

CIVIL PROCEDURE CODE

Unit I

HISTORY:

Before 1859 no uniform code of civil procedure was in existence. The system of civil procedure was followed differently in different parts of the country. The first CPC was enacted in 1859 which was not applicable to the Supreme Courts in the presidency towns and prudency small cause Courts. Therefore, an amendment took place and the code was applied to whole of British India but due to many defects new code was enacted in 1877, and next code in 1882 and thereafter time to time. The present code was enacted in 1908 and thereafter amended time to time by Amendment Act 1951 and 1956. After considering the recommendations made by the Law Commission in its report, the Government decided to bring forward the Bill for the amendment of the Civil Procedure Code 1908 keeping in view the **following considerations**.

1. fair trial and principal of natural justice
2. expedite disposal of civil suits and proceedings.
3. Procedure should not be complicated and ensure a fair deal with poorer sections who are unable to engage a pleader to defend their cases.

Important changes made by the Amendment Act 1976 as below-

1. Doctrine of res judicata.
2. Powers conferred on SC to transfer suit from one HC to another HC
3. Freedom from attachment of portion salary.
4. Provision of giving notice to Government under Sec.80 before filing of suit against the Government or public officer.

5. Certain restrictions on right to appeal and revision
6. Provision regarding filing of written statement and documents without delay.
7. New Order 32A concerned to family affairs like matrimonial relief, validity of marriage, adoption, guardianship, custody, maintenance, Will and succession.
8. In camera proceeding
9. Settlement
- 13 Scope of summary trial is substantially widened.

EXTENT AND APPLICABILITY-

The code extends to whole India including State of Jammu and Kashmir, Amindivi Islands, East Godavari and Vishakhapatnam agencies in the State of Andhra Pradesh and the Union territory of Lakshadweep **except** Nagaland and tribal areas (the state may extend its applicability or parts through notification only)

Introduction; Distinction between procedural law and substantive law-

Introduction:

The Civil Procedure Code was passed in 1908 and came into force on 1st January 1909. The Civil Procedure Code neither creates nor takes away any right. It is intended to regulate the procedures followed by the civil court.

Laws can be divided into two groups –

1. Substantive law
2. Adjective or Procedural law

The code contains 158 sections and 51 orders and rules. Object of the code is to Facilitate justice, not a penal enactment for punishment and penalties. There should be a liberal view and no technical objections allowed to defeat substantial justice.

In **Saiyad Mohd. Bakar vs Abdulhabib Hasan (SCC 343-1998)** it is observed that *a procedural law is always submissive to substantive law. Nothing can be given by a procedural law what is not sought to be given by a substantive law and nothing can be taken away by the procedural law what is given by the substantive law.*

Distinction between procedural law and substantive law-

Essential distinction between both laws is, the substantive law is to define, create or confer substantive legal rights or status or to impose and define the nature and extent of legal duties, whereas, the procedural law prescribes procedure and machinery for the enforcement of rights and liabilities etc. Contract Act, TP Act, Bharti nyay sanhita (BNS) are the instances of substantive law whereas Bhartiya saksh adhiniyam, Limitation Act, Civil procedure code are instances of procedural law.

The legal Maxim ***Ubi jus ibi remedium*** which means where there is right there is remedy. If person's legal right is violated they must have access to a legal mechanism to seek redress or compensation for that violation.

DEFINITIONS: Section 2 (1 to 20)

1. CODE:

Code includes rules.

2. DECREE:

"decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the

rejection of a plaint and the determination of any question within section 144,

but shall not include-

- (a) any adjudication from which an appeal lies as an appeal from an order, or
- (b) any order of dismissal for default.

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

Essential elements of the decree:

- a. There must be an adjudication-** for a decision of a Court to be a decree, there must be an adjudication, i.e. a judicial determination of any matter in dispute.
- b. In a suit-** the expression “suit” means a civil proceeding instituted by presentation of plaint. It means, where there is no suit there is no decree. However, under certain enactments, an applications treated as a suit, eg. Proceeding under Indian Succession Act, the Hindu Marriage Act, the Arbitrations Act etc.
- c. Rights of parties in controversy-** the adjudication must have determined the rights of the parties relate to any matter in controversy in the suit. Thus, an order of dismissal of suit in default or order dismissing an application for execution for non-prosecution is not a decrees as they do not determine the rights of the parties.

- d. Conclusive determination-** Determination must be final or conclusive in nature. Interlocutory orders are not decrees as they do not decide the rights of the parties finally. eg. an order refusing an adjournment is not a decree as they are not decided the rights of the parties conclusively.
- e. Formal expression-** There must be a formal expression of such adjudication and which must be deliberate (thoughtful) and given in the manner provided by law.

Examples- Decisions which are decrees-

1. Order of abetment of suit.
2. Dismissal of appeal as time barred.
3. Dismissal of suit for want of evidence.
4. Order holding there is no cause of action.
5. Rejection of plaint for non-payment of court fees.

Examples- Decisions which are not decrees-

1. Dismissal of suit or appeal for default.
2. Appointment of commissioner.
3. order on interim relief.
4. Return of pliant to present in proper court.
5. Rejection of delay condonation application.

Classes of decrees:

- A. Preliminary decree
- B. Final decree
- C. Partly preliminary and partly final.

A. Preliminary decree-

Decides rights of the parties regard to controversy but does not completely dispose of the suit.

For examples-

- **Suit for dissolution of partnership-**

preliminary decree declaring the proportionate share of the parties and fix the day for dissolution of partnership which is final in nature.

- **Suit for foreclosure of mortgage.**

In foreclosure suits, if the plaintiff succeeds, the court typically passes a preliminary decree that includes an accounting of the mortgage amount, costs, and other relevant details, and thereafter following the preliminary decree, a final decree may be passed, which could involve foreclosure.

In **Shankar vs Chandrkant** (1995) 3 SCC 413 the Supreme Court stated that: *A preliminary decree is one which declares the rights and liabilities of the parties leaving the actual result to be worked out in further proceedings. Then, as a result of the further inquiries, conducted in pursuant to the preliminary decree, the rights of the parties are fully determined and the decree is passed in accordance with such determination is final.*

Deemed Decree:

A deemed decree under the Code of Civil Procedure (CPC) is not a decree in the literal sense, but it is treated as one by law due to its nature of conclusively determining the rights of parties. Essentially, certain orders or proceedings that are not explicitly defined as decrees under Section 2(2) of the CPC are deemed to have the effect of a decree for specific purposes, like appeals. The rejection of plaint, restitution of suit, dismissal for default are the instances of deemed decree.

3. DECREE-HOLDER:

Means any person in whose favor a decree has been passed or an order capable of execution has been made;

4. DISTRICT:

Means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a “District Court”), and includes the local limits of the ordinary original civil jurisdiction of a High Court;

5. FOREIGN COURT:

Means a Court situate outside India and not established or continued by the authority of the Central Government.

6. FOREIGN JUDGMENT:

Means the judgment of a foreign Court;

7. GOVERNMENT PLEADER:

Includes any officer appointed by the State Government to perform all or any of the functions expressly imposed by this Code on the Government Pleader and also any pleader acting under the directions of the Government Pleader.

(7A) HIGH COURT:

In relation to the Andaman and Nicobar Islands, means the High Court in Calcutta;

(7B) INDIA except in sections 1, 29, 43, 44, 6 [44A,] 78, 79, 82, 83 and 87A, means the territory of India excluding the State of Jammu and Kashmir;]

8. JUDGE:

"Judge" means the presiding officer of a Civil Court. As per dictionary meaning court means 'An assembly of judges or other persons acting at the place where justice is judicially administered'

9. JUDGMENT:

"Judgment" means the statement given by the Judge on the grounds of a decree or order.

Essentials for judgment-

- a. Concise statement of the case.
- b. The points for determination.
- c. The decision thereon.
- d. The reasons for such decision.

In **Balraj Taneja vs Sunil Madan** SC held that, "a judgment cannot merely say *suit decreed or suit dismissed*, the whole process of reasoning has to be set out for deciding the case one way or other."

judgment and decree:

- Judgment is a formal decision rendered by a judicial court whereas decree is a formal order from a court of law.
- A judgment is supported by facts whereas the decree has a judgment as its foundation. A judgment includes the case facts, the issues raised, the evidence presented by the parties, and the conclusions drawn in judicial manner whereas, the suit's decision is contained in a decree, which also definitively establishes each party's rights and liabilities.
- Judgment is always final even though it may lead to a preliminary decree, final decree, or order on its own. Whereas, the decree could be partially preliminary and partially final, preliminary, or final.

10.JUDGMENT-DEBTOR:

Means any person against whom a decree has been passed or an order capable of execution has been made. On the other hand, a person who is party to a suit but no decree has been passed against him, is not a judgment debtor.

11.LEGAL REPRESENTATIVE:

Means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued;

Executors, administrators, Hindu coparceners etc. are held to be a legal representative.

12.MESNE PROFITS:

Mesne profits of property mean those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession.

Object: The object of awarding decree of mesne profits is to compensate the person who has been kept out of possession and deprived of enjoyment of his property even though he was entitled to possession thereof.

Against whom mesne profits can be claimed:

A person who is in wrongful possession enjoying of immovable property is liable for mesne profit. Thus mesne profit can be claimed against the trespasser., mortgager in possession of mortgage property even after decree for foreclosure has been passed. Where the plaintiff is disposed by several persons all such persons are liable to pay mesne profit.

Assessment and test:

While calculating the mesne profit the court will take into account what the defendant has gained or might have gained by his wrongful possession of the property and not what plaintiff has lost by being out of possession.

Interest: interest is an integral part of mesne profits which may be allowed in the computation of mesne profit and till the date of payment.

Deductions: while granting mesne profits, the court may allow deductions from the gross profits of the defendant in wrongful possession, such as land revenue, rent, cost of cultivation etc.

13. MOVABLE PROPERTY: Includes growing crops.

14. ORDER:

"order" means the formal expression of any decision of a Civil Court which is not a decree. An order of a court of law is founded on objective considerations and as such the judicial order must contain a discussion of the question at issue.

Similarities between order and decree:

- a. An adjudication of a court of law is either a decree or order.
- b. Both are relating to matter in controversy.
- c. Both are decisions given by the court.
- d. Both are adjudications of a court of law.

- e. Both are formal expressions of a decision.

Distinction between order and decree:

- a. Decree can be passed in a suit after presentation of plaint whereas an order may be passed in suit, proceedings or an application.
- b. A decree is conclusive determination whereas order may or may not be a conclusive determination of rights.
- c. Decree may be preliminary or final whereas order cannot be a preliminary.
- d. Subject to provision every decree is appealable whereas, every order is not appealable.

15. PLEADER: Means any person entitled to appear and plead for another in a court, and includes an advocate, a Vakil and attorney of a High Court.

16. PRESCRIBED: Means prescribed by rules.

17. PUBLIC OFFICER:

means a person falling under any of the following descriptions, namely: -

(a) every Judge; (b) every member of All-India Service; (c) every commissioned or gazette officer in the military, naval or air forces while serving under the Government; (d) Every officer of a court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order, in the Court, and

every person especially authorized by a court of Justice to perform any of such duties; (e) every person who holds any office by virtue of which he is empowered to place or keep any person in confinement; (f) every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience; (g) every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue process, or to investigate, or to report on, any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government; and (h) every officer in the service or pay of the Government, or remunerated by fees or commission for the performance of any public duty;

18. RULES: Means rules and forms contained in the first schedule or made under section 122 or section 125.

19. SHARE IN CORPORATION: Shall be deemed to include stock, debenture stock, debentures or bonds.

20. SIGNED: Save in the case of judgment or decree, includes stamp.

OTHER IMPORTANT TERMS

1. AFFIDAVIT:

Affidavit is declaration of facts, reduced to writing and affirmed or sworn before an officer having authority to administer oaths. It should be drawn up in the first person and contain statements and not inferences.

2. APPEAL:

Appeal is the judicial examination of the decision by higher court of the decision of the lower court.

3. CAUSE OF ACTION:

A bundle of essential facts. It is s foundation of a suit. If a pliant does not disclose cause of action, court can reject such plaint.

4. CAVEAT:

Caveat is an official request that a court should not take a particular action without issuing notice to the party lodging the caveat and without affording an opportunity of being heard.

5. CIVIL:

The term ‘civil’ pertains to civil rights and remedies of a citizen other than criminal, political etc. the term ‘civil proceeding’ covers all proceedings where a party asserts civil rights conferred by civil law.

6. COURT:

Court is a place where justice is administered.

7. PLAINTIFF:

The person who brings the suit or commences action against defendant.

8. DEFENDANT:

The person who defends the case is defendant. There must be two parties namely plaintiff and defendant.

9. PLAINT:

A plaint is a statement of claim, a document from which suit is instituted. It is pleading of the plaintiff.

10.ISSUE:

It is a point in question or subject of debate or litigation. Issues are of three kinds. a) issues of fact, b) issues of law, c) mixed issues of fact and law. Issues arise when material proposition of fact or law is affirmed by one party and denied by the other.

11.JURISDICTION:

Means authority to decide. It is the power of the court to hear and decide the matter. It is the extent of authority of a court to administer justice prescribed with reference to subject matter, pecuniary or territorial limits.

12.SUMMONS:

A summons is a document issued by the office of a court calling upon the person directing him to appear before the judge or an officer of the court for certain purpose.

13.WRITTEN STATEMENT:

Written statement is an answer or reply given by the defendant to the plaint filed by plaintiff. It is a pleading of defendant. It may contain the reply as well as the new material facts.

SUIT:

An expression of suit not defined in the code. The lordships in privy council in **Hansraj Gupta vs official liquidators of the Dhera Dun Mussoorie electric tramway Co. Ltd.** Defined as, the word 'Suit' ordinarily means and part from some context must be taken to mean a civil proceeding instituted by the presentation of a plaint. However, under certain enactments, an applications treated as a suit, eg. Proceeding under Indian Succession Act, the Hindu Marriage Act, the Arbitrations Act etc.

JURISDICTION OF CIVIL COURTS-

Sec.9: Courts to try all civil suits unless barred.

a) INTRODUCTION:

A litigant having civil dispute has right to file a civil suit in a competent court unless its cognizance is expressly barred by law. Where there is right there is remedy. The litigant has right to knock the door of competent court.

b) JURISDICTION-MEANING:

The term jurisdiction derived from the latin terms "juris" and "dicto" means "I speak by the law". It means the power or authority of law to here and determine a matter in dispute. It is extent of authority of court to administer the justice.

c) JURISDICTION AND CONSENT:

The consent cannot confer nor take away jurisdiction of a court. In **A.R.Antulay vs R.S.Nayak** it is stated that "*this courts by its directions could not confer jurisdiction on the High Court of Bombay to try any case for which it did not possess.....*". The decree passed by the court

having no jurisdiction is technically correct but is null and void and the validity thereof can be challenged at any stage (coram non judice).

d) **KINDS OF JURISDICTION:**

- **Civil and criminal jurisdiction:** The disputes of civil nature comes within the scope of civil jurisdiction whereas the matters which are criminal in nature and punishable to offender are of criminal jurisdiction.
- **Territorial or local jurisdiction:** The court has its own territorial jurisdiction beyond which it cannot exercise its jurisdiction. The district judge can exercise his power within that district and not in other district.
- **Pecuniary jurisdiction:** The pecuniary jurisdiction depends upon the value of the subject matter. Some courts have unlimited pecuniary jurisdiction, eg. High Court and District court have no limit as to the pecuniary jurisdiction.
- **Jurisdiction as to subject matter:** Different court have power to try different types of suits. Certain courts are precluded to entertain certain suits. Eg, small courts have no jurisdiction to try suits for specific performance of a contract, at other hand the suits like probate or divorce petition etc only district court have jurisdiction to entertain such suits.
- **Original and appellate jurisdiction:** Original jurisdiction is inherent jurisdiction conferred upon a court of first instance, such courts decide suits, petitions or petitions, at other hand an appellate

jurisdiction conferred on superior court to re-hear by way of appeal, revision. Courts of civil judges, small cause court has original jurisdiction whereas the district court and the High Court have original as well as appellate jurisdiction.

- **Exclusive and concurrent jurisdiction:** exclusive jurisdiction is that which confers sole power on a court or tribunal to decide a case, no other court or authority have power to deal with such class of cases, eg the Supreme Court has exclusive power over the cases having issue between two states. At other hand concurrent jurisdiction is that which may be exercised by different courts or authorities of same level eg District court and family court have powers to decide divorce matters.
- **General and special jurisdiction:** General jurisdiction extends to all cases comes within a class or classes, eg the civil court has powers to decide civil or criminal cases, whereas the special jurisdiction is limited to special or particular cases, eg, SC has special jurisdiction under Art 131 relates to state or inter states disputes. Family Court have power to deal with only matrimonial cases. Labor court or industrial tribunals are concerned to employment and labor. Juvenile justice board is concerned to children issues.

e) **CONDITIONS FOR CIVIL JURISDICTION**

- **The suit must be of a civil nature:** Suit of civil nature will cover private rights and obligations of citizen. Political and religious matters are not covered by that expression. The matters other than criminal nature generally falls within the ambit of civil nature. Eg,

suits relating to right to property, worship, damages for civil wrong, suits for specific reliefs are of civil nature. Though the worship is connected with religious practice the right of the parties is recognized and enforceable by law, in **Sinha Ramanuja vs Ranga Ramanuja** Supreme Court held that *duties regarding right to worship in a temple are of civil nature*. Eg. right to entry into temple, right of pujari Whereas suits related caste, religious rites, political questions etc are not the suits of civil nature since they are not enforceable as legal rights as they do not involve consequences like property, office or personal status.

- **Cognizance of such suit is not expressly or impliedly barred:**

1. **Suits expressly barred:** suit is expressly barred when it is barred by any enactment. The legislature can bar of jurisdiction concerned to a particular class of suits of civil nature. The matters which are within the exclusive jurisdiction of revenue court, criminal court, tax tribunal are expressly barred to try by civil courts.
2. **Suits impliedly barred:** The suits are impliedly barred when it is barred by general principal of law. Some suits are barred to try by civil court on the ground of public policy. Eg, the suit is barred to recover the cost incurred in a criminal prosecution. The suit is barred against any judge for acts done in the course of his duties or the suits of political nature.
3. **Who may decide?** The jurisdiction to the court has been conferred by the law, therefore the civil court has inherent

power to decide its own jurisdiction. The consent or the averments in the pleading as to the jurisdiction makes no effect.

4. Presumption as to jurisdiction: As to the question of jurisdiction, every presumption should be made in favor of the jurisdiction of civil court and the exclusion of jurisdiction should not be readily inferred unless expressly provided.

5. Exclusion of jurisdiction: Limitations: When a party raise objection as to the jurisdiction, the exclusion of jurisdiction of civil court is not readily inferred and such exclusion must be clear. In **Secy. of State Vs Mask & Co.** the Privy Council has observed that, *“it is settled law that the exclusion of jurisdiction of civil court is not be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied.”*

DOCTRINE OF RES SUB JUDICE AND RES JUDICATA

Section-10,11 and 12

SEC.10: STAY OF SUIT: (RES SUB JUDICE)

No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India have jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

Explanation-The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action.

1. Nature and scope: Section 10 bars on trial of suit in which the matter in issue is directly and substantially in issue in previously instituted suit between the same parties is pending before the same court or any other court having jurisdiction. However, the pendency of such suit in foreign court does not preclude the courts in India to try the same. The provision only bars the trial and not institution of suit.

2. Object: The policy of law behind this provision is to confine a plaintiff to the **one litigation**, so as to avoid possibility of two **contradictory verdicts** by one and same court concerned to same cause of action. The provision also avoids a person from **multiplicity of proceedings** and **two conflicting decisions**.

3. Conditions:

- a. There must be two suits, one previously filed and other subsequently filed.
- b. The matter in issue in the subsequent suit must be directly and substantially in issue in the prior suit.
- c. Both the suits must be between the same parties or their representative.
- d. The prior suit must be pending in the same court in which the subsequent suit is brought or any other court in India or any court

beyond the limits of India established and continued by the central Government or before the Supreme Court.

- e. The court in which previous suit is filed must have jurisdiction to grant the relief claimed in the subsequent suit.
- f. Such parties must be litigating under the same title in both the suits.

4. Suit pending in foreign court: There is no bar to Indian court to try subsequently filed suit if the previously suit is pending in a foreign court.

5. Inherent power to stay: Where the provision of sec. 10 does not strictly apply, to achieve the end of justice, the court has inherent power under section 151 to stay such suit.

6. Consolidation of suits: Since the main purpose of the provision is to avoid two conflicting decisions, therefore, a court in appropriate cases can pass an order consolidation of both suits, or different suits between the same parties having same issue in such both suits.

7. Contravention: Effect- A decree passed in contravention of section 10 is not a nullity and therefore, cannot be disregarded in execution proceedings, since, the trial is barred and not institution of subsequent suit, the rule of procedure which can be waived by the party and if the parties once waived their right asking the court to proceed with subsequent suit, they cannot afterwards challenge the validity of the subsequent suit.

8. Interim orders: An order of stay cannot take away the power of court to pass any interim orders such as attachment before judgment, temporary injunction etc.

SEC. 11- RES JUDICATA:

No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.-The expression “former suit” shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.

Explanation II. -For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

While determining jurisdiction of earlier court it should not confuse confused with right to appeal. Even if the decision of earlier court is subject to appeal, it will still operate as res judicata.

Explanation III. -The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other. Matter alleged by one party and denied by other party it becomes issue. Eg. in suit for possession, A asserts ownership and B denies it, here, ownership becomes an issue.

Explanation IV. – (Constructive res judicata) Any matter which might and ought to have been made ground of defense or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. The party who could raise defense in first suit but failed to do so, he cannot raise the same in a later suit.

e.g.

- A files suit against B for possession of land on the ground that he purchased it from C;
- B defends only saying A's sale deed is invalid;
- The Court decides the matter in favor B;
- Later, A again files a suit against B for the same property claiming ownership by inheritance from his father;
- In the First Suit A could raise an additional ground of inheritance, hence explanation IV applies and second suit is barred by constructive res judicata.;

Explanation V.-Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

Eg. A sues B for recovery of principal amount along with interest. The court decree only principal amount and silent on an interest. In this case, it is deemed that interest was refused. A cannot file later a separate suit asking for interest.

Explanation VI. -Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Eg. A group of villagers files a suit against factory for village water tank pollution (a public right), the court gives a judgment. The said judgment is binding on all villager even those who are not party (Plaintiff) to the suit because the suit was filed bona fide on behalf of all. This provision applied to the representative suit, to avoid multiplicity of proceedings.

Explanation VII.-The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

The provision applies to execution proceeding also.

Eg. 'A' obtain decree against B for possession of land and A files execution proceeding. B objects that the decree is time barred. Court decide the objection against B. Later in another proceeding B objects decree again on limitation which is barred by limitation, because the issue was already decided earlier in execution.

Explanation VIII.-An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.

Eg. Revenue court having limited jurisdiction, decides the question of title to land between A and B, Later A files a civil suit in higher court on same issue of title. Here res judicata applies because an issue of title was already decided by a competent court of limited jurisdiction.

1. INTRODUCTION:

Section 11 embodies the doctrine of res judicata or the rule conclusiveness of a judgment, as to question of fact, law or fact and law, in every subsequent suit between the same parties. It enacted that once the matter is finally decided by the competent court, no parties are permitted to reopen it in subsequent suit. This doctrine is based on the legal maxim “*ex captio res judicata*” means one suit and one decision is enough for any single dispute. In **Satyadhyan Ghosal Vs Deorjin Debi** it is observed that, “The principal of res judicata is based on the need of finality to judicial decisions. Once a res is *judicta*, it shall not be adjudged again.”

2. Nature and scope:

“Res” means subject matter or dispute and “judicata” means adjudged or decided or adjudicated. Thus res judicata means dispute decided. The doctrine of res judicata applied in larger public interest. This principle is founded on justice, equity and good conscience which requires the party once succeeded on an issue should not be harassed the other by multiplicity of proceeding.

3. Object:

The doctrine of res judicata is based on three maxims-

- a. Nemo debet bis vexari pro una et eadem causa (no man should be vexed twice for the same cause.)
- b. Interest reipublice ut sit finis litium (it is in the interest of the state that there should be an end to a litigation)
- c. Res judicata pro veritate accipitur (a judicial decision must be accepted as correct)

Thus, the doctrine of res judicata is the combine result of public policy and private justice. In absence of the said rule there would be no end to litigation.

4. Extent and applicability: The doctrine is fundamental concept based on public policy and private justice. It applies to civil suits, execution proceedings, arbitration, taxation, industrial adjudication, writ petition, interim orders, etc.

5. Res Judicata and res sub judice: Difference in two aspects-

- a. Res judicata applies to matter adjudicated upon whereas, res sub judice applies to a matter pending trial.
- b. Res judicata bars the trial of suit or issue decided in former suit whereas res sub judice bars a trial of suit which is pending decision in previously instituted suit.

6. Res judicata and lis pendens- Both rules are of one aspect. Lis pendens liad down in Tranfer of Property Act 1882 which provides that an alienee pendent lite is bound by the outcome of the litigation. When the conflict arises between the res judicata and lis pendens the former will prevail the later. Once the judgment is pronounced by the competent court to which the doctrine of lis pendens is applied, the said decision would operate as res judicata and would bind not only to parties but also the transferees pendent lite.

Illustration:

A files suit against B for declaration of ownership of property, during the pendency of the said suit B transfers the property to C, the lis pendens

apply to such transfer and if decree passed in favor of A, C cannot claim title over A. But, in another suit between C and B for same property, and decree is passed in favor of B before the suit filed by A is decided, such decree will operate as res judicata against A notwithstanding the doctrine of lis pendens and transfer in favor of C during the pendency of suit filed by 'A' against 'B'.

7. Res judicata and withdrawal of suit:

Order 23 rule 1 deals with withdrawal of suit. If plaintiff withdraws the suit or abandons his case without the leave of the court, he cannot institute a fresh suit on same cause of action.

Difference between res judicata and withdrawal of suit is that, in res judicata the matter is heard and finally decided on merits whereas, in later the plaintiff himself withdraws or abandon his claim before adjudication of merits.

8. Res judicata and estoppel:

Res judicata is similar to estoppel. Res judicata is estoppel by verdict or judgment. The rule of constructive res judicata is nothing but the rule of estoppel.

Difference: Res judicata and estoppel:

- a. Res judicata results from a decision of the court whereas, estoppel from the act of parties.
- b. Res judicata based on public policy whereas estoppel based on doctrine of equity.

- c. Res judicata bars multiplicity of suits whereas, estoppel prevents multiplicity of conduct or representation.
- d. Res judicata ousts the jurisdiction of court to try the suit whereas the estoppel is only rule of evidence which shuts the mouth of the party.
- e. Res judicata binds both the parties to a litigation, whereas, estoppel binds that party who made the earlier statement.

