

PAPER PRESENTATION
SUBMITTED BY

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Session No. I

Money Suits & Mortgage Suits:

(a) Limitation, Admissibility and Appreciation of Evidence vis-a-vis burden of proof and onus of proof.

(b) Costs and interest - Case Law.

(c) Contours of Judgment Writing in Money & Mortgage Suits - Special reference to operative portion - Precedents.

SESSION-I

Money Suits & Mortgage Suits

D. Vijay Goutam,
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(a) Limitation, Admissibility and Appreciation of Evidence vis-à-vis Burden of Proof and Onus of Proof.

MONEY SUITS:

A suit for recovery of money is a civil relief and acts as an effective remedy to recover money from the delinquent. Every person, who has a right to sue, can file a money suit. Suits are filed in civil court for money recovery subject to (1) territorial jurisdiction under section 15 to 20 of CPC, (2) pecuniary jurisdiction under section 16 of The A.P. Civil Courts Act, (3) subject matter/inherent jurisdiction under section 9 of CPC.

Promissory Note: -

Most of the money suits are on the foot of promissory note. The word "Promissory Note" is defined in (1) Section 4 of the Negotiable Instruments Act, (2) Section 2(22) of Stamp Act and (3) Section 2(k) of Limitation Act.

Burden of proof and Onus of proof: -

Section 101 Evidence Act deals with "Burden of Proof".

Where the issue was whether the document in question was genuine or sham or bogus, the party who alleged

that fact had to prove nothing till the party relying upon the document established its genuineness in the first place. Section 102 Evidence Act deals with onus of proof. It lays down that the burden of adducing the evidence rests upon the party who would fail if no evidence at all, or no more evidence, as the case may be, were adduced by either side. There is an essential distinction between burden of proof and onus of proof. Burden of proof lies upon a person who has to prove the fact and which never shifts. Onus of proof shifts. Such a shifting of onus is a continuous process in an evaluation of evidence (**Abdulla Mohammed Pagarkar v. State (Union Territory of Goa, Daman and Diu), (1980) 3 SCC 110; AIR 1980 SC 499**). Therefore, 'burden of proof' is static while 'onus of proof' is dynamic.

Limitation: The legal principle as to law of limitation is limitation does not extinguish the right but only bars the remedy. Articles 31, 34 to 38 of Schedule of the Limitation Act, 1963 provides the period of limitation regarding promissory notes. Generally, in most of the cases Article 35 of limitation Act is applicable. As per Article 35, the period of limitation is 3 years from the date of promissory note.

Acknowledgment: Section 18 of the Limitation Act deals with effect of acknowledgment in writing. It provides that where before the expiration of the prescribed period for a suit or application in respect of any property or right an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed or by whom he derives his title or liability, a fresh period of limitation shall be computed from

the time when the acknowledgment was so signed. Acknowledgement of liability must be in writing and unqualified.

Part Payment: Section 19 of the Limitation Act deals with effect of payment on account of debt or of interest on legacy. It states that where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made. The payment in order to attract section 19 must proceed from the debtor.

Under section 18, a fresh period of limitation is allowed from the date when the acknowledgment of liability is signed. But under section 19, such fresh period of limitation starts from the time the payment as mentioned in section 19 is made. **(Jiwanlal vs. Rameshwarlal, AIR 1967 SC 118).**

The burden is on the plaintiff to prove that by virtue of acknowledgment of liability the suit is not barred by limitation **(AIR 1976 Mad. 142).**

Receipt: Generally, there may not be suits basing of receipt but, in several promissory note suits parties file receipts to show that they discharged debt. Section 2(23) of Stamp Act defines the word receipt. Article 53 of Schedule 1 provides that the stamp duty is payable on receipt. In view of section 35(b) of Stamp Act, receipt can be impounded on payment of penalty of Rs.3/- by the person tendering it.

Set off: - It is a cross-claim which partly off sets the original claim. Order 8, Rule 6 CPC deals with set off.

Counter claim: A counter claim may be defined as a claim made by the defendant in a suit against the plaintiff. One of the pleas open to a defendant to defeat the relief sought by the plaintiff against him is a counter claim. Order 8, Rule 6-A to 6-G CPC deals with counter claim.

MORTGAGE SUITS:

There are six types of mortgages described in section 58 of Transfer of Property Act. Rights of parties are governed by the terms of the instrument.

