

**Uttarakhand Judicial and Legal Academy  
Bhowali, Nainital**

**(INDEX OF CASE LAWS)**

***Settlement of Issues***

***Order XIV, Code of Civil Procedure, 1908***

***and***

***Disposal of Suit at First Hearing***

***Order XV, Code of Civil Procedure, 1908***

## **Settlement of Issues**

### **Order XIV, Code of Civil Procedure, 1908**

#### **1. Object of framing issues :**

- The object of framing issues is to focus upon questions on which evidence has to be led and to indicate the party on whom burden of proof lies.
- It is necessary in every contested regular civil suit and not necessary in summary proceedings.

**Fiza Developers & Inter-Trade (P) Ltd. v. Amci (I) (P) Ltd.**

**(2009) 17 SCC 796**

#### **2. What are Triable issues :**

- The issues which arose for actual consideration in a suit like,
- validity of the agreement for sale;
- grant of possession;
- Interference, obstruction;
- determination of share or part etc.

**Ajay Mohan v. H.N. Rai (2008) 2 SCC 507**

#### **3. Duty of court while framing issues :**

- Framing of issues is a very important stage in civil litigation.

- It is bounden duty of court that due care, caution, diligence and attention must be bestowed by Presiding Judge while framing issues.

**Ramrameshwari Devi v. Nirmala Devi (2011) 8 SCC 249**

**4. Role of Parties and their counsel in issue framing :**

- The duty of framing proper issues rests with the judge himself/herself.
- The parties and their counsel are bound to assist the court in the process of framing issues.

**Makhanlal Bangal v. Manas Bhumia (2001) 2 SCC 652**

**5. Duty of the Court to find out the precise nature of plea :**

- Before framing an issue relating to fraud, coercion, undue influence, mistake of fact etc. , it is the duty of court to examine the parties to find out the precise nature of the plea.

**Hiralal v. Badkulal, AIR 1953 SC 225**

**6. Non-framing of an issue :**

- Non-framing of an issue is not significant when parties are aware of rival cases and that issue is present in connected matters and evidence recorded on it without demur.

**Sri Gangai Vinayagar Temple v. Meenakshi Ammal,**  
**(2015) 3 SCC 624**

**7. No need to frame unnecessary issue :**

- In suit for eviction by landlord against trespasser, framing of issue as to his title to property is not necessary.

**Sadashiv Shyama Sawant v. Anita Anant Sawant, (2010) 3 SCC 385**

**8. Determination of issue without pleading :**

- Determination of issue without any pleading or evidence adduced is impermissible.

**Vimal Chand Ghevarchand Jain v. Ramakant Eknath Jadoo,**  
**(2009) 5 SCC 713**

**9. What is preliminary issue :**

- Preliminary issues can be those where no evidence is required.
- Thus, for instance, on basis of reading of plaint or applicable law, if jurisdiction of court or bar to suit is made out, court may decide such issues with sole objective for expeditious decision.

**Sathyanath v. Sarojamani, (2022) 7 SCC 644**

### **10. What are the preliminary issues ?**

- The words “preliminary issue” are intended to lend meaning that before the parties can obtain a final relief, that preliminary issue which is raised on contest between the parties shall be decided.

**Laxmi & Co. v. Anant R. Deshpande, (1973) 1 SCC 37**

### **11. What are the preliminary issues ?**

- Law Explained.

**Nusli Neville Wadia v. Ivory Properties, (2020) 6 SCC 557**

### **12. Preliminary issue, when should be raised :**

- Preliminary issue regarding maintainability of suit, raised for first time at appellate stage (before Supreme Court) is not permissible. It must first be raised by defendant in written statement for adjudication on merits by trial court as a preliminary issue under Order 14 Rule 2.

**A. Kanthamani v. Nasreen Ahmed, (2017) 4 SCC 654**

### **13. Mixed question of law and fact :**

- Issues decided as preliminary issues with respect to redemption of mortgage as well as with regard to limitation could not have been decided as preliminary issues by trial court, being mixed questions of law and facts.

