

**Paper Preparation by Sri S.China Babu, Spl. Judge for trial of
Offences under POCSO Act, Ananthapuramu,
on the topic - Section 9 CPC with reference to Jurisdiction
under various Special Enactments.**

Introduction:

Section 9 of CPC can be equated with Article 32 of Constitution of India. In India, the civil courts are empowered with inherent jurisdiction to adjudicate and decide all cases of civil nature. Such authority is drawn from the provisions of Sec.9 of Civil Procedure Code, 1908, which implicates the jurisdiction of Civil courts in India. It is inherent right of the plaintiff to sue the defendant. The common law grants it as a inherent right upon all the individuals for file a suit. Before proceeding further, it is apt to refer to said provision of C.P.C., as follows:-

1. Section 9: Courts to try all civil suits unless barred:-

The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation (I) - A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation (II) - For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.

2. The necessary conditions for a civil court to invoke jurisdiction on a suit are;

i) The suit must be civil in nature.

ii) The cognizance of the suit should not have been impliedly or expressly barred.

3. Infact, the word “civil suit” or “suit of civil nature” has not been defined in the C.P.C or any Act. However, any suit of non-criminal nature which determines civil rights or obligations can be termed as a civil suit. On the meaning of a civil proceeding, the *Hon’ble Supreme Court of India in Kehar Sinha Nihal Sing V/s Custodian General* observed as an approbation of private rights to corporations or human beings. The private rights and obligations, other than political or religious issues, are generally covered under the expression “suit of civil nature”. The word “Civil” relates to a citizen or an individual. The inherent qualities of a person/thing can be termed as his/it’s “nature”.

4. The afore mentioned power or authority of civil court to try all suits of civil nature is called it’s inherent jurisdiction or jurisdiction as to subject matter of the suit. Now, it is very apt to touch upon the meaning of the term “jurisdiction”. Infact, it is not define in C.P.C. It is originated from the latin phrase *juris* means “Law” and *dicere* means “to speak”. In simple terms “jurisdiction” means the power of court to hear and determine a cause, to adjudicate and exercise a judicial powers in relation to

it. In major *SS Khana V/s Brig Dillon (1963)*, the *Supreme Court of India* held that the issue of jurisdiction is the first issue supposed to be decided by the court.

5. Major Kinds of jurisdictions:-

i) Pecuniary:- To try the cases based on its monetary value i.e., the valuation done by the plaintiff.

ii) Territorial:- To try the cases basing on the territory or geographical wise.

iii) Subject matter:- It implies the fundamental matter of a particular nature which is under question. It states whether the court has the authority to try matters of a certain nature. If not, then the courts can't try that particular case.

6. Generally, the jurisdiction of a court is not decided on the arguments of the defence, but, on the basis of the contentions made in the plaint. A decree or order passed by a court lacking jurisdiction as to subject matter is *null and void*, which are unenforceable by Law.

7. A cursory glance at Sec.9 C.P.C clarifies that all civil courts have jurisdiction to try all suits of civil nature, subject to the provisions of the Code. Any suit of civil nature can be tried by the court unless it is either expressly or impliedly barred.

8. As can be observed from the explanations appended to main provision of Sec.9 C.P.C., suits of civil nature mean a suit

that is presented before a civil court for adjudication of a civil matter, specifically to determine the right of property or office.

Relating to the widespread scope of jurisdiction of civil courts, Hon'ble Apex court in the case of *Shankar Narayan Potti V/s K.Sreedevi*, observed that *"in all types of civil disputes the civil courts have inherited jurisdiction as per Sec.9 of C.P.C. unless apart of jurisdiction is carved out from such jurisdiction, expressly or by necessary implication by any statutory provision conferred on any other tribunal or authority"*.

9. Now, it is required to understand the meaning of "the suits expressly barred" and "the suits impliedly barred".

i) Suit expressly barred:- It means, the suits barred by the statutes or enactments that were passed by legislatures. A suit is said to be expressly barred when it is prohibited by a statute, from the jurisdiction of civil courts.

ii) Suits impliedly barred:- When the statute provides a specific right and remedy for enforcement of such right, such statute deprives the remedy from any other form. A suit is said to be impliedly barred when it is said to be excluded by general principles of Law. When a specific remedy is given by a statute, it can be understood that it denies a remedy of any different form than what is given by said statute.

As observed by Hon'ble Supreme Court of India in *Raja Ram Kumar Bhargava V/s. Union of India*, the material considerations for determination of implied exclusion of civil court's jurisdiction are that;

- a) Whether a right has been created by a statute.
- b) Whether statute itself provided machinery for enforcement of that right.
- c) Both rights and remedies have been created *uno flatu*, which means-in one breath.
- d) A finality is intended to be the result of the statutory proceedings.

Unless a statute provides a provision expressly or indicates necessary implication stating the jurisdiction of the civil courts is excluded to try a particular type of matter, exclusion of the jurisdiction of civil courts will not be assumed. General rule is that all the civil courts have inherent jurisdiction to try all civil suits. Exclusion of jurisdiction of civil courts is an exception.

10. The burden of proof of lack of jurisdiction, lies on the person who asserts that the civil court has no jurisdiction to try a suit of civil nature. [*V.L.N.S. Temple Vs. I.Pattabirama*, 1967 SC 781]

In *State of A.P. Vs. Majeta Laxmikanth Rao*, the Hon'ble Supreme Court of India examined the aspect of exclusion of jurisdiction of civil courts.

11. The civil courts, as contemplated u/s 9 of CPC, are empowered to deal with disputes relating to right to property and right to an office. Right to office implies a right to both acquire a position and subsequently exercise it. It could include any position in a job, religion etc. It is to note that any suit in which primary question is related to a religion or caste, is not civil nature. However, if such question happens to be adjudicated incidentally relating to caste or religious rites and ceremonies, such suit does not cease to be of a civil nature.

12. The concept of jurisdiction is fundamental in understanding how courts operate in any legal system. Jurisdiction refers to the authority granted to a court to hear and decide legal cases. The Code of Civil Procedure, 1908 CPC lays down the rules that define the jurisdiction of civil courts in India.

13. By enactment of the following special legislations, the jurisdiction of Civil Courts is impliedly barred with respect to disputes relating to respective statutes:-

i) By virtue of the **Industrial Disputes Act, 1947**, the disputes arise between employer and employees such as payment of wages, working conditions, retrenchments etc., which are enumerated u/s 2(k) and 2-A of the Act, are brought to the jurisdiction of Industrial Tribunals cum Labor Courts. By virtue of

this legislation, the jurisdiction of Civil courts to entertain such disputes, was ousted.

The Hon'ble Supreme Court in the case of *Premier Automobiles vs. K.S.Wadke*, AIR 1975 SC 2238, enumerated certain directions relating to Industrial disputes relevant to the jurisdiction of civil courts. The Hon'ble Supreme Court propounded that-

a) If the dispute is not an industrial dispute and it does not correspond to the enforcement of any rights under the Industrial Disputes Act, it shall lie under the preview of civil courts.

b) If the dispute is an Industrial Dispute arising out of a right or liability under the general common law and not under the Act, the jurisdiction of the Civil Court is alternative leaving it to the election of the suitor.

c) If the industrial dispute concerns to the enforcement of any right or obligation enumerated under the Act, the suitor can get a remedy only under the Industrial Disputes Act.

d) If the right, which is sought to be enforced is a right created under the Act such as chapter 5(A) then the remedy for its enforcement is either Sec.33(c) or the raising of an Industrial Dispute, as the case may be.