Stamp Duty: Section 58 of Transfer of Property Act defines a mortgage and a mortgage deed. Section 2(17) Stamp Act defines a mortgage deed. Article 7 of Schedule 1-A provides the stamp duty payable on agreements relating to deposit of title deeds, pawn, pledge, hypothecation etc. Article 35 of Schedule 1-A deals with stamp duty payable on mortgage deed.

A hire purchase agreement containing a clause mortgaging schedule mentioned property as security for payment of money due under it is chargeable as mortgage (**Chief Controlling Revenue Authority vs. D.S.James, AIR 1973 Mys.105**).

Article 45 provides the stamp duty payable on reconveyance of mortgaged property.

Registration: All kinds of mortgages, except mortgage by deposit of title deeds, can be affected only by a registered

instrument signed by the mortgagor, when the principal money secured is Rs.100/- or above. In case mortgage money is below Rs.100/-, then mortgage can be affected under registered instrument or delivery of property except in the case of simple mortgage.

Attestation: The mortgage deed shall be attested by at least two witnesses (Section 59). As per Section 68 of Indian Evidence Act, in order to prove mortgage deed, at least one of the attester shall be examined.

Limitation: It is well established principle of law that once a mortgage, always a mortgage.

Article 61(a) of Schedule of Limitation Act relates to suits for redemption of mortgages and suits to recover possession of the immovable property mortgaged. The period of limitation is thirty years and the limitation commences in the case of suit for redemption from the date on which the right to redeem arises or in case of recover of possession, from the date when the right to recover possession accrues.

Article 62 governs suits to enforce payment of money secured by mortgage or otherwise charged upon immovable property. The period of limitation is 12 years and has to be filed within 12 years from the date when the money becomes due.

Right of usufructuary mortgagor is equitable as well as statutorily recognized right. Usufructuary mortgage is distinct from other mortgage. Special right of usufructuary mortgagor u/s. 62 of Transfer of Property Act to recover possession commences when mortgage money is paid out of usufructs or

partly out of usufructs and partly on payment by the mortgagor. Therefore, in case of usufructuary mortgage mere expiry of 30 years does not extinguish the right of the mortgagor and consequently does not entitle the mortgagee ownership on the mortgaged property (**Singh Ram (D) Thr.L.Rs. Vs. Sheo Ram & Ors, [2014] 14 S.C.R. 1412**).

Procedure: *Suit for foreclosure:*

Preliminary decree – In suit for foreclosure, if the plaintiff succeeds, the court shall pass a preliminary decree (a) ordering that an account be taken of what was due to the plaintiff at the date of such decree for principal and interest on the mortgage, the costs of the suit awarded to him; and other costs, charges and expenses properly incurred by him; or (b) declaring the amount so due; and (c) directing that if the defendant pays into court the said amount, on or before such date fixed or extended by the court, the plaintiff shall deliver to the defendant all documents relating to the mortgaged property and retransfer the property to the defendant free from the mortgage and all encumbrances created by the plaintiff and put the defendant in possession thereof. If the payment is not made by the defendant, the plaintiff shall be entitled to apply for a final decree debarring the defendant from his right to redeem the mortgage.

Final decree – Where the defendant makes payment of all amounts on or before the date fixed or extended by the court for such payment, the court shall, on an application being made by him, pass a final decree directing the plaintiff to deliver to the defendant all the documents referred to in the preliminary

decree, to transfer the property and to put the defendant in possession thereof. Where no payment has been made by the defendant on or before the date fixed or extended by the court for such payment, the court shall on application being made by the plaintiff pass a final decree declaring that the defendant is debarred of his right to redeem the mortgage and, if necessary, by directing the defendant to put the plaintiff in possession of the mortgaged property. On passing of a final decree, the defendant shall be deemed to have been discharged from all his liabilities in respect of the mortgage.

Suit for sale:

Preliminary decree – In a suit for sale, if the plaintiff succeeds, the court shall pass a preliminary decree in the manner provided in the suit for foreclosure (same as in preliminary decree). In case of default by the defendant, the plaintiff shall be entitled to apply a final decree directing that the mortgaged property be sold and the sale proceeds be applied in payment of amount due to plaintiff.

Final decree – Where on or before the day fixed or at any time before the confirmation of sale, the defendant makes payment into court all amounts due, the court shall on application being made by him pass a final decree directing the plaintiff to deliver to the defendant all the documents referred to in the preliminary decree, to retransfer the mortgaged property and to put the defendant in possession thereof. Where the payment has not been made by the defendant, the court shall, on an application being made by the plaintiff pass a final decree directing sale of mortgaged property. If the net proceeds of such sale are less

than the amount due, the court may pass a decree for the balance if it is legally recoverable from the defendant.

