division) might hear suits up to Rs. 20 lakhs, and a District Court above that.

3. Territorial Jurisdiction (Sections 16 to 20 of CPC):

o This defines the geographical limits within which a court can exercise its authority. A court can only try suits that arise within its territorial boundaries.

o Section 16: Deals with suits relating to immovable property, which must be instituted where the property is situated.

o Sections 17-18: Provide for situations where immovable property is located within the jurisdiction of different courts or where local limits are uncertain.

o Section 19: Deals with suits for compensation for wrongs to person or movable property.

o Section 20: The residuary section, states that every other suit shall be instituted where the defendant resides or carries on business, or where the cause of action wholly or partly arises.

• **Hira Lal Patni v. Sri Kali Nath (1962):** The Supreme Court emphasized that a decree passed by a court without inherent jurisdiction is a nullity, and its invalidity can be set up whenever it is sought to be enforced or relied upon.

• **Bhoop Singh v. Ram Singh Major (1995):** Reiterated that objections to territorial or pecuniary jurisdiction must be taken at the earliest opportunity, or they are deemed waived (unless there is a total lack of inherent jurisdiction).

• **A.R. Antulay v. R.S. Nayak (1988):** Highlighted that a court cannot confer jurisdiction upon itself which is not provided by law.

General Power of Transfer and Withdrawal under the Civil Procedure Code, 1908

Introduction

The Civil Procedure Code, 1908 (CPC) is a procedural law governing the administration of civil proceedings in India. While the CPC primarily deals with the procedures related to suits, execution of decrees, and other related matters, it also implicitly touches upon the concepts of transfer and withdrawal of cases. This article aims to provide a comprehensive overview of the general power of transfer and withdrawal of suits and proceedings under the CPC, highlighting the relevant sections and judicial interpretations within the context of Indian law.

Transfer of Cases under the CPC

The power to transfer cases is primarily governed by Sections 22 to 25 of the CPC. These sections aim to ensure that justice is not only done but also seen to be done, by allowing for the transfer of cases where circumstances warrant it.

1. Section 22: Power to Transfer Suits Which May be Instituted in More Than One Court

Section 22 deals with situations where a suit can be instituted in multiple courts. It states that where a suit may be instituted in any one of two or more courts, and the defendant, after notice to the other parties, applies to have the suit transferred to one of the other courts, the High Court must determine in which of such courts the suit shall proceed.

Key Elements:

The suit must be capable of being instituted in more than one court.

The defendant must apply for the transfer.

Notice must be given to all other parties.

The High Court decides on the transfer.

Purpose: This section is designed to prevent multiplicity of litigation and to consolidate proceedings in a single, convenient court. It also aims to prevent the plaintiff from choosing a court that might unduly prejudice the defendant.

2. Section 23: To What Court Application Lies

Section 23 clarifies which court has the power to entertain an application for transfer under Section 22.

Sub-section (1): Where the several courts referred to in Section 22 are subordinate to the same High Court, the application shall be made to the High Court.

Sub-section (2): Where such courts are subordinate to different High Courts, the application shall be made to the High Court to which the court in which the suit was first instituted is subordinate.

Practical Application: This section provides a clear hierarchy for determining the appropriate High Court to hear a transfer application, depending on the jurisdiction of the courts involved.

3. Section 24: General Power of Transfer and Withdrawal

Section 24 provides a broader and more discretionary power to the High Court and the District Court to transfer or withdraw suits.

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

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

(b) withdraw any suit, appeal or other proceeding pending in any court subordinate to it, and—

(i) try or dispose of the same; or

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

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

Scope and Interpretation:

Wide Discretion: This section grants broad discretionary powers to the High Court and the District Court.

"At any Stage": The transfer or withdrawal can occur at any stage of the proceeding.

Subordinate Courts: The power extends to cases pending in courts subordinate to the High Court or District Court.

Competent Court: The transferee court must be competent to try the suit.

Notice Requirement: While the court can act suo moto (on its own motion), it generally requires notice to the parties and an opportunity to be heard.

Grounds for Transfer: The grounds for transfer under Section 24 are not explicitly defined but typically include:

Reasonable apprehension of bias or prejudice.

Convenience of the parties and witnesses.

Questions of law are complex and require specialized knowledge.

Expeditious disposal of the suit.

For example, in Maneka Sanjay Gandhi v. Rani Jethmalani (AIR 1979 SC 468), the Supreme Court transferred a case to ensure a fair trial and prevent any apprehension of bias.

4. Section 25: Power of Supreme Court to Transfer Suits, etc.

Section 25 vests the Supreme Court with the power to transfer cases from one High Court to another or from a civil court in one state to a civil court in another state.

Grounds: The Supreme Court can exercise this power if it is satisfied that such an order is necessary for the ends of justice.

Procedure: The application must be made by a party to the suit and must be supported by an affidavit.

Significance: This section is crucial for ensuring justice in cases with inter-state implications or where there is a potential for conflicting judgments from different High Courts.

Withdrawal of Suits under the CPC

The CPC also deals with the withdrawal of suits by the plaintiff. Order XXIII Rule 1 outlines the conditions and consequences of withdrawing a suit.

Order XXIII Rule 1: Withdrawal of Suit or Abandonment of Part of Claim

Sub-rule (1): At any time after the institution of a suit, the plaintiff may, as against all or any of the defendants, withdraw his suit or abandon part of his claim.

Sub-rule (2): Where the Court is satisfied—

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or abandon such part of a claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

Sub-rule (3): Where the plaintiff withdraws from a suit, or abandons part of a claim, without the permission referred to in sub-rule (2), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

Key Aspects and Interpretation:

Plaintiff's Right: The plaintiff has an inherent right to withdraw a suit at any time.

Formal Defect: If the court is satisfied that the suit is bound to fail due to a formal defect (e.g., improper valuation, misjoinder of parties), it can grant permission to withdraw with liberty to file a fresh suit.

Sufficient Grounds: "Sufficient grounds" are interpreted broadly and may include discovery of new evidence, change in circumstances, or any other reason that justifies allowing a fresh suit.

Costs: If the plaintiff withdraws without permission, they are liable for costs.

Bar to Fresh Suit: Withdrawal without permission bars a fresh suit on the same cause of action.

Example: In Vrajlal Manilal & Co. v. N.V. Abdullahbhai & Co. (AIR 1968 Guj 192), the court elaborated on what constitutes a "formal defect" and the conditions under which permission to withdraw with liberty can be granted.

Institution of a Suit under Civil Procedure Code

Definition of Suit

A “suit” refers to any legal proceeding initiated by a plaintiff against a defendant in a civil court, seeking enforcement of a right, redress of a grievance, or recovery of property or compensation. It begins when a party approaches the court by presenting a plaint.

The CPC does not explicitly define the term “suit,” but it forms the bedrock of civil litigation and includes every legal action initiated by a private person for enforcement of a right.

Legal Provision: Section 26 and Order IV of CPC

The institution of a suit is primarily governed by:

Section 26 of the CPC: “Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.”

Order IV: Lays down the procedural aspects for instituting a suit.

These provisions together frame the groundwork for initiating a civil case.

Steps for Institution of a Suit

1. Presentation of the Plaint

A civil suit formally begins with the presentation of a plaint, a document that contains the facts of the case, the relief sought, and the legal grounds on which the relief is claimed. The plaint must:

Be in writing,

State the name of the court and the parties involved,

Include a concise statement of facts,

Specify the relief claimed,

Be signed and verified by the plaintiff.

The plaint is presented to the appropriate civil court having jurisdiction—territorial, pecuniary, and subject-matter.

2. Payment of Court Fees

The plaintiff is required to pay court fees as per the Court Fees Act applicable in the respective state. The amount depends on the nature and value of the claim. Insufficient payment can lead to the rejection of the plaint under Order VII Rule 11.

3. Registration and Numbering of the Suit

Once the plaint is accepted, the court registers the suit and assigns a suit number. This step formally recognizes the beginning of the judicial process.

4. Issue of Summons

After registering the suit, the court issues summons to the defendant(s), directing them to appear before the court and respond to the plaint. This is governed by Order V of the CPC.

Conditions Precedent to Institution

1. Cause of Action

A civil suit must be based on a valid cause of action, a bundle of essential facts which gives the plaintiff the right to sue.

2. Jurisdiction

The plaintiff must file the suit in a court that has:

Territorial jurisdiction – where the cause of action arose or where the defendant resides.

Pecuniary jurisdiction – the monetary value of the claim should fall within the court's authority.

Subject-matter jurisdiction – the nature of the dispute should fall under the category the court can adjudicate.

3. Limitation

The suit must be instituted within the limitation period as prescribed by the Limitation Act, 1963. Filing a suit after the limitation period generally leads to its dismissal.

Reference Case Laws

The courts in India have consistently held that presentation of the plaint is the formal commencement of a suit. In **Maya Devi v. Raj Kumari Batra (2010),** the Supreme Court reaffirmed that institution takes place on the date the plaint is presented before the competent court.

Furthermore, in **Lachhman Dass v. Jagat Ram (2007)**, it was held that non-compliance with mandatory procedural requirements, such as non-payment of requisite court fees or filing in a court lacking jurisdiction, can invalidate the institution of the suit.

Reference Case Laws

1. Cannot go behind the decree:

In **Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman (1970)**, the Supreme Court held that an executing court cannot question the legality or correctness of a competent court's decree and must enforce it as it stands.

2. No new trials:

In **MMTC Limited v Anglo American Metallurgical Coal Pvt. Limited INSC 1279 2025** the Supreme Court held that an objection petition under Section 47 of the Code of Civil Procedure, 1908 (CPC)—against execution of a decree—should not be treated as the commencement of a new trial.

3. Multiple Preliminary Decrees allowed in partition suits:

In **Phoolchand v. Gopal Lal (1967)** and **Shankar v. Chandrakant (1995)**, the Supreme Court ruled that the CPC does not prohibit passing more than one preliminary decree if changing circumstances or adjusted shares require it before a final decree is drawn.

4. Indian Bank v. Maharashtra State Co-operative Marketing Federation Ltd. (1998):

Clarified that Section 10 does not stop a person from filing a new suit, but only stops the court from going ahead with the trial.Stated the main goal is to stop courts with equal power from running two cases at the same time and giving different results.

5. National Institute of Mental Health and Neuro Sciences v. C. Parameshwara (2005):

Ruled that the matter in both cases must be directly and substantially the same. Just having some similar points or facts is not enough to pause the second suit.

6. Kiran Singh v. Chaman Paswan (1954):

Held that a decree passed by a court lacking territorial or pecuniary jurisdiction is a complete nullity, and consent of parties cannot cure a fundamental lack of jurisdiction.

7. Hira Lal Patni v. Sri Kali Nath (1962)

Established that an objection to the place of suing (territorial/pecuniary) must be taken at the earliest possible opportunity; once a case is decided on merits, such technical objections cannot be arbitrarily raised later.

8. Harshad Chiman Lal Modi v. DLF Universal Ltd. (2005):

Clarified that suits for land or immovable property must be instituted in the court within the local limits of whose jurisdiction the property is situated, per Section 16 of the Code of Civil Procedure (CPC).