The Hon'bel Supreme Court of India propounded the principles applicable to industrial disputes in its Judgment in the case of *Rajasthan State Road Corporation Vs. Krishna Kanth* AIR 1995 SC 1715.

In *Jitendra Nath Vs. Empire of India & Ceylone Tea Co*, A.I.R. 1990 S.C. 255 it has been held that I.D. Act not only confers the right on a worker for reinstatement and back wages if the order of termination or dismissal is not in accordance with the Standing Orders but also provides a detailed procedure and machinery for getting this relief. Under these circumstances therefore there is an apparent implied exclusion of the jurisdiction of the Civil Court to grant such relief.

ii) By enactment of the **A.P. Rent Control Act, 1960**, the disputes between the landlord and tenant were placed under the jurisdiction of special tribunals under rent controllers.

In *S.Prakash Rao Vs. Smt Ganga Bai*, 1984 (2) APLJ 304, it is observed that “*civil court cannot grant bare declaration as to the creation of sub-tenancy when the application for eviction on the ground of sub-letting is pending before special tribunal under the Rent Control Act. The remedy of plaintiff is to seek his redress before the special tribunals under the Act.*”

The Jurisdiction of the tenancy tribunals in respect of the matter provided under the Act is exclusive. But, where the tenancy court cannot grant relief for damages and when the suit is filed for eviction as well as damages a suit is maintainable before a civil court.

In *Sathya Pramoda Tirtha Swamula Varu Vs. M.Gunnaiah*, AIR 1982 AP 24, it is held that “*it is now well established by a catina of decisions of this Court reported in Chigurupadi Venkata Subbaiah*

Vs. Ravi Punnamayya, 1957 (2) An W R 204; Mahendrada Ramaiah Vs. Mahendrada Govindu, 1966 (1) An W R 352; and Dontireddy Venkata Reddy Vs. Bheemavarapu Bhushi Reddy, 1970 (2) An W R 226 (F.B.) that when only a part of the relief claimed can be granted by a tenancy court, the civil court had jurisdiction to entertain the suit and the court below was in error in holding that the civil court had no jurisdiction to entertain the suit.

iii) **Declaration of lists of ST and SCs** made by the President of India under Art. 341 and 342 of the Constitution of India is subject to amendment by the Parliament. By necessary implication, by virtue of Art. 341 (2) and Art. 342 (2), jurisdiction of civil court to take cognizance and give declaration in respect of caste of a party stands prohibited. [*State of Tamilnadu Vs. Guruswamy AIR 1997 SC 1199 = 1997 (2) ALT (D.N.) 14.2 (D.B.)*].

iv) The **A.P. Land Reforms and Ceiling on Agricultural Holdings Act**, excluded the jurisdiction of civil courts to entertain certain matters relating to surrender of excess land.

For an instance, the Hon'ble High Court of A.P. observed in *Gadda James and Others Vs. Kolla Upendra Babu, 2009 (4) ALD 115* that “the suit for restitution of excess land surrendered by the plaintiff under the provisions of A.P. Land Reforms Act is not maintainable and plaintiff has only to invoke the provisions of the said Act as that Act is a self contained code.”

In *V.V.Subba Rao Vs. Chatlapalli Seetharamaratna Ranganayakamma, AIR 1997 SC 3082*, the Hon'ble Apex Court held that “since the land reform laws extinguish pre-existing rights and

create new rights under the Act, and as the Act confers jurisdiction on the tribunals and as hierarchy of appeals, revision are provided thereunder giving finality to the orders passed, by necessary implication the jurisdiction of the civil court to take cognizance of the suits of civil nature covered under the land reform laws stands excluded". The Supreme Court further observed that, *"if the fundamental principles of procedure were not followed by the tribunals, the civil courts would have jurisdiction"*.

v) The **Land Acquisition Act, 1984** provided for special tribunal for adjudication of the relevant disputes and thereby jurisdiction of the civil court to take cognizance of the cases arising under the Act, by necessary implication, stood barred. Hence, the civil court is devoid of jurisdiction to give declaration the invalidity of the procedure contemplated under the Act. The only right an aggrieved person has to approach the Constitutional Courts. [*Lakshmi Chand Vs. Gram Panchayat Karoria, AIR 1996 SC 523*].

In *State of Bihar Vs. Dhirendra Kumar and others, 1995 (3) ALT (D.N.) 8.2 (D.B.)*, it is held that "under sections 4(1), 6 and 9 of the Land Acquisition Act and u/s 9 and Order 39 Rule 1 of CPC, the civil courts have no jurisdiction to question the validity or legality of notifications issued under the said Act, as this authority is exclusively vested in the High Court.

vi) **Under Indian Electricity Act, 1910 :-**

In *Punjab State Electricity Board Vs. Aswani Kumar, (1997) 5 SCC 120*, the Hon'ble Supreme Court reiterated the principle that ordinary civil court has jurisdiction to go into disputed

questions of 'civil nature' where fundamental fairness of procedure is violated, but where the procedure is followed the jurisdiction of the civil court is excluded by necessary implication. The Court further held that where alternative statutory remedy is available, the Court is not justified in entertaining the suit and giving declaration without directing the party to avail of the remedy provided under the Indian Electricity Act and the Indian Electricity Supply Act. ¹

vii) In Temple Management Dispute:-

The Hon'ble Apex Court in *Saheb Gouda (died) by L.Rs. Vs. Ogeppa, 2003 (5) ALT (D.N.) SC 1.2 (D.B.)* dealt with a suit relating to appellants claim to be ancestral pujaries of a temple, seeking a declaration of their rights and an injunction against the respondents. The trial court partly decreed the suit, affirming the puja rights of both parties, but the High Court held that the jurisdiction of civil courts was barred u/s 80 of Bombay Public Trust Act, 1950. The Hon'ble Supreme Court overturned this decision, stating that the bar u/s 80 specifically applies to questions that must be decided by an officer or authority under the Act, which did not encompass the issues at hand.

viii) Under SARFAESI Act:-

Under this Act, the civil courts cannot entertain suits involving allegations of fraud related to equitable mortgages u/s 34 of said Act. The injunction petition was not maintainable and once secured creditors take measures under the Act, the civil court

¹ vi) - Ref: The article- Jurisdiction of Civil Courts and limitations thereon-
Authored by Sri Justice T.Ch. Surya Rao, as Director of A.P.J.A.

cannot interfere with interim orders. The debt recovery tribunals are proper authorities to take recourse in the claims regarding allegations of fraud.

ix) **By Commercial Courts Act, 2015**, the special courts for trial and disposal of commercial disputes were established and thereby the jurisdiction of civil court to entertain disputes of commercial nature was excluded in case of valuation of the suit exceeding three lakhs.