Suit for redemption:

Preliminary Decree – In a suit for redemption, if the plaintiff succeeds, the court shall pass a preliminary decree in the manner provided in the suit for foreclosure (same as in preliminary decree). If the plaintiff does not make the payment, the defendant shall be entitled to apply for a final decree that the mortgaged property be sold or that the plaintiff be debarred of his right to redeem that mortgaged property, depending upon the nature of the mortgage.

Final decree – Where before a final decree debarring the plaintiff of his right to redeem the mortgage has been passed or before the confirmation of sale, the plaintiff pays all amounts due, the court shall, on application being made by him pass a final decree directing the defendant to deliver to the plaintiff all the documents referred to in the preliminary decree, to retransfer the mortgaged property and to put the plaintiff in possession thereof. Where no payment has been made by the plaintiff, the court shall, on application being made by the defendant, pass a final decree declaring that the plaintiff is debarred of his right to redeem the mortgage or directing that the mortgaged property be sold and proceeds thereof be applied in payment of amount found due to the defendant and the balance, if any, be paid to the plaintiff. If the net proceeds of such sale are less than the amount due, the court may pass a decree for the balance if it is legally recoverable from the plaintiff.

E.P. basing on preliminary decree is not maintainable: The Hon'ble High Court of A.P in **Namboori Surya Kumari v. Bandaru Seetamahalakshmi & another, 2023 (4) AmLJ 393**, was pleased to hold that "Execution Petition is not maintainable to execute a mortgage decree on the basis of a preliminary decree that was passed without obtaining a final decree.

Application for final decree – Limitation: The Hon'ble Madras High Court in **2018 (5) CTC 353** was pleased to hold that "there is no period of limitation for filing application for final decree in mortgage suits (Discussed in para 28 to 36 of judgment). This judgment is followed by The Hon'ble Madras High Court in the judgment between **Punjab National Bank Represented by its Manager, Villupuram Vs. G.Vijayakumar (C.R.P.(N.P.D).No.2949 of 2016, Dt.11.02.2021).**

(b) Costs and Interest – Case Law

Introduction:

The question of the award of interest in civil proceedings for payment of money is of most frequent occurrence. However, the expression “interest” has not been defined in the Code of Civil Procedure. A person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation. This may be called interest, compensation or damages according to the principle underlying in Section 34, CPC. The provision of the Section 34, CPC, invests the courts with the requisite jurisdiction in that behalf. Before the CPC (Amendment) Act, 1976, the maximum interest which could be awarded by a court under this section was six per cent per annum. In appropriate cases, the court had discretion to award interest at a lesser rate but in no case, it could exceed six per cent. A proviso has been introduced by the CPC (Amendment) Act, 1976 which enables the court to increase post decretal interest in relation to a liability arising out of a commercial transaction on the principal sum adjudged. The amendment is intended to prevent commercial operators from exploiting the situation by lending money at a rate higher than six per cent and thereby earning profits.

The award of costs is at the discretion of the court. Normally, in civil proceedings, “costs shall follow the events”. The Hon’ble Supreme Court of India in *Ashok Kumar Mittal v. Ram Kumar Gupta and another*¹, was pleased to hold that the

¹ (2009) 2 SCC 656

present system of levying meagre costs in civil matters (or no costs in some matters), no doubt, is wholly unsatisfactory and does not act as a deterrent to vexatious or luxury litigation borne out of ego or greed, or resorted to as a "buying time" tactic. More realistic approach relating to costs may be the need of the hour.

Interest Prior to the Date of Institution of Suit:

The claim for interest for the period prior to the institution of the suit came up for adjudication by the Hon'ble Supreme Court of India in *Union of India v. West Punjab Factories Ltd*², which arose out of suits for damages for loss of goods which were destroyed by fire on the railway platform. Disallowing the claim of plaintiff for interest before the suit and modifying the decree of the court below on that account, the Hon'ble Supreme Court referred to some earlier decisions and was pleased to hold that, "In the absence of any usage or contract, express or implied, or of any provision of law to justify the award of interest it is not possible to award interest by way of damages".

Section 34, CPC, is not concerned with interest prior to suit. Such interest may be awarded: (i) when there is a contract, (ii) when there is usage of trade having the force of law, (iii) when it is contemplated by any provision of substantive law, or (iv) under the Interest Act, 1978, (v) it may sometimes be awarded under a rule of equity also.