**Hareendran v. Sukumaran, (2018) 14 SCC 187**

**14. Courts should adjudicate on all the issues and give its findings on all the issues :**

- It is the duty cast upon the courts to adjudicate on all the issues and pronounce the judgment on all the issues rather than adopting a shortcut approach and pronouncing the judgment on only one issue.
- By such a practice, it would increase the burden on the appellate court and in many cases if the decision on the issue decided is found to be erroneous and on other issues there is no adjudication and no findings recorded by the court, the appellate court will have no option but to remand the matter for its fresh decision.

**Agricultural Produce Marketing Committee v. State of Karnataka, (2022) 7 SCC 796**

**15. Framing of issues - Effect of an omission :**

- No doubt, no issue was framed, and the one, which was framed, could have been more elaborate; but since the parties went to trial fully knowing the rival case and led all the evidence not only in support of their contentions but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case, or that there was that mistrial which vitiates proceedings.
- The suit could not be dismissed on this narrow ground, and also that there is no need for a remit, as the evidence which has been led in the case is sufficient to reach the right conclusion.

**Nedunuri Kameswaramma v. Sampati Subba Rao,  
1962 SCC OnLine SC 41**

### **16. Non Framing of issue - Remand :**

- Though formally no issue was framed, the parties went to trial and adduced evidence with this issue in mind and have drawn the attention of the court to the existence of another house belonging to the appellant in Ismail Madan Lane and the said house being not vacant.
- There is, therefore no need for the appeal being remanded for a finding on the question whether alternate suitable accommodation is available for the appellant.

**Bhairab Chandra Nandan v. Ranadhir Chandra Dutta,**  
**(1988) 1 SCC 383**

### **17. Matrimonial Dispute – Ground for divorce- Desertion :**

- **Issue not framed but evidence led**
- Where no specific issue had been framed on question of desertion but parties had led evidence and it was contended on behalf of appellant wife that there was enough evidence to return a verdict of desertion, the Hon'ble Supreme Court decided to examine the matter

**Savitri Pandey v. Prem Chandra Pandey, (2002) 2 SCC 73**

### **18. Purpose behind adjudication on all the issues :**

- After the amendment w.e.f. 1-2-1977, though Order 14 Rule 2(2) enables the court to decide the issue of law as a preliminary issue in case the same relates to -

(i) jurisdiction of court; or

(ii) a bar to suit created by any law for the time being in force,

- a departure has been made in amended provision whereby now it mandates the court to pronounce judgment on all issues notwithstanding that a case may be disposed of on a preliminary issue. It is further observed that intendment behind this departure is to avoid remand in an appealable case for deciding other issues.

**Nusli Neville Wadia v. Ivory Properties, (2020) 6 SCC 557**

#### **19. Where issues both of law and of fact arise :**

- Under Order 14 Rule 2 Code of Civil Procedure, where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the Court the whole suit may be disposed of on the issues of law alone, ***but the Code confers no jurisdiction upon the Court to try a suit on mixed issues of law and fact as preliminary issues.*** Normally all the issues in a suit should be tried by the Court .

**Major S.S. Khanna v. Brig. F.J. Dillon, AIR 1964 SC 497**



## 20. Issue on limitation :

- A question came up for consideration of rejection of the plaint under Order 7 Rule 11 on the ground that same being barred by limitation. On mere ex facie reading of the plaint, it could not be held that the suit was barred by time. The question of limitation becomes a mixed question of facts and law and cannot be decided as a preliminary issue as the framing of issues and taking evidence was necessary.

**Vaish Aggarwal Panchayat v. Inder Kumar, (2020) 12 SCC 809**

## 21. Issue of Court Fee - Preliminary issue :

- In terms of Rule 2 Order 14 of the Code of Civil Procedure, 1908, the issue as to court fee can be heard and decided as a preliminary issue.