9. Conditions for res judicata:

- a. Matter directly and substantially in issue in subsequent suit, or constructively in the former suit.
- b. Former suit between the same parties or their representative.
- c. Parties must have been litigating under the same title in the former suit.
- d. Former suit decided by the competent court.
- e. The matter in issue in subsequent suit finally decided by the court in former suit.

10. Constructive res judicata:

The constructive res judicata is an artificial form of res judicata which provides that, if a plea could have been taken by a party in a proceeding, he should not be permitted to take that plea against the same party in a subsequent suit. In **Workmen Vs Board of Trustees. Cochin Port Trust** it is observed that, “.... a grounds of defense in a former proceeding but was not so made, to avoid multiplicity of litigation and to bring about finality, it is deemed to have been constructively in issue and therefore, is taken as decided.”

Illustration:

A sues B for possession of property on the basis of ownership, the suit is dismissed, later, 'A' cannot claim possession of a property as a mortgagee.

11. Operation of doctrine of res judicata:

- a. Dismissal for default:** such matter is not heard and finally decided on merits hence such dismissal will not operate as res judicata.
- b. Dismissal of special leave petition:** Such dismissal in limine by a non-speaking order does not operate as res judicata.
- c. Ex parte decree:** An ex parte decree passed by competent court on merit operate as res judicata since the defendant is not appeared even after summons was duly served.
- d. Compromise decree:** Such decree is not an outcome of heard and finally decided hence res judicata does not apply.
- e. Fraudulent decree:** Decree obtained by practicing fraud does not attract the principle of res judicata.
- f. Withdrawal of suit:** The suit withdrawn is not heard and finally decided hence does not operate res judicata.

SEC. 12-BAR OF SUIT:

When a plaintiff is precluded by rule from instituting a further suit in respect of any particular cause of action, he shall not be entitled to file a suit in respect of such cause of action in following cases-

Section 11 where suit is barred by res judicata.

Section 21-A No suit shall lie challenging the validity of a decree passed in former suit between the same parties on any ground of objection objection as to territorial or pecuniary jurisdiction.

Eg. A files suit against B for recovery of money in Pune court.

Pune court passes a decree in favor of A.

Later B files a new suit in Mumbai saying the Pune court has no territorial jurisdiction and decree in former suit is invalid. Here bar on this suit under section 12.

Order 22 Rule 9- where a suit has abated.

FOREIGN JUDGMENT (Sec. 13 and 14)

Sec. 13- When foreign judgment not conclusive-

A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except-

- (a) where it has not been pronounced by a Court of competent jurisdiction;
- (b) where it has not been given on the merits of the case;
- (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognize the law of India in cases in which such law is applicable;
- (d) where the proceedings in which the judgment was obtained are opposed to natural justice;

(e) where it has been obtained by fraud;

(f) where it sustains a claim founded on a breach of any law in force in India.

14. Presumption as to foreign judgments-

The Court shall presume upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction.

1. Introduction:

Section 13 and 14 deals with principle of res judicata in case of foreign judgments. Judgment delivered by the foreign court of competent jurisdiction is enforceable by an Indian court and operates as res judicata between the parties except the cases stated in section 13 of the code.

2. Definition:

a. Foreign Court: Is a court situate outside India and not established or continued by the authority of central Government.

b. Foreign Judgment: Means a judgment of foreign court. Thus adjudication on matter and pronounced judgment thereof by court of England, France, Germany are the foreign judgments.

3. Nature and scope:

Section 13 deals with principle of res judicata in foreign courts. Section 13 provides substantive law and not mere a rule of law. Thus,

the judgment delivered by foreign competent court can be enforced in India.

4. Illustration:

‘A’ sues ‘B’ in a foreign court and suit is dismissed, the judgment will operate as a bar to a fresh suit by ‘A’ against ‘B’ in India on the same cause of action.

5. Binding nature of foreign judgments: Exceptions-

This code provides that the foreign judgments are conclusive one between the same parties **excepts-**

- a. Judgment not delivered by competent court.
- b. Judgment not on the merits.
- c. Judgment, on the face of record, founded on an incorrect view.
- d. Judgment opposed to natural justice or obtained by fraud.
- e. claim founded on breach of law in force in India.

SECTION 14-

Presumption as to foreign judgments-The Court shall presume upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction.

1. Scope of the section:

It provides that the court upon submission of the certified copy of foreign judgment on record, to presume that the such judgment was pronounced by the court of competent jurisdiction unless contrary appears on the record or is proved. However, for admissibility of such copy any further conditions are required to

be fulfilled, it can be admissible in evidence only after fulfilling of such requirement.

In **Narsinmha Rao Vs Venkata Lakshmi** the Supreme Court has observed that, “*mere production of a Photostat copy of decree of foreign court is not sufficient, it is required to be certified by a representative of the central Government of USA.*”

2. Conditions:

- a. Certified copy of foreign judgment must be on record.
- b. The jurisdictional fact not contrary appears on record or is proved.

3. Submission to jurisdiction of foreign court:

It is voluntary submission of the party to the jurisdiction of foreign court, hence, the foreign courts are recognized to be internationally competent. The reason behind this principle is, when the party choose foreign jurisdiction, it is not open to the party raise objection as to jurisdiction to turn round when the judgment is against him.

4. Foreign judgments and res judicata:

Sec.13 deals with the rule of res judicata in relation to foreign judgment. The foreign judgment is subject to conditions is conclusive since it is adjudicated on merit by the competent foreign court, hence in such circumstances it would operate as res judicata.

5. Judgment and reasons:

As per sec.2 (9) judgment means the statement given by the judge of the grounds of decree or order, and sec.2(6) “foreign judgment” means the judgment of a foreign Court. Foreign judgments are not supported by the reasons thereto and therefore it is not open to be held that it is not conclusive under sec. 13. Supreme Court observed that section 13 speaks not only a judgment but any matter thereby directly adjudicated upon.

6. Enforcement of foreign judgment:

A foreign judgment which are conclusive under section 13 of the code can be enforced in below way-

- a. By instituting a suit on such foreign judgments within 3 years from the date of judgment or,
- b. By instituting execution proceedings under sec 44-A subject to conditions under section 13 (a to f).

PLCAE OF SUITS (Sec.15 to 20)

Sec. 15. Court in which suits to be instituted-Every suit shall be instituted in the Court of the lowest grade competent to try it. Provision helps to prevent unnecessary hardship and other practical difficulties. This prevents confusion, conflicting judgments, and delays due to cases being filed in wrong courts. It prevents the party to choose favorable court.

Sec.16. Suits to be instituted where subject-matter Situate-

Subject to the pecuniary or other limitations prescribed by any law, suits-

- (a) for the recovery of immovable property with or without rent or profits,

- (b) for the partition of immovable property,
- (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,
- (d) or the determination of any other right to or interest in immovable property,
- (e) for compensation for wrong to immovable property,
- (f) for the recovery of movable property actually under distraint or attachment, shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation- In this section “property” means property situate in India.

17. Suits for immovable property situate within jurisdiction of different Courts-

Provision deals with immovable property, like land, buildings, or other immovable assets. If parts of the same property lie in different areas within the local jurisdiction of different courts, the plaintiff may choose to file the suit in any of those courts that cover at least a part of the property instead of filing multiple suits in multiple courts, one court can handle the entire dispute. The purpose of this provision Prevents inconsistent decisions if multiple courts were to adjudicate overlapping

disputes and avoids forcing plaintiffs to litigate in multiple courts unnecessarily.

Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court. This proviso clause Maintains the integrity of jurisdiction rules by requiring both local and pecuniary jurisdiction. Both local and pecuniary jurisdiction aspect has to consider while choosing jurisdiction under this section.

18. Place of institution of suit where local limits of jurisdiction of courts are uncertain-

1. When the local limits of jurisdiction of two or more courts are uncertain or unclear of which of two or more Courts, any immovable property is situating, a suit may be instituted in any one of those courts. The court
2. as to the jurisdiction, after recording a statement to that effect, may entertain and dispose of any such suit.

Provided that the suit is one with respect to which the Court is competent as regards the nature and value of the suit to exercise jurisdiction.

3. Where a statement has not been recorded under sub-section (1), and an objection is taken before an Appellate or Revisional Court that a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the Appellate or Revisional Court shall not allow the objection unless in its opinion there was, at the time of the institution of the suit, no reasonable

ground for uncertainty as to the court having jurisdiction with respect thereto and there has been a consequent failure of justice.

19. Suits for compensation for wrongs to person or movables-

Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.

Illustrations

- (a) A, residing in Delhi, beats B in Calcutta. B may sue A either in Calcutta or in Delhi.
- (b) A, residing in Delhi, publishes in Calcutta statements defamatory of B. B may sue A either in Calcutta or in Delhi.

20. Other suits to be instituted where defendants reside or cause of action Arises-

Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-

- (a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or
- (b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either

the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally works for gain, as aforesaid, acquiesce in such institution; or

(c) The cause of action, wholly or in part, arises.

[Explanation]- A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Illustrations

(a) A is a tradesman in Calcutta, B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause of action has arisen, or in Delhi, where B carries on business.

(b) A resides at Shimla, B at Calcutta and 'C' at Delhi. A, B and C being together at Banaras, B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C at Banaras, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Delhi, where C resides but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the Court.

1. INTRODUCTION:

Suits are of different types relates to movable, immovable property, suits based on contracts, matrimonial proceedings etc. subject wise the

jurisdiction of the court over the cases may be restricted, therefore determination as to the place of suing is important. Place of suing means venue of trial of the cases. Section 15 to 20 provides the forum for institution of suits.

2. Nature and scope:

Section 15 requires the plaintiff to file a suit in the court of lowest grade competent to try it. Section 16 to 18 deals with the suits concerned to immovable property. Section 19 is relating to suits for movable property and compensation for wrong to person or movable property. Section 20 deals with the other suits which are not covered in section 15 to 19.

3. Pecuniary jurisdiction:

- a. **General rule:** The code regulates that every suit shall be filed in the court of lowest grade competent to try it.
- b. **Scope of section 15:** The rule laid down in section 15 is rule of procedure and does not affect the jurisdiction of the court. Therefore, the decree passed by the higher court is not held to be without jurisdiction but it is mere irregularity covered under sec. 99 and the decree is not nullity.
- c. **Object:** To avoid the overburden on the higher grade court and to afford convenience to the parties and whiteness.

d. Mode of valuation: The pecuniary jurisdiction determines on the basis of plaintiff's valuation in the plaint and not the amount for which the decree may be passed. Thus, if the pecuniary jurisdiction of the lowest grade is Rs.10000, and the plaintiff files suit for account and after trial it finds that Rs.15000 are due, in such cases the court is not deprived of its jurisdiction to pass decree for that amount.

e. Duty of the court: The plaintiff may deliberately undervalue or overvalue the suit in view to choose the convenient forum/court. It is the duty of the court to return the suit to file in proper court. If the court appears that the valuation is falsely made to avoid jurisdiction, the court may ask the plaintiff to prove the valuation is proper. Cases in which the court is unable to find out the proper value of the suit the court has to accept the valuation of the plaintiff.

4. Territorial jurisdiction:

a. Suits relates to immovable property:

Sec. 16 to 18 deals with suits for immovable property. Such suits are viz.

- i) Suits for recovery of immovable property;
- ii) Suits for partition of immovable property;
- iii) Suits for foreclosure, redemption of immovable property or charge on immovable property;
- iv) Suits for determination of right or interest in immovable property;
- v) Suits for torts to immovable property

Such suits must be filed in the court within the local limits of whose jurisdiction the property is situated. However, in case of suit for compensation for wrong to immovable property, the suit may be instituted within the local limits of whose jurisdiction the property is situated or within the local limits of whose jurisdiction the defendant actually and voluntarily resides.

Suits for immovable property situate within jurisdiction of different Courts:

Section 17 deals with the provision relates to immovable property situated within the jurisdiction of different courts. In such circumstances the suit can be filed in the court of whose jurisdiction the portion of the property is situated having pecuniary jurisdiction also.

b. Suits relates to movable property:

Sec.19 deals with suits for wrong to movable property which may be filed at the Plaintiff's option either at the place where the wrong is committed to movable property or where the defendant resides, carries on business or personally works for gain. In case of series of act of wrong to movable property, suit may be filed at any place where any of the acts has been committed. In case of wrongful act at one place and the result of such act at another place, the suit may be filed either where the act took place or the result ensued.

c. Compensation for wrong:

The suit for compensation for wrong can be filed either where the wrong has been take place or where the defendant resides or work for gain.

d. Other suits: Sec.20

Sec.20 deals with the cases not covered in the foregoing provisions. All such cases can be filed at plaintiff's option in any following courts-

- i) Where cause of action wholly or partly arises;
- ii) Where defendant resides or carries on business or personally works for gain.
- iii) Where there are two or more defendants, may file at the place any of them resides or work, however, the leave of the court is necessary where the one of them defendant is not residing or working for gain.

e. Selection of forum:

The consent can neither confer nor take away jurisdiction of a competent court and where court has jurisdiction neither consent, nor waiver can take away the jurisdiction. Agreement taking away the jurisdiction of the court is void.

However, where there are more than two courts have jurisdiction, an agreement by the parties as to selection of jurisdiction is valid and binding.

5. Objection as the jurisdiction:

The decree passed by the court without jurisdiction is a nullity. Section 21 deals with the provision as to the objection as to jurisdiction. In case of objection as to territorial jurisdiction the objection by the defendant can be waived and once it waived the defendant later cannot raise the said objection as to the territorial jurisdiction.

Objection as to the pecuniary jurisdiction, generally, the plaintiff's valuation in the plaint determines the jurisdiction of the court.

Objection as to subject matter of jurisdiction, over the subject matter is condition precedent or *sine qua non*, and if the court has no jurisdiction, a judgment, decree or order of the court is absolutely null and void and may be set aside.

Objection in execution proceeding deals as per the provision of section 21(3) of the code.

6. Bar of suit: Section 21-A

Substantive suit can be filed to set aside a decree passed by a court on an objection as to the place of suing. This provision speaks only about territorial jurisdiction and does not deal with the pecuniary jurisdiction.

TRANSFER OF CASES: SECTION 22 TO 25

Section 22. Power to transfer suits which may be instituted in more than one Court- Where a suit may be instituted in any one of two or more Courts and is instituted in one of such Courts, any defendant, after notice to the other parties, may, at the earliest possible opportunity and in all cases where issues

are settled at or before such settlement, apply to have the suit transferred to another Court, and the Court to which such application is made, after considering the objections of the other parties (if any), shall determine in which of the several Courts having jurisdiction the suit shall proceed.

Section 23- To What Court application lies-

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

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

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

Section 24. General power of transfer and withdrawal-

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

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

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

(i) try or dispose of the same; or

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

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

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which is thereafter to try or dispose of such suit or proceeding may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section, -

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) “proceeding” includes a proceeding for the execution of a decree or order.

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.

25. Power of Supreme Court to transfer suits, etc.-

(1) On the application of a party, and after notice to the parties, and after hearing such of them as desire to be heard, the Supreme Court may, at any stage, if satisfied that an order under this section is expedient for the ends of justice, direct that any suit, appeal or other proceeding be transferred from a High Court or other Civil Court in one State to a High Court or other Civil Court in any other State.

(2) Every application under this section shall be made by a motion which shall be supported by an affidavit.

(3) The Court to which such suit, appeal or other proceeding is transferred shall, subject to any special directions in the order of transfer, either retry it or proceed from the stage at which it was transferred to it.

(4) In dismissing any application under this section, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum, not exceeding two thousand rupees, as it considers appropriate in the circumstances of the case.

(5) The law applicable to any suit, appeal or other proceeding transferred under this section shall be the law which the Court in which the suit, appeal or other proceeding was originally instituted ought to have applied to such suit, appeal or proceeding.

The purpose of provision in clause (5) is-

It ensures that transferring a case doesn't change the legal principles that should govern it.

The rights and obligations of the parties are protected, and no party is disadvantaged by the transfer.

The continuity of justice is maintained without reopening or re-evaluating the applicable law.

A. INTRODUCTION:

In general, the plaintiff has a right to choose his own forum to institute a suit in case of more than one court having jurisdiction. This right cannot be interfered or controlled, but the power vested to the superior court to transfer a case pending in one lower court to another lower court or recall the same to itself for hearing. Section 22 to 25 deals with the provisions of transfer and withdrawal of suits.

B. OBJECT:

To facilitate justice. Ensure fair and impartial trial. To ensure both the parties present before the court equally and impartially.

C. NATURE AND SCOPE:

Section 22 allows the defendant to make an application for transfer of a suit. Section 23 provides to which court such application can be made. Section 24 empowers the superior court to transfer any suit, appeal or other proceeding at any stage either on application or suo motu or to call itself for hearing. This power has not conferred to High Court to transfer such proceedings from one subordinate High Court to another High Court. Section 25 confers the wide power to Supreme Court to transfer any suit, appeal or other proceedings from one High Court to another High Court or from one civil court in one state to another civil court in another state.

D. WHO MAY APPLY: Section 22-23-

In case where the plaintiff has choice of two or more court to file a suit, the defendant at earliest opportunity at or before settlement of issues, after notice to the other side may apply to transfer a suit to another court.

E. CONDITIONS:

- i) Application must be made at the earliest opportunity or at or before settlement of issues;
- ii) Notice to other side must be given.

F. TO WHICH COURT APPLICATION FILES:

- i) Where several courts are subordinate to the same appellate court, transfer application must be filed to such appellate court;
- ii) Where such courts are subordinate to the same High Court, transfer application must be filed to that High Court;
- iii) Where such courts are subordinate to different High Court, transfer application must be filed to the High Court within whose local jurisdiction the suit is already filed;
- iv) Supreme Court to transfer any suit, appeal or other proceedings from one High Court to another High Court or from one civil court in one state to another civil court in another state.

G. NOTICE:

Notice as to the application for transfer under section 22 by defendant to other side is mandatory.

H. POWER AND DUTY OF THE COURT:

The court has discretionary power to transfer the suits etc, such powers has to be exercised with due care. After fulfillment of provision of notice to other side and objections of the other party and after considering the balance of convenience and considering the inconvenience to other party may transfer the suit. The court should not enter into the merit of the case while dealing with the transfer application.

I. COSTS:

Where an application for transfer is dismissed as frivolous or mala fide, the court has power to award costs to opposite party.

J. APPEAL:

An order transferring the suit etc neither affects the merits nor disposes of the suit hence the order of transfer is not appealable.

CIVIL PROCEDURE CODE

Unit II

INSTITUTION OF SUITS AND SUMMONS:

(Section 26, 27, 28, 31 Order 1, 4, 5)

Sec.26-Institution of suit-

A. Suit meaning: It is a civil proceeding instituted or filed by presentation of plaint regarding disputes of aggrieved parties.

B. Essential of suits:

1. Opposing parties;
2. Subject matter in dispute;
3. Cause of action;
4. Relief.

C. Parties to the suit: Order 1

1. Introduction: Order 1 deals with parties to the suit which is essential part of the suit. This provision deals with addition, deletion or substitution of parties, joinder, non-joinder or misjoinder of the parties and objections thereto.

2. Joinder of parties: Rule 1- Joinder of parties may be either joinder of plaintiff or defendant. The question as to joinder of parties arises when an act is done by two or more persons or it affects to two or more

persons. The object of the provision is to avoid multiplicity of proceeding.

A defame on social media to X, Y and Z concerned to their religion or on any particular thing, here X, Y and Z can be a join as plaintiff.

X, Y and Z disposes 'A' from his land, here A in his suit can join X, Y and Z as a defendant.

- 3. Joinder of Plaintiffs-** Rule 1 deals with joinder of plaintiffs. Two or more persons may be joined as plaintiff in following conditions-
 - a. Right to relief of each plaintiff arises out of same act or transaction;
 - b. If the suit filed by such plaintiffs separately common question of law or fact may arise.
- 4. Joinder of defendants-** Rule 3 deals with joinder of defendants. Two or more persons may be joined as defendants in following conditions-
 - a. Right to relief exists against two or more persons arises out of same act or transaction;
 - b. If the suit filed against such defendants separately common question of law or fact may arise.
- 5. Power of court to order separate trial:** Rule 3A provides that, if any joinder of plaintiff or defendant makes delay the trial of suit, court may order for separate trial.
- 6. Court may give judgment for or against one or more of joint parties-** The court may without amendment in suit, pass judgment for the plaintiffs those are entitled for relief or may pass judgment against the defendants who are liable according their respective liabilities.

7. When plaintiff in doubt from whom relief is to be sought- In such cases the plaintiff may join two or more defendants and the question as to their respective liability may be determined by the court in trial.

8. One person may sue or defend on behalf of all in same interest- (REPRESENTATIVE SUIT)

a. General rule: All persons having same interest in a suit need ought to be joined as a parties in view to avoid multiple proceedings. However, rule 8 is a general exception to this rule.

b. Definition: A suit filed by or against one or more persons on behalf of themselves and others having the same interest in the suit.

c. Object of the provision: The object of this provision is to prevent waste of judicial resources, prevent contradictory decisions, and reduce harassment by multiple suits, it save time and expenses.

d. Enabling provision: This provision mere enables parties to file a suit in representative capacity to avoid multiplicity of proceeding, and does not compel any individual to represent body of persons having same interest in the suit if his action is otherwise maintainable without joining in the suit. The provision does not preclude individual to file a separate suit in his own right respect to the wrong done to him.

e. Conditions:

1. Parties must be numerous- There must be numerous parties having same interest. Thus, suit on behalf of villagers with

reference to village property or on behalf of members of community is maintainable under this provision.

2. Same interest in the suit- The interest must be common to all people. The condition as to same interest is condition precedent. However, same cause of action or same transaction is not necessary. In *T. N. Housing Board vs T. N. Ganpathy*, residential buildings were allotted by the housing board to the applicants who belonged to the low-income group. After settlement of price, excess demand was made by the board. The allottees challenged that such suit in representative capacity is not maintainable as separate demand notice were issued against each of the allottees, which creates separate cause of action. The SC observed that all of them had a same interest and therefore suit in representative capacity is maintainable.

3. Permission granted by court or directions given by the court- If this condition not fulfilled the suit does not become representative one. Mere pleading of common interest is not enough and the court before granting permission or directions given, must be satisfied that the common interest of numerous parties has been involved.

4. Notice to the parties to whom it is proposed to represent in the suit- The decree passed in a representative suit is binding on all of them, unless obtained by fraud. Therefore, the notice to the concerned parties through paper publication is mandatory.

5. Addition or substitution of parties- Any person having same interest may apply to the court to be added him as a plaintiff or

defendant in a such suit. Such person must show the court that his interest will seriously affected if not added him as a plaintiff or defendant. Such party may be added as a co-plaintiff or co-defendant but cannot be substituted for the original parties. However, any person suing or defending in representative capacity is not proceed with due diligence, the court may substitute his place to any other person having same interest.

- 6. Non-compliance of rule 8-** Compliance under rule 8 as to the notice to other plaintiffs and other direction given by the court is mandatory.
- 7. Withdrawal or compromise-** Unless and until notice to the all persons interested is issue at the plaintiff's expenses and leave of the court is obtained, the suit cannot be withdrawal or enter into any agreement or compromise.
- 8. Conduct of suit: Rule 8A and 11-** The court has discretionary power to permit any person interested in any question of law in issue in any suit to represent his opinion before the court and to take part in the proceedings. Court may allow any person interested in suit to conduct the case.
- 9. Decree passed in representative suit-** Binding on all persons for whose benefits suit filed or defended and operates as a res judicata.
- 10. Abatement of suit-** In representative suit person appointed to conduct a suit is mere representative of suit, and therefore, upon

death of such representative, suit will not abate and other persons interested I suit may proceed with the suit.

11. Execution of decree- Decree passed in representative suit can be executed same like other decree passed in regular suit.

F. Necessary party and proper party- A necessary party is one whose presence is vital, against whom relief is claimed and without whom no effective order can be passed, eg. the purchaser of property in public auction is necessary party in suit for setting aside public auction. At other hand decree can be passed in absence of proper party, so far concerned to the parties before court. Eg. grandsons are proper party in a suit for partition by father against grandfather.

G. Non-joinder or mis-joinder of parties-

O1. R 9 deals with Non-Joinder- Necessary or proper party has not been joined as a party is non-joinder of party.

Mis-joinder- The person joined as plaintiff or defendant is neither necessary party nor proper party is Mis-joinder. The suit cannot be dismissed only on ground of non-joinder or mis-joinder of parties and decree passed on merit cannot be set aside. If the person likely to be affected by decree is not joined as party, the suit or appeal liable to be dismissed.

H. Objections as to non-joinder or mis-joinder- Rule 13 provides that all objections on the ground of non-joinder or misjoinder of parties shall be taken at the earliest possible opportunity or at or before settlement of issues. If the defendant has raised objection but plaintiff declines to add party, subsequently he cannot rectify the error by applying amendment.

I. Suit in the name of wrong Plaintiff-Rule 10:

i) Adding or substituting plaintiffs-

If the plaintiff discovers that he cannot get relief without joining some other person as plaintiff, or wrong plaintiff is named he may by application to the court add or substitute the plaintiff if it was bona fide mistake.

Example:

1. Property belongs to *X*, but due to misunderstanding, his *agent Y* files a case in his own name instead of *X*'s. Court may substitute *X* as the plaintiff if satisfied it was an honest mistake.
2. A files suit for possession of land. B defence that A has sold the land to C and has no right to file suit. A can add C here as co-plaintiff.

ii) Striking out or adding parties-

The court can upon application or its own motion, can struck out the name of the party who is improperly joined in a suit and be added the name of any person whose presence is necessary for effective and complete justice.

Example-

Striking out parties: If A files a suit for recovery of debt against B and unnecessarily adds C (who has nothing to do with the transaction), the court may strike out C's name.

Adding parties: In a partnership dispute, if one partner sues another but leaves out a third partner, the court may add that third partner to avoid multiplicity of suits.

iii) Duty of the court-

- a. Identify necessary and proper parties;
- b. Ensure real controversy is decided;
- c. Avoid multiplicity of litigation;
- d. Protect parties from prejudice.

iv) Where defendant added, plaint to be amended- Where defendant has been added the necessary amendment need to be made and amended copy must be served to other party.

SUMMONS Section 27, 28 31 and order 5

- 1. Meaning:** Summons means a document issued by court, calling the person to attend before court on the day stated in such document for certain purpose.
- 2. Object:** To inform the defendant that a suit has been filed against him. To give the defendant a fair chance to appear and contest the case.
- 3. Essentials of summons-** Summons must be signed and seal of court and accompanied by copy of plaint.
- 4. Summons to defendant:** Sec.27 O.5 R.1- once suit has been duly filed, summons to defendant calling him to appear and answer the claim by submitting written statement within 30 days before the court is necessary.

