STUDY MATERIAL

ON

"APPEAL, REVISION & REVIEW"

WITH

VARIOUS JUDGMENTS OF HON'BLE SUPREME COURT OF INDIA AND HIGH COURTS

PREPARED BY:

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CIVIL APPEAL, REVIEW AND REVISION

Provisions governing the civil appeals

Various Provisions of Laws Applicable to the Civil Appeals, Review and Revision are as under:

(i) Sections 96 to 99-A CPC & Order 41 CPC (Appeals from original decrees)

(ii) Sections 100 to 103 CPC & Order 41 CPC (Appeals from appellate decrees)

(iii) Sections 104 to 112 CPC & Order 43 CPC (Appeals from orders)

(iv) Order 44 CPC (Appeals by indigent persons)

(v) Order 43 CPC (Appeal from orders)

(vi) Provisions in Special Acts regarding appeals

- (vii) Section 114 and Order 47 (Review)
- (viii) Section 115 (Revision)
- (ix) Provision of General Rules (Civil) 1957
- (x) Provision of Limitation Act, 1963
- (xi) Recent Judicial Trend
- (xii) Bengal, Agra and Assam Civil Courts Act, 1887
- (xiii) The Uttarakhand Civil Laws (Amendment) Act, 2021 (Uttarakhand Act No. 10 of 2022)
- (xiv) Notification No. 243/XXXVI (3)/2022/75(1)/2021 Dehradun, 20 September,2022

ORDER XLI

Appeals from Original Decrees

Order 41 Rule-1. → **Form of appeal. What to accompany memorandum.**

Order 41 Rule 2. → **Grounds which may be taken in appeal.**

Order 41 Rule 3. → **Rejection or amendment of memorandum.**

Order 41 Rule3-A. → **Application for condonation of delay.**

Rule 3-A has been inserted by the Amendment Act of 1976. It provides that where an appeal has been presented after the expiry of the period of limitation specified therefore, it shall be accompanied by an application that the applicant had sufficient cause for not preferring the appeal within time.

Order 41 Rule 4. → **One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all.**

Stay of proceedings and of execution

Order 41 Rule 5. → **Stay by Appellate Court.**

Rule 5 provides for stay of an execution of a decree or an order. After an appeal has been filed, the appellate court may order stay of proceedings under the decree or execution of such decree.

Order 41 Rule 6. → **Security in case of order for execution of decree appealed from.**

Order 41 Rule 7. → **No security to be required from the Government or a public officer in certain cases.**

Order 41 Rule 8. → **Exercise of powers in appeal from order made in execution of decree.**

Procedure on admission of appeal

Order 41 Rule 9. → **Registry of memorandum of appeal.**

Rule 9 states that, the court from who's decree an appeal lies, shall entertain the memorandum of appeal, shall make an endorsement thereon and shall register the appeal in register of appeals.

Order 41 Rule 10. → **Appellate Court may require appellant to furnish security for costs.**

Under Rule 10(1), the appellate court may at its discretion require the appellant to furnish the security for the costs of appeal or of the suit or of both.

Order 41 Rule 11. → **Power to dismiss appeal without sending notice to Lower Court.**

Rule 11 deals with the power of the appellate court to dismiss an appeal summarily. The discretion, however, must be exercised judiciously and not arbitrarily. Such powers should be used very sparingly and only in exceptional cases. When an appeal raises a triable issue(s), it should not be summarily dismissed.

Order 41 Rule 11-A. → **Time within which hearing under Rule 11 should be concluded**

Every appeal shall be heard as expeditiously as possible and endeavour shall be made to conclude such hearing within sixty days from the date of filing appeal.

Order 41 Rule 12. → **Day for hearing appeal.**

Order 41 Rule 13. → **Appellate Court to give notice to Court whose decree appealed from.**

Order 41 Rule 14. → **Publication and service of notice of day for hearing appeal.**

R.12,13&14,If the appeal is not summarily dismissed, the Appellate Court shall fix a day for hearing of the appeal, and the notice of such date if hearing shall be served upon the respondent with a copy of memorandum of appeal.

Procedure on hearing

Order 41 Rule 16. → **Right to begin.**

R. 16, The appellant has a right to begin. After hearing the appellant, in support of the appeal, if the court finds no substance in the appeal it may dismiss the appeal at once without calling upon the respondent to reply but it the appellate court does not dismiss the appeal at once, it will hear the respondent against the appeal and the appellant shall then be entitled to reply.

Order 41 Rule 17. → **Dismissal of appeal for appellant's default.**

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

Explanation.—Nothing in this sub-rule shall be construed as empowering the Court to dismiss the appeal on the merits.

(2) Hearing appeal ex parte.—Where the appellant appears and the respondent does not appear, the appeal shall be heard ex parte.

Order 41 Rule 18. → **Dismissal of appeal where notice not served in consequence of appellant's failure to deposit costs.**

Order 41 Rule 19. → **Readmission of appeal dismissed for default.**

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

Order 41 Rule 20. → **Power to adjourn hearing and direct persons appearing interested to be made respondents.**

Order 41 Rule 21. → **Rehearing on application of respondent against whom ex parte decree made.**

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

Order 41 Rule 22. → **Upon hearing respondent may object to decree as if he had preferred separate appeal.**

Order 41 Rule 22 is a special provision, permitting the respondent who has not filed an appeal against the decree to object to the said decree by filing cross-objections in the appeal filled by the opposite party.

Order 41 Rule 23. → **Remand of case by Appellate Court.**

Order 41 Rule 23-A → **Remand in other cases.**

Order 41 Rule 24. → **Where evidence on record sufficient, Appellate Court may determine case finally.**

Order 41 Rule 25. → **Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from.**

Order 41 Rule 26. → **Findings and evidence to be put on record: Objections to finding.**

Order 41 Rule 26-A → **Order of remand to mention date of next hearing.**

Order 41 Rule 27. → **Production of additional evidence in Appellate Court.**

Rule 27 enumerates the circumstances in which the appellate court may admit additional evidence, whether oral or documentary, in appeal, they are as under:

Where the lower court has improperly refused to admit evidence which ought to have been admitted; or

Where such additional evidence was not within the knowledge of the party or could not, after exercise of due diligence, be produced by him at the time when the lower court passed the decree.

Where the appellate court itself requires such evidence, either to enable it to pronounce judgement or for any other substantial cause.

Order 41 Rule 28. → **Mode of taking additional evidence.**

Order 41 Rule 29. → **Points to be defined and recorded.**

Where additional evidence is directed or allowed to be taken, the Appellate Court shall specify the points to which the evidence is to be confined, and record on its proceedings the points so specified.

Order 41 Rule 30. → **Judgment when and where pronounced.**

(1)The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the Court from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day of which notice shall be given to the parties or their pleaders.

(2) Where a written judgment is to be pronounced, it shall be sufficient if the points for determination, the decision thereon and the final order passed in the appeal are read out and it shall not be necessary for the Court to read out the whole judgment, but a copy of the whole judgment shall be made available for the perusal of the parties or their pleaders immediately after the judgment is pronounced.

Order 41 Rule 31. → **Contents, date and signature of judgment.**

The judgment of the Appellate Court shall be in writing and shall state—

(a) → **the points for determination;**

(b) → **the decision thereon;**

(c) → **the reasons for the decision; and**

(d) → where the decree appealed from is reversed or varied, the relief to which the appellant is entitled; and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

Order 41 Rule 32. → What judgment may direct.

The judgment may be for confirming, varying or reversing the decree from which the appeal is preferred, or, if the parties to the appeal agree as to the form which the decree in appeal shall take, or as to the order to be made in appeal, the Appellate Court may pass a decree or make an order accordingly.

Order 41 Rule 33. → Power of Court of Appeal.

Order 41 Rule 34. → Dissent to be recorded.

Decree in appeal

Order 41 Rule 35. → **Date and contents of decree.**

(1) The decree of the Appellate Court shall bear date the day on which the judgment was pronounced.

(2) The decree shall contain the number of the appeal, the names and descriptions of the appellant and respondent, and a clear specification of the relief granted or other adjudication made.

(3) The decree shall also state the amount of costs incurred in the appeal, and by whom, or out of what property, and in what proportions such costs and the costs in the suit are to be paid.

(4) The decree shall be signed and dated by the Judge or Judges who passed it:

Order 41 Rule 36. → **Copies of judgment and decree to be furnished to parties.**

Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the Appellate Court and at their expense.

Order 41 Rule 37. → **Certified copy of decree to be sent to Court whose decree appealed from.**

A copy of the judgment and of the decree, certified by the Appellate Court or such officer as it appoints in this behalf, shall be sent to the Court which passed the decree appealed from and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the register of civil suits.

Appeals from Orders

Or. 43, Rule 1. Appeals from orders

An appeal shall lie from the following orders under the provisions of Section 104, namely:—

(a) an Order under Rule 10 of Order VII returning a plaint to be presented to the proper Court except where the procedure specified in Rule 10-A of Order VII has been followed;

(b) an Order under Rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;

(c) an Order under Rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed ex parte;

(d) an Order under Rule 21 of Order XI;

(e) an Order under Rule 34 of Order XXI on an objection to the draft of a document or of an endorsement;

(f) an Order under Rule 72 or Rule 92 of Order XXI setting aside or refusing to set aside a sale;

(g) an order rejecting an application made under sub-rule (1) of Rule 106 of Order XXI, provided that an order on the original application, that is to say, the application referred to in sub-rule (1) of Rule 105 of that Order is appealable;

(h) an Order under Rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit;

(i) an Order under Rule 10 of Order XXII giving or refusing to give leave;

(j) an Order under Rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;

(k) an Order under Rule 5 or Rule 7 of Order XXXIII rejecting an application for permission to sue as an indigent person;

(l) orders in interpleader-suit under Rule 3, Rule 4 or Rule 6 of Order XXXV;

(m) an Order under Rule 2, Rule 3 or Rule 6 of Order XXXVIII;

(n) an Order under Rule 1, Rule 2, [Rule 2-A], Rule 4 or Rule 10 of Order XXXIX;

(o) an Order under Rule 1 or Rule 4 of Order XL;

(p) an order of refusal under Rule 19 of Order XLI to readmit, or under Rule 21 of Order XLI to rehear, an appeal;

(q) an Order under Rule 23 [or Rule 23-A] of Order XLI remanding a case, where an appeal would lie from the decree of the Appellate Court;

(r) an Order under Rule 4 of Order XLVII granting an application for review.

Or. 43, Rule 1-A. Right to challenge non-appealable orders in appeal against decrees

(1) Where any order is made under this Code against a party and thereupon any judgment is pronounced against such party and a decree is drawn up, such party may, in an appeal against the decree, contend that such order should not have been made and the judgment should not have been pronounced.

(2) In an appeal against a decree passed in a suit after recording a compromise or refusing to record a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise should, or should not, have been recorded.

Or. 43, Rule 2. Procedure:- The rules of Order XLI shall apply, so far as may be, to appeals from orders

the Court which passed the order appealed from shall not send the records of the case unless summoned by the Appellate Court". (17-1-1983)

ORDER XLIV

[Appeals by Indigent Persons]

1. Who may appeal [as an indigent person].—[(1)] Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeal, and may be allowed to appeal as an [indigent person], subject, in all matters, including the presentation of such application, to the provisions relating to suits by [indigent persons], insofar as those provisions are applicable:

2. Grant of time for payment of Court-fee.—Where an application is rejected under Rule 1, the Court may, while rejecting the application, allow the applicant to pay the requisite Court-fee, within such time as may be fixed by the Court or extended by it from time to time; and upon such payment, the memorandum of appeal in respect of which such fee is payable shall have the same force and effect as if such fee had been paid in the first instance.]

3. Inquiry as to whether applicant is an indigent person.—(1) Where an applicant, referred to in Rule 1, was allowed to sue or appeal as an indigent person in the Court from whose decree the appeal is preferred, no further inquiry in respect of the question whether or not he is an indigent person shall be necessary if the applicant has made an affidavit stating that he has not ceased to be an indigent person since the date of the decree appealed from; but if the Government pleader or the respondent disputes the truth of the statement made in such affidavit, an inquiry into the question aforesaid shall be held by the Appellate Court, or, under the orders of the Appellate Court, by an officer of that Court.

(2) Where the applicant, referred to in Rule 11, is alleged to have become an indigent person since the date of the decree appealed from, the inquiry into the question whether or not he is an indigent person shall be made by the Appellate Court or, under the orders of the Appellate Court, by an officer of that Court unless the Appellate Court considers it necessary in the circumstances of the case that the inquiry should be held by the Court from whose decision the appeal is preferred.]

Court Fees Act, 1870

6A. Appeal against order to pay court fee.

(1) Any person called upon to make good a deficiency in court fee may appeal against such order as if it were an order appealable under Section 104 of the Code of Civil Procedure.

The party appealing shall file with the memorandum of appeal, a certified copy of the plaint together with that of the order appealed against.

(2) In case an appeal is filed under sub-section (1), and the plaintiff does not make good the deficiency, all proceedings in the suit shall be stayed and all interim orders made, including an order granting an injunction or appointing a receiver, shall be discharged.

(3) A copy of the memorandum of appeal together with a copy of the plaint and of the order appealed against shall be sent forthwith by the appellate court to the [Commissioner of Stamps]

(4) If such order is varied or reversed in appeal, the appellate court shall if the deficiency has been made good before the appeal is decided, grant to the appellant a certificate, authorising him to receive back from the Collector such amount as is determined by the appellate court to have been paid in excess of the proper court fee.

(5) The court may make such order for the payment of costs of such appeal as it deems fit. and where such costs are payable to the Government, they shall be recoverable as arrears of land revenue.

12. Decision of question as to valuation

(i) Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this chapter on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit.

(ii) But whenever any such suit comes before a Court of appeal, reference or revision, if such Court considers that the said question has been wrongly decided to the detriment of the revenue, it shall require the party by whom such fee has been paid, to pay within such time as may be fixed by it, so much additional fee as would have been payable had the question been rightly decided. If such additional fee is not paid within the time fixed and the defaulter is the appellant, the appeal shall be dismissed, but if the defaulter is the respondent the Court shall inform the Collector who shall recover the deficiency as if it were an arrear of land revenue.

13. Refund of fee paid on memorandum of appeal

If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the Code of Civil Procedure, is ordered to be received, or if a suit is remanded in appeal on any of the grounds mentioned in Section 351 of the same Code for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate authorizing him to receive back from the Collector the full amount of fee paid on the memorandum of appeal:

Provided that if, in the case of a remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorize the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.

14. Refund of fee on application for review of judgement.

- Where an application for review of judgement is presented on or after the ninetieth day from the date of the decree, the Court, unless the delay was caused by the applicant's laches, may, in its discretion, grant him a certificate authorizing him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before such day.

Review

Section 114, Subject as aforesaid, any person considering himself aggrieved

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.

ORDER XLVII

Review

1. Application for review of judgment

(1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment of the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Explanation.— The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment.]

3. Form of applications for review— The provisions as to the form of referring appeals shall apply, mutatis mutandis, to applications for review.

4. Application where rejected— (1) Where it appears to the Court that there is not sufficient ground for a review, it shall reject the application.

Application where granted— (2) Where the Court is of opinion that the application for review should be granted, it shall grant the same:

Provided that—

(a) no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree, or order, a review of which is applied for; and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation.

5. Application for review in Court consisting of two or more Judges— Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same.

6. Application where rejected— (1) Where the application for a review is heard by more than one Judge and the Court is equally divided, the application shall be rejected.

(2) Where there is a majority, the decision shall be according to the opinion of the majority.