² AIR 1966 SC 395

Interest After the Date of Institution of Suit:

The award of interest after the date of institution of the suit is purely a matter of statutory power of courts under section 34, CPC. Hence, as regards interest due from the date of the institution of suit to the date of the decree and that due from the date of decree till the date of realization is governed by the Section 34³. This section applies where the decree is for a definite sum of "money". The expression "decree for the payment of money" as used in this section includes a claim to unliquidated damages. In money suits, therefore, the question of interest after the institution of the suit passes from the domain of contract into that of judgment and a Court has discretion as to the rate of interest⁴. That discretion however, is a judicial discretion to be exercised on proper judicial grounds and not arbitrarily.

A three-Judge Bench of the Hon'ble Supreme Court of India in *Madnani Construction Corporation (P) Ltd. v. Union of India and Ors*⁵, while discussing several aspects of the arbitration and also the provisions of Section 34 of the Code of Civil Procedure held: "...Though the said decision deals with the power of the arbitrator to award interest pendente lite, the principle of the decision makes it clear that the arbitrator is competent to award interest for the period commencing with the date of award to the date of decree or date of realization, whichever is earlier. This is also quite logical for, while award of interest for the period prior to an arbitrator entering upon the

³ *Madnani Construction Corporation (P) Ltd. v. Union of India and Ors.*, AIR 2010 SC 383

⁴ *S. Nazeer Ahmed v. State Bank of Mysore and Ors.*, AIR 2007 SC 989

⁵ AIR 2010 SC 383

reference is a matter of substantive law, the grant of interest for the post-award period is a matter of procedure. Section 34 of Code of Civil Procedure provides both for awarding of interest pendente lite as well as for the post-decree period and the principle of Section 34 has been held applicable to proceedings before the arbitrator, though the section as such may not apply...”.

Costs— Scope and Ambit:

Sections 35, 35-A, 35-B and Order 20-A, CPC, enables the court to pass order of costs. An order of costs is entirely in the discretion of the court, while an order of interest which the court makes under Section 34 forms part of a dispute between the parties. The object of awarding costs is to secure to a litigant the expenses which he has incurred and not to punish the opposite party. The costs to be awarded under this section are in the judicial discretion of the Court. This judicial discretion is to be exercised on sound legal principles. Ordinarily, the successful party is entitled to his costs. In other words, costs follow the event. When both the parties are guilty of acts of bad faith, both may be deprived of their costs. The CPC provides for the following kinds of costs: (a) General Costs (Section 35), (b) Miscellaneous Costs (Order 20-A), (c) Compensatory Costs (Section 35- A), (d) Costs for Causing Delay (Section 35-B).

General Costs— Section 35:

Section 35, CPC, lays down that the costs of an incidental to all suits shall be in the discretion of the Court. The Court can order by whom and out of what property, the costs are to be

paid. The section clearly provides that "costs shall follow the events". It means that the successful party is entitled to the costs, unless the Court in its discretion orders otherwise, either because that party is guilty of misconduct or because there is some other good cause for not awarding costs to him. Thus, successful party will not get his costs if he succeeds on a small part of his claim, but fails on the most important and larger part of it or if the party has raised an unnecessary issue, or placed a burden on the defendant which ought not to have in the litigation, etc. Similarly, a landlord who deliberately mis-states the areas of the land in a rent suit may be deprived of costs, though he is successful in his suit⁶.

The theory on which costs are now awarded to a plaintiff is that default of the defendant made it necessary to sue him, and to a defendant is that the plaintiff sued him without cause; costs are thus in the nature of incidental damages allowed to indemnify a party against the expense of successfully vindicating his rights in court and consequently the party to blame pays costs to the party without fault. These principles apply, not merely in the award of costs, but also in the award of extra allowance or special costs. Courts are authorized to allow such special allowances, not to inflict a penalty on the unsuccessful party, but to indemnify the successful litigant for actual expenses necessarily or reasonably incurred in what are designated as important cases or difficult and extraordinary cases. In *Salem Advocates Bar Association v. Union of India*⁷, the Apex Court after noticing that the award of costs is in the

