

# **CIVIL PROCEDURE CODE**

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**Class-room live lectures edited, enlarged  
and updated**

# CIVIL PROCEDURE CODE

[with Amendments of 1999 & 2002]

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## Text and Reference Books :

Mulla	:	Civil Procedure Code
Sarkar	:	Code of Civil Procedure
Mulla	:	Key to Indian Practice C. P. C.

## INTRODUCTION

Substantive and procedural laws are two branches of law from jurisprudential stand-point, and the Civil Procedure Code belongs to the latter. Civil Procedure, in contradistinction to Criminal Procedure, deals with the steps that the parties-plaintiff & the defendant-should take from the time of commencement of the Civil proceeding until its conclusion. [Amendments to CPC in 1999 and 2002 \[operative from 1<sup>st</sup> July 2002\]](#) aim at meeting the problem of inordinate delay in civil Courts. **Justice delayed is Justice denied. It is hoped that these changes help solving the procedural delays to a great extent.**

One of the remarkable features of the C.P.C. is that each party to a dispute is provided with an equal and fair opportunity to present his case before the Court.

The volume of the subject (Sns. 1 to 158 read with Order 1 Rule 1 to Order 51 Rule 1), is formidable and presents much difficulty to the student inasmuch as, without practical exposure to the courts, he-finds himself traversing in the strange land of imagination and inferences. He must take active and practical steps to learn these procedures and participate in the moot-courts, and, attend the Civil courts ..

**No amount of observing and reading literature will convert a person a swimmer, until he gets into water and starts his maiden-attempt!** Where accommodative advocates are available it would be profitable to take instructions and guidelines on procedures-forms, rules, devices governing Civil proceedings and also to attend actively the civil courts and make productive use of his time

MSR

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### QUESTIONS BANK

- 1 Explain, with illustrations, suits of a Civil Nature.
- 2 Discuss the doctrine of Res Judicata'
- 3 Explain the procedure to be followed to file a case against the Government.
- 4 What is informa pauperis ? Detail the Procedure provided for in the C.P.C. to file a suit by an indigent person.
- 5 Foreign judgement operates as a Res Judicata between the parties in India. Explain. Refer to exceptions.
- 6 Explain the provisions that enable the courts to grant Temporary Injunctions.
- 7 (1) What are the grounds for attachment & state properties which cannot be attached (2) Explain 'Arrest before judgement'3.Detail issue & service of Summons.
- 8 How & for what purpose is a Commission appointed,  
Explain its powers & functions
- 9 .1) Define & distinguish an order from a decree.  
(2) Explain Reference, Review, Revision

- 10.(1) Discuss the doctrine of Restitution.  
 (2) Write a note on interpleader suit.
- 11 Explain how appeals are made to the Supreme Court from Civil Proceedings
- 12 Detail the provisions relating to the place of suing and joinder of parties.
- 2.Explain *Alternate Dispute Resolution [Out of Court Settlement]*
- 3 Explain:(i) Res subjudice (ii) Constructive Res judicata  
 .  
 (iii) Caveat (iv) Remand (v) Next friend (vi) Garnishee  
 (vii) Precept (viii) Consent-decree.
- 14 Write Short notes on : •  
 (i) Public Nuisance (ii) Mense Profits (iii) Interrogatories (iv) Substituted service (v) Representative suit (vi) Legal Representative (vii) Abatement of suit (viii) Withdrawal of the suit, (ix) Compensatory costs.
15. What is a Plaint ? What are its contents? When is it rejected or returned.
16. What defenses can be taken in written Statements.
17. Detail the procedure to be followed for issue and service of summons under C P C 1999.

## CHAPTER 1

### SUITS OF A CIVIL NATURE

#### Ch.1 Suit of a Civil Nature:

Civil Suits are divided into : i) Suits of a civil nature and ii) Suits not of a civil nature.

The Civil courts have jurisdiction to try suits of a Civil nature. They have no jurisdiction to try suits not of a Civil-nature. This principle is laid down in Sn.9 of C.R.C. It says that the Civil Courts have jurisdiction to try all suits of a Civil nature excepting those that are expressly or impliedly barred.

The C.P.C. 1976 has added two explanations.

i) A suit in which the right to property or to an office is contested, is a suit of a Civil nature, even though such a right is connected with a religious right or with religious ceremony,

ii) It is immaterial whether or not any fees had been attached to an office or such an office was attached to a particular place or not,

Eg.: i) Suits of Civil nature: Matters relating to Easement, Adoption, Marriage, title to property, to run a customary bull race,, right to burial.

ii) Suits not of a civil nature: Suit for claiming dakshina for worship at a temple by the pujari (worshipper), political questions etc.

Suits expressly barred: Remedy of a workman against termination order, is barred as the remedy is in the Industrial Disputes Act. Suits dealing with Act of State & public policy are barred.

The cardinal rule is therefore that the Civil Courts can entertain only suits of a civil nature. But, vexed problems do come before the courts with mixed rights civil & religious. The courts are guided by certain procedural principles in such circumstances.

i) If the main question or the only question is in respect of caste or religious right or ceremonies it is not of a civil nature but, if the religious right is only a subsidiary question, then it is of a civil nature. Further, if

the main question cannot be decided without deciding the religious or caste question then, the matter is of a civil nature and the courts have jurisdiction.

Expulsion from caste (Excommunication). This will deprive a person of his legal right which forms part of his status. Hence, suit will lie. However, excluding a member from invitation to caste dinners or ceremonies will deprive him a social privilege, and hence no civil suit can be filed.

Similarly a) No civil suit can be filed to compel a pujari to adorn an idol at a certain season.

b) Suit in respect of a mere dignity attached to an office is not of the civil nature. The suit of a swamiji, that he should be carried on the high road in a palanquin is not a suit of a civil nature as it is only a religious honour.

ii) If the main question is a civil or a legal right, it is a civil nature. Therefore, a right to an office is a suit of a civil nature. Office may be secular or religious.

A religious office may be of two kinds :

a) Those offices to which fees are attached as of right.

Eg. Khaji, Aya of a Mutt, Joshi of a village, or pujari of a temple, Upadayaya of a Caste.

b) Those offices to which no fees is attached.

Hence, the

officer may be receiving an ex gratia. No civil suit can be filed to

recover ex gratia amounts

.The Bombay High Court had maintained a distinction between (1) an office attached to a sacred place (2) office not so attached. It allowed cases under (1) and not under (2)

To override this new C.P.C. provides that whether any fees is attached or not and whether the office is attached to any religious place or not, it is a suit of a civil nature.

iii) Interference with temple properties. Eg.: Removing the name or other religious mark is of civil nature. Right to worship at a certain place is of a civil nature. Right of burial is a civil right. Carrying religious procession on the highway is a civil right. Hence, a civil suit may be filed.

iv) Examples:

1. Right of an elected person to act as such
2. Right to vote or stand for election
3. Suit for dissolution of marriage
4. Right of a club or Association member to continue as member
5. Suit for rent contribution, mesne profits, etc.

## CHAPTER 2

### RES SUBJUDICE & RES JUDICATA

#### Ch. 2.1 Res-Subjudice: Sn .10 CP.C.

This means 'a right under judicial consideration'.

In order to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue, provisions are made in Sn.10 C.P.C.

Such a matter is said to be '**Res Subjudice**' if the matter previously instituted is pending in another court of competent jurisdiction.

What is barred is the second suit instituted. The second court should not proceed with the trial of the suit if:

i) The matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties.

ii) The previously instituted suit must be (a) in the same court in which the second, suit is brought or (b) in any other court original or appellate.

iii) The previously instituted case must be pending in any of the courts as above or Supreme Court competent to grant the relief.

E.g.: B residing in Calcutta, has an agent A at Mysore to sell goods. A sues B in Mysore for balance due on account. During the pendency of the suit B institutes a suit against A, in Calcutta. The Calcutta court must not proceed as the matter is re-subjudice in Mysore Court. The suit must be stayed.

Exception: If a suit is pending in a Foreign Court, the suit is not barred in India and hence, a suit may be filed.

The provisions in Sn 10 are mandatory. It also applies to proceedings under Art 226 of the Constitution.

#### Ch.2.2. **Res Judicata** : Sn. 11 C.P.C.

Res Judicata means '**right decided**'. This means 'the matter is adjudicated' and hence, the competent court has already decided the matter. The rule is that the second trial should be barred to prevent multiplicity of proceedings. This rule was laid down in the Duchess of Kingstone's case by Sir William de Gray, Judge. However, several conditions are to be fulfilled to bar the jurisdiction of the second court.

#### **Conditions**

i) The matter directly & substantially in issue in the subsequent

suit must be the same matter which was directly and substantially in issue either directly or constructively in the former suit. Former suit is a suit which has been decided prior to the suit in question.

a) A sues B for breach of contract. The suit is dismissed. A subsequently sues B for damages for breach of contract on the same contract. This is barred under Res Judicata.

b) A sues B for rent due for the year 1995. The defense is that the rent has been paid and that there are no dues. Hence, the claim for rent is the matter directly and substantially in issue.

ii) The former suit must have been between the same parties or between their representatives.

iii) The parties to the suit must have litigated under the same title in the former suit,; same title means the same capacity.

Eg.: A manager of a Hindu mutt, dies. His heir B sues 'S' to recover mutt property from him. The suit is dismissed on the ground that the heir had not taken out succession certificate. But later B is appointed duly as the manager of the mutt. He can sue 'S' and there is no Res Judicata.

iv) The court which decided the former suit should have been a court competent to try the subsequent suit.

If the first court had exclusive jurisdiction, then that court's jurisdiction will act as Res Judicata to bar any subsequent suit.

If the first court had concurrent jurisdiction then that court is competent hence Res Judicata operates.

Hence, if the first court had neither exclusive nor concurrent jurisdiction, it has no jurisdiction at all. Hence Res Judicata will not apply. The suit may be initiated.

v) The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the suit.

**There must be final decision, the matter is heard and finally decided in any one of the following ways:**

(a) Ex Parte (b) Dismissal (c) Decree (d) Dismissal due to plaintiffs failure to produce evidence.

Explanation :- Sn 11 has 8 explanations : According to them

i) The matter in the former suit should have been alleged by one party and admitted or denied by the other

ii) Competence of court is decided irrespective of a provision to an appeal in the earlier suit,

iii) "Matter" which might or ought to have been agitated or defended in the earlier suit shall be the matter directly or substantially in issue.

**iv) Relief, if not, granted in earlier suit shall be constructed as rejected.**

### **Amendments of C.P.C. 1976.**

i) To avoid multiplicity of proceedings it is provided that the District court may try the suit or transfer it to a court with competent jurisdiction if the court finds that the case involves a question which a court of limited jurisdiction would be incompetent to try.

ii) Before the new C.P.C. under res judicata the successful party was barred in respect of adverse findings of the court. Now, it is not barred, and he may file an appeal against such adverse findings.

iii) The doctrine is now extended to independent proceedings and also to execution proceedings.

### **Ch.2-3. Constructive res judicata.**

According to Sn.II, Explanation iv: a matter may be actually or constructively in issue. Matters may be directly in issue.

These are clear from the pleadings in the plaint and the written statement. However, there may be matters 'might have been' or 'ought to have been' made by the parties (the plaintiff in his averment or the defendant in his written statement).

If the parties have failed in the previous suit to bring out these, then under the rule of res judicata, the matter is deemed to have been in issue directly and substantially, and it is also deemed to have been heard and decided. The result is that in such cases, the suit is barred under res Judicata.

Eg.: A sues B to recover certain property belonging to the estate of C. The ground was that C & D were brothers; on the death of C, the property came to the survivor D and that D had adopted 'A'. D, died and the property had come to B. A claimed as adopted son. The suit was dismissed as adoption was not proved. Later A sued B alleging that he was a 'bandhu' of C and hence was entitled. This is barred by constructive res Judicata. B ought to have pleaded that he was a 'bandhu' in the earlier suit. Suit dismissed

### **Ch. 2.4. Res judicata and estoppel**

#### **Distinguished:**

Though res judicata is sometimes treated as part of the doctrine of estoppel, still they are essentially different.

#### **Res judicata**

1. Res judicata under Sn.II, is based on public policy. It is essentially procedural. Based on "Nemo dabet bix vexari" (No

#### **Estoppel**

Estoppel as per Sn.115 of the Evidence Act is by conduct of parties, or agreement or estoppel in

one should be vexed twice) to  
put an end to litigious tendency.  
What is barred in the second suit  
on the same cause of action

pais.  
This is essentially a  
rule of evidence. It is  
based on the rule that if

between the same parties and subject to other conditions of Sn.11.