7. Order of rejection not appealable. Objections to order granting application— [(1) An order of the Court rejecting the application shall not be appealable; but an order granting the application may be objected to at once by an appeal from the order granting the application or in an appeal from the decree or order finally passed or made in the suit.]

(2) Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, where it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

(3) No order shall be made under sub-rule (2) unless notice of the application has been served on the opposite party.

8. Registry of application granted, and order for rehearing— When an application for review is granted, a note thereof shall be made in the register and the Court may at once rehear the case or make such order in regard to the rehearing as it thinks fit.

9. Bar of certain applications— No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained.

Revision 115

State Amendment

"115. Revision (1) A superior court may revise an order passed in a case decided in an original suit or other proceeding by a subordinate court where no appeal lies against the order and where the subordinate court has —

(a) exercised a jurisdiction not vested in it by law ; or

(b) failed to exercise a jurisdiction so vested ; or

(c) acted in exercise of its jurisdiction illegally or with material irregularity.

(2) A revision application under sub-section (1), when filed in the High Court, shall contain a certificate on the first page of such application, below the title of the case, to the effect that no revision in the case lies to the district court but lies only to the High Court either because of valuation or because the order sought to be revised was passed by the district court.

(3) The superior court shall not, under this section, very or reverse any order made except where —

(i) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding ; or

(ii) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it is made.

(4) A revision shall not operate as a stay of suit or other proceeding before the court except where such suit or other proceeding is stayed by the superior court.

Explanation — I In this section,—

(i) the expression 'superior court' means —

(a) the district court, where the valuation of a case decided by a court subordinate to it does not exceed five lakh rupees ;

(b) the High Court, where the order sought to be revised was passed in a case decided by the district court or where the value of the original suit or other proceedings in a case decided by a court subordinate to the district court exceed five lakh rupees ;

(ii) the expression 'order' includes an order deciding an issue in any original suit or other proceedings.

Explanation —II. The provisions of this section shall also be applicable to orders passed, before or after the commencement of this section, in original suits or other proceedings instituted before such commencement."

Provincial Small Causes Court Act, 1887

25. Revision of decrees and orders of Courts of Small Causes.— The High Court, for the purpose of satisfying itself that a decree or order made in any case decided by a Court of Small Causes was according to law, may call for the case and pass such order with respect thereto as it thinks fit.

Provided that in relation to any case decided by a District Judge or Additional District Judge exercising the jurisdiction of Judge of Small Causes, the power of revision under this section shall vest in the High Court.

General Rules Civil, 1957

31. Valuation to be noted on petitions

In every petition on which an appealable order may be passed by the Court, the

petitioner shall give the value of the subject-matter affected by the petition.

95. Decree to contain addresses filed by parties

Every decree or formal order must contain the names and addresses of the parties, as given in the plaint as also the addresses filed subsequently. The words, 'non-contesting', shall also be written in a bracket against the name of such defendant as has not appeared or has not filed a written statement or after having filed written statement has failed to appear and contest the suit at the hearing, as referred to in Order V, rule 4-A and Order XXII, rule 4(4).

96. Decree to be self contained

Every decree and order as defined in Section 2, of the Code shall be drawn up in such a manner that in order to the understanding and execution thereof, it may not be necessary to refer to any other document or paper whatever, which is not made part of the decree or order.

Prescribed forms of decrees.

In all cases in which the form of a decree has been prescribed or indicated by statute, the decree shall be prepared, as far as possible, in the form so prescribed.

97. Taxing of diet money of witnesses

In taxing costs the diet money of only such witnesses as are actually examined shall be included unless the Court directs otherwise.

97-A

A party may file an affidavit stating the amounts spent by him on any one or more of the items referred to in clauses (a) to (f) of Order XX-A. Rule I of the Code of Civil Procedure, and the Court may award such costs under these items as may appear to be reasonable, the cost so awarded shall be taxed as costs in the decree.

***(Note:- This rule shall also apply to suits filed under rule 2 of Order XXXVII C.P.C.)**

98. Drawing up of decree

(1) The decree shall be drawn up by the decree writer ordinarily within seven days of the date of the judgment and shall bear that date. The formal order may, however, be drawn up only when a party applies for a copy of the formal order or the Court so directs, within seven days from such application or direction. After the decree or formal order has been examined and the provisions of Order XX, Rule 21, have been complied with, it shall be signed by the judge and the date of such signature entered by him immediately beneath the signature.

(2) Contents of decree (original). A Judge shall see that the decree or formal order drawn up specifies clearly the relief granted or other determination of the case and that the heading of the decree contains definite particulars of the claim.

99. Contents of appellate decree

When an appellate Court modifies or reverses the decree of the trial Court, the appellate decree shall specify the relief actually granted as the result of such modification or reversal. The Judge shall satisfy himself before signing the decree that the relief thus specified has been embodied in the decree.

100. Copy of appellate judgment to be certified to lower Court

A copy of an appellate judgment certified to the lower Courts shall, after noting the result in the appropriate register, be sent for perusal to the officer against whose order or decree the appeal was preferred. Such officer shall return the copy within a fortnight to the record keeper to be filed.

102. Parties to file summons

(a) A party shall file with the plaint, memorandum of appeal, or an application requiring the issue of a summons/notice, a printed summons/notice form in duplicate, in the Nagri character, duly filled up except in respect of the date of appearance/hearing and date of issue of the summons/notice. The Court may also direct a party in any proceeding to file a summons or notice filled up as above to be served on the opposite party.

Provided that the Presiding Officer may in his discretion direct that such forms in general or any particular such form be filled up entirely in the office of the Court.

(b) Date to be filled by office. In summons and notice the date of appearance/hearing and the date of issue shall be filled up by the office of the Court and the Presiding Officer or the Munsarim, to whom such authority may have been delegated, shall sign the summons/notice and also put the date of signature.

(c) Forms to be legibly written and signed by parties. The forms shall not be accepted unless filled up in a bold, clear and legible hand-writing [or typewritten or computer typed and printed. The valid and existing mobile number, if any, or email address, if any, of the opposite party should also be mentioned clearly.] The parties, their recognized agents or pleaders, shall sign the form in the left bottom corner, and will be responsible for the accuracy of the information entered in the forms.

(d) Process to contain name of issuing Court. In every process or order, issued or made by a judicial officer, the names of the district and the state, the Court and the officer issuing or making it, shall be legibly written at the top.In all cases all judicial officers and Munsarims shall sign their names distinctly and legibly. No such signature shall be made by means of a stamp.

(e) **Form of process.-** (e)There shall be two types of the forms of process, one printed on white paper to be used in ordinary cases and the other printed on pink paper to be used in urgent cases. Where there are printed forms available for any process, such forms shall invariably be used. Where there is a prescribed form but no printed copies are available, a process shall be written in the prescribed form. In cases where there is no prescribed form, a standard form, if possible, shall be modified to meet the requirements of the particular case.

(f) When translation to accompany process sent to other Courts (f) Where a process is sent to the Court of a district of another state where a different language is in ordinary official use, a translation, certified by the transmitting Court to be correct, into such other language may also accompany the process.

Limitation Act, 1963

ARTICLE	COURT	PRESCRIBED TIME	COMPUTATION OF DURATION
116.	Under the Code of Civil Procedure,1908 (5 of 1908)—	Ninety days.	The date of the decree or order.
	(a) to a High Court from any decree or order.	Thirty days.	The date of the decree or order.
	(b) to any other court from any decree or order.	Thirty days	The date of the decree or order.
117	From a decree or order of any High Court to the same Court.	Thirty days.	The date of the decree or order.
130	For leave to appeal as a pauper—		
	(a) to the High Court;	Sixty days	The date of decree appealed from.
	(b) to any other court.	Thirty days	The date of decree appealed from.

Meaning and Case Laws on Appeal

First Appeal

Meaning

There is no definition of appeal in the Code of Civil Procedure, but their Lordships have no doubt that any application by a party to an appellate court, asking to set aside or reverse a decision of a subordinate court, is an appeal within the ordinary acceptation of the term.

Nagendra Nath Dey v. Suresh Chandra Dey AIR 1932 PC 165

Appeal is thus

Removal of a cause from an inferior court to a superior court for the purpose of testing the soundness of the decision of the inferior court.

Essentials of Appeal

Every appeal has three basic elements, they are :-

(i) A Decision (usually a judgement of a court or the ruling of an administrative authority);

(ii) A person aggrieved (who is often, though not necessarily, a party to the original proceeding); and

(iii) A reviewing body ready and willing to entertain an appeal.

Nature& scope

First appeal is a valuable right of parties. The appellate court has jurisdiction to reverse or affirm the findings of the trial court. It is within the scope of the first appellate court to go into the question of fact and appraise the evidence available on record.

Right of appeal is not an inherent right

An appeal lies only as against a decree or as against an order passed under rules from which an appeal is expressly allowed by Order 43 Rule 1. No appeal can lie against a mere finding for the simple reason that the Code does not provide for any such appeal.

There is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous to claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law. That explains why the right of appeal is described as a creature of statute.

Ganga Bai v. Vijay Kumar (1974) 2 SCC 393

An appeal is a creature of statute and there is no right of appeal unless it is given clearly in express terms by a statute

It is well settle that an appeal is a creature of statute and there is no right of appeal unless it is given clearly in express terms by a statute and there is no reason why the legislature, while granting the right cannot impose condition for the exercise of such right so long as the conditions are not so onourous as to amount to unreasonable restrictions rendering the right almost illusionary.

Anant Mills company ltd. v state of Gujrat (1975) 2 SCC 175

Appeal and revision are creatures of statutes. Appeal is a continuation of suit or original proceeding, revision is not.

Hindustan Petroleum Corp. Ltd. v. Dilbahar Singh AIR 2014 SC 3708

A first appeal filed u/s 96 CPC is continuation of the original suit:

- **Dilip Vs. Mohd. Azizul Haq, (2000)3 SCC 607 (Para-7)**
- **D. Purushottam vs K. Sateesh (2008)8 SCC 505 (Para-11)**
- **Triloki Nath singh Vs. Anirudh Singh, (2020) 6 SCC 629 (Para-21)**

Right to appeal a substantive right

Right to appeal is not merely a matter of procedure. It is a matter of substantive right. The right of appeal from decision of inferior tribunal to a superior tribunal becomes vested in a party when the proceedings are first initiated in, and before a decision is given by the inferior court. The pre-existing right of appeal is not destroyed by the amendment if the amendment is not made retrospective by express words or necessary intendment. However, unless a right of appeal is clearly given by a Statute, it does not exist.

- **Hoosein Kasam Dada (India) Ltd Vs. State of M.P., (1953) 1 SC 299 (Para-24)**
- **Gujarat Agro Industries Vs. Municipal Corporation of Ahmedabad, (1999) 4 SCC 468 (Para -8)**

'First appeal' a valuable right of the parties

The first appeal is a valuable right of the parties and unless restricted by law the whole case is open for rehearing both on questions of fact and law.

- **Santosh Hazari Vs. Purushottam Tiwari, (2001) 3 SCC 179**
- **(ii) Parimal Vs. Veena, (2011) 3 SCC 545 (Para-26)**

Right of Appeal

Garikapati Veera. vs. N. Subbiah Chaudhry 1957 SCC Online SC 28:

The Hon'ble Supreme Court in this case,in para no.23, laid down the following principles pertaining to the right of appeal:

- That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings, all connected by an intrinsic unity and are to be regarded as one legal proceeding
- The right of appeal is not a mere matter of procedure but is a substantive right.
- The institution of the suit carries with it the implications that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit
- The right of appeal is a vested right and such a right to enter the Superior court accrues to the litigant and exist on and from the date the lis commences and, although it may be actually exercised when the adverse judgement is pronounced, such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.
- This vested right of appeal can be taken away only via subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.

An appeal lies only against a decree and not against judgment:

Under Section 96 CPC, an appeal lies only against a decree and not against judgment.

Banarasi Vs Ram Phal, (2003) 9 SCC 606(Para-8)

Tests for determination whether order passed is a decree:

The court with a view to determine whether an order passed by it is a decree or not must take into consideration the pleadings of the parties and the proceedings leading upto the passing of an order. The circumstances under which an order had been made would also be relevant. An order to qualify as decree must satisfy the following tests:

(i) There must be adjudication

(ii) Such adjudication must have been given in a suit

(iii) It must have determined the rights of the parties with regard to all or any of the matters in controversy in the suit

(iv) Such determination must be of a conclusive nature

(v) There must be a formal expression of such adjudication.

S. Satnam Singh & others Vs. Surender Kaur & another, (2009)2 SC C 562 (Para-16)

Memorandum of appeal must contain the grounds for appeal

The appeal is the judicial examination. The memorandum of appeal contains the grounds on which judicial examination is invited for purpose of limitations and rules. A written memorandum is required to be filed.

Laxmiratan Engg. Works Ltd. Vs. C.S.T., 1968 SCC Online 140 (Three-Judge Bench).

Preliminary decree is appealable (Sec 97 CPC): An appeal lies against a preliminary decree. As per Section 97 CPC, failure to appeal against a preliminary decree precludes the aggrieved party from challenging the final decree.

Mool Chand Vs. Dy. Director of Consolidation, (1995)5 SCC 631(Para-25)

The appeal is to be filed under Order 41 Rule 1 in the court in which it is maintainable.

The appeal is to be filed under Order 41 Rule 1 in the court in which it is maintainable. All that Order 41 Rule 9 requires is that a copy of memorandum of appeal which has been filed in the appellate court should also be presented before the court against whose decree the appeal has been filed and endorsement thereof shall be made by the decreeing court in a book called the register of appeals. Perhaps, the intention of the legislature was that the court against whose decree an appeal has been filed should be made aware of the factum of the filing of the appeal which may or may not be relevant at a future date. Merely because a memorandum of appeal is not filed under Order 41 Rule 9 will not, to our mind, make the appeal filed in the appellate court as a defective one.

Salem Advocates Bar Association Vs Union of India, (2003) 1 SC C 49 (Three-Judge Bench) (Para-23)

No condition to be imposed while admitting appeal

While the court can impose conditions while granting stay in exercise of its jurisdiction under Order 41 Rule 5 of the Code of Civil Procedure, it cannot pass any such order where the appellate or revisional jurisdiction is to be exercised.

G.L.Vijain Vs K. Shankar, (2006) 13SC C136 (Para-21)

Who can file appeal u/s 96 CPC

Unless a person is prejudicially or adversely affected by the decree, he is not entitled to file an appeal u/s 96 or u/s 100 CPC.

Banarasi & Others Vs. Ram Phal, (2003) 9 SCC 606 (Para-8)

Only aggrieved person with the decree or order competent to file appeal

Appeal is creature of statute, hence can be filed only by person permitted by the statute and subject to the statutory permission regarding the filing of such appeal.

Northern Plastics Ltd. Vs. Hindustan Photo Films Mfg. Co. Ltd. (1997) 4 SCC 452

Anyone out of several parties to suit aggrieved by decree can file appeal(Order 41 rule33)

Where there are several defendants, who are equally aggrieved by a decree on a ground common to all of them, and only one of them challenges the decree by an appeal in his own right, the fact that the other defendants do not choose to challenge the decree or that they have lost their right to challenge the decree, cannot render the appeal of the appealing defendant infructuous on this ground. In fact, Rule 4 and Rule 33 of Order 41 CPC are enacted to deal with such a situation.

Bajranglal Shivchandrai RuiaVs. Shashikant N. Ruia, (2004) 5 SCC 272 (Three-Judge Bench)(Para-44)

Right to appeal can be exercised in the manner prescribed by law

Right to appeal has to be exercised within the limits and according to the procedure provided by law. It is filed for invoking the powers of superior court to redress the error of court below, if any.