14. Arbitration Agreement Vs. Civil Court Jurisdiction:-

Section 28 of the Contract Act prohibits agreements restraining the parties from enjoyment of the fundamental right of approaching a Civil Court for redressal and relief in case of infringement of any civil right. Condition limiting the jurisdiction to one Court when two or more Courts have concurrent jurisdiction over the same dispute is not void and the contract is valid to that extent. Under the two exceptions of Sec.28 an agreement to refer the dispute to arbitration is saved. Therefore an arbitration agreement in the contract between the parties will not attract the mischief of Sec.28. But that agreement will not have the effect of taking away the jurisdiction of the Civil Courts. Section 32, 33 and 34 of the Arbitration Act 1940 are plain that there is nothing in them which takes away the jurisdiction of the Civil Courts.

It is held by the Apex Court in *Orient Transport Co Gulabra Vs. Jaya Bharat Credit and Investment Co, Ltd*, reported in (1987) 4 S.C.C. 421, that every person, it has to be borne in mind, has a right to bring a suit which was of a civil nature and the Court had

jurisdiction to try all suits of civil nature under Section 9 of the Code of Civil Procedure. That right has not been taken away by Section 32 of the Act. Such a right can only be taken away by express terms or by necessary implication. Section 32 of the Act does not have that effect.

The Apex Court in *F.C.I. Vs. Yadav Engineer & Contractor*, reported in *A.I.R. 1982 S.C. 1302* while dealing with the scope of section 34 of the Arbitration Act held that if the parties enter into an arbitration agreement implying that they would like that the dispute covered by the agreement will be resolved by a forum of their choice, the approach of the Court must be that parties to the contract are held to their bargain by staying the suit. The suit is not barred but the suit is got to be stayed for enabling the party to enforce the arbitration agreement. There seems to have been no change in the said position of law under the new Arbitration and Conciliation Act of 1996.

15. Whether alternative remedy is a bar to the suit?

It has been held by the AP High Court in a short noted case reported in *1997(1) APLJ 21* that alternative remedy is no bar to the maintainability of the suit.

It may be mentioned here that lack of jurisdiction is one aspect and maintainability of suit is an altogether a different aspect. A suit may be premature on account of the fact that the alternative remedy as provided by the statute is not exhausted before approaching the Civil Court. It is obvious that indeed the Court has jurisdiction to entertain the suit, but the suit cannot be entertained as it is

premature on account of the fact there is an alternative remedy provided which is to be exhausted. After exhausting such remedy the aggrieved can approach the Civil Court. Therefore, non-maintainability cannot be equated with lack of jurisdiction.

16. In case of Concurrent Jurisdiction:-

In *ABC Laminart Private Limited Vs. AP Agency, Salem* Reported in AIR 1989 S.C. 1239, it has been held that where there may be two or more competent Courts which can entertain a suit consequent upon a part of the cause of action having arisen there within, if the parties to the contract agreed to vest jurisdiction in one such Court to try the dispute, which might arise as between themselves, the agreement would be valid. If such a contract is clear, unambiguous and explicit and not vague it is not hit by Section 23 and 28 of the Contract Act. This cannot be understood as parties contracting against the Statute or public policy.²

Conclusion:

17. The civil court can try any case of civil in nature except when the cognizance of such suit is barred expressly or implying. Only the contents of the plaint decide the proper form or jurisdiction, but not the defence taken in the written statement. Consent of parties cannot confer jurisdiction on the Court or Tribunal lacking inherent jurisdiction.

18. Now and then, if not frequent, we see the office staff put a note for return of a plaint as “how the suit is maintainable before this

² 14, 15 and 16 - Ref: The article- Jurisdiction of Civil Courts and limitations thereon- Authored by Sri Justice T.Ch. Surya Rao, as Director of A.P.J.A.

Court, to be explained". But, when the civil courts have inherent jurisdiction to entertain all suits of civil nature, it is the duty of the court to point out how a particular suit or matter is not within the jurisdiction of that civil court. It is not the burden of the party seeking intervention of the civil court to explain that the matter is entitled for taking cognizance by a civil court.

19. It is general presumption that when there is a suit pending before a civil court, it would have the jurisdiction to try the same. The civil court's jurisdiction cannot be obliterated if no alternative remedy is provided. But, a statute may specifically provide for ousting jurisdiction of civil courts. Even if there was no such specific exclusion, if it creates liability not existing before and gives a special and particular remedy for the aggrieved party, the remedy provided by it must be followed.

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Lok Adalath Award and Jurisdiction

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Importance of Legal Service Authorities Act, 1987

1. This Act provide free legal services to weaker sections of the society to ensure opportunities for securing justice to every citizen not to deny on the reason of economic or other disabilities, to promote justice on the ground of equal opportunity.
2. Article 39-A of the Constitution provides that State shall secure that the operation of the legal system promotes justice, on the basis of equal opportunity and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to secure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.
3. Alternative Dispute Resolution (ADR) provide speedy Justice, reduce the costs and more effective when compared to the litigation adjudication in Civil Court.

5 Types of ADR

- Arbitration
- Mediation
- Conciliation
- Judicial Settlement
- Lok adalat settlement.

In the case between **Afcons Infrastructure Ltd & Anr vs Cherian Varkey Construction Co (P) Ltd. & Ors** Civil Appeal No. 6000 of 2010. dt.26.7.2010

Para 20., It is held by the Hon'ble Court of Supreme Court that

“ Section 89 refers to five types of ADR procedure, made up of one adjudicatory process (arbitration) and four negotiatory (Non adjudicatory) process – conciliation, mediaton, judicial settlement and Lok Adalat settlement. The object of section 89 of the Code is that settlement should be attempted by adopting an appropriate ADR process before the case proceeds to trail.

Neither section 89 Nor Rule 1 of Order 10 of the Code is intended to supersede or modify the provisions of the Arbitration and Conciliation Act, 1996 or the Legal Services Authorities Act, 1987. On the other hand, section 89 of the Code makes it clear that two of the ADR processes – Arbitration and Conciliation, will be governed by the provisions of the AC Act and two other ADR Processes – Lok Adalat Settlement and Mediation will be governed by the Legal Services Authorities Act. As for the last of the ADR process- Judicial settlement, section 89 makes it clear that it is not governed by any enactment and the court will follow such procedure as may be prescribed (by appropriate rules)

at para 19 of Judgment it is held that

“ All other suits and cases of civil nature in particular the following categories of case (whether pending in civil courts or other special Tribunals/Forums) are normally suitable for ADR process:

(I) All cases relating to trade, commerce and contracts, including

- disputes arising out of contracts (including all money claims);
- disputes relating to specific performance;
- disputes between suppliers and customers;
- disputes between bankers and customers;
- disputes between developers / builders and customers;
- disputes between landlords and tenants/licensor and licensees;
- disputes between insurer and insured;

(ii) All cases arising from strained or soured relationships, including

- disputes relating to matrimonial causes, maintenance, custody of children;
- disputes relating to partition/division among family members/co-parceners/co-owners; and
- disputes relating to partnership among partners.

(iii) All cases where there is a need for continuation of the pre-existing relationship inspite of the disputes, including

- disputes between neighbours (relating to easementary rights, encroachments, nuisance etc);

- disputes between employers and employees;
- disputes among members of societies/associations/Apartment owners Associations,

(iv) All case relating to tortious liability including

- claims for compensation in motor accident / other accidents, and

(v) All consumer disputes including

- disputes where a trader/supplier/manufacturer/service provider is keen to maintain his business/professional reputation and credibility or product popularity.