2. Res judicata ousts the jurisdiction of the court in the second suit.

3. Deals with jurisdiction of the second court itself and bars it from exercising jurisdiction.

a person induces another to alter his situation, he cannot take advantage of such altered situation. He will not be allowed to contradict himself.

Estoppel shuts the mouth of the party from blowing hot and cold in the same breath.

This is by a party and hence he is prevented from going back on his earlier statement.

## CHAPTER 3 SUITS AGAINST GOVT.

### Ch.3 Sns 79 & 80 Suits against Government

Suits may be (i) General or (ii) of a particular kind.

In respect of suits in general it is not necessary to give notice to the defendant before filing a civil suit. However, in respect of suits against the Government, it is essential that notice under Sn. 80 C.P.C. must be served. The object is to provide an opportunity to the Govt. to reconsider the legal position, and to amend or settle the claim without any litigation. The Central Government shall be called the Union of India and the State Government shall be called the State, e.g. state of Karnataka for the purpose of serving notice. Period of notice: Two months Notice is essential, as per sn.80

In respect of suits, against the Central Government notice must be given to the Secretary to the Government. (If it relates to the railway, notice must be given to the General Manager of the railways).

In respect of suits against State the cause of action Government notice must be given to the Secretary to that Govt. or the Collector of the District, as the case may be.

The notice must be in writing, state the name and description and place of residence of the plaintiff and also the relief which he claims.

In case of a public officer, notice under Sn.80 must be delivered to him or left at this office.

#### **Plaint**

The plaint shall contain a statement stating that notice under Sn.80 has been so delivered or left in the office of the person so concerned. If notice has not been so served, then the suit is to be dismissed.

The new C.P.C. Sn.80(2) provides that when a suit to obtain an urgent or immediate relief is to be filed then no notice is necessary if the court so permits. The court in such circumstances shall give the Govt. or the Officer, reasonable opportunity of showing cause. The court also, decides whether there is urgency or not.

No suit under Sn.80 shall be dismissed merely on technical grounds of error or defect in the notice.

If there is no urgency to grant relief, the Court returns the plaint for presentation after giving notice .It must identify the cause of action and reliefs claimed, in the notice and in the plaint.

## CHAPTER 4

### INDIGENT PERSON

#### Ch. 4.1 Informa Pauperis

(Suits by indigent person)

Provisions are made in C.P.C. to enable a pauper to file a suit subject to certain conditions. 0.33r. 1 to 16 provide for this.

A person is a pauper when he is not possessed of sufficient means to pay the court fee to institute a suit. Where no such fee is prescribed, the person is a pauper when his entire property is below Rs.1000/- value excluding his necessary wearing apparel and of course the matter of the suit.

#### **Suit**

0.33 provides for the procedure to file a suit *informa pauperis*. Every application for leave (permission) to sue *informa pauperis* must contain the particulars as required in a plaint. Also a schedule of any movable or immovable property with estimated value should be annexed. The plaint should be duly signed and verified.

#### **Presentation**

The application should be presented to the Court by the applicant or agent capable of answering material questions put to him by the court.

#### **Examination**

The applicant is examined, if the application is proper and duly presented and if the court thinks fit to examine. The examination relates to the merits of the claim and property of the applicant.

#### **Rejection**

The court rejects the application:

- i) If it is not framed and presented in the prescribed manner.
- I ii) If the applicant is newfound to be a pauper.
- iii) If the applicant has fraudulently disposed of his property within two months next before instituting the suit.
- iv) If there is no cause of action.
- v) If there is a transfer of interest in the subject matter of the proposed suit, to some other person.

#### **Hearing**

If there is no reason to reject the application, the court shall fix a day for receiving the evidence by the applicant to prove his pauperism. Evidence to disprove pauperism may be allowed. (Notice to the

opposite party and Govt. pleader necessary). On the day fixed the court shall examine the witnesses produced by either party and may examine the applicant and make a memorandum thereof. Thereupon the court may give its decision allowing the application or its refusal.

**Admission of application:** If the application is granted it should be numbered and registered. It shall be deemed to be a plaint and the suit shall proceed of course without payment of Court fees.

### **Dispaupering**

i) If the plaintiff is guilty of vexatious or improper conduct in the course of the suit.

ii) If his means are more than a pauper.

iii) If the plaintiff transfers his interest in the subject matter,

The court may dis-pauper him. Under the new C.P.C. the court is empowered to assign a pleader to an indigent person who is not represented by a pleader Order 33, Rule 18 also provides for free legal services to such persons.

### **Costs**

Where the plaintiff succeeds, the court shall calculate the amount of court fees and recover the same from the plaintiff.

### **Ch. 4.2.: Pauper Appeals**

A pauper who is entitled to go for an appeal but who is unable to pay the fees is allowed to appeal as a pauper subject to the same provisions as provided above.

The court entertains the appeal if, the lower court's decision is contrary to law usage or is erroneous or unjust.

## CHAPTER 5

### PRELIMINARY TOPICS

#### Ch. 5.1. Pleadings :

i) Pleadings are statements in writing drawn up and filed by each party to a case, stating what his contentions will be at the trial, and giving all such details as his opponent to know, in order to prepare his case in answer (P.C. Mogha).

There are two pleadings : The 'Plaint' & the 'Written Statement'.

The C.P.C. defines pleadings (O.VI R.2) 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 defense, as the case may be, but not the evidence by which they are to be proved.

**According to Sri. P.C Mogha :**

**Drafting of pleading is an art, it requires a good knowledge of law and the skill of sorting out material facts from the whole bundle of facts and circumstances brought to the knowledge of the Advocate.**

ii) **Essentials :**

a) **Every pleading must state facts and not law :**

Eg : The deft, is in possession of the mortgaged property and 'is liable to render accounts of income and expenditure'. (There is a statutory duty and hence, need not be pleaded)

b) **Pleadings should have only material facts**

The party must plead all material facts on which he intends to rely and must plead material facts only. These are 'facta probenda' (Facts to be proved).

1. In a claim on a Promissory note, it is unnecessary to plead, that money was given because of the honesty of the promisor.

2. In denying, the receipt of any money taken as a loan, it is unnecessary to plead that the defendant is a very rich man and that he had never taken any loan from any body.

c) **Pleadings should not contain the evidence, but only facts :**

Eg: An Insurance company was defending the claims made by a party. The term of the policy was that it would become void if the insurer-died by his own hand'.

In the written statement the Company had stated that policy  
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holder was a moody fellow, that he had bought a pistol from a shop a few days before his death and that he had also written to his wife that he would kill himself. The court held that all this was evidence and hence should not be included in the pleadings (Written Statement). It was sufficient to say that "the policy holder died by his own hand".

**d) Facts must be pleaded with simplicity, brevity and precision.**

This rule is more easily said than done. As P.C. Mogha, points out, precision and brevity can be attained by experience and careful observation.

1. Simple words and short sentences should be used. Facts must be stated plainly and with precision. Use of pronouns must be avoided. The said defendant or the said plaintiff may be used often to avoid ambiguity. Similarly 'the said deed', 'the First-schedule property' etc may be used.

2. Dates, sums, numbers must be expressed in figures.

3. Chronological order must be followed.

4. Legal effects of documents must be briefly stated, without reproducing the document or quoting from it.

5. Intention, malice, knowledge etc., must be stated as a fact without setting out the circumstances.

6. The pleading should be signed by the parties and his advocates. It shall be verified at the foot to testify the sanctity of the fact stated.

7.

**Ch. 5.1.1. Pleint (0.7, R.1) CP.C.**

**The pleint is the foundation of the Civil Case.** Before drafting it 4 essentials are to be noted 1) Period of limitation (ii) Pecuniary or territorial jurisdiction of the court (iii) Statutory formalities before filing a suit (iv) Impleading all necessary parties.

**Contents :**

1) Headings : The name of the Court

(Space for fixing Court - fee - stamps)

2) Title : Description of Plaintiff and Defendant

3) Body : States the material facts divided into paragraphs and numbered consecutively.

4) Relief - Claims or Amounts sued for

5) Valuation, court fee - paid

6) Jurisdiction of court, within period of limitation, etc..

7) List of documents, annexure

8) Signature and Verification

**PLAINT (Proforma)**

In the court of..... at .....

Original Suit (O.S.) No..... of 2012

A S/o, B, aged 40, residing

at No.....Street..... Place . Plaintiff

Versus

C/S/o D, aged 45, residing

at No. .... Street .... Place Defendant

The above named plaintiff states as follows : 1

.....

2.....

3 .....

4. The Cause of action arose on.....

when the defendant .....

5. The defendant is resident in.. ..... and

within the jurisdiction of this Honorable court

6. The value of the subject matter of the suit for the purpose of court fee and jurisdiction is Rs .....

7. The suit is filed within the period of limitation

8. The plaintiff claims

9.

Signature of Advocate (of the Plaintiff) Signature of Plaintiff

**VERIFICATION**

I, ..... (Plaintiff) ..... declare that the facts stated above in paragraphs 1 to ..... above are true to my knowledge, information and belief in token whereof affix my signature at .... on the .... day of..... (month) 2012. '

Signature of the Plaintiff

**Affidavit: According to the new Sn 26, the C P C Amendment Act of 1999 it is mandatory that all the facts mentioned in the plaint are proved by way of an affidavit. Hence, an affidavit is a must.**

[Sn 26(2) says In every plaint, facts shall be proved by affidavit." ]

**Summons to Defendants : Section 27 C P C**

**provides for the issue of summons to the defendants in a suit to appear and answer the claim within 30 days of the institution of the suit. Earlier, the section did not provide any time limit for the plaintiff to serve the summons on the defendants. That resulted in long delays.**

#### **Ch.5.1.2. WRITTEN STATEMENT**

Defence available to defendant in a Civil Suit  
(Essentials of W.S.)

The written statement can be conveniently divided into following heads

1. The heading and title or formal portion
2. The body of the W.S.
  - a) Admission and Denial part
  - b) Additional pleas
  - c) Objection in point of law
  - d) Special defences and avoidance
  - ^Verifications

##### **1. The heading and the title :**

The heading of the W.S. should be the same as that of the plaint. Then there should be the number of the suit. Title also should be the same as that of the plaint with the difference that if there are several plaintiffs, the name of the first plaintiff should only, be written with the addition of words 'and another' or 'and others'. After the title, the person on whose behalf the W.S. is filed should be shown. In some places, the words "The defendant states as follows" are used before the various paragraphs of the W.S., but this is not necessary.

The rules about signature and verification of the W.S. should be carefully observed.

Eg : In the court of..... Munsiff, Mysore

O.S. No.118 of 2012

Kannapa and others..... Plaintiffs

Versus

Krishnappa and others.....Defendants.

Written statement under Order VIII RI C.P.C.

First Defendant begs to state as follows :

I that

2

Verification

-----  
signature of Defendant

## 2. The body of the W.S. a) Admissions and Denials :

The defendant should take each fact in the same order in which it is alleged in the plaint and it should be either admitted or denied, or when the defendant has no knowledge of it, he may refuse to admit. General denial is not sufficient. A denial may be total or partial. When the denial is total, i.e., when the defendant totally and categorically denies the allegations in the plaint, the defence is said to be in form "traverse".

### i) Dilatory pleas :

Dilatory pleas are those which merely delay trial of suit on merits. But, pleas which go to the very root of the case are called peremptory plea, or pleas in bar.

### ii) Objection in point of Law :

It is an objection which a defendant takes to the legal inference which is drawn by the plaintiff in his favour in the plaint. Ordinarily this is heard and decided at the time of trial, but the court should try that objection before proceeding with trial of other issues, if the case (or any part there of) can be disposed of on the decision of such objection.

### iii) Special defence :

Order 8, Rule 2 contains the rule : which says that the defendant must rise, by his pleading, all matters which show the suit not maintainable, or that the transaction is void, or

voidable in point of law, and all such grounds of defence, as for instance, fraud, limitation, release, payments, performance, or facts showing illegality etc.

In a suit by a firm, if the defendant wants to plead its non-maintainability on the ground of the firm's non-registration, it will not be sufficient to say that plaintiff does not allege that the firm is registered.