State of Haryana Vs. Maruti Udyog Ltd., (2000) 7 SCC 348 (Para-7)

Defects in the memorandum of appeal not to invalidate appeal

(Para-15). It is, thus, now well settled that any defect in signing the memorandum of appeal or any defect in the authority of the person signing the memorandum of appeal, or the omission to file the vakalatnama executed by the appellant, along with the appeal, will not invalidate the memorandum of appeal, if such omission or defect is not deliberate and the signing of the memorandum of appeal or the presentation thereof before the appellate court was with the knowledge and authority of the appellant. Such omission or defect being one relatable to procedure, can subsequently be corrected. It is the duty of the office to verify whether the memorandum of appeal was signed by the appellant or his authorized agent or pleader holding appropriate vakalatnama. If the office does not point out such defect and the appeal is accepted and proceeded with, it cannot be rejected at the hearing of the appeal merely by reason of such defect, without giving an opportunity to the appellant to rectify it. The requirement that the appeal should be signed by the appellant or his pleader (duly authorized by a vakalatnama executed by the appellant) is, no doubt, mandatory. But it does not mean that non-compliance should result in automatic rejection of the appeal without giving an opportunity to the appellant to rectify the defect. If and when the defect is noticed or pointed out, the court should, either on an application by the appellant or suo motu, permit the appellant to rectify

the defect by either signing the memorandum of appeal or by furnishing the vakalatnama. It should also be kept in view that if the pleader signing the memorandum of appeal has appeared for the party in the trial court, then he need not present a fresh vakalatnama along with the memorandum of appeal, as the vakalatnama in his favour filed in the trial court will be sufficient authority to sign and present the memorandum of appeal having regard to Rule 4(2) of Order 3 CPC, read with Explanation (c) thereto. In such an event, a mere memo referring to the authority given to him in the trial court may be sufficient. However, filing a fresh vakalatnama with the memo of appeal will always be convenient to facilitate the processing of the appeal by the office.

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(Para-17). Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. The well-recognized exceptions to this principle are:

(i) where the statute prescribing the procedure, also prescribes specifically the consequence of non-compliance;

(ii) where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it;

(iii) where the non-compliance or violation is proved to be deliberate or mischievous;

(iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court;

(v) in case of memorandum of appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant.

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Udai Shankar Triyar Vs. Ram Kalewar Prasad Singh, (2006) 1 SCC 75

Second appeal after withdrawl of first appeal is maintainable

The withdrawal of an incompetent appeal which will indeed be no appeal in the eye of law cannot in any way prejudice the right of any appellant to file a proper appeal, if the right of appeal is not otherwise lost by lapse of time or for any other valid reason.

M. Ramnarain (P) Ltd. Vs. State Trading Corpn. Of India Ltd., (1983)3 SC C75(Para-21)

Ordering deposit of money as condition precedent for admission of appeal not proper

It is open for the appellate court to impose any condition as it may think fit and proper in the facts and circumstances of the case. Otherwise imposing a condition of deposit of money subject to which an appeal may be admitted for hearing on merits is not legally justified and such order cannot be sustained.

Management of Devi Theatre Vs Vishwa Nath Raju, (2004) 7 SC C 337(Para-6)

Summary dismissal of appeal when possible u/s 96 CPC

Court hearing first appeal against finding of facts must record its reasons, especially if it is the final court on finding of facts. One word order 'Dismissed' not permissible. While affirming judgment of lower court detailed discussion is not required.

Kerala Transport Co. Vs. Shah Manilal Mulchand, 1991 Supp. (2) SCC 461

Ex parte ad interim injunction order is appealable u/o 43, rule 1(r) CPC

Order granting temporary injunction under Order 39, rule 1 CPC is appealable u/o 43, rule 1(r) CPC. Plea that only orders granting injunction which finally decide application 6-C2 are alone appealable is not tenable. All orders under Order 39, rule 1 CPC are interim orders and cannot be bifurcated as final orders and interim orders.

Appeal under Order 43, rule 1 CPC maintainable against an ex parte order of injunction passed u/o 39, rule 1& 2 CPC

Appeal against an order passed on an application under Order 39, rule 1&2 CPC is maintainable under Order 43, rule 1 CPC. The choice is of the party affected by the order either to move the appellate court or to approach the same court which passed the ex parte order for any relief.

New Kenilworth Hotel Pvt. Ltd vs. Orissa State Finance Corporation, (1997) 3 SCC 462, (Para-5)

Appeal u/o 43, rule 1 (r) CPC not maintainable against mere issue of notice u/o 39, rule 3 CPC

Where only notice u/o 39, rule 3 CPC was issued to defendant and the injunction application was not finally disposed off by the court u/o 39 rule 1 and 2 CPC, it has been held that appeal u/o 43, rule 1(r) CPC does not lie against mere issue of notice to defendant u/o 39, rule 3 CPC.

Appellate court should not interfere under Order 43, rule 1 (r) CPC with the order of trial court granting interim injunction u/o 39, rule 1 & 2 CPC except in exceptional situations

Appellate court should not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions.

Shyam Sel And Power Limited Vs Shyam Steel Industries Limited, (2023) 1 SCC 634

Under Order 43, Rule 1 CPC, appellate court should normally not interfere with the discretion of the trial court in granting interim injunction

It is now well-entrenched in our jurisprudence that the appellate court should not flimsily, whimsically or lightly interfere in the exercise of discretion by a sub-ordinate court unless such exercise is palpably perverse, arbitrary, capricious or against the settled principles of law. Perversity can pertain to the understanding of law or the appreciation of pleadings or evidence. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage, it would have come to a different conclusion.

Neon Laboratories Ltd. Vs. Medical Technologies Ltd., (2016) 2 SCC 672 (para 5)

Appellate court should not interfere u/o 43, rule 1 CPC with the order of grant or refusal of interim injunction

Once the court of first instance exercises its discretion to grant or refuse to grant relief of temporary injunction and the said exercise of discretion based upon objective consideration of the material based before court and is supported by cogent reasons, the appellate court will be loath to interfere simply because on a de novo consideration of the matter. It is possible for the appellate court to form a different opinion on the issues of prima facie case, balance of convenience, irreparable injury and equity. Unless the appellate Court comes to the conclusion that the discretion exercised by the trial court in refusing to entertain the prayer for temporary injunction is vitiated by an error apparent or perversity and manifest injustice has been done, there will be no warrant for exercise of power.

Skyline Education Institute (Pvt.) Ltd. v. S.L. Vaswani & another, (2010) 2 SCC 142(Three-Judge Bench) (Para-22&25)

Interim injunction in appeal u/o 43, rule 1(r) CPC not to be granted beyond the scope/prayer in the main appeal

The scope of an interim application cannot be greater in scope than the main appeal filed u/o 43, rule 1(r) CPC. Grant of interim relief by appellate court in relation to issues which are not raised in main appeal filed u/o 43, rule 1(r) CPC is not permissible.

Relief not claimed in plaint not to be granted

A relief larger than the one claimed by plaintiff in the suit cannot be granted by court. It is not open to the court to grant a relief to the plaintiff on a case for which there is no basis in the pleadings.

- **Meena Chaudhary Vs. Commissioner of Delhi Police, (2015) 2 SCC 156. (Para-3)**
- **Om Prakash Vs. Ram Kumar, (1991) 1 SCC 441 (Para 4)**
- **M. Siddiq (Ram Janmabhumi Temple Vs. Suresh Das, (2020) 1 SCC 1 at pages 737 & 738 (Para 1228) (Five-Judge Bench).**

Appeal u/o 43, rule 1 r/w Section 104 and order 1 rule 10 & order 41, rule 33 CPC against order of temporary injunction by an appellant not party in suit maintainable

There is nothing in order 43, rule 1 CPC that leave to appeal has to be applied for in any particular format. When the appellant was not stranger to the controversy and he was already party in a proceeding before BIFR, he could have maintained an appeal u/o 43, rule 1 CPC against an order of interim injunction.

Ghanshyam Sharda Vs. Shiv Shankar Trading Company, (2015) 1 SCC 298

Temporary Injunction cannot be passed against a third party or stranger

A temporary injunction cannot be passed under Order 39, rules 1&2 CPC or under Order 22 CPC against a third party or stranger or a non party to the suit.

West Bengal Housing Board vs. Pramila Sanfui, (2016) 1 SCC 743 (Para-24, 25 & 29)

All issues to be considered by the Appellate Court

First appellate court it ought to have considered and addressed itself to all the issues of fact and law before setting aside the judgment of the trial court. The judgment of the High Court suffers from a grave error as it ignored and overlooked the finding of the trial court on Issue 5 that the seller accepted the encashment of bill and document on collection basis. The High Court was required to address itself to Issue 5 which surely had bearing on the final outcome of the case.

- **State Bank of India & another Vs. M/s. Emmsons International Ltd. And another, (2011)12 SCC 174(Para-19)**
- **Santosh Hazari Vs. Purushottam Tiwari, (2001) 3 SCC 179**

Extent of powers of first appellate court u/s 96 read with Order 41, rule 33 CPC

First appellate court can go into the questions of facts and appraise the evidence on record.

- **Madanlal Vs. Yoga Bai, (2003) 5 SC C 89(Para-4)**
- **Jurisdiction of first appellate court u/o 41, Rule 11 CPC:**
- **Devi Theatre Vs. Vishwanath Raju, (2004) 7 SCC 337 (Para-5 & 6)**

Powers of first appellate court under Order 41, rules 33 & 22

The first part confers on the appellate court very wide power to pass such order in appeal as the case may require. The second part contemplates that this power will be exercised by the appellate court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents. The third part is where there have been decrees in cross suits, this power is exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees.

Biahr Supply Syndicate Vs. Asiatic Navigation, (1993) 2 SCC 639 (Para-29)

Power of first appellate court

First appellate court can re- appreciate the entire evidence and come to a different conclusion from a trial court.

Jagannath Vs. Arulappa, (2005) 12 SCC 303(Para-2)

Duty of first appellate court

First appellate court, being the last court of appeal on facts, it is a duty of the first appellate court to go into all the questions raised in the appeal and also the challenge of the evidence led in the case. If this not having being done the matter must be remitted for decision afresh.

Rama Pulp & Paper Ltd Vs. Maruti N. Dhotre, (2005) 12 SCC 186.

First appellate court, in exercise of its powers u/s 96 CPC read with Order 41, rule 31 CPC is obliged to decide all issues arising in the case both on facts and law after appreciating the entire evidence. Disposal of appeal in a cryptic manner by a judgment bereft of concise statement of points for determination and decisions thereon and reasons is improper.

UPSRTC, Uttar Pradesh Vs. Kumari Mamta, 2016 (2) ALJ 645 (SC)

First appellate court u/s 96 CPC must record it findings only after dealing with all the issues of law as well as of facts and with the evidence, oral as well as documentary, led by the parties. The appellate court must give reasons in support of its findings. If the court does not fulfill its obligations, the parties would not get the true benefit of the first appeal which is a valuable right on the basis of which parties have a right to be heard on questions of law as well as of facts.

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Madhukar Vs. Sangram, (2001) 4 SCC 756 (Three-Judge Bench) (Para-5)

All questions of fact and law decided by the Trial Court remain open for re-consideration by the first appellate court

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Section 96 of the CPC provides for filing of an appeal from the decree passed by a court of original jurisdiction. Order 41, Rule 31 CPC provides the guidelines to the appellate court for deciding the appeal. This rule mandates that the judgment of the appellate court shall state:

(a) points for determination;

(b) the decision thereon;

(c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

(e) Thus, the appellate court has the jurisdiction to reverse or affirm the findings of the Trial Court. It is settled law that an appeal is a continuation of the original proceedings. The appellate court's jurisdiction involves a rehearing of appeal on questions of law as well as fact. The first appeal is a valuable right, and, at that stage, all questions of fact and law decided by the Trial Court are open for re- consideration. The judgment of the appellate court must, therefore, reflect conscious application of mind and must record the court's findings, supported

by reasons for its decision in respect of all the issues along with the contentions put forth and pressed by the parties. Needless to say, the first appellate court is required to comply with the requirements of Order 41, Rule 31 CPC and non-observance of these requirements lead to infirmity in the judgment.

Somakka (Dead) by LRs Versus K.P. Basavaraj (Dead) by LRs, 2022 SCC OnLine SC 736. (Para-32.4)

Complying with the essentialities of order 41, rule 31 CPC is mandatory for the first appellate court

It is mandatory for the first appellate court to comply with the essentialities of order 41, rule 31 CPC while deciding the first appeal. Without complying with the provisions of order 41, rule 31 CPC, first appeal cannot be decided.

- **Manjula Versus Shyam Sundar, (2022) 3 SCC 90 (Para-8)**
- **K. Karuppuraj Versus M. Ganesan, (2021) 10 SCC 777 (Para-7 & 8)**
- **Malluru Mallappa Versus Kuruvathappa And Others, (2020) 4 SCC 313 (10, 13 & 18)**

Recording of reasons must for appeallate court

If having regard to the nature of oral evidences adduced before it, the Trial Judge came to the conclusion that the appellant had failed to prove her case, the first appellate court, as has rightly been held by the High Court, could not have reversed the said finding without assigning sufficient and cogent reasons thereof.

Chinthamani Ammal Vs. Nadagopal Gounder, (2007) 4 SCC 163 (Para-18)

Cryptic and non-speaking appellate order not justifiable

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Dismissal of regular first appeal passing cryptic order on facts is not proper. If a first appeal deserved to be dismissed at the admission stage itself some reasons however brief, must be recorded therefor.

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Delhi, U.P., M.P. Transport Co. Vs. New India Assurance Co. (2006) 9 SCC 213 (Para-5)

Appellate court has discretion to pass a decree in favour of a non-appealing party if he is entitled to such a decree

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No rigid rule can be laid down and it would depend on facts of each case. In exceptional cases appellate court can pass such decree or order as ought to have been passed even in favour of a party who had not preferred an appeal. O. 41, R. 33 CPC enables the appellate court to pass any order or decree which ought to have been made and to make such further order or decree as the case may be in favour of all or any of the parties even though (i) the appeal is as to part only of the decree and, (ii) such party or parties may not have filed an appeal.

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- **Chandramohan Vs Bapu, (2003)3 SCC552(Para-14&15)**
- **K. Muthuswami Gounder Vs. N. Palaniappa Gounder, (1998) 7 SCC 327 (Para-12)**

Non-appealing plaintiffs or defendants can also be granted relief by the appellate court

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Some of plaintiffs whose claim was denied by the trial court and who had not challenged the same by way of appeal before first appellate court were held to be entitled to the relief in second appeal. In a partition suit, all parties stand on the same pedestal and every party is a plaintiff as well as a defendant. Position of plaintiff and defendant can be interchangeable. Trial court could grant relief even to non- appealing plaintiffs and make an adverse order against all defendants and in favour of all plaintiffs, Merely because trial court had not granted relief in favour of some of the plaintiffs, that would not come in the way in the High Court allowing their claim.

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Azgar Barid Verus Mazambi Alias Pyaremabi, (2022) 5 SCC 334 (Para-14)

Appellate Court can pass interim order

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The power to make interim order is, except where it is specifically taken away by the statute, implicit in the power to make a final order. It is exercised by the authority who has to make the final order or an Authority exercising appellate or revisional jurisdiction against an order granting or refusing an interim order like one u/o 39 Rule 1 & 2 CPC. The exercise of the power implies that the authority seized of the proceedings in which such an order is made will eventually pass a final order, the interim order serving only as a step in aid of such final order. The law does not permit the making of an interim order by one authority or court pending adjudication of the dispute by another.