- 5. Appearance in person: R.3-** Court may require the defendant either in person or through the pleader.
- 6. Exemption from appearance in person-** Unless he resides within court's jurisdiction or outside such limit but within 50 miles or 200 miles (where public conveyance is available) from the court house or women not appearing in public (custom of purdah or burka) or who is entitled to exemption under the code.
- 7. Contents of summons-** summons must contain the purpose ie the date fixed for settlement of issues or for final disposal of the suit directing him to produce his witness or documents etc. the place of defendant and give him sufficient time to appear and answer.
- 8. Mode of service of summons: Rule 9-30-** Fair and reasonable notice to the other party regarding legal proceeding against him is fundamental rule. Service of summons is major causes of delay the procedure. Some defendant avoid service of summons therefore alternate mode of services provided by law as below-

A. Personal or direct service:

- a. Summons to defendant in person or to his authorized agent;
- b. Defendant absent from his residence and no reasonable possibility of being found, summons may be given to any adult male/female member of his family;
- c. Suit relating to business or work, summons to manager or agent;
- d. Suit for immovable property, defendant or agent of defendant in charge of property;
- e. More than two defendants, service to all defendants.

B. Service by court-9

- a. Service through the court officer;
- b. Register post acknowledge due (RPAD);
- c. Currier, fax, message, e-mail;
- d. Other permissible means of transmission.
- e. Where defendant resides outside the jurisdiction of court, summons through the court within whose jurisdiction defendant resides.

C. Service by plaintiff: R 9A-

Court may permit service of summons through plaintiff in addition to service by court.

D. Substitute service: R 17,19-20-

- a. Affixing copy of summons on outer door of the house or carries on business-

- i. Where defendant refuses to sign acknowledge;
 - ii. Defendant not found at home after due diligence of court officer, and not reasonable possibility of his being found at home within reasonable time and there is no authorized agent.

After such service serving officer shall return the original with report of affixing copy and the name of person by whom the place identified. The order of service of summons by affixing copy on the door may be passed only after if court satisfied that defendant avoids summons.

- b. Service by post-

Summons may serve through RPAD and after receiving the acknowledge copy or where defendant refused to accept the summons, court shall declare that summons is duly served.

E. Refusal of summons-

Where defendant refuses to accept the summons or where acknowledgment is signed by defendant or his agent and acknowledgement received by the court as to the refusal of summons, the summons is deemed to be served.

F. Objections as to the service of summons- objection should be raised at earliest opportunity.

G. Service of summons in special cases: R21-30-

- a. Defendant residing in another court's jurisdiction- through that court;
- b. Service of foreign summons-that territorial court to which provision of the code applies;
- c. Summons within the presidency towns of Bombay, Madras and Calcutta, through small causes court of that jurisdiction;
- d. Summons out of India and no authorized agent in India to receive summons- RPAD, fax, e-mail etc;
- e. Defendant is public officer (other than Military, Air and naval)-to head of concerned department;
- f. Defendant is soldier, sailor or airman, service to his commanding officer.
- g. Defendant in prison- in charge of prison;
- h. Defendant is corporation-summons served to Secretary, director or principal officer;
- i. Defendant is firm- summons to any one of the partner of the firm and in case of dissolution of firm before filing of suit then to all partners;

- j. Defendant is exempted one by the code may be informed by letter of request instead of summons.

INTEREST AND COST (Section 34, 35, 35A, B)

A. Meaning: A charge that is paid for use of others money.

B. Award of interest: In decree for payment of money the court may allow interest at specific rate.

C. Three parts of interest:

- i. Interest prior to filing suit- such interest is not awarded as of right but is always subject to agreement clause.
- ii. Interest pendent lite (during pendency)- court has discretionary power to award interest during pendency of the suit.
- iii. Interest from the date of decree- at the rate exceeding 6% but not exceeding contractual rate of interest and in absence of contractual rate. At the rate of interest of nationalized bank for commercial transactions.

D. Rate of interest: Discretionary power of the court subject to the agreement clause regard to rate of interest. And in case the plaintiff is bank or financial institution, the rate of interest of such bank or institution.

E. Recording of reasons- Apart from the award of interest as per the agreement, where the court grants the interest at the rate less than mentioned in the agreement, has to state the reason for the same.

F. Compound interest: it is interest on interest, such interest may allow subject to agreement clause to that effect.

G. Inflation: In some case judicial notice of inflation has been taken while awarding higher rate of interest.

H. Decree silent as to interest- Where decree do not speak about interest, it deemed to have been refused and no further suit demanding interest is allowed since it operates res judicata.

COSTS (Sec. 35, 35A, 35B, O.20-A)

A. Introduction: The losing party normally pays the litigation costs of the successful party.

B. Types of cost:

a. General cost- Discretionary power to award cost. This provision is not in punitive nature.

i. Object:

- To discourage frivolous litigation.
- To compensate the successful party for expenses incurred.
- To make parties more responsible when approaching the court.

ii. When lies- Generally cost lies upon event of success of party, depend upon the facts and circumstances of the case.

b. Miscellaneous cost- Such costs lie for the expenses relating to notices, typing charges, inspection of record by commission, obtaining certified copies or for witnesses etc. such incidental cost are in addition or separate from the general cost.

c. Compensatory cost- In case of false or groundless clam or defense this cost may be imposed on a party. The court has discretionary power to grant such cost upon abuse of judicial process by either party.

i. Object: To compensate other party for unnecessary expense or trouble caused by false, frivolous, or vexatious claims/defenses.

ii. Who is liable: The party abusing the judicial process is liable to pay.

iii. Conditions-

- False claim or defense;
- Objection taken by the other party;
- Claim disallowed or withdrawn.

iv. Limit on cost: Compensatory cost may be awarded up to 3000/-. However, such cost never exempt person from any other liability.

v. Appel: Appealable. But no appeal if refused to award cost.

d. Cost against delay caused- Such cost imposed in the event of delay caused by the either party to step. This provision prevents the party to cause unnecessary delay in the suit. The provision is mandatory

in nature and therefore further steps may be curtailed upon failure to pay such awarded cost.

PLEADING: O.6

A. Introduction:

Provision of order 6 deals with meaning of pleading, rules of pleading, its contents, method of verification of contents, the power of court to reject the pleadings and the provision for amendment of pleading.

B. Meaning:

Pleading is Plaint or written statement. Pleading refers to the written statement of facts and claims submitted by the parties to a court in a civil suit. It sets out what the plaintiff claims and what the defendant admits, denies, or contests.

C. Object: to ascertain the real dispute between the parties.

D. FUNDAMENTAL RULES OF PLEADING-

The pleading must be in the format required under fundamental rules laid down under this law.

- a. **Facts and not law:** Duty to state only facts and not law. The court will apply the law to the facts. It must be specifically pleaded. However, mix question of law and fact need to be pleaded specifically.
- b. **Material facts:** Material facts are those facts which are necessary to establish the cause of action. These are the basic facts which are

necessary to be add in support of the case. In absence of such pleading the party cannot be allowed to lead the evidence. To enable the opposite party to know the case the material facts and other particulars are necessary in the pleading.

- c. **Fact and not law:** The parties required to state the Fact only and not necessary to plead the law basis on which they are proving their case. The pleading should contain only *facta probanda* (facts to be proved) and not *facta probantia* (Means of proving the fact).
- d. **Concise form:** The pleading must be in precise manner. It should be brief, effective and meaningful and unambiguous. It should be in separate paragraphs and sub paragraphs. Each allegation must be in separate paragraph.
- e. **Cause of action:** The pleading must clearly show the cause of action. Without cause of action, the suit may be dismissed.
- f. **Relief Must Be Specified-** The plaintiff must specify the relief claimed. Court cannot grant a relief that is not claimed in the plaint.
- g. **Other rules of pleading:**
 - i. Particulars and dates;
 - ii. Enable other party the adequate notice of the case;
 - iii. Avoid inconsistent facts;
 - iv. Should not be lengthy;
 - v. Presumption of law or fact need not be pleaded;
 - vi. The series of transactions (letters/communications) or acts need to be pleaded.
 - vii. Names of the parties and their address of all parties.

viii. Pleading should be verified on affidavit.

h. **Amendment in pleading-** Pleading can be amended to correct mistakes. The court may approve such amendment application.

PLAINT AND WRITTEN STATEMENT

A. Introduction-

Order 7 rule 1 to 8 deals with the plaint and written statement. A plaint is the statement of claim filed by the plaintiff (the person who brings the suit). It sets out the cause of action and the relief sought. At other hand a written statement is the defense filed by the defendant in response to the plaint. It is the reply where the defendant either admits, denies, or explains the allegations.

B. Plaint:

Plaint is statement of claim in a document presenting of which the suit is instituted. The object of the said plaint is state the grounds on which the relief is claiming. It is a pleading of the plaintiff.

C. Contents of the plaint:

1. Name of the court in which the suit is filed.
2. Name, description, and residence of the plaintiff.
3. Name, description, and residence of the defendant.
4. Facts constituting the cause of action and when it arose.
5. Suit in representative capacity- facts showing common interest.
6. Facts showing that the court has jurisdiction (territorial and pecuniary).
7. Suit for immovable property- property description.

8. Where suit is barred by limitation, plaintiff must show the grounds of exemption or reasons for delay.
9. The relief claimed by the plaintiff (e.g., damages, injunction, possession).
10. Value of the subject matter for the purpose of jurisdiction and court fee.
11. Verification at the end (signed by plaintiff/authorized agent). Supported by affidavit.

D. Events happening after institution of suit-

A suit is based on facts at the time of filing, but subsequent events can be considered if they materially affect the rights or relief. Court can take notice of subsequent events if they affect the cause of action or change the relief to be granted and ignoring them would lead to multiplicity of litigation. If a party wants to bring subsequent events on record it may file an application for amendment of pleadings.

Case law-

Pasupuleti Venkateswarlu v. Motor & General Traders (1975 SC)

Court must take notice of subsequent events if they are relevant for proper and just decision.

Ramesh Kumar v. Kesho Ram (1992 SC)

Relief can be molded in view of subsequent developments.

E. Admission of plaint:

Once the plaint is admitted by the court the plaintiff has to submit the copies of plaint for the defendants and take a steps for service of summons.

F. Return of plaint-

The suit may be returned at any stage of the suit on below grounds-

- Lack of territorial jurisdiction
- Lack of pecuniary jurisdiction
- Lack of subject-matter jurisdiction

The appellate court can also return the suit to present in proper court.

Court returning the suit should endorse on the plaint:

- Date of presentation,
- Date of return, and
- Reasons for return.

Effect on return of suit-

When the plaint after returning is filed in proper court is not continuation of the suit but deemed to be commence when such suit filed in proper court.

Appeal: order returning the plicant is appealable.

Fresh suit: Return of plaint is not a decree and fresh suit can be filed.

Joginder Tuli v. S.L. Bhatia (1997)- Court should return the plaint instead of dismissing it when jurisdiction is lacking.

G. Rejection of plaint-

For the below reasons the suit may be rejected-

- Where plaint does not disclose cause of action-** where it founds to court that the cause of action does not disclose, the suit can be rejected. Such rejection can be done only when the court come to the conclusion that though plaintiff proved his allegations he would not be entitled for relief claimed. To determine whether cause of action

discloses or not, an averment made in the suit regarding cause of action is relevant and material.

b. Where relief claimed is undervalued-Where the relief claimed is undervalued and the valuation is not corrected within time fixed by the court or time extended for correction but failed to correct it, the plaintiff will be rejected.

c. Where plaintiff is insufficiently stamped- Where suit is properly valued or not and the sufficient stamp duty has not been paid as per the value of the suit, and such stamp duty is not paid within time fixed by the court or time extended for payment of sufficient stamp duty but failed to correct it, the plaintiff will be rejected. If the plaintiff is unable to pay the sufficient stamp duty, he may apply to continue the suit as an indigent person.

d. Where suit is barred by law- Where the suit appears from the statement in the plaintiff to be barred by any law the plaintiff shall be rejected.

Examples-

- Suit barred by limitation Act;
- Suit barred by res judicata;
- Barred by special statutes- (Industrial dispute Act-No civil court has jurisdiction)
- Barred by contract Act (Void contract)
- Notice has not been issued in case of suit against Government.

Duty of the court- Duty of the court to look in to the issues of bar on suit suo motu and not to wait till the objection being raised by party.

- e. **Where plaint is not in duplicate-** Where a suit has not been filed in duplicate for the purpose to serve the copy to defendant, and if even after giving an opportunity to cure the defect, plaintiff fails to submit the same in court, the plaint will be rejected.
- f. **Where there is noncompliance of statutory provisions-** Where the plaintiff fails to comply the provisions of rule 9 suit will be rejected.
- g. **Other reasons-** The suit can be rejected on other relevant grounds.
Eg. Signature not done by the authorized person or failed to correct the mistake. Where suit found to be malicious on the face of record.
- h. **Powers and duty of the court-** The court can reject the suit at any stage of the suit if any of the above conditions are fulfilled.
- i. **Order rejecting the plaint-** Where the plaint is liable to reject, the court will pass an order rejecting the plaint and record the reasons thereto.
- j. **Res judicata-** Where plaint is rejected the principle of res judicata does not apply hence the fresh suit can be filed on the same cause action.
- k. **Appeal-** Rejection of plaint is deemed to be decree and hence order is appealable.

H. Documents relied on in plaint: The plaintiff has to produce the documents at the time of filing of suit. If he failed to produce the same during filing, he cannot file it later without permission of court.

Exceptions-

- Documents reserved for the cross examination of defendant's witness;
- Documents handed over to a witness merely to refresh his memory.

I. Written Statement: Order 8-

- a. Meaning-** A written statement is the pleading of the defendant wherein he deals with every material fact alleged by the plaintiff, also stated in written statement the new facts in his favor and may include legal objections.
- b. Who may file written statement-** Defendant or his agent. In case of two or more defendants, one common written may be filed. It is signed and verified by the defendant/s. written statement filed separately by more defendants not binding on each other.
- c. Time limit to file written statement-** May be filed within 30 days from the date of service of summons. This period may extend up to 90 days in total. In Salem Advocate Bar Assn. v Union of India, it observed that where the party fails to present the written statement within time permitted or time fixed by the court, court may pronounce judgment or pass any further order as it thinks fit.
- d. Particulars of written statement-** All rules of pleading apply to the written statement. The defendant may raise number of defenses.
- e. Rules of defense/written statement-**

1. **New fact must be specifically pleaded-** For example, suit is not maintainable, transaction is void or voidable, fraud, limitation, performance etc.
2. **Denial to be specific-** the denial by defendant in written statement must be specific and not general. If the denial is not specific, it shall be taken to be admitted.
3. **Denial in commercial court-** while denying the allegations defendant must state his reasons to deny.
4. **Denial should not be evasive-** Denial should not be vague. He must specifically state the substance of denial. If he denies receiving money, he must state whether he received part payment or received nothing.
5. **Specific denial-** Every allegation if not denied specifically in the pleading of the defendant, shall be taken to be admitted except as against a person under disability.
6. **Defense or set-off founded upon separate ground-** Need to be stated separately and distinctly.
7. **New ground of defense-** defense which has arisen after the institution of the suit or the presentation of a written statement claiming a set-off 1 [or counter-claim] may be raised by the defendant or plaintiff, as the case may be, in his written statement.
8. **Subsequent pleadings-** Subsequent pleading after written statement is not allowed except set off or counter claim.
9. **Failure to submit written statement-** Court shall pronounce judgment against defendant or make such order in relation to the suit as it thinks fit.

10. Documents relied on in written statement- defendant is bound to produce and if failed he cannot produce the same in evidence except with the permission of court.

➤ **SET OFF**

A. Meaning-

Plaintiff and defendants both are creditors or debtors to each other. Such debt may be settled against each other. It is defense of defendant in his written statement. After settlement, set off either wipes out or reduces the plaintiff's claim in suit for recovery of money.

B. Doctrine of set off-

Rule of set off applied in a suit for recovery of money.

It is applicable in case of mutually creditors of each other's.

C. Types of set off-

1. **Legal set off-** Legal set-off means a defendant can deduct a certain and ascertained sum of money which the plaintiff owes to him, from the amount claimed by the plaintiff. Claim for certain amount.
2. **Equitable set off-** Claim for ascertained amount. Eg. Contract between A and B with 5 lakhs payment from B to A. B fails to comply with conditions and loss of 50000/- caused to A. when B files suit for contracted amount of 5 lakhs, 'A' can ask for set off of 50000/- as an equitable set off.

D. Conditions-

1. Suit must be for recovery of money;
2. Sum must be ascertained;
3. Sum must be legally recoverable by defendant;

4. Must not exceed the pecuniary jurisdiction;
5. Both the parties must be in same position against each other.

E. Effect of set off-

In claim for set off by defendant in plaintiff's suit, the defendant became plaintiff and plaintiff became a defendant in the same suit and vice versa. No separate number get to the claim for set off. Where plaintiff withdraw his suit or it dismisses in default, the claim for set off by defendant will not affect and he may proceed his claim.

F. Equitable set off-

The practice of equitable set off was in court of equity in England. In this set off the amount is not ascertained but cross demand arises out of one transaction or connected with the said transaction.

M. S. Anirudhan v. Thomco's Bank Ltd.

Supreme Court held that equitable set-off can be claimed when both claims arise out of the same transaction.

Union of India v. Karam Chand Thapar & Bros.

Equitable set-off allowed because the cross-demands were closely connected in the same contract.

Example-

A contracts to deliver goods to B for ₹1,00,000.

B fails to pay; A sues for price.

B claims that A delivered low quality goods causing him ₹20,000 losses.

Here B's claim is arising out of same transaction.

G. Difference between legal and equitable set off-

Basis	Legal set off	Equitable set off
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Nature	Legal right available to defendant	Discretionary right- court may allow
Transaction	May be independent transactions	must be same transition or arises due to so connected with the transaction
Sum	Ascertained amount	Unascertained amount
Separate suit	Defendant may file separate suit	Cant not file separate suit
Nature of claim	Must be plead specifically	May be pleaded in written statement
Power of court	Upon fulfillment of conditions court must allowed the claim	Court has discretionary power to allow such claim

➤ COUNTER CLAIM

A. Meaning- A counter-claim is a claim made by the defendant against the plaintiff in the same suit, effectively allowing both parties' claims to be decided together.

It enables the defendant not only to defend the suit but also to assert his own claim against the plaintiff within the same proceeding avoiding multiple suits.

B. Doctrine- The Doctrine of Counter-Claim allows a defendant not only to defend himself against the plaintiff's claim but also to assert his own cause of action against the plaintiff within the same suit. It converts the

defendant into a plaintiff in respect of his own claim and original plaintiff into defendant.

Laxmidas v. Nanabhai

Facts-

The plaintiff (Nanabhai) filed a suit against the defendant (Laxmidas) for certain reliefs relating to partnership accounts.

During the proceedings, the defendant wanted to raise a counter-claim (or cross-demand) against the plaintiff for sums allegedly due to him in the same transaction.

The trial court refused to entertain the defendant's counter-claim, stating that there was no specific provision in the Civil Procedure Code (CPC) allowing such a claim.

Issue-

Whether, in the absence of an express provision in the CPC (before the 1976 amendment), the defendant could make a counter-claim or set up a cross-demand in the same suit based on principles of equity and justice?

Decision-

Even though there was no express provision in the CPC at that time permitting a counter-claim, the court has inherent power (under Section 151 CPC) to allow a defendant to raise such a claim if it arises out of the same transaction and its consideration is necessary for complete and final adjudication of the dispute.

C. Object-

- To Avoid Multiplicity of Suits;
- To Achieve Final and Complete Adjudication;
- To Save Time, Cost, and Effort;
- To Promote Justice, Equity, and Convenience

D. Nature and scope-

- Its cross suit by defendant;
- Independent right of defendant;
- Provisions of suit applied to the counter claim;
- Arises before filing of written statement;
- It's part of written statement but considered as a counter suit.

E. Mode of filing counter claim-

- May be filed in the written statement;
- By amending written statement;
- In a subsequent pleading.

F. Who may file counter claim?

Defendant can file counter claim against plaintiff.

G. When counter claim can be filed-

The defendant can raise counter claim on the basis of cause of action accruing either or after filing of suit. But such counter claim must be within limitation, since the provision applied to suit is applicable to counter claim.

H. Reply to counter claim-

Rules of suit applied to counter claim, hence the plaintiff has to submit his written statement to the counter claim of defendant within 90 days from the date of receipt of counter claim from the court.

I. Effect of counter claim-

It converts the defendant into a plaintiff for his own claim, allows independent adjudication of both claims in the same suit, and enables the court to deliver a single, complete, and final judgment between the

parties. Same like suit the defendant also have to deposit requisite court fee. In the same suit the defendant became a plaintiff related to his counter claim and plaintiff became a defendant for the part of defendant's counter claim. In case of plaintiff withdraws his suit, the defendant is entitled to continue his counter claim.

J. Difference between set off and counter claim-

Basis	Set off	Counter claim
Nature	defendant to reduce or wipe out the plaintiff's claim.	the defendant asserts his own claim against the plaintiff.
Type of claim	Limited to ascertained money claims which are legally recoverable.	Covers any claim, whether for money, damages, injunction, declaration, or possession.
Cause of action	Must arise out of a mutual debt between plaintiff and defendant.	May arise from the same transaction or an independent cause of action, if it existed before filing the written statement.
Amount of claim	Must be a definite, ascertained sum of money.	May be ascertained or unascertained; not limited to money only.
Scope	Narrow- confined to money claims.	Wider- includes any legal right the

		defendant may have against the plaintiff.
Decree	No independent decree can be passed for set-off; it only reduces the plaintiff's claim.	Independent decree can be passed on the counter-claim even if plaintiff's suit is dismissed.
Jurisdiction of court	Both claims must fall within the pecuniary jurisdiction of the court.	The counter-claim must also be within the pecuniary and territorial jurisdiction of the court.

APPEARANCE OF THE PARTIES

A. Introduction- Order 9 of the Code of Civil Procedure (CPC), 1908 deals with the “Appearance of Parties and effect of Non-Appearance”. This order primarily regulates how parties must appear in court after the suit is filed, and effects if they do not appear. The provision also deals with the ex parte decision upon failure of defendant to attend.

B. Appearance of Parties-

Parties are required to appear in court on the day fixed in the summons. Appearance can be personally or through the lawyer. Court may adjourn if a party is unable to appear for sufficient reason.

C. Where neither party appears-

Where neither party is appeared, court may dismiss the suit. Upon dismissal of suit, plaintiff may file fresh suit or apply to restore the suit. Court may restore the suit and fix the day for proceeding.

D. Where only plaintiff appears-

Where defendant is absent, the plaintiff has to prove the summons is duly served, the court may pass ex parte order against the defendants.

E. Where only defendant appears-

Where is plaintiff is absent, defendant appeared and not admitted the plaintiff's claim, court shall dismiss the suit of the plaintiff.

F. Dismissal of suit where summons not served in consequence of plaintiff's failure to pay cost- Suit may be dismissed.

G. Plaintiff may bring fresh suit or Court may restore suit to file- Plaintiff may file fresh suit or may apply to setting aside dismissal order.

H. Dismissal of suit where plaintiff after summons returned unserved, fails for 4 [seven days] to apply for fresh summons- Suit may be dismissed unless he satisfied the court that-

- Failed to discover the residence of the defendant even after genuine attempt;
- defendant is avoiding service of process;
- any other sufficient cause for extending the time.

I. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance- Court may impose cost or heard him as if he was appeared.

J. Decree against plaintiff by default bars fresh suit- Where suit is dismissed against the plaintiff, he is precluded to file fresh suit. However, he can apply for restoration of the said suit.

K. Procedure in case of non-attendance of one or more of several plaintiffs'- Court may permit to proceed the case in the presence of appeared plaintiff.

L. Procedure in case of non-attendance of one or more of several defendants- Out of said defendants some defendants appeared, court shall proceed and may pass judgment as it thinks fit.

M. Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person- When a party who is ordered to appear in person fails to do so without sufficient cause, the court will apply the same rules as for non-appearance, the plaintiff's suit may be dismissed, or the defendant may be proceeded against ex-parte.

N. Ex parte decree-

1. Meaning- An ex parte decree means a judgment or decree passed by the court in the absence of one party, usually the defendant, when that party fails to appear after being properly served with summons.

2. Remedies- Application to set aside Order 9 Rule 13 CPC

- The defendant can apply to set aside the ex parte decree by showing (a) summons not duly served, or (b) sufficient cause for non-appearance.
- Appeal -Defendant may file a regular appeal against the ex parte decree.
- Review -Can apply for review if there is an apparent error on record.

3. Setting aside ex parte decree-

- The defendant may apply for setting aside ex parte decree against him. In case of death of defendant his legal heirs can apply for the same.
- Such application for setting aside ex parte decree need to file to the court which passed the decree.
- The court may set aside the ex parte decree if the defendant satisfies the court that the summons was not duly served to him or he was prevented by any sufficient cause from appearing on the date fixed.
- Sufficient cause for non-appearance of defendant is the date on which ex parte decree was passed and not his past negligence or default.
- The rule of “sufficient cause” apply to Government defaulting party too.

4. Power and duty of the court-

If there is sufficient cause for non-appearance court is bound to set aside the ex parte decree. The court should take liberal view while deciding setting aside of ex parte decree.

5. Irregularity in service of summons: Effect- If the adequate service of summons was applied the court shall not set aside ex parte decree merely on the ground of irregularity in service of summons.

6. Burden of proof-

Burden of proof as to the sufficient cause lies on the defendant.

7. Limitation Period- Within 30 days from the date of decree.

8. Notice to opposite party- Notice to other party is mandatory. Court cannot set aside ex parte decree without issuing notice to other party.

9. Cost or other terms and conditions- Ex parte decree may be set aside upon payment of cost or other terms. The court may direct the defendant to deposit in the court the decretal amount.

10. No inherent power to set aside ex parte decree- Unless and until there is no sufficient cause the court cannot set aside ex parte decree inherently.

11. Re Judicata- Where application for setting aside ex parte decree is dismissed the fresh application is not allowed since the principle of res judicata is applies.

12. Setting aside application during execution of ex parte decree-

The defendant may apply during the pendency of the execution of ex parte decree.

13. Effect of setting aside ex parte decree-

The suit is restored and the trial will start afresh (De novo).

14. Appeal, revision and review-

- Appeal lies against an order rejecting application to set aside ex parte decree.
- An order setting aside ex parte decree is a case decided hence order is revisable.
- Subject to the conditions mentioned in order 47, the review application is permissible.

DISCOVERY, INSPECTION AND PRODUCTION OF DOCUMENTS (Order 11 and 13)

Discovery and Inspection- (Order 11)

1. Introduction- Discovery and Inspection are procedural steps used during a civil suit to ensure fairness and transparency between the parties by compelling disclosure of relevant documents and information in the possession of other party. Discovery may be done by one party to suit to other party to the suit.

2. Meaning-

a. Discovery- means compelling the opposite party to disclose:

- Facts or
- Documents

which are in the possession or knowledge of other party, and are relevant to the case.