## **2. Pecuniary (Sns. 6 & 15) :**

The civil courts have different grades to try suits of a civil nature. Small causes courts have Jurisdiction upto a fixed amount. However, High courts, District and Civil judge courts have unlimited pecuniary jurisdiction.

## **3. Subject matter:**

The jurisdiction in civil matters is based on the subject matter as well.

i) Generally, money suits are confined to small causes courts upto a fixed amount. Matrimonial matters are to be initiated at the District Judges court. Various acts prescribe which court has jurisdiction. ;

ii) The suit is to be instituted where subject matter i.e., immovable property is situated.

The general rule is that parties cannot create or oust the jurisdiction of the courts.

Ch. 5.2.2. Suit by or against a partnership FIRM order 30 Rules 1 to 10 C.P.C. deal with provisions to file a suit by or against a firm.

## **Partnership firms**

### **1. Partners may sue or be sued in the name of the firm:**

According to 0.30 R.I, 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. These persons should be partners of the firm at the time of accrual of the "cause of action". Further, any party to the suit, may apply to the court for a statement of names and addresses of the persons who were partners (at that time of accrual of cause of action) in such firm and this is to be furnished by the party and verified in such manner as the court may direct.

All pleadings (plaint, written statement etc) may be verified or signed by any such person (partner).

The suit is not affected, if there is a minor in the firm, or one who is not capable of suing or be sued.

## 2. Partners' name and addresses:

When the suit is filed in the name of the firm, the defendant may in writing demand the names and addresses of all the partners and the plaintiff shall furnish the same to the court.

If the plaintiff fails to so furnish, the court may stay all proceedings on such terms as it may direct. However, if the names and addresses are declared, the suit shall proceed, with the partners arrayed in the plaint. The proceedings continue in the name of the firm, but the names are to be entered in the decree of the court.

## 3. Summons :

Provisions are made for service of summons. If persons are named in the cause title, the summons shall be served on any partner or partners or at the place of business as directed by the court. This is good service of summons.

However, if the plaintiff has knowledge, at the time of filing the suit that the partnership firm has been dissolved summons will have to be served on every such partner of the said dissolved firm.

Appearance is necessary, if the person is a partner. Otherwise, he may enter appearance under protest (Rule 8), stating that he was never a partner at any material time. The court decides whether that person was a partner or not.

When the partners are sued in the name of their firm, they should make appearance, in their names but subsequent proceedings shall be in the name of the firm.

Death : In case of death of a partner, it is not necessary to join the legal representative. But a legal representative has a right to apply to the court to be made a party.

### Suits between partners:

R.9 provides for suits between partners of the same firm. Similarly, in case of two or more common partners in two firms, suits by one firm against the other may be filed.

### 5.2.3. Suit by a minor : (0.32 RI to 16)

A minor or infant is regarded by law as of immature intelligence and discretion. Due to want of capacity and judgment, he is disabled from binding himself, except for his,»own benefit. Order 32 is therefore specially made to protect the interests of minors. These provisions apply to persons of unsound mind. The objective is to see that a minor or unsound person is represented by a qualified person, to act on his behalf.

Suit:

Every suit by a minor should be filed in his name by a "next friend", "Minor" is a person who has not completed 18 years of age, if minor's property is under charge of court of Wards Act, the minority is upto 21 years.

The cause title of the suit gives the title and description. "X, minor, by his next friend Mr..... " versus AB defendant.

Suit filed, without next friend should be taken off the file, on hearing the objector - defendant.

#### **Appointment:**

The court has powers to appoint (Rule 3), a "Guardian" for the suit, by issuing an order made on the application of the guardian. The guardian should file an application, with an affidavit verifying that he is a fit person and has no interest in the suit adverse to the minor i.e., he would act for the benefit of the minor. The court will appoint after giving notice to Father, but if he is not alive, to the mother if both are dead, to the guardian, if any, of the minor. Guardian should give his consent for appointment.

The guardian so appointed continuous until he is terminated by removal, retirement, or death.

If any person is not fit to be appointed as guardian, the court may appoint an officer of the court as guardian and his expenses shall be met from the property of the minor as justice and circumstances

(Rule 3).

ii) If defendant appears and plaintiff does not, the court is bound to dismiss the suit.

iii) If plaintiff appears and defendant does not, the court is authorised either to postpone the hearing or proceed exparte.

The order is applicable to hearing, before the trial begins. For subsequent stages suitable provisions are made in order 17.

### **Ch. 5.3 Parties to the Suit (O.I.R. 2 to RR.23)**

#### **Joinder of parties**

The four essentials of a suit are

- i) **Opposing parties** (Plaintiff and Defendant)
- ii) **Subject in dispute.**
- iii) **a cause of action, and**
- iv) **a demand for relief or**

### **compensation.**

Provisions are made in the C.P.C. relating to joinder of parties and the framing of suits.

#### **i) Joinder of Plaintiffs:**

All persons may be joined as plaintiffs in one suit, if the relief claimed arises from the same act or transaction and there is a common question of law or of fact.

Eg.: a) A publishes books in the name of 'The Oxford and Cambridge Publication', misleading the public. The two Universities may sue together as Plaintiff in one suit for an injunction against A.

b) A & Co. issued a prospectus. X, Y and Z believed the statements and bought shares. The statements were in fact a misrepresentation. X, Y and Z may together sue A & Co.

If this rule is not followed it is a misjoinder of plaintiffs. Similarly, if a party necessary to the suit is not included it becomes non-joinder of parties.

#### **ii) Joinder of defendants:**

The rule is that all those persons may be joined as defendants when any relief claimed by the Plaintiff, arise out of the same act or transaction, and further, when there is any common question of law or of fact.

Eg.: a) A, a passenger in a bus belonging to B is injured by a collision between the bus and a truck of C. A sues B & C for damages for personal injury. As the transaction is the same and there is a common question of law B & C may be sued together.

b) A & B conspire and publish a libel against C. C may sue A and B together.

If the above rule is not followed it may lead to misjoinder of defendants. Misjoinder of plaintiff or misjoinder of defendants or misjoinder of cause of action will not be fatal to the suit but, the plaint may be amended, and the Court may proceed further.

If a necessary party is not joined, it amounts to non-joinder of parties.

### **Ch. 5.4. Framing of suit in civil Court [ As amended in 1999.]**

i) Order 2, Rules 1 to 7 C.P.C. have provided for "**Frame of suit**".

The rule is : **every suit should be framed so as to afford ground for final decision on the subjects in dispute.**

The objective is to prevent further litigation. Hence, as far as possible the framing should be complete by itself.

e.g. In a partition suit, the plaint should be so framed as to disclose the whole partible property.[all properties to be partitioned]

ii) **The plaintiff should include the whole of his claim, to which he is entitled as regards cause of action.** He may relinquish a part of his claim, in which case he is estopped from claiming it (Rule 2).

Where various reliefs are available in respect of the same cause of action he may claim for a few. If he has omitted a relief, he cannot claim, except with the permission of the court.

iii) **Joinder of causes of action** : Rule 3 :

a) Plaintiff may unite several causes of action against the same defendant or defendants jointly.

b) Further, if plaintiffs are jointly interested in the cause of action, they may sue jointly.

iv) For recovery of immovable property

The plaintiff may include with the leave of the court:

i) mesne profits or arrears of rent

ii) damages for breach of contract

iii) claims on the same cause of action.

Exception : In a suit for foreclosure or redemption the party may claim possession of mortgaged property.

v) Rule 7 : All objections for misjoinder of causes of action should be taken by the defendant at the earliest time. Otherwise it is deemed to be waiver.

**Procedure:**

O.IV R 1 : The plaint should **be filed to the Court with a duplicate copy.**

If duly instituted, a summon is issued to the defendant to appear and answer the claim. He should file the written statement of his defence, if any, **within thirty days** from the day of institution of the suit as may be specified therein: **But no summon is issued if defendant was present at the time of filing of suit and admits the claims.**

*If the defendant fails to file his written statement within the 30 days, the Court in its discretion may allow to file his W S on a day not later than 30 days from date of service of summons to him.*

## Ch 5.5 Issue of Summons and delivery

C P C amendment 1999 has made many changes in respect of issue and delivery of summons. The objective is to minimize delay and expedite the disposal of the case.

Under rule 9 the Court may issue summons and deliver the same to the plaintiff or his agent for service. , **it will direct the plaintiff to present as many copies of the plaint on plain paper as there are defendants within two days from the date of such order along with requisite fee for service of summons on the defendants.**

It may direct the summons to be served by

- (i) registered post acknowledgement due or
- (ii) by speed post or
- (iii) High Court approved Courier Service or
- (iv) by fax message or
- (v) by Electronic Mail service [ email] or
- (vi) by such other means as the High Court may prescribe by rules.

The summons is addressed to the defendant, to accept the service at the place where the defendant or his agent actually and voluntarily resides or carries on business or personally works for gain.

Under rule 9A the Court can , in addition to, and simultaneously with the delivery of summons for service to the plaintiff, direct that summons to be served on the defendant or his agent.

*Rule 14.* Provides for production of document on which plaintiff sues or relies along with the plaint.

He should prepare a list of all such documents and shall produce it in Court with all the documents and a copy thereof, with the plaint. But, if he does not file any such document or a copy, it will not be admitted in his evidence. Exception:

documents produced for the cross examination of the plaintiffs witnesses, or, handed over to a witness merely to refresh his memory.

Rule 18. 1A deals with the duty of defendant to produce documents upon which he relies for relief

He should prepare a list of all such documents and shall produce it in Court with all the documents and a copy thereof, with the plaintiff. But, if he does not file any such document or a copy, it will not be admitted in his evidence. Exception:

documents produced for the cross examination of the defendant's witnesses, or, handed over to a witness merely to refresh his memory.

***Order of dismissal***

**If plaintiff or his agent has not sent the summons within 2 days to the defendant or he has not paid the court-fee or charges, the court shall make an order that the suit be dismissed.**

## **Ch 5.6 Recording of Evidence Amendments 1999**

One important change in the C P C amendment Act 1999 is the procedure of recording of evidence made with a view to save the time of the Court.

Recording of evidence is conducted in the following manner:

- a) Examination in Chief of a witness shall be on affidavit;
- b) The Cross Examination and Re-Examination of such a witness will be either taken by the Court or the Commissioner appointed by it;
- c) The Court or the Commissioner will then record the evidence in writing or mechanically in the presence of the Judge or the Commissioner, as the case may be;
- d) The Commissioner has to return the evidence along with his report in writing to the Court;
- e) The report of the Commissioner has to be submitted to the Court within 60 days of such appointment or within such further extended time as the Court may permit for reasons to be recorded in writing;
- f) Such evidence shall form part of the record of the suit

**Written Arguments:**

**In addition to this the C P C Amendment Act of 2002 has made provisions for submission of written arguments in support of the case by both the parties separately .This is in addition to oral arguments with the permission of the Court.**

**This helps in saving the valuable time of the Court**

### **Ch 5.6 .1 Exparte proceedings Rule 6 :**

When the suit is called on, for the "first" hearing, Rule 6 provides that if the plaintiff appears and the defendant does not appear, the court may make an order to hear exparte

- 1) When summons has been served on the defendant.
- 2) and it is proved that it is so served.

The court must be satisfied that there was due service of summons on the defendant. "Service" does not mean by Regd. post. Hence, no exparte decree is made on that basis.

The court weighs the merits of the suit even in exparte proceeding.

Adjourned exparte hearing (0.9 R.7) :

When the hearing exparte, is adjourned to a later date, the defendant may appear and file an application with affidavit and assign "good cause" for his non-appearance on that date, The court may issue suitable directions as to costs etc. He is then entitled to defend the suit.

Non appearance of plaintiff (R.8):

When the defendant appears and the plaintiff does not appear, the court may dismiss the suit. However, if the defendant admits any claims, the court may pass a decree on the basis of the admission. But in respect of other claims, if any, the court dismisses such claims.

In such a case, the plaintiff is barred from filing a fresh suit R-9. But, he may file an application to set aside the dismissal by showing "sufficient cause" and the court at its discretion may set aside the dismissal order and allow the party to proceed with the suit. Notice should be served on the defendant, before making such an order under R-9.

In case of non attendance of one or more of several plaintiffs or defendants, the court at the instance of the plaintiffs (or defendants) appearing as the case may be, permit the suit to proceed in the same way as all were present. **Attendance in person :**

R-12 provides that where the plaintiff or defendant is to appear in person as per summons and absents without sufficient cause, the suit will be dismissed as per the Rules under order 9.