Important Questions

1. Define Decree. Discuss different kinds of Decree. Distinguish between Decree and Order.

2. What do you mean by the term ‘jurisdiction? Discuss different kinds of jurisdiction.

3. Define suit and discuss its essentials.

4. Define pleading, plaint and written statement.

5. Explain the Doctrine of Res Sub Judice and Doctrine of Res Sub Judicata. Distinguish between them.

6. what do you mean by the term summon? What are the different modes of service of summons? Explain substituted service of summons.

7. Write short notes on set off and counter claim.

8. What do you mean by suit of a civil nature?

9. discuss the suits expressly barred and impliedly barred.

10. Discuss the basic test of real controversy between the parties in amendment of pleadings.

Unit II

EXECUTION

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

In Periyammal (Dead) Through LRs & Ors. v. V. Rajamani & Anr. CIVIL APPEAL NOS. 3640-3642 OF 2025 Etc. it is observed by the Supreme Court that an executing court is competent to decide all questions relating to execution, discharge, or satisfaction of the decree, including those concerning possession, without requiring the decree-holder to initiate fresh litigation.

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

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

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

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

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

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

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

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

1.3 APPLICATION FOR EXECUTION:

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

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

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

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

(a) the number of the suit;

(b) the names of the parties;

(c) the date of the decree;

(d) whether any appeal has been preferred from the decree;

(e) whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree;

(f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results;

(g) the amount with interest (if any) due upon the decree, or other relief granted thereby, to- gether with particulars of any cross decree, whether passed before or after the date of the decree sought to be executed;

(h) the amount of the costs (if any) awarded;

(i) the name of the person against whom execution of the decree is sought; and the mode in which the assistance of the court is required, whether —

i) by the delivery of any property specifically decreed;

ii) by the attachment, or by the attachment and sale, or by the sale without attachment, of any property;

iii) by the arrest and detention in prison of any person;

iv) by the appointment of a receiver;

v) otherwise, as the nature of the relief granted may require.

(3) The court to which an application is made under sub-rule (2) may require the applicant to produce a certified copy of the decree.

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

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

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

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

(a) by delivery of any property specifically decreed;

(b) by attachment and sale or by sale without attachment of any property;

(c) by arrest and detention in prison for such period not exceeding the period specified in section 58, where arrest and detention is permissible under that section;

(d) by appointing a receiver; or

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

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

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

i) is likely to abscond or leave the local limits of the jurisdiction of the Court. or

ii) has, after the institution of the suit in which the decree was passed, dishonestly trans- ferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or

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

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

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

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

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

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

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

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

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

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

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

ILLUSTRATIONS

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

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

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

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

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

(1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank notes cheques, bills of exchange, hundis, promis- sory notes, Government securities, bonds or other securities for money, debts, shares in a corpo- ration and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment debtor,

or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment debtor or by another person in trust for him or on his behalf :

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

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

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

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

(d) books of account;

(e) a mere right to sue for damages;

(f) any right of personal service;

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

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

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

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

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

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

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

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

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

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

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

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

(n) a right to future maintenance;

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

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

Explanation I : The moneys payable in relation to the matters mentioned in clauses (g), (h), (I), (Ia), (j), (I) and (0) are exempt from attachment or sale, whether before or after they are actually payable, and, in the case of salary, the attachable portion thereof is liable to attachment, whether before or after it is actually payable.

Explanation II : In clauses (I) and (ia), “salary” means the total monthly emoluments, ex- cluding any allowance declared exempt from attachment under the provisions of clause (I), de- rived by a person from his employment whether on duty or on leave.

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

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

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

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

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

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

(a) by his own labour, or

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

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

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

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

Section 61 - Partial exemption of agricultural produce:

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

Section 62 - Seizure of property in dwelling-house:

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

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

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

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

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

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

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

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

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

attachment

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

(a) the judgment debtor, or

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

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

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

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

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

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

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

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

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

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

(4) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the court may suspend the execution of the order for such time as it thinks fit, and may, in its discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.

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

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

(1) In the case of —

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

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

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

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

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

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

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

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

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

Rule 49. Attachment of partnership property :

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

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

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

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

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

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

Rule 50 provdes for the execution of decree against firm — (1) Where a decree has been passed against a firm, execution may be granted- (a) against any property of the partnership;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) In the case of —

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

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

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

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

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

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

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

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

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

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

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

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

Garnishee Orders: Order XXI Rules 46 CPC

Meaning, Definition & Explanation

A Garnishee Order is a judicial directive enabling a decree-holder (creditor) to recover debts from a third party who owes money to the judgment debtor. This third party, termed the garnishee, is instructed to pay the debt directly to the decree-holder, bypassing the judgment debtor. In India, the legal framework for garnishee orders is encapsulated under Order XXI, Rule 46 of the Code of Civil Procedure, 1908 (CPC). The term “garnishee” is derived from the French word ‘garnir,’ meaning to warn or prepare.

Legal Provisions / Procedure / Specifications / Criteria

The procedure for issuing a garnishee order under the CPC involves several steps:

Attachment of Debt: Under Order XXI, Rule 46, the court may attach debts (excluding those secured by a mortgage or charge) owed to the judgment debtor by issuing an order prohibiting the payment of such debts to the judgment debtor.

Notice to Garnishee: As per Rule 46A, upon the decree-holder's application, the court issues a notice to the garnishee, directing them to either pay the debt into court or show cause why they should not do so. This ensures the garnishee is informed and given an opportunity to respond.

Order Against Garnishee: If the garnishee fails to comply with the notice or disputes liability, the court may, under Rule 46B, order the garnishee to pay the debt. Such an order is treated as a decree against the garnishee, enabling the decree-holder to execute it as if it were a regular decree.

Disputed Liability: According to Rule 46C, if the garnishee disputes their liability, the court will adjudicate the matter, determining the existence and extent of the debt. This provision ensures that the garnishee's rights are protected, and any genuine disputes are resolved judicially.

Third-Party Claims: Rule 46D allows any third party claiming an interest in the attached debt to appear and prove their claim. The court will then adjudicate upon such claims, ensuring that the rights of third parties are not unjustly affected by the garnishee proceedings.

Payment as Discharge: Under Rule 46F, payment made by the garnishee in compliance with the court's order serves as a valid discharge of their liability to the judgment debtor. This provision protects the garnishee from any future claims by the judgment debtor regarding the same debt.

Case Laws / Precedents / Overruling Judgments

Several landmark judgments have elucidated the application of garnishee orders in India:

Syndicate Bank v. Vijay Kumar and Others (1992): In this case, the Supreme Court held that a bank, upon receiving a garnishee order, is entitled to set off the amount owed by the customer against any debts due from the customer to the bank before making payment to the decree-holder. This judgment underscores the bank's right to claim a set-off in garnishee proceedings.

Food Corporation of India v. Sukh Deo Prasad (2009): The Supreme Court emphasized that before issuing a garnishee order, the court must ensure that the debt owed by the garnishee to the judgment debtor is clear and undisputed. This case highlights the necessity of proper adjudication to prevent unjust enrichment.

Essentials / Elements / Pre-Requisites

For a garnishee order to be validly issued, certain essential conditions must be satisfied:

Existence of a Debt: There must be a clear, existing debt owed by the garnishee to the judgment debtor. Contingent or future debts are generally not subject to garnishee orders.

Absence of Dispute: The debt should be undisputed. If the garnishee contests the debt, the court must first adjudicate the dispute before issuing a garnishee order.

No Existing Charge or Mortgage: Debts secured by a mortgage or charge are typically excluded from garnishee proceedings, as specified under Order XXI, Rule 46.

Defences / Exceptions / Exceptions to Defences

A garnishee may raise certain defences to contest a garnishee order:

Non-existence of Debt: The garnishee can assert that no debt is owed to the judgment debtor, thereby nullifying the basis for the garnishee order.

Debt is Secured: If the debt is secured by a mortgage or charge, it falls outside the purview of garnishee proceedings under Order XXI, Rule 46.

Prior Set-off: The garnishee may claim a right to set off any amount owed to them by the judgment debtor against the debt in question, as recognized in the Syndicate Bank v. Vijay Kumar case.

Precept in CPC

A precept in CPC is a directive or order issued by the court that has issued a decree to another competent court, instructing it to attach any property owned by the judgment-debtor. According to the Concise Oxford Dictionary, a precept can be described as a "command," "order," "writ," or "warrant."

Ordinarily, the court responsible for executing the decree is the same court that passed it. However, certain situations may arise where the court faces challenges executing the decree. For example, the judgment debtor might not possess sufficient property within the court's jurisdiction to satisfy the decree, or the debtor could reside outside the court's jurisdiction, making it impossible to execute a warrant against their person.

To address these circumstances, Section 38 of the Civil Procedure Code stipulates that the decree may be executed either by the court that issued it or by the court to which it has been transferred for execution.

Historical Background of Precepts in the Civil Procedure Code

The concept of precepts in the legal system was introduced by the Civil Procedure Code of 1908. Prior to this, there was a significant case known as 'Saboda Prosad Mullick v. Luchmeeput Singh Deogur', reported in 14 moo Ind app 529, where the Judicial Committee supported an order from a decreeing Court in East Burdwan.

Interim Orders under CPC

Interim orders refer to temporary, provisional or interim arrangements made by the court during the pendency of legal proceedings to protect rights and interests of parties. Interim orders are intended to preserve status quo, maintain equilibrium and mitigate hardships until conclusion of the proceedings.

The Code of Civil Procedure contains several provisions empowering courts to pass interim orders at the discretion of the court. Interim orders enable interim relief in cases of urgency until final orders. Interim orders do not determine substantive or legal rights of parties, but are temporary adjustments regulating rights of parties in the interim.

Types of Interim Orders

Some important types of interim orders under CPC are:

1. Temporary Injunctions (O.39 R.1) – Court can issue temporary injunction restraining defendant from committing acts complained of until further orders. This maintains status quo regarding subject matter to prevent irreparable loss.

2. Interlocutory Mandatory Injunctions (O.39 R.2) – Mandatory injunctions issue directing defendant to carry out specified acts pending suit to undo harm or prevent irreparable damage.

3. Detention, Preservation and Inspection of Subject matter (O.39 R.2) – Court can pass orders for custody, detention, preservation or inspection of any property which is subject matter of suit to maintain status quo.

4. Appointment of Receiver (O.40 R.1) – Court may appoint Receiver of any property at issue subject to conditions during proceedings to protect assets.

5. Attachment before Judgment (O.38) – Where defendant intends to obstruct execution of decree, court may order attachment of property before judgment.

6. Temporary Ex parte Orders (O.39 R.3) – Urgent ad-interim ex-parte orders can be passed without notice to prevent damage pending admission by court.

7. Security for Keeping Property (O.39 R.4) – Defendant can be directed to furnish security for fulfilling judgment before removing attached property.

8. Directions on Disputed Possession (O.39 R.6) – Where suit property's possession is disputed, court may pass interim order regarding custody and enjoyment till rights decided.

9. Commission for Preservation (O.39 R.7) – Local commission may be issued to assess and report measures required to protect or preserve property pendente lite.

10. Stay of Execution of Decree (O.41 R.5) – Court which passed decree may on sufficient grounds order stay of execution on terms on application by judgment debtor.

Principles for grant of Interim Orders

Irreparable hardship and injury will be caused if order not granted.

Balance of convenience lies in favour of order.

Prima facie case exists in favour of applicant.

Order necessary to preserve status quo or prevent damage.