**N.R. Govindarajan v. V.K. Rajagopalan, (2005) 12 SCC 362**

## 22. Issue of Res Judicata & Constructive Res Judicata :

- It is neither in doubt nor in dispute that the issues of res judicata and/or constructive res judicata as also the maintainability of the suit can be adjudicated upon as preliminary issues.
- Such issues, in fact, ***when facts are admitted***, ordinarily should be decided as preliminary issues.

**Abdul Rahman v. Prasony Bai, (2003) 1 SCC 488**

**23. Issue of Limitation :**

- In the case of a disputed question of fact, the question of limitation cannot be decided as a preliminary issue without a decision on facts based on the evidence that has to be adduced by the parties.
- The Court has no jurisdiction under Order 14 Rule 2 to decide a mixed question of law and facts as a preliminary issue.

**Ramesh B. Desai v. Bipin Vadilal Mehta, (2006) 5 SCC 63**

**24. Issue of Jurisdiction :**

- When the Court had no jurisdiction over the subject-matter of the suit it cannot decide any question on merits. It can simply decide on the question of jurisdiction and coming to the conclusion that it had no jurisdiction over the matter had to return the plaint.

**Athmanathaswami Devasthanam v. K. Gopalaswami Ayyangar,  
1963 SCC OnLine SC 251**

**25. Issue of Jurisdiction :**

- In a case, the question of jurisdiction also depends upon the proof of facts which are disputed.
- It cannot be decided as a preliminary issue if the facts are disputed and the question of law is dependent upon the outcome of the investigation of facts, such question of law cannot be decided as a

preliminary issue, is settled proposition of law either before the amendment of CPC and post amendment in the year 1976.

**Nusli Neville Wadia v. Ivory Properties, (2020) 6 SCC 557**

## **26. Issue of Jurisdiction – Duty of Trial Court and Power of Higher Court:**

- An issue of maintainability of a suit strikes at the root of the proceedings initiated by filing of the plaint as per requirements of Order 7 Rule 1CPC. If a suit is barred by law, the trial court has absolutely no jurisdiction to entertain and try it.
- This is a duty the trial court has to discharge in its pursuit for rendering substantive justice to the parties, irrespective of whether any party to the *lis* has raised or not. If the jurisdictional fact does not exist, at the time of settling the issues, notice of the parties must be invited to the trial court's *prima facie* opinion of non-existent jurisdictional fact touching its jurisdiction.
- any failure or omission on the part of the trial court to frame an issue on maintainability of a suit touching jurisdictional fact by itself cannot trim the powers of the higher court to examine whether the jurisdictional fact did exist for grant of relief as claimed, provided no new facts were required to be pleaded and no new evidence led.

**R. Kandasamy v. T.R.K. Sarawathy, (2025) 3 SCC 513**

\*\*\*\*\*

*Uttarakhand Judicial and Legal Academy*

**Disposal of Suit at First Hearing**  
**Order XV CPC, 1908**

**1. Summons for ‘settlement of issues’ or ‘final disposal’ :**

- Rule 5 of Order 5 says that the court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit which shall be noted in the summons.
- However, in every suit heard by a Court of Small Causes, the summons shall be for the final disposal of the suit.

**Ashok Kumar v. Rishi Ram, (2002) 5 SCC 641**

**2. Meaning of ‘First Hearing’ :**

- Explanation 1 to Rule 5 of Order 15 defines the expression “first hearing” to mean the date for filing written statement or for hearing mentioned in the summons or where more than one of such dates are mentioned, the last of the dates mentioned. But the said expression, as noticed above, is defined in clause (a) of the Explanation to sub-section (4) of Section 20.

**Ashok Kumar v. Rishi Ram, (2002) 5 SCC 641**

### **3. 'First Hearing' : Date of framing of issues :**

- Rule 3 of Order 15 applies only to the disposal of a suit on the date of first hearing namely on the date when issues are framed.

**Kanwar Singh Saini v. High Court of Delhi, (2012) 4 SCC 307**

### **4. Date of 'First Hearing' :**

- The date of first hearing of a suit under the Code is ordinarily understood to be the date on which the court proposes to apply its mind to the contentions in the pleadings of the parties to the suit and in the documents filed by them for the purpose of framing the issues to be decided in the suit.