**Setting aside exparte decree (0.9, R.13) :**

0.9, Rule 13 is wide enough to cover every application to set aside ex parte decree. The grounds are that summons was not "duly served", defendant was prevented by "sufficient cause or reason" from appearing, or that there was fraud in suppressing summons.

**Application :**

The defendant may file an application with affidavit to the court which passed the ex parte decree.

The court will make an order setting aside the decree, if the defendant satisfies that the summons was not duly served or he was prevented from appearing by "sufficient cause". The court imposes such terms as to costs and fixes a day to proceed with the case.

**Limitations:**

1. The defendant should make the application, within 30 days from the date of decree, or where the summons are not duly served, the period is 30 days from the date of his knowledge of the decree.
2. No decree should be set aside without notice to the plaintiff (Rule 14).
3. If the decree is of such a nature that it cannot be set aside against such defendant only, it may be set aside against all defendants.
4. Mere irregularity in the service of summons, is no ground to set aside the decree, if the defendant, had notice of the date of hearing and had sufficient time to appear.

**Sufficient cause :**

It is interpreted liberally to do substantial justice when there is no negligence or inaction or want of bonafides of the defendant. A finding by the court on sufficient cause is mandatory. Such a cause depends on various facts and circum-stances of the case.

**Effect:**

The effect of setting aside the ex parte decree is that the parties are restored to the position they previously held. Hence, the court\* proceeds from that stage. If decree is not set aside, it will be absolute and binding.

**Revision :**

Under Sn. 151 C.P.C. revision will lie if the conditions are satisfied.

**5.6. Suit dismissed for default.**

Refer Ch. 5.4.

## 5.7. Court appointment of Guardian

Refer Ch. 5.3.2.

## 5.8. Death of a party (Order 22 : Rules 1 to 12) :

Provisions have been made in 0.22 R1 to 12 C.P.C. to cases of creation, transfer or devolution of interests in pending cases. The cardinal rule is that if the right to sue survives, the death of a party (plaintiff or defendant) does not cause the suit to abate. The suit or

appeal can be represented by the heirs and legal representatives. If the right to sue does not survive, the suit ends.

The general rule is that death of a party, marriage or insolvency of a party to the suit, pending in the court, will not abate, if the right to sue survives.

**Rule 1 :** If the right to sue survives, the Suit shall not abate on the death of plaintiff or defendant.

**Rule 2 :** Death of one of several plaintiffs or defendants :

When there are several plaintiffs or several defendants and any of them dies, and the right to sue survives, the court shall make an entry on record and the suit continues between the surviving plaintiffs alone or against surviving defendants alone.

**Rule 3 :** Death of sole plaintiff or one of several plaintiffs : In such a case, if the right to sue survives to the sole surviving plaintiff, or the right to sue does not survive to surviving plaintiff alone - the court, on an application made in that behalf, shall allow the legal representatives to be made a party, and the suit proceeds.

However, if no application is made within the period of limitation, the suit abates so far as that dead plaintiff is concerned. Costs, if any may be recovered by defendant from the estate of the deceased plaintiff.

**Rule 4 : Death of sole defendant or one or more of several defendants.**

i) When the sole defendant dies and right survives to legal representative he may be brought on record.

ii) When one of several defendants dies, and the right to sue does not survive to defendants alone, legal representatives may be brought on record.

iii) If no application is made to bring on record, the suit abates.

iv) However, the defendant may prove his ignorance or show sufficient cause for the delay and the court with due regard to the ignorance of the defendant, may allow the legal representatives to be brought on record.

**Pleaders duty :**

It is the duty of the pleader, appearing on behalf of the defendant to inform the court about the death of the party. The court gives notice to the other party and allows the legal Reps, to be brought on record.

**Marriage of female party: Rule 7 :**

This will not abate the suit. Hence, it may be continued and executed against her alone. However, if the husband is liable for debts of his wife, the decree may be, executed against the husband.

**Insolvency Rule 8 :**

Insolvency of plaintiff will not abate the suit. The official receiver may continue but if he refuses to give security, the court on an application made by the defendant dismiss the suit.

**Ch. 5.9. Transfer of a suit (Sns. 22-25):**

Sn. 22: C.P.C.: The general principle is that the plaintiff has a right to choose his own forum. However, if the suit is one which can be instituted in two or more courts and the plaintiff has instituted in one of them, the defendant, may make an application to the appellate court, to have the suit transferred to another court. He should give notice to the plaintiff before making the application. The time of making application is at the earliest opportunity and before such settlement of issues.

The appellate court shall consider the objections of the parties and examine the totality of circumstances which indicate to the balance of convenience in favour of the applicant and decides in which court the suit should proceed.

The application lies to the Appellate court, when several courts are under its jurisdiction. But, if those courts are subordinate to several appellate courts, application should be made to the High Court to which the appellate courts are subordinate.

**Sn. 24 : General power of transfer :**

The High Court or District Court on motion by any party - but with notice and after hearing the parties or suo moto, at any stage,  
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may transfer any suit, appeal or other proceeding pending before it to any competent court to try or dispose of.

It has the powers to withdraw any suit, appeal or proceeding pending in any court subordinate to it, and may try and dispose of or may transfer to the competent court to dispose of the same.

The grounds of transfer should be sufficient and the burden is on the applicant. If he has a genuine apprehension that he would not get justice from the court, or if transfer would be "convenient" to the parties and "would be cheap" - or if the balance of convenience was in favour of transfer - the court may, if satisfied with the reasons, transfer the suit.

#### **Sn. 25 powers of Supreme Court:**

On application filed with affidavit by a party before the Supreme Court, the Court after giving notice and hearing parties may make an order for transfer, if such an order would be necessary for the ends of justice. It may transfer any suit, appeal or proceeding from a High Court or Civil Court of a State, to another High Court or Civil Court.

#### **Ch. 5.9. "Costs follow the event" - Explained**

Sn. 35 C.P.C. deals with costs of suits. According to it costs of the suit and incidentals thereto are determined by the court at its discretion.

It has full power to determine to what extent the costs are to be paid by whom and from what property. It may give suitable and

necessary directions in this regard.

A court without jurisdiction may also determine costs.

#### **Exception :**

In case the court directs that "any cost does not follow the event" it should state its reasons.

**Costs :** Mean expenses incurred by the party/The object is not to make any gain or profit to the party. It is not a bonus. They cost is determined by the court, but is subject to the conditions and limitations of law.

Cost includes incidentals e.g. arbitration referred by court.

**Order :** Order as to costs may be "costs reserved" "costs to follow the event", "costs to abide the result" etc. The court takes into account the length of trial, nature of questions involved, conduct of parties. The principle is **costs follow the event**.

#### **Scope :**

1. The successful party is entitled to cost if not guilty of

misconduct. For harassment exemplary costs may be levied.

2. It does not depend on who wins or loses. Many facts shape judicial verdict.

3. Cost is not equal to what a litigant may actually spend.

4. Costs are disallowed for misconduct or for frivolous and vexatious suits or for loss of time of the state.

5. Under Sns. 35 A, compensatory costs for vexatious or false claims may be ordered to be paid to the objector who has put forward his defence. The maximum is Rs.3000/-

### **Ch. 5.10. Rateable distribution Sn. 73 C.P.C**

Sn. 73 C.P.C. provides for rateable distribution, among decree-holders of the assets of the judgement debtor, held by the court.

Earlier the rule was "first come, first serve, and this had led to

malpractices and scrambles. To put an end to this, Sn. 73 was made to place all decree-holders on equal footing.

The objects are (1) to prevent multiple execution proceedings and (2) to secure equitable distribution of assets. This section provides for a cheap and speedy mode of execution. It is a rule of procedure.

#### **Essentials:**

The essential conditions are as follows :

i) The assets of judgement - debtor (J.D.) must be held by the court i.e., attached by the court.

ii) The decrees obtained by two or more decree holders, should be money-decrees and should be against the same J.D.

iii) The claimant must have applied for execution to the same court and before the court received the assets. He should not have obtained satisfaction of his decree.

iv) The cost of realisation, should be deducted before rateable distribution.

#### **Distribution of proceeds:**

When the immovable property of the J.D. is sold by the court, the sale proceeds shall be applied to meet:

i) cost of making sale

ii) amounts due under the decree

iii) interest and principal on encumbrances if any.

iv) rateable distribution of moneys among all the eligible decree-holders.

**Restrictions :**

1. The right of the Govt. is not affected by the section.
2. The sale of immovable property by the court is subject to the mortgage or charge, if any, on the property and hence, the purchaser gets the property subject to the said mortgage or charge.

Of course, such a mortgagee or holder of charge, may waive and agree for reteable distribution with other decree-holders.

**Revision :**

The High Court has powers of revision when the lower court has no jurisdiction or distribution is wrong.

**Ch. 5.11. Subsistence allowance:**

0.21, R. 39 21 has provided for execution of decrees or orders.

Provisions have been made in Rules 37 to 39, for the arrest and detention of the **judgment-debtor (J.D.)** in execution proceedings against him, before the execution court,

On an application with affidavit filed by the decree-holder, the court instead of issuing a warrant for arrest, issue a notice to the J.D, to show cause why he should not be committed to the civil prison Notice is not necessary if the J.D. is making plans to abscond etc.

The court on inquiry may release the J.D. on security or detain in custody of officer of the court.

If warrant of arrest is issued, it is addressed to an officer appointed by the judge and specifies the amount to be paid by the J.D. and is signed by the judge.

No arrest is to be made if the amount is specified. Otherwise, the officer may arrest the J.D. and bring him before the court "with all convenient speed".

Condition to deposit subsistence allowance :

One strict rule is that the decree-holder should make the deposit of amounts as the judge thinks sufficient for the subsistence of the J.D. until the JD is brought before the court.

However, if the JD is committed to the civil prison, the court fixes the monthly allowance, as per prescribed scales. The decree-holder should deposit in advance in full on the first of every month. If not paid the JD will be released.

Such amounts are deemed costs in the suit.

### **Ch 5.12 Out of Court Settlement or Alternate Dispute Resolution**

**One important change made by the C.P.C. is in introducing alternate Dispute Resolution [ Sn 89.] This is taken from the United States where it has been a success thereby reducing the delay in civil litigations.**

**Civil Courts are given the power to refer the disputes to:**

- a) Arbitration;**
- b) Conciliation;**
- c) Judicial settlement including settlement through Lok Adalat; or**
- d) Mediation.**

**a) In case the Court prefers arbitration, it invokes the provisions of the Arbitration and Conciliation Act and advises the parties to settle as per the Act.**

**b) In case the Court finds the conciliation is suitable, it will refer the two parties to Lok Adalat, in which case Sn 20 (1) of the Legal Services Authority Act, 1987 and all other relevant provisions will apply .**

**c) In case the Court thinks that Judicial settlement is suitable, it may refer to an institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Act 1987 will become applicable.**

**(d) for mediation, the Court makes a compromise between the parties and follows such procedure as may be prescribed.**

### **Direction:**

**C P C Amendment of O. X.1A.**

**Direction of the Court to opt for any one mode of alternative dispute resolution —**

**After recording the admissions and denials, the Court shall direct the parties to the suit to opt either mode of the settlement outside the Court as specified in sub-section (1) of section 89. On the option of the parties, the Court shall fix the date of appearance before such forum or authority as may be**

opted by the parties.

**1B. Appearance before the conciliatory forum or authority —**

Where a suit is referred under rule 1A, the parties shall appear before such forum or authority for conciliation of the suit.

**1C. Appearance before the Court consequent to the failure of efforts of conciliation —**

Where a suit is referred under rule 1A and the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then, it shall refer the matter again to the Court and direct the parties to appear before the Court on the date fixed by it.

## CHAPTER 6

### TEMPORARY INJUNCTIONS

#### Ch. 6. Temporary Injunction. (0.39)

Provisions are made in the C.P.C. to enable courts to grant temporary injunctions.

#### **Injunctions are of two kinds.**

Temporary and Permanent.

Temporary injunctions are those that continue for a specified time or until further orders are made by the courts. They may be issued at any stage of the suit or even before the issue of summons, but it is essential that the suit should be pending in the court. But, a perpetual injunction can be granted by the decree of the civil court made at the hearing and on the merits of the case. These are governed by the Specific Relief Act. Circumstances under which a temporary injunction can be granted are :

i) The property which is the subject matter of dispute must be in danger of being wasted, damaged or transferred by a party to the suit or wrongfully be sold in execution of a decree.

ii) The deft must be threatening to dispose of his property with a view to defraud his creditors.

iii) The deft threatens to disposes the plaintiff or otherwise cause injury to schedule property.