⁶ *U.P. Cooperative Federation Ltd. v. Three Circles*, (2009) 10 SCC 374

⁷ AIR 2005 SC 3353

discretion of the court and that there is no upper limit in respect of the costs awardable under Section 35 of the Code of Civil Procedure observed thus: "Judicial notice can be taken of the fact that many unscrupulous parties take advantage of the fact that either the costs are not awarded or nominal costs are awarded against the unsuccessful party. Unfortunately, it has become a practice to direct parties to bear their own costs. In a large number of cases, such an order is passed despite Section 35(2) of the Code. Such a practice also encourages the filing of frivolous suits. It also leads to the taking up of frivolous defences. Further, wherever costs are awarded, ordinarily the same are not realistic and are nominal. When Section 35(2) provides for cost to follow the event, it is implicit that the costs have to be those which are reasonably incurred by a successful party except in those cases where the court in its discretion may direct otherwise by recording reasons therefore. The costs have to be actual reasonable costs including the cost of the time spent by the successful party, the transportation and lodging, if any, or any other incidental costs besides the payment of the court fee, lawyer's fee, typing and other costs in relation to the litigation. It is for the High Courts to examine these aspects and wherever necessary make requisite rules, regulations or practice direction so as to provide appropriate guidelines for the subordinate courts to follow."

It is clear from the foregoing discussions that normally costs shall follow the event and it is not the rule that costs should be left to be borne by the parties. However, the costs may not be awarded by the Court if it is satisfied in this respect on account of some good reasons. This means that the

successful party is entitled to costs unless he is guilty of misconduct or there is some good cause for not awarding costs to him⁸.

Miscellaneous Costs— Order 20-A:

Order 20-A⁹, CPC, makes specific provision with regard to the power of the court to award costs in respect of certain expenses incurred in giving notices, typing charges, inspection of records, obtaining copies and producing witnesses. Under Order 20-A, the court may award costs in respect of: 1. expenditure incurred for the giving of any notice required to be given by law before the institution of the suit;

2. expenditure incurred on any notice which, though not required to be given by law, has been given by any party to the suit to any other party before the institution of the suit;

3. expenditure incurred on the typing, writing or printing of pleadings filed by any party;

4. charges paid by a party for inspection of the records of the Court for the purpose of the suit;

5. expenditure incurred by a party for producing witnesses, even though not summoned through Court; and

6. in the case of appeals, charges incurred by a party or obtaining any copies of judgments and decrees which are required to be filed along with the memorandum of appeal.

⁸ *Jugra Singh v. Jaswant Singh*, (1970) 2 SCC 386.

⁹ Order 20-A was inserted by CPC (Amendment) 1976, Section 71 (w.e.f. 1.2. 1977)

Compensatory Costs— Section 35-A:

Section 35-A provides for compensatory costs. This Section is an exception to the general rule on which Section 35 is based and intended to deal with those cases in which Section 35 does not afford sufficient compensation in the opinion of the court. Under this provision, if the court is satisfied that the litigation was inspired by vexatious motive and was altogether groundless, it can take deterrent action¹⁰. Under Section 35-A, compensatory costs for vexatious claims and defences may not exceed to Rs. 3,000/-. The principles and practices relating to levy of costs are matters of administrative law that cannot be imported mechanically in relation to civil litigation governed by the CPC. The Apex Court, therefore, held that imposition of exemplary costs is governed and regulated by Sections 35 and 35-A of CPC and there is no question of exercising inherent power contrary to the specific provisions of the CPC.

Costs for Causing Delay— Sections 35-A:

Section 35-B, CPC, deals with the law relating to costs levied for causing delay. Section 35-B was added by the CPC Amending Act of 1976. It is inserted to put a check upon the delaying tactics of litigating parties. It empowers the court to impose compensatory costs on parties who are responsible for causing delay at any state of the litigation. Such costs would be irrespective of the ultimate outcome of the litigation.

¹⁰ *Devinder Singh and Ors. v. State of Haryana and Anr.*, AIR 2006 SC 2850;

(c) Contours of Judgment Writing in Money & Mortgage Suits – Special reference to Operative portion – Precedents.

A judgment is the statement given by the Judge, on the grounds of a decree or order. It is the end product of the proceedings in the Court. The writing of a judgment is one of the most important and time-consuming task performed by a Judge. The making and the writing of a judgment and the style in which it is written, varies from Judge to Judge and reflects the characteristic of a Judge. Every Judge, of every rank has his own distinct style of writing.

The Code of Civil Procedure, 1908 and Code of Criminal Procedure, 1973 have provided sufficient guidelines for writing judgment. These, however, are not exhaustive. There is a wide discretion left with the Judges to choose their style of writing, language, manner of statement of facts, discussion of evidence and reasons for the decision.