**Siraj Ahmad Siddiqui v. Prem Nath Kapoor, (1993) 4 SCC 406**

### **5. Stage of 'First Hearing' :**

- The expression “at the first hearing of the suit” is also to be found in Order 10 Rule 1, Order 14 Rule 1(5) and Order 15 Rule 1 of the Code of Civil Procedure.
- These provisions indicate that “the first hearing of the suit” can never be earlier than the date fixed for the preliminary examination of the parties (Order 10 Rule 1) and the settlement of issues [Order 14 Rule 1(5)].

**Ved Prakash Wadhwa v. Vishwa Mohan, (1981) 3 SCC 667**

## 6. Issues framed by trial court on the basis of admission made in W.S. :

- Subsequently, withdrawal of admission by way of amendment of W.S. sought by defendant on unsustainable grounds.
- ***Held- amendment can not be allowed.***
- Admission of such a nature that plaintiff could have asked the court to pass a preliminary decree under O-15 R-1 CPC.

**Heeralal v. Kalyan Mal, (1998) 1 SCC 278**

## 7. Expression “first day” in the context of the rent legislations :

- It is imperative that the words “the first hearing of the application” have to be interpreted in a manner which promotes the object of this beneficial legislation.
- Viewed from this aspect we cannot but hold that the words, “first hearing of the application” as used in proviso (i) to sub-section (2) of Section 13 of the said Act does not mean the day fixed for return of the summons or the returnable day *but the day when the court applies its mind to the case.*

**Sham Lal v. Atme Nand Jain Sabha, (1987) 1 SCC 222**

## 8. Court has discretion not to strike off defence :

- In case of failure to deposit admitted rent and further failure to make representation within terms of O-15 R-5 CPC , court has

discretion not to strike off defence, if on fact on record there is good reason existed.

**Bimal Chand Jain v. Gopal Agarwal, AIR 1981 SC 1657**

**9. Order 15 Rule 5 is mandatory:**

A plain reading of Rule 5, as it stands today divide the range of comprehension into two parts,

(i) admitted arrears to be due and, (ii) current dues.

Now the liability is to deposit the arrears admitted. Irrespective of admission it cast the liability of depositing current dues month by month. In default of either of the deposit the defence is liable to be struck off.

Admittedly, rule 5 is mandatory because of the nature of the expression used therein. The Court while striking out defence has to exercise its discretion judiciously. In case the provision is not complied with evil consequences would visit the defendants-applicants. The court has no alternative in case of non-compliance of rule 5 by the defendants-applicants but to strike off the defence.

**S.K. Masood v. Wahid Ahmad Ansari, 1997 SCC OnLine All 334**

**10. Deposit by trespassers sub-tenants :**

- In this case the deposits were in fact made not by the defendant who was the tenant, but by the defendants who were impleaded

alleging them as trespassers or sub-tenants, nonetheless they bearing the capacity of defendants to the suit, were entitled to comply with O. XV, R. 5 C.P.C. by making the requisite deposits.

**Jagmandar Dass v. Ram Phal, 1981 SCC OnLine All 661**

**11. Provisions of Order XV, Rule 5 CPC are not mandatory but discretionary :**

- In every case of default the court is not obliged to strike off the defence, even if there is a default the Court in its discretion may refuse to strike off the defence.

**Smt. Leela Devi v. Smt. Shanti Devi Jaiswal,**

**AIR 1986 Allahabad 90**

**12. Purpose of O-XV R-10 CPC is not to punish the tenant:**

- “The purpose of enacting the provisions of Rule 5 in Order XV was not go given lever to the landlord to get a tenant punished for insignificant lapses.
- The purpose was merely to ensure that the dues of the landlord are properly secured and he can get his rent regularly even though the litigation may continue.”