#### **Illustrations**

i) X lets out vacant land to Y under a contract that Y should not dig there. Y makes arrangement to dig and carry sand for his purpose. X may sue for an injunction to restrain Y from doing so.

ii) T is the trustee and A is the beneficiary. T is attempting to sell trust property in violation of the trust deed. A may sue for an injunction.

iii) X pollutes the air with smoke and gas and interferes with the physical comfort of the neighbours. Y may sue for an injunction.

The court in its discretion may grant a temporary injunction, for the purpose of preventing waste, or dispossession or injury etc. This is a preventive relief until disposal of suit or until further orders. This is an equitable relief.

If order is granted till the disposal of the interlocutory application for injunction (without finally disposing) it is ad interim. If given in finally disposing of application it is Temporary injunction. This

enures to the benefit of the party until disposal of suit, or until further orders.

The plaintiff must come with clean hands & disclose all facts.

The court will grant, if there is a prima facie case. There must be a serious question to be tried, or on facts there should be a probability of getting relief, by plaintiff. The courts interference should be necessary to protect against injury; otherwise mischief would be more.

Balance of convenience is in favour of plaintiff. Breach of injunction by defendant, amounts to contempt of court.

Under this order 39, injunction can be granted to prevent second marriage, if the first wife / husband is living.

Appeal: An appeal

If the plaintiff has brought a suit on insufficient grounds or if there was no reasonable ground for suing, the court, may on the application of the deft, award compensation upto Rs.1,000/- to the deft. The Plaintiff shall pay this.

## CHAPTER 7

### ATTACHMENT & ARREST

#### Ch. 7.1 Properties which cannot be attached

A suit in a civil court concerning any right to any property may be decreed in favour of the plaintiff or may be dismissed. If the suit is decreed, the person in whose favour the decree is passed is called the decree-holder and a person against whom it is given is called the judgment-debtor. The decree-holder can resort to execution to realise the amount, by way of attachment of the property of the judgment debtor, or by ways of arrest of the judgment debtor or by both.

Attachment is an order of the court prohibiting the judgment-debtor from dealing with the property attached. It is only after attachment that it will be ordered to be sold by the court by court auction. Those properties which may be attached are mentioned in Sn.60 subject to certain exceptions.

Property liable for attachment:

Lands, Houses, other buildings, goods, moneys, cheque, Government Securities, debts, shares etc. as per Sn.60.

The following are not liable for attachment:

i) Necessary wearing apparel, cooking vessels, beds and beddings of the debtor, of his wife and children. Personal ornaments which should be with a woman by religion. (Eg.Mangala Sutra etc.)

ii) Tools of artisans, Agricultural implements including cattle and seed grain and agricultural produce as are necessary for livelihood.

iii) Books of account, a mere right to sue for damages, any right of personal services, etc.

iv) Stipends and gratuities and political pensions.

v) Wages of laborers and domestic servants payable in kind or in money.

vi) Salary to the first Rs.400/- and two thirds of the remainder,

vii) A right to future maintenance etc. as per Sn.60 of C.P.C.

viii) Houses and buildings belonging to agriculturist, laborer or a domestic servant,

ix) L.I.C. Policies, Provident Fund Contributions.

Where the property is immovable the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in anyway. All persons are prohibited from taking any benefit from such transfer or charge..

The order shall be proclaimed at some place on the property or adjacent to the property by beat of drum or other customary mode. A copy of the order shall be affixed on a conspicuous part of the property or of the Court house (or in the office of the collector if it is land).

### **Ch.7.2 Arrest before Judgment**

A plaintiff in a suit may at any stage of the suit pray for the arrest of the deft before judgment or for the attachment of property before judgment.

He must make an application after the plaint is admitted. It is not just to arrest a person or attach his property before a decree. But, in only certain specified cases such an action is allowed.

. Order 38 Rules 1 to 4 provide for arrest before judgment.

If the court is satisfied that the deft has an intention to delay or obstruct the execution of a decree that may be passed against him:

i) has absconded or is about to abscond or had left or is about to leave the local limits of its jurisdiction.

ii) has disposed of his property or has removed from the local limits, or

iii) he is about to leave India, the court may issue a warrant to arrest the deft, and to bring him before the court. The court may ask him to furnish security for his appearance.

The Warrant should specify the amounts claimed by the plaintiff. If the amount is paid, the deft, should not be arrested. If not so paid the court may ask him to deposit sufficient money or property or to furnish security for his appearance. If he fails to do so, he may be committed to the civil prison. He should not be detained for more than 6 months. If the value of the subject matter is below Rs.50/- he should not be arrested for more than 6 weeks.

### **Attachment before judgment**

If the deft is about to dispose of the property or to remove it from the local jurisdiction, with a view to delaying or obstructing the execution of a decree, then the court may direct the deft, to furnish security. The court may order for conditional attachment of the said property..

Compensation: If the arrest before judgments or attachment is made on insufficient grounds the court may award upto Rs.1,000/- compensation to the deft. The plaintiff should pay this compensation.

## CHAPTER 8 COMMISSIONS

### Ch.8 Commissions (Order 26 Rules 1 to 22.)

The C.P.C. has provided for the appointment of a commission for the examination of a resident, within its jurisdiction, if that person is (i) exempted from attending the Court or is proved to be (ii) sick and infirm.

The persons who are exempted are:

i) Persons resident outside the jurisdiction or who is about to go outside.

ii) Govt. officers who are in service and who cannot attend without detriment to public interest.

Who may be the Commission:

The Court may appoint an advocate or pleader or any person at its discretion as a commission.

Commissions may be appointed, i)

to make local investigations, ii) to

examine accounts, iii) to make

partitions.

iv) to make scientific investigation or to make sale of movable property.

### Powers

The Commission should discharge its functions as per the directions of the Court.

i) It may examine the parties or any witnesses or any other person whom it deems fit.

ii) Call for and examine documents and other relevant things,

iii) Enter any place or buildings at reasonable times, iv) Record

objections to answer questions.

Attendance, Summoning: The Commission is considered as a Civil Court, and is empowered to exercise its power as in C.P.C. (Of course, no penalties can be imposed.)

Returning of Commission: The court fixes the time within which the Commission should return. It should submit its report to the court with the evidence collected, depositions, documents etc.

Evidentiary Value: The evidence taken under a Commission should not be read as evidence without the consent of the other party, subject to certain exceptions.

When the commission submits its returns, it is dissolved, and, ceases to have any power.

## CHAPTER 9 RECEIVER

### Ch. 9 Receiver (Order 40 C.P.C.)

There may arise a circumstance where the court may have to appoint some person to look after the property of a person. Such an appointed person is a '**RECEIVER**'. If it appears to the court to be just and convenient, it may appoint a receiver of any property and hand it over to his possession and management. This may be done at any stage of the suit.

Such a receiver has the power conferred by the Court: i)

He may file suits and defend suits, ii) He may realise, protect and manage the property, iii) He may collect rents and apply them.

iv) He may execute the documents and exercise any other powers as the Court orders. When the party to the suit has a right to remove any person from possession of property the receiver may remove him with the permission of the Court.

Eg.: i) In a suit for dissolution of a partnership firm, if the court thinks fit, it may appoint a receiver to protect the assets of the firm.

ii) In a suit for partition of a Mithakashara Coparcenary property, the court may appoint a receiver to the co-parcenary property.

**Remuneration:** The court fixes the amounts to be paid to the receiver as remuneration.

**Grounds of appointment:** Mere convenience is not a ground. There must be a just and convenient ground.

**Status:** The Receiver, duly appointed by the court is an officer of the court and hence he is subject to the orders of the Court. He is also the representative of the court and also of all the parties

interested in the suit. He is not an agent of any party. In respect of land paying revenue, the collector may be appointed as the receiver/.

A Receiver duly appointed should

i) furnish security, ii) submit his accounts duly, iii) make payments,

iv) be responsible for losses, if any, resulting from his wilful default or gross negligence.

#### **Failure**

If the receiver fails to discharge his duties e.g., fails to submit his accounts or make payments or causes wilful loss, the court may direct to 'attach the property of the receiver and may sell such property and apply, the proceeds to make good the loss thereof.

## CHAPTER 10 JUDGMENT, DECREE AND ORDER

### Ch.10.1 Judgment and decree.

Judgment means the statement of the grounds of decree or order, given by a judge. The judgment contains:

- i) A concise statement of the case,
- ii) The points for determination, iii) The decision thereon, and iv) The reason for-such decision.

**Decree:** After the judgment is pronounced, the successful party may apply to the court to draw up the decree. It is then drawn up by the officer of the court. It should contain:

- i) The number of the suit.
- ii) The names and description of parties.
- iii) The relief granted or other determinations such as that the suit is dismissed.
- iv) The particulars of the claim.

The decree must correspond with the judgment. The court may correct clerical arithmetical errors or accidental slips.

Decree may be preliminary or final. The preliminary decree is passed in suits such as dissolution of partnership, suits for presumption, administration suits etc.

In the case of dissolution of partnership, the preliminary decree, may declare the proportional shares and may direct that accounts are to be taken. The suit is adjourned to a later date for passing a final decree. After accounts are taken and the amounts of share determined the court passes the final decree. Appeal is allowed from the preliminary decree.

#### Form of Decree

Name of the Court .....

(Title of the suit etc) No .....

Claim for specific performance of an agreement dated, 20-1-2010 and in the alternative for damages for Rs.5,000/-

The suit coming on this day for final disposal before ..... the name of the judge ..... in the presence of Sri ..... Advocate for plaintiff and of Sri ..... advocate for the defendant, it is declared. that the plaintiff is not entitled to specific performance, of the said agreement, and it is ordered and decreed that the deft, do pay Rs.5,000/- to the plaintiff as and for damages for the breach of contract referred to above, and, Rs ..... on account of costs of this suit with interest thereon at the rate of 6% per annum from this

date to the date of realisation.

Given under my hand and seal of the Court on this 15th day of  
January 2012

Judge

Seal

(Cost of suit with details)

**Ch. 10.2. Order**

Means the formal expression of any decision, of a Civil Court,  
which is not a decree.

Eg.: i) Order issued under Sn. 91 Public Nuisance

ii) Order made under Sn.95 for payment of compensation to

## **CHAPTER 11**

### **GENERAL**

#### **Ch.II. 1 Substituted Service**

The usual procedure of serving the summons to the defendant, is by delivering it to the defendant if he is living within the jurisdiction of the Court, or to his agent if so directed by the Court. The defendant or his agent is required to give an acknowledgment in writing duly signed with date.

Where this personal or direct service fails, the summons may be served under 'Substituted Service'. Where the defendant refuses to sign or where the Ameen (Bailiff) after all due and reasonable diligence cannot find him, he may serve as follows;

- i) He should affix a copy of the Summons on the outer door or some conspicuous part thereof.
- ii) He should return the original to the court endorsing the nature of the service.
- iii) If the Court is satisfied, declares that it is duly served.

Where the Court is satisfied that there is reason to believe that the defendant is deliberately avoiding the summons, it may order the summons to be served by affixing a copy in some conspicuous place in the court-house and also in the usual place of his residence, or business or working.

Under this the Court may order service by advertising in the newspapers. The Court shall fix the time for the appearance of the defendant.

#### **Ch. 11.2 Remand (O 41 R 23)**

Remand means to send back a case to the same lower court for taking action thereon. This is the inherent power of an appellate court. Where the appellate court finds i) that the trial court has decreed the suit on its finding on a preliminary issue, and that ii) the said decree is reversed in appeal, then it may remand the case to the same lower court with suitable directions. The Appellate court sends a copy of its judgment and its order to the trial court. It may thereby direct to re-admit the suit and to proceed with the suit. The evidence recorded earlier to the remand order may be accepted as evidence.

Eg.: A files a case against B. The trial court declares the suit as barred by limitation. In appeal this decree is reversed. The appellate court may direct to the trial court to re-admit the case with the same suit number and proceed with the case.

The inherent power to remand includes cases of error, omission or irregularity committed by the lower court.

### **Ch.11.3 Restitution Sn.144 C.P.C.**

Restitution means 'restoring to the party what he has lost'. This doctrine of restitution is applicable in Civil courts in the following circumstances:

i) The trial court must have given a decree or order and in pursuance the plaintiff P must have received some benefit from the defendant D.

ii) The appellate court on appeal from the trial court must have reversed the trial court order or decree in favour of D.