The judgment writing consumes the major part of Judge 's work. Taking into account the mounting arrears, and the number of cases in the daily cause list, the burden in judgment writing sometimes becomes intolerable. The Judges by their experience, find methods to reduce this burden, by writing brief opinions. The judgment, however should serve the requirement of law without compromising with the quality. The judgment is also a reflection of the conscience of a Judge, who writes it, and

evidences his impartiality, integrity and intellectual honesty. The judgment writing provides opportunities for judicial officers to demonstrate his own ability and his worthiness to be a participant in the high tradition of moral integrity and social utility.

Before writing a judgment, a Judge must remember that he is performing a public act of communicating his opinion on the issues brought before him and after the trial by observing fair procedures. He is required to tell the parties of the decision, on the facts brought before him, with application of sound principles of law, his decision, and what the parties are supposed to do as a necessary consequent to the judgment or to appeal against it. It is basically a communication to the parties coming before him for a decision.

It is worthwhile to keep the following basic rules in mind while writing a judgment:

(a) Reasoning should be intelligible and logical.

(b) Clarity and precision should be the goal. Prolivity and verbosity should be avoided. At the same time, brevity to an extent where reasoning is the casualty should be avoided.

(c) Use of strange and difficult words and complex sentences should be avoided. The purpose of a judgment is not to showcase the Judge's knowledge of language, or legal erudition, but to decide disputes in a competent manner, and state the law in clear terms.

(d) A judge cannot use his personal knowledge of facts in a judgment.

(e) If a judge wants to rely on precedents or decisions unearthed by the Judge by his own research, he has to give an opportunity to the parties to comment upon or distinguish the same.

(f) In civil matters, the judgment should not travel beyond the pleadings or the issues. Recording findings on issues or matters which are unnecessary for disposal of the matter should be resisted.

(g) Findings of fact should be based upon legal testimony. The decision should rest upon legal grounds. Neither findings of fact nor the decision should be based upon suspicion, surmises or conjectures.

(h) All conclusions should be supported by reasons duly recorded. The exceptions are where an action is undefended or where the parties are not at issue, or where proceedings are summary or interlocutory or formal in nature.

(i) The findings and directions should be precise and specific.

(j) A judge should avoid use of disparaging and derogatory remarks against any person or authority whose conduct arises for consideration. Even when commenting on the conduct of the parties or witnesses, a judge should be careful to use sober and restrained language. It should be remembered that the judge making the remark is also fallible.

(k) While exercising appellate or revisional jurisdiction, unnecessary criticism of the trial courts' conduct, judgment or reasoning should be avoided.

(l) Before making any adverse remarks, court should consider:

(i) whether the party or the person whose conduct is being discussed has an opportunity of explaining or defending himself against such remarks; (ii) whether there is evidence on record bearing on the conduct justifying the remark; (iii) whether it is necessary to comment or criticize or censure the conduct or action of the person, for decision of the case.

THE OPERATIVE PORTION:

A Judge must clearly write the operative portion of the judgment, which pronounces his conclusion over the issues brought before him. He must give clear and precise direction and the manner in which the directions have to be obeyed in conformity with the prayers made in the plaint. The object of good judgment is to conclude the dispute and not to leave the matter undecided. The judgment should leave nothing to be brought back to the Court. The operative portion of the order should as far as possible self-executing and self-contained.

Judgment should finally record the result of the determination either granting relief or refusing to grant such relief in civil cases and convicting or acquitting the accused in criminal case and in the case of conviction, clearly indicating the quantum of sentence both in terms of imprisonment and fine and consequences of failure to pay fine within the prescribed time. Even in civil cases, this part of the judgment should be

stated in clear terms, leaving no scope for ambiguity. It should exactly indicate what the Court requires the parties to do and how the decision should be executed and which party has to carry it out, the deadline for execution thereof. If it is a money decree, the amount of money to be paid, by which party to whom and if interest is also to be paid, the rate and the period for which it has to be paid. In civil cases, Order 48, Rule 3 of CPC provides that the forms given in the appendices, which may be used as a guideline with such variation as the circumstances of each case may require, for the purpose therein mentioned.