**Shiv Prasad v. Special Judge, Allahabad**

**(1996) 1 All Rent Cas 110 : 1996 All LJ 1007**



**13. Stage to decide the issue/applioication related to O-XV R-5 CPC as preliminary issue :**

- After recording the evidence of the defendants in part, an application was filed on behalf of the respondents-landlords under Order XV Rule 5. C.P.C. requesting the court to strike off the defence of the petitioner.
- The Judge Small Causes Court after hearing the parties come to the conclusion that the application filed by the respondents landlord was liable to be rejected. In the revision filed by the respondents landlords the revisional court directed the trial court to decide the application of the respondents-landlords as preliminary issue for striking off the defence of the petitioner under Order XV Rule 5 C.P.C.
- *Since the plaintiff have already closed his evidence and three witnesses have been examining on behalf of the petitioner, it is not proper to decide the preliminary issue at this stage.*

**Rajendra Pal Garg v. Ist ADJ, Dehradun,  
1987 SCC OnLine All 546 (Overruled)**

- In view of the provisions of Rule 5 of Order XV of the Code, where the defendant commits default in making the deposit of the monthly amount due, during the continuation of the suit, even after the closure of the evidence of the plaintiff, the Court shall have power to strike off defence, and to consider the application

made by the landlord under Order XV Rule 5 C.P.C. and decide the same on merits.

**Bal Krishna v. Ramanand Dixit, 1996 SCC OnLine All 243**

**14. Even if there is a default the Court in its discretion may refuse to strike off the defence :**

- The facts and circumstances of the case in hand are liable to be considered before making any order striking of the defence by the Court.
- Explanation given for non deposit of rent should be considered by the Court before striking off the defence.

**Central Academy Society School v. Raj Kumar Ganjur,  
2002 SCC OnLine All 172**

**15. Some delay in deposit may be condoned :**

- Some delay in deposit may be condoned under discretionary power by the Court under Order XV, Rule 5 C.P.C.,
- however if no deposit is made then there is no option available to the Trial Court except to strike off the defence.

**Deo Narain Verma v. XVth ADJ, 2004 SCC OnLine All 681**

**16. After filing of the suit, tenant is not entitled to deposit the rent under section 30 of the Act:**

- After filing of the suit, tenant is not entitled to deposit the rent under section 30 of the Act. Even if such deposit under section 30 of the Act is made on the wrong advice of the Counsel still defence of the tenant will have to be struck off.
- Even otherwise suit was instituted after serving notice of termination of tenancy and demand of rent. After notice of demand tenant is not entitled to deposit or continue to deposit rent under section 30 of the Act

**Deo Narain Verma v. XVth Addl. District Judge**

**2004 SCC OnLine All 681**

**17. Meaning of the expression “monthly amount due” :**

- The expression “monthly amount due”, as defined by Explanation (3) to sub-rule (1) of Rule 5 of Order XV of the Code, means the amount due every month, whether as rent or compensation for use and occupation at the admitted rate or rent, after making no other deduction except the taxes, if any, paid to a local authority, in respect of the building on lessor's account.
- The defendant can not claim adjustment from some advance deposited by him under agreement.

**Bal Krishna v. Ramanand Dixit, 2001 SCC OnLine All 159**

**18. Applicability of Order XV Rule 5 C.P.C. :**

- It is, therefore, clear that the provisions of Order XV Rule 5 C.P.C., only apply to a case where the tenant admits any amount due from him.
- Where the tenant does not admit the amount due from him, he is not liable to deposit the amount at the first hearing of the suit and his defence, therefore, cannot be struck off.

**Rameshwar Dayal v. District Judge, 1980 SCC OnLine All 815**

**19. Scheme of Order-15 CPC :**

- Scheme of Order-15 CPC is explained.

**C.S. Balakrishnan V. T. Amudan Antony (Deceased)**

**2023 SCC OnLine Mad 8781**

**20. Scheme of Order-15 Rule-5 CPC :**

- Scheme of Order-15 Rule-5 CPC is explained.

**Ram Kumar Singh v. III ADJ, Ghaziabad,**

**2002 SCC OnLine All 1111**

\*\*\*\*\*