- b. Inspection- After disclosure, the party asking for discovery may examine or inspect those documents physically or obtain copies.

3. Scope of the provision-

A. Discovery is limited to matters in issue-

Discovery can be sought only for matters directly related to the questions in dispute in the suit.

- It cannot be used for fishing inquiries or to find out a case.
- It applies only to relevant facts and documents.

Section 2, Bharatiya Sakshya Adhiniyam, 2023- Evidence may be given only of facts in issue and relevant facts and not of other facts.

B. Discovery must be necessary for fair disposal of the suit-

Court orders discovery only if it is necessary to:

- Clarify matters in dispute
- Narrow down issues
- Avoid unnecessary evidence

If the matter can be proved by other simpler means, the court may refuse discovery.

C. Discovery applies to documents in possession, power or control-

The party can be directed to disclose:

- Documents actually in the possession of other party, or
- Those they have the right or authority to obtain to other party.

If the document is not in the custody or control of other party- No discovery.

D. Privileged and confidential documents are excluded-

Eg. Lawyer- Client discussion, Husband-wife communication, Doctor-patient communication, Confidential government records

E. Inspection is allowed only after discovery- Court may refuse discovery, if the application is vexatious, oppressive, or made to cause delay.

F. Discovery will not be treated as evidence- The party still have to prove the documents revealed in discovery process.

The scope of discovery and inspection under Order 11 CPC is confined to matters in issue and documents relevant for fair adjudication, which are in the possession or control of the opposite party. It excludes privileged and confidential documents and cannot be used for fishing inquiries or delaying proceedings. Inspection is permitted only after discovery, and these procedures assist but do not replace proof at trial.

4. Object-

- To ascertain the real fact in issue;
- To avoid surprise at trial;
- To save time and expenses;
- To obtain admissions and reduce the oral evidence;
- To ensure fair trial;
- To reveal concealed facts.

Interrogatories-

1. Meaning- Interrogatories are a set of written questions sent by one party to the opposite party in a civil suit, which the opposite party is legally required to answer in writing on oath as to the facts.

2. Object-

- To ascertain the real fact in issue;
- To know the nature of the case of opposite party;
- To support his own case;

- To obtain admissions and reduce the oral evidence;
- To reveal concealed facts.
- Impeaching the case of opposite party.

3. Who may administer interrogatories-

Either party to suit to other party. Plaintiff to defendant or defendant to plaintiff.

4. Against whom interrogatories may be allowed?

- Either party to suit against other party;
- Suit by agent- to principal;
- Suit concerned to minor, lunatic or unsound person- next friend or guardian.

5. Objections to interrogatories- Party may raise objection on the ground of scandalous, mala fide, irrelevant, privileged information.

6. Rules as to interrogatories-

- In writing and with leave of the court;
- Details of interrogatories should be submitted to court and court will decide it within 7 days from its submission;
- Applied to either party to the suit;
- Must be related to fact in issue;
- One set of interrogatories except court's permission for more interrogatories;
- No interrogatories unless written statement filed or time to file it expired;
- In case of corporation or company it may be administered to concerned officer of the company;
- Suit by agent- to principal;
- Suit concerned to minor, lunatic or unsound person- next friend or guardian.

7. **Interrogatories which may be allowed-** Interrogatories are allowed only when they relate to the real issues, help in obtaining admissions, and shorten the trial, without being oppressive or irrelevant.
8. **Interrogatories which may not be allowed-** Interrogatories which are irrelevant, scandalous, harassing, investigative in nature, or seek privileged information will not be allowed.
9. **No answer to interrogatories: Effect-** Party may request the court direct the other party to give answer by affidavit or by oral examination. Still the other party failed to answer, may result in dismissal of suit in case of plaintiff's failure to answer or striking out of defense in case of defendant's failure to answer.
10. **Appeal or revision-** Appeal not allowed however, revision may allow if it clearly seems wrong or illegal.

Discovery of documents-

1. **Scope of the provision-** The provision for discovery of documents allows a party to compel the opposite party to disclose and produce all the documents in his possession or power which are relevant to the matters in question in the suit.
2. **Object-** The object of discovery is to clarify the facts and ensure that no party hides any relevant document, so the trial becomes fair, faster, clearer.
3. **Who may apply and against whom it apply-** Either party too suit may apply to the court by way of affidavit or otherwise. It may apply against the other party to suit.

- 4. Conditions-** Court may allow if it is necessary for disposal of suit fairly and it saving cost.
- 5. Objections against discovery-** May allow if such discovery not necessary or not necessary at any particular stage of the case.
- 6. Admissibility of documents-** Discovered documents need to be admissible in evidence if it is relevant or connected with matter in issue. Eg. promissory note in case of recovery of money, admissible, whereas asked for personal diary to check any entries, the diary is not admissible since it is not relevant to the fact in issue.
- 7. Documents disclosing evidence-** Discovery not allowed to produce document which are in the evidence form/nature.
- 8. Privileged documents-** Discovery not allowed to produce document which are privileged documents. However, in case of issue regarding claim of privileged, the court can inspect such documents to decide whether such documents are privileged or not.
- 9. Oppressive discovery-** Oppressive discovery means a request for documents that is unreasonable or harassing, and the court will not allow it. Eg. in suit for recovery of money given as loan, the party asking 10 years old bank account, income tax report for 10 years, such requests are irrelevant for the matter in issue as oppressive discovery.
- 10. Effect of non- compliance-** An adverse inference may be drawn that such documents are not in his favor and hence denied to discover. In case the order to plaintiff too discover it and he failed, his case may

be dismissed and not allowed to file fresh suit and in case of defendant, his evidence may be struck off.

Inspection of documents

1. Inspection of documents- once the documents so requested discovered, are open for examine from other side.

2. Object-

- To verify the nature and contents of documents.
- To prepare for cross-examination and arguments.
- To prevent surprise at the time of trial.
- To ensure fairness and transparency.

3. Who may inspect- The party applying for discovery and inspection, may examine or inspect such documents.

Privileged documents-

Privileged documents are protected from disclosure because of confidentiality, public interest, or privacy. The court does not permit to discover and inspect such documents. Below are the examples.

- Documents which are themselves evidence;
- Confidential communication between the lawyer and client;
- Confidential public official records.

Premature discovery- Request for discovery and inspection which is not necessary at a particular stage is known as a premature discovery. The court is empowered to postponed such premature discovery.

FISRT HEARING AND FRAMING OF ISSUES

1. **Introduction-** pliant and written statement means a pleading. Upon pleading the dispute between the parties becomes clear. Order 10 empowered the court to examine the parties in view to ascertain the real dispute between them. Order 14 deals with the framing of issues.
2. **First hearing-** The first hearing is the first day on which the court actually determines the facts of the case, after going through pleadings (plaint + written statement). After that the court frame and settle the issues and this day is the first hearing of the suit.
3. **Object-** The court and the parties are fully clear about the real matters in dispute. It prevents unnecessary delays, narrows down controversies, and prepares the case for trial.
4. **Alternate dispute resolution-** The Amendment Act provide alternate dispute resolution for settlement of issue out of court through mediation, conciliation or lok adalat.
5. **Issue: Meaning-** Means a point in question. One party asserts the fact and the other party deny the fact. Such facts in dispute are known as issues which need to be decided by court.
6. **Framing of issues-** The court while framing of issues identifies and formulates the material questions of fact and law that are in dispute between the parties. These issues guide the entire trial and determine what evidence must be produced.
7. **Object of framing of issues-** To know the real dispute in the suit and reduce the scope of dispute.

8. Kinds of issues-

- a. Issue of fact-** Issues of fact are those issues that arise when a fact is asserted by one party and denied by the other. Eg. whether money was given, whether wife is subject to cruelty by husband, whether contract was executed. The issue of fact comes from pleading for which evidence is necessary to prove.
- b. Issue of law-** An Issue of Law is a disputed question relating to the interpretation, applicability, or validity of a legal rule. Eg. Limitation, jurisdiction, cause of action, bar of suit, court fee and valuation of suit.

9. Preliminary issue- A preliminary issue is a legal issue that the court decides at preliminary stage of the suit. Eg. limitation, res judicata or res sub judice, prior notice to Government under section 80.

10. Importance of issues-

- Guide the parties to lead evidence;
- Court cannot refuse to decide the point in issue;
- Court should not frame an issue out of pleading;
- The issue must be related to question of fact or law;
- It gives clarity about the real disputed fact;
- It speaks to whom any particular issue has to prove;
- It reduces the scope regarding admission of evidence.

11. Power and duty of court-

- Duty to frame issue;
- Duty to examine pleadings and documents;
- Duty to frame only material issue;
- Duty to separate issue of fact and law;
- Power to frame issue suo motu;

- Power to decide preliminary issue;
- Power to amend or strike out issue;
- Power to reframe issue at any stage of the case.

12. Materials for framing of issue-

- Pleadings of the parties;
- Documents produced by the parties;
- Statements of the parties on oath;
- Answer's to court's question;
- Contents of affidavits.

13. Amendments of issues-

- Issues can be amended at any stage of suit;
- Court may frame additional issue;
- Strike out improper issue framed before.

14. Omission to frame issues- Does not fatal the suit. It is mere irregularity which can be cured. However, if such omission is fatal to dispose of the case on merit, the matter can be remanded to the court for fresh trial.

15. Disposal of suit: Order 15-

- There are no issues of fact or law in dispute; or
- The parties are not at issue on any material proposition;
- If the plaintiff and defendant are not at issue on any fact or law;

ADMISSION AND AFFIDAVIT

ADMISSION

1. Meaning- Order 12 deals with admissions made by parties in a civil suit.

Admissions help the court avoid unnecessary trials by deciding admitted facts quickly. An admission is a statement that accepts the truth of a fact.

2. Object-

- Narrow down issues;
- To avoid unnecessary trial;
- To save time and costs;
- To promote speedy disposal

3. Importance- Admissions under CPC and the Evidence Act are important because they simplify disputes, shorten trials, and prevent unnecessary evidence. Facts admitted need not be proved, and the court may pass judgment on admission under Order 12 Rule 6. Admissions help in proper framing of issues, reduce delay, and serve as strong evidence against the party making them. Their primary purpose is to promote speedy and efficient disposal of suits.

4. Kinds of admissions-

a. Admission of document on notice;

b. Admission of facts-

- Admission in pleadings-
 - Express admission- In written form.
 - Implied admission- Eg. Paying part of a claimed amount implied admission of liability.
- Admission otherwise than in pleadings-

- Admission during examination of court;
- Admission in answer to interrogatories;
- Admission on notice;
- Admission on oath;
- Admission by agreement of parties.

5. Conclusiveness of admission- It's not conclusive but mere piece of evidence. The value of the admission is depending upon the fact and circumstances under which it is made.

6. Admission should be taken as a whole- When a party makes an admission, the court must consider the entire statement, not just the portion that is favorable to the opposite party. Admissions must be considered as a whole. A party cannot rely on a portion of an admission and discard the rest. However, if the admission is separable, the court may accept the part of such admission.

7. Notice to admit case- This provision enables a party to issue a written notice to the opposite party to admit facts relating to the case. The object is to narrow down controversies and avoid unnecessary evidence. If the other party refuses or neglects to admit without reasonable cause, the court may award costs. It promotes speedy disposal of litigation.

8. Notice to admit documents- Either party may, before hearing, call upon the opposite party to admit the genuineness of documents. The purpose is to avoid formal proof of undisputed documents and to shorten the trial. If the party refuses or neglects to admit without reasonable cause, the court may award costs under Rule 2-A. Admission relates only to genuineness and execution, not to the truth of contents.

9. Notice to admit facts- Any party to issue a written notice calling upon the opposite party to admit facts. The object is to narrow the scope of dispute and avoid leading evidence on facts that are not genuinely denied. The opposite party must respond within time. Unreasonable refusal or failure to admit may lead to imposition of costs under Rule 4. This provision promotes speedy and economical disposal of suits.

10. Judgment on admission- The court may pass judgment on the basis of admissions made in pleadings or otherwise. The object is to expedite litigation and avoid trials where facts are clearly admitted. The power is discretionary and must be exercised only when admissions are clear, unambiguous, and unequivocal. Courts may pass partial or complete decrees on admitted facts. Leading cases: Uttam Singh Dugal (2000), Karam Kapahi (2010), Himani Alloys (2011)

AFFIDAVIT

1. Meaning- An affidavit is a declaration of facts, made in writing and sworn before a person having authority to administer oath. Every affidavit should be drawn up in the first person and should contain only facts and not inferences.

2. Essentials-

- Declaration made by person;
- Relate to facts;
- In writing;
- In the first person;
- Sworn before magistrate or any other authorized person.

3. Contents of affidavit-

- Name, age and full address;
- Facts within personal knowledge;

- Sources of information;
- Clear and certain facts;
- Verification as to the truth of stated facts

4. Evidence on affidavit- Fact may be proved by affidavit. Such evidence on affidavit is subject to cross examination by opposite party.

5. False affidavit- Submitting false affidavit is an offence of perjury and punishable under the criminal law.

ADJOURNMENT Order 17

1. General Meaning-

An adjournment order is a court order to postpone or delay a scheduled hearing or proceeding to a later date.

Purpose: Gives parties more time to prepare, gather evidence, or ensure attendance.

Effect: The case is temporarily paused, and the next date is fixed by the court.

Common reasons:

- Non-availability of parties, lawyers, or witnesses
- Need for more evidence or documents
- Court's workload or administrative reasons

2. Discretion of court-

The court has the discretion to postpone or delay a hearing, taking into account the reasons given by the parties, the interest of justice, and to ensure a fair opportunity to present their case.

3. When adjournment may be granted-

- Sickness of parties/witness/advocate
- Non service of summons
- Withdrawal of appearance by pleader

4. When adjournment may be granted-

- Unreasonable conduct of party/advocate
- Advocate in another court
- Refusal to cross examine of witness
- Very old case

5. Power and duty of court-

Power: The court can grant or refuse adjournment at its discretion based on the reasons provided and the interest of justice.

Duty: The court must ensure fairness by giving parties a reasonable opportunity to prepare and present their case, while avoiding unnecessary delay.

6. Recording of reasons- When granting or refusing an adjournment, the court should record the reasons for its decision in the case proceedings, ensuring transparency and accountability.

7. Last adjournment- The final adjournment allowed by the court after which the case must proceed, ensuring that unnecessary delays are avoided and the matter is heard and decided.

8. Maximum adjournment- Maximum 3 adjournment may be granted.

9. Cost of adjournment- The court may impose costs on the party requesting an adjournment, especially if it is unjustified or causes unnecessary delay, to compensate the other party and discourage frivolous adjournments.

10.Failure to appear on adjourned day- If a party fails to appear on the adjourned date without a valid reason, the court may proceed with the case in their absence and may also impose costs or other penalties.

DEATH, MARRIAGE-INSOLVENCY OF PARTIES – O 22

1. General:

In the course of legal proceedings, situations such as the death, marriage, or insolvency of a party may occur. The law provides clear rules to ensure that such events do not unnecessarily interrupt or defeat justice. These provisions regulate whether a case should continue, abate, or be taken over by legal representatives. It creates, assign or devolve interest during the pendency of suit in the circumstances of death, marriage or insolvency.

2. Death of party-

- a. Death of plaintiff-** If the plaintiff dies during the pendency of a suit, the case does not abate if the right to sue survives. The legal representatives of the plaintiff may be brought on record and the suit continues; otherwise, the suit abates.
- b. Death of defendant-** If the defendant dies during the pendency of a suit, the suit does not abate if the right to sue survives. The legal representatives of the defendant are brought on record and the suit continues; otherwise, the suit abates.
- c. Right to sue-** The right to sue means the legal right to continue or institute a case. It survives if the cause of action is not purely personal (e.g., property or contractual rights) and does not survive in personal matters (e.g., defamation, personal injuries).

- d. Nature of inquiry-** The court conducts a limited and summary inquiry to determine whether the right to sue survives and who should be brought on record as legal representatives, without deciding the merits of the case.
- e. Interpretation-** Order XXII of the Code of Civil Procedure deals with the effect of death, marriage, and insolvency of parties on civil suits. Its purpose is to ensure that legal proceedings do not fail due to a change in the status of parties, provided the right to sue survives. It lays down rules for substitution of legal representatives, abatement of suits, and procedure for continuation of proceedings, balancing procedural discipline with substantive justice.
- f. Applicability to other proceedings-** Provision apply to suit, appeal and application too.
- g. Partial abatement-** Partial abatement occurs when, on the death of one of several parties, the suit abates only against that party, while it continues against the remaining parties, provided the right to sue survives against them independently.
- h. Determination of question as to legal representative-** When a dispute arises about who is the legal representative of a deceased party, the court decides this question by a summary inquiry, and its decision is only for the purpose of continuing the suit.
- i. Duty of pleader-** When a party to a suit dies, it is the duty of the pleader representing that party to inform the court about the death as soon as it comes to his knowledge.

- j. Duty of court-** On being informed of the death of a party, the court must ensure that the legal representatives are brought on record within the prescribed time and take appropriate steps to decide whether the suit should continue or abate, in the interest of justice.
 - k. Effect of abatement-** If suit abates or dismissed due to failure of plaintiff to bring legal representative on record, fresh suit on same cause of action not allowed.
 - l. Suit against dead person-** Not allowed since no legal effect is there.
- 3. Marriage of party-** Suit does not abate by marriage of female plaintiff or defendant.
- 4. Insolvency of party-**
 - a. Insolvency of plaintiff-** Suit does not abate on occasion of plaintiff's insolvency and suit can be continued against assignee or receiver.
 - b. Insolvency of defendant-** Court may stay suit against such defendant.
- 5. Devolution of interest-** If the interest has passes from the plaintiff or defendant to other person, the suit may continue by or against the person in whose favor such interest is created.

WITHDRAWAL AND COMPROMISE: O 23

- 1. Withdrawal of suit-** Withdrawal of a civil suit is a procedural right available to a plaintiff under the Code of Civil Procedure, 1908 (CPC). It refers to the act of voluntarily abandoning or discontinuing a suit or part of a claim by the plaintiff at any stage of the proceedings.

2. Object- The object behind allowing withdrawal is to prevent unnecessary continuation of litigation when the plaintiff no longer wishes to pursue the matter or when the suit suffers from formal defects. However, to safeguard the interests of the defendant and to prevent abuse of process, the law places certain restrictions on withdrawal, especially where the plaintiff seeks liberty to file a fresh suit on the same cause of action.

3. Withdrawal without leave of court- The plaintiff withdraws the suit without permission to file a fresh one. Under Order XXIII Rule 1 CPC, such withdrawal bars the plaintiff from filing another suit on the same cause of action.

4. Withdrawal with leave of court- Withdrawal with leave of court is provided under Order XXIII Rule 1(3) of the Code of Civil Procedure, 1908. It allows the plaintiff to withdraw a suit or part of a claim with permission of the court to institute a fresh suit on the same cause of action. Grant of leave is not a matter of right; it is entirely within the discretion of the court.

The court may grant such permission only when it is satisfied that:

a. Grounds-

- The suit must fail by reason of some formal defect.
- Any other sufficient grounds.

b. Effect of leave- While granting permission, the court may impose terms and conditions, including costs, to prevent prejudice to the defendant.

5. Suit by minor- According to this rule, no suit instituted by a minor (or on behalf of a minor through a next friend) can be withdrawn or abandoned without the leave of the court. The same restriction applies to withdrawal of any part of the claim. The purpose of this provision is to protect the interests of minors, who are legally incapable of taking decisions affecting their rights. Since the suit is conducted by a next friend or guardian ad

litem, the law requires judicial scrutiny to ensure that withdrawal is bona fide and for the benefit of the minor.

- 6. Withdrawal by one of the plaintiffs-** According to this provision, where there are more plaintiffs than one, any one of them cannot withdraw the suit or abandon a part of the claim without the consent of the other plaintiffs. This rule ensures that the rights and interests of the remaining plaintiffs are not prejudiced by the unilateral action of one plaintiff. The object of this provision is to prevent injustice and abuse of process, as the cause of action in a joint suit is often common or interconnected. Allowing one plaintiff to withdraw independently could adversely affect the claims of others.
- 7. Limitation-** The plaintiff withdrawing a suit with liberty to file fresh suit, must file fresh suit within limitation period in the same manner, as if the first suit has not been filed at all.
- 8. Applicability to other proceedings-** The provisions relating to withdrawal also applied to other proceedings of a civil nature, such as appeals, writ petitions.

 - a. Appeals-** An appellant is generally permitted to withdraw an appeal, as no person can be compelled to continue litigation against their will. However, withdrawal of an appeal does not automatically confer a right to file a fresh appeal on the same matter; such right depends on the provisions of the CPC and the law of limitation.
 - b. Revisions-** A party seeking to withdraw a revision petition may do so, but the court's leave is required if the petitioner seeks liberty to file a fresh revision on the same grounds. The court exercises its discretion to

ensure that withdrawal is bona fide and does not prejudice the opposite party or encourage multiplicity of proceedings.

c. Representative suit- Plaintiff in representative capacity cannot withdraw the suit but he may get out from the suit but that does not give end to the litigation since other persons are interested in such litigation.

d. Writ petitions- A petitioner may seek to withdraw a writ petition, but if they wish to file a fresh petition on the same grounds, the court's leave is required. The court exercises its discretion to ensure that withdrawal is genuine and does not prejudice any party or lead to multiplicity of proceedings.

e. Execution proceedings- Provision do not apply to the execution proceeding since there is no bar to file a fresh execution proceeding.

9. Restoration of benefits- When a plaintiff withdraws a civil suit after obtaining interim relief, such as a temporary injunction, attachment of property, or any other interim order—the court may require restoration or return of the benefits granted under such interim orders. The principle is that interim relief is provisional and is intended to maintain the status quo pending the outcome of the suit. If the suit is withdrawn, the basis for granting such relief ceases to exist, and allowing the plaintiff to retain the benefits would be unjust and inequitable.

10. Fresh suit- A fresh suit is a new suit filed on the same cause of action after withdrawing the earlier suit with the court's permission under Order XXIII Rule 1(3) CPC. It must be filed within the limitation period, and any interim benefits from the withdrawn suit may need to be restored. Filing without leave bars the fresh suit.

11. Appeal or revision- An order granting or rejecting the withdrawal of a suit is neither decree nor appealable order hence appeal does not lie against such order. However, such order is case decided hence such order is revisable.

COMPROMISE OF SUIT: Order 23, Rule 3-3 B

1. General- A compromise of a suit occurs when the parties to a civil suit agree to settle their dispute amicably, either wholly or partially, without the need for a trial. Order XXIII Rules 3 to 3B of the Code of Civil Procedure, 1908 govern such compromises. The law encourages compromise to reduce litigation, save time, and promote amicable settlement, while ensuring that the agreement does not violate public policy or legal rights.

2. Meaning- Settlement of dispute between the parties by mutual consent.

3. Conditions-

- a. Agreement between parties;
- b. In writing and signed by the parties;
- c. Must be lawful;
- d. Must be recorded by the court;
- e. Consent decree must have been passed by the court.

4. Who may record compromise?

The court before whom the suit /application/proceeding is pending.

- Trial court;
- Appellate or revisional court,
- Executing court.

5. Who may challenge compromise?

Any party to a compromise raise objection on the ground of-

- No compromise or agreement;
- Not in writing or signed.

The court recording compromise must decide the such challenge.

6. Satisfaction of the court-

Before recording a compromise under Order XXIII Rules 3–3B CPC, the court must be satisfied that the compromise is genuine, voluntary, and lawful. Only after such satisfaction can the court record the compromise and pass a decree, giving it the same force and effect as a decree after trial. This ensures that the settlement is equitable, just, and enforceable.

7. Compromise on behalf of minor-

When a civil suit involves a minor or a person under disability, a compromise can be entered only with the leave of the court under Order XXIII Rule 3 CPC. The compromise must be for the benefit of the minor, and the court carefully examines whether:

- The compromise is genuine and voluntary.
- The terms protect the minor's interests and do not result in prejudice or loss.
- The minor's guardian or next friend is acting in good faith.

8. Compromise by pleader-

A compromise can be entered into through a pleader (lawyer) representing a party, but the court must ensure that the compromise is voluntary, genuine, and in the interest of the party. The pleader can submit the terms of settlement on behalf of their client, but the court usually requires:
Verification by the party that the compromise reflects their free will.
Judicial satisfaction that there is no coercion, fraud, or misrepresentation.

9. Compromise in representative suit-

Compromise in representative suit can be made only with the leave of the court. However, notice to other parties must be served to other plaintiffs, before granting permission.

10. Compromise decree and res judicata-

Compromise decree is not decision of the court, hence res judicata not apply. However, in many cases court held that a consent decree would also operate as res judicata.

11. Compromise decree and estoppel-

Compromise decree is based on consent or compromise of the parties hence will operate as an estoppel.

12. Execution of compromise decree-

A compromise decree passed under Order XXIII Rule 3 CPC is executable in the same manner as any other civil decree. Once the court records the lawful compromise and passes a decree in terms of it, the rights and obligations of the parties are finally determined. If any party fails to comply with the terms of the compromise, the aggrieved party may initiate execution proceedings under the CPC.

13. Bar to suit-

Suit for setting aside compromise decree not maintainable on the ground that it is not lawful.

14. Appeal and revision-

Appeal against compromise decree is not maintainable, however, an order recording or refusing to record compromise in “case decided” hence revisable.

JUDGMENT AND DECREE: Order 20

JUDGMENT

1. Definition: "Judgment" means the statement given by the Judge on the grounds of a decree or order.

2. Essentials for judgment-

- Concise statement of the case.
- The points for determination.
- The decision thereon.
- The reasons for such decision.

3. judgment and decree-

- Judgment is a formal decision rendered by a judicial court whereas decree is a formal order from a court of law.
- A judgment is supported by facts whereas the decree has a judgment as its foundation. A judgment includes the case facts, the issues raised, the evidence presented by the parties, and the conclusions drawn in judicial manner whereas, the suit's decision is contained in a decree, which also definitively establishes each party's rights and liabilities.
- Judgment is always final even though it may lead to a preliminary decree, final decree, or order on its own. Whereas, the decree could be partially preliminary and partially final, preliminary, or final.

4. Pronouncement of judgment-

After the hearing of the case is completed, the court shall pronounce judgment in open court, either at once or on a future date after due notice to the parties. The judgment shall contain a concise statement of the case, points for determination, the decision thereon, and the reasons for such decision. It must be dated and signed by the judge at the time of

pronouncement. In cases where issues are disposed of on a preliminary point or where only part of the claim is decided, the court may pronounce partial judgments in accordance with law.

5. Copy of judgment-

A copy of the judgment shall be made available to the parties after its pronouncement.

6. Contents of judgments-

- Concise statement of the case
- Points for determination (issues)
- Decision on each point
- Reasons for each decision
- Relief granted or order passed
- Date and signature of the Judge

7. Alteration in judgment-

After a judgment is pronounced, the court cannot alter or review it except as permitted by law. Under Section 152 CPC, the court may correct clerical or arithmetical mistakes or errors arising from accidental slips or omissions.