Case Laws

1. Dorab Cawasji Warden vs Coomi Sorab Warden, AIR 1990 SC 867

The Supreme Court observed that grant of an interim relief preserving status quo is a device to ensure that the matter does not become either infructuous or a fait accompli before the final hearing. The object is to protect party against injury by violation of rights pending trial.

2. Gujarat Bottling Co. Ltd. vs Coca Cola, (1995) 5 SCC 545

The Supreme Court held that interim injunctions can be granted only if the plaintiff makes out a prima facie case, balance of convenience is in his favour and refusal would cause irreparable injury. There must be a substantial question to be tried on merits.

Details of procedure relating to Commissions (Order XXVI)

Introduction

A commission under the Code of Civil Procedure (CPC) is an official directive issued by a court, appointing an individual known as a commissioner to perform specific tasks on behalf of the court. This process is essential for gathering evidence, conducting investigations, and facilitating the judicial process in various scenarios.

Concept of Commission

A commission involves instructing a commissioner to carry out tasks essential for the case's adjudication. These tasks may include local investigations, recording evidence, adjusting accounts, and more. The commissioner acts as an extension of the court, ensuring that specific judicial functions are performed efficiently and impartially.

Authority to Appoint a Commissioner

1. Court's Authority: Under Section 75 of the CPC, "the Court" has the authority to issue a commission. The court adjudicating the matter is responsible for appointing the commissioner, either upon the application of a party or suo moto (on its own initiative).

2. Eligibility of Commissioners: Commissioners are typically selected from a panel of qualified professionals established by the High Court. This panel includes individuals with the expertise required for the tasks. The commissioner must be independent, impartial, and possess the necessary skills to carry out the duties effectively.

3. Appointment Procedure: Each High Court has its own rules for appointing commissioners. For instance, the Delhi High Court Rules, 1967 (Chapter 10), outline the following procedure:

• Formation of a panel of commissioners, including young lawyers and a lady lawyer.

• Notification of vacancies to the bar, with applications forwarded to the High Court.

• The term of appointment is generally three years, extendable by the High Court but not exceeding six years.

Circumstances for Issuing a Commission

1. Examination of Witnesses (Order 26, Rules 1-8): A commission can be issued for examining witnesses under certain conditions:

• Sickness or Infirmity (Order 26 Rule 1): If a witness cannot attend court due to health reasons, a commission may be issued to record their evidence.

• Apprehension of Danger (Order 26 Rule 4): If a witness fears for their safety, the court may allow their evidence to be recorded through a commission.

• Pardanashin Ladies (Section 132): The attendance of pardanashin ladies may be exempted, allowing evidence to be recorded via commission.

• Civil or Military Officers (Order 26 Rule 4): Government officials whose presence affects public service can provide evidence through a commissioner.

• Persons Detained in Prison (Order 26 Rule 7): A commission can be issued to record evidence from individuals in custody.

2. Local Investigations (Order 26, Rules 9-10): The court can appoint a commissioner to conduct local investigations to clarify issues related to the case, such as property conditions or market value.

3. Adjustment of Accounts (Order 26, Rule 11): In cases involving complex financial matters, a commissioner can be appointed to scrutinize and adjust accounts.

4. Partition of Property (Order 26, Rules 13-14): A commissioner may be appointed to divide property as per the court's decree in partition suits.

5. Scientific, Technical, or Expert Investigations (Order 26, Rule 10A): For cases requiring specialized knowledge, a commissioner with the appropriate expertise can conduct investigations and provide expert reports.

6. Sale of Property (Order 26, Rule 10C): In execution of a decree requiring property sale, a commissioner can be appointed to manage the sale and report on the proceedings.

7. Ministerial Tasks (Order 26, Rule 10B): Commissioners can also be appointed to perform administrative or ministerial tasks, such as preparing documents or calculations.

Powers and Duties of Commissioners (Order 26, Rules 16-18)

Commissioners have specific powers and duties, including:

• Examining Parties and Witnesses (Order 26 Rule 16): Commissioners can question individuals and request documents relevant to their tasks.

• Entering Property (Order 26 Rule 16): With court permission, commissioners may enter and search premises.

• Proceeding Ex Parte (Order 26 Rule 17): If a party fails to appear, the commissioner can proceed with the task without their input.

Remuneration and Expenses (Order 26, Rule 15)

The CPC does not specifically provide for remuneration of commissioners, but Rule 15 allows the court to direct the deposit of funds to cover the commissioner's expenses. The court has discretion in determining the remuneration based on the complexity of the tasks performed.

Limitations on Commissioners

Commissioners are restricted from performing judicial functions, such as determining property values or making legal decisions. Their role is to assist the court by providing factual reports and evidence.

Evidentiary Value of the Commissioner's Report (Order 26, Rule 10(2))

The report and evidence provided by the commissioner form part of the case record. The court evaluates this report, which can be challenged by the parties on valid grounds. The weight given to the commissioner's report is determined by the court.

Arrest and Attachment before Judgement in CPC

In most cases, a creditor with a claim against their debtor must first obtain a decree against the debtor and then execute the decree by either having the debtor arrested or attaching their property in accordance with the provisions outlined in Order 21 of the legal code.

However, under certain special circumstances, provided under Order XXXVIII, the creditor may seek the arrest of the debtor or the attachment of their property even before obtaining a judgement.

These provisions are designed to serve two primary purposes:

1. To facilitate the plaintiff in recovering the amount of the decree if it is eventually ruled in their favour.

2. To prevent any attempts by the defendant to obstruct or evade the execution of a decree issued against them.

Conditions for Arrest Before Judgement

An application for arrest may be filed by the plaintiff at any point after the presentation of the plaint, even before the defendant has been served with summons.

However, before exercising this exceptional power, the court must be satisfied with two conditions:

(a) The plaintiff's suit must be genuine, and their cause of action must appear to be prima facie valid, subject to the plaintiff substantiating the allegations made in the plaint.

(b) The court must have sufficient grounds to believe, based on adequate evidence, that unless this extraordinary power is invoked, there is a genuine risk that the defendant will attempt to evade the jurisdiction of the court by either leaving the jurisdiction or transferring their property beyond the reach of the court's authority.

The authority to arrest the defendant, particularly before a decree is issued in favour of the plaintiff, is a drastic measure and should be exercised with careful consideration.

Before invoking this rule, the court must be convinced, based on substantial evidence, that there exists a genuine risk that the defendant will attempt to evade the jurisdiction of the court by either leaving the jurisdiction or disposing of their assets.

As highlighted in the case of Vareed Jacob v. Sosamma Greevarghese (2004) 6 SCC 378, the court must exercise this power with due care, caution, and circumspection.

It's crucial to note that the power to arrest before judgement should not be utilised as a means for the plaintiff to coerce or compel the defendant to settle, nor should it be employed to ensure an easier execution of the decree.

This principle was emphasised in the case of Raman Tech. & Process Engg Co. v. Solanki Traders (2008) 2 SCC 302.

Attachment Before Judgement

Under Rule 5 of Order XXXVIII, if the court becomes convinced, either through affidavit or other means, that the defendant intends to hinder or postpone the execution of any potential decree against them, it may take action. This action may include:

(a) Directing the defendant, within a specified timeframe, to provide security in a specified amount. This security may serve to ensure that the defendant preserves their property or its value until it can be used to satisfy any potential decree, or

(b) Directing the defendant to appear before the court and present reasons as to why they should not be required to provide security.

If the defendant fails to present sufficient reasons or neglects to provide the required security within the stipulated time frame, the court may then order the attachment of the specified property, or a portion of it, which appears adequate to satisfy any decree that may be issued in the suit.

Rules as to Attachment Before Judgement

Attachment before judgement is governed by several rules outlined in Order 38 of the legal code. Thesaid rules as follows:

Mode of Attachment (Rule 7): Attachment shall be carried out in the same manner as the attachment of property in execution of a decree.

2. Exemption from Attachment (Rule 12): Agricultural produce in possession of an agriculturist cannot be attached by the court.

3. Rights of Third Parties (Rule 10): Attachment before judgement does not affect the rights of individuals who had rights to the property prior to the attachment, provided they are not parties to the suit.

4. Adjudication of Claims (Rule 8): Any claim made to the property attached before judgement will be adjudicated in the same manner as claims to property attached in execution of a decree.

5. Reattachment in Execution (Rules 11-11-A): If a decree is passed in favour of the plaintiff after attachment before judgement, there's no need to reattach the property in execution. The provisions of Order 21 concerning attachment made in execution of a decree also apply to attachment before judgement.

6. Effect of Attachment: Attachment before judgement serves as a guarantee that the decree will not become ineffective due to lack of property for satisfaction. However, the plaintiff does not gain title to the property through attachment before judgement.

7. Withdrawal of Attachment (Rule 9): If the defendant furnishes security, the court must withdraw the attachment.

8. Removal of Attachment (Rule 9): The court will withdraw the attachment if the defendant furnishes security or if the suit is dismissed.

9. Determination of Attachment: Attachment is determined in various circumstances, including when the defendant furnishes security, when the attaching creditor withdraws the attachment, when the suit is dismissed.

Remedy against Attachment before Judgment

The remedy of attachment before judgement is considered an extraordinary measure and should be employed sparingly and strictly in accordance with the law, exercising utmost care and caution to prevent its misuse as a tool of oppression.

Before the court can issue an order of attachment, it must satisfy two conditions:

1. The court must ascertain that the defendant is on the verge of disposing of their property, either wholly or partially

2. It must be established that this disposition is intended to obstruct or delay the execution of any potential decree against the defendant.

Attachment essentially restricts the defendant's ability to alienate their property, and such limitations on the exercise of property rights should only be imposed upon clear and convincing evidence that the order is necessary for the plaintiff's protection.

Mere initition of a suit against an individual does not automatically justify restricting their property rights. Additional circumstances must be present to convince the court of the defendant's intent to defraud the plaintiff.

Attachment before judgement should never be used as a means for the plaintiff to pressure the defendant into reaching a settlement. Therefore, the court must exercise utmost caution and circumspection.

It should thoroughly examine the allegations against the defendant, ensure that the requirements of the legal code are met, and confirm that a valid case for attachment before judgement has been established before issuing the necessary order.

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".

* 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.

* 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 temporary 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 defendant threatens, or intends to remove or dispose of his property with the intention to defraud creditors.

iii) If the defendant 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').

'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.

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 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.

- **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.

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).

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

Section 79. Suits by or against Government

[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, [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:

- In spite 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 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-

"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 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.

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.

CHAPTER - 1 EXECUTION

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

In Periyammal (Dead) Through LRs & Ors. v. V. Rajamani & Anr. CIVIL APPEAL NOS. 3640-3642 OF 2025 Etc. it is observed by the Supreme Court that an executing court is competent to decide all questions relating to execution, discharge, or satisfaction of the decree, including those concerning possession, without requiring the decree-holder to initiate fresh litigation.

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

(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or
(b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or
(c) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it, or
(d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

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

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

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

1.3 APPLICATION FOR EXECUTION:

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

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

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

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

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

(3) The court to which an application is made under sub-rule (2) may require the applicant to produce a certified copy of the decree.

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

(2) Where on the day fixed or on any other day to which the hearing may be adjourned the applicant does not appear when the case is called on for hearing, the court may make an Order that the application be dismissed.
(3) Where the applicant appears and the opposite party to whom the notice has been issued by the court does not appear, the court may hear the application ex parte and pass such Order as it thinks fit.