Lok Adalat Award :

4. Defined under Section 21 of Legal Services Authorities Act, 1987

As per Section 21(1) of the Act, provides

- Every award passed by the Lok Adalat shall be deemed to be a decree of Civil Court or as the case may be an order of any other court
- Where a compromise or settlement has been arrived at by the Lok Adalat the court fee paid in such case shall be refunded in the manner provided under the Court Fees Act, 1870

Section 21(2) of the Act provide

- That ever award made by a Lok Adalat shall
- be final and binding on all parties to the disputes
- No appeal shall be made to any court against the award.

5. **No appeal lies on the Lok Adalat Award:**

Section 96 of Civil Procedure Code, 1908 shall not lie against the award passed in Lok Adalat award.

Section 96 of CPC.Appeal from Original decree:-

(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such court

(2) An Appeal may lie from an original decree passed exparte

(3) No appeal shall lie from a decree passed by the court with the consent of parties.

(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by courts or small causes, when the amount or value of the subject matter of the original suit does not exceed ten thousand rupees.

The award passed in Lok Adalat cannot be reversed or set aside and no appeal shall lie to any court against the award.

In the case K. Srinivasappa vs M. Mallamma Civil Appeal NO. 3486-3488 OF 2022. decision dt.18.5.2022, the Hon'ble Supreme Court of India, it is held in para 29

“ While we recognise that a Writ Petition would be maintainable against an award of the Lok Adalat, especially when such writ petition has been filed alleging fraud in the manner of obtaining the award of compromise, a writ court cannot, in a casual manner, de hors any reasoning, set aside the order of the Lok Adalat. The award of a Lok Adalat cannot be reversed or set aside without setting aside the facts recorded in such award as being fraudulent arrived at.”

6. Significant features of Award in Lok Adalat

- *An award from Lok Adalat deemed to be decree of the civil Court*
- *Every award passed from Lok Adalat is final and binding on all the parties to the dispute.*
- *No appeal shall lie on the award passed in Lok adalat*
- *Award is executed like a Civil decree, for enforcement in execution proceedings.*

7. Jurisdiction - Organisation of Lok Adalats

Chapter VI of Legal Services Authorities Act, 1987 under Section 19 (1) of the Act speaks about organisation of Lok Adalats by the Every State Authority or District Authority or the Supreme Court Legal services committee or every High Court Legal Services Committee or, as the case may be, Taluk Legal Services

Committee may organise Lok Adalats at such intervals and place and for exercising such Jurisdiction and for such areas as it thinks fit.

8. Compromise - Settlement

Section 19(5) determines

A Lok Adalat shall give jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of

- (i) any case pending before; or
- (ii) any matter which is falling within the Jurisdiction of and is not brought before, any court for which the Lok Adalat is organised.

9. Compoundable and Non- Compoundable

As per the proviso of Section 19 of Legal Services Authority Act, 1987., Lok Adalat shall have no Jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.

In the decision given by the Honble High Court of Andhra Pradesh between ***Board of Trustees of the Port of Visakhapatnam Vs Presiding Officer, Permanent, Lok Adalat-cum-Secretary, District Legal Services Authority, Visakhapatnam and another reported in 2000(5) ALT 577. at para 10 it is held as follows***

“under the provision of 19(5) of Legal Services Authorities Act, 1987, the Lok Adalat is vested with jurisdiction in respect of any case pending before a court or any matter which is not before the court. The expressions used and the purposes behind are very clear and distinct. This is in consonance with the objects which are intended to be achieved and furthering the aims under Article 39-A of the constitution of India. Thus, it has all the powers not only take up the dispute pending before the Court but also in pursuance of the applications filed before it during the proceedings. In fact the ‘Legal Services’ as defined under section 2(c) of the said Act includes rendering of any service in the conduct of any case or other legal proceedings before any Court or other authority or tribunal and the giving of advice on any legal matter, the object being to provide free legal aid service which is also the one enshrined under Article 39-A.”

10. The Jurisdiction of Lok Adalats extended in disposing the case that are pending before any court. In the settlement of case before the lok adalat the jurisdiction Civil Court case can be brought for settlement on the mutual consent of the parties to the suit. Further more the disputes can be settled which are not brought before the Civil Court. Hence, the Jurisdiction of Lok-Adalat can be exercised for the pending case as well the dispute which are not brought before the court.

Handling of case by Lokadlats

- 1) Civil Case, Compoundable Criminal case, Revenue Cases
- 2) Motor Accident Compensation claims cases
- 3) Family and Matrimonial disputes
- 4) land related case
- 5) Bank loan unpaid cases
- 6) Bonded labour cases
- 7) prelitigation cases.

11. Binding of Awards passed in Lok-Adalats: Awards Passed in Lok-Adalats on the settlement of both parties in terms of compromise, it is final, equivalent to the Civil Court Decree. The scope of challenging the award passed in lok adalat is on the ground of fraud and coercion.

In the case between **New Okhla Industrial Development Authority (Noida) vs Yunus and Ors** in Civil Appeal No.901 of 2022 (Arising out of SLP (C) No.9927 of 2020, dt.3.2.2002, the Hon'ble Supreme Court of India at para 26, discussed about the Jurisdiction of the Lok Adalat, it is held that **Lok Adalat has no adjudicatory role. It cannot decide a lis.**

“The object of the 1987 Act inter alia as can be noticed from the preamble to the Act, also is the organisation of Lok Adalats. It is clear beyond the shadow of any doubt that the Jurisdiction of the Lok Adalat under Section 20 is to facilitate a

settlement of disputes between the parties in a case. It has no adjudicatory role. It cannot decide a lis. All that it can do is to bring about a genuine compromise or settlement. Sub-Section of Section 20 is important insofar as the law giver has set out the guiding principles for a Lok Adalat.. The principles are justice, equality, fair play and other legal principles. The significance of this provisions looms large when the court bears in mind the scheme of section 28A of the Act.”

At para 18 and 19 of the case the Hon'ble Supreme Court of India categorise the cases that normally considered and not considered for ADR process.

12. The following categories of case are normally considered to be not suitable for ADR process having regard to their nature.

(I) Representative suits under order 1 rule 8 CPC which involve public interest or interest of numerous persons who are not parties before the court. (In fact, even a compromise in such a suit is a difficult process requiring notice to the persons interested in the suit, before its acceptance.

(ii) Disputes relating to election to public offices (as contrasted from disputes between two groups trying to get control over the management of societies, clubs, associations etc)

13. Lok Adalat award- presence of parties, GPA and Co-accused:

Presence of the parties

Parties to the suit and criminal case, shall appear before the Lok-Adalat through their advocate. Parties to the dispute represented by the Advocates of concern to resolve the dispute and reduce the conditions therein with the consent of the parties, in due process of law.

14. Issues of notices

Notice to the parties to disputes is communication of information to act upon, that there case is referred to lok adalat and it mandates the parties to the dispute to

prepare themselves to settle the dispute between them. If the party is not will to settle the dispute in Lok-Adalat, then the case decides on merits of the case.