DECREE:

- 1. Definition-** "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144,

but shall not include-

- (a) any adjudication from which an appeal lies as an appeal from an order,
or
- (b) any order of dismissal for default.

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

2. Essential elements of the decree:

- a. There must be an adjudication-** for a decision of a Court to be a decree, there must be an adjudication, i.e. a judicial determination of any matter in dispute.
- b. In a suit-** the expression “suit” means a civil proceeding instituted by presentation of plaint. It means, where there is no suit there is no decree. However, under certain enactments, an applications treated as a suit, eg. Proceeding under Indian Succession Act, the Hindu Marriage Act, the Arbitrations Act etc.
- c. Rights of parties in controversy-** the adjudication must have determined the rights of the parties relate to any matter in controversy in the suit. Thus, an order of dismissal of suit in default or order dismissing an application for execution for non-prosecution is not a decrees as they do not determine the rights of the parties.
- d. Conclusive determination-** Determination must be final or conclusive in nature. Interlocutory orders are not decrees as they do not decide the

rights of the parties finally. eg. an order refusing an adjournment is not a decree as they are not decided the rights of the parties conclusively.

e. Formal expression- There must be a formal expression of such adjudication and which must be deliberate (thoughtful) and given in the manner provided by law.

- **Examples- Decisions which are decrees-**

1. Order of abatement of suit.
2. Dismissal of appeal as time barred.
3. Dismissal of suit for want of evidence.
4. Order holding there is no cause of action.
5. Rejection of plaint for non-payment of court fees.

- **Examples- Decisions which are not decrees-**

1. Dismissal of suit or appeal for default.
2. Appointment of commissioner.
3. order on interim relief.
4. Return of plaint to present in proper court.
5. Rejection of delay condonation application.

3. Types of decrees:

- A. Preliminary decree
- B. Final decree
- C. Partly preliminary and partly final.

A. Preliminary decree-

Decides rights of the parties regard to controversy but does not completely dispose of the suit.

For examples-

- **Suit for dissolution of partnership-**

preliminary decree declaring the proportionate share of the parties and fix the day for dissolution of partnership which is final in nature.

- **Suit for foreclosure of mortgage.**

In foreclosure suits, if the plaintiff succeeds, the court typically passes a preliminary decree that includes an accounting of the mortgage amount, costs, and other relevant details, and thereafter following the preliminary decree, a final decree may be passed, which could involve foreclosure.

In **Shankar vs Chandrkant** (1995) 3 SCC 413 the Supreme Court stated that: *A preliminary decree is one which declares the rights and liabilities of the parties leaving the actual result to be worked out in further proceedings. Then, as a result of the further inquiries, conducted in pursuant to the preliminary decree, the rights of the parties are fully determined and the decree is passed in accordance with such determination is final.*

4. Necessity of decree-

A decree is necessary because it is the formal expression of the adjudication of the court conclusively determining the rights of the parties in a suit, as defined under Section 2(2) of the CPC. While a judgment contains the reasons for the decision, the decree is the operative part that is executable and enforceable by law. Without a decree, the judgment cannot be executed, and no appeal ordinarily lies. Thus, a decree gives finality, enforceability, and legal effect to the judgment.

5. Drawing up of decree-

Decree should be drawn up within 15 days from the date of judgment. Appeal cannot be preferred without copy of decree.

6. Contents of decree-

- Number of the suit
- Names and descriptions of the parties
- Relief granted or other determination of the suit
- Amount of costs awarded
- Date of the judgment
- Signature of the Judge

7. Deemed Decree:

A deemed decree under the Code of Civil Procedure (CPC) is not a decree in the literal sense, but it is treated as one by law due to its nature of conclusively determining the rights of parties. Essentially, certain orders or proceedings that are not explicitly defined as decrees under Section 2(2) of the CPC are deemed to have the effect of a decree for specific purposes, like appeals. The rejection of plaint, restitution of suit, dismissal for default are the instances of deemed decree.

8. Decree in special cases-

Order XX Rules 9 to 19 CPC provide for decrees in special cases, where the court passes specific directions according to the nature of the suit, such as recovery of movable or immovable property, payment of money, mesne profits, administration, partnership dissolution, accounts, partition, and mortgage-related suits. These provisions ensure that the decree is precise, effective, and capable of execution in accordance with the relief granted.

EXECUTION

GENERAL PRINCIPLES OF EXECUTION

1. Execution follows decree – Only a valid and enforceable decree can be executed.
2. Executing court cannot go behind decree – It must execute the decree as it stands.
3. Decree must be clear and definite – Ambiguous decrees cannot be executed.
4. Jurisdiction of executing court – Execution lies with the court which passed the decree or a transferee court.
5. Limitation applies – Execution must be filed within the prescribed limitation period.
6. Parties to decree – Execution is generally between the decree-holder and judgment-debtor.
7. Modes of execution – As provided under CPC (attachment, arrest, sale, etc.).
8. Equity and fairness – Execution should not cause unnecessary hardship or injustice.
9. Death of party- Decree executable even after death of decree holder or judgment debtor.
10. Question as to execution- Court cannot go into the question of executability

POWERS OF EXECUTING COURT

The court may order execution of a decree, on application of the decree-holder, by:

1. Delivery of property specifically decreed.
2. Attachment and sale or sale without attachment of property.
3. Arrest and detention in civil prison, subject to Section 58 CPC.
4. Appointment of a receiver.
5. Any other manner as required by the nature of the relief granted.
6. Proviso (Money Decree – Detention):

Detention in prison shall be ordered only after giving the judgment-debtor an opportunity of hearing and recording reasons, if the court is satisfied that:

7. The judgment-debtor is likely to abscond or has dishonestly dealt with property to obstruct execution; or
8. The judgment-debtor has or had the means to pay but refuses or neglects to pay; or
9. The decree amount is due from the judgment-debtor in a fiduciary capacity.

Explanation: Exempted property is excluded while calculating the means of the judgment-debtor.

Powers of Court in Executing Transferred Decree -Section 42 CPC

1. The transferee court has the same powers of execution as if the decree had been passed by itself.
2. It can punish disobedience or obstruction to execution in the same manner as the court which passed the decree.
3. Orders passed in execution are appealable as if the decree were its own.

Specific powers included:

1. Power to send the decree for further execution to another court (Section 39).
2. Power to execute the decree against legal representatives of a deceased judgment-debtor (Section 50).
3. Power to order attachment of a decree.
4. Any order passed while exercising these powers must be communicated to the court which passed the decree.
8. The transferee court cannot execute the decree at the instance of a transferee of the decree.
9. In decrees against a firm, it cannot grant leave to execute the decree against persons other than those specified under Order XXI Rule 50(1)(b) and (c).

TRANSFER OF DECREES FOR EXECUTION

The provisions relating to transfer of decrees for execution ensure that a decree passed by one civil court can be enforced in another court within whose jurisdiction the judgment-debtor resides or where the property to be attached is located. This facilitates efficient and practical enforcement of decrees across different jurisdictions.

Section 39- Transfer of decree for execution:

- The court which passed the decree may send it to another court having jurisdiction over the person or property of the judgment-debtor.
- The executing court then enforces the decree as if it had been passed by itself.

Section 40- Transferor court to give necessary documents:

The transferor court must provide the executing court with all necessary documents to enforce the decree effectively.

Section 41- Procedure by executing court:

The executing court follows the same procedure and powers as if it had passed the decree itself.

Section 42- Powers of executing court for transferred decree:

- The transferee court has full powers to execute the decree, punish disobedience, and communicate orders back to the sending court.
- Certain limitations apply, e.g., it cannot execute at the instance of a transferee of the decree or act beyond specified persons in decrees against firms.

Order 21 Rules 2 to 9 CPC -Procedure for transferred decree:

Rule 2: Decree may be sent for execution to another court having jurisdiction over the judgment-debtor or property.

Rule 3: Execution must be conducted according to the procedure applicable to the court which passed the decree.

Rule 4: All relevant documents and records must accompany the decree.

Rule 5: Executing court may require the decree-holder to furnish security or costs.

Rule 6-9: Provide for service of notice, arrest, attachment, and sale of property, and for reporting back to the sending court.

MODE OF EXECUTION

1. General-

Section 51 of the Code of Civil Procedure, 1908 specifies the various modes by which a decree may be executed. Subject to conditions and limitations prescribed by law, the court may, on application of the decree-holder, execute a decree by various modes.

2. Modes of execution-

a. Delivery of property-

- Seizure and delivery of property
- Detention of the judgment debtor
- Attachment and sale of property
- Attachment and detention both

b. Immovable property-

- Removing of judgment debtor or person bound by decree
- Delivering property to the decree holder

- If the property is occupied by a tenant or other person not bound by the decree, delivery is effected by symbolic possession, such as affixing a copy of the warrant on the property. If there is resistance or obstruction, the court may take appropriate action under Order XXI Rules 97 to 103, including removal of obstruction and use of necessary force.

3. Attachment and sale of property-

- Decree may be executed by attachment and sale, or sale without attachment.
- Attachment of property situated within local limit of the court.
- Sale of property without attachment is not void.
- Notice to the judgment debtor of order of attachment.
- Proclamation of such attachment.

4. Arrest and detention-

- Detention of judgment debtor in civil prison,
- Detention only after giving opportunity of showing cause why he should not be so detained,
- Detention in below circumstances-
 - Obstructing or delaying the execution
 - Likely to abscond or leave the local limit of the court
 - After filing of suit dishonestly transferred, concealed or removed any part of the property
 - Refuse to pay the amount

5. Appointment of receiver-

- Discretionary power of the court to appoint receiver,
- This is an exceptional remedy and the plaintiff must prove no any other remedy is effective,

- Decree holder cannot be permitted to pray for this mode if the property is expressly excluded from attachment by the law. Eg. Receiver cannot be appointed to recover the amount of PF since such amount is excluded from the attachment.

6. Partition-

- Execution should be effected by the collector.
- Why through collector-
 - Better qualified to deal with revenue matter
 - Interest of the Government regarding revenue paying estate.

7. Cross decrees and cross claims-

Execution of cross decrees and cross claims is governed by Order XXI Rules 18 and 19 of the CPC. When both parties hold decrees against each other in the same or different suits for payment of money, the court may set off the amounts, and execution is allowed only for the balance due. Similarly, in cross claims, mutual claims are adjusted to avoid multiple executions. The object of these provisions is to ensure equity, convenience, and avoidance of unnecessary proceedings in execution.

8. Payment of money-

- By attachment and sale of property
- Detention of the judgment debtor in civil prison
- Appointment of receiver
- Mode of payment of money-
 - Payment in court
 - Payment out of court
- Certification of payment- Court records the payment
- Effect of payment- valid discharge of the decree against the judgment debtor.

9. Specific performance of contract-

- Attachment of property
- Detention of judgment debtor

- Both attachment and detention
- Decree against the corporation, property of corporation can be attached

10. Injunction-

- Attachment of property
- Detention of judgment debtor
- Both attachment and detention
- Decree against the corporation, property of corporation can be attached

11. Restitution of conjugal rights-

- Attachment of property of the husband
- No civil prison
- Parents do not comply with the decree for restitution of conjugal rights they can be dealt with under this provision.
- Satisfaction of the decree only after ready and willing the judgment debtor to obey the decree

12. Execution of document-

When a judgment-debtor fails or refuses to execute a document as directed by the decree, the decree-holder may prepare a draft of the document and submit it to the court. The court gives the judgment-debtor an opportunity to raise objections to the draft. After considering objections, the court approves or modifies the draft and causes the document to be executed by an officer of the court on behalf of the judgment-debtor.

13. Endorsement of negotiable instrument-

When a decree directs the endorsement of a negotiable instrument and the judgment-debtor fails or refuses to comply, the court may cause the endorsement to be made through an officer of the court. The decree-holder

may submit a draft endorsement, objections are invited from the judgment-debtor, and after approval, the endorsement is executed on his behalf. Such endorsement has the same legal effect as if made by the judgment-debtor himself.

14. Attachment of rent, mesne profits-

By attachment of property.

ARREST AND DETENTION

1. Introduction: Arrest and detention in civil prison is one of the modes of execution of a decree provided under Section 51(c) of the Code of Civil Procedure, 1908. It is mainly applicable in the execution of money decrees and is intended to compel compliance with the court's order. However, this mode is exceptional and restrictive in nature, as personal liberty is involved. Therefore, the law provides safeguards, such as giving the judgment-debtor an opportunity of being heard and requiring the court to record reasons before ordering detention.

2. Object- The object is not to punish the judgment-debtor, but to enforce payment in a just and lawful manner.

3. When arrest and detention may be ordered-

- Decree for payment of money
- Specific performance of contract or injunction
- Director of the corporation may be arrested with the leave of the court

4. Who cannot be arrested-

- a. Women- A woman shall not be arrested or detained in execution of a money decree.

- b. Limits on Detention- Detention in civil prison cannot exceed the maximum period prescribed (e.g., up to three months for larger amounts), and release does not discharge the debt.
- c. Persons Attending Court- Parties, witnesses, and pleaders attending court or going to or returning from court are exempt from arrest under civil process.
- d. Members of Legislative Bodies- Members of Parliament and State Legislatures are exempt from arrest during sessions and for a specified period before and after such sessions.

5. Procedure-

- a. Application by decree-holder for arrest and detention under Section 51(c) CPC.
- b. Notice to judgment-debtor to show cause why he should not be committed to civil prison (Order XXI Rule 37).
- c. Hearing of judgment-debtor and inquiry into his means to pay.
- d. Recording of reasons by the court, as required under Section 51 proviso.
- e. Order of arrest, if conditions are satisfied (Order XXI Rule 38).
- f. Detention in civil prison for the period prescribed under Section 58 CPC.
- g. Release on payment of decretal amount or on expiry of detention period.

6. Notice- Under Order XXI Rule 37, before ordering arrest in execution of a money decree, the court shall issue a notice to the judgment-debtor to show cause why he should not be committed to civil prison. The notice may be dispensed with only if the court is satisfied that the judgment-debtor is likely to abscond or leave the jurisdiction to delay execution.

According to Order XXI Rule 40, when the judgment-debtor appears in response to the notice or is brought before the court after arrest, the court

shall hear the decree-holder, take evidence regarding the means of the judgment-debtor, and then decide whether to order detention or release. The court must record reasons in writing before committing the judgment-debtor to civil prison.

7. Opportunity to judgment debtor to satisfying decree-

Before ordering arrest and detention, the court must give the judgment-debtor a fair opportunity to satisfy the decree. Under Order XXI Rules 37 and 40 CPC, the judgment-debtor is allowed to show cause, present evidence regarding his means to pay, and may pay the decretal amount, offer security, or seek time or instalments. If the court is satisfied that the decree has been paid or arrangements are made for payment, detention cannot be ordered. This safeguards personal liberty and ensures arrest is used only as a last resort.

8. Power and duty of court-

- To issue notice to the judgment-debtor to show.
- To hear both parties and conduct an inquiry into the judgment-debtor's means to pay.
- To give opportunity to the judgment-debtor to satisfy the decree by payment or arrangement.
- To record reasons in writing before ordering arrest and detention.
- To ensure statutory safeguards.
- To order arrest only as a last resort, when conditions are satisfied.
- To determine the period of detention within limits prescribed by Section 58 CPC.
- To order release on payment of decretal amount or on expiry of detention period.

9. Recording of reasons- Before ordering arrest and detention of a judgment-debtor in execution of a money decree, the court must record reasons in writing as mandated.

10. Period of detention-

- Up to 3 months in case of decretal amount exceeds 5000/-
- Up to 6 weeks in case of decretal amount exceeds 2000/- but does not exceeds 5000/-
- No detention in case of decretal amount does not exceeds 2000/-

11. Release of judgment debtor-

- Payment of decretal amount
- Decree otherwise fully satisfied
- On the request of the decree holder
- Omission on the part of decree holder
- On the ground of illness.

12. Re-arrest of judgment debtor-

- Judgment debtor once released cannot be rearrested in execution of same decree.
- He may be rearrested if he released by mistake of jail authority
- Released on the ground of illness can be rearrested.

ATTACHMENT OF PROPERTY

1. Introduction- Attachment of property is a key mode of execution under the Code of Civil Procedure, 1908, used to enforce a decree when the judgment-debtor fails or refuses to satisfy it voluntarily. It involves a legal

process whereby the court takes control over the debtor's property to secure or realize the decretal amount.

2. Object-

- To secure satisfaction of the decree: Ensures that the judgment-debtor's property is available to satisfy the decree.
- To compel compliance: Acts as a coercive measure to induce the judgment-debtor to pay or deliver as directed by the court.
- To prevent disposal or transfer: Stops the debtor from concealing, selling, or transferring property to evade execution.
- To protect rights of decree-holder and third parties: Balances enforcement of the decree with the protection of exempt property and interests of innocent third parties.

3. Property which can be attached-

- Movable property – goods, bank balances, shares, vehicles, etc.
- Immovable property – land, buildings, and other immovable assets.
- Debts and actionable claims – money owed to the judgment-debtor by third parties.
- Property in the possession of third parties that belongs to the judgment-debtor.

4. Property which cannot be attached-

- Essential household items – furniture, cooking utensils, bedding, and clothing necessary for the family.
- Tools of trade – implements, books, or machinery required by the judgment-debtor for earning a living.
- Exempted immovable property – property specifically protected by law from attachment for civil debts.

- Property in possession of third parties – unless the third party is indebted to the judgment-debtor or claims are adjudicated.
- Salaries and pensions – income that is exempt under law or statutory provisions for maintenance.

5. Modes of attachment-

- The court may attach movable or immovable property of the judgment-debtor to satisfy a decree.
- Attachment can be made in the possession of the judgment-debtor or in the possession of third parties holding the property for the debtor.
- The court ensures that the attachment does not affect exempt property as provided under Sections 60–64 CPC.

Detailed Procedure:

- Attachment of movable property – property may be seized and taken into custody by the court.
- Attachment of immovable property – notice to the judgment-debtor and public notice, entry into possession.
- Attachment of debts and actionable claims – court may order third parties to pay the decree-holder directly.
- Procedure for inventory and valuation of attached property.
- Sale of attached property – property may be sold by public auction, and proceeds applied towards satisfaction of the decree.

6. Precept-

a. Meaning- Means a command, an order, a writ or a warrant.

b. Nature and scope- A precept is an official written order issued by a court directing another court to execute a decree or attach property

within its jurisdiction. It is a mechanism used when the decree-holder or property is located outside the territorial jurisdiction of the court which passed the decree.

c. Object- The object of a precept is to enable a court to execute a decree outside the jurisdiction of the court that passed it, ensuring the decree-holder can realize the decree lawfully and efficiently while maintaining judicial control and accountability.

d. Limitations-

- It can be issued only to a court within India having jurisdiction over the judgment-debtor or property.
- The executing court cannot modify the decree; it must execute it as passed.
- Execution is subject to procedural rules and safeguards under CPC, including protection of exempt property.
- It cannot be used to initiate fresh proceedings; it applies only for enforcement of the existing decree.

7. Garnishee-

a. Introduction- Garnishee proceedings are a mode of execution used to realize a money decree by attaching debts or money owed to the judgment-debtor by a third party (garnishee). Under Order XXI Rules 46-A to 46-I CPC, the court may order the garnishee to pay the amount directly to the decree-holder instead of the judgment-debtor.

b. Meaning- The court directs a third person (garnishee), who owes money or holds property on behalf of the judgment-debtor, to pay such amount directly to the decree-holder for satisfaction of the decree.

- c. Object-** The object of garnishee proceedings is to secure speedy and effective satisfaction of a money decree by attaching debts or money payable to the judgment-debtor by a third party, thereby preventing evasion of payment and ensuring direct recovery by the decree-holder.
- d. Illustration-** A obtains a money decree against B. B has ₹50,000 deposited in a bank or is owed money by C. The court may issue a garnishee order directing the bank or C (the garnishee) to pay the amount directly to A instead of B, in satisfaction of the decree.
- e. Doctrine explained-** The doctrine of garnishee is a principle of execution under which a debt or money due to the judgment-debtor from a third person is attached and applied towards satisfaction of the decree. Instead of compelling the judgment-debtor to pay, the law allows the decree-holder to step into the shoes of the judgment-debtor and recover the amount directly from the third party (garnishee). This doctrine prevents evasion of payment, ensures speedy recovery of money decrees, and operates on the principle that what is payable to the debtor can be claimed by the creditor through court intervention.
- f. Notice-** In garnishee proceedings under Order XXI Rule 46-A CPC, the court issues a notice to the garnishee requiring him to show cause why the debt or money due to the judgment-debtor should not be paid to the decree-holder. A copy of the notice is also served on the judgment-debtor. This notice ensures fair opportunity to the garnishee to admit or dispute liability before any payment order is passed.
- g. Effect of payment-** When the garnishee makes payment to the decree-holder or into court in compliance with a garnishee order, such payment

operates as a valid discharge of the garnishee's liability to the judgment-debtor to the extent of the amount paid. The garnishee is thereafter protected from any further claim by the judgment-debtor in respect of that amount.

- h. Failure to pay-** If the garnishee, after notice, fails or refuses to pay the attached amount without lawful justification, the court may pass an order against the garnishee as if he were a judgment-debtor himself. Such amount can then be recovered from the garnishee through execution proceedings, ensuring effective enforcement of the decree.
- i. Costs-** Costs for garnishee proceedings is at the discretion of the court.
- j. Appeal-** Order passed in garnishee proceedings are appealable as a decree.

SALE OF PROPERTY

1. Introduction- Sale of property is an important mode of execution under the Code of Civil Procedure, 1908, resorted to when a decree cannot be satisfied by voluntary compliance or attachment alone. Under these provisions, the court may order the sale of attached movable or immovable property of the judgment-debtor through public auction, following a prescribed procedure to ensure transparency, fairness, and protection of interests of all parties. The law lays down rules regarding proclamation of sale, conduct of auction, confirmation of sale, delivery of property, and distribution of sale proceeds.

2. Power of court-

- Attachment of property

- To make enquiry whether sale of the part of the property is sufficient to satisfy the decree.
- To sell property or portion thereof.
- Sale shall be conducted by public auction.

3. Proclamation of sale-

- Court must prepare a sale proclamation before sale.
- Notice to decree-holder and judgment-debtor is mandatory (Rule 66).
- Proclamation shall contain description of property to be sold.
- It shall mention encumbrances, if any.
- Amount due under decree must be specified.
- Time and place of sale to be clearly stated.
- Proclamation is published by affixture on court notice board (Rule 67).
- It is also affixed on the property to be sold.
- Court may order publication by beat of drum or newspaper, if necessary.
- Object is to ensure proper notice, fair sale, and maximum price.

4. Time of sale-

- Sale shall not take place until at least 15 days have elapsed from the date of proclamation in case of immovable property.
- In case of movable property, sale shall not take place until 7 days have elapsed, unless the property is perishable.
- The court may shorten the time for sale for reasons to be recorded.

- Sale must be conducted at the time and place mentioned in the proclamation.
- Object is to give sufficient notice and opportunity to the judgment-debtor and intending purchasers.

5. Adjournment of sale- The court has the power to adjourn a sale to a later date and time for reasons recorded in writing. However, if the sale is adjourned for a period exceeding thirty days, a fresh proclamation of sale is required unless the judgment-debtor waives such proclamation. The provision ensures fairness and adequate notice while preventing unnecessary delay in execution.

6. Stoppage of sale- The court may stop or postpone a sale of attached property if the decree is satisfied before the sale either by payment, compromise, or other means. Notice of stoppage is given to all concerned, including the judgment-debtor and intending purchasers. This ensures that unnecessary sale is avoided and protects the interests of both the decree-holder and the judgment-debtor.

7. Default by purchaser- If a purchaser fails to pay the purchase money on the day of sale or within the period fixed by the court, the court may:

- Resell the property by public auction.
- Forfeit the deposit paid by the defaulting purchaser, if any.
- Recover any loss sustained due to default from the purchaser.

8. Restrictions to bid- These rules restrict bidding at the sale to ensure fairness and transparency. Under Rule 72, only persons present at the auction and complying with court requirements may bid. Rule 73 prohibits certain persons, such as the judgment-debtor, their spouse, or agents, from bidding to prevent collusion or undue advantage. These provisions

safeguard the interests of the decree-holder and maintain the integrity of the sale process.

9. Sale of movable property-

a. General- Movable property attached by the court may be sold by public auction after proper proclamation and notice to the judgment-debtor. The court may appoint an officer to conduct the sale and ensure that it is fair, transparent, and competitive. Proceeds of the sale are applied toward satisfaction of the decree, and any surplus is returned to the judgment-debtor. This process ensures effective realization of decrees involving movable assets.

b. Place of sale- Sale of movable property held within the jurisdiction of the court.

c. Agricultural produce-

- The sale should be conducted at the place where the produce is grown or where it is stored.
- The court may appoint an officer to conduct the sale and ensure proper valuation and publicity.
- Proceeds of the sale are applied toward satisfaction of the decree, and any surplus is returned to the judgment-debtor.

d. Negotiable instruments and shares- Sale through broker instead of public auction.

e. Payment of the price- The purchaser at a public sale is required to pay the purchase money on the day of sale or within the period fixed by the court. The court may accept payment in cash, demand draft, or other approved modes. Payment by the purchaser discharges the obligation

and allows the court to deliver possession of the property. If the purchaser fails to pay, provisions under Rule 71 apply, including reselling the property and forfeiture of deposit.

- f. Irregularity in sale-** If a sale of attached property is conducted irregularly, for example, without proper notice, proclamation, or contrary to court directions, the court may set aside the sale either on its own motion or on application by an interested party. The court ensures that fairness and legality are maintained in execution proceedings, and a fresh sale may be ordered if necessary.

10. Sale of immovable property-

- a. General-** Immovable property may be sold only by public auction after proper attachment, valuation, and proclamation by the court. The court ensures that the sale is conducted fairly and transparently, and that notice is given to the judgment-debtor and other interested parties. Proceeds from the sale are applied to satisfy the decree, and any surplus is returned to the judgment-debtor. These rules ensure effective realization of decrees while protecting the rights of all parties involved.
- b. Court competent to order-** Any court except small causes court may order sale of immovable property.
- c. Postponement of sale-**
- To enable the judgment debtor to raise the decretal amount by private alienation
 - Discretion of the court to postponement
 - Provision apply only before sale has taken place

- If the postponement extends beyond a prescribed period, the court may require a fresh proclamation of sale to ensure that the judgment-debtor and intending purchasers receive proper notice.

d. Deposit and payment of price-

- Deposit a portion of the purchase money (usually 25% or as fixed by the court) on the day of sale.
- Pay the balance within the period fixed by the court, failing which the deposit may be forfeited.
- Payment can be made in cash, demand draft, or other approved modes.
- On full payment, the court directs delivery of possession of the property to the purchaser.

e. Bid by co-owner- If the property to be sold is co-owned by multiple persons, a co-owner may bid at the public sale. This rule allows co-owners to protect their right of pre-emption in the property to keep away the stranger out of undivided property.

f. Setting aside sale-

- On deposit of 5% of auction price to auction purchaser and entire amount to the decree holder.
- Irregularity in sale procedure – if the sale was conducted without proper notice, proclamation, or in violation of court directions.
- Fraud or collusion – if the sale was influenced by fraud, misrepresentation, or collusion among parties.
- Auction purchaser applied for the setting aside the sale on the ground that the judgment debtor having no saleable interest.