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L.V. Ashok Kumar Lingala vs. State of Karnataka, (2012) 1 SC C321(Para-23)

No automatic expiration of interim stay order after six months

Overruling its previous Three-Judge Bench judgement in Asian Resurfacing of Road Agency (P) Ltd. Vs. CBI, (2018)16 SCC 299, a Five-Judge Constitution Bench of the Hon'ble Supreme Court has ruled that an interim stay order would not expire after expiration of six months from the date of passing of the stay order.

High Court Bar Association, Allahabad vs. State of U.P, 2024 SCC Online SC 207

Meaning of "Stay Order"

While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending.

Shree Chamundi Mopeds Limited Vs. Church of South India Trust Association CSI Cinod Seceretariat, Madaras, (1992) 3 SCC 1 (Three-Judge Bench) (Para 10)

Discretionary power of appellate court u/o 41, Rule 33 CPC

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When circumstances exist which necessitate the exercise of discretion conferred on the appellate court by Order, 41 Rule 33 CPC, the appellate court cannot be found wanting when it comes to exercise its powers.

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Delhi Electric Supply Undertaking vs Basanti Devi, (2000)8 SCC 229

Deficiency in court fee occurred in trial court can be directed to be made good even at appellate stage

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It is well known legal position that appeal is continuation of suit and power of appellate court is co- extensive with that of the trial court. Deficiency in court fee occurred in trial court can be directed to be made good even at appellate stage.

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Sardar Tajendra Singh Gambhir Vs. Sardar Gurpreet Singh, 2015 (1) ARC 616 (SC).

Findings of facts recorded by lower court not to be ordinarily disturbed

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Findings recorded by lower court/authority in favour of the appellant cannot be interfered with by the appellate court/authority in absence of any appeal filed by the respondent. The object of R. 33 is to avoid contradictory and inconsistent decisions on the same questions in the same suit. The power under this rule is in derogation of the general principle that a party cannot avoid a decree against him without filing an appeal or cross objection, it must be exercised with care and caution.

The rule does not confer an unrestricted right to reopen decrees which have become final merely because the appellate court does not agree with the opinion of the court appealed from.

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Choudhary Sahu Vs. State of Bihar, 1981INSC 205

When can appellate court interfere u/s 96 CPC with the finding of facts recorded by the trial court

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The appellate court may not interfere with the finding of the trial court unless the finding recorded by the trial court is erroneous or the trial court ignored the evidence on record.

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Venkatesh Construction Co. Vs. Karnataka Vidyuth Karkhane Limited, (2016) 4 SCC 119 (para 20) (Three-Judge Bench).

Reversal of findings of trial court and duty of appellate court

While reversing a finding of fact, the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it.

- **State Bank of India & another Vs. M/s. Emmsons International Ltd. and another, (2011) 12 SCC174 (Para-19)**
- **V. Prabhakara Versus Basavaraj K., (2022) 1 SCC 115 (Para-22)**

When can appellate court not interfere with the findings of fact recorded by the trial court

The first appellate court should not disturb and interfere with the valuable rights of the parties which stood crystallized by the trial court's judgment without opening the whole case for re-hearing both on question of facts and law. More so, the appellate court should not modify the decree of the trial court by cryptic order without taking note of all relevant aspects, otherwise the order of the appellate court would fall short of considerations expected from the first appellate court in view of the provisions of Order 41, rule 31 CPC and such judgment and order would be liable to set aside.

Parimal Vs. Veena, (2011) 3 SCC 545 (Para-26)

Plea of jurisdiction can be raised at appellate stage

Objection as to jurisdiction of the trial court can be raised at any stage. If the trial court had no jurisdiction in the matter, the doctrine of coram non judice would apply and the judgment and decree of the lower court being without jurisdiction cannot be upheld.

Chief Engineer, Hydel Project Vs. Rabinder Nath, (2008) 2 SCC 350 (Para-24)

Plea of absence of jurisdiction when not to be entertained by the appellate court

A decision rendered without jurisdiction would coram non judice. It is a fundamental principle that a decree passed by a court without jurisdiction is nullity and its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction strikes at the very authority of the court to pass any decree and such a defect cannot be cured even by consent of parties. But a distinction, however, must be made between a jurisdiction with regard to subject matter of the suit and that of territorial and pecuniary jurisdiction. Whereas in the case falling within the former category the judgment would be a nullity, in the later it would not be.

- **Mantoo Sarkar Vs. Oriental Insurance Company Ltd. & another, (2009) 2 SCC 244 (Para-21)**
- **Harshad Chiman Lal Modi Vs. DLF Universal Limited & another, (2005) 7 SCC 791(Para-16)**
- **Chief Engineer, Hydel Project Vs. Rabinder Nath, (2008) 2 SCC 350 (Para-28)**

Appellate court can mould relief in accordance with the law having come into force during pendency of appeal

Appeal is in continuation and rehearing of the suit. Appellate court is entitled to take into account even facts and events which came into existence after passing of decree appealed against. If a new enactment comes into force during the pendency of appeal, appellate court can mould the relief by applying the new enactment.

Dilip Vs. Mohd. Azizul Haq, (2000)3 SCC 607 (Para-8)

Procedure in Appeal

An appeal preferred u/s 96 must conform to the requirements of O.41. an appeal cannot be filed in anticipation. An appeal at the time of filing, will either be maintainable or will not be.

Rekha v. Ashis (2005) 3 SCC 427(Para-33)

Requirements

In order that an appeal may be said to be validly presented, the following requirements must be complied with :

It must be in the form of memorandum

It must be signed by the appellant or his pleader

It must be presented to the court or to such officer as authorised

The memorandum must be accompanied by (certified copy) of the judgement.

Procedure to decide first appeal

Order 41, rule 31 CPC provides for procedure for deciding the appeal. The law requires substantial compliance of the said provisions. The first appellate court being the final court of facts has to formulate the points for its consideration and independently weigh the evidence on the issues which arise for adjudication and record reasons for its decision on the said points. The first appeal is a valuable right and the parties have a right to be heard both on question of law and on facts.

- **H. Siddiqui Vs. A. Ramalingam, (2011)4 SCC 240 (Para-21)**
- **Parimal Vs. Veena, (2011) 3 SCC 545 (Para-25&26)**
- **Shiv Kumar Sharma Vs. Santosh Kumari, (2007) 8 SCC 600 (Para-29)**
- **Gannamani Anasuya Vs. Parvatini Amarendra Chowdhary, (2007) 10 SCC 296 (Para-29)**
- **G. Amalorpvam Vs. R.C. Diocese of Madurai, (2006) 3 SCC 224 (Para-9)**
- **Santosh Hazari Vs. Purushottam Tiwari, AIR 2001 SC 965**

Memorandum of appeal

Presentation of Appeal : Rules 9, 10

Rule 9 states that, the court from who's decree an appeal lies, shall entertain the memorandum of appeal, shall make an endorsement thereon and shall register the appeal in register of appeals.

Under Rule 10(1), the appellate court may at its discretion require the appellant to furnish the security for the costs of appeal or of the suit or of both.

Delay Condonation : Rule 3-A

Rule 3-A has been inserted by the Amendment Act of 1976. It provides that where an appeal has been presented after the expiry of the period of limitation specified therefore, it shall be accompanied by an application that the applicant had sufficient cause for not preferring the appeal within time.

Rule 3A (3) no stay of execution of decree pending application of condonation.

Respondent must be heard; no ex-parte condonation without notice.

10. What is the consequence if such an appeal is not accompanied by an application mentioned in sub-rule (1) of Rule 3-A? It must be noted that the Code indicates in the immediately preceding Rule that the consequence of not complying with the requirements in Rule 1 would include rejection of the memorandum of appeal. Even so, another option is given to the court by the said Rule and that is to return the memorandum of appeal to the appellant for amending it within a specified time or then and there. It is to be noted that there is no such rule prescribing for rejection of memorandum of appeal in a case where the appeal is not accompanied by an application for condoning the delay. If the memorandum of appeal is filed in such appeal without an accompanying application to condone delay the consequence cannot be fatal. The court can regard in such a case that there was no valid presentation of the appeal. In turn, it means that if the appellant subsequently files an application to condone the delay before the appeal is rejected the same should be taken up along with the already filed memorandum of appeal. Only then the court can treat the appeal as lawfully presented. There is nothing wrong if the court returns the memorandum of appeal (which was not accompanied by an application explaining the delay) as defective. Such defect can be cured by the party concerned and present the appeal without further delay.

11. No doubt sub-rule (1) of Rule 3-A has used the word "shall". It was contended that employment of the word "shall" would clearly indicate that the requirement is peremptory in tone. But such peremptoriness does not foreclose a chance for the appellant to rectify the mistake, either on his own or being pointed out by the court. The word "shall" in the context need be interpreted as an obligation cast on the appellant. Why should a more restrictive interpretation be placed on the sub-rule? The Rule cannot be interpreted very harshly and make the non-compliance punitive to an appellant. It can happen that due to some mistake or lapse an appellant may omit to file the application (explaining the delay) along with the appeal.

12. It is true that the pristine maxim vigilantibus non dormientibus jura subveniunt (law assists those who are vigilant and not those who sleep over their rights). But even a vigilant litigant is prone to commit mistakes. As the aphorism "to err is human" is more a practical notion of human behaviour than an abstract philosophy, the unintentional lapse on the part of a litigant should not normally cause the doors of the judicature permanently closed before him. The effort of the court should not be one of finding means to pull down the shutters of adjudicatory jurisdiction before a party who seeks justice, on account of any mistake committed by him, but to see whether it is possible to entertain his grievance if it is genuine.

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State Of M.P. And Anr. vs Pradeep Kumar And Anr. (2000) 7 SCC 372.

Hearing of Appeal

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Date of hearing normally means, admission hearing, i.e., that date on which the court applies its mind to the merits of the case. On that date, either the court may dismiss the appeal summarily, or may admit for regular hearing.

Mahadev Govind Gharge v. Land Acquisition Officer (2011) 6 SCC 321.

Stay of Proceedings : Rules 5-8

Rule 5 provides for stay of an execution of a decree or an order. After an appeal has been filed, the appellate court may order stay of proceedings under the decree or execution of such decree.

Kamla Devi v. Takhatmal AIR 1964 SC 859.

Mere filing of an appeal does not suspend the operation of a decree. Stay may be granted if sufficient grounds are established.

The following conditions must, therefore, be satisfied before stay is granted by the court:

The application has been made without unreasonable delay;

Substantial loss will result to the applicant unless such order is made; &

Security for the due performance of the decree or order has been given by the applicant.

Atmaram Properties (p) Ltd. v. Federal Motors (p)Ltd. (2005) 1 SCC 705.

Appeal filed without making deposit of decretal amount or giving security. There cannot be stay of execution unless the appellant can make out an exceptional case.

Malwa Strips (p)Ltd. v Jyoti Ltd. AIR 2009 SC 1582

Appellate court to decide all issues in its judgment

First appellate court is required to consider and decide all issues whether of law or facts or of both.

State Bank of India & another Vs. M/s. Emmsons International Ltd. and another, (2011) 12 SCC174

The first appellate court was bound to apply its mind to all the evidence available on record

The first appellate court was bound to apply its mind to all the evidence available on record and then test the legality of the findings arrived at by the trial court.

Rattan Dev Vs. Pasam Devi, (2002) 7 SCC 441(Para-4)

Appeal cannot be dismissed on merits in default of appearance of appellant

In view of bar of the explanation added to Order 41, rule 17 CPC w.e.f. 1.2.1977, a civil appeal cannot be dismissed on merits in absence of the appellant or his counsel. The option of the appellate court is to dismiss the appeal in default of the appellant. But the appeal can be heard on merits if the respondent does not appear.

Harbans Pershad Jaiswal Vs. Urmila Devi Jaiswal, (2014) 5 SCC 723 (Para-11)

Rule 1 of Order 42 which deals with appeals from appellate decrees (second appeals) lays down procedure and expressly states that the Rules of Order 41 shall apply so far as may be to appeals from appellate decrees. Prima facie, therefore, it appears that once an appeal is admitted and is placed for hearing i.e. hearing on merits, it can be dismissed for default but cannot be decided on merits in the absence of the appellant (or his advocate).

Secretary, Department of Horticulture, Chandigarh Vs. Raghu Raj, (2008)13 SCC 395(Para-38)

Production of additional evidence by parties at appellate stage and relevant considerations for permitting it

If an application is filed by the party under Order 41, rule 27 CPC to produce additional evidence at appellate stage, the duty of the court is to decide the same on merit and consider as to whether the document or other evidence sought to be adduced has any relevance or bearing on the issues involved.

- **Malyalam Plantations Limited Vs. State of Kerala, AIR 2011 SC 559**
- **Shyam Gopal Bindal Vs. Land Acquisition Officer, AIR 2010 SC 690**
- **Jatinder Singh Vs. Mehar Singh, AIR 2009 SC 354**
- **Mahavir Singh Vs. Naresh Chandra, AIR 2001 SC 134.**

Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances

The general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. The appellate court may permit additional evidence only and only if the conditions laid down in this Rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, the provision does not apply, when on the basis of the evidence on record, the appellate court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the court and is to be used sparingly. Such a discretion is only a judicial discretion circumscribed by the limitation specified in the Rule itself.

It is crystal clear that an application for taking additional evidence on record at an appellate stage, even if filed during the pendency of the appeal, is to be heard at the time of the final hearing of the appeal at a stage when after appreciating the evidence on record, the court reaches the conclusion that additional evidence was required to be taken on record in order to pronounce the judgment or for any other substantial cause. In case, the application for taking additional evidence on record has been considered and allowed prior to the hearing of the appeal, the order being a product of total and complete non-application of mind, as to whether such evidence is required to be taken on record to pronounce the judgment or not, remains inconsequential/inexecutable and is liable to be ignored.

Union of India Vs. Ibrahim Uddin, (2012) 8 SCC 148 (Para - 36&52).

Relevant considerations for permitting production of additional evidence u/o 41, rule 27 CPC

The true test to be applied in dealing with the application for additional evidence u/o 41, rule 27 CPC is whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. If the additional evidence is allowed to be adduced contrary to the principles governing the reception of such evidence, it will be a case of improper exercise of discretion and additional evidence so brought on record will have to be ignored.

Natha Singh Vs. The Financial Commissioner, AIR 1976 SC 1053.

Vigilance or negligence of party not relevant for invoking power u/o 41, rule 27 CPC to permit production of additional evidence

It is clear that Rule 27 deals with production of additional evidence in the appellate court. The general principle incorporated in sub-rule (1) is that the parties to an appeal are not entitled to produce additional evidence (oral or documentary) in the appellate court to cure a lacuna or fill up a gap in a case. The exceptions to that principle are enumerated thereunder in clauses (a), (aa) and (b). We are concerned here with clause (b) which is an enabling provision. It says that if the appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, it may allow such document to be produced or witness to be examined. The requirement or need is that of the appellate court bearing in mind that the interest of justice is paramount. If it feels that pronouncing a judgment in the absence of such evidence would result in a defective decision and to pronounce an effective judgment admission of such evidence is necessary, clause (b) enables it to adopt that course. Invocation of clause (b) does not depend upon the vigilance or negligence of the parties for it is not meant for them. It is for the appellant to resort to it when on a consideration of the material or record it feels that admission of additional evidence is necessary to pronounce a satisfactory judgment in the case.

Wadi Vs. Amilal, (2015) 1 SCC 677(Para-5)

Lacuna to fill up in evidence not to be allowed u/o 41, rule 27 CPC

Additional evidence in appeal u/o 41, rule 27(1)(b) CPC cannot be filed by a party at appellate stage as of right. Attempt to fill up gap in the case left out before the trial court cannot be permitted. Additional District Judge therefore illegally allowed application u/o 41, rule 27 CPC and the same was set aside.