15. Element of settlement :

- On appearance of the parties, the terms of settlement be communicated between the parties to arrive a just conclusion to put the end to the litigation.
- Every party to the dispute shall affix their signature
- Every party represented by their Advocate shall affix their signature.
- Every member of the lok adalat shall affix their signature.
- On settling the disputes, award should contain entitlement of refund of court fee.
- Terms of settlement shall not be unreasonable or illegal or one way effects the one party

In the case between **Yalamarathi Narasimha Rao vs The District Legal Services Authority (Lok Adalath) at Vijayawada, Krishna District, rep. By its Secretary & two others.**, in writ petition No.41481 of 2018., The Hon'ble High Court of Andhra Pradesh, at Amaravati., decision dt.6.1.2022., The Observation of the Honble High Court of Andhra Pradesh explained **the importance of appearance of all the parties to the dispute and also to avoid Multiplicity of Litigation of Impersonation or forgery of signatures of parties to the suit while passing award** in Lok Adalat at para 20 it is held as follows issuing certain directions

(a) we, hereby direct the members of Lok Adalat, more particularly, the Sub-ordinate Officers dealing with the Lok Adalat cases to verify the documents of the suit or atleast the plaint copy to find out as to whether all the parties before the Civil Court are made parties before the Lok Adalat.

(b) Photographs of the parties may also be taken at the time of passing of the award, with signature of the parties on the photographs, so as to avoid impersonation.

(c) Legal Services authorities, at all levels, are directed to maintain the record of disposed off cases, namely the application filed, photographs

along with the application and the award passed, at least for a period of three years from the date of award.

(d) The members or member of the Lok Adalat shall find out the parties as to pendency of any other proceedings in respect of the subject property between the parties in any other Court and orders if any passed. The same shall be also be recorded in the order/ award.

(e) The members of the Lok Adalat shall verify if compromise/ settlement is between all the parties and if it finds that it is not between all but some of the parties, it shall consider if such compromise may have adverse effect on the party who has not entered into compromise. If it so affects award shall not be passed based on such compromise.

(f) If all the parties before the civil court are parties before the Lok Adalat, but during the pendency of the proceedings before the Lok Adalat, any application is filed or request is made to delete the name of any of the parties as not being necessary or proper party or being a formal party and non contesting party, the Lok Adalat shall before acceding to such request shall provide opportunity to such party before deletion of his / her name and shall also consider the impact of the award based on compromise/settlement between the parties other than the party sought to be deleted on the rights of the party sought to be deleted or alleged as proforma and non -contesting party.

16. Lok Adalat Award – General Power of Attorney

A person holding General Power of Attorney document, is a authorised person to act upon the rights and interest of such party authorised. Terms and conditions in settlement of the case is final and binds the parties to the suit.

GPA holder Binding on the directions of principal

The GPA holder shall act upon the scope of the authorization and not beyond the purview for the settlement of the case and permitted to civil suits.

GPA holder not allowed in criminal proceedings in Lok adalats

GPA holder is not allowed to act upon or represented in settlement of criminal cases

17. Lok Adalath in reference to Co-Accused

If one of more persons involved in the criminal offence, the reference of co-accused used, as he was charged with the same criminal offence. Even though there is involvement more than one accused in a criminal offence, the said case be compounded and can be settled with the victim. Non compoundable offence out of the jurisdiction of Lok Adalat.

18. Lok Adalat award – Ex-parte decree

- Lok Adalat award passed in settlement of both parties to suit on basis of conciliation held between them.
- Ex-parte decree: It is a Judgment passed by the court in the absence of the one party.
- Lok Adalat award is final binds each party to the dispute.
- No appeal over the award passed in Lok Adalat
- Lok Adalat award set a side on playing fraud in writ proceedings
- Lok Adalat executable as a decree of Court on either of the party

19. Exparte decree

- Exparte decree passed in the absence of the defendant, in fails to appear on receipt of summons.
- Exparte decree can be set aside
- Exparte decree challenged in appeal
- Exparte decree bases on the evidence of one party to the suit.
- Exparte decree is executable on the party who fails to appear

20. Lok Adalat award – Executability

Lok Adalat award passed on settlement of parties to the suit on conciliation, wherein the parties arrive compromise to the dispute between them.

- *Section 21(1) of the Legal Services Authorities Act, makes the awards enforceable and it deemed to be a decree of civil court binds each and every party to the litigation.*
- *Civil court execute the award in the execution proceedings*
- *The award is final and binds the parties*
- *No separate suit to be filed for execution of lok adalat award*

In a case between K.N.Govindan Kutty Menon- Appellant versus C.D.Shaji – Respondent in Civil Appeal No.10209 of 2011 (Arising out of SLP© No.2798 of 2010) dt.28.11.2011

at para 17 the Hon'ble Supreme Court of India made following propositions

(1) In view of the unambiguous language of Section 21 of the Act, every award of the Lok Adalat shall be deemed to be a decree of a Civil Court and as such it is executable by that Court

(2) The act does not make out any such distinction between the reference made by a civil Court and criminal court

(3) There is no restriction on the power of the Lok Adalat to pass an award based on the compromise arrived at between the parties in respect of cases referred to by various courts(both civil and criminal), Tribunals, Family Court, Rent Control Courts, Consumer Redressal Forum, Motor Accidents Claims Tribunal and other Forms of Similar nature

(4) Even if a matter is referred by a criminal court under Section 138 of Negotiable Instruments Act, 1881 and by virtue of the deeming provisions, the award passed by the Lok Adalat based on a compromise has to be treated as a decree capable of execution by a civil court.

21. Whether the Lok Adalat Award can contain conditions as to the future compliance, consequence of violations etc.

Lok Adalat award passed based on the terms of compromise in settlement of dispute before the court of law, wherein the award is on conciliation, can be place conditions for future compliance and same be enforced in the court of law on failure on one party, as if it is a decree of the civil court.

- *Section 21 of Legal Services Authorities Act, 1987 empowers to lok adalat bench to pass award in terms of settlement of parties.*
- *Conditions for future compliance may be in timely intervals arrived between the parties.*
- *In case of specific performance suits, for enforcement of contract the conditions compliance is necessary due to constrains of the parties.*

- *Though there is no right to appeal on the award passed in the Lok Adalat, they can agitate before the Court of law by way of filing fresh suit, in case of violation of rights of the parties in respect of properties or for any easement rights.*

The award passed in Lok Adalat cannot be reversed or set aside and no appeal shall lie to any court against the award.

22. Lok Adalat award – Hybrid Mode – special reference to matrimonial matters.

Introduction to Hybrid Mode:

In the modern era of Information Technology and Digital Age, transformation of traditional courts system into tech revolution, it is essential for every one in the current changing Digital India. In the process of digitalization on of the authorized process permitted by the Hon'ble Supreme Court of Indian is the Hybrid Mode in the Courts of India. The hybrid mode aims at accessibility for making convenience to the legal professionals and parties who involved in cases before the Courts.

Hybrid mode is a platform, plays a significant role in providing alternative to traditional court proceedings. It makes justice more accessible, transparency reach to every corner of the country. **Hybrid mode refers to physical and Virtual appearance in court rooms.**

23. Accessibility modes

In the implementation of the technology advancements the Hon'ble High Court of Andhra Pradesh as adopted hybrid proceedings allowing hearing through the modes of “**Blue Jeans**”, “**Microsoft teams**” applications in virtual process.