Operative portions in money decrees:

As per Order 20, Rule 6 of Code of Civil Procedure, 1908 The decree shall agree with the judgement, it shall contain the number of the suit, the name and description of the parties, their registered addresses and particulars of the claim and shall specify clearly the relief granted or other determination of the suit. The decree shall also state the amount of costs incurred in the suit and by whom or out of what property and in what proportions such costs are to be paid. Further in money suits the court may direct that the costs payable to one party by the other shall be set-off against any sum which is admitted or found to be due from the former to the latter. As per Order 20, Rule 6A CPC, every endeavour shall be made to ensure that the decree is drawn up as expeditiously as possible and in any case within 15 days from the date on which the judgment is pronounced. A decree is substantially the operative part of the judgement, whether it may be money or mortgage. It is the duty of the Judge to

make the operative portion of the judgment specific and indicative of the intention in which the relief is intended to be granted. Further it is the bounded duty of the court to give findings on the issues framed by the court and the judgement must conclude with the reliefs prayed by the plaintiff and whether the relief granted or denied by the court must be very clear to the parties to the suit. Such operative portion must be executable.

Where a suit is partly decreed, the extent to which the claim is decreed must be clearly specified with proportionate costs. When it is intended to award pending and future interest in money suits, the rate of interest and the amount on which interest is to run, should be clearly specified.

As per Order 20, Rule 11 CPC, where and in so far as a decree is for the payment of money, the court may for any sufficient reason incorporate in the decree, after hearing such of the parties who had appeared personally or by pleader at the last hearing, before judgment, an order that payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable. Order, after decree, for payment by instalments— After the passing of any such decree the court may, on the application of the judgment debtor and with the consent of the decree holder, Order that payment of the amount decreed shall be postponed or shall be made by instalments on such terms as to the payment of interest, the attachment of the

property of the judgment debtor, or the taking of security from him, or otherwise, as it thinks fit.

As per Andhra Pradesh Amendment, where and in so far as a decree is for the payment of money, the court may for any sufficient reason incorporate in the decree, after hearing such of the parties who had appeared personally or by pleader at the last hearing, before judgment, an Order that payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable.

Order, after decree, for payment by instalments: After the passing of any such decree the court may, on the application of the judgment debtor and with the consent of the decree holder, order that payment of the amount decreed shall be postponed or shall be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment debtor, or the taking of security from him, or otherwise, as it thinks fit.

The discretion to order payment of decretal amount by installments should not be exercised in such a manner to constitute a virtual denial of the decree holders' rights. Whenever installments are granted, the number of installments and the period for their payment must have specifically stated. In case of vagueness, it will create confusion in execution of the decree. Likewise, it is better to specify what is to happen in case of default in payment of installments.

Some Model Operative Portions:**Model No.1:**

In the result, the suit is decreed with costs. The plaintiff is entitled to receive a sum of Rs.10,76,264-33/- from the defendant along with interest of 6% per annum till the realization of the entire decretal amount. The defendant is directed to pay the decretal amount to the plaintiff within six months from the date of this order.

Model No.2:

In the result, the suit is decreed with costs against defendant for Rs. 3,00,000/-, together with subsequent interest @ 12% p.a. on the principal amount of Rs.2,00,000/- from the date of the suit till the date of decree and thereafter at 6% p.a., till the date of realization.

Model No.3:

In the result, the suit is decreed ex-parte with costs. The plaintiff is entitled to receive a sum of Rs.10,76,264-33/- from the defendant along with interest of 6% per annum till the realization of the entire decretal amount. The defendant is directed to pay the decreed

amount to the plaintiff within six months from the date of this order.

In mortgage suits there would be several judgments basing up on the type of mortgage on which then plaintiff relies. Accordingly, the operative portions will vary from case to case. In the appendix appended to the Civil Procedure Code, 1908 the various models of mortgage decrees are illustrated. From them the operative portions of judgments in mortgage suits can be deduced.

Operative portion for the judgments of Mortgage:

Model No.1:

The suit for foreclosure is preliminarily decreed for recovery of Rs.10,00,000/- (for example) with costs and interest @ 24% p.a. (contractual rate of interest or in its absence at discretion of the Court) from the date of suit till the date of preliminary decree and thereafter @ 12% p.a. (discretion of the Court) on the principal amount. Time granted to defendant for redemption is six months. In default the final decree ordering the sale of mortgaged property may be sought by the plaintiff. (Order 34 R.2 of C.P.C.)

Foreclosure of mortgage suits and where accounts are directed to be taken: -

In the Result the Commissioner to take the accounts following: — (i) an account of what is due on this date to the plaintiff for principal and interest on his mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent. per annum or at such rate as the Court deems reasonable); (ii) an account of the income of the mortgaged property received up to this date by the plaintiff or by any other person by the order or for the use of the plaintiff or which without the wilful default of the plaintiff or such person might have been so received; (iii) an account of all sums of money properly incurred by the plaintiff up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security, together with interest thereon (such interest to be computed at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent. per annum); (iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the plaintiff which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.