Natha Singh Vs. The Financial Commissioner, AIR 1976 SC 1053

Remand of appeal an 'interlocutory order'

Remand of appeal u/o 41,rule 23-A CPC is an interlocutory order which does not terminate the proceedings and hence it could be challenged from the final order.

Mangal Prasad Tamoli Vs. Narvedshwar Misra, 2005 (2) SCJ 515

Appeal must be remanded to the trial court for deciding as to who is the LR of the deceased party: Interpreting the provisions of Order 41,rule 25 CPC read with Proviso to Order 22, rules 4 & 5 CPC, it has been ruled by the Hon'ble Supreme Court that if a question arises in appeal as to who is the legal representative of the deceased party, the appeal must be remanded to the trial court as an enquiry on question as to who is LR of the deceased party can be done only by the trial court. It is, therefore, necessary for the appellate court remand the appeal to trial court for recording such finding.

Karedla Parthasaradhi Vs. Gangula Ramanamma, AIR 2015 SC 891.

Admissibility of additional evidence/documents

Production of additional evidence/documents at the appellate stage is permissible, when such evidence/documents have material bearing on the issues involved in thesuit and in determining the rights of the parties,

Uttaradi Mutt v. Raghavendra Swamy Mutt, (2018) 10 SCC 484

Allowing of the applications filed under Order 41 Rule 27 CPC, does not lead to the result that the additional documents/additional evidence can be straightaway exhibited rather, the respondent/applicant would have to not only prove the existence, authenticity and genuineness of the said documents but also the contents thereof, in accordance with law,

Uttaradi Mutt v. Raghavendra Swamy Mutt, (2018) 10 SCC 484

Admissibility of additional evidence under Order 41 Rule 27 CPC does not depend upon the relevancy of the issue on hand, or whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. That is, whether such additional evidence has a direct bearing on pronouncement of the judgment,

Sanjay Kumar Singh v. State of Jharkhand, (2022) 7 SCC 247

Order for taking additional evidence in appeal without following procedure under Order 41 Rules 27, 28 and 29 is not permissible

H.S. Goutham v. Rama Murthy, (2021) 5 SCC 241

Procedure to be followed by appellate courts after receiving additional evidence

Once additional evidence is permitted at appellate stage, other side must be given opportunity to lead rebuttal evidence to counter additional evidence. Appellate courts have two options (i) to take recourse remanding entire matter under Order 41 Rule 23-A for retrial, or (ii) to make limited remand under Order 41 Rule 25 by retaining main appeal with itself so that parties can lead evidence on particular issues in light of additional evidence and then to decide main appeal on merits,

Corporation of Madras v. M. Parthasarathy, (2018) 9 SCC 445, See also Akhilesh Singh v. Lal Babu Singh, (2018) 4 SCC 659.

Conditions

The appellate court, in exercise of its discretionary jurisdiction and subject of fulfilment of the conditions laid down under Order 41, Rule 27 CPC, may allow the parties to adduce additional evidence,

Vimal Chand Ghevarchand Jain v. Ramakant Eknath Jadoo, (2009) 5 SCC 713 : (2009) 2 SCC (Civ) 669, See also Lekhraj Bansal v. State of Rajasthan, (2014) 15 SCC 686 : (2015) 4 SCC (Civ) 480

Conditions for allowing additional evidence to be produced in appellate court, if not satisfied, additional evidence cannot be permitted to fill in lacunae or to patch up weak points in the case,

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Satish Kumar Gupta v. State of Haryana, (2017) 4 SCC 760

Due diligence of party

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Party guilty of remissness in not producing evidence in trial court cannot be allowed to produce it in appellate court. There must be satisfactory reasons for non-production of the evidence in trial court for seeking production thereof in appellate court,

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Union of India v. Ibrahim Uddin, (2012) 8 SCC 148 : (2012) 4 SCC (Civ) 362

Recording of reasons

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Though reasons need not be recorded in a separate order but they should be embodied in appellate judgment,

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Union of India v. Ibrahim Uddin, (2012) 8 SCC 148 : (2012) 4 SCC (Civ) 362

On Order 41 rule 27CPC

It is true that the general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. It may also be true that the appellate court may permit additional evidence if the conditions laid down in this Rule are found to exist and the parties are not entitled, as of right, to the admission of such 4 evidence. However, at the same time, where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed. Even, one of the circumstances in which the production of additional evidence under Order 41 Rule 27 CPC by the appellate court is to be considered is, whether or not the appellate court requires the additional evidence so as to enable it to pronouncement judgment or for any other substantial cause of like nature. As observed and held by this Court in the case of A. Andisamy Chettiar v. A. Subburaj Chettiar, reported in (2015) 17 SCC 713, the admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. It is further observed that the true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced.

The appellate court to take additional evidence in exceptional circumstances - Where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed - The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause - The true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. (Para 4)

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Sanjay Kumar Singh vs State of Jharkhand,2022 LiveLaw (SC) 268

The Hon'ble Supreme Court observed that additional evidence cannot be introduced at the appellate stage under Order XLI Rule 27 CPC if it is inconsistent with the pleadings. The Court emphasized that appellate courts must first examine the pleadings before allowing such evidence, as evidence unrelated to the pleadings serves no purpose, rendering them inadmissible.

"In our opinion, before undertaking the exercise of considering whether a party is entitled to lead additional evidence under Order XLI Rule 27(1) of the Code, it would be first necessary to examine the pleadings of such party to gather if the case sought to be set up is pleaded so as to support the additional evidence that is proposed to be brought on record. In absence of necessary pleadings in that regard, permitting a party to lead additional evidence would result in an unnecessary exercise and such evidence, if led, would be of no consequence as it may not be permissible to take such evidence into consideration.".

"…the appellate court may permit additional evidence only upon being satisfied that the conditions expressly stipulated under Order XLI Rule 27 of CPC are fulfilled. The parties do not possess any vested or automatic right to seek admission of additional evidence at the appellate stage."

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Gobind Singh AND ORS. Versus Union Of India And ORS.2026 LiveLaw (SC) 221

On Order 41 rule 27CPC

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"Thus, besides the requirements prescribed by Order XLI Rule 27(1) of the Code being fulfilled, it would also be necessary for the Appellate Court to consider the pleadings of the party seeking to lead such additional evidence. It is only thereafter on being satisfied that a case as contemplated by the provisions of Order XLI Rule 27(1) of the Code has been made out that such permission can be granted. In absence of such exercise being undertaken by the High Court in the present case, we are of the view that it committed an error in allowing the application moved by the defendant for leading additional evidence.",

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Iqbal Ahmed (Dead) By LRS. & ANR. Versus Abdul Shukoor, 2025 LiveLaw (SC) 831

Mandatory requirement of compliance with Order 41 Rule 31

First appellate court is mandatorily required to comply with requirements of Order 41 Rule 31 and non-observance of these requirements lead to infirmity in judgment,

Manjula v. Shyamsundar, (2022) 3 SCC 90.

Review jurisdiction Scope and extent

Court of review has only limited jurisdiction circumscribed by definitive limits fixed by language used in Order 47 Rule 1, Court of review has only limited jurisdiction circumscribed by definitive limits fixed by language used in Order 47 Rule 1,

Diesel LOCO Shed & South Eastern Railway House Building Coop. Society Ltd. v. Attili Appala Swamy, (2015) 2 SCC 390. Diesel LOCO Shed & South Eastern Railway House Building Coop. Society Ltd. v. Attili Appala Swamy, (2015) 2 SCC 390.

Grounds for Review

Expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds. An error which is not self-evident and which can be discovered only by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of review power. An erroneous order/decision cannot be corrected in the guise of exercise of review power,

Shri Ram Sahu v. Vinod Kumar Rawat, (2021) 13 SCC 1

Review of a decree

The decree that is subsequently passed on review whether it modifies, reverses or confirms the decree originally passed is a new decree superseding the original one,

Sushil Kumar v. State of Bihar, (1975) 1 SCC 774

Review of judgment in second appeal

Review of judgment in second appeal is maintainable subject to availability of a ground within the meaning of Order 47, Rule 1 of the Code,

Pandit Dhana Mali v. Bhimbai, (2007) 15 SCC 434

Applications for review

In law, there is no bar in filing application for review successively if the same is otherwise maintainable in law,

Jaya Chandra Mohapatra v. Land Acquisition Officer, (2005) 9 SCC 123

On Review

The Hon'ble Supreme Court has observed that persons who were not parties to a case but are adversely affected by the judgment are not without remedy and can seek review or challenge the decision before the appropriate forum.

Dr Jiji KS v Shibu K, 2026 LiveLaw (SC) 212

Ordinarily, right of review is available only to those who are party to a case. However, even if we give wider meaning to the expression "a person feeling aggrieved" occurring in Section 22 of the Act whether such person aggrieved can seek review by opening the whole case has to be decided by the Tribunal. The right of review is not a right of appeal where all questions decided are open to challenge. The right of review is possible only on limited grounds, mentioned in Order 47 of the Code of Civil Procedure. Although strictly speaking Order 47 of the Code of Civil Procedure may not be applicable to the tribunals but the principles contained therein surely have to be extended. Otherwise there being no limitation on the power of review it would be an appeal and there would be no certainty of finality of a decision. Besides that, the right of review is available if such an application is filed within the period of limitation. The decision given by the Tribunal, unless reviewed or appealed against, attains finality. If such a power to review is permitted, no decision is final, as the decision would be subject to review at any time at the instance of the party feeling adversely affected by the said decision. A party in whose favour a decision has been given cannot monitor the case for all times to come. Public policy demands that there should be an end to law suits and if the view of the Tribunal is accepted the proceedings in a case will never come to an end. We, therefore, find that a right of review is available to the aggrieved persons on restricted ground mentioned in Order 47 of the Code of Civil Procedure if filed within the period of limitation.

K. Ajit Babu v. Union of India, (1997) 6 SCC 473, (Para-4)

Remanding case to trial court to frame fresh issue and decide the suit afresh

If an issue on any specific and material question of fact was not framed and decided by the trial court which in the opinion of the first appellate court appears to be necessary to be framed and decided, then the appellate court should not frame and decide such issue if there is no sufficient evidence available before it to decide the same and in such cases, the appellate court, in exercise of its power under section 96 CPC read with order 41, rule 24 CPC remand the matter to the trial court with the direction to frame such issue and decide the suit afresh.

- **M/s. Divya Exports Vs. M/s. Shalimar Video Company and others, AIR 2011 SC 3063.**
- **Nicholas V. Menezes Vs. Joseph M. Menezes, (2009) 4 SCC 791**
- **Remco Industrial Workers House Building Co-operative Society Vs. Lakshmeesha M. & Others, 2003 SAR (Civil) 804 (SC)**
- **The Municipal Corporation of Greater Bombay Vs. Lala Pancham, AIR 1965 SC 1008 (Five-Judge Bench).**

Scope of remand by appellate court.

Where decree under challenge is reversed in appeal and retrial is considered necessary, appellate court shall remand case. Order of remand not to be passed in routine manner since unwarranted remand order merely elongates life of litigation without serving cause of justice,

Shivakumar v. Sharanabasappa, (2021) 11 SCC 277

Rewriting overruled judgment after remand amounts to judicial indiscipline

If a judgment is overruled by the higher court, the judicial discipline (on remand) requires that the Judge whose judgment is

overruled must submit to the judgment (of the higher court). He cannot,in the same proceedings or in collateral proceedings between the same parties, rewrite the overruled judgment.

- **Markio Tado Vs. Takam Sorang, (2013) 7 SCC 524 (para 31)**
- **State of W.B. Vs. Shivananda Pathak, (1998) 5 SCC 513**

Fresh issue u/o 41, rule 25 CPC when not to be framed

Non framing of issues not fatal where parties went to trial fully knowing the rival cases and led all evidence.

Nedu Nuri Kame Swaramma Vs. Sampati Subba Rao, AIR 1963 SC 884

Ex-parte decree is appealable

When an application u/o 9, rule 13 CPC for setting aside an ex-parte decree is dismissed, the defendant cannot prefer an appeal u/o 43, rule 1 CPC. The appellant cannot raise same contention in the first appeal. Principles of res-judicata applies in different stages of the same proceedings. Once ex-parte judgment is reserved u/o 20, rule 1 & 2 CPC, application by defendant u/o 9, rule 7 CPC does not lie. Remedy of the defendant is by way of order 9, rule 13 CPC or appeal.

Bhanu Kumar Jain Vs. Archana Kumar, 2005 (1) SCJ 243 (Three-Judge Bench).

An application u/o 9, rule 13 CPC not to be entertained after disposal of the appeal on the ground of limitation

An application u/o 9, rule 13 CPC cannot be entertained by the trial court after the appeal against the ex-parte decree was dismissed by the appellate court on the ground of limitation.

- **P. Kiran Kumar Vs. A.S. Khadar, (2002) 5 SCC 161**
- **Rani Chowdhary Vs. Lt. Col. Suraj Jit Chowdhary, (1982) 2 SCC 596**

Appeal u/o 43, Rule 1 CPC maintainable after dismissal of application u/o 9, Rule 13 CPC

When an ex parte decree is passed, the defendant has two options viz. to file an appeal and to file an application under Order 9, rule 13 CPC. He can take recourse to both the proceedings simultaneously. But in the event of the appeal being dismissed, the result would be that the ex parte decree passed by the trial court would stand merged in the order of the appellate court. Therefore, in view of the Explanation appended to Order 9, rule 13 CPC,application under Order 9, rule 13 CPC would not be maintainable. When an application under Order 9, Rule 13 CPC is dismissed, the defendant can prefer an appeal under Order 43, Rule 1 CPC. The appellant cannot raise same contention in the first appeal. Principle of res judicata applies at different stages of the same proceedings.

Bhanu Kumar Jain Vs. Archana Kumar, AIR 2005 SC 626 (Three-Judge Bench)

Application to set aside ex parte decree u/o 9, Rule 13 CPC not maintainable after dismissal of appeal against such ex parte decree

Where there has been an appeal against ex parte decree and the same has been disposed off on any ground (even on limitation), the application u/o 9, Rule 13 CPC would not lie and should not be entertained.

- **Rani Choudhary Vs. Lt. Col. Suraj Jit Choudhary, (1982) 2 SCC 596.**
- **P. Kiran Kumar Vs. A.S Khadar, (2002) 5 SCC 161**
- **Shyam Sundar Sarma Vs. Pannalal Jaiswal, 2005 (1) SCJ 180**

Limitation period of 90/30 days for filing appeal

As per Article 116 of the Limitation Act, 1963, limitation period for filing an appeal against a decree or order to the High Court is 90 days and 30 days to any other appellate court from the date of the decree or the order.

Law of limitation or some other law to bar filing of appeal

The right to appeal conferred on any party may be lost to the party in appropriate cases by the provisions of some law as the law of limitation and also by the conduct of the party and in appropriate cases a party may be held to have become disentitled from enforcing the right of appeal which he may otherwise have.

M. Ramnarain (P) Ltd. Vs. State Trading Corpn. Of India Ltd., AIR 1983 SC 786.

Time-barred appeal and condonation of delay

(O. 41 R. 3-A –CPC) Application for condonation of delay in filing appeal- when defence of limitation is upheld, whether appeal itself is deemed to have been dismissed. There is no corresponding requirement for admission of applications for suits after overcoming the barriers of limitations. A suit which is dismissed on the grounds of limitation may be appealed against as decree. No final view expressed.

Rama Krishna Reddy, (2000) 6 SCC 94.