24. Lok Adalat – Hybrid Mode

Lok Adalat under the platform of Hybrid Mode facilitates parties to litigation to overcome the delay in settlement of cases and to have speedy access to justice.

Hybrid Mode have been permitted by the Hon'ble High Court of Andhra Pradesh during the period of Covid Pandemic and continued as a mode of access to parties to the litigation and public for making their appearance in virtual mode

before the Courts. It facilitates the people who are in remote locations to have access in lok adalats through the process of video conferencing facility, it overcomes the geological obstacles and saves the time. **The Hon'ble Andhra Pradesh State Legal Services Authority, Amaravathi in circular proceedings in ROC No.9-L2/APSLSA/LSW, 2003, dt.6.5.2023, permitted to conduct lokadalat in virtual as well as physical mode.**

25. Quick Disposal of case

Accessing the Hybrid Mode in Lok Adalats, Courts can dispose the case in safe and secure manner, subject to checks and balances in identification of the parties to the litigation and exchanging the settlement of terms, documents in virtual mode, precautions should be taken in confirmation of the parties on appearance of the parties in virtual mode.

26. Lok Adalat – Special reference to the matrimonial cases

Matrimonial matters refers to the maintenance case, settlement of properties disputes, divorces cases and case relating to RCR (Restitution of Conjugal Rights) under section 9 of Hindu Marriage Act. Access of parties through Hybrid Mode enables them to participate in lok Adalat from remote locations, it reduces the financial constrains to the parties and they receive accurate speedy justice to their door steps.

27. Legal frame work in Matrimonial cases

Section 23 (2) of the Hindu Marriage Act, 1955 mandates the Courts to make every effort for reconciliation of the parties to the dispute who approach the Court for granting relief under the Act. It is an importance stage to preserve the sanctity of marriage. Adopting the facility of virtual mode makes the courts / presiding officers to deal with the cases effectively by one or more sitting in the time frame facilitated to the parties.

28. Lok Adalat Award

- Virtual Mode facilitates access of parties to litigation from remote locations to participate in lok adalats

- Virtual Mode reduce the distance and time constraints and useful for the senior citizens
- Virtual Mode facilitates the parties to discuss on mutual terms of settlement of case, excluding the third person.
- Lok Adalat award ensures binding of the parties to dispute on the terms of compromise
- Lok Adalat Award in virtual Mode have its effect equal to the passing award physically
- Hybrid Mode needs the identification of parties to the litigation, it is a major step for passing award.

29. Lok Adalat award – Compoundable Offences / ancillary non-compoundable offences.

Compounding the offence lead to the withdrawal of the case by the complainant and facilitate the accused to set free from the criminal charges in view of mutual agreement on terms of compromise. Section 359 of BNSS (Bharatiya Nagarik Suraksha Sanhita, 2023) provides the compounding the offences with and without the permission of the court. On compounding the offence, it ends the case in acquittal of the accused. On observing the table under the section 359 of BNSS, it facilitates the complainant and accused to compound the 37 offences without permission of the court.

Offence specified under section 359 (2) of BNSS make reference to the 13 offences to compound between the accused and complainant with the permission of the court.

TABLE – (Section -359)

Compoundable Offence without permission of the Court	Section of the Bharatiya Nyaya Sanhita, 2023 applicable
1	2
Enticing or taking away or detaining with criminal intent a married woman.	84
Voluntarily causing hurt.	115(2)

Voluntarily causing hurt on provocation.	122(1)
Voluntarily causing grievous hurt on grave and sudden provocation	122(2)
Wrongfully restraining or confining any person.	126(2), 127(2)
Wrongfully confining a person for three days or more.	127(3)
Wrongfully confining a person for ten days or more.	127(4)
Wrongfully confining a person in secret.	127(6)
Assault or use of criminal force.	131, 133, 136
Uttering words, etc., with deliberate intent to wound the religious feelings of any person.	302
Theft.	303(2)
Dishonest misappropriation of property.	314
Criminal breach of trust by a carrier, wharfinger, etc.	316(3)
Dishonestly receiving stolen property knowing it to be stolen.	317(2)
Assisting in the concealment or disposal of stolen property knowing it to be stolen.	317(5)
Cheating.	318(2)
Cheating by personation.	319(2)
Fraudulent removal or concealment of property etc., to prevent distribution among creditors.	320
Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	321
Fraudulent execution of deed of transfer containing false statement of consideration.	322
Fraudulent removal or concealment of property.	323
Mischief, when the only loss or damage caused is loss or damage to a private person.	324(2), 324(4)

Mischief by killing or maiming animal.	325
Mischief by injury to	326(a)
Works of irrigation by wrongfully diverting water when the only loss or damage caused is loss or damage to private person.	
Criminal trespass.	329(3)
House-trespass.	329(4)
House-trespass to commit an offence (other than theft) punishable with imprisonment.	332(c)
Using a false trade or property mark.	345(3)
Counterfeiting a property mark used by another.	347(1)
Selling goods marked with a counterfeit property mark.	349
Criminal intimidation.	351(2), 351(3)
Insult intended to provoke a breach of peace.	352
Inducing person to believe himself an object of divine displeasure.	354
Defamation, except such cases as are specified against section 356(2) of the Bharatiya Nyaya Sanhita, 2023, column 1 of the Table under sub-section(2).	356(2)
Printing or engraving matter, knowing it to be defamatory.	356(3)
Sale of printed or engraved	356(4)
Substance containing defamatory matter, knowing it to contain such matter. Criminal breach of contract of service.	357
Compoundable Offence with permission of the Court	Section of the Bharatiya Nyaya Sanhita, 2023 applicable

Word, gesture or act intended to insult the modesty of a woman.	79
Marrying again during the life-time of a husband or wife.	82(1)
Causing miscarriage.	88
Voluntarily causing grievous hurt.	117(2)
Causing hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	125(a)
Causing grievous hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	125(b)
Assault or criminal force in attempting wrongfully to confine a person.	135
Theft, by clerk or servant of property in possession of master.	306
Criminal breach of trust.	316(2)
Criminal breach of trust by a clerk or servant.	316(4)
Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	318(3)
Cheating and dishonestly inducing delivery of property or the making alteration or destruction of a valuable security.	318(4)
Defamation against the President or the Vice-President or the Governor of the State or the Administrator of the Union territory or a Minister in respect of his public functions when instituted upon a complaint made by the public prosecutor.	356(2)

- Offences of less serious falls under the provision of compounding nature
- Offences of serious, grave in nature falls under the provision of Non-Compounding nature

- Charges can be withdrawn in case the compromise between the parties when the nature of offence is compounding

30. Ancillary Non Compoundable offences

- An ancillary non-compoundable offense refers to an offense that is considered as less serious than the main offense and cannot be permitted to settle through compromise in Lok-Adalat between the parties to case. Ancillary relates to the main Non compoundable offence.

31. Conclusion

Lok Adalat forum provides speedy remedy to the persons in litigation to resolve the disputes between both parties. Award passed in Lok Adalat is final and permanent, cannot be appealed on any grounds specified in other laws. The award of Lok Adalat is executable like a civil decree in the court.