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

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

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

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

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

i) is likely to abscond or leave the local limits of the jurisdiction of the Court. or

ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or

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

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

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

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

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

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

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

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

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

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

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

ILLUSTRATIONS

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

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

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

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

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

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

(a) the necessary wearing apparel, cooking vessels, beds and bedding of the judgment debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, can- not be parted with by any woman;
(b) tools of artisans, and, where the judgment debtor is an agriculturist, his implements of husbandry and such cattle and seed grain as may in the opinion of the court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section;
(c) houses and other buildings (with the materials and the sites thereof and the land immedi- ately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist or a labourer or a domestic servant and occupied by him;
(d) books of account;
(e) a mere right to sue for damages;
(f) any right of personal service;
(g) stipends and gratuities allowed to pensioners of the Government or of a local authority or of any other employer, or payable out of any service family pension fund notified in the Official Gazette by the Central Government or the State Government in this behalf, and political pension;
(h) the wages of labourers and domestic servants, whether payable in money or in kind;
(i) salary to the extent of the first one thousand rupees and two-thirds of the remainder in execution of any decree other than a decree for maintenance:

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

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

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

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

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

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

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

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

(m) an expectancy of succession by survivorship or other merely contingent or possible right or interest;
(n) a right to future maintenance;
(o) any allowance declared by any Indian law to be exempt from liability to attachment or sale in execution of a decree; and
(p) where the judgment debtor is a person liable for the payment of land revenue, any movable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue.

Explanation I : The moneys payable in relation to the matters mentioned in clauses (g), (h), (I), (Ia), (j), (I) and (0) are exempt from attachment or sale, whether before or after they are actually payable, and, in the case of salary, the attachable portion thereof is liable to attachment, whether before or after it is actually payable.

Explanation II : In clauses (I) and (ia), “salary” means the total monthly emoluments, ex- cluding any allowance declared exempt from attachment under the provisions of clause (I), de- rived by a person from his employment whether on duty or on leave.

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

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

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

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

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

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

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

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

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

Section 61 - Partial exemption of agricultural produce:

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

Section 62 - Seizure of property in dwelling-house:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

recoverable from the judgment debtor as if they were included in, or formed part of, the decree.

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

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

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

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

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

(1) In the case of —
(a) a debt not secured by a negotiable instrument,
(b) a share in the capital of a corporation,
(c) other movable property not in the possession of the judgment debtor, except property de- posited in, or in the custody of, any court, the attachment shall be made by a written order prohib- iting, —

(i) in the case of the debt, the creditor from recovering the debt and the debtor from making payment thereof until the further order of the court;
(ii) in the case of the share, the person in whose name the share may be standing from trans- ferring the same or receiving any dividend thereon;
(iii) in the case of the other movable property except as aforesaid, the person in possession of the same from giving it over to the judgment debtor.

(2) A copy of such Order shall be affixed on some conspicuous part of the court house, and another copy shall be sent in the case of the debt, to the debtor, in the case of the share, to the proper officer of the corporation , and, in the case of the other movable property (except as aforesaid), to the person in possession of the same.
(3) A debtor prohibited under clause (i) of sub-rule (1) may pay the amount of his debt into court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

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

Rule 49. Attachment of partnership property :

- Property belonging to a partnership shall not be attached or sold in execution of a decree other than a decree passed against the firm or against the partners in the firm as such.
- The court may, on the application of the holder of a decree against a partner, make an Order charging the interest of such partner in the partnership property and profits with payment of the amount due under the decree, and may, by the same or a subsequent order, appoint a receiver of the share of such partner in the profits (whether already declared or accruing) and of any other money which may be coming to him in respect of the partnership, and direct accounts and inquir- ies and make an Order for the sale of such interest or other orders as might have been directed or made if a charge had been made in favour of the decree holder by such partner, or as the circum- stances of the case may require.

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

- Every application for an Order under sub-rule (2) shall be served on the judgment debtor and on his partners or such of them as are within India.
- Every application made by any partner of the judgment debtor under sub-rule (3) shall be served on the decree holder and on the judgment debtor, and on such of the other partners as do not join in the application and as are within India.
- Service under sub-rule (4) or sub-rule (5) shall be deemed to be service on all the partners, and all orders made on such applications shall be similarly served.

Rule 50 provdes for the execution of decree against firm — (1) Where a decree has been passed against a firm, execution may be granted- (a) against any property of the partnership;

(b) against any person who has appeared in his own name under rule 6 or rule 7 of Order XXX or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner;
(c) against any person who has been individually served as a partner with summons and has failed to appear.

(2) Where the decree holder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to in sub-rule (1), clauses (b) and (c), as being a partner in the firm, he may apply to the court which passed the decree for leave, and where the liability is not disputed, such court may grant such leave, or, where such liability is disputed, may Order that the liability of such person be tried and determined in any manner in which any issue in a suit may be tried and determined.
(3) Where the liability of any person has been tried and determined under sub-rule (2), the Order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.
(4) Save as against any property of the partnership, a decree against a firm shall not release, render liable or otherwise affect any partner therein unless he has been served with a summons to appear and answer.

51. Attachment of negotiable instruments — Where the property is a negotiable instrument not deposited in a court, nor in the custody of a public officer, the attachment shall be made by the actual seizure, and the instrument shall be brought into court and held subject to further orders of the court.
52. Attachment of property in custody of court or public officer — Where the property to be attached is in the custody of any court or public officer, the attachment shall be made by a notice to such court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the court from which the notice is issued.

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

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

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

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

(2) Where a court makes an Order under clause (a) of sub-rule (1), or receives an application under sub-head (ii) of clause (b) of the said sub-rule, it shall, on the application of the creditor who has attached the decree or his judgment debtor, proceed to execute the attached decree and apply the net proceeds in satisfaction of the decree sought to be executed.
(3) The holder of a decree sought to be executed by the attachment of another decree of the nature specified in sub-rule (1) shall be deemed to be the representative of the holder of the at- tached decree and to be entitled to execute such attached decree in any manner lawful for the holder thereof.
(4) Where the property to be attached in the execution of a decree is a decree other than a decree of the nature referred to in sub-rule (1), the attachment shall be made, by a notice by the court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and, where such decree has been passed by any other court, also by sending to such other court a notice to abstain from executing the decree sought to be attached until such notice is cancelled by the court from which it was sent.
(5) The holder of a decree attached under this rule shall give the court executing the decree such information and aid as may reasonably be required.
(6) On the application of the holder of a decree sought to be executed by the attachment of another decree, the court making an Order of attachment under this rule shall give notice of such Order to the judgment debtor bound by the decree attached; and no payment or adjustment of the attached decree made by the judgment debtor in contravention of such Order with knowledge thereof or after receipt of notice thereof, either through the court or otherwise, shall be recognized by any Court so long as the attachment remains in force.

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

(1) The Order shall also require the judgment debtor to attend court on a specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale.
(2) The Order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the Order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the court house, and also, where the property is land paying revenue to the government, in the office of the Collector of the District in which the land is situate and, where the property is land situate in village, also in the office of the Gram Panchayat, if any, having jurisdiction over that village.)

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

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

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

(a) the property to be sold, or, where a part of the property would be sufficient to satisfy the decree, such part;
(b) the revenue assessed upon the estate or part of the estate, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the government;
(c) any incumbrance to which the property is liable;
(d) the amount for the recovery of which the sale is ordered; and
(e) every other thing which the court considers material for a purchaser to know in order to judge of the nature and value of the property.

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

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

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

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

(2) Where a sale is adjourned under sub-rule (1) for a longer period than thirty days, a fresh proclamation under rule 67 shall be made, unless the judgment debtor consents to waive it.
(3) Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satis- faction that the amount of such debt and costs has been paid into the court which ordered the sale.

72. Decree holder not to bid for or buy property without permission, no holder of a decree in execution of which property is sold shall, without the express permission of the court, bid for or purchase the property. Where decree holder purchases, amount of decree may be taken as pay- ment. Where a decree holder purchases with such permission, the purchase money and the amount due on the decree may, subject to the provisions of section 73, be set-off against one another, and the court

executing the decree shall enter up satisfaction of the decree in whole or in part accord- ingly. Where a decree holder purchases, by himself or through another person, without such per- mission, the court may, if it thinks fit, on the application of the judgment debtor or any other person whose interests are affected by the sale, by Order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale and all expenses attending it, shall be paid by the decree holder.

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

(1) In the case of —
(a) a debt not secured by a negotiable instrument,
(b) a share in the capital of a corporation,
(c) other movable property not in the possession of the judgment debtor, except property de- posited in, or in the custody of, any court, the attachment shall be made by a written order prohib- iting, —

(i) in the case of the debt, the creditor from recovering the debt and the debtor from making payment thereof until the further order of the court;
(ii) in the case of the share, the person in whose name the share may be standing from trans- ferring the same or receiving any dividend thereon;
(iii) in the case of the other movable property except as aforesaid, the person in possession of the same from giving it over to the judgment debtor.

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

(1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has willfully failed to obey it he decree may be enforced the case of decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction by his detention in the civil prison, or by the attachment of his property, or by both.
(2) Where the party against whom a decree for specific performance or for an injunction has been passed in a corporation the decree may be enforced by the attachment of the property of the corporation or with the leave of the court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.
(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force month ,if the judgment debtor has not obeyed the decree and the decree holder has applied to have at- tached property sold, such property may be sold; and out of the proceeds the court may award to the decree holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment debtor on his application.
(4) Where the judgment debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of six months from the date of the attachment, no application to have the property sold has been made, or if made has been refused, the attachment shall cease.
(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree holder or some other person appointed by the court, at the cost of the judgment debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the court may direct and may be recov- ered as if they were included in the decree.

Reference Case Laws

1. Cannot Go Behind the Decree:In Topanmal Chhotamal v. Kundomal Gangaram (AIR 1960 SC 388)

   The Supreme Court held that an executing court must enforce a decree exactly as it is written. It cannot alter, change, or substitute the original relief (such as turning a delivery of goods decree into a money decree).

2. Nullity of Decrees:In Kiran Singh v. Chaman Paswan (AIR 1954 SC 340),

   It was established that if a court passes a decree without having proper jurisdiction, that decree is a complete nullity. Its invalidity can be raised even during execution proceedings.

3. Constructive Res Judicata in Execution:

   In Mohanlal Goenka v. Benoy Krishna Mukherjee (1953 SCR 377), the Supreme Court ruled that principles of res judicata apply to execution proceedings. If a party fails to raise an objection at an earlier stage of execution, they cannot bring it up later.

CHAPTER – 2: Appeals

2.1 APPEAL: ORDER XLI : APPEALS FROM ORIGINAL DECREES

The word appeal ha not been defined in the Code. A right of appeal is not a natural or inherent right it is a creature of statute and there is no right of appeal unless it is given clearly in the statute. The form of appeal is provided in sections 96-99A and in order 41.

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

(2) Contents of memorandum- The memorandum shall set forth, concisely and under dis- tinct heads, the grounds of objection to the decree appealed from without any argument or narra- tive; and such grounds shall be numbered consecutively.
(3) Where the appeal is against a decree for payment of money, the appellant shall, within such time as the Appellate Court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may think fit

2. Grounds which may be taken in appeal :

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

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

3. Rejection or amendment of memorandums :
(1) Where the memorandum of appeal is not drawn up in the manner hereinbefore pre- scribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there.
(2) Where the Court rejects any memorandum, it shall record the reasons for such rejection.
(3) Where a memorandum of appeal is amended, the Judge, or such officer as he appoints in this behalf, shall sign or initial the amendment.