In such a case,. D may make an application under Sn.144. The court may make orders to restore D to his status ante. For this purpose it may order for refund of costs, for payment of interests, damages, Mesne profits as it may find proper.

The court will not entertain any suit but an application for restitution will suffice.

Eg.: A obtains a decree against B for possession of 10 Metric Tonnes of timber, and in execution thereof obtains possession. This decree is reversed by the appellate court. B may make an application for the restoration of his 10 Metric Tonnes of timber.

The doctrine of restitution is based on the rule that when a person has made a gain or benefit under a decree, and the appellate court reverses the decree, the law imposes an obligation on such a party to restore to the other who has lost i.e, Status quo ante is to be restored. It is for this reason that the trial court takes security from the party for restitution of the property, if the decree is reversed on appeal.

### **Ch.11.4 Caveat (Sn.148 A, CPC) or Caveat application**

Caveat means 'beware'.

Any person who claims any right of hearing before the Court, where an application is or is about to be made, may lodge a 'Caveat' in that regard, before that court. He is called the Caveator. Such a Caveator shall serve a notice of the Caveat by Regd. Post (acknowledgment due) on the person who is or is about to make an application.

If a Caveat is' duly filed, the court shall serve notice to the Caveator. The applicant shall furnish to such a Caveator a copy of the application and also copies of any paper or documents filed by him before the Court.

The period of limitation of the **Caveat is 90 days**. Hence, if within this period no application is filed by the applicant, then the

Caveat lapses.

### **Ch.11.5 Representative Suit**

The general rule is that all persons interested in a suit ought to be made the necessary parties thereto. However, on the basis of convenience, there is an exception. This is the representative suit. Under this a few persons should be allowed to file a suit when there is a community of interest among a large number of persons.

The leading case is Ramashesiah V Ramappa.

According to this, a suit may be filed by one or more persons on behalf of themselves and others having the same interest in the suit. The court may grant permission for filing such a suit. It shall give notice to all concerned persons or by public advertisement as the case may be. Any person who is interested may apply to the court to include his name.

No part of the suit should be withdrawn or abandoned or compromised without notice to all concerned.

A decree under this rule shall be binding on all persons-plaintiffs & defendants-and acts as a Res judicata.

### **Ch 11.6 Next friend 0.32. R.1**

A minor has no legal capacity to sue or be sued. Hence, it is necessary that his interest should be protected and the C.P.C. provides for a Next friend to act and file or defend him. But, the Next friend is not a party to the suit.

The title of the suit will be put as A, a minor by his Next friend B versus C & D. No suit will be entertained by or against a minor without a next friend. (The court may ask the 'next friend' to furnish security for expenses of the suit.)

Any person of sound mind and who has attained majority may act as a 'next friend'. Such a person should not have any adverse interest to that of the minor.

The next friend may be removed when he does not do his duty or acts adverse to the interests of the minor.

### **Ch. 11.7 Legal Representative Sn.2(II).C.P.C**

Means a person who **represents in law** the estate of the deceased person It includes i) any person who intermeddles with the estate of the deceased.

ii) When a party sues in a representative character, and dies, the person on whom the property devolves, is a legal representative.

Eg.: Universal legatee, Legatees of portions of estate.

Where a decree is passed against a legal representative, for payment out of property of the deceased, the decree can be executed against such property as remains in his hands.

Son or other descendant in Hindu Law is a legal representative of the deceased.

### **Ch. 11.8 Interrogatories 0.11 R.1 to 8**

Discovery by interrogation : Any person to suit is entitled to elicit and know the nature of his opponents case and also to know before-hand what case he has to meet at the hearing. A plaint or a written statement of the case may not sufficiently disclose the nature of a case. To make good the deficiencies, either party may administer interrogatories, in writing to the other, through the court. The party to whom interrogatories are administered must answer them in writing and an oath.

Interrogatories(questions) are allowed:

- i) to know the nature of the case or the material facts.
- ii) to support one's case by getting admissions or impeaching the opposite party's evidence.

e.g. A sues B for i) breach of contract & ii) for damages. A must prove the i) Contract and ii) the breach. B may administer interrogatories to A to obtain admissions to prove his own case. But, B cannot put questions to know evidence A has to prove his case.

Interrogatories not allowed:

Matters which are of:

- i) Evidentiary value and which are of a
- ii) Confidential nature between the opponent and his Advocate, and
- iii) Matters injurious to public interest-

Procedure: The party must make an application to the Court in the pro forma for permission to deliver the interrogatories. The court shall consider and grant the permission. The opposite party shall answer them by affidavit in 10 days, in the pro forma. However, it may take objections if the questions are irrelevant, not bona fide or privileged. If questions are vexatious or improper, the cost sustained by the party shall be paid by the party in default.

### Ch. 11.9 Foreign judgment. Sns 13 & 14

Foreign judgment is defined as the judgment given by the Foreign Court i.e. a court situated beyond the territorial limits of India and which is not established or continued by the President of India. The rule is that a foreign judgment operates as a Res judicata between the parties except in the following cases ;

i) The Courts in India will not give effect to a foreign judgment pronounced by a court **without jurisdiction**.

The leading case is Gurdayal V. Raja of Faridkot (1895).

A sued B in the Faridkot court to recover Rs.60,000/- misappropriated by B, when B was in A's services. B did not appear and hence an ex parte decree was passed. At the time of the suit B was not residing in Faridkot and had no domicile of that place. Thereupon, A sued B in British Indian Courts. Held, Faridkot Court's decree was a foreign judgment. As B had no residence or domicile and was not even present there the foreign decree was without jurisdiction and hence, would not be followed in India.

ii) The foreign judgment must have been given **on the merits** of the case. The Indian courts have a right to examine the merits.

iii) If the Indian court finds that the foreign judgment appears **on the face of the record to be an incorrect view** of International Law or Indian Law, it may refuse to follow that decision.

iv) If the foreign judgment is given in **violation of the principles of Natural Justice**, the Indian courts may refuse to follow it.

v) Any foreign judgment **obtained by fraud** is void, and hence, not followed by Courts in India.

vi) If the foreign judgment has decreed for a claim, which is a **breach of any Indian Law**, then the decision is not found. Hence, a foreign judgment for a gambling debt would not be enforceable in Indian courts.

#### **Presumptions as to foreign judgments :**

According to Sn.14, a certified copy of the foreign judgment is admissible in evidence in India, There is a presumption that the judgment is duly pronounced. This presumption is, of course, rebuttable.

### Ch. 11.10 Public Nuisance : Sn. 91

It is an unauthorised act or omission which causes any common danger, injury or annoyance to the public or to the people in general who live in the vicinity.

Under Section 91, the Advocate General or two or more persons who have obtained the leave of the court, may institute a suit. There may not be any special damage caused by such public nuisance. But the plaintiff may pray for declaration or injunction or for such other reliefs as may be appropriate under the circumstances of the case.

Institution of a suit under this section will not limit any other remedy provided elsewhere i.e., criminal prosecution or suit for tortious liability.

Eg.: A keeps his horses and wagons standing for an unreasonable time on the highway causing public nuisance.

**Here the advocate-general, or 2 or more persons** with the permission of the court may file a suit against, A praying the court:

- i) For abatement of nuisance and injunction, ii)  
Restraining him from continuing the nuisance.

This remedy is available in respect of Public Nuisance or any wrongful act affecting the public at large.

### Ch. 11.11 Mesne Profits

Sn.2(12) C.P.C. defines mesne profit. It means those profits which a person in wrongful possession of some property actually received or might have received with ordinary diligence, together with interest on such profits. However, it shall not include profits due to improvements made by the person in wrongful possession.

0.20 R.12 provides for the recovery of the immovable property and the mesne profits.

The court may pass a decree for the mesne profits which have accrued. on the property, prior to the institution of the suit. It may direct an inquiry as to mesne profits from the institution of the suits until the delivery of possession of property to the decree-holder.

The court shall pass a final decree on the basis of such suit.

This inquiry may be held by an officer of the court who must report to the court the results of his inquiry. After this, the court hears the parties and a final decree may be passed in respect of mesne profits.

It is provided that when the court has passed a decree directing an inquiry into mesne profits, the grant of mesne profits may be from the commencement of the suit until a maximum of 3 years from the date of the decree.

### **Ch.11.12. Garnishee**

#### **Sn 6(4)**

He is a person in whose hands there is a debt (i.e., amount due by him to the judgment debtor), this may be attached by the execution order of the court. A Garnishee order is an order served on the Garnishee, attaching a debt in his hands. The decree holder may attach the debt.

Eg.: P is the decree-holder [D H] for Rs.2,00,000/-against the defendant, judgment- debtor.[ J.D.]

G owes Rs.200,000/- to D. P may ask court to give a Garnishee order to attach Rs.200,000/- due from G

G is the garnishee. He may pay the amounts to P. P may give a discharge for payment of moneys thereof.

Judgment debtor DH, has Rs. 1,50,000/- in SB account in HDFC Bank. The Court may issue a garnishee order to the .Bank to attach the account.

The Court may issue notice to the garnishee to pay such amount to the Court.

When the amount is so paid, the Court directs that the amount may be paid to the decree-holder.

**If the garnishee does not pay or appears and shows cause, the court may issue execution order against him.**

If there is dispute, it shall be tried and disposed off.

Ch.11.13. **Precept: Sn.46.**

On the application made by the decree-holder the court which passed the decree may in suitable cases issue a precept to any court competent to execute such decree, to attach any property belonging to the judgment-debtor mentioned in the precept.

That court which receives the precept shall attach the prop in the prescribed manner provided for attachment.

No such attachment can continue for more than two months. But the court may extend the period. However if the decree has transferred to this Court and the decree-holder has applied for: order of sale, the precept stands good.

Ch.11.14 **Inter Pleader Suit** (S.88, 0.35 R. 1 to 6)

When two or more persons D1, D2, D3 and D4 claim adverse to one another, the same debt, sum of money or other property in movable or immovable from another person P who claims no interest therein, and who is ready to pay or deliver it to the rightful claim P may institute an inter pleader suit against all the claimants for purpose of obtaining a decision as to the person to whom payment or delivery shall be made and of obtaining indemnity for himself.

If there is already a suit pending no such suit shall be instituted. In the plaint the plaintiff should make the following allegations:

- i) No interest is to be claimed by the plaintiff in the subject matter of the suit.
- ii) Claims area made by the defendants severally.
- iii) There is no collusion between the plaintiff and any of the defendants.
- iv) Things claimed to be paid or placed in the custody of the court, must be specified. (subject matter).

If any of the defendants has already filed a suit against the plaintiff, interpleader suit is to be stayed.

The Court may declare that the plaintiff is discharged from liability to debts or it may retain all parties until the final disposal of the suit. Agents and tenants may not institute interpleader suits.

The Court may provide for the costs 'of the plaintiff by imposing charge on the things claimed.

Details of procedure are provided for in the Civil Court Rules.

## CHAPTER 12

### REFERENCE, REVIEW & REVISION

#### Ch.12.1 Reference Sn 113

Any court below the High Court may state a case and refer the same for the opinion of the High Court and the latter may make such order thereon as it thinks fit. This is called **reference**.

If the lower court is satisfied that the case before it, involves a question challenging the validity of any Act, Ordinance or

Regulation (or any provision thereof) and that there is no decision of that High Court or the Supreme Court on that, it may set-out its reasons and opinion and refer the same for the opinion of the High Court.

The reference can be made only when the lower court has a 'doubt' on the question. The object is to get the questions speedily decided by the High Court. This saves much time of the parties which would have otherwise moved a writ challenging the Statute under Art.226 and 227 of the Constitution. Provisions have been made in the Civil Court Rules, relating to how the references are to be made.

#### Ch 12.2 Review Sn.114 C.P.C.

To review is to **re-consider**. Provisions are made in the C.P.C for a review of a decision by the very court which passed the decree or made the order.

Any party to a suit, who considers himself aggrieved

i) by a decree or appealable order of a court-but no appeal is preferred or

ii) by a non appealable decree or order of the Court, or

iii) by a decision on a reference from a Court of Small Causes-may apply for a review of the judgment.

As the application is made to the very court, it may reconsider and make suitable orders thereof.

### . 12.3 Revision Sn.115

This is called Revisional Jurisdiction of the High Court. A large number of cases come under this section. However certain conditions are to be fulfilled.