- g. Effect of setting aside sale-** When a sale of property is set aside, it is deemed null and void, and any payment made by the purchaser is refundable. An application must be file under this rule within 3 years from the date of order of setting aside the sale.
- h. Confirmation of sale-** After a sale of attached property, the court may confirm the sale if it is satisfied that the sale was conducted properly, fairly, and in accordance with law. Once confirmed, the sale becomes absolute, the purchaser acquires a valid title, and the proceeds are applied toward satisfaction of the decree. Confirmation ensures finality of the sale and protects the purchaser against future claims.
- i. Certificate of sale-** After the sale of attached property is confirmed, the court issues a certificate of sale to the purchaser. This certificate serves as conclusive evidence of the sale and entitles the purchaser to take possession of the property.
- j. Effect of the sale-** Sale become absolute ad property deemed to have vested in the purchaser from the date of sale.

UNIT IV

SUITS IN PARTICULAR CASES

SUIT BY OR AGAINST GOVERNMENTS

- 1. Introduction-** Suits involving the Central Government or State Government are governed by Sections 79 to 82 of the Code of Civil Procedure, 1908, read with Order XXVII CPC. These provisions ensure that the government is not unnecessarily dragged into litigation and that proper notice and procedure are followed when the government is a party.
- 2. Statutory notice under section 80-** A suit against the Central or State Government cannot be filed without giving two months' prior notice to the government authorities. The notice allows the government to settle claims without litigation.
- 3. Object of notice-**
 - Provide opportunity to the government to examine the claim and decide whether to settle it without litigation.
 - Prevent unnecessary or frivolous litigation against the government.
 - Protect public funds and resources from being unnecessarily spent in legal proceedings.
 - Ensure that the government's interests are safeguarded while allowing genuine claims to be enforced.
- 4. Essentials of notice-**
 - Name and other details of the person giving notice

- Claim should be set out sufficiently to enable the Government the actual grievance.
- Notice in writing and delivered to appropriate authority.
- Whether suit is filed after expiration of 2 months after notice?

5. Whether the notice is mandatory- Notice under Section 80 CPC is generally mandatory before filing a suit against the Central or State Government. The court cannot proceed with the suit unless the government has been given the prescribed two months' notice and the opportunity to respond or settle the claim.

6. Construction of notice-

- Strict but reasonable compliance: The notice must be sufficiently clear and specific, stating the cause of action, relief claimed, and facts. Minor technical defects that do not prejudice the government may not invalidate the notice.
- Purpose-oriented interpretation: Courts interpret the notice in light of its object, i.e., to give the government a reasonable opportunity to settle or respond.

7. Waiver of notice- Notice under section 80 is mandatory to file a suit against Government. However, it does not affect the jurisdiction of the court and hence it is open to the Government to waive such benefits.

8. Form of notice- No particular form but required the notice must be sufficient to know the nature of claim.

9. Technical defects in notice- Minor technical defects in the notice issued to the Central or State Government do not invalidate the notice as long as the substantive purpose is achieved.

10.Exclusion of period of notice- For the limitation purpose the period of notice has been excluded.

11.Leave of court- Under Section 80(2) CPC, the court may grant leave to institute a suit against the Government or a public officer without serving the statutory notice if the plaintiff seeks urgent or immediate relief. In such cases, the court must be satisfied that delay caused by serving notice would defeat the purpose of the suit.

12.Writ petition- Writ is not a suit within the meaning of section 80 hence prior notice under section 80 is not necessary before filing of writ in the Supreme Court or High Court.

13.Premature suit- A suit filed before expiration of 2 months after notice is premature suit and liable to be dismissed.

14.Appeal or revision- An order passed under section 80 is neither ‘decree nor appealable order’ but a ‘case decided’ hence not appealable but revisable.

15.Title of the suit- In case suit against Government of India “The Union” and in case a suit against State Government “The State”.

16.Statement in plaint- A suit can be presented after expiration of 2 months after notice under section 80 which must contain a statement that the 2 months’ prior notice has been delivered as required by section 80. In absence of such statement suit will be rejected.

17.Procedure-

- The plaint/written statement shall be signed by the person appointed by the Government.
- Person appointed by the Government deemed to be recognized agents under the code.
- Government pleader can receive summons on behalf of the Government.
- Reasonable time should be granted to the Government to file a written statement.

18. Other privileges-

- The court shall, in suits involving the Government or a public officer, endeavor to assist parties in arriving at a settlement where possible. The object is to reduce unnecessary litigation and encourage amicable resolution in matters involving public interest.
- The court shall not proceed with the suit until reasonable opportunity is given to the Government or public officer to consider the claim and file its defense. This rule ensures that adequate time is provided for administrative decision-making and proper representation.

SUIT BY ALIENS Section 83

Alien friends and alien enemies residing in India with the permission of the Central Government may institute a suit in Indian courts as if they were Indian citizens, provided the court is otherwise competent. However, alien enemies residing in India without such permission, or residing in a foreign country at war with India, are barred from suing in Indian courts.

The Explanation clarifies that any person residing and carrying on business in a country at war with India without a license from the Central Government shall be deemed to be an alien enemy, and hence disqualified from suing.

SUIT BY OR AGAINST FOREIGN RULERS, AMBASSADORS

Section 84-87-A deals with this provision.

When aliens may sue:

Alien friends and alien enemies residing in India with Central Government permission may sue as Indian citizens. Alien enemies without permission or residing in a country at war with India cannot sue.

When foreign States may sue:

A foreign State may sue in a competent court only to enforce a private right vested in its Ruler or officer in public capacity.

Suits by foreign Rulers through agents:

The Central Government may appoint persons to prosecute or defend suits on behalf of a foreign Ruler; such persons are deemed recognized agents.

Suits against foreign States and dignitaries:

No suit or execution can be instituted against a foreign State, Ruler, Ambassador, or Envoy without prior consent of the Central Government, except in limited cases (e.g., tenancy). Certain dignitaries are immune from arrest.

Title of the suit:

A foreign Ruler shall sue or be sued in the name of the State, unless otherwise directed by the Central Government.

Definitions:

“**Foreign State**” means any State outside India which has been recognised by the Central Government

“**Ruler**” in relation to a foreign State, means the person who is for the time being recognized by the Central Government to be the head of that State.

Judicial notice of the fact-

courts must take judicial notice of recognition by the Central Government that-

- a State has or has not been recognized by the Central Government;
- a person has or has not been recognized by the Central Government to be the head of a State.

SUITS RELATING TO PUBLIC MATTERS: Section 91-93**(Public nuisances and other wrongful acts affecting the public)****SUIT RELATING TO PUBLIC NUISANCE: Section 91**

1. **Nature and scope-** A suit relating to public nuisance is a representative action intended to protect the rights and interests of the public at large. Its nature is preventive and remedial, aiming to restrain, remove, or prevent acts that affect or are likely to affect the community, such as obstruction of public roads, pollution, or unlawful activities in public places.
2. **Object-** The object of a suit relating to public nuisance is to protect public rights and interests by preventing, restraining, or removing acts that affect or are likely to affect the public at large. It aims to provide a remedy without requiring proof of special damage, prevent multiplicity of suits, and ensure that unlawful or harmful activities causing public inconvenience are effectively controlled through judicial intervention.
3. **Public nuisance Meaning-** A public nuisance is an act or omission which causes common injury, danger, or inconvenience to the public at large or to a section of the community, by interfering with a public right. It affects the community generally and not merely a particular individual, such as obstruction of public roads, pollution of water or air, or activities endangering public health or safety.

4. Who may sue?

- The Advocate-General, or
- Two or more persons with the leave of the court,
- An individual if he sustained special damage.

5. Remedies-

- Punishment under BNS,
- Removal of public nuisance
- Declaration and injunction.

6. Appeal- An appeal lies against an order refusing to grant leave to file a suit for public nuisance or other wrongful acts affecting public.

SUIT RELATING TO PUBLIC TRUST: Section 92

1. Nature and scope-

A suit under Section 92 of the Code of Civil Procedure, 1908 is a representative suit concerning public charitable or religious trusts. Its nature is not to enforce individual or personal rights, but to protect and ensure proper administration of public trusts created for charitable or religious purposes.

2. Extent and Applicability- Section 92 is limited to cases involving an alleged breach of an express or constructive trust or where directions of the court are necessary for the administration of such trust. The suit may be instituted by the Advocate-General or by two or more persons having an interest in the trust with the leave of the court. Reliefs include removal or appointment of trustees, settling schemes, taking accounts, vesting of trust property, and application of the cy-pres doctrine. The provision aims to

safeguard public interest, prevent misuse of trust property, and ensure effective judicial supervision of public trusts.

3. Object- The object of Section 92 CPC is to protect public charitable and religious trusts by ensuring their proper administration and management. It aims to prevent misuse or misappropriation of trust property, provide judicial supervision in cases of breach of trust, and safeguard the public interest for whose benefit such trusts are created, rather than to enforce individual or personal rights.

4. Conditions-

- There must be a public trust
- There must be breach of trust or direction of the court in respect of administration of such trust.

5. Who may sue?

- Advocate General in presidency town or
- Collector for outside presidency town or
- Officer appointed by the State Government or
- Two or more persons with the leave of the court.

6. Against whom suit may be filed- Against the person in possession of trust property or any trustee who have committed breach of trust.

7. Notice- The court should normally issue notice before filing of suit.

8. Relief-

- Removal of trustee,
- Appointment of new trustee.
- Vesting any property in a trustee,
- Directing accounts and inquires,
- Declaration,
- Settling a scheme.

9. Appeal- An appeal lies against an order refusing to grant leave to for breach of trust.

10. Doctrine of Cy-Pres

The Doctrine of Cy-Pres means “as near as possible”. It is applied when the original purpose of a public charitable or religious trust cannot be carried out fully or at all. In such cases, the court may direct that the trust property or income be applied to a purpose as close as possible to the original intention of the trust-creator, keeping in view the spirit of the trust. The doctrine ensures that charitable intentions do not fail and that trust property continues to be used for public benefit, even when the original object becomes impracticable, impossible, or obsolete.

In **Ratilal v State of Bombay** the Supreme Court explained this doctrine:

- **Doctrine of Cy-Pres Applied:** The court held that when the original purpose of a public charitable trust cannot be carried out, the property should be applied “as near as possible” to the original charitable purpose.
- **Judicial Supervision:** Courts have the power to modify the application of the trust property to ensure the intent of the settlor is honored, while still benefiting the public.
- **Public Interest Paramount:** The ruling emphasized that failure of the original purpose does not invalidate the trust, and the public interest is the guiding principle in applying the doctrine.

SUIT BY OR AGAINST FIRM

1. Suit by or against partners- A partnership firm may sue in the firm’s name through all partners or through partners expressly authorized to represent the firm. Similarly, a suit may be filed against the firm by its name, with notice to all partners. Partners acting on behalf of the firm are

deemed to represent all partners, and any decree passed binds the entire firm. This provision ensures that firms can litigate as a single entity while protecting the interests of all partners.

- 2. Service of summons-** Summons in a suit by or against a firm may be served on any partner of the firm, and service on one partner is generally sufficient for all. When the suit is filed against individual partners, summons must be served on each partner personally, unless the court allows otherwise. If a partner cannot be served personally, the court may permit substituted service by post, publication, or other appropriate means. These provisions ensure that all partners are notified of the proceedings while enabling the firm to function as a single legal entity in litigation.
- 3. Appearance by parties-** the firm may appear through all partners or through one or more partners expressly authorized to represent the firm. An appearance by an authorized partner is deemed to be on behalf of the entire firm. Similarly, if the suit is against individual partners, they may appear personally or through authorized representatives. These rules ensure that the firm and its partners are adequately represented, and that any proceedings or decrees are binding on all partners.
- 4. Suit between co-partners-** A suit between co-partners regarding partnership matters (such as dissolution, accounts, or disputes) may be filed by one or more partners on behalf of themselves, without necessarily including all partners as parties. However, the court may direct that all partners be joined if their presence is necessary for a just and complete adjudication. This rule ensures that disputes within a firm can be efficiently resolved while protecting the rights of all co-partners.

- 5. Suit against persons carrying on business in names of others-** A person who carries on a business in the name of another person or firm may be sued in the name under which the business is carried on. The court may direct that the actual person carrying on the business be made a party if necessary. This rule ensures that persons cannot evade liability by conducting business under another name and allows the court to effectively enforce claims against the real parties responsible.
- 6. Decree in partnership suits-** Order 20 rule 15 provides that court will pass preliminary decree and then final decree concerned to dissolution of partnership or taking of partnership accounts.
- 7. Execution of decree against partnership firm-**
 - Execution can be initiated against the firm in the firm's name or against all partners jointly.
 - The court may allow execution against the legal representatives of deceased partners or against specific partners if necessary to satisfy the decree.

SUIT BY OR AGAINST MINORS AND UNSOUND/LUNATIC PERSONS

- 1. Definition: Minor-** A person who has not attained the age of 18 years and in case whose property is a guardian or next friend has been appointed by a court or whose property is under superintendence of a court, the age of majority is 21 years.
- 2. Nature and scope-** To protect the legal rights and interests of minors who are incapable of safeguarding their own interests in judicial proceedings. It ensures that a minor is properly represented by a next friend or guardian ad litem and that the court exercises supervisory control over the conduct of

the suit. The provision aims to prevent exploitation, negligence, or prejudice to the minor's rights and to secure fair, just, and effective adjudication in matters involving minors.

- 3. Suit by minors-** Every suit by a minor must be filed through a next friend, who represents the minor's interests during the proceedings. The next friend must be a competent adult having no interest averse to that of the minor.

Rule 2 empowers the Court to remove the next friend if he is found to have an adverse interest or is acting prejudicially to the minor, and to appoint another suitable person in his place.

Rule 2A provides that where the Court is satisfied that the next friend has acted negligently, fraudulently, or improperly, it may order such next friend to pay costs or compensation to the minor. These provisions collectively ensure that the minor's rights are adequately protected and that the litigation is conducted in the minor's best interest.

- 4. Suit against minors-** When a suit is instituted against a minor, the Court shall appoint guardian ad litem for the minor to defend the suit. No decree can be passed against a minor unless he is properly represented by such guardian. The guardian must be a fit and proper person, having no interest averse to that of the minor, and is appointed after due notice to the minor or his natural guardian. The rule ensures that the minor's rights are adequately protected and that proceedings conducted without the appointment of a guardian are voidable and liable to be set aside if prejudice is caused to the minor.

- 5. Who may be appointed as a next friend?** Any person who is of sound mind, has attained majority, and has no interest averse to that of the minor may be appointed as a next friend of the minor to institute a suit on his

behalf. Ordinarily, the father, and after him the mother or lawful guardian, is preferred for such appointment. However, the Court has discretion to appoint any other suitable person if it is satisfied that such appointment is in the best interest of the minor. A person having an interest conflicting with that of the minor cannot act as a next friend, and the Court may remove or replace the next friend at any stage if the minor's interests so require.

6. Powers and duties of guardian or next friend-

- Representation of Minor – The guardian or next friend represents the minor in all judicial proceedings.
- Conduct of Suit – He has the power to institute, defend, and conduct the suit on behalf of the minor.
- Protection of Interest – It is his primary duty to act honestly and diligently to safeguard the minor's interests.
- Engaging Advocate – He may appoint an advocate and give instructions for proper conduct of the case.
- No Compromise Without Leave – He cannot compromise, withdraw, or abandon the suit without prior permission of the Court (Rule 7).
- Effect of Unauthorized Compromise – Any compromise or agreement made without leave of the Court is voidable at the instance of the minor.
- Liability for Costs – The Court may order the guardian or next friend to pay costs personally if he acts improperly or negligently.
- Removal by Court – The Court may remove the guardian or next friend if he has an adverse interest or fails to protect the minor.
- Substitution – On removal or incapacity, the Court may appoint another suitable person as guardian or next friend.

7. Retirement, removal or death of guardian or next friend-

a. Retirement of Next Friend

- The next friend of a minor may retire from the suit.
- Retirement requires permission of the Court.
- Notice of the application must be given to:
 - The minor (if capable), and
 - The proposed new next friend.
- Court will appoint another next friend to protect the minor's interest.
- Suit does not abate due to retirement.

b. Removal of Next Friend or Guardian

- The Court may remove a next friend or guardian on application or suo motu.
- Grounds for removal:
 - Interest averse to the minor
 - Negligence or misconduct
 - Failure to perform duties
 - Any reason prejudicial to the minor's interest
- Court must appoint a fit and proper person as replacement.

c. Stay of Proceedings on Removal or Retirement

- When a next friend or guardian:
 - Retires, or
 - Is removed,
- The Court shall stay the proceedings until:
 - A new next friend or guardian is appointed.
- Purpose: Protection of minor's legal rights.

d. Death of Next Friend or Guardian

- If the next friend or guardian dies during pendency of the suit:
 - The suit does not abate.

- Court shall:
 - Stay proceedings temporarily
 - Appoint a new next friend or guardian for the minor
- Proceedings resume after appointment.

8. Decree against minor- No decree can be passed against a minor unless a guardian for the suit is duly appointed by the Court. A decree passed without such appointment is not binding on the minor and is null and void, as it violates the requirement of proper representation and protection of the minor's interests.

9. Minor attaining majority- On attaining majority, the minor must elect whether to continue or abandon the suit. If he elects to proceed, the next friend or guardian is discharged, and the suit continues in the minor's own name; if he chooses not to proceed, the suit may be dismissed or he may apply for appropriate relief. The Court records the election to ensure the proceedings continue lawfully.

SUITS BY INDIGENT PERSON: Order 33

1. Nature and scope- A suit by an indigent person is a special procedure that allows a person having no sufficient means to pay court fees to institute a suit without paying such fees at the initial stage. The nature of this provision is beneficial and remedial, intended to ensure access to justice and equality before law. Its scope extends to civil suits where the plaintiff satisfies the conditions of indigence, subject to court inquiry and safeguards to prevent misuse. The court fee is payable only if the plaintiff succeeds or as directed by the court.

2. Object- The object of allowing suits by indigent persons is to ensure access to justice to those who are unable to pay court fees due to poverty. It aims to prevent denial of legal remedies on financial grounds, uphold the principle of equality before law, and enable genuine claims to be heard while safeguarding against abuse through judicial scrutiny.

3. Indigent person: Meaning- An indigent person is one who does not possess sufficient means to pay the court fee required for instituting a suit. A person is also treated as indigent if, after excluding necessary wearing apparel and tools of trade, he has no property of value other than the subject-matter of the suit.

4. Contents of application- An application to sue as an indigent person shall contain the same particulars as a plaint, including the cause of action and relief claimed, and must be signed and verified like a plaint. It shall also include a schedule of all movable and immovable property belonging to the applicant, with estimated values.

5. Rejection of application-

The Court shall reject an application to sue as an indigent person if-

- The applicant is not an indigent person.
- The applicant has fraudulently disposed of property within two months before applying, to appear indigent.
- The application does not disclose a cause of action.
- The suit appears to be barred by law.
- The applicant has entered into an agreement giving another person an interest in the subject-matter of the suit.
- The application is not framed or presented in the manner prescribed under Rules 2 and 3.

- 6. Inquiry-** The Court may conduct an inquiry, either itself or through its officer, to determine whether the applicant is truly an indigent person, by examining evidence and circumstances relating to his financial capacity, so as to prevent misuse of the provision.
- 7. Where permission is granted-** When permission to sue as an indigent person is granted, the application is registered as a plaint and the suit proceeds in the same manner as an ordinary suit, without payment of court fees at the initial stage. The plaintiff is entitled to all procedural benefits, and under Rule 9A, the Court may assign a pleader to assist the indigent person if necessary, ensuring effective access to justice.
- 8. Where permission is rejected-** When permission to sue as an indigent person is rejected, the applicant may institute the suit in the ordinary manner by paying the requisite court fees, and the rejection does not bar a fresh suit on the same cause of action. Under Rule 15A, the Court may allow the applicant reasonable time to pay the court fee, and upon such payment, the suit shall proceed as a regular suit.
- 9. Revocation of permission-** Permission granted to sue as an indigent person may be revoked by the Court if the plaintiff is no longer indigent, has obtained permission by fraud or misrepresentation, or enters into an agreement giving another person an interest in the subject-matter of the suit. Upon revocation, the Court may direct the plaintiff to pay the court fees, failing which the suit may be dismissed.
- 10. Recovery of court fees and costs-**

 - a. Where indigent person succeed- Court shall calculate he fees and costs and recover from the party.

b. Where indigent person fails- The court shall order the indigent person to pay court fees and costs accordingly.

11. Realization of court fees- Government can recover court fees from the party as per directions given by the court. In case of death of such plaintiff the court fees would be recovered from the estate of the deceased plaintiff.

12. Set off or counter claim- Indigent person may claim set off or counter claim without paying fees.

13. Appeal- An order rejecting an application to sue as an indigent person is appealable.

14. Appeals by indigent persons- An indigent person may file an appeal without paying the court fee, similar to filing a suit as an indigent person. The Court may require proof of indigence and grant permission to proceed. If the appeal succeeds, the appellate proceedings continue like an ordinary appeal. If the appeal is dismissed or permission was obtained by misrepresentation, the Court may direct payment of court fees and costs, ensuring protection against misuse while maintaining access to justice.

INTER-PLEADER SUIT

1. Meaning- Means to litigate with each other to settle a point concerning to a third party.

2. Nature and scope- A person who holds property, money, or goods but faces claims from two or more parties and is uncertain about the rightful claimant. Its nature is preventive, seeking protection from multiple liabilities rather than asserting personal rights, while its scope includes disputes over bank deposits, insurance claims, rent, or goods in custody,

helping the Court determine the legitimate claimant and avoiding multiple litigations against the stakeholder.

3. Object- The main object of an inter-pleader suit is to protect a stakeholder from multiple liabilities when two or more parties claim the same property, money, or goods. It ensures that the stakeholder can deposit or deliver the disputed subject-matter under the Court's direction, and enables the Court to adjudicate the rights of all claimants fairly, thereby preventing conflicting claims and unnecessary litigation.

4. Conditions-

- The person is in possession of money, goods, or property claimed by two or more parties.
- The person does not claim any interest in the money, goods, or property beyond delivery or payment to the rightful claimant.
- There exists a real and bona fide dispute between the claimants.
- The person is ready to deposit the money, goods, or property in Court or deliver it according to the Court's order.

5. Illustrations-

- a. Bank Deposit:** A bank holds ₹5 lakh deposited by Mr. A. Both Mr. B and Mr. C claim it as due to them. The bank has no personal interest in the amount. To avoid multiple liabilities, the bank files an inter-pleader suit, depositing the money in Court and asking the Court to decide the rightful claimant.
- b. Goods in Custody:** A warehouse stores goods belonging to X. Both Y and Z claim ownership. The warehouse, not claiming any interest, can file an inter-pleader suit to have the Court determine who is entitled to the goods.

6. Who may file interpleader suit-

An inter-pleader suit can be filed by any person who is in possession of money, goods, or property claimed by two or more persons, and who does not claim any personal interest in the subject-matter except charges and cost and is ready to delivery or payment to the rightful claimant.

For examples-

- Banks or financial institutions holding disputed deposits.
- Warehouses or custodians holding goods.
- Employers liable to pay salaries or dues claimed by multiple parties.
- Insurance companies facing claims from multiple beneficiaries.

7. Who cannot file interpleader suit?

- Agent against principal;
- Tenant against landlord.

8. Procedure- The inter-pleader suit is filed like an ordinary suit, with the plaintiff disclosing all claimants and their claims. The Court summons the claimants to state their claims in writing and may allow the plaintiff to deposit the money, goods, or property in Court. The Court then adjudicates the suit based on the claimants' submissions, and if claimants fail to appear, it may proceed ex parte. Finally, the Court directs delivery of the money, goods, or property to the rightful claimant, awards costs if necessary, and discharges the plaintiff from further liability.

9. Appeal- An order dismissing the interpleader suit is a decree hence appealable.

INTERIM ORDERS

1. Introduction- Interim orders are temporary directions issued by a court during the pendency of a suit or proceeding to protect the rights of the parties, prevent prejudice, or maintain the status quo until the final decision is made. They are not final judgments but are intended to ensure justice is not frustrated while the matter is being adjudicated. Examples include injunctions, stay of proceedings, appointment of receivers, or interim custody orders. The scope of interim orders is broad and discretionary, allowing the court to act swiftly to prevent irreparable harm or prejudice to any party.

2. Commissions-

a. Issue of commissions- Section 75 CPC empowers the Court to appoint a commissioner to perform specific functions in a suit when it is necessary to complete justice.

b. Object-

- To examine witness.
- Conduct local inspection/investigation of any property.
- To adjust accounts.
- To make partition.
- Measure, weigh, or value goods, land, or other materials.
- Make a report regarding accounts, documents, or other facts.
- Execute any act which the Court itself cannot conveniently perform.

The objective is to assist the Court in gathering evidence or performing ministerial acts to ensure fair and efficient adjudication of the dispute. The commissioner acts under the direction and control of the Court, and

their report is treated as evidence, subject to the parties' right to examine it.

3. Powers-

- Summon persons to assist in performing the commission.
- Inspect documents, property, or places relevant to the suit.
- Take measurements, samples, or photographs as directed by the Court.
- Administer oaths or affirmations to witnesses examined during the commission.
- Call necessary assistance, including experts or officials, to efficiently carry out the commission.

4. Expenses-

- Court may order the plaintiff, defendant, or both to pay the expenses.
- Expenses include commissioner's fees, travel, assistance, and other necessary costs.
- The Court may adjust costs in the final decree, allowing the successful party to recover or be reimbursed.

5. Commissions for foreign tribunals- The Court may issue a commission for examining witnesses or documents in a foreign country. Any party can apply for such a commission, which is issued through the proper channels, usually via the Central Government or diplomatic mission, respecting international law. The foreign authority executes the commission according to its own procedure, and the evidence or report is returned to the Court to be used in the suit, subject to the parties' right to cross-examine where feasible. These rules enable parties to collect evidence from abroad while complying with foreign jurisdiction and procedures.

6. Limitations-

- The commissioner cannot decide the merits of the case; their role is ministerial and evidentiary.
- They must act under the directions of the Court and cannot exercise independent judicial authority.
- They cannot compel parties beyond the powers conferred by the Court.
- Commissions cannot be used for illegal acts or acts beyond the Court's jurisdiction.
- He cannot act which need to be done exclusively by court.