3A. Application for condonation of delay :

(1) When an appeal is presented after the expiry of the period of limitation specified therefor, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for Pot preferring the appeal within such period.
(2) If the Court sees no reason to reject the application without the issue of a notice to the respondent, notice hereof shall be issued to the respondent and the matter shall be finally decided by the Court before it proceeds to deal with the appeal under rule 11 or rule 13, as the case may be.
(3) Where an application has been made under sub-rule (1) the Court shall not make in order fact the stay of execution of the decree against which the appeal is proposed to be filed so long as the Court does not, after hearing under rule 11, decide to hear the appeal.

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

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

Stay of proceedings and of execution.

5. Stay by Appellate Court :

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

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

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

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

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

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

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

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

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

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

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

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

Procedure on admission of appeal.

8. Registry of memorandum of appears :

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

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

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

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

Where appellant resides out of India —

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

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

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

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

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

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

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

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

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

12. Day for hearing appeal :

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

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

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

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

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

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

14. Publication and service of notice of day for hearing appeal : Notice of the day fixed under rule 12 shall be affixed in the Appellate Court-house, and a like notice shall be

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

15. Contents of notice :

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

Procedure on hearing.

16. Right to begin :

(1) On the day fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal.
(2) The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal and in such case the appellant shall be entitled to reply.

17. Dismissal of appeal for appellants' default :

(1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.
(2) Hearing appeal ex parte- Where the appellant appears and the respondent does not appear the appeal shall be heard exparte.

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

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

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

19. Re-admission of appeal dismissed for default :

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

thinks fit.

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

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

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

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

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

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

(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree 21 but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross-objection] to the decree which he could have taken by way of appeal provided he has filed such objection in the Appellant Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

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

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

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

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

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

23. Remand of case by Appellate Court :

Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate court may, if it fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so re- manded, and shall send a copy of its judgement and order to the Court from whose decree the appeal is preferred, which directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

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

24. Where evidence on record sufficient Appellate Court may determine case finally: Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgement, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwith- standing that the judgement of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.
25. Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from : Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essen- tial to the right decision of the suit upon the merits the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required; and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together its findings thereon and the reasons therefor 26 [within such time as may be fixed by the Appellate Court or extended by it from time to time].
26. Findings and evidence to be put on record. Objections to finding :

(1) Such evidence and findings shall form part of the record in the suit; and either party may, within a time to be fixed by the Appellate Court, present a memorandum of objections to any finding.
(2) Determination of appeal- After the expiration of the period so, fixed for presenting such memorandum the Appellate Court shall proceed to determine the appeal.

27. Production of additional in Appellate Court :

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if —
(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

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

(b) the Appellate Court requires any document to be produced or any witness to be exam- ined to enable it to pronounce judgement, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.
(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

28. Mode of taking additional evidence :

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

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

JUDGEMENT IN APPEAL

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

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

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

ILLUSTRATION

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

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

DECREE IN APPEAL

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

(2) The decree shall contain the number of the appeal, the names and descriptions of the appellant and respondent, and a clear specification of the relief granted or other adjudication made.
(3) The decree shall also state the amount of costs incurred in the appeal, and by whom, or out of what property, and in what proportions such costs and the costs in the suit are to be paid.
(4) The decree shall be signed and dated by the Judge or Judges who passed it : Judge dissenting from judgement need not sign decree —

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

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

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

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

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

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

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

Explanation I — A person is an indigent person, —

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

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

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

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

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

- A second appeal lies in the High Court
- Only on the based on the substantial question of law
- The High Court should formulate the substantial question
- No appeal lies in money decree where the amount does not exceed twenty five thousand rupees
- Appeal may be filed against an exparte decree Sections 100 & 103 C.P.C.:

8. These provisions provide for the conditions precedent for entertaining a Second Appeal and the specific manner of its disposal. Section 100 CIVIL PROCEDURE CODE,1908 reads as follows:

According to section 100. Second Appeal: An appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law. In an appeal under this section, the memoran- dum of appeal shall precisely state the substantial question of law involved in the appeal.Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question. The appeal shall be heard on the question so formulated and the respon- dent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question.

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

(a) which has not been determined by the lower appellate court or both by the court of first instance and the lower appellate court, or
(b) which has been wrongly determined by such court or courts by reason of a decision on such question of law as is referred to in Section 100."

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

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

Appeal from orders under order 43:

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

* an order awarding compensatory costs in respect of false and vexatious claims or defense.
* an order refusing leave to institute suit against public nuisance.
* an order under rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed ex parte.
* an order awarding compensation for obtaining arrest and detention, attachment or injunction
* an order imposing fine
* order dismissing suit out defence for non-compliance with an order for discovery.
* an order under rule 34 of Order XXI on an objection to the draft of a document or of an endorsement;
* an order under rule 72 or rule 92 of Order XXI setting aside or refusing to set aside a sale;
* an order rejecting an application made under sub-rule (1) of rule 106 of Order XXI, pro- vided that an order on the original application, that is to say, the application referred to in sub-rule

(1) of rule 105 of that Order is appealable.

* an order refusing to set aside the abatement or dismissal of a suit;
* an order under rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;
* an order rejecting an application for permission to sue as an indigent person;
* orders in interpleader-suits under rule 3, rule 4 or rule 6 of Order XXXV;
* an order to deposite money for attachment of property;
* an order under rule 1, rule [rule 2A], rule 4 or rule 10 of Order XXXIX;
* an order to appoint receiver;

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

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

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

> 109. When appeals lie to the Supreme Court — Subject to the provisions in Chapter IV of Part V of the Constitution and such rules as may, from time to time, be made by the Supreme Court regarding appeals from the Courts of India, and to the provisions hereinafter contained, an appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court, if the High Court certifies —
>
> (i) that the case involves a substantial question of law of general importance and
> (ii) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.
>
> 112. Saving — (1) Nothing contained in this Code shall be deemed —

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

> (2) Nothing herein contained applies to any matter of criminal or admiralty or vice admiralty jurisdiction, or to appeals from orders and decrees of Prize courts.
>
> 15. Procedure to enforce orders of the Supreme Court — (1) Whoever desires to obtain execu- tion of any decree or order] of the Supreme Court shall apply by petition, accompanied by a certified copy of the decree passed or order made in appeal and sought to be executed, to the court from which the appeal to the Supreme Court was preferred.

(2) Such court shall transmit the decree or order of the Supreme Court to the Court which passed the first decree appealed from, or to such other court as the Supreme Court by such decree or order may direct and shall (upon the application of either party) give such directions as may be required for the execution of the same; and the Court to which the said decree or order is so

transmitted shall execute it accordingly, in the manner and according to the provisions applicable to the execution of its original decrees.

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

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

2.2 Appeal from Appellate Decree: -

Appeals from Appellate Decrees (Section 100 – 103)

Section 100: Second appeal. —

(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed ex parte.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.

Section 100-A: No further appeal in certain cases.—

Notwithstanding anything contained in any Letters Patent for any High Court or in any instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a High Court, no further appeal shall lie from the judgment and decree of such Single Judge.

Section 101: Second appeal on no other grounds.—

No second appeal shall lie except on the grounds mentioned in Section 100.

Section 102: No second appeal in certain cases.—

No second appeal shall lie from any decree, when the subject-matter of the original suit is for recovery of money not exceeding twenty-five thousand rupees.

Section 103: Power of High Court to determine issues of fact.—

In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal,—

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

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

IMPORTANT CASE LAWS: -

1. Scope of Second Appeal

Ramathal v. Maruthathal, (2018) 18 SCC 303 : "A clear reading of Sections 100 and 103 CODE OF CIVIL PROCEDURE,1908 envisages that a burden is placed upon the appellant to state in the memorandum of grounds of appeal the substantial question of law that is involved in the appeal, then the High Court being satisfied that such a substantial question of law arises for its consideration has to formulate the questions of law and decide the appeal. Hence a prerequisite for entertaining a second appeal is a substantial question of law involved in the case which has to be adjudicated by the High Court. It is the intention of the legislature to limit the scope of second appeal only when a substantial question of law is involved and the amendment made to Section 100 makes the legislative intent more clear that it never wanted the High Court to be a fact-finding court. However, it is not an absolute rule that the High Court cannot interfere in a second appeal on a question of fact. Section 103 CODE OF CIVIL PROCEDURE,1908 enables the High Court to consider the evidence when the same has been wrongly determined by the courts below on which a substantial question of law arises as referred to in Section 100. When appreciation of evidence suffers from material irregularities and when there is perversity in the findings of the court which are not based on any material, the court is empowered to interfere on a question of fact as well. Unless and until there is absolute perversity, it would not be appropriate for the High Courts to interfere in a question of fact just because two views are possible; in such circumstances the High Courts should restrain itself from exercising the jurisdiction on a question of fact."

2. Importance of Substantial Question of Law

Kshitish Chandra Purkait v. Santosh Kumar Purkait, (1997) 5 SCC 438: "……when the Court exercises its jurisdiction under the proviso to sub-section (5) of Section 100 CODE OF CIVIL PROCEDURE,1908 in formulating the substantial question of law, the opposite party should be put on notice thereon and should be given a fair or proper opportunity to meet the point. Proceeding to hear the appeal without formulating the substantial question of law involved in the appeal is illegal and is an abnegation or abdication of the duty cast on court; and even after the formulation of the substantial question of law, if a fair or proper opportunity is not afforded to the opposite side, it will amount to denial of natural justice. The above parameters within which the High Court has to exercise its jurisdiction under Section 100 CODE OF CIVIL PROCEDURE,1908 should always be borne in mind…….”

2.3 Appeals from Orders (Section 104 – 106): -

Section 104: Orders from which appeal lies: —

(1) An appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force, from no other orders: —

(ff) an order under Section 35-A;

(ffa) an order under Section 91 or Section 92 refusing leave to institute a suit of the nature referred to in Section 91 or Section 92, as the case may be;

(g) an order under Section 95;

(h) an order under any of the provisions of this Code imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution of a decree;

(i) any order made under rules from which an appeal is expressly allowed by rules:

Provided that no appeal shall lie against any order specified in clause (ff) save on the ground that no order, or an order for the payment of a less amount, ought to have been made.

(2) No appeal shall lie from any order passed in appeal under this section.

Section 105: Other orders: —

(1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

(2) Notwithstanding anything contained in sub-section (1), where any party aggrieved by an order of remand from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.

Section 106: What Courts to hear appeals.—

Where an appeal from any order is allowed it shall lie to the Court to which an appeal would lie from the decree in the suit in which such order was made, or where such order is made by a Court (not being a High Court) in the exercise of appellate jurisdiction, then to the High Court.