I. The lower court should have

i) acted in excess of its jurisdiction. ,

ii) failed to exercise its jurisdiction.

iii) acted illegally or with material irregularity. This refers to errors of jurisdiction.

II. The lower court's decision must be non-appealable.

In such a case on an application by the applicant for revision, the High Court calls for the records of the lower court, and makes such orders as it thinks fit.

Scope

The Revisional Jurisdiction is **discretionary in character**. Hence, even if the above conditions are satisfied the Court may not interfere. It is only when there is a substantial failure of justice to a party that it interferes.

It has powers to vary or reverse any order made by the lower court. The test is, if the order is allowed as it is, it should cause injustice and irreparable loss to the party.

There is no Revisional Jurisdiction of a decree or order against which there is a regular appeal under C.P.C.

The High Court will not enter into the merits of the case but it examines whether the requirements of law have been duly fulfilled by the lower court.

The irregularity must be of such a nature as to justify an interference to prevent any gross miscarriage of justice. The Court will not interfere on mere technical grounds.

#### **Amendment C P C 1999**

**"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 "**

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

## CHAPTER 13

### APPEAL TO THE SUPREME COURT

#### Ch. 13 Appeal to the Supreme Court. Sn. 109 C.P.C.

Provisions are made in the C.P.C for appeals from the High Court to the Supreme Court.

The appeal may be from any judgment decree or final order in a Civil proceeding.

The High Court must certify . . .

i) that the case involves a substantial question of law of general importance and

ii) that in its opinion the said question needs to be decided by the Supreme Court.

#### Scope:

i) This provision is subject to Art. 132 of the Constitution. Before 1972, the position was, that the High Court had to certify that the value of the subject matter of the dispute was not less than Rs.20,000/-. However this requirement was omitted by the 13th Amendment to the Constitution. Sn.109 of C.P.C. has incorporated this amendment.

ii) Appeals are allowed only in a 'Civil proceeding'. It means a proceeding in which there is the termination of right to property or a Civil right.

Hence, a reference under Income Tax Act or Sales TAX Act is not a Civil proceedings.

iii) Certificate of fitness is to be granted by the High Court. The certificate is the leave(permission) to appeal to the Supreme Court. Hence, if the certificate is refused, the party cannot go in appeal. However, he may invoke the Special Leave jurisdiction **SLP** of the Supreme Court under Art. 136 of the Constitution.

iv) The value of the suit in the court of first instance to be Rs.20,000/- is irrelevant now in view of the omission of this requirement.

#### Procedure

The petition for the certificate should be made to the High Court which shall hear and conclude within 60 days. If the certificate is refused, the petition shall be dismissed. If certificate is granted to the appellant, the High Court, shall require him to provide security and deposit as it may determine. Thereupon the Court may declare the case as admitted and transmit the case to the Supreme Court.

**CHAPTER 14**  
**MISCELLANEOUS**

**Ch.14.1 Abatement of suit (0.22.RR. 1 to 9)**

Abatement here means 'ceasing to exist'.

The rule in Civil proceedings is that the death of the plaintiff or the defendant will not abate the suit if the right to sue survives. The test is whether the right to sue survives to the Legal representative or not.

Eg.: A suit for assault, divorce defamation etc. abates on the death of the plaintiff or the defendant.

In Saifuddin V. Sate of Bombay A, the religious head excommunicated B. B contested this order in a suit but died pending the suit. The Supreme Court held that the maxim '**actio personalis moritur cum person'a applied**' [**Personal action died with the person**] and the suit abated. Similarly, a suit to recover damages for breach of contract of marriage abates on the death of the plaintiff.

The suit will not abate if the right to sue survives, e.g. cases coming under Succession, breach of mercantile contracts, right to a share in the property, tenancy right etc.

When there are two or more plaintiffs or defendants, the death of one will not abate the suit if the right to sue survives. The court records the death but proceeds with the case.

**Exception** : A new provision is made under C.P.C. If the case has been fully heard and concluded but reserved for judgment then the suit will **not abate** but will be operative even if death takes place in the meanwhile.

**Scope :**

If the suit abates, no fresh suit be brought on the same cause of action. It is barred by Res Judicata.

**Ch. 14.2 Withdrawal of a Suit. 0.23 R.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. When the Court is satisfied that a suit must fail by reason of some formal defect, or, that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of

a suit then it may grant permission to withdraw the suit.

The party is at liberty to the fresh suit. If the plaintiff withdraws without the permission of court, he is liable for cost and shall be precluded from instituting any fresh suit. The court should not allow one plaintiff to withdraw, without the consent of the other plaintiffs.

### **Ch. 14.3 Consent-decree or Compromise 0.23 R.3.**

a) Provisions are made in the C.P.C. for compromise. In that case, the 'consent decree' is passed by the Court.

The conditions that should be fulfilled for a consent-decree are:

i) The Court must be satisfied that the suit has been adjusted fully or partly by an lawful agreement or compromise in writing and signed by the parties to the suit, or

ii) The defendant must have satisfied the plaintiff in respect of the subject matter of the suit fully or partly.

The court records the same, and passes a decree accordingly.

#### **b) Scope:**

No consent decree is passed if the agreement or compromise made by the parties is void or voidable.

If the parties contest the agreement, the Court decides the question. **The consent decree is not appealable** .No suit will be entertained to set aside a decree on the ground that the compromise is not lawful.

In case of a representative suit, there shall be no compromise without the permission of the Court.

### **Ch. 14.4 Compensatory Costs: Sn. 35. A**

Means cost by way of compensation or damages for false or vexatious claims and defences in a civil suit or other proceeding.

Eg.: a) Recovery of dispossessed immovable property,

b) Recovery of movables attached

c) Partition of immovable property etc. are covered under this section.

iii) Wrongs to persons :

In respect of compensation for wrongs done to the person or to movable property, the suit may be instituted in the place where the plaintiff lives.

a) A resident of Delhi beats B when A was in Calcutta. B may sue either in the court at Delhi or Calcutta.

b) A residing in Madras/publishes a libel in Bombay, defaming

B.B may sue either in the court at Madras or Bombay.

,This section covers torts and contracts, iv)

Every other suit is to be instituted:

a) in the court where the defendant resides or carries on business.

b) in the court within whose jurisdiction, the cause of action arose.

A resides at Simla. B at Calcutta & C at Delhi. In Benaras A.B & C were on a pilgrimage. B & C made a joint Promissory Note in favour of A for Rs.5,000/-.

A may sue B & C at Benaras where the cause of action arose. But A may sue B & C at Calcutta or at Delhi, but the non-resident may object. The court may grant leave to sue.

#### **Ch. 14.9 Inherent powers of the Court: Sn. 151. C P C**

The Court has inherent powers to make such orders as may be necessary for the ends of justice or to prevent any abuse of the process of the court.

The C.P.C. does not limit or affect this inherent power of the court (Sn.151)

As the Supreme Court has stated, this inherent power has not been conferred on the Court by the C.P.C.

**It is a power inherent in the court itself, by virtue of its duty to do justice between the parties before it.**

The C.P.C. is not exhaustive: and, hence, where the circumstances demand, the court may act upon the assumption of its inherent power in the interests of justice.

**When there are no express provisions in the C.P.C., the court resorts to its inherent powers.**

#### **Illustrations:**

i) To order joint trials or suits,  
ii) To allow a defence to the indigent person,  
iii) To apply the principles of Res Judicata outside Sn.II of C.P.C.

iv) To grant maintenance allowance for the ends of justice

v) To correct its own mistakes.

vi) To amend the sale certification and correct the misdescription of the property.

vii) To punish disobedience to an order of the court, etc.

**Exceptions:**

1. Inherent powers are not exercised by the Court, to do that which is prohibited by the C.P.C. It cannot extend the period of limitation on grounds of equity and justice. It cannot entertain a suit which is purely on religious grounds.

2. When there are express provisions in the C.P.C., the inherent power should not be exercised.

The court has no powers in the following:

i) to set aside an ex parte decree (after the period of limitation)

ii) to restore an election petition dismissed for default/

iii) to substitute the legal representative after signing the judgment.

**Inherent powers to amend decrees or orders.**

The court has inherent powers to vary or amend its own decree or order so as to carry out its own meaning, when the decree or order does not correctly state what the court actually decided or intended.

eg. (1) A sues B for Rs.20,000/- and interest. The judgment was given for Rs.12,000/- in all. The decree is drawn accordingly. A applies to amend the decree to include interest. The court refuses the amendment, as its decree is according to its judgment.

(2) In a case, the judgment did not award costs, but in drawing up the decree, costs had been awarded. The court has powers to amend so as to carry out its judgment.

**General Powers to amend.**

Sn. 153 provides that the court may at any time amend any defect or error in any proceeding in a suit for the purpose of determining the real question or issue before the Court.

## CHAPTER 15

### APPEALS

#### **Ch. 15.1. Appeal from original decree (First appeal) Sees. 96 to 99 :**

Appeal is a **substantive right** and not procedural.

Sn. 96 : An appeal lies from every decree passed by any court exercising its original jurisdiction to the appellate court. This is subject to restrictions.

1) Appeal lies from an original decree passed ex parte.

2) No appeal lies from a consent-decree

3) No appeal lies from a small causes court if value is below Rs.3000/- except on point of law .As per C P C amendment 1999, this amount is Rs.10,000/-

4) If there is failure to appeal against a preliminary decree, the party is barred from appealing from the final decree passed by the court. The reason is, the preliminary decree is conclusive so far as matters dealt with and decided by the court. These matters form part of the final decree. In fact, it operates as Res 'judicata to the first stage.

5) Rules of procedure are made to serve the ends of justice. Hence, mere technicalities should not defeat justice.

On these lines, Sn. 99 provides that if the error, defect or irregularity, or non-joinder or misjoinder of parties, or cause of action, does not affect the merits of the case, or the jurisdiction of the court, the appellate court should not reverse or substantially vary the decree of the lower court.

The merits of the case are affected when the error results in error of judgment.

#### **Ch. 15.2. Second Appeals:**

The right of appeal is a substantial right and is provided in C.P.C. as a statutory right in Sns. 100 to 102.

Sn. 100 provides for appeal to the High Court from every decree passed by the appellate court, if the High Court is satisfied that the case involves a substantial question of law. This rule is subject to the other provisions of C.P.C. and other law for the time being in force.

Appeal lies from an ex parte appellate decree.

#### **Procedure:**

The memorandum of appeal should precisely state the substantial question of law.

If satisfied, the court formulates that question of law. The appeal is heard by the High Court on that question and the respondent is allowed to argue that there is no question of law.

The court has powers to hear on any other substantial question of law if it so desires,

Sn. 100 A provides that if heard by a single judge and decided,

C P C 1999 provides "**100A. No further appeal in certain cases** — .....

**(a) where any appeal from an original or appellate decree or order is heard and decided,**

**(b) where any writ, direction or order is issued or made on an application under article 226 or article 227 of the Constitution, by a single Judge of High Court, no further appeal shall lie from the judgment, decision or order of such Single Judge**

**Scope :**

Whether a particular question is substantial or not, depends on the facts and circumstances of each case.

**Amendment:**

**"102. No second appeal in certain cases —**

**No second appeal shall lie from any decree, when the amount or value of the subject-matter of the original suit does not exceed twenty-five thousand rupees."**

If the findings of the trial court are unsound, perverse, findings based on material inconsistencies or inaccuracies - the High Court will interfere. However, the court will not interfere merely on the ground of gross or erroneous finding of fact or a finding based on some documentary evidence.

It will admit or reject. There is no partial admission.

**THE END**

Reference Section  
Selected Sns and Orders

CIVIL PROCEDURE CODE (AMENDMENT) Act, 1999

2. Amendment of section 26 — In the Code of Civil Procedure, 1908 (5 of 1908) (hereinafter referred to as the principal Act), existing section 26 shall be re-numbered as sub-section (1), and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:

"(2) In every plaint, facts shall be proved by affidavit."

3. Amendment of section 27 the following words shall be inserted at the end, namely:

"on such day not beyond thirty days from date of the institution of the suit".

4. Amendment of section 32 — In section 32 of the principal Act, in clause (c) for the words "not exceeding five hundred rupees" the words "not exceeding five thousand rupees" shall be substituted.