7. Evidentiary value of the report of commissioner- Prima facie piece of evidence and cannot be rejected except on sufficient grounds.

8. Issuance of commission by Supreme Court or High Court-Order 26 do not apply to issuance of commission by the Supreme Court or High Court.

ARREST BEFORE JUDGMENT: Order 38 Rule 1-4.

1. Nature and scope- Arrest before judgment is an extraordinary and preventive remedy under Order XXXVIII CPC, intended to ensure the presence of the defendant who is likely to abscond or dispose of property to avoid satisfying a decree. It applies only in specific cases such as recovery of money payable under a contract. The scope is limited and discretionary, the Court exercises caution to balance the plaintiff's interest in securing the debt against the defendant's personal liberty, and such arrest is allowed only under strict conditions prescribed by the Rules.

2. Object- The main object of arrest before judgment is to prevent the defendant from absconding or disposing of property to avoid payment of a

debt or decree. It is a protective and preventive measure that ensures the plaintiff's rights are secured while the suit is pending, without waiting for the final judgment. It balances the plaintiff's interest in recovery with the defendant's personal liberty, and is granted only under strict judicial discretion.

3. Grounds-

- The suit is for the recovery of money due under a contract or negotiable instrument.
- The defendant is likely to abscond or leave the jurisdiction of the Court.
- There is a real risk of the defendant disposing of, concealing, or diminishing assets to frustrate the decree.

4. Discretionary of court- To order arrest before judgment is entirely discretionary. The Court examines the facts and circumstances of each case, including:

- Whether the plaintiff's claim is bona fide and likely to succeed.
- The risk of the defendant absconding or disposing of assets.
- The conduct and circumstances of the defendant.

The Court may refuse arrest if it appears that the defendant's liberty would be unreasonably curtailed or the plaintiff's apprehensions are not justified. This discretionary power ensures a balance between the plaintiff's interest and the defendant's personal liberty.

5. Conditions-

- Suit must be bona fide and
- Court must be reason to believe that defendant will remove himself or his property from the ambit of the powers of the court.

6. Security- When arrest before judgment is sought, the Court may direct the defendant to furnish security to ensure his appearance or to satisfy any decree that may be passed. The defendant may avoid arrest by showing cause or by furnishing sufficient security as ordered by the Court. If the defendant fails to show cause or provide security, the Court may order his arrest. Conversely, if security is furnished or cause is shown to the satisfaction of the Court, the defendant shall not be arrested or shall be released, reflecting the Court's discretionary and protective approach.

7. Where arrest before judgment not allowed-

- In case of suit for immovable property specified in section 16 (a) to (d);
- To convert unsecured debt in to secure debt;
- To ensure easy execution of decree.

8. Appeal- An order passed under order 38 rule 2, 3 and 6, is appealable.

9. Revision- An order passed under order 38 rule 1 regarding arrest, is case decided under section 115 and hence revisable.

10. Arrest on insufficient grounds- The Court may award reasonable compensation up to ₹50,000, including compensation for expenses, injury, or injury to reputation, subject to its pecuniary jurisdiction. An order passed under this section bars any separate suit for compensation in respect of such arrest, attachment, or injunction.

ATTACHMENT BEFORE JUDGMENT Order 38 rule 5-13

1. Nature and scope- Attachment before judgment under Order XXXVIII Rules 5–13 is a preventive and protective remedy intended to secure the subject-matter of the suit and prevent the defendant from defeating the

execution of a possible decree by disposing of or removing property. Its scope is limited and discretionary, exercised only when the Court is satisfied that the defendant acts with intent to obstruct or delay execution. It does not create rights in favor of the plaintiff, nor does it determine ownership, but merely preserves property until adjudication, while safeguarding third-party rights and procedural fairness.

2. Object- The object of attachment before judgment is to prevent the defendant from defeating the execution of a possible decree by disposing of, concealing, or removing property during the pendency of the suit. It is a protective measure to secure the plaintiff's interests, ensure the effectiveness of the final decree, and maintain the integrity of judicial proceedings, without deciding the rights of the parties in advance.

3. Grounds-

- About to dispose of the whole or any part of his property, or
- About to remove the whole or any part of his property from the local limits of the Court's jurisdiction.

4. Attachment on Failure to Show Cause or Furnish Security

- If the defendant fails to show cause or furnish security, the Court may order attachment.
- If cause is shown or security furnished, attachment shall be withdrawn.

5. Mode of Attachment-

Attachment shall be made in the same manner as attachment in execution of a decree.

6. Adjudication of Claims-

Claims to property attached before judgment are adjudicated like claims in execution proceedings.

7. Removal of Attachment-

Attachment shall be removed when security is furnished with costs, or when the suit is dismissed.

8. Rights third party-

- Attachment before judgment does not affect rights of third parties.
- It does not bar other decree-holders from seeking sale in execution.

9. No Re-Attachment After Decree

Property attached before judgment need not be re-attached after decree in plaintiff's favor.

10.Provisions Applicable

- Rules relating to attachment in execution apply to attachment before judgment.
- Attachment does not revive automatically if a suit dismissed for default is restored.

11.Exemption from attachment-

Agricultural produce in possession of an agriculturist cannot be attached before judgment.

12.Small Cause Court-

A Small Cause Court cannot attach immovable property before judgment.

13.Determination of attachment-

- Attachment is removed when the defendant furnishes required security along with costs of attachment (Rule 9).
- Attachment is withdrawn if the defendant shows sufficient cause to the satisfaction of the Court (Rule 6).
- Attachment comes to an end when the suit is dismissed (Rule 9).
- If a decree is passed in favor of the plaintiff, the attachment continues without re-attachment and operates as attachment in execution (Rule 11).
- Attachment does not revive automatically if a suit dismissed for default is later restored (Rule 11-A).

14.Appeal- An order passed under order 38 rule 6 is appealable.

15.Revision- An order granting or refusing attachment before judgment is a case decided under section 115 hence revisable.

16.Wrongful attachment- A suit for damages is maintainable for wrongful attachment of property.

17.Attachment on insufficient grounds- The Court may award reasonable compensation up to ₹50,000, including compensation for expenses, injury, or injury to reputation, subject to its pecuniary jurisdiction. An order passed under this section bars any separate suit for compensation in respect of such arrest, attachment, or injunction.

TEMPORARY INJUNCTION: Order 39 rule 1-5

1. Introduction- A temporary injunction is an interim relief granted by the Court during the pendency of a suit to preserve the subject-matter, maintain

status quo, and prevent irreparable injury until the final decision. Governed by Order XXXIX of the Code of Civil Procedure, it is a discretionary and equitable remedy, granted on well-settled principles such as prima facie case, balance of convenience, and likelihood of irreparable harm, ensuring that justice is not defeated by delay or wrongful acts of a party.

2. Meaning- A temporary injunction is an order of the Court by which a party is restrained from doing a particular act for a limited period, usually during the pendency of a suit, in order to protect the subject-matter of the dispute and prevent irreparable injury until the rights of the parties are finally determined.

3. Stay and injunction- Stay is an order of the Court by which the continuation of judicial proceedings is temporarily suspended, either wholly or partly, to prevent multiplicity of proceedings or abuse of process. It operates on the court or proceedings themselves.

Injunction is an order directing a party to do or refrain from doing a particular act, usually to protect rights or property during the pendency of a suit. It operates on the person, not on the proceedings.

4. Object- The object of stay is to suspend proceedings in order to prevent multiplicity of litigation, conflicting decisions, or abuse of the judicial process. The object of an injunction is to prevent threatened or continuing injury by restraining a party from doing a particular act, thereby preserving the subject-matter of the dispute and ensuring that the final relief is not rendered ineffective.

5. Types-

- Temporary injunction;
- Permanent injunction;

- Preventive, prohibitive or restrictive injunction;
- Mandatory injunction.
- Interim or ad-interim injunction.

6. Who may apply- Generally plaintiff alone can apply for temporary injunction but in some cases defendant may also apply for it.

7. Against whom injunction may be issued- Against party to the suit and not against strangers.

8. Grounds-

- The property in dispute is in danger of being wasted.
- The property is likely to be damaged.
- The property may be alienated by any party to the suit.
- The property is in danger of being wrongfully sold in execution of a decree.
- The defendant intends to remove or dispose of his property to defraud creditors.
- The defendant threatens to dispossess the plaintiff.
- The defendant threatens to cause injury to the plaintiff in relation to the property in dispute.

9. Principles- Before granting injunction, court must be satisfied below factors-

- Prima facie case in favor of plaintiff;
- Irreparable loss of plaintiff if injunction not granted;
- Balance of convenience of both the parties;
- Other factors/conduct of the parties.

10. Injunction to Restrain Breach or Injury- The Court may grant a temporary injunction to restrain breach of contract or other injury, whether or not compensation is claimed, and may impose conditions such as duration, security, or maintenance of accounts.

11. Consequence of Disobedience- If an injunction is disobeyed, the Court may order attachment of property and civil imprisonment up to three months. Continued disobedience may lead to sale of attached property and compensation to the injured party.

12. Notice Before Granting Injunction- Ordinarily, the Court must give notice to the opposite party before granting an injunction. If granted without notice, reasons must be recorded, and copies of pleadings and documents must be supplied immediately.

13. Disposal Within 30 Days- Where an ex parte injunction is granted, the Court should endeavor to dispose of the application within 30 days, recording reasons for delay if unable to do so.

14. Discharge, Variation or Setting Aside- An injunction may be discharged, varied, or set aside on application by an aggrieved party, especially if obtained by false or misleading statements or due to change in circumstances or undue hardship.

15. Injunction Against Corporation- An injunction against a corporation is binding not only on the corporation but also on its officers and members whose actions are restrained.

16. Res judicata- Apply to application for temporary injunction.

17.Appeal- An order refusing or granting injunction is appealable. If ex parte order obtained regarding injunction and application is not decided within 30 days such ex parte order also appealable.

18.Revision- An order refusing or granting injunction is case decided under section 115 hence revisable. +

APPOINTMENT OF RECEIVERS: Order 40

1. Meaning- A receiver is a person appointed by the Court to take custody, manage, or preserve property that is the subject of a dispute during the pendency of a suit. The receiver acts as an officer of the Court and is responsible for protecting the property, collecting income, and ensuring its proper administration until the Court decides the rights of the parties. The main purpose is to prevent loss, waste, or mismanagement of the property and to secure the interests of all parties involved in the litigation.

2. Object- The main object of appointing a receiver is to protect and manage property that is the subject of litigation during the pendency of a suit. It ensures that the property is preserved, rents and profits are collected, and mismanagement or waste is prevented. By placing the property under the control of a neutral officer of the Court, the remedy safeguards the interests of all parties and secures the effectiveness of any final decree.

3. Appointment of Receivers-

The Court may, when just and convenient, by order:

- a) Appoint a receiver of any property, before or after decree.
- b) Remove any person from possession or custody of the property (subject to existing rights).

c) Commit the property to the possession, custody, or management of the receiver.

d) Confer powers on the receiver for management, protection, realisation, collection of rents/profits, execution of documents, or to bring/defend suits as the owner could.

4. Remuneration-

The Court may fix, by general or special order, the amount to be paid to the receiver for his services.

5. Duties of Receiver-

- Furnish security if directed.
- Submit accounts periodically as directed.
- Pay amounts due as per Court's directions.
- Be responsible for loss caused by willful default or gross negligence.

6. Enforcement of Duties-

If the receiver fails in duties (accounts, payments, or causes loss), the Court may:

- Attach and sell receiver's property,
- Apply proceeds to compensate for loss or dues,
- Pay any balance to the receiver.

7. Collector as Receiver-

If the property is land paying revenue to Government or revenue-assigned land, the Court may appoint the Collector as receiver with his consent to promote the interests of parties concerned.

8. Who may apply- generally plaintiff apply but in some cases defendant may apply for the same. The stranger to the suit cannot apply.

9. Who may appoint receivers- Trial court or appellate court.

10. Who may be appointed as receiver? A person who is independent, impartial and not interested in a suit can be appointed as a receiver. In special circumstances the party to the suit can be appointed as a receiver.

11. Appeal- An order appointing or refusing to appoint a receiver is appealable.

12. Revision- An order appointing or refusing to appoint a receiver is case decided under section 115 and hence revisable.

APPEALS

FIRST APPEAL

1. Meaning- An appeal is a legal process by which a party aggrieved by a decision or order of a lower court requests a higher court to review and modify or reverse that decision. It is a statutory right provided under the Code of Civil Procedure and aims to ensure that errors of law or fact committed by the lower court can be corrected, thereby securing justice between the parties.

2. Essentials-

- a. Existence of a Judgment or Order:** There must be a decidable order or decree passed by a competent court.
- b. Aggrieved Party (Appellant):** The person filing the appeal must be directly affected or dissatisfied by the decision.
- c. Competent Appellate Court:** The appeal must be filed in a court having jurisdiction to hear and decide appeals.

d. Within limitation: The appeal must be filed within the period prescribed by law.

3. Right to appeal- Appeal is statutory right and not a natural right.

4. Suit and appeal- A suit is a civil proceeding initiated by a plaintiff in a court to enforce a right or claim and obtain a legal remedy. It is part of the original proceedings, where the court examines the facts and law to grant a decree or order in favor of the plaintiff. An appeal, on the other hand, is filed by an aggrieved party who is dissatisfied with a judgment or order of a lower court, seeking a higher court's review to modify, reverse, or affirm that decision. While a suit begins in a court with original jurisdiction, an appeal is heard by a court with appellate jurisdiction. Essentially, a suit initiates the litigation, whereas an appeal is a subsequent proceeding aimed at correcting or challenging the decision in the suit.

5. Conversion of appeal into revision- In certain circumstances, a court may treat an appeal as a revision, particularly when the appeal has been filed in a wrong forum or does not comply with the procedural requirements of an appeal but raises questions that can be examined under the powers of revision. The higher court, instead of dismissing the case outright, may exercise its revisional powers to review and correct errors in the lower court's order or decision. This ensures that substantial justice is done despite procedural irregularities, and the rights of the aggrieved party are not defeated due to technical defects.

6. Who may appeal?

- Aggrieved party to the suit;
- The person bound by the decree but aggrieved by the decree;
- Guardian appointed by the court;

- Any other person with the leave of the court.

7. Appeal by plaintiff /defendant against co-plaintiff/co-defendant-

Normally no appeal lies against co-plaintiff/defendant but in exceptional cases it can be filed.

8. Who cannot appeal-

- Party agreed not to appeal;
- Waives right to appeal;
- Person has accepted benefits under a decree

9. Appeal against ex parte decree- The defendant may file an appeal against ex parte decree or may file application for setting aside ex parte decree.

10.No appeal in certain cases-

- No appeal against consent decree;
- No appeal in petty cases;
- No appeal against final decree where no appeal against preliminary decree;
- No appeal against findings.

11.Appeal against preliminary decree- Where appeal against preliminary decree is allowed, the final decree falls to the ground that there is no preliminary decree to support the final decree.

12.Appeal against judgment- There is appeal from decree and not from judgment, however, party may file appeal against judgment if decree is not drawn up.

13.Appeal against dead person- Appeal against dead person not allowed. Party may apply for substitution of the legal representative of the deceased respondent.

14.Limitation- 90 days in case of appeal in High Court and in any other cases
30 days from the date of decree or order.

15.Form of appeal-

- very appeal shall be preferred in the form of a memorandum of appeal.
- The memorandum must be signed by the appellant or his pleader.
- It shall set forth concisely and under distinct heads the grounds of objection to the decree.
- It must be accompanied by a certified copy of the decree appealed from (and judgment, if required).

16.Grounds of Appeal- The appellant shall not be heard on any ground not set forth in the memorandum. However, the appellate court may, for sufficient cause, allow the appellant to urge other grounds.

17.Rejection or Amendment of Memorandum- If the memorandum is not drawn up properly, the court may reject it or Allow the appellant to amend the memorandum within a fixed time.

18. One Appeal from Several Decrees- One appeal may be filed from two or more decrees passed in the same suit, Provided the decrees are between the same parties and the appeal is competent.

19.Valuation in appeal- The valuation of an appeal is generally the same as the valuation of the suit in the trial court, and it is determined according to the subject-matter in dispute in the appeal. The appellant must state the correct valuation in the memorandum of appeal and pay the appropriate court fee. Where only a part of the decree is challenged, the valuation is

limited to the value of the relief actually appealed against, and not the entire decree.

20.Presentation of appeal- Under Rule 9, an appeal is presented by filing the memorandum of appeal along with the required court fees and copies before the proper appellate court or an officer authorized by it. Rule 10 empowers the appellate court, when the appeal is presented after limitation or with defects, to return the memorandum for amendment, re-presentation, or compliance with requirements, and upon such compliance within the allowed time, the appeal is treated as duly presented.

21.Condonation of delay- When an appeal is filed after the prescribed period of limitation, the appellant must file a separate application explaining the delay. The court may condone the delay if it is satisfied that there was sufficient cause for not filing the appeal in time, and the appeal shall be heard only after the delay is condoned.

22.Stay of proceedings- Under Order 41 Rules 5–8, the filing of an appeal does not automatically operate as a stay of proceedings under the decree appealed from. The appellate court may grant a stay of execution if it is satisfied that substantial loss may result to the appellant unless the stay is granted, the application is made without unreasonable delay, and security is furnished for due performance of the decree. The court may impose conditions while granting stay, and such stay remains subject to further orders of the court.

23.Summary disposal- Under Order 41 Rule 11, the appellate court may summarily dismiss an appeal at the admission stage after hearing the appellant or his pleader, if it finds no sufficient ground for proceeding further, without issuing notice to the respondent. Rule 11A requires that

where an appeal is not dismissed summarily, the court shall endeavor to finally dispose of the appeal within one year from the date of service of notice on the respondent.

24.Abatement of appeal- Provision of abatement of suits also apply to the appeal.

25.Admission of appeal- Under Order 41 Rule 12, when an appeal is not dismissed summarily, the appellate court admits the appeal and fixes a date for hearing. As per Rule 14, the court then issues notice of the appeal to the respondent, requiring him to appear and be heard on the specified date, and such notice shall be served in the manner prescribed.

26.Doctrine of merger- Once the appeal is decided the decree of the trial court ceases automatically.

27.Procedure at hearing- The appellate court hears the appellant and the respondent. If the appellant does not appear, the court may dismiss the appeal for default; if the respondent does not appear, the appeal may be heard ex parte. The court may then pronounce judgment after hearing the parties. Provision is also made for re-hearing of an appeal dismissed for default and for setting aside an ex parte decree in appeal on sufficient cause being shown.

28.Addition of respondent- Where it appears to the appellate court that a person who was a party to the suit but has not been made a respondent in the appeal is necessary for the effective and complete adjudication of the appeal, the court may direct such person to be added as a respondent and issue notice to him, even if the period of limitation has expired.

29. Cross-objections- A respondent, though he has not filed an appeal, may file cross-objections against any part of the decree which is against him, within one month from the date of service of notice of the appeal. Cross-objections have the same force as a cross-appeal and can be heard and decided along with the main appeal, even if the original appeal is withdrawn or dismissed.

30. Powers of appellate court-

- a. Power to determine case finally-** The appellate court may finally decide the case itself if the evidence on record is sufficient.
- b. Power of remand-** The court may remand the case when the trial court disposed of the suit on a preliminary point and the decree is reversed in appeal.
- c. Remand in other cases-** The court may remand the case even when disposed of otherwise than on a preliminary point, if a re-trial is necessary.
- d. Framing of issues and reference for trial-** The appellate court may frame additional issues and refer them to the trial court for findings.
- e. Taking additional evidence-** Court may allow additional evidence if it is necessary for pronouncing judgment or for any other substantial cause.
- f. Mode of taking additional evidence-** The appellate court may itself take such evidence or direct the trial court to do so.
- g. Power to call for records-** The court may direct production of documents or witnesses for proper adjudication.
- h. General powers under Section 107-** The appellate court has the same powers as the trial court, subject to prescribed conditions and limitations.

- i. **Wide discretionary power (Rule 33)** – The appellate court may pass any decree or order which ought to have been passed, even in favour of a party who has not appealed or filed cross-objections, to do complete justice.

31. Duties of appellate court-

- a. Duty to decide appeal finally;
- b. Not to interfere with decree for technical errors;
- c. To re-appreciate evidence;
- d. To record reasons;
- e. Other duties.

32. Judgment- Under Section 98 and Order 41 Rules 30–34, the appellate court pronounces its judgment after hearing the parties, stating the points for determination, decisions on each point, reasons, and relief granted. Where the appeal is heard by multiple Judges, the majority opinion prevails, and dissenting opinions are recorded separately. Following the judgment, a decree is drawn up in accordance with the decision, clearly specifying the relief granted or refused, ensuring transparency and finality in the appellate process.

33. Letters patent appeal- A Letter Patent Appeal (LPA) is a special appeal available under the Letters Patent of a High Court, allowing a party to challenge the decision of a single Judge before a Division Bench of the same High Court. It can be filed against final or interlocutory orders of the single Judge and is designed to correct errors without approaching the Supreme Court. The procedure, limitation, and powers for LPA are governed by the High Court's Letters Patent and rules, and it is usually heard and decided by two or more Judges of the Division Bench.

SECOND APPEAL: Section 100-103, 107-108 and order 42

- 1. General-** A second appeal is an appeal to a High Court against the decree passed by a lower appellate court. Unlike the first appeal, a second appeal is not a matter of right in all cases; it lies only on substantial questions of law arising from the first appellate court's decision.
- 2. Object-** The purpose is to ensure uniformity in law and prevent miscarriage of justice in cases where important legal principles are involved. The main object of a second appeal is to correct errors of law committed by the lower appellate court, ensure uniformity in the interpretation of law, and prevent miscarriage of justice in cases where substantial questions of law arise. It is intended to provide a limited supervisory jurisdiction to the High Court over decisions of lower appellate courts, rather than re-examining all facts of the case.
- 3. Second appeal and first appeal-** A first appeal is filed against a decree or order of a trial court and is primarily concerned with both facts and law, allowing the appellate court to re-examine evidence and pass appropriate orders. In contrast, a second appeal is filed against the decree of a lower appellate court and is limited to substantial questions of law, not questions of fact. While the first appeal is generally a matter of right, the second appeal lies only under specific circumstances as provided by Sections 100–103 CPC, making its scope more restricted and focused on ensuring correct application of legal principles.
- 4. Second appeal and revision-** A second appeal is a statutory appeal to the High Court against the decree of a lower appellate court, primarily on substantial questions of law, and the High Court has the power to confirm, reverse, or modify the decree. Revision, on the other hand, is a supervisory

jurisdiction exercised by a higher court to correct errors of law, jurisdiction, or procedure in the orders of a lower court, without being an appeal and generally does not require a substantial question of law. While a second appeal is filed as of right in specified cases, revision is discretionary and depends on the higher court's satisfaction that correction is necessary to prevent injustice or abuse of process.

5. Substantive question of law- A substantive question of law refers to a question regarding the interpretation or application of law that has a direct effect on the outcome of the case. In the context of a second appeal under Sections 100–103 CPC, the High Court entertains an appeal only if a substantial question of law arises from the decree of the lower appellate court. It does not concern mere questions of fact, but focuses on issues such as-

- Interpretation of statutes or legal provisions.
- Violation of principles of law or legal procedure.
- Errors in applying law to the facts that materially affect the decision.

6. No second appeal in certain cases-

- A second appeal shall not lie except on the grounds specified in Section 100, i.e., only when a substantial question of law is involved.
- No second appeal lies on questions of fact or re-appreciation of evidence.
- No second appeal lies in suits of the nature cognizable by Courts of Small Causes.
- The bar applies when the value of the subject-matter does not exceed the prescribed limit.
- To reduce frivolous litigation and ensure finality of decisions in petty cases.

7. No letters patent appeal- No further appeal shall lie against a judgment, decree, or order passed by a single Judge of a High Court while exercising appellate jurisdiction, whether under the Code of Civil Procedure or any other law. The object of this provision is to prevent multiplicity of proceedings, reduce delays, and ensure finality of decisions, making the judgment of the single Judge final except for an appeal to the Supreme Court, where permissible.

8. Limitation- Within 90 days from the date of decree or order of lower appellate court.

9. Form of appeal-

- A second appeal shall be filed by a memorandum of appeal.
- The memorandum must be addressed to the High Court.
- It shall be signed by the appellant or his pleader.
- It must clearly state the substantial question(s) of law involved.
- The grounds of appeal shall be set out concisely.
- It must be accompanied by certified copies of the decree and judgment of the lower appellate court.
- The appeal shall comply with the procedure prescribed under Order 42 CPC, which generally follows the rules applicable to first appeals.

APPEAL FROM ORDER

1. General- An appeal from order is an appeal provided under the Code of Civil Procedure against certain orders of a court, as distinguished from

decrees. Such appeals are not available against all orders, but only against those expressly made appealable by law, mainly under Section 104 and Order 43 CPC. The object of an appeal from order is to correct serious errors in important interlocutory or final orders that affect the rights of the parties, while avoiding unnecessary delay by restricting appeals in minor procedural matters.

- 2. Order: Meaning-** An order is the formal expression of any decision of a civil court which is not a decree, as defined under Section 2(14) of the Code of Civil Procedure, 1908. It may decide a procedural or substantive matter during the pendency of a suit or proceeding, but it does not finally determine the rights of the parties as a decree does.
- 3. Appealable orders-** Under Section 104 CPC read with Order 43 Rule 1, an appeal lies from only those orders which are expressly made appealable by the Code. These include orders such as granting or refusing temporary injunctions, appointing or refusing to appoint a receiver, setting aside or refusing to set aside a sale, return of plaint, and other important orders enumerated in Order 43 Rule 1. No appeal lies from any other order unless expressly provided by law, ensuring that only substantial and significant orders are subject to appellate scrutiny.
- 4. Other orders-** No separate appeal lies from orders which are not expressly appealable. However, any error, defect, or irregularity in such non-appealable orders may be challenged in an appeal from the final decree or appealable order, provided it has affected the decision of the case. This provision ensures that minor or interlocutory orders do not cause delay through multiple appeals, while still allowing correction of substantial errors at the final stage.

- 5. Res judicata-** The principle of res judicata applies to an appeal from order in the same manner as it applies to suits and appeals from decrees. Once an appealable order has been decided by a competent court and the decision has attained finality (either because no appeal was filed or the appeal was decided), the same issue cannot be re-agitated between the same parties in a subsequent appeal or proceeding. This ensures finality of judicial decisions and prevents multiplicity of litigation, even in matters arising from interlocutory order.
- 6. Limitation-** The limitation for filing an appeal from an order is generally 30 days from the date of the order, as prescribed under the Limitation Act, 1963. If the appeal is filed beyond this period, the appellant must seek condonation of delay by showing sufficient cause, failing which the appeal is liable to be dismissed as time-barred.
- 7. Forum of appeal-** An appeal from an order shall lie to the court to which an appeal would lie from the decree of the court passing the order.
- 8. Letters patent appeal-** A Letters Patent Appeal (LPA) in matters of appeal from order lies only if it is expressly permitted by the Letters Patent of the concerned High Court and is not barred.
- 9. Appeal to Supreme Court-** An appeal to the Supreme Court from an appealable order lies only if it involves a substantial question of law of general importance.