<u>IMPORTANT CASE LAWS: -</u>

1. Scope of Section 104:

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

2. Appeals allowed under Section 104:

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

At this stage it would be appropriate to analyse Section 104 CODE OF CIVIL PROCEDURE,1908. Sub-section (1) of Section 104 CODE OF CIVIL PROCEDURE,1908 provides for an appeal from the orders enumerated under sub-section (1) which contemplates an appeal from the orders enumerated therein, as also appeals expressly provided in the body of the Code or by any law for the time being in force. Sub-section (1) therefore contemplates three types of orders from which appeals are provided, namely,

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

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

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

2.4 APPEAL TO SUPREME COURT: -

INTRODUCTION: -

The term 'appeal' has not been defined in the Code of Civil Procedure, 1908. It generally refers to the removal of a cause from an inferior to a superior Court to test the soundness of the decision of the inferior Court. In simple words, it is a remedy provided by law to nullify the decree of the lower Court. The provisions relating to the appeal to Supreme Court (hereinafter referred as SC) has been provided in the Constitution of India from Article 132 to Article 134A and in Section 109 and Order XLV of the Code of Civil Procedure, 1908.

Right to Appeal is substantive as well as a statutory right: -

It has been conferred by the appeal statute. This right arises as soon as the Court pronounces judgement against the party. This Right can be waived by the party if the concerned party has accepted the benefits under the decree. Thus it was stated in the case of Veeraya vs. Subbia Chaudhury. that the Right to Appeal cannot be taken away if available on the date of institution of the suit and subsequent law passed taking away Right of appeal. Although the fact that it may be exercised when the unfavourable judgement is given and such right are to be ruled by the law prevailing at the time of institution of the suit and not by the law that induces at the time of giving decision.

It was stated in the case of Amarjeet Kaur vs. Pritam Singh that when the appeal against a decree was pending, the SC has gone through the matter and became a sub-judice again. The trial court decree gets merged with the Appellate court decree and hence the court of appeals shall perform the same duties as imposed on the court of original jurisdiction.

PROVISIONS RELATING TO APPEAL TO SUPREME COURT UNDER CODE OF CIVIL PROCEDURE,1908: -

Article 132 of the Constitution accommodates the Appellate Jurisdiction of SC in appeals from High Court (hereinafter referred as HC) in situations where the appeals shall lie to the SC from judgement, decree or final order whether in Civil or Criminal or any other proceedings. Article 133 also prescribes if the High Court specifies or certifies that the particular case needs to be decided by the SC.

Article 133 was based on the provisions of Section 109 and Section 110. If we compare the Article with the Section, few differences that can be made out are previously, the right to appeal was confined to decrees and final order by the HC but now it is available against the judgement, decree and final order and even the certificate of fitness which was available for any order of HC has now been restricted to the final order.

Article 136 allows the Court to grant leave to a case decided by any Court in India to become an appeal and under this, the term "Court" does not include which is constituted under the law relating to armed force.

Under CODE OF CIVIL PROCEDURE,1908, appeal to the Supreme Court have been specified from Section 109 to Section 112 and in Order XLV. Section 109 prescribes certain conditions for the appeal from the judgement, decree or final order in a civil matter from High Court and it is subjected to the provisions of the Constitution of India. Notwithstanding that no allure can be recorded from the judgement, decree or final order of single a judge bench of the High Court. The conditions are if the High Court certifies that there is a substantive question of law involved in the case and this certificate is issued under Article 134A of the Constitution and that the said question is to be decided by the Supreme Court. There is even a limitation period of 60 days from the date of grant of the certificate by HC.

The said Article 134A was inserted in the 44th Amendment of the Constitution of India. Before this, no provision dealt with the time and way of applying to the issue of the certificate. The object of this article is that the HC can allow the grant of a certificate under Article 132 either on its motion or on the oral application of the aggrieved party immediately after passing the judgement, decree or the final order.

It has been decided in the case of Union of India vs. Gopal Singh that the test to find out whether the order is final or not shall rely on whether the disagreement is finally over but the disagreement raised before the High Court is eventually over or not.

Apart from this the "substantive question of law", as stated in the first condition of Section 109, has not been defined in the CODE OF CIVIL PROCEDURE,1908 and it has to be constructed from the facts. One of the prime aspects is to test whether the question of law will benefit the general public or not. Moreover, the High Court ought to think that the specific question of law is of grave importance and therefore need to be decided by the Supreme Court. Another reason may be the lack of competency of the High Court in considering the issue related to that particular case. These two conditions must be fulfilled for SC to allow the appeals from the lower courts.

The second necessity is that the case should involve a reasonable or considerable question of law of general importance. Since this term is of great significance has not been outlines under the Code and in Mahindra and Mahindra Limited vs. Union of India, it was stated that the substantial question must of such nature that apart from the party to the litigation, the public ought to have an interest in the determination of such question in SC because it will affect a huge number of people or several cases having the same question of law.

Even according to the 44th Law Commission of India report, the granting of certificate should not be taken lightly. It should be conceded only when the HC discovers it extremely difficult to decide the matter or in any exceptional circumstances.

PROCEDURE OF HEARING OF THE APPEAL IN THE SC: -

The procedure or methodology for Appeal to SC under Order XLV prescribes that a request for or petition for leave be made by the Appellant from the Court of law, the decision of which is claimed against. The period prescribed by law is sixty days from the order it the decision given by the Court. The said petition should state the specific grounds and it is solely after that the Court against whose decision an appeal is favored pulls out to the opposite side that is Judgment Creditor, in whose favor the case is chosen and really at that time an authentication or a Certificate is given to the judgment indebted person to Appeal before the Supreme Court.

Application of leave or certificate of fitness: –

The party envious of filing an appeal on the certificate by the HC need to file a petition of appeal in SC.

Security and Deposits: -

Order XLV Rule 7 prescribes the provision of security, where it says the applicant need to within 90 days or in reasonable cause given, within further 90 days from the date of decree or within 6 weeks from the date certificate was granted, whichever is later. The SC at any point can revoke this security and under Order XLV Rule 10, after the admission of appeal but before the transmission of a copy of a record, the SC can ask for further security if it finds it to be inadequate. Other procedural aspects involving the furnishing of security and costs and so on which are alongside the procedure of admission by the Court to examine the declaration of allure by the subordinate court alongside checking if the amount is paid in a specified time so that such appeal may enter in records of the Supreme Court. From this time forward the arrangement, everyday summarizes the arrangements and methodology concerning the Appeal to the Supreme Court.

Admission of Appeal: -

Under Order XLV Rule 8, the procedure of admission is given. After furnishing of security, the Court shall declare the appeal has been admitted, give notice of such admission to the respondent, transmit a correct copy of the said record under the seal of the court and provide one or more authenticated copies of any paper in a suit to either party.

Pending appeal: –

Under Order XLV Rule 13 of the Code prescribes the power of the Court pending Appeal. It is an order given by Court which suspends the Court proceeding but it does not prevent the other party from imposing the order of a lower Court. In the case of Videocon vs. SEBI, the Court held that if the right to Appeal is restricted, it does not affect the right to Appeal in pending proceedings, unless expressly so expressed.

Execution of Orders: –

Order XLV Rule 16 of the Code states that the order made by the Courts or Supreme Court, will be appealable in a similar manner as the rules as the orders of that Court relating to the execution of the decree.

Chapter 3: Reference, Review and Revision: -

3.1 Reference

Section 113 - Reference to High Court: -

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

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

Court shall state a case setting out its opinion and the reasons therefor, and refer the same for the opinion of the High Court.

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

3.2 Review: -

Review: Section 114, Order 41 Rule 1 of CIVIL PROCEDURE CODE,1908: The review proceedings will be initiated, on the application of an aggrieved party or person, i.e. party or person who has legal grievance.An application for review shall lie to the following authorities.

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

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

(ii) Some judge or his successor :

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

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

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

(ii) No Right of Appeal allowed: Where no right of appeal is allowed to an aggrieved party, he can file a review application.
(iii) Discovery of new and important matter or evidence: When new and important matter or evidence is discovered, but such matter or evidence was not within knowledge of aggrieved per- son or such matter or evidence could not be produced by aggrieved person at that time when decree or order was passed, review application can be filed.
(iv) When any mistake or error is apparent on face of record, and not require any extra evi- dence to establish it, than a review application can be filed.
(v) Party may apply for review, an order or decree when there is any other sufficient ground or reason, review application can be filed.

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

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

3.3 Revision: -

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

(a) to have exercised a jurisdiction not vested in it by law, or
(b) to have failed to exercise a jurisdiction so vested, or
(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit :—

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

(2) The High Court shall not, under this section vary or reverse any decree or order against which an appeal lies either to the High Court or to any court subordinate thereto.
(3) A revision shall not operate as a stay of suitor other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.

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

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

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

Sec 149 empowers the court to allow a party to make up the deficiency of court fees pyble on plaint , memorandum of appel etc. Sec 150 provides fr where the business of any court is trans- ferred to any other court the transferee court will exercise same powers and discharge same duties conferred or imposed by the code. Under section 151the court can recall its own orders and cor- rect mistakes and can set aside an exparte order passed against the party and can issue tempo- rary injunctions. This section is based on the doctrine of actus curiae neminem gravabit (an act of the court shall prejudice no one). Section 152 enacts that the clerical, arithmetical, mistakes in judgements, decree or orders may at ny time be corrected by the court.

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

Differences between Appeal and revision:

- Appeal lies in the superior court notnecessarily to the high court whereas revision is only done by the High court
- A right to appeal is the substantive right while revisional power is discretionary

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

Difference between Appeal and reference:

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

Chapter 4: Miscellaneous

4.1 Transfer of Cases:

The importance of ensuring that cases are heard in the right court cannot be overstated. This is particularly true when it comes to the transfer of cases under the Code of Civil Procedure, 1908 (CODE OF CIVIL PROCEDURE,1908). The provisions related to the transfer of cases aim to ensure fairness in the judicial process, remove any reasonable apprehension of bias, and ensure that the case is heard in the most appropriate forum.

Transfer of Cases under Code of Civil Procedure,1908:

The transfer of cases under the CODE OF CIVIL PROCEDURE,1908 refers to the process of moving a case or proceeding from one court to another court that has the jurisdiction to hear and decide the matter. The transfer can be requested by a party to the case, or it can be done by the court on its own initiative (suo motu). This mechanism ensures that the case is heard at a court that is more competent, fair, and convenient for all parties involved.

The power to transfer cases is vital to ensuring justice is delivered fairly and without bias. By facilitating the transfer of a case to a court that can better serve the interests of justice, the CODE OF CIVIL PROCEDURE,1908 ensures that litigants are not subjected to undue hardship or prejudice due to the location, bias, or lack of competence of the court initially chosen.

The Legal Provision of Transfer of Cases: Sections 22 to 25 of the CODE OF CIVIL PROCEDURE,1908

The transfer of cases under the CODE OF CIVIL PROCEDURE,1908 is governed by Sections 22 to 25. These sections lay down the rules and procedures for when and how a case can be transferred. The key sections involved in the transfer of cases include:

Section 22: Deals with the power to transfer cases between two or more courts that have jurisdiction over the matter. This section empowers the defendant to apply for the transfer of the case to another court.

Section 23: Specifies which higher court (Appellate Court or High Court) should hear the application for the transfer of a case when there are multiple courts with jurisdiction.

Section 24: Provides the power for the High Court and District Courts to transfer or withdraw cases on their own motion (suo motu) or based on an application from any party.

Section 25: Empowers the Supreme Court to transfer cases between High Courts or Civil Courts in different states, ensuring that cases can be moved when required for justice.

Section 22 – Transfer by Defendant

Under Section 22, the defendant in a case has the right to apply for the transfer of the case to another court if the suit could have been filed in more than one court. This application for transfer must be made at the earliest possible opportunity, specifically before the issues in the case are settled or during the issue settlement stage.