Time-barred appeal and condonation of delay (order 41, rule 3-A(1) CPC & 3(1) CPC)

Filing of memorandum of appeal without application for condonation of delay held, consequences not fatal unintentional lapses of a litigant should not result in closing of doors of the court permanently– word 'shall' in R. 3-A(1) does not foreclose the chance to rectify a mistake.

State of M.P. Vs. Pradeep Kumar, (2000) 7 SCC 372.

Dismissal of time barred appeal and its legal effects

Dismissal of appeal even on ground of limitation is a dismissal for all purposes finality of the judgment.

Bindeshwari Prasad Singh Vs. State of Bihar, AIR 2002 SC 2907.

Delay of 1942 days in filing appeal due to laxity of lawyer held unsatisfactory and not fit to be condoned: In the case noted below, the appellants took the plea that their lawyer did not take timely steps which resulted in causing delay of 1942 days in filing the appeal. The Supreme Court held that the delay was inordinate and unexplained. The said explanation was found to be insufficient and the Supreme Court refused to condone the delay.

State Officer, Haryana Urban Development Authority Vs. Gopi Chand Atreja, AIR 2019 SC 1423.

Cross-objections or cross-appeal by defendant not necessary to oppose appeal filed by plaintiff/appellant

In the case of plaintiff's appeal against partial decree, the respondent can even without filing any appeal or cross-objection, can for the purpose of sustaining the impugned part of decree attack the findings on which the part of decree passed against him was based. Under O. 41 R. 22 CPC, before 1976 amendment, it was open to the respondent defendant who had not taken any cross objection to the partial decree passed against him, to urge in opposition to the appeal of the plaintiff, a contention which if accepted by the trial court would have resulted in total dismissal of the suit. The filing of cross-objection, after 1976 amendment is purely optional and not mandatory.

Ravinder Kumar Sharma Vs. State of Assam, AIR 1999 SC 3571

No relief to be granted to the party in the absence of cross appeal by him

When appeal is filed by defendant against the grant of relief of compensation or refund, the plaintiff as respondent can seek the relief of specific performance of contract or modification of decree only by taking cross-objection or by filing appeal of his own. In absence of cross-objection or cross-appeal appellate court cannot grant relief to plaintiff in exercise of power under O. 41 R. 33.

Banarsi Vs. Ram Phal, AIR 2003 SC 1989.

Right to take cross-objection is substantive right of appeal conferred by Order 41, Rule 22 CPC

Available grounds of challenge against the judgment, decree or order impugned remained the same whether it is an appeal or a cross-objection. The difference lies in the form and manner of exercising the right; the terminus a quo (the starting point) of limitation also differs.

Municipal Corp. of Delhi Vs. International Security and Intelligence Agency, AIR 2003 SC 1515.

Cross-objection need not be filed when respondent does not want any alteration in decree dismissing suit but even without filing appeal against any part of decree and instead while seeking to have decree confirmed entirely, respondent can challenge only a finding recorded against him in court below, for which no cross-objection or appeal necessary.

Prabhakar Gones Prabhu Navelkar v. Saradchandra Suria Prabhu Navelkar, (2020) 20 SCC 465.

Cross Appeals maintainable:

Cross Appeals are maintainable u/o 41,Rule 22 CPC.

Dhanraj Singh Choudhary vs. Nathulal Vishwakarma, AIR 2012 SC 628.

Cross-objection

Cross-objection need not be filed when respondent does not want any alteration in decree dismissing suit but even without filing appeal against any part of decree and instead while seeking to have decree confirmed entirely, respondent can challenge only a finding recorded against him in court below, for which no cross-objection or appeal necessary

Prabhakar Gones Prabhu Navelkar v. Saradchandra Suria Prabhu Navelkar, (2020) 20 SCC 465.

When cross-objections may be filed

For supporting decree by trial court, it is not necessary for respondent in appeal to file a memorandum of cross-objections challenging a particular finding by trial court against him when the ultimate decree itself is in his favour. Memorandum of cross-objections, is needed only if respondent claims any relief, negative to him by trial court and in addition to what he has already been given by decree under challenge,

S. Nazeer Ahmed v. State Bank of Mysore, (2007) 11 SCC 75.

Mode of disposal of cross-objections

Merely because High Court dismissed the appeals though on merits, yet that by itself would not result in dismissal of the cross-objections also. Cross-objections had to be disposed of on their own merits notwithstanding dismissal of the appeals, as provided for in Order 41 Rule 22(4) CPC, by assigning reasons,

Badru v. NTPC, (2019) 20 SCC 652

Non-filing of cross-objections

A party cannot challenge findings of trial court before appellate court without filing cross-objections against findings of trial court

Laxman Tatyaba Kankate v. Taramati Harishchandra Dhatrak, (2010) 7 SCC 717 : (2010) 3 SCC (Civ) 191

Re-adjudication of issues

Issues decided in favour of appellant, not having been challenged by respondent, cannot be re-adjudicated by appellate court,

Biswajit Sukul v. Deo Chand Sarda, (2018) 10 SCC 584

Applicability

Court should be slow in exercising its discretionary power under Rule 23 and unless the conditions precedent therefor are satisfied, Rule 23 should not be invoked. Rule 23 is an enabling provision,

Municipal Corpn., Hyderabad v. Sunder Singh, (2008) 8 SCC 485

Inherent power of remand

Remand of matter to trial court for de novo trial without there being express pleadings before lower appellate court or High Court, is not permissible. Principles explained relating to exercise of power to remand case and when remand power may be exercised in second appeal,

Syeda Rahimunnisa v. Malan Bi, (2016) 10 SCC 315

Scope of remand by appellate court

Where decree under challenge is reversed in appeal and retrial is considered necessary, appellate court shall remand case. Order of remand not to be passed in routine manner since unwarranted remand order merely elongates life of litigation without serving cause of justice,

Shivakumar v. Sharanabasappa, (2021) 11 SCC 277

Discretionary power

Discretion of appellate court to allow production of, in exceptional circumstances should be exercised judicially and with circumspection, only where any of the prerequisite conditions provided under Rule 27 exist,

Union of India v. Ibrahim Uddin, (2012) 8 SCC 148 : (2012) 4 SCC (Civ) 362

Succession certificate and power of appellate court

Grant of succession certificate in proceedings under Sec 373 of the Succession Act could not bar any party to raise same issue in a suit for partition such decision is not final between the parties and Sec 387 of Succession Act takes the decision outside the purview of explanation VIII th to Sec 11.

Madhavi Amma Bhawani Amma Vs. Kunjikutti Pillai Meenakshi Pillai, AIR 2000 SC 230

Infructuous appeal

For finality of judgment where appeal therefrom is rendered infructuous.

Dharam Dutt Vs. UOI, AIR 2004 SC 1295

Order returning plaint for presentation to proper court not appealable u/o 43, Rule 1 CPC

An order returning plaint for presentation to proper court is not an appealable order u/o 43, Rule 1 CPC.

Nilgiri Estate Pvt. Ltd. Vs. Khaniva Housing (India) Pvt. Ltd., AIR 2012 Calcutta 60 (DB).

Order of lower authority merges into that of the superior authority

A judicial order passed by the trial court merges in the order passed by the appellate or revisional court. It cannot be said that an appellate or revisional decision in which the decision of the trial court has merged is still a case arising out of the original suit. After merger, the decision arising out of the original suit vanishes.

No appeal lies from the decree of the JSCC

As per Section 96(4) CPC, no appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed ten thousand rupees.

Compromise should be challenged before the judge recording the compromise and not in appeal: Party concerned should approach the court which recorded the compromise in the first instance rather than straight away filing appeals as it is judge before whom the compromise was recorded who is privy to events that led to the compromise order and is thus in a better position to deal with validity of compromise.

Y. Sleebachen & Others Vs. State of Tamil Nadu through Superintending Engineer Water Recourses Organization/Public works Department and Another, (2015) 5 SCC 747.

Compromise decree can be set aside by court which granted the decree or an appeal u/o 43, rule 1-A CPC can also be filed:

Vipan Aggarwal Vs Raman Gandotra, (2023) 10 SCC 529

Suit challenging compromise decree not maintainable

A person questioning lawfulness of a compromise decree must approach the same court which recorded the compromise. Independent suit filed by the stranger to compromise is not maintainable.

Triloki Nath SinghVersus Anirudh Singh, (2020) 6 SCC 629.

Proper remedy against an order rejecting plaint under Order 7, rule 11 CPC is first appeal u/s 96 CPC: Proper remedy against an order rejecting plaint under Order 7, rule 11 CPC is first appeal u/s 96 CPC. Writ petition under Article 227 of the Constitution against order rejecting plaint is not maintainable.

Sayyed Ayaz Ali Versus Prakash G. Goyal and Others, (2021) 7 SCC 456.

Retrospective and prospective application of amended law

Amendment in law during pendency of appeal giving right to party must be applied by court to give benefit of the amended law to the party

A change in law during pendency of appeal must be considered and appropriately applied. It is the duty of court, whether it is trying the original proceedings or hearing an appeal, to take notice of the change in law affecting the pending action and to give effect to the same. Mere severance of status by way of filing of a suit does not bring about the partition and till the date of the final decree. Thus, change in law, and change due to subsequent event, can be taken into consideration. In this case,Section 6 of the Hindu Succession Act, 1956 was amended wef 9.8.2005 giving equal rights to daughter as coparcener co- equal to sons from her birth.

A preliminary decree was passed in the partition suit but before passing of the final decree, Section 6 of the Hindu Succession Act, 1956 was amended. Preliminary decree was challenged in appeal and during pendency of appeal, Section 6 of the said Act was amended. Supreme Court held that the final decree must have been passed in accordance with the amended Section 6 of the Hindu Succession Act,1956.

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Prasanta Kumar Sahoo Vs Charulata Sahu, (2023) 9 SCC 641

Object

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The object of the provision is to enable a person, who is ridden by poverty, or not possessed of sufficient means to pay court fee, to seek justice. These provisions exempt such indigent person from paying requisite court fee at the first instance and allows him to institute suit or prosecute appeal in forma pauperis, Mathai M. Paikeday v. C.K. Antony, (2011) 13 SCC 174 : (2012) 3 SCC (Civ) 413.

Civil Revision, Sec. 115

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

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"This section consists of two parts, the first prescribes the condition in which jurisdiction of a Superior Court arises, i.e., there is a case decided by a subordinate court in which no appeal lie to the Superior Court, and the second sets out the circumstances in which the jurisdiction may be exercised."

"The section is concerned with jurisdiction and jurisdiction alone involving a refusal to exercise jurisdiction where one exists or an assumption of jurisdiction where none exists, and lastly acting with illegality or material illegality."

Scope

It is only when some illegality or material irregularity is committed by the subordinate court in the matter of the exercise of its jurisdiction, i.e., if some procedural error in exercise of its jurisdiction are committed resulting into any illegality or material irregularity such errors can be rectified by the High Court while exercising the power u/s 115.

Object

Manick Chandra v. Dev Das Nandy (1986) 1 SCC 512

"The underlying object of section 115 is to prevent the subordinate court from acting arbitrarily, Capriciously and illegally or irregularly in the exercise of their jurisdiction. The court in this case held that for the effective exercise of its superintending visitorial powers, revisional jurisdiction is conferred upon the HC."

Who may file

A person aggrieved by an order passed by a court subordinate to to HC (Superior Court) may file a revisions against such order but the HC (Superior Court) may even suo moto exercise revisional jurisdiction u/s/ 115. of CPC.

Conditions

Chaube Jagdish Prasad v. Ganga Prasad Chaturvedi. AIR 1959 SC 492.

The court held that the following conditions must be satisfied before revisional jurisdiction can be exercised by the HC. They are: -

2. A case must have been decided
3. The court which has decided the case, must be subordinate to HC
4. The order should not be appealable one
5. The subordinate court must have either exercised jurisdiction not vested in it by law, or failed to exercise jurisdiction vested in it or acted in the exercise of its jurisdiction illegally or with material irregularity.

Case Decided

The expression case decided was not defined in the code of 1908. The Supreme Court in the case Major SS Khanna (supra) holding that section115 applies even to interlocutory orders.

Explaining the ratio led down in Major Khanna (supra), the Supreme Court in **Baldevdas Shivlal v. Filmistan Distributors (India) (p)Ltd. AIR 1970 SC 406;** held that:

"A case may be said to have been decided, if the court adjudicates for the purpose of the suit, some right or obligation of the parties in controversy."

Revision

The Hon'ble Supreme Court recently held that a Civil Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (CPC) is not maintainable against the dismissal of an application field under Order IX Rule 13 of the CPC to set aside an ex-parte decree

"When there is an express provision available under the CPC or any statute under which an appeal is maintainable, by-passing the same, a Revision Petition cannot be filed. It is needless to observe that in the absence of an appellate remedy, a revision may be maintainable"

When an application is filed seeking condonation of delay for seeking setting aside an ex-parte decree and the same is dismissed and consequently, the petition is also dismissed, the appeal under Order XLIII Rule 1(d) CPC is maintainable. Thus, an appeal only against the refusal to set aside the ex-parte decree is maintainable whereas if an order allowing such an application is passed, the same is not appealable" the Court observed.

In view of the appellate remedy under Order XLIII Rule 1(d) of the CPC being available to the Appellant, the revision under Section 115 of the CPC filed was not maintainable.

The Court delved into the question of how a Civil Revision Petition was maintainable against an order passed by the Trial Court dismissing the application filed seeking condonation of delay in filing the petition under Order IX Rule 13 CPC and consequently rejecting or dismissing the said petition too.

"When an application or petition filed under Order IX Rule 13 CPC is dismissed, the defendant can avail a remedy by preferring an appeal in terms of Order XLIII Rule 1 CPC. Thus, Civil Revision Petition under Section 115 of the CPC would not arise when an application/petition under Order IX Rule 13 CPC is dismissed. Thus, when an alternative and effective appellate remedy is available to a defendant, against an ex-parte decree, it would not be appropriate for the defendant to resort to filing of revision under Section 115 of the CPC challenging the order refusing to set aside the order of setting the defendant ex-parte".

Koushik Mutually Aided Cooperative Housing Society V. Ameena Begum,2023 LiveLaw (SC) 1056

No Revision Against Rejection Of Plaint Under Order 7 Rule 11 CPC

The Court observed that a plain reading of Section 2(2) specifically provides that the rejection of a plaint shall be deemed to be a decree. "… A question may therefore arise as to the effect of such legal fiction and the effect of such legal fiction is that a position which otherwise would not be there, is deemed to be present under certain circumstances and that an effect must therefore be given to such legal fiction" and though, an order passed under O.7 r.11 CPC, rejecting the plaint does not preclude the plaintiff from presenting a fresh plaint on the same cause of action, yet, Section 2 (2) of the CPC specifically provides that the rejection of the plaint shall be deemed to be a decree".

The case in question involves the rejection of plaint by the trial court under Order 7 Rule 11 CPC which is deemed to be a decree and hence no revision would be possible against the rejection of the plaint, even if the trial court committed any procedural irregularity.

Mehvish Choudhary Vs J&K Bank & Anr. 2023 LiveLaw (JKL) 133(Jammu & Kashmir High Court)

From bare perusal of the amended provisions of the first proviso to Section 115 of the CPC, it is apparent that civil revision shall not lie against an order of interim injunction, passed under Order 39 Rule 1 & 2 of CPC…In the instant case, since no alternate remedy was available to the petitioners against the impugned order passed by the First Appellate Court, i.e., the Court of 10th District Judge, Gwalior under Order 43 Rule 1 of CPC, therefore, objection raised by the learned counsel for the respondents about the maintainability of the petition on this ground also has no force at all.