PAPER PRESENTATION ON THE TOPIC OF FRAMING OF ISSUES
AND
NECESSITY OF FRAMING OF PRELIMINARY ISSUES

*By Smt A.Padma,
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According to legal dictionaries, an "issue" refers to a point, question, or matter in dispute or controversy. An issue is a specific point of law or fact that is disputed between parties. In this sense, issues are the core points that the court needs to decide upon to resolve the case. The framing of issues is a crucial step in legal proceedings, as it clarifies the scope of the dispute and guides the court's decision-making process.

Order 14 of the Civil Procedure Code deals with settlement of issues and determination of the suit on issues of law or on issues agreed upon by the parties. As per Rule 1 of Order 14, the court shall at the first hearing of the suit, after reading the plaint and the written statements if any, and after examination of the parties, settle the issues as to material propositions. Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence. In legal proceedings, issues can be categorized into different types, such as:

- Issues of law: These issues relate to the interpretation or application of law.

Ex. “Does the doctrine of promissory estoppel apply to the facts of this case?”

- Issues of fact: These issues relate to the determination of facts in dispute.

Ex. “Whether the plaintiff was in the actual possession of suit property on the date of filing suit for permanent injunction?”

-Issues of mixed nature: There may be mixed issues of fact and law.

Ex. “Was the plaintiff’s conduct ‘reasonable’ under the circumstances of the case, to seek specific performance of contract?”

Rule 2 deals with the general rule that the court must pronounce judgment on all issues, both of law and fact. The only exception is Preliminary Issues. The court may decide an issue of law as a preliminary issue when it relates to:

- (a) Jurisdiction
- (b) Limitation
- (c) Maintainability

- (d) Procedure
- (e) Locus-Standi
- (f) Res judicata, etc.

Rule 3 deals with the material from which the Issues may be framed. They are:

- (a) Allegations made on oath by parties or their pleaders
- (b) Allegations in pleadings or answers to interrogatories
- (c) Contents of documents produced by either party.

Rule 5 deals with recasting of issues. This provision enables the court to amend, or modify the issues previously framed. It also enables the court to frame additional issues when it appears that the original issues do not adequately reflect the real controversy between the parties. This provision also empowers the court to strike out any issues that appear to it to be wrongly framed or to recast the issues altogether. Recasting becomes necessary when new facts emerge during trial, or there has been an inadvertent omission or misstatement in the original issues, or the framed issues are ambiguous, misleading, or irrelevant. Power of the court to amend the issues is a procedural safeguard to ensure that the trial is based on the real points of dispute.

Additional Issues

Sometimes, either by oversight or for any other reason, the Court may omit to frame an issue on a relevant point even though the pleadings may justify framing of that issue. In that case, certainly the parties can ask for framing of an additional issue by taking recourse to Order 14 Rule 5 Code of Civil Procedure. The Court is required by Sub. Rule 5 of Rule 1 thereof to ascertain as to what material proposition of fact or of law, the parties are at variance and therefore frame the issues on which the right decision of the case appears to depend. Order 14, Rule 1 of C.P.C. provides that the issue arises when a material proposition of fact or of law is affirmed by one party and denied by the other. It further provides that the material propositions are those propositions of law or of fact which plaintiffs must allege in order to show a right to sue or a defendant must allege in order to constitute the defense, Thus the object of framing the issues is to shorten the arena of the dispute and to identify the points required to be determined. The courts are not expected to determine an issue which does not arise from the pleadings.

Some important aspects as to framing of issues

- * It is the issues framed and not the pleadings that guide the parties in the matter of leading evidence.
- * Issues should be clear, concise, and shall not be Compound
- * Each issue should address a single, clear point of dispute.
- * Compound or vague issues can lead to confusion and inefficiency at trial.
- * If the defendant does not contest the claim, the court need not frame or record issues, as there is no dispute to be resolved.
- * The court cannot refuse to decide the point on which an issue had been framed and evidence led by the parties, even if the point involved is not in the pleadings.
- * The court should not frame an issue which does not arise in the pleadings.
- * Issue must be confined to the material question of fact or law and not on subordinate facts or evidence.
- * One issue should cover only one fact or law in dispute between the parties.
- * Even in appeals, it should be dealt by the appellate courts on the issues settled for trial.
- * All the issues settled for trial should normally be tried in the suit and decided at once.

The purpose of settling issues is to:

- Clarify the points in dispute between the parties
- Determine the scope of the trial
- Focus the evidence and arguments on the key points in dispute

By settling issues, the court can ensure that the trial is conducted efficiently and that the parties are aware of the specific points that need to be addressed.

How to Frame the Issues

Issues are framed by the judge, usually at the first hearing after going through pleadings and documents and hearing both parties under Order X and Order XIV of C.P.C. Though both

the parties can submit their draft issues for the court's consideration, the framing of actual issues is the exclusive function and discretion of the court. Rule 106 of A.P. Civil Rules of Practice and Circular Orders, 1980 also deals with framing of issues.

- (a) Every material proposition shall be made the subject of a separate issue.
- (b) Every issue of fact shall indicate on whom the burden of proof lies.
- (c) Every issue shall to indicate, either by a statement of admitted or alleged in the pleadings or some documents mentioned.
- (d) No fact which is not itself a material one, shall be made an issue.
- (e) No question regarding admissibility of evidence shall be made as an issue.

The issues framed by the court shall be drawn up in Form No. 21 and shall form part of the record in the suit and all parties are entitled to inspect the same and to obtain copies thereof.

Power of the court to decide on questions outside the issues framed

A court should not decide upon a question of law which was not pleaded by either party, and in respect of which no specific issue was framed after the completion of pleadings as well. A party approaching a civil court claims specific reliefs and lays down its position in its pleadings. Therefore, if an issue is not framed by the court, since no pleading or relief was claimed towards such an issue by either party, the court cannot determine such a question and pass a decree based on the same, as the parties did not have chance to address such an issue.

A point alleged by the plaintiffs and admitted by the defendants cannot be said to be in issue and a decision can be given on the basis of the admission without an issue. When a specific plea was raised, relevant issue ought to have been framed. A mere vague recital that the suit is not maintainable in law cannot give rise for framing of an issue as to the maintainability of the suit.

A plea of limitation cannot be decided as an abstract principle of law divorced from facts as in every case the starting point of limitation has to be ascertained. which is entirely a question of fact. A plea of limitation is a mixed question of law and fact. The question whether the words "barred by law" occurring in Order VII Rule 11(d) C.P.C would also include the ground that it is barred by law of limitation.

Consequences of Failure to Frame Issues

Though framing issues is mandatory, Hon'ble Supreme Court held that failure to frame an issue does not necessarily vitiate the trial if evidence on the point was led and parties had the opportunity to address it. In *Mohd Kareemuddin Khan v. Syed Aza*, the Court held that even if an issue was not framed, the court could decide on that question if both parties adduced evidence on it. Similarly, in *Sunyabasi Pikra v. Paramanand Ranasingh*, the Court observed that non-framing of a particular issue is immaterial if both parties have led evidence on the matter.

Issues such as maintainability of the suit, when based on pure questions of law and not requiring evidence, may also be tried as preliminary issues.