Key Aspects of Section 22:

The defendant must file the application for transfer to another court.

The application must be made before the settlement of issues between the parties.

Notice of the application must be given to the other parties involved in the suit.

The court where the application is made will consider the objections of other parties and decide which court will handle the case.

Section 23 – Which Court to Approach

Once an application for the transfer of a case is filed under Section 22, Section 23 outlines the court that should hear the application based on the jurisdictional hierarchy. The section is divided into three parts:

If multiple courts have jurisdiction under the same Appellate Court: The application should be made to that Appellate Court.

If the courts are subordinate to different Appellate Courts but to the same High Court: The application should be made to the High Court.

If the courts are under different High Courts: The application should be made to the High Court within the local jurisdiction of the court where the case was originally filed.

This section ensures that the transfer application is heard by the appropriate authority, depending on the jurisdiction of the courts involved.

4.2 CAVEAT: -

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

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

(2) Where a caveat has been lodged under sub-section (1), the person by whom the caveat has been lodged (hereinafter referred to as the caveat or) shall serve a notice of the caveat by regis- tered post, acknowledgement due, on the person by whom the application has been, or is ex- pected to be, made under sub-section (1).
(3) Where, after a caveat has been lodged under sub-section (1), any application is filed in any suit or proceeding, the court shall serve a notice of the application on the caveat or.
(4) Where a notice of any caveat has been served on the applicant, he shall forthwith furnish the caveat or, at the caveator's .expense, with a copy of the application made by him and also with copies of any paper or document which has been, or may be, filed by him in support of the application.
(5) Where a caveat has been lodged under sub-section (1), such caveat shall not remain in force after the expiry of ninety days from the date on which it was lodged unless the application referred to in sub-section (1) has been made before the expiry of the said period

4.3 RESTITUTION: -

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

(a) where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdiction, the Court of first instance;
(b) where the decree or order has been set aside by a separate suit, the Court of first instance which passed such decree or order;
(c) where the Court of first instance has ceased to exist or has ceased to have jurisdiction to execute, it, the Court which, if the suit wherein the decree or order was passed were

instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit.

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

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

(1) Where the several Courts having jurisdiction are subordinate to the same Appellate Court, an application under section 22 shall be made to the Appellate Court.
(2) Where such Courts are subordinate to different Appellate Courts but to the same High Court, the application shall be made to the said High Court.
(3) Where such Courts are subordinate to different High Courts, the application shall be made to the High Court within the local limits of whose jurisdiction the Court in which the suit is brought is situate.

24. General power of transfer and withdrawal —

(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage-
(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or
(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and

    (i) try or dispose of the same; or
    (ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or
    (iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

25. Power of State Government to transfer suits —

(1) Where any party to a suit, appeal or other proceeding pending in a High Court presided over by a single Judge objects to its being heard by him and the Judge is satisfied that there are reasonable grounds for the objection, he shall make a report to the State Government, by notifica- tion in the Official Gazette transfer such suit, appeal or proceeding to any other High Court:
(2) The law applicable to any suit, appeal or proceeding so transferred shall be the law which the Court in which the suit, appeal or proceeding was originally instituted ought to have applied to such case

4.4 Inherent Powers of Courts: -

Introduction:

The inherent powers are considered necessary to do the right and undo the wrong in the course of the administration of justice and to be regarded as supplementary to specially conferred powers. Inherent powers have roots in necessity, and they are coextensive with necessity in order to do complete justice.

The law relating to inherent powers is contained in Section 148 to Section 153A of the Code of Civil Procedure, 1908 (CIVIL PROCEDURE CODE,1908) which visualizes the exercise of powers in different circumstances.

Section 148 of Civil Procedure Code,1908

This section deals with the enlargement of time.

It states that where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, not exceeding thirty days in total, even though the period originally fixed or granted may have expired.

This power of the court is of discretionary nature and cannot be claimed as a right.

Section 149 of Civil Procedure Code,1908

This section deals with the power to make up deficiency of court-fees.

It states that where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court fee; and upon such payment, the document, in respect of which fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.

Section 150 of Civil Procedure Code,1908

This section deals with the transfer of business.

It states that save as otherwise provided, where the business of any Court is transferred to any other Court, the Court to which the business is so transferred shall have the same powers and shall perform the same duties as those respectively conferred and imposed by or under this Code upon the Court from which the business was so transferred.

Section 151 of Civil Procedure Code,1908

This section deals with the saving of inherent powers of Court.

It states that nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

This section does not confer any substantive rights on parties but is meant to get over the difficulties arising from rules of procedure.

Section 152 of Civil Procedure Code,1908

This section deals with the amendment of judgments, decrees or orders.

It states that clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.

This section is based on two important principles:

An act of court should not prejudice any party.

It is the duty of the courts to see that their records are true, and they represent the correct state of affairs.

Section 153 of Civil Procedure Code,1908

This section deals with the general power to amend.

It states that the Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.

Section 153A of Civil Procedure Code,1908

This section deals with the power to amend a decree or order where appeal is summarily dismissed.

It states that where an Appellate Court dismisses an appeal under rule 11 of Order XLI, the power of the Court to amend, under section 152, the decree or order appealed against may be exercised by the Court which had passed the decree or order in the first instance, notwithstanding that the dismissal of the appeal has the effect of confirming the decree or order, as the case may be, passed by the Court of first instance.

Limitations of the Inherent Powers

The exercise of inherent powers carries with it certain limitations such as -

They can be exercised only in the absence of express provisions in the code.

They cannot be exercised in conflict with what has been expressly provided in the code.

They can be exercised in exceptional cases.

While exercising the powers, the court has to follow the procedure prescribed by the legislature.

The Courts cannot exercise jurisdiction not vested in them by law.

Case Laws: -

In Ram Chand v. Kanhayalal (1966), the Supreme Court held that the inherent powers under Section 151 of CIVIL PROCEDURE CODE,1908 can also be exercised to prevent the abuse of the process of court.

In case of Mahendra Manilal Nanavati v. Sushila (1965), the Supreme Court while expressing its view on the nature of inherent powers of the court, observed that the Code of Civil Procedure is a special piece of legislation to deal with procedural situations of proceeding of trials of civil nature. Under the Code itself, some hidden powers are conformed on the courts according to the emerging situations during the proceedings and courts can exercise them in absence of expressed provisions. But where there are express provisions in the Code, the Courts are barred from invoking such powers.

Important Case Laws regarding Reference, Review and Revision

Reference (Section 113 CPC)

- **Central Board of Dawoodi Bohra Community v. State of Maharashtra:**

The Supreme Court affirmed that a lower court can refer a substantial question of law regarding the validity or interpretation of an Act to the High Court only if it entertains a reasonable doubt, and a coordinate bench cannot ignore a prior binding precedent.

- **Matadin v. Ahmad Ali:**

Established that a reference must arise in a pending suit or appeal where the final decree or order is not subject to appeal, ensuring lower courts do not waste time on matters already clear under existing laws.

Review (Section 114 and Order 47 CPC)

- **Thungabhadra Industries Ltd. v. Government of Andhra Pradesh:**

The Supreme Court held that a review is not an "appeal in disguise". Rehearing an issue just because a decision is alleged to be erroneous is barred; a review is restricted strictly to a patent error or an error apparent on the face of the record.

- **Parsion Devi v. Sumitri Devi:**

  Clarified that an error on the face of the record must be self-evident and not require a long-drawn-out argument or re-appreciation of facts to be discovered.

Revision (Section 115 CPC)

- Major S.S. Khanna v. Brig. F.J. Dillon:

  The Supreme Court ruled that the term "case decided" under Section 115 is wide enough to include any interlocutory order or part of a proceeding, provided the subordinate court has exercised jurisdiction not vested in it, or failed to exercise it legally.

- Maniben Devrajshah v. Municipal Corporation of Greater Bombay:

  Emphasized that the High Court's revisional power is discretionary and is meant solely to keep subordinate courts within the bounds of their legal authority, not to correct routine errors of fact or law where no jurisdictional defect exists.

Chapter 5: LAW OF LIMITATION

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

Section 3 provides for the bar of limitation and also provides that every suit instituted pre- ferred and application made after the prescribe the period shall be dismissed , although the limitation period has not been set up as a defence.

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

6. Legal disability —

- Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the prescribed period is to be reckoned, a minor or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time specified therefor in the third column of the Schedule.
- Where such person is, at the time from which the prescribed period is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period after both disabilities have ceased, as would otherwise have been allowed from the time so specified.
- Where the disability continues up to the death of that person, his legal representative may institute the suit or make the application within the same period after the death, as would other- wise have been allowed from the time so specified.
- Where the legal representative referred to in sub-section (3) is, at the date of the death of the person whom he represents, affected by any such disability, the rules contained in sub-sections (1) and (2) shall apply.
- Where a person under disability dies after the disability ceases but within the period allowed to him under this section, his legal representative may institute the suit or make the application within the same period after the death, as would otherwise have been available to that person had he not died. Explanation.-For the purposes of this section, 'minor' includes a child in the womb.

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

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

(1) Suits instituted in the territories to which this Act extends on contracts entered into in the State of Jammu and Kashmir or in a foreign country shall be subject to the rules of limitation contained in this Act.
(2) No rule of limitation in force in the State of Jammu and Kashmir or in a foreign country shall be a defence to a suit instituted in the said territories on a contract entered into in that State or in a foreign country unless —

(a) the rule has extinguished the contract; and

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

12. Exclusion of time in legal proceedings —

(1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.
(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.
(3) Where a decree or order is appealed from or sought to be revised or reviewed, or where an application is made for leave to appeal from a decree or order, the time requisite for obtaining a copy of the judgment shall also be excluded.
(4) In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

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

18. Effect of acknowledgment in writing —

(1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.
(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received. Explanation. For the purposes of this section—
(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;
(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf; and
(c) an application for the execution of a decree or order shall not be deemed to be an applica- tion in respect of any property or right.

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

Effect of acknowledgment in writing under Section 18:

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

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

Explanation. —For the purposes of this section-

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

(b) The word “signed” means signed either personally or by an agent duly authorized in this behalf; and

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

Principle of Section 18 of Limitation Act, 1963:

This section is based on the principle that the bar of limitation should not be allowed to operate in cases in which the existence of a claim is acknowledged by persons who are under the liability. Every acknowledgement affords a new proof of the existence of debt.

Section 18 does not enlarge the period of limitation, but a fresh period begins to run from the date of acknowledgement. Acknowledgement of liability by the defendant interrupt limitation i.e., cancels the already elapsed portion of the period of limitation and allows a fresh period of limitation from the date of such interruption.

Such an acknowledgement, however, does not extinguish the original cause of action nor create a new one. An acknowledgment merely recovers the debt.

Requisites of a Valid Acknowledgement:

Acknowledgment must be made before the expiration of the limitation period. It must be made after the period of limitation has begun to run and while it is actually running.

Acknowledgement of liability must be in writing. Hence oral acknowledgment is not sufficient.

Acknowledgment must be signed by the person making the acknowledgment or by his duly authorized agent.

Acknowledgment must be made by the party against whom any property or right is claimed or by some person through whom he derives title or liability.

Acknowledgment must be in respect of the particular property or right claimed in the suit or application.

Acknowledgment need not be express, it may be by necessary implication.