Smt. Silky Jain & Ors. v. Yaadram Shivhare & Ors. 2023 LiveLaw (MP) 60(MP High Court)

Revisable Order : Uttarakhand

KRIPAL SINGH VS NAGAR AYUKTA WPMS 2449 of 2020 Uttarakhand HC DOD 21/12/2020

"Under CPC, any order, which has not been made appellable u/o 43, to re-read with sec. 104 of CPC, would be revisable, us/ 115 of CPC, but subject to the restrictions as provided under sec. 115 of the CPC itself.

Order passed under O. 26 R 9 would be revisable."

SMT. Urmila Kothari v. DJ Dehradun Uttarakhand WPMS 362 of 2008 HC DOD 28/2/2008

"Order issuing notice U/O 39 R 3 CPC is not a "case decided" and interlocutory order; thus bars the exercise of revisional jurisdiction."

Limitation

Article 131 of The limitation act, 1963 provides that the period of limitation for preferring a revision application is 90 days from the decree or order sought to be revised.

Death of Applicant

The provisions of O. 22 do not apply to revision applications. A revision, therefore, does not abate on the death of the applicant or on account of failure on the part of the applicant to bring on record the heirs of the deceased opponent.

Miscellaneou

Southern Sales and Services & othrs. v. Sauermilch Design and Handels AIR 2009 SC 320.

"It is now well established as a principle of law that even if a wrong order is passed by a court having jurisdiction to pass an order in such cases, the revisional court will not interfere with such an order unless a jurisdictional error is pointed out and established by the person who questions such order."

Deb Ratan Biswas & Othrs. v. Most Anand Moyi Devi & Othrs. AIR 2011 SC 1653

"It is well established that in civil revision the jurisdiction of the HC (Superior Court) is limited, and it can only go into the question of jurisdiction."

Hindustan Petroleum Corp. Ltd. v. Dilbahar Singh AIR 2014 SC 3708.

"Appeal and revision are creatures of statutes. Appeal is a continuation of suit or original proceeding, revision is not."

Maintainability of appeals under Order 43 Rule 43, Rule 43, Rule 23-A, held, is maintainable. However, said appeal under Order 43, Rule 100, Jagannathan v. Raju Sigamani, (2012) 5 SCC 540 : (2012) 3 SCC (Civ) 308, See also Narayanan v. Kumaran, (2004) 4 SCC 26.

Maintainability of appeals under Order 43 Rule 43,

Rule 43, Rule 23-A, held, is maintainable. However, said appeal under Order 43, Rule 100, Jagannathan v. Raju Sigamani, (2012) 5 SCC 540 : (2012) 3 SCC (Civ) 308, See also Narayanan v. Kumaran, (2004) 4 SCC 26.

Tests for quality of finality

Most of the interlocutory orders which contain the quality of finality are clearly specified in clauses (a) to (w) of Order 43 Rule 1 and would be "judgments" within the meaning of the letters patent and, therefore, appealable thereunder. However, there may be interlocutory orders which are not covered by Order 43 Rule 1 CPC but which also possess the characteristics and trappings of finality inasmuch as such orders may adversely affect a valuable right of the party or decide an important aspect of the trial in an ancillary proceeding. However, for such an order to be a "judgment", an adverse effect on the party concerned must be direct and immediate rather than indirect or remote,

Shyam Sel & Power Ltd. v. Shyam Steel Industries Ltd., (2023) 1 SCC 634.

BENGAL, AGRA AND ASSAM CIVIL COURTS ACT, 1887
[Act No. 12 of 1887]

[11th March, 1887]

CHAPTER I

Section 1 - Title, extent and commencement

(1) This Act may be called the Bengal, Agra and Assam Civil Courts Act, 1887.
(2) It extends to the territories which were on the 11th of March, 1887 respectively administered by the Governor of Bengal, the Governor of the Uttar Pradesh and the Governor of Assam, except such portions of those territories as for the time being are not subject to the ordinary civil jurisdiction of the High Courts [* * * *]; and
(3) It shall come into force on the first day of July, 1887.

Section 2 - Repeal

(1) [* * * *]
(2) All courts constituted, appointments, nominations, rules and orders made, jurisdiction and powers conferred and lists published under the Bengal Civil Courts Act, 1871 or any enactment thereby repealed or purporting expressly or impliedly to have been so constituted, made, conferred and published, shall be deemed to have been respectively constituted, made, conferred and published under this Act; and
(3) Any enactment on document referring to the Bengal Civil Courts Act, 1871 or to any enactment thereby repealed, shall be construed to refer to this Act or to the corresponding portion thereof.

CHAPTER II
CONSTITUTION OF CIVIL COURTS

Section 3 - Classes of Courts

There shall be the following classes of Civil Courts under this Act, namely :
(1) the Court of the District Judge;
(2) the Court of the Additional Judge;
(3) the Court of the [1] **[**Civil Judge (Senior Division)**]**; and
(4) the Court of the [2] **[**Civil Judge (Junior Division)**]**.

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1. in Sections 3, 4, 6, 10, 11, 13, 18, 21, 22, 23, 24 and 25, for the words “Civil Judge" and "Civil Judges" wherever occurring, the words " Civil Judge (Senior Division)" and "Civil Judges (Senior Division)" shall respectively substituted by U.P. Act 25 of 1995;

2. in Sections 3, 4, 13, 19, 21, 22, 23, 24 and 25, for the words "Munsif” and "Munsifs" wherever occurring, the word. "Civil Judge (Junior Division)” and "Civil Judges (Junior Division)" shall respectively substituted by U.P. Act 25 of 1995.

Section 4 - Number of District Judges, Civil Judge (Senior Division)s and Civil Judge (Junior Division)s

The State Government may alter the number of District Judges Civil Judge (Senior Division) and Civil Judge (Junior Division) now fixed.

Section 5 - Number of Civil Judge (Junior Division)-
Repealed by Act IV of 1914, Section 2 and Schedule, Part I.

Section 6 - Vacancies among District or Civil Judge (Senior Division)

(1) Whenever the office of District Judge or Civil Judge (Senior Division) is vacant by reason of the death, resignation or removal of the Judge or other cause, or whenever an increase in the number of District or Civil Judge (Senior Division) has been made under the provisions of section 41, the State Government or, as the case may be the High Court may fill up the vacancy or appointment the Additional District Judges or Civil Judge (Senior Division).
(2) Nothing in this section shall be construed to prevent a **[**High Court**]** [3] from appointing a District Judge or Civil Judge (Senior Division) to discharge, for such period as it thinks fit, in addition to the functions devolving on him as such District Judge or Civil Judge (Senior Division), all or any of the functions of another District Judge or Civil Judge (Senior Division), as the case may be.

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3. Substituted by U. P. Act 17 of 1991, vide Section 2 (w.e.f. 15-1-1991), for the words "State Government".

Section 7- [Vacancies among Civil Judge (Junior Division)s [Repealed by the A.O. 1937.]

Section 8 - Additional Judges

(1) When the business pending before any District Judge requires the aid of Additional Judges for its speedy disposal, the State Government may, having consulted the High Court [* * *] appoint such Additional Judges as may be requisite.
(2) Additional Judges so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to them, and in the discharge of those functions, they shall exercise the same powers as the District Judge.

Section 9 - Administrative control of Courts

(1) Subject to the superintendence of the High Court, the District Judge, shall have administrative control over all the Civil Courts under this Act within the local limits of his jurisdiction.

Section 10 - Temporary charge of District Court

(1) In the event of the death, resignation or removal of the District Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held, the Additional Judge, or, if an Additional Judge is not present at that place, the senior Civil Judge (Senior Division) present thereat, shall, without relinquishing his ordinary duties, assume charge of the District Judge and shall continue in charge thereof until the office is resumed by the District Judge or assumed by an officer appointed thereto.
(2) While in charge of the office of the District Judge, the Additional Judge or Civil Judge (Senior Division), as the case may be, may subject to any rules which the High Court may make in this behalf, exercise any of the powers of the District Judge.

Section 11 - Transfer of proceedings to vacation of office of Civil Judge (Senior Division)

(1) In the event of the death, resignation or removal of a Civil Judge (Senior Division), or of his being in capacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held, the District Judge may transfer all or any of the proceedings pending in the Court of the Civil Judge (Senior Division) either to his own Court or to any Court under his administrative control competent to dispose of them.
(2) Proceedings transferred under sub-section (1) shall be disposed of as if they had been instituted in the Court to which they are so transferred.
(3) Provided that the District Judge may re-transfer to the Court of the Civil Judge (Senior Division) or his successor any proceedings transferred under sub-section (1) to his own or any other Court.
(4) For the purpose of proceedings which are not pending in the Court of the Civil Judge (Senior Division) on the occurrence of an event referred to in sub-section (1), and with respect to which that Court has exclusive jurisdiction, the District Judge may exercise all or any the jurisdiction of that Court.

Section 12 - Temporary charge of office of Civil Judge (Junior Division)- [Repealed by the A.O. 1937.]

Section 13 - Power to fix local limits of jurisdiction of Courts

(1) The State Government may, by notification in the official Gazette, fix and alter the local limits of jurisdiction of any Civil Court under this Act.
(2) If the same local jurisdiction is assigned to two or more Civil Judge (Senior Division)s, or to two or more Civil Judge (Junior Division)s, the District Judge may assign to each of them, such civil business cognizable by the Civil Judge (Senior Division) or Civil Judge (Junior Division), as the case may be, as, subject to any general or special orders of the High Court, he thinks fit.
(3) When civil business arising in any local area is assigned by the District Judge under sub-section (2) to one or two or more Civil Judge (Senior Division)s ; or to one or two or more Civil Judge (Junior Division), a decree or order passed by the Civil Judge (Senior Division) or Civil Judge (Junior Division) shall not be invalid by reason only of the case in which it was made having arisen wholly or in part in a place beyond the local area if that place is within the local limits fixed by the [State Government] under that sub-section.
(4) A Judge of a Court of a Small Causes appointed to be also a Civil Judge (Senior Division) or a Civil Judge (Junior Division) is a Civil Judge (Senior Division) or a Civil Judge (Junior Division), as the case may be, within meaning of this section.
(5) The present local limits of the jurisdiction of every Civil Court under this Act shall be deemed to have been fixed under this section.

Section 14 - Place of sitting of Courts

(1) The State Government may, by notification in the official Gazette, fix and alter the place or places at which any Civil Court under this Act is to be held.
(2) All places at which any such Courts are now held shall be deemed to have been fixed under this section.

Section 15 - Vacation of Courts

(1) Subject to such orders as may be made [* *] by the State Government [* * * *] the High Court shall prepare a list of days to be observed in each year as close holiday in the Civil Courts.
(2) The list shall be published in the Official Gazette.
(3) A judicial act done by Civil Court on a day specified in the list shall not be invalid by reasons only of its having been done on that day.

Section 16 - Seals of Courts

(1) Every Civil Court under this Act shall use a seal of such form and dimensions as are prescribed by the State Government.

Section 17 - Continuance of proceedings of Courts ceasing to have jurisdiction

(1) Where any Civil Court under this Act has from any cause ceased to have jurisdiction with respect to any case any proceedings in relation to that case which, if that Court had not ceased to have jurisdiction might have been had therein may be had in the Court to which the business of the former Court has been transferred.
(2) Nothing in this section applies to cases for which provision is made in section 623 or section 649 of the Code of Civil Procedure or in any other enactment for the time being in force.

CHAPTER III
ORDINARY JURISDICTION

Section 18 - Extent of original jurisdiction of District or Civil Judge (Senior Division)

Save as otherwise provided by any enactment for the time being in force, the jurisdiction of a District Judge or Civil Judge (Senior Division) extends, subject to the provisions of section 15 of the Code of Civil Procedure to all original suits for the time being cognizable by Civil Courts.

Section 19 - Extent of Jurisdiction of Civil Judge (Junior Division)

(1) Save as aforesaid, and subject to the provisions of sub-section (2), the jurisdiction of a Civil Judge (Junior Division) extends to all like suits of which the value does not exceed **[**ten thousand rupees**]** [4]
[5] **[**(2) The High Court may direct by notification in the Official Gazette, with respect to any Civil Judge (Junior Division) named therein, that his jurisdiction shall extend to all like suits of such value not exceeding **[**one lac**]** [6] rupees as may be specified in the notification.
Provided that the State Government may, by notification in the official Gazette, delegate to the High Court its powers under this Section.**]**

4. Substituted by U.P. Act 17 of 1991, vide see. 2 (w.e.f. 15-1-1991).
5. Substituted by U.P. Act 17 of 1991, vide See. 3 (w.e.f. 15-1-1991).
6. Uttarakhand Amendment, 2005 " sub- sec.(2) Words 'one lac' for the words 'twentyfive thousand' shall be substituted."

Section 20 - Appeals from District and Additional Judges

(1) Save as otherwise provided by any enactment for time being in force an appeal from a decree or order of a District Judge or Additional Judge shall lie to the High Court.
(2) An appeal shall not lie to the High Court from a decree or order of an Additional Judge in any case in which, if the decree or order had been made by the District Judge an appeal would not lie to that Court.

Section 21 - Appeals from Civil Judge (Senior Division)s and Civil Judge (Junior Division)

[7] **[**(1) Save as aforesaid an appeal from a decree or order of a Civil Judge (Senior Division) shall lie,--
(a) to the High Court in any case other than a case referred to in clause (b);
(b) to the District Judge where the value of the original suit in which or in any proceeding arising out of which the decree or order was made (whether instituted or commenced before or after the relevant date) did not exceed one lakh rupees or such higher amount not exceeding five lakh rupees as the High Court may fix from time to time by notification in the official Gazette.
Explanation.--For the purposes of this sub-section and sub-sections (1-A) and (1-B) relevant date means the date of commencement of the Uttar Pradesh Civil Laws (Amendment) Act, 1991 or as the case may be, the date of commencement of notification made under clause (b) of sub-section (1).
(1-A) An appeal, from a decree or order of a Civil Judge (Senior Division) where the value of the original suit in which, or in any proceeding arising out of which the decree or order was made was not more than the amount fixed by or under clause (b) of sub-section (1) instituted in the High Court and pending in the High Court immediately before the relevant date, shall stand transferred to the

District Judge having jurisdiction who may either decide it himself or assign it to any additional Judge subordinate to him :
Provided that any judgment, decree or order passed in such an appeal by the High Court after the relevant date shall be valid as if the High Court had withdrawn the appeal under section 24 of the Code of Civil Procedure, 1908.
(1-B) The period of limitation prescribed for filing an appeal from a decree or order of a Civil Judge (Senior Division) made before the relevant date, which lay to the High Court immediately before such date but lies to the District Judge under sub-section (1) shall, notwithstanding anything to the contrary contained in the Limitation Act, 1963, be deemed to be and always to have been the same as if the appeal continued to lie to the High Court.**]**
(2) Save as aforesaid, an appeal from a decree or order of a Civil Judge (Junior Division) shall lie to the District Judge.
(3) Where the function of receiving any appeals which lie to the District Judge under sub-section (1) or sub-section (2) has been assigned to an Additional Judge, the appeals may be preferred to the Additional Judge.
(4) The High Court may, [8]**[* * * * *]** direct, by notification in the official Gazette, that appeals lying to the District Judge under sub-section (2) from all or of the decrees or orders of any Civil Judge (Junior Division) shall be preferred to the Court of such Civil Judge (Senior Division) as may be mentioned in the notification, and the appeals shall thereupon be preferred accordingly.

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7. Substituted by U.P. Act 17 of 1991, vide see. 4 (w.e.f. 15th Jan., 1991).
8. The words "with the previous sanction of the Stale Government", omitted by U.P. Act 17 of 1991, vide Section 4 (b) (w.e.f. 15th Jan., 1991).