APPEALS TO SUPREME COURT

- 1. General-** Appeals which are generally restricted to questions of law of general public importance arising from judgments or decrees of High

Courts or other courts. The object is to ensure uniformity in the interpretation of law, protect the fundamental rights, and provide a final forum of appeal in civil matters. Appeals to the Supreme Court are not a matter of right in all cases; they require compliance with jurisdictional and procedural requirements, such as obtaining leave to appeal in certain instances.

2. Conditions-

- Judgment, decree or final order;
- Substantial question of law of general importance;
- Such question need to be decided by Supreme Court.

3. Procedure at hearing-

- a. Application for leave and certificate of fitness-** At the hearing of an appeal to the Supreme Court, the appellant must first apply for leave to appeal, unless the appeal lies as of right. Along with the application, a certificate of fitness is filed, typically by the High Court or the concerned authority, certifying that the case involves a substantial question of law of general importance and is fit for consideration by the Supreme Court. The Supreme Court examines the application, and if satisfied, grants leave, after which the appeal proceeds to be heard on merits.
- b. Security and deposit-** While filing an appeal to the Supreme Court, the appellant may be required to furnish security or deposit a portion of the decretal amount to protect the interests of the respondent. The Court has the discretion to fix the amount of security or deposit and may grant stay of execution of the decree subject to such conditions. Failure to comply with these requirements may result in the appeal being dismissed or stay refused.

- c. Admission of appeal-** Once the Supreme Court is satisfied that the application for leave to appeal and other procedural requirements are in order, it may admit the appeal. The Court then fixes a date for hearing, issues notices to the respondents, and directs the parties to file their respective pleadings and records, ensuring the appeal proceeds in an orderly manner.
- d. Powers of court pending appeal-** The appeal pending in Supreme Court does not affect the right of the decree holder unless the court otherwise directs.
- e. Execution of orders of Supreme Court-** The decrees or orders passed by the Supreme Court are final and binding and are to be executed as a decree of a civil court. The Supreme Court may direct execution through the concerned lower court, specifying the manner in which it should be carried out. These rules ensure that the rights declared by the Supreme Court are effectively enforced, and the decree-holder can seek execution without filing a fresh suit, thereby giving practical effect to the Court's orders.
- 4. Appeal under constitution-** An appeal under the Constitution refers to the appeal to the Supreme Court provided under Articles 132, 133, and 134-A, Art. 136. These appeals arise from judgments, decrees, or orders of High Courts in civil, criminal, or constitutional matters. They are generally limited to cases involving a substantial question of law of general public importance or matters affecting fundamental rights. Such appeals ensure uniformity in the interpretation of law across India and serve as the highest forum of judicial review, providing a mechanism to correct errors of law and uphold justice.

REFERENCE

- 1. General-** A reference is a procedure under the Code of Civil Procedure (Section 113 and Order 46) whereby a subordinate court refers a question of law to the High Court for its authoritative opinion. It is made when the court trying a suit entertains a reasonable doubt on a question of law, particularly involving the validity or interpretation of an Act, Ordinance, or Regulation.
- 2. Object-** The object of a reference is to obtain the authoritative opinion of the High Court on a doubtful or complex question of law arising before a subordinate court. It aims to ensure uniform interpretation of law, avoid errors in legal reasoning, and promote certainty and consistency in judicial decisions, particularly where the validity or interpretation of statutory provisions is involved.
- 3. Conditions-**
 - The reference must arise in a pending suit, appeal, or proceeding before a subordinate court.
 - It must involve a question of law, not a question of fact.
 - The question should be one on which the subordinate court entertains reasonable doubt.
 - The question may relate to the interpretation of law or the validity of any Act, Ordinance, or Regulation.
 - The subordinate court must be competent to try the case and make the reference to the High Court.
- 4. Who may apply-** Any party to the suit or court of civil judicature suo motu. Tribunal cannot a court hence cannot apply.

5. Power and duty of referring court- Duty to refer only when reasonable doubt arisen on question of law. Such question must have arisen between the parties.

6. Power and duty of High Court-

- If new aspect arises on question of law the High Court can consider it;
- To make answer on question referred and send it back to subordinate court;
- Court may refuse to answer and quash it;
- Not to make an order on merits nor can it make suggestions.

7. Costs- Costs shall be the cost in the cause (as per final order). The High Court may direct the referring judge to pay the cost personally.

REVIEW

1. General- A review is a remedy provided under Section 114 and Order 47 of the Code of Civil Procedure, which allows a court to reconsider and correct its own judgment or order in limited circumstances. It is not an appeal but a restricted power of re-examination, exercised to prevent miscarriage of justice due to an error apparent on the face of the record, discovery of new and important matter, or other sufficient reason.

2. Object- To enable a court to correct its own mistakes and prevent miscarriage of justice where an error apparent on the face of the record exists, or where new and important evidence has been discovered. It aims to ensure fairness, accuracy, and justice in judicial decisions.

3. Review: Meaning- A review is the judicial re-examination of a judgment or order by the same court. It allows the court to correct an apparent error, consider newly discovered evidence, or act for any other sufficient reason, but it does not permit a re-hearing of the case on merits like an appeal.

4. When review lies-

- Cases in which no appeal lies;
- Cases in which appeal lies but not preferred;
- Decisions on reference from court of small causes. (CPC allows a review of a judgment on a reference from a small cause court)

5. Grounds-

- Discovery of new and important matter or evidence;
- Mistake or error apparent on the face of the record;
- Any other sufficient reason.

6. Who may make review- The same court and by same judge can make review upon application by the party. The court cannot review his case suo motu. In absence of such judge due to his death etc., the successor court may hear such petition.

7. No inherent power of review- A court has no inherent power to review its own judgment or order. The power of review is purely statutory and can be exercised only when expressly provided under Section 114 and Order 47 CPC or any other specific law. In the absence of such provision, a court cannot review or reconsider its decision, as doing so would violate the principle of finality of judgments.

8. Review and res judicata- Once the review petition decide the principle of res judicata applied and hence subsequent review petition is not maintainable.

9. Limitation- 30 days (other than Supreme Court) from the date of the decree or order.

10. Appeal- An order granting or rejecting a review is not itself appealable as a matter of right. However, when a review is allowed and the original decree or order is modified or reversed, an appeal lies against the new decree or order so passed. If the review petition is rejected, no appeal lies against such rejection, except on limited grounds where the law expressly permits. Thus, the appeal is directed against the resultant decree, not against the mere order refusing review.

REVISION

1. General- Revision is a supervisory jurisdiction of the High Court under Section 115 CPC, exercised to ensure that subordinate courts act within the limits of their jurisdiction. It is not a right of the party, but a discretionary power of the High Court.

2. Object- The object of revision is to enable the High Court to supervise and control subordinate courts and ensure that they act within the bounds of their jurisdiction. It aims to prevent miscarriage of justice arising from jurisdictional errors, such as excess of jurisdiction, failure to exercise jurisdiction, or material irregularity in the exercise of jurisdiction. Revision is intended to correct grave procedural defects and illegal exercise of authority, and not to substitute the High Court as a court of appeal or to re-examine findings of fact.

3. Meaning- To revise, to look again, to go through carefully and correct necessary.

4. Revision and writ- The revisional power is clearly in the nature of power to issue a writ of certiorari, however, revision and writ jurisdiction are both supervisory remedies, but they differ in scope and purpose. Revision under Section 115 CPC is exercised by the High Court over subordinate civil courts to correct jurisdictional errors.

5. Who may file? A person aggrieved by the order by court or the High Court also sou motu exercise revisional jurisdiction.

6. Conditions-

- Case decided;
- Case decided by the court subordinate to High Court;
- Order passed by such court is not appealable;
- The subordinate court must have-
 - exercised jurisdiction not vested in it by law;
 - failed to exercise jurisdiction vested in it;
 - Acted in the exercise of jurisdiction illegally or with material irregularity.

7. Limitation- 90 days from the date of decree or order.

CAVEAT

1. General- A caveat under Section 148-A of the Code of Civil Procedure is a preventive legal remedy by which a person apprehending that an application may be made against him in a suit or proceeding seeks a right

of prior notice and hearing before any interim order is passed. It enables the caveator to appear before the court at the earliest stage and oppose the grant of any ex parte order. The provision is based on the principles of natural justice and aims to avoid unnecessary hardship caused by one-sided interim orders. A caveat can be filed in any civil court where such an application is expected to be made.

- 2. Meaning-** A caveat means a formal notice given to the court by a person who expects that an application may be filed against him, requesting the court not to pass any order on such application without giving him prior notice and an opportunity of being heard. It is a precautionary measure intended to prevent the court from granting any ex parte interim relief against the caveator.
- 3. Object-** The object of a caveat is to ensure that no ex parte order is passed by the court against a person without giving him an opportunity of being heard. It aims to protect the interests of the caveator by securing prior notice of any application likely to affect his rights, to uphold the principles of natural justice, to avoid unnecessary interim orders, and to reduce multiplicity of proceedings by enabling the court to hear both parties before granting relief.
- 4. Who may lodge caveat?** A caveat may be lodged by any person who claims a right to appear before the court on the hearing of an application. Caveat may be filed by any person who is going to be affected by an interim order.
- 5. When caveat may be lodged-** After judgment is pronounced or order is passed.

6. Notice- when caveat is lodged, the court will issue notice to the caveator at the caveator's expenses, along with the copy of application.

7. Rights and duties-

Caveator

- Duty: After lodging a caveat, the caveator must serve notice of the caveat on the person by whom the application is expected to be made.
- Right: On filing of the application, the caveator has the right to receive notice from the Court and to be heard before any order is passed.
- Right: The caveat remains effective for 90 days from the date of filing, unless the application is made earlier.

Applicant

- Duty: When an application is filed after a caveat, the applicant must serve a copy of the application and all supporting documents on the caveator at the caveator's expense, as directed by the Court.

Court

- Duty: The Court shall serve notice of the application on the caveator and shall not pass any order on such application without giving the caveator an opportunity of being heard.

8. Limitation- Caveat filed will remain effective till 90 days from the date of its filing.

INHERENT POWERS OF COURTS

1. **General-** The inherent powers of courts under Sections 148 to 153B of the Code of Civil Procedure are intended to enable the court to act in the interests of justice where the Code is silent or inadequate. These provisions empower the court to regulate procedure, correct errors, enlarge time, amend defects, and pass necessary orders to prevent abuse of the process of the court and to secure the ends of justice.
2. **Inherent powers: Meaning-** Inherent means natural. Inherent powers are thus powers which may be exercise by court to do full and complete justice between the parties.
3. **Scheme of the provision-** The scheme of the provisions relating to inherent powers under the Code of Civil Procedure is primarily embodied in Sections 148 to 153-B, with Section 151 as the core provision. These sections collectively preserve the court's authority to act in the interests of justice where the Code is silent.
4. **Enlargement of time-** Section 148 of the Code of Civil Procedure empowers the Court to enlarge the time fixed or granted for doing any act prescribed or allowed by the Code. The power is discretionary and may be exercised even after the expiry of the original period. However, the total extension granted under this section cannot exceed thirty days. The object of this provision is to ensure that procedural technicalities do not defeat substantial justice, while at the same time placing a reasonable limit on the Court's power to prevent undue delay.
5. **Transfer of business-** Section 150 of the Code of Civil Procedure provides that when the business of one Court is transferred to another Court, the transferee Court shall exercise the same powers and perform the same

duties as were vested in the original Court. This is subject to any contrary provision in the Code. The object of this section is to ensure continuity of judicial proceedings and to avoid failure of justice due to administrative or territorial changes in courts.

6. End of justice- Section 151 of the Code of Civil Procedure saves the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. These powers are not expressly provided in the Code but are inherent in every civil court. Section 151 cannot be exercised where specific provisions of the Code apply, but it may be invoked in situations where the Code is silent and justice demands judicial intervention.

7. Amendment of judgment, decrees, orders and other records- Section 152 CPC empowers the Court to correct at any time any clerical or arithmetical mistakes or errors arising from accidental slips or omissions in judgments, decrees, or orders, either on its own motion or on the application of a party. Section 153 CPC confers a general power of amendment, enabling the Court to amend any defect or error in any proceeding at any stage, on such terms as it thinks fit, so as to determine the real question in controversy between the parties. Section 153A CPC provides that where an appeal is summarily dismissed under Order 41 Rule 11, the trial court retains the power under Section 152 to amend its decree or order, despite the dismissal confirming the decree.

8. Limitations- The inherent powers of the Court under Section 151 CPC are not unlimited. They cannot be exercised where the Code expressly or impliedly provides a specific remedy or procedure, nor can they be used to override, nullify, or conflict with statutory provisions. Such powers cannot be invoked to create substantive rights, to circumvent limitation, or to

reopen matters finally decided. Inherent powers must be exercised sparingly, cautiously, and in the interest of justice, only to prevent abuse of process or to secure the ends of justice.

UNIT V

LIMITATION ACT, 1963

Section 2: Definitions-

(a) **“applicant”** includes—

- (i) a petitioner;
- (ii) any person from or through whom an applicant derives his right to apply;
- (iii) any person whose estate is represented by the applicant as executor, administrator or other representative;

(b) **“application”** includes a petition;

(c) **“bill of exchange”** includes a hundi and a cheque;

(d) **“bond”** A bond is a written instrument by which a person binds himself to pay money to another person, subject to a condition.

(e) **“defendant”** includes-

- (i) any person from or through whom a defendant derives his liability to be sued;
- (ii) any person whose estate is represented by the defendant as executor, administrator or other representative;

(f) **“easement”** An easement means a right not arising from a contract, by which one person is entitled to take and use for his own benefit:

- any part of the soil of another person, or

- anything growing on, attached to, or existing on the land of another.

(g) “foreign country” means any country other than India;

(h) “good faith”-nothing shall be deemed to be done in good faith which is not done with due care and attention;

(i) “plaintiff” includes-

- (i) any person from or through whom a plaintiff derives his right to sue;
- (ii) any person whose estate is represented by the plaintiff as executor, administrator or other representative;

(j) “period of limitation”

Period of limitation” means the time-limit fixed by the Schedule of the Limitation Act for filing any suit, appeal, or application.

“Prescribed period” means the actual period calculated according to the provisions of the Limitation Act, including rules relating to exclusion, extension, or computation of time.

(k) “promissory note” A promissory note is a written instrument by which the maker makes an absolute and unconditional promise to pay a specified sum of money to another person.

(l) “suit” does not include an appeal or an application;

(m) “tort” means a civil wrong which is not exclusively the breach of a contract or the breach of a trust;

(n) “trustee” does not include a benamidar, a mortgagee remaining in possession after the mortgage has been satisfied or a person in wrongful possession without title

LIMITATION OF SUITS, APPEALS AND APPLICATIONS

Section 3: Bar of limitation

A. Mandatory bar-

- Every suit, appeal or application filed after the prescribed period must be dismissed.
- This applies even if limitation is not pleaded as a defence by the opposite party.
- The court is duty-bound to examine limitation suo motu.

B. When proceedings are deemed to be instituted-

(a) Institution of a suit

A suit is deemed instituted:

- Ordinary case – when the plaint is presented to the proper officer.
- Pauper suit – when the application to sue as a pauper is filed.
- Claim against company in winding up – when the claimant first submits the claim to the official liquidator.

(b) Set-off and Counter-claim

Treated as separate suits for limitation purposes.

- Set-off – deemed instituted on the same date as the original suit.
- Counter-claim – deemed instituted on the date it is filed in court.

(c) Applications by notice of motion (High Court)

An application is deemed made when it is presented to the proper officer of the High Court.

Section 4: Expiry of prescribed period when court is closed- When the last day of the prescribed period for filing a suit, appeal, or application falls on a day when the court is closed, it may validly be filed on the day the court re-opens.

Explanation-

A court is deemed to be closed if it remains closed during any part of its normal working hours on that day (e.g., holiday, strike, emergency closure, half-day closure).

Section 5: Extension of prescribed period in certain cases- The court to admit an appeal or an application, except applications under Order XXI of the Code of Civil Procedure, even after the expiry of the prescribed period if the appellant or applicant satisfies the court that there was sufficient cause for not filing it within time; the provision is discretionary in nature, applies only to appeals and applications and not to suits.

Explanation-

If a party was misled by an order, practice, or judgment of the High Court while calculating limitation, it may amount to sufficient cause.

Section 6: Legal disability-

1. Disability at the commencement of limitation-

When a person entitled to file a suit or an execution application is, at the time limitation begins to run, a minor, insane, or an idiot, he may institute the suit or make the application within the same period after the disability ceases.

2. Multiple or successive disabilities-

Where a person is affected by two disabilities at the same time, or where one disability follows another before the first ends, the limitation period starts only after all such disabilities have ceased.

3. Disability continuing till death-

If the disability continues up to the death of the person, his legal representative may institute the suit or make the application within the same period after the death as would have been allowed to the deceased.

4. Disability of legal representative-

Where the legal representative is also under a legal disability at the time of the deceased person's death, the provisions of sub-sections (1) and (2) apply to the legal representative.

5. Death after cessation of disability-

If the person under disability dies after the disability has ceased but before the expiry of the extended period, the legal representative may institute the suit or make the application within the remaining period available to the deceased.

Explanation- Meaning of minor

For the purposes of this section, the term "minor" includes a child in the womb.

Section 7: Disability of one of several persons-

1. Joint entitlement and disability-

When several persons are jointly entitled to institute a suit or make an application for execution, and one of them is under a legal disability (minor, insane, or idiot), the effect on limitation depends on the possibility of giving a valid discharge.

2. Where discharge can be given without the disabled person-

If a valid discharge can be given without the concurrence of the person under disability, limitation runs against all the jointly entitled persons despite the disability.

3. Where discharge cannot be given-

If no valid discharge can be given without the concurrence of the disabled person, limitation does not run against any of them until:

- one of them becomes capable of giving such discharge alone, or
- the disability of the affected person ceases.

Explanation I – Scope of discharge

The term discharge includes a discharge from every kind of liability, including liabilities relating to immovable property.

5. Explanation II – Hindu Undivided Family (Mitakshara law)

Under Mitakshara law, the Manager (Karta) of a Hindu Undivided Family is deemed capable of giving a discharge without the concurrence of other members only if he is in management of the joint family property.

Section 8: Special exceptions-

1. Non-application to pre-emption suits-

The provisions of Sections 6 and 7 relating to legal disability do not apply to suits for enforcement of rights of pre-emption.

2. Maximum extension limit-

Even where Sections 6 and 7 apply, they cannot extend the period of limitation beyond three years from:

- the cessation of the disability, or
- the death of the person affected by the disability.

3. Statutory restriction-

Section 8 imposes a statutory cap to prevent indefinite extension of limitation on the ground of disability.

Section 9: Continuous running of time-

1. General rule-

Once the period of limitation has begun to run, it continues to run uninterrupted, and no subsequent disability or inability to institute a suit or make an application can stop it.

2. Effect of later disability-

Any disability arising after the commencement of limitation (such as minority or insanity) does not arrest or suspend the running of time.

3. Exception- Debtor as administrator

If letters of administration to the estate of a creditor are granted to his debtor, the running of limitation for a suit to recover the debt is suspended during the continuance of such administration.

Section 10: Suits against trustees and their representatives-

Section 10 removes the bar of limitation for suits against trustees to recover or account for trust property, except against bona fide purchasers for value.

Section 11: Suits on contracts entered into outside the territories to which the Act extends-

Section 11 applies the Limitation Act to suits on contracts made outside its territories, and foreign limitation law is a defence only if it has extinguished the contract and parties were domiciled there.

COMPUTATION OF PERIOD OF LIMITATION

Section 12. Exclusion of time in legal proceedings-

1. Exclusion of first day-

While computing limitation for any suit, appeal, or application, the day from which the period begins is excluded. (i.e., counting starts from the next day).

2. Exclusion in appeals, revisions, or reviews-

For appeals or applications for leave to appeal, revision, or review:

- The day on which the judgment/order was pronounced is excluded, and
- The time required to obtain a copy of the decree, sentence, or order is excluded.

3. Additional exclusion for appeals from decree/order-

When appealing or seeking revision/review, or applying for leave to appeal, the time to obtain a copy of the judgment is also excluded.

4. Exclusion for applications to set aside award-

In computing limitation for applications to set aside an arbitral award, the time required to obtain a copy of the award is excluded.

Explanation

- Any time taken by the court to prepare the decree/order before a copy is requested is not excluded.
- Only the time actually needed to obtain a copy after the request is excluded.

Section 13. Exclusion of time in cases where leave to sue or appeal as a pauper is applied for-

Section 13 excludes time spent in prosecuting a pauper application in good faith and allows the suit/appeal to proceed on subsequent payment of court fees.

Section 14. Exclusion of time of proceeding bona fide in court without jurisdiction-

While computing the period of limitation for any suit or application, the time during which a plaintiff or applicant has been prosecuting another civil proceeding in good faith in a court without jurisdiction or suffering from a defect of like nature shall be excluded, whether the proceeding was in a court of first instance, appeal, or revision and relates to the same matter or relief; this also applies to a fresh suit instituted with court permission under Order XXIII CPC when the first suit fails for such jurisdictional defect, and for the purposes of this section, the day of institution and conclusion of the prior proceeding are counted, a plaintiff or applicant resisting an appeal is deemed to be prosecuting a proceeding, and misjoinder of parties or causes of action is treated as a cause of a like nature.

Section 15. Exclusion of time in certain other cases-

1. Stay by injunction or order-

For a suit or execution application stayed by an injunction or court order, the entire period of stay, including the day of issuance and withdrawal of the injunction/order, is excluded from limitation.

2. Requirement of notice, consent, or sanction-

When a suit requires prior notice, consent, or government/authority sanction under any law, the period of notice or time to obtain such consent/sanction is excluded.

Explanation: Both the date of application and the date of receipt of consent/order are counted.

3. Proceedings under insolvency or winding-up-

For suits or applications executed by a receiver, interim receiver, liquidator, or provisional liquidator, the period from the institution of insolvency/winding-up proceedings to three months after the appointment of such officer is excluded.

4. Sale in execution-

For a suit for possession by a purchaser at a sale in execution of a decree, the time during which a proceeding to set aside the sale is prosecuted is excluded.

5. Absence of defendant-

The period during which the defendant is absent from India or from territories under the Central Government's administration is excluded from limitation.

Section 16. Effect of death on or before the accrual of the right to sue-

If a person entitled to sue dies before the right to sue accrues, or if the right accrues only on the death of a person, the period of limitation is computed from the time a legal representative capable of suing exists; similarly, if the person against whom a right would have accrued dies, limitation begins when a legal representative of the deceased exists against whom the suit can be instituted; however, this section does not apply to suits enforcing rights of pre-emption, or for possession of immovable property or hereditary office.

Section 17. Effect of fraud or mistake-

In suits or applications based on fraud, concealment, or mistake, the period of limitation does not begin until the plaintiff or applicant has discovered the fraud or mistake, or could have discovered it with reasonable diligence, or, in the case of a concealed document, until they first had the means to produce or compel production of the document; however, this does not affect rights of bona fide purchasers for value who were unaware of the fraud, mistake, or concealment at the time of purchase. Additionally, if a judgment-debtor fraudulently or forcibly prevents execution of a decree within limitation, the court may extend the period

for execution on application by the judgment-creditor within one year from discovery of the fraud or cessation of force.

Section 18. Effect of acknowledgment in writing-

If a person admits in writing that he owes a debt or has a liability before limitation ends, the limitation period starts again from the date of that writing; it applies even if details are missing or there's a refusal or set-off, but does not apply to execution of a decree.

Section 19. Effect of payment on account of debt or of interest on legacy-

If a person makes a payment towards a debt or interest on a legacy before limitation expires, a fresh limitation period starts from the date of payment, provided the payment is acknowledged in writing by the payer (except interest paid before 1 Jan 1928); rent or produce from mortgaged land counts as payment, but money under a court decree is not considered a debt for this section.

Section 20. Effect of acknowledgment or payment by another person-

Under Sections 18 and 19, an acknowledgment or payment made by a lawful guardian, manager, or authorized agent of a person under disability is valid; it does not bind other joint contractors, partners, executors, or mortgagees unless they also acknowledge or pay. For Hindu property, an acknowledgment or payment by a limited owner binds the reversioner, and one made by the manager of a Hindu undivided family binds the whole family.

Section 21. Effect of substituting or adding new plaintiff or defendant-

When a new plaintiff or defendant is added or substituted in a suit, the suit is deemed instituted as to them from the date they are added; however, if the court is satisfied that the omission was a mistake made in good faith, it may allow the suit to be deemed instituted from an earlier date. This does not apply when a party

is added due to assignment, devolution of interest, or when a plaintiff becomes defendant or vice versa.

Section 22. Continuing breaches and torts-

In the case of a continuing breach of contract or a continuing tort, a fresh period of limitation starts at every moment during which the breach or tort continues.

Section 23. Suits for compensation for acts not actionable without special damage-

A suit seeking compensation for an act not actionable without special damage, the limitation period starts from the time when the specific injury actually occurs.

Section 24. Computation of time mentioned in instruments-

For computing limitation, all instruments are to be reckoned according to the Gregorian calendar.

ACQUISITION OF OWNERSHIP BY POSSESSION

Section 25. Acquisition of easements by prescription-

A person who has peacefully and openly enjoyed an easement—such as access to light or air, a way, watercourse, use of water, or other easement—as of right, without interruption, for twenty years acquires an absolute and indefeasible right. The twenty-year period is counted as ending within two years before the suit in which the easement is contested. If the property belongs to the Government, the period is thirty years. An interruption is recognized only if there is actual discontinuance caused by another person and the obstruction is submitted to or acquiesced in for one year after the claimant has notice.

Example:

- Suppose a person has been using a path across someone else's land as a right of way for 20 years.
- The person wants to claim this easement in court in January 2026.
- According to Section 25(2), the 20-year period can be any continuous 20 years ending within two years before the suit, i.e., between January 2004 and January 2024.
- Even if the person started using the path earlier (say in 2000), only the 20-year period ending no earlier than January 2024 counts for the claim.

Section 26. Exclusion in favour of reversioner of servient tenement-

Section 26 provides that if an easement (like a right of way, water use, etc.) has been enjoyed over land or water held under a life interest or a term exceeding three years, the time during such interest or term is excluded when computing the 20-year period for prescription, provided the claim is resisted within three years after the interest or term ends by the person entitled to the land or water (the reversioner).

Section 27. Extinguishment of right to property-

When the prescribed limitation period for instituting a suit for possession of any property expires, the person's right to that property is extinguished.