Section 19 of Limitation Act, 1963:

Effect of payment on account of debt or of interest on legacy-

Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorized in this behalf, a fresh period of limitation shall be computed from the time when the payment was made:

Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.

Explanation. —For the purposes of this section:

(a) where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment;

(b) “debt” does not include money payable under a decree or order of a court."

Section 19 provides for the computation of the period of limitation when a payment on account of debt or of interest on legacy is made.

Essential Conditions of Section 19:

The payment must be made within the prescribed period of limitation.

It must be acknowledged by some form of writing either in the handwriting of a prayer himself or signed by him. If there is no acknowledgment in the required form, the payment by itself is of no avail.

Th word "prescribed" means the period prescribed in the First Schedule, not the period within which the plaintiff may bring his suit.

The term 'person liable to pay debt' includes not only a person who is personally liable but also a person who is not personally liable but whose interest in the family property is liable.

Section 20 of Limitation Act, 1963:

Effect of acknowledgement or payment by another person-

This section is an explanatory as well as supplementary section to Section 18 and 19 and does not constitute an exception in the case of either of these section.

Section 20 deals with the question as to who can keep alive a right which is not time- barred. It does not deal with the question as to who can revive a time-barred debt.

According to sub-section (1), the expression "agent duly authorized in this behalf" in Section 18 and 19 shall, in the case of a person under disability, include his lawful guardian, committee or manager or an agent duly authorized by such guardian, committee or manager to sign the acknowledgment or make the payment.

Sub-section (2) declares that one of several joint contractors, partners, executors, mortgagees, will not render the other joint contractors, partners, executors or mortgagees chargeable under an acknowledgment or payment made by him or his duly authorized agent.

Sub- section (3)(a) provides that an acknowledgment signed by or a payment made, in respect of any liability, by any limited owner of property (e.g., widow) governed by the Hindu law, shall be a valid acknowledgment or payment, against a reversioner succeeding to such liability.

Sub-section (3)(b) provides that the manager of a Hindu joint family can make acknowledgment and payment so as to save limitation in regard to liabilities which are binding on the family. Such payment or acknowledgment must be deemed to be made on behalf of the family.

Case laws:

Bhagwan v. Madhav (1922):

The Bombay High Court held that an acknowledgment or liability need not be expressed; it may be by implication.

Union of India v. Seyadu Beedi Co. (1970):

The Madras High Court held that just sending a letter to the higher authorities to settle the dues does not amount to acknowledgment. The respondent gave notice of the filing of suit to which the appellants replied that the matter was under investigation and if before investigation the suit is filed then respondents will be responsible for the costs. The court held that the reply of the appellants was not an express acknowledgment of liability, and the facts were not sufficient even for the implied admission of liability. Therefore, the limitation period was not allowed to start afresh.

Kishori Engineering Works v. Bank of India (1991):

The Patna High Court held that where the debtor was making part-payment the limitation would run from the last made part-payment.

Adverse Possession vis-à-vis The Limitation Act, 1963

The law of adverse possession is contained in the Limitation Act, 1963 (Hereinafter referred to as, ‘the Act’). Section 3 of the Act says that the Court will not take cognizance of any suit, which is barred by limitation even if the issue of limitation is not taken as a defence. Thus, the law of limitation bars remedy but not the right. But section 27 of the Act contains provision regarding adverse possession which is an exception to the general principle of law of limitation . It reads, “if a person fails to file suit for recovery of possession, within a period of limitation, his right to recover the possession of that property also extinguishes”. If such situation occurs, the ownership of true owner over the property is extinguished. But at the same time property cannot be left ownerless. It must be in name of any other person or any other person must be entitled to have right over it. This situation gives birth to the concept of adverse possession. If any person possesses any property, adverse to the interest of true owner and true owner fails to file a suit for recovery of possession within a period of limitation, then the person in possession becomes owner of property by way of adverse possession.

Article 65 of Schedule I of the Act prescribes a limitation of a period of 12 years for a suit for possession of immovable property or any interest therein based on title. It is important to note that the starting point of limitation of 12 years is counted from the point of time “when the possession of the defendants becomes adverse to the plaintiff”. Article 65 is an independent Article applicable to all suits for possession of immovable property based on title i.e., proprietary title as distinct from the possessory title. Article 64 governs suits for possession 5 based on the possessory right. Twelve years from the date of disposition is the starting point of limitation under Article 64. Article 65 as well as Article 64 are to be read with section 27.

Essentials of the Doctrine of Adverse Possession

The requirements of law that must be fulfilled by an adverse possessor to obtain title, primarily include:

1. Possession over certain Property: There must be certain property, which may be movable or immovable.

2. Possession must be hostile: Possession must be hostile if title is to mature from adverse possession. Hostile possession means that the claimant must occupy the land in opposition to the true owner's rights. One type of hostile possession occurs when the claimant enters and remains on land under the colour of title. Colour of title is the appearance of title as a result of a deed that seems by its language to give the claimant valid title, but in fact, does not because some aspect of it is defective. If a person, for example, was suffering from a legal disability at the time he or she executed a deed, the granteeclaimant does not receive actual title. But the grantee- claimant does have the colour of title because it would appear to anyone reading the deed that good title has been conveyed. If a claimant possesses the land in the manner required by law for the full statutory period, his or her colour of title will become actual title as a result of adverse possession.

3. Possession must be with intent to oust the real owner: In order to establish title by adverse possession, Animus possidendi is necessary. Person holding property by way of adverse possession must publish his intention to deny the right of the real owner. In the case of Bhimrao Dnyanoba Patil v. State of Maharashtra6, It has been held that, unless enjoyment of the property is accompanied by adverse animus, mere possession for a long period even over a statutory period, would not be sufficient to mature the title to the property by adverse possession.

4. Possession must be continuous and uninterrupted: All elements of adverse possession must be met at all times through the statutory period in order for a claim to be successful. The prescribed period of limitation is the amount of time the claimant must hold the land in order to successfully claim 62003 (1) Bom. L.R. 322; 2003(1) All MR 565; 2003 (2) LJSoft 131 6 title by adverse possession.7 For such prescribed period, possession must be continuous and uninterrupted. But it is not necessary to establish possession at every moment of the requisite period.

5. Possession must be open and notorious: An adverse possessor must possess land openly for the entire world to see, as a true owner would. Secretly occupying another's lands does not give the occupant any legal rights. Clearing, fencing, cultivating or improving the land demonstrates open and notorious possession, while actual residence on the land is the most open and notorious possession of all. The owner must have actual knowledge of adverse use, or the Claimant's possession must be so notorious that it is generally known by the public or the people in the neighbourhood. The notoriety of the possession puts the owner on notice that the land will be lost unless he or she seeks to recover possession of it within a certain period of time.

6. Actual Possession: In order to constitute adverse possession, there must be actual possession of a person claiming as of right by himself or by persons deriving title from him. It is not sufficient to show that some acts of possession have been done.

7. Exclusive Possession: Adverse possession will not ripen into title unless the claimant has had exclusive possession of the land. Exclusive possession means sole physical occupancy. The claimant must hold the property as his or her own, in opposition to the claims of all others. Physical improvement of the land, as by the construction of fences or houses, is evidence of exclusive possession.

Can adverse possession extinguish ownership?

Yes, adverse possession can extinguish the original owner's title and transfer ownership to the occupier. Under Article 65 and Section 27 of the Limitation Act, 1963, if a true owner fails to file a lawsuit to recover private land within 12 years (or 30 years for government property), their legal right and ownership are extinguished.

Key Rules for Extinguishing Ownership

To successfully end an owner's rights, the physical possession must meet strict legal standards:

Hostile: Held against the true owner's explicit interest and without permission.

Open and Not Hidden: Clear, visible, and known to the public and community.

Continuous: Uninterrupted and unbroken for the entire statutory period of 12 or 30 years.

Exclusive: Controlled only by the possessor as if they were the true owner.

Difference between limitation and prescription

Limitation only blocks the right to sue in court, while prescription can actually create or completely destroy a legal right.

Effect on Rights:

- *Limitation*: Stops a person from filing a case after a set time, but the core right or debt still exists.

- *Prescription*: Changes ownership or status by building a new right (like a path over someone's land) or ending an old one completely.

Type of Law:

- Limitation: Acts as procedural law (rules for court actions).

- Prescription: Acts as substantive law (rules that shape actual property and personal rights).

How Time is Used:

- *Limitation*: Puts a countdown on how long you have to ask a judge for help.

- *Prescription*: Rewards open, continuous, and peaceful use over many years to grant legal ownership or easements.

Difference between limitation and laches

Limitation and laches are both legal defenses based on time delays, but they differ significantly: limitation involves a strict, fixed statutory time limit, whereas laches is a flexible, equitable defense based on unfairness and prejudice caused by waiting too long.

Nature of Rule

- **Limitation:** A rigid, written law passed by a legislative body.
- **Laches:** A flexible rule created by courts based on fairness (equity).

Time frame

- **Limitation:** Sets an exact number of days, months, or years to file a case.
- **Laches:** Has no fixed time period; judges decide case-by-case if the wait was unreasonable.

Requirement of Harm

- **Limitation:** Bars the suit purely because the time ran out, regardless of harm.

- **Laches:** Requires the opposing party to show they suffered real damage or disadvantage because of the delay.

Where It Applies

- **Limitation:** Applies to regular legal claims and lawsuits.
- **Laches:** Applies mainly to fair remedies like orders or injunctions, often when no written time limit exists.

Reference Case Laws of Law of Limitation

Nature and Scope of Limitation

In Bombay Dyeing and Manufacturing Co. v. State of Bombay (1958), the Supreme Court held that limitation laws only bar the legal remedy in court; they do not destroy the underlying legal or moral right itself.

In **A.S.K. Krishnappa Chettiar v. K.S.V.V. Somiah (1964)**, it was ruled that the Limitation Act is an exhaustive procedural law and courts cannot extend its provisions by inference to cover unlisted proceedings.

Duty of the Court

Mandatory Dismissal: **In [V.M. Salgaocar and Bros. v. Board of Trustees of Port of Mormugao (2005)] and Rama Murthy v. Ravula Somasundaram (2005)**,

The Court affirmed that under Section 3 of the Limitation Act, a court has a mandatory duty to dismiss any time-barred suit, appeal, or application—even if the defendant fails to raise limitation as a defense.

Condonation of Delay and "Sufficient Cause"

Liberal Construction for Justice:

In **Sandhya Rani v. Sudha Rani (1978) and G. Ramagowda v. Special Land Acquisition Officer (1988)**, the Supreme Court noted that "sufficient cause" under Section 5 should be interpreted liberally to advance substantial justice when no negligence or bad faith is found.

No Exception for Government: In **Postmaster General v. Living Media India Ltd. (2012)**, the Court ruled that the government is bound by limitation just like ordinary citizens. Bureaucratic delays, red tape, and file movements do not constitute "sufficient cause".

Important Questions

1. Discuss the effect of acknowledgement in writing under the Limitation Act,1963.
2. What is adverse possession? Whether adverse possession can extinguish ownership?
3. What is condonation of delay? State the circumstances when delay may be condoned.
4. Distinguish between limitation and prescription.
5. Distinguish between limitation and laches.
6. Explain the doctrine of sufficient cause for condonation of delay.
7. Limitation bars the remedy Distinguish between limitation and laches.but does not extinguish the right – explain.