CHAPTER IV

SPECIAL JURISDICTION

Section 22 - Power to transfer to Civil Judge (Senior Division)s appeals from Civil Judge (Junior Division)s

(1) A District Judge may transfer to any Civil Judge (Senior Division) under his administrative control any appeals pending before him from the decrees or orders of Civil Judge (Junior Division)s.
(2) The District Judge may withdraw any appeal so transferred, and either hear and dispose of it himself or transfer it to a court under his administrative control competent to dispose of it.
(3) Appeals transferred under this section shall be disposed of subject to the rules applicable to like appeals when disposed of by the District Judge.

Section 23 - Exercise by Civil Judge (Senior Division) or Civil Judge (Junior Division) of jurisdiction of District Court in certain proceedings

(1) High Court may, by general or special order, authorize any Civil Judge (Senior Division) or Civil Judge (Junior Division) to take cognizance of, or any District Judge to transfer to a Civil Judge (Senior Division) or Civil Judge (Junior Division) under his administrative control, any of the proceedings next hereinafter mentioned or any class of those proceedings specified in the order.
(2) The proceedings referred to in sub-section (1) are the following, namely,--
(a) proceedings under Bengal Regulation V of 1799 to limit the Interference of the Zila and City Courts of Dewanny Adalat in the Executive of Wills and Administration to the Estates of persons dying intestate;
(b) [* * *]
(c) [* * *]
(d) proceedings under the Indian Succession Act, 1865, and the Probate and Administration Act, 1881, which cannot be disposed of by District Delegates; and
(e) reference by Collectors under Section 322-C of the Code of Civil Procedure.
(3) The District Judge may withdraw any such proceedings taken cognizance of by, or transferred to, a Civil Judge (Senior Division) or Civil Judge (Junior Division), and may either himself dispose of them or transfer them to a court under his administrative control competent to dispose of them.

Section 24 - Disposal of proceedings referred to in lastly foregoing section

(1) Proceedings taken cognizance of by, or transferred to, a Civil Judge (Senior Division) or Civil Judge (Junior Division), as the case may be, under the last foregoing section, shall be disposed of by him subject to the rules applicable to like proceedings when disposed of by the District Judge:
Provided that an appeal from an order of the Civil Judge (Junior Division) in any such proceedings shall lie to the District Judge.
(2) An appeal from the order of the District Judge on the appeal from the order of the Civil Judge (Junior Division) under this section shall lie to High Court if a further appeal from the order of the District Judge is allowed by the law for the time being in force.

Section 25 - Power to invest Civil Judge (Senior Division)s and Civil Judge (Junior Division)s with Small Cause Court jurisdiction

[9]**[(**1) The High Court may by notification in the Official Gazette, confer within such local limits as it thinks fit, upon any Civil Judge (Senior Division) or Civil Judge (Junior Division), the jurisdiction of a Judge of a Court of Small Causes under the Provincial Small Cause Court Act, 1887 for the trial of suits cognizable by such Courts, up to such value not exceeding five thousand rupees as it thinks fit, and may withdraw any jurisdiction so conferred:
Provided that in relation to suits of the nature referred to in the proviso to subsection (2) of Section 15 of the said Act, the reference in this sub-section to five thousand rupees shall be construed as reference to twenty five thousand rupees**.]**
(2) The [10]**[(**High Court**]** may by notification in the official Gazette, confer upon any District Judge or Additional District Judge the jurisdiction of a Judge of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887, for the trial of all suits (irrespective of their value), by the lessor for the eviction of a lessee from a building after the determination of his lease, or for the recovery from him of rent in respect of the period of occupation thereof during the continuance of the lease or of compensation for the use and occupation thereof after such determination of lease, and may withdraw any jurisdiction so conferred.
Explanation.--For the purposes of the sub-section, the expression 'building' has the same meaning as in Art. (4) in the Second Schedule to the said Act.
(3) [11] **[* * * *]**
4) Where the jurisdiction of a Judge of a Court of Small Causes is conferred upon any District Judge or Additional District Judge by notification under this section, then notwithstanding anything contained in Section 15 of the Provincial Small Cause Courts Act, 1887, all suits referred to in sub-section (2) shall be cognizable by Court of Small Causes.

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9. Substituted by U.P. Act 17 of 1991, vide Section 5 (a) (w.e.f. 15th Jan., 1991).
10. Substituted by U.P. Act 17 of 1991, vide Section 5(b) (w.e.f. 15-1-1991).
11. Sub-section (3), omitted by U.P. Act 17 of 1991, vide Section 5 (c) (w.e.f. 15th Jan., 1991).

CHAPTER V
MISFEASANCE

Section 26 to 29 - Section 26 to 29- [Repealed by the A.O. 1937.]

CHAPTER VI
MINISTRIAL OFFICERS

Section 30 to 35 - Section 30 to 35- [Repealed by the A.O. 1937.]

CHAPTER VII

SUPPLEMENTAL PROVISIONS

Section 36 - Power to confer powers of Civil Courts on officers

(1) The State Government may invest with the powers of any civil court under this act, by name or in viture of office--
(a) any officer in the Chota Nagpur, Sambalpur, Jalpaiguri or Darjeeling District, or in any part of the territories administered by the Chief Commissioner of Assam except the district of Sylhet; or
(b) after consultation with High Courts, any officer serving in any other part of the territories to which this Act extends and belonging to a class defined in this behalf by the State Government.
(2) Nothing in Secs. 4, 5, 6, 8, 10 or 11 applies to any officer so invested, but all the other provisions of this Act shall, so far as those provisions can be made applicable, apply to him as if he were a Judge of the court with the powers of which he is invested.
(3) Where, in the territories mentioned in clause (a) of sub-section (1), the same local jurisdiction is assigned to two or more officers invested with the powers of a Civil Judge (Junior Division), the officer invested with the powers of a District Judge may, with the previous sanction of the State Government delegate his functions, under sub-section (2) of Section 12 to an officer invested with the powers of a Civil Judge (Senior Division) or to one of the officers invested with the powers of a Civil Judge (Junior Division).
(4) Where the place at which the court of an officer invested with powers under subsection (1), is to be held has not been fixed under Section 14, the court may be held at any place within the local limits of its jurisdiction.

Section 37 - Certain decisions to be according to personal law

(1) Where in any suit or other proceeding it is necessary for a civil court to decide any question regarding succession, inheritance, marriage or caste, or any religious usage or institution, the Muhammadan law in cases, where the parties are Muhammadans, and the Hindu law in cases

where the parties are Hindus, shall from the rule of decision except in so far as such law has, by legislative enactment, been altered or abolished.
(2) In cases not provided for by sub-section (1) or by any other law for the time being in force, the court shall act according to justice, equity and good conscience.

Section 38 - Judges not to try suits in which they are interested

(1) The presiding officer of a Civil Court shall not try any suit or other proceeding to which he is a party or in which he is personally interested.
(2) The presiding officer of an appellate civil court under this Act shall not try an appeal against a decree or order passed by himself in another capacity.
(3) When any such suit, proceeding or appeal as is referred to in sub-section (I) or -sub-section (2) comes before any such officer, the Officer shall forthwith transmit the record of the case to the court to which he is immediately subordinate, with a report of the circumstances attending the reference.
(4) The superior court shall thereupon dispose of the case under Section 24 of the Code of Civil Procedure.
(5) Nothing in this section shall be deemed to affect the extraordinary original civil jurisdiction of the High Court.

Section 39 - Subordination of Courts to District Court

For the purposes of the last foregoing section the presiding officer of a court subject to the administrative control of the District Judge shall be deemed to be immediately subordinate to the court of the District Judge, and for the purposes of the Code of Civil Procedure, the court of such an officer shall be deemed to be of a grade inferior to that of the court of the District Judge.

Section 40 - Application of Act to State Courts of Small Causes

(1) This section and Section 15, 32, 37 and 39 apply to Courts of Small Causes constituted under the Provincial Small Cause Courts Act, 1887.
(2) Save as provided by that Act, the other sections of this Act do not apply to these courts.

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No. 243/XXXVI(3)/2022/75(1)/2021
Dated Dehradun, September 20, 2022

NOTIFICATION

Miscellaneous

In pursuance of the provisions of Clause (3) of Article 348 of the Constitution of India, the Governor is pleased to order the publication of the following English translation of **'The Uttarakhand Civil Laws (Amendment) Act, 2021'** (Act No.: 10 of 2022).

As passed by the Uttarakhand Legislative Assembly and assented to by the President on 07 th September, 2022.

THE UTTARAKHAND CIVIL LAWS (AMENDMENT) ACT, 2021
(UTTARAKHAND ACT NO. 10 OF 2022)

An

Act

Further to amend the Code of Civil Procedure, 1908 and the Bengal, Agra and Assam Civil Courts Act, 1887 in their application to the State of Uttarakhand.

Be it enacted by the Uttarakhand State Legislative Assembly in the Seventy Second Year of the Republic of India as follows:-

Short title, extent and commencement-

1.(1) This Act may be called the Uttarakhand Civil Laws (Amendment) Act, 2021.

(2) It shall extend to whole of the State of Uttarakhand

(3) It shall come into force at once.

Amendment to Section 115 of the Code of Civil Procedure, 1908

2. In explanation-I in the section 115 of the Code of Civil Procedure, 1908, wherever the words "five lakh" occurs, words "fifteen lakh" shall be substituted.

Amendment to Section 19 of the Bengal, Agra and Assam Civil Courts Act, 1887

3. In sub-section (2) of the section 19 of the Bengal, Agra and Assam Civil Courts Act, 1887, wherever the words "one lakh" occurs, words "three lakh" shall be substituted.

Amendment to Section 21 of the Bengal, Agra and Assam Civil Courts Act, 1887	4.	In clause (b) of sub-section (1) of section 21 the Bengal, Agra and Assam Civil Courts Act, 1887, wherever the words "five lakh" occurs, words "fifteen lakh" shall be substituted.
Saving of Pending Proceedings	5.	Nothing in this Amendment Act shall affect suits, appeals or the revisions already filed and pending in any civil Court including the High Court, having jurisdiction to entertain such suits, appeals or revisions before the commencement of this Amendment Act.

By Order,

HIRA SINGH BONAL,
Principal Secretary.

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No. 243/XXXVI(3)/2022/75(1)/2021
Dated Dehradun, September 20, 2022

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By Order,

HIRA SINGH BONAL,
Principal Secretary.

सरकारी गजट, उत्तराखण्ड

उत्तराखण्ड सरकार द्वारा प्रकाशित

असाधारण

विधायी परिशिष्ट

भाग–1, खण्ड (क)

(उत्तराखण्ड अधिनियम)

देहरादून, मंगलवार, 20 सितम्बर, 2022 ई0

भाद्रपद 29, 1944 शक सम्वत्

उत्तराखण्ड शासन

विधायी एवं संसदीय कार्य विभाग

संख्या 243 / XXXVI (3) / 2022 / 75(1) / 2021

देहरादून, 20 सितम्बर, 2022

अधिसूचना

विविध

"भारत का संविधान" के अनुच्छेद 201 के अधीन मा0 राष्ट्रपति ने उत्तराखण्ड विधान सभा द्वारा पारित 'उत्तराखण्ड सिविल विधि (संशोधन) विधेयक, 2021' पर दिनांक 07 सितम्बर, 2022 को अनुमति प्रदान की और वह उत्तराखण्ड का अधिनियम संख्या 10, वर्ष 2022 के रूप में सर्व–साधारण के सूचनार्थ इस अधिसूचना द्वारा प्रकाशित किया जाता है।

उत्तराखण्ड सिविल विधि (संशोधन) अधिनियम, 2021

(उत्तराखण्ड अधिनियम संख्या 10, वर्ष 2022)

सिविल प्रक्रिया संहिता, 1908 तथा बंगाल, आगरा और आसाम सिविल न्यायालय अधिनियम, 1887 में उत्तराखण्ड में उनकी प्रवृत्ति के सम्बन्ध में अग्रेतर संशोधन करने के लिए,

अधिनियम

भारत गणराज्य के बहत्तरवें वर्ष में उत्तराखण्ड राज्य विधान सभा द्वारा निम्नलिखित रूप में यह अधिनियमित हो–

संक्षिप्त नाम, विस्तार और प्रारम्भ

1.(1) इस अधिनियम का संक्षिप्त नाम उत्तराखण्ड सिविल विधि (संशोधन) अधिनियम, 2021 है।

(2) इसका विस्तार सम्पूर्ण उत्तराखण्ड राज्य में होगा।

(3) यह तुरन्त प्रवृत्त होगा।

सिविल प्रक्रिया संहिता, 1908 की धारा 115 में संशोधन

2. सिविल प्रक्रिया संहिता, 1908 की धारा 115 के स्पष्टीकरण एक में जहाँ पर भी शब्द "पाँच लाख" है, उनके स्थान पर शब्द "पंद्रह लाख" प्रतिस्थापित कर दिये जायेंगे।

बंगाल, आगरा और आसाम सिविल न्यायालय अधिनियम, 1887 की धारा 19 में संशोधन

3. बंगाल, आगरा और आसाम सिविल न्यायालय अधिनियम, 1887 की धारा 19 की उप–धारा (2) में जहां पर भी शब्द "एक लाख" है, उनके स्थान पर शब्द "तीन लाख" प्रतिस्थापित कर दिये जायेंगे।

बंगाल, आगरा और आसाम सिविल न्यायालय अधिनियम, 1887 की धारा 21 में संशोधन

4. बंगाल, आगरा और आसाम सिविल न्यायालय अधिनियम, 1887 की धारा 21 की उप–धारा (1) के खण्ड (ख) में जहां पर भी शब्द "पाँच लाख" है, उनके स्थान पर शब्द "पंद्रह लाख" प्रतिस्थापित कर दिये जायेंगे।

लम्बित कार्यवाहियों की व्यावृत्तियां

5. इस संशोधन अधिनियम की कोई भी बात किसी भी सिविल न्यायालय, जिसमें उच्च न्यायालय भी सम्मिलित है, में पूर्व से संस्थित और लम्बित वाद, अपील अथवा पुनरीक्षण जिस वाद अपील अथवा पुनरीक्षण की सुनवाई की क्षेत्राधिकारिता ऐसे न्यायालय को इस अधिनियम के प्रारम्भ होने से पूर्व से प्राप्त है, को प्रभावित नहीं करेगी।

आज्ञा से,

हीरा सिंह बोनाल,
प्रमुख सचिव।

कारण और उद्देश्य

चूँकि न्यायालयों में लायी गयी विषय वस्तु का मूल्य सारभूत रूप से बढ़ चुका है, अतः सिविल न्यायालयों और साथ में उच्च न्यायालय की प्रारम्भिक, अपीलीय और पुनरीक्षण की धन–संबंधी अधिकारिता में वृद्धि करने की आवश्यकता है। अतएव यह आवश्यक हो गया है कि न्याय के बेहतर प्रशासन को सुनिश्चित करने के लिए सिविल प्रक्रिया संहिता, 1908 और बंगाल, आगरा और आसाम सिविल न्यायालय अधिनियम, 1887 की उत्तराखण्ड राज्य में प्रवृत्ति में संशोधन कर उपरोक्त धन–संबंधी अधिकारिता में वृद्धि की जाय।

2– तद्नुसार उत्तराखण्ड सिविल विधि (संशोधन) विधेयक, 2021 पुरःस्थापित किया जाता है।

3– प्रस्तावित विधेयक उपरोक्त उद्देश्यों की पूर्ति करता है।

पुष्कर सिंह धामी
मुख्यमंत्री