In the result any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall first be adjusted against any sums paid by the plaintiff under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, debited in reduction of the amount due to

the plaintiff on account of interest on the principal sum adjudged due, and thereafter in reduction or discharge of the principal.

And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the.....day of..... and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

That the defendant do pay into Court on or before the..... day of....., or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due, and the sum of Rs..... for the costs of the suit awarded to the plaintiff. (ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff-or any

person claiming under him or any person under whom he claims and free from all liability whatsoever or arising from the mortgage or this suit and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

In default of payment as aforesaid, the plaintiff shall be at liberty to apply to the Court for a final decree that the defendant shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Model No.2:

FORECLOSURE (Order XXXIV, Rule 2 CPC—Where the Court declares the amount due.)

In the result the amount due to the plaintiff on his mortgage mentioned in the plaint calculated up to thisday of..... is the sum of Rs..... for principal, the sum of Rs..... for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) properly incurred by the plaintiff in respect of the mortgage-security, together with interest thereon, and the sum of Rs..... for the costs of this suit awarded to the plaintiff, making in all sum of Rs.....

2. (i) that the defendant do pay into Court on or before the.....day of.....or any later date up to which time for payment may be extended by the Court of the said sum of Rs.....,

3. (ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property

3. In default of payment as aforesaid, the plaintiff may apply to the Court for a final decree that the defendant shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required,

deliver up to the plaintiff quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Model No.3:

Sale (Order XXXIV When the Court declares the amount due.)

In the result the amount due to the plaintiff on the mortgage mentioned in the plaint calculated up to this..... day of.....is the sum of Rs.....for principal, the sum of Rs.....for interest on the said principal, the sum of Rs..... for costs, charges and expenses (other than the costs of the suit) properly incurred by the plaintiff in respect of the mortgage-security, together with interest thereon, and the sum of Rs.....for the costs of the suit awarded to the plaintiff, making in all the sum of Rs.....

2. (i) that the defendant do pay into Court on or before the..... day of..... or any later date up to which time for payment may be extended by the Court, the said sum of Rs.....;

(ii) that on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be

payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the defendant quite and peaceable possession of the said property. 3. In default of payment as aforesaid, the plaintiff may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property.

4. The money realised by such sale shall be paid into Court and shall be duly applied (after deduction herefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil

Procedure, 1908, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.

If the money realised by such sale shall not be sufficient or payment in full of the amount payable to the plaintiff as aforesaid, the plaintiff shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the defendant for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Model No.4:

Redemption where on default of payment by mortgagor a decree for foreclosure is passed.

In the result, the amount due to the defendant on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) properly incurred by the defendant in respect of the mortgage-security together with interest thereon, and the sum of Rs. for the costs of the suit awarded to the defendant, making in all the sum of Rs.

2. (i) that the plaintiff do pay into Court on or before the..... day of or any later date up to which time for payment may be extended by the Court the said sum of Rs.

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such cost of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims, and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

3. In default of payment as aforesaid, the defendant may apply to the Court for a final decree that the plaintiff shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required,

deliver up to the defendant quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Model No.5:

The suit is preliminarily decreed for recovery of Rs.10,00,000/- (for example) with costs and interest @ 24% p.a.(contractual rate of interest or in its absence at discretion of the Court) from the date of suit till the date of preliminary decree and thereafter @ 12% p.a. (discretion of the Court) on the principal amount. Time granted to defendant for redemption is six months. In default the final decree ordering the sale of mortgaged property may be sought by the plaintiff. (Ord.34 R.4 of C.P.C.)

In case the defendant/ mortgagor failed to deposit the decreed amount within the period of time granted for redemption the plaintiff/ mortgagee can file the final decree petition under Ord.34 R.5 of C.P.C. In such case, the court shall pass a final decree directing that the mortgaged property or sufficient part thereof be sold, according to Law.

Model No.6:

The suit is preliminarily decreed for redemption of mortgaged property subject to payment of Rs.10,00,000/- (illustrious) with costs and interest from the date of suit till the period of six months granted for redemption. In default the defendant/mortgagee can file petition for final decree for appropriate relief. (for foreclosure in case of suit for conditional sale; for sale in case of other suits of mortgage) (Ord.34 R.7 C.P.C.).