5. Amendment of section 58 (i) in sub-section (1),—

(a) in clause (a), for the words "one thousand rupees", the words "five thousand rupees" shall be substituted; (b) for clause (b), the following clause shall be substituted, namely:

"(b) where the decree is for the payment of a sum of money exceeding two thousand rupees, but not exceeding five thousand rupees, for a period not exceeding six weeks:";

(ii) in sub-section (1A), for the words "five hundred rupees", the words "two thousand rupees" shall be substituted.

6. Amendment of section 60 in the first proviso to sub-section (1), in clause (i), for the words "four hundred rupees", the words "one thousand rupees" shall be substituted.

7. Insertion of new section 89 In the principal Act, after section 88, the following section shall be inserted, namely:—

"89. [Settlement of disputes outside the Court](#) —

(1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for (a) arbitration; (b) conciliation; (c) judicial settlement including settlement through Lok Adalat; or (d) mediation.

(2) Where a dispute has been referred—

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;

(b) to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

(c) for judicial settlement, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(d) for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed."

8. Amendment of Section 95 in sub-section (1), for the words "not exceeding one thousand rupees", the words "not exceeding fifty thousand rupees" shall be substituted.

9. Amendment of Section 96 in sub-section (4), for the words "three thousand rupees", the words "ten thousand rupees" shall be substituted.

10. Substitution of new section for Section 100A For section 100A of the principal Act, the following section shall be substituted, namely:—

"100A. No further appeal in certain cases — Notwithstanding anything contained in any Letters Patent for any High Court or in any other instrument having the force of law or in any other law for the time being in force,

(a) where any appeal from an original or appellate decree or order is heard and decided,

(b) where any writ, direction or order is issued or made on an application under article 226 or article 227 of the Constitution, by a single Judge of High Court, no further appeal shall lie from the judgment, decision or order of such Single Judge."

11. Substitution of new section for section 102 the following section shall be substituted, namely:—

"102. No second appeal in certain cases — No second appeal shall lie from any decree, when the amount or value of the subject-matter of the original suit does not exceed twenty-five thousand rupees."

12. Amendment of section 115 in sub-section (1)(i) for the proviso, the following proviso shall be substituted, namely:—

"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.";

(ii) after sub-section (2), but before the Explanation, the following sub-section shall be inserted, namely:— "(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court."

13. Amendment of section 148 — , after the words "such period", the words "not exceeding thirty days in total," shall be inserted.

### CHAPTER III - Amendment of Orders

14. Amendment of Order IV —

In the First Schedule to the principal Act (hereinafter referred to as the First Schedule), in Order IV, in rule 1,— (i) in sub-rule (1), for the words "plaint to the Court", the words "plaint in duplicate to the Court" shall be substituted;

(ii) after sub-rule (2), the following sub-rule shall be inserted, namely: "(3) The plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub-rules (1) and (2)."

15. Amendment of Order V — (i) in rule 1, for sub-rule (1), the following shall be substituted, namely:—

"(1) When a suit has been duly instituted, a summon may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, on such day within thirty days from the day of institution of the suit as may be specified therein:

Provided that no such summons shall be issued when a defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim:

Provided further that where the defendant fails to file the written statement on the said day, he shall be allowed to file the same on such other day which shall not be beyond thirty days from the date of service of summons on the defendant, as the Court may think fit.";

(ii) for rule 2, the following shall be substituted, namely:—

"2. Copy of plaint annexed to summons.— Every summon shall be accompanied by a copy of the plaint.";

"9. Delivery of summons to the plaintiff or his agent —

(1) The Court shall issue summons and deliver the same to the plaintiff or his agent, for service, and direct the summons to be served by registered post acknowledgement due or by speed post or by such courier service as may be approved by the High Court or by fax message or by Electronic Mail Service or by such other means as the High Court may prescribe by rules, addressed to the defendant to accept the service at the place where the defendant or his agent actually and voluntarily resides or carries on business or

personally works for gain.

(2) The plaintiff or his agent shall send the summons by any means as directed by the Court under sub-rule (1) within two days from the delivery of summons to the plaintiff by the Court under that sub-rule.

(3) When an acknowledgement or any other receipt purporting to be signed by the defendant or his agent received by the Court or postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee or by any authorised person to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons or refused to accept the summons by any other means specified in sub-rule (1), when tendered or transmitted to him the Court issuing the summons shall declare that the summons had been duly served on the defendant:

Provided that summons was properly addressed, pre-paid and duly sent by registered post acknowledgement due, the declaration referred to in this sub-rule shall be made notwithstanding the fact that the acknowledgement having been lost or misled or for any other reasons has not been received by the Court on the date fixed by it."

9A. Simultaneous issue of summons for service by the Court controlled process.—

(1) The Court may, in addition to, and simultaneously with the delivery of summons for service to the plaintiff as provided in the manner provided in rule 9, may also direct that summons to be served on the defendant or his agent empowered to accept the service at the place where the defendant or his agent actually and voluntarily resides or carries on business or personally works for gain. (2) The summons shall, unless the Court otherwise direct, be delivered or sent to the proper officer in such manner as may be prescribed by the High Court to be served by him or one of his subordinates.

(3) The proper officer may be an officer of the Court other than that in which the suit is instituted, and where he is such an officer, the summons may be sent to him in such manner as the Court may direct.

(4) The proper officer may serve the summons by registered post acknowledgement due, by speed post, by such courier service as may be approved by the High Court, by fax message, by Electronic Mail service or by such other means as may be provided by the rules made by the High Court.;"

(vi) rule 19A shall be omitted;

(vii) in rule 21, for the words "or by post", the words "or by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court" shall be substituted;

(viii) in rule 24, for the words "by post or otherwise", the words "or by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court" shall be substituted;

(ix) in rule 25, for the words "by post," the words "or by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court" shall be substituted. :—

"(4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings.";

17. Amendment of Order VII — "9. [Procedure on admitting plaint](#)

(1) Where the plaint is admitted, the Court shall give to the plaintiff summons in the name of all the defendants to be served upon or get served in the manner provided under Order V. ) Within two days of the receipt of summons under sub-rule (1), the plaintiff shall send or cause to send he summons to the defendants along- with the copy of the plaint in the manner provided under Order V.

(3) Where the Court orders that the summons be served on the defendants in the manner provided in rule 9A of Order V, it will direct the plaintiff to present as many copies of the plaint on plain paper as there are defendants within two days from the date of such order alongwith requisite fee for service of summons on the defendants."

"14. [Production of document on which plaintiff sues or relies](#) —

(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) Where any such document or a copy thereof is not filed with the plaint under this rule, it shall not be allowed to be received in evidence on behalf of the plaintiff at the hearing of the suit.

(4) Nothing in this rule shall apply to document produced for the cross examination of the plaintiffs witnesses, or, handed over to a witness merely to refresh his memory.";

18. Amendment of Order VIII — (i) for rule 1, the following rule shall be substituted, namely:—

"1. Written statement.—The defendant shall at or before the first hearing or within such time as the Court may permit, which shall **not be beyond thirty days from** the date of service of summons on the defendant, present a written statement of his defence.";

"1A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him.—

(1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set off or counter claim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

(2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(3) Where a document or a copy thereof is not filed with the written statement under this rule, it shall not be allowed to be received in evidence on behalf of the defendant at the hearing of the suit.

(4) Nothing in this rule shall apply to documents— (a) produced for the cross-examination of the plaintiff's witnesses, or (b) handed over to a witness merely to refresh his memory.";

"2. Dismissal of suit where summons not served by the plaintiff or his agent or in consequences of failure to pay cost.—Where on the day so fixed it is found that the summons has not been sent within **stipulated period of two days**, to the defendant by the plaintiff or his agent or in consequence of their failure to pay the Court-fee or any charges, if any chargeable for such service, the Court shall make an order that the suit be dismissed:

Provided that no such order shall be made if, notwithstanding such failure, the defendant attends in person or by agent when he is allowed to appear by agent on the day fixed for him to appear and answer.";

O. X.1A. **Direction of the Court to opt for any one mode of alternative dispute** resolution

After recording the admissions and denials, the Court shall direct the parties to the suit to opt either mode of the settlement outside the Court as specified in sub-section (1) of section 89. On the option of the parties, the Court shall fix the date of appearance before such forum or authority as may be opted by the parties.

1B. Appearance before the conciliatory forum or authority —

Where a suit is referred under rule 1A, the parties shall appear  
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before such forum or authority for conciliation of the suit.

1C. Appearance before the Court consequent to the failure of efforts of conciliation —Where a suit is referred under rule 1A and the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then, it shall refer the matter again to the Court and direct the parties to appear before the Court on the date fixed by it.";

23. Amendment of Order XIII — In the First Schedule, in Order XIII, for rules 1 and 2, the following rule shall be substituted, namely:—

"1. Original documents to be produced at or before the settlement of issues —

(1) The parties or their pleader shall produce on or before the settlement of issues, all the documentary evidence in original where the copies thereof have been filed along with plaint or written statement.

(2) The Court shall receive the documents so produced:

Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

(3) Nothing in sub-rule (1) shall apply to documents—

(a) produced for the cross-examination of the witnesses of the other party; or (b) handed over to a witness merely to refresh his memory."

24. Amendment of Order XIV —

(i) in rule 4, for the words "may adjourn the framing of the issues to a future day", the words "may adjourn the framing of issues to a day not later than seven days" shall be substituted.

26. Amendment of Order XVII.—

(i) for sub-rule (1), the following shall be substituted, namely:—

"(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."*;

"4. Recording of evidence by commissioner—

(1) In every case, the evidence of a witness of his examination-in-chief shall be given by affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence.

(2) The evidence (cross-examination and re-examination) of the witness in attendance, whose evidence (examination-in-chief) by affidavit has been furnished to the Court shall be taken orally by a commissioner to be appointed by the Court from amongst the panel of commissioners prepared for this purpose on the same day:

Provided that, in the interest of justice and for reasons to be recorded in writing, the Court may direct that the evidence of any witness shall be recorded by the Court in the presence and under the personal direction and superintendence of the judge.

(3) The commissioner shall be paid such sum for recording of evidence as may be prescribed by the High Court.

(4) The amount payable to the commissioner under sub-rule (3) shall be paid by the Court or by the parties summoning the witness as may be prescribed by the High Court.

(5) The District Judge shall prepare a panel of commissioners to record the evidence under this rule.

(6) The commissioner shall record evidence either in writing or mechanically in his presence and shall make a memorandum which shall be signed by him and the witnesses and submit the same to the Court appointing such commissioner.

(7) Where any question put to a witness is objected by a party or his pleader and the commissioner allows the same to be put, the commissioner shall take down the question together with his decision.";

"19. Power to get statements recorded on commission — Notwithstanding anything contained in these rules, the Court may, instead of examining witnesses in open Court, direct their statements to be recorded on commission under rule 4A of Order XXVI."

"6A. Preparation of decree.—(1) Every endeavour shall be made to ensure that the decree is drawn up as expeditiously as possible and, in any case, within fifteen days from the date on which the judgment is pronounced.

(2) An appeal may be preferred against the decree without filing a copy of the decree and in such a case the copy made available to the party by the Court shall for the purposes of rule 1 of Order XLI be treated as the decree. But as soon as the decree is drawn, the judgment shall cease to have the effect of a decree for the purposes of execution or for any other purpose.

6B. Copies of judgments when to be made available.—

Where the judgment is pronounced, copies of the judgment shall be made available to the parties immediately after the pronouncement of the judgment for preferring an appeal on payment of such charges as may be specified in the rule made by the High Court."

29. Amendment of Order XXVI —

"4A. Commission for examination of any person resident within the local limits of the jurisdiction of the Court —Notwithstanding anything contained in these rules, any Court may, in the interest of justice or for the expeditious disposal of the case or for any other reason, issue commission in any suit for the examination, on

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interrogatories or otherwise, of any person resident within the local limits of its jurisdiction, and the evidence so recorded shall be read in evidence.

30. Amendment of Order XXXIX — In the First Schedule, in Order XXXIX, rule 1 shall be renumbered as sub-rule (1) of that rule and after sub-rule (1) as so renumbered, the following sub-rule shall be inserted, namely:—

"(2) The Court shall, while granting a temporary injunction to restrain such act or to make such other order for the purposes of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property under disposition in the suit under sub-rule (1) direct the plaintiff to give security or otherwise as the Court thinks fit."

"9. Registry of memorandum of appeal —(1) The Court from whose decree an appeal lies shall entertain the memorandum of appeal and shall endorse thereon the date of presentation and shall register the appeal in a book of appeal kept for that purpose.

THE END