Some times the appellate courts remand the suit to the trial court to frame the issues properly and to conduct trial again to dispose of the suits.

In *Ramesh B. Desai v. Bipin Vadilal Mehta* Hon'ble Supreme Court explained that the object of the amendment was to ensure that, except in clear cases, all issues should be tried together to avoid unnecessary fragmentation of proceedings and to promote the expeditious disposal of suits.

Hon'ble Supreme Court and various High Courts have repeatedly held that a preliminary issue can be framed and decided only when it is a pure question of law, not when it is a mixed question of law and fact. In *Nusli Neville Wadia v. Ivory Properties & Ors.*, the Court held that if the determination of a legal issue (such as limitation or res judicata) depends on disputed facts, it cannot be decided as a preliminary issue. The court has no jurisdiction to try a suit on mixed issues of law and fact as a preliminary issue.

The framing of issues stands as a pillar of civil litigation, ensuring that trials are focused, efficient, and just. This process is not a mere procedural formality. It is the mechanism by which the real points of dispute are crystallized, enabling the court to adjudicate only those matters that are genuinely contested between the parties. By identifying and separating questions of fact, law, and mixed questions, the court not only streamlines the trial but also upholds the principles of natural justice and procedural fairness.

The importance of framing issues correctly, stressing the need for due care and diligence was held by the Hon'ble Supreme Court in ***R. Ramrameshwari Devi & Ors vs Nirmala Devi & Ors*** reported in (2011) 8 SCC 249.

The Hon'ble Supreme Court held that the absence of formal issues is not fatal if parties understood the dispute and led evidence accordingly in **Laliteshwar Prasad Singh vs S.P. Srivastava** reported in 2007 (2) SCC 34

In **Shyam Lal vs Sanjeev Kumar** reported in 2003 (2) SCC 151, the Hon'ble Supreme Court reiterated that Order XIV Rule 5 empowers courts to recast issues at any stage before passing a decree. It was held that the Court is not functus officio after framing of issues and has the power to amend or recast issues even at a later stage.

The Necessity of Framing Preliminary Issues

The necessity of framing preliminary issues arises from the need to prevent unnecessary trials when a pure question of law can dispose of the suit at the outset. However, as clarified by the Honourable Supreme Court and High Courts, this power is to be exercised sparingly and only in clear cases where no factual inquiry is required as to Jurisdiction of the court, limitation, res judicata etc. This approach prevents the wastage of valuable time of the courts and parties.

It is at this juncture that the court crystallizes the real disputes between parties, ensuring that the trial is focused, efficient, and fair. Framing preliminary issues will enable the courts to dispose of a suit at the threshold.

The Honourable Supreme Court in *Sri Nanjudchari v. The Chairman* held that "It is mandatory on the part of the trial court to frame all necessary issues arising from pleadings i.e., material proposition of fact and law affirmed by one party and denied by another." This clarity ensures that only genuine disputes are put to trial, preventing unnecessary litigation on uncontested matters.

The process begins with a careful examination of the plaint, written statement, and any subsequent pleadings. The court must also consider documents produced by the parties and answers to interrogatories. The court may examine the parties or their representatives to clarify the points of variance. This interactive process helps the court to ascertain the real controversy and avoid the omission of any material issue.

Hon'ble Supreme Court in *Bhagwati Prasad v. Chandramaul and Ram Sarup Gupta* (through his LRs) v. *Bishun Narain Inter College* has emphasised that in the absence of pleadings, if it appears that the suit was decreed on a specific issue which was not framed or in the knowledge of the counter party, thereby preventing the party from leading any evidence on such an issue, the decree passed by the court would be unsustainable.

In *Nagubai Ammal v. B.Shama Rao*, Hon'ble Supreme Court clarified that the framing of a wrong, improper, or defective issue does not vitiate the trial, as long as the parties entered the trial knowing the other side's case in full and led evidence in respect of the question which the court decided upon. However, the court cannot decide upon a question of law not pleaded or for which no specific issue was framed, as this would deprive parties of the opportunity to address the matter.

If sufficient evidence is adduced on a point not explicitly framed as an issue, the court may decide that point, provided both parties had the opportunity to address it. This principle prevents technicalities from defeating substantive justice.

Mixed questions of law and fact cannot be tried as preliminary issues unless the relevant facts are clear and undisputed from the pleadings. Order XIV Rule 2 CPC confers no jurisdiction on the court to decide a mixed question of law and fact as a preliminary issue unless the facts are clear from the plaint itself.

The Hon'ble Supreme Court held that preliminary issues should only be decided if they can dispose of the suit entirely in **Ramesh B. Desai vs Bipin Vadilal Mehta** reported in 2006 (5) SCC 638. In **M/s. Mongia Realty and Buildwell Private Limited Vs. Manik Sethi** reported in Civil Appeal No.814 of 2022 (Arising out of SLP (C) No.26930 of 2019) the Hon'ble Supreme Court reiterated that the determination of the issue of limitation is not a pure question of law, it cannot be decided as preliminary issue under Order XIV Rule 2 of the CPC.

The court has discretion to decide whether to try a preliminary issue first or along with other issues. This discretion must be exercised judiciously, ensuring that only pure questions of law that can dispose of the suit are tried as preliminary issues.

Accurate framing of preliminary issues also promote fairness by providing early notice to all parties, preventing surprises. It guides the scope of the trial, admissibility of evidence adduced and keeps the process focused. Omission of this crucial step can lead

to protracted, costly, and ultimately unsustainable proceedings, potentially undermining the efficiency of legal system.

A perfect approach of framing preliminary issues will build confidence of the public in the system. It ensures that only legitimate and sustainable matters proceed to the trial stage, paving the way to quick, fair and effective disposal. In other words the effective and skillful framing of preliminary issues is not a mere procedural formality but a fundamental requirement for well considered decisions.

PAPER PRESENTATION ON THE TOPIC OF JUDGMENT WRITING

WORKSHOP NO.2

ANANTHAPURAMU DISTRICT UNIT

SESSION NO.4

Complied and Submitted by

T. VASUDEVAN

Civil Judge (Senior Division).
Penukonda, Ananthapuramu unit.

PAPER ON **JUDGMENT WRITING.**

Complied and Submitted by,

T. VASUDEVAN

Civil Judge (Senior Division).
Penukonda, Ananthapuramu unit.

**“It is an art which can be acquired by practice and
experience which requires sound knowledge”**

**“A judge should be a legal Architect
not a mason laying a brick after brick”.**

....Honorable Rtd, Justice **V.V.S**

Rao.

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 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.

1. INTRODUCTION:-

Administration of justice is not a private matter between the parties but implicates wider interests of the State in preserving law and order as well as a societal interest. **Judges speak through their judgments and orders.** The written text is capable of being assailed. The element of judicial accountability is lost where oral regimes prevail. This would set a dangerous precedent and is unacceptable. Judges, as much as public officials over whose conduct they preside, are accountable for their actions. Reiterating an old saying that 'a judge should not speak but his judgments should speak.' Thus, **the quality of a Judge can be assessed only through his Judgment writing skills.** Hence, Judgment is a formal expression of opinion by the court. (**Boards & Boards Private Limited, Jaipur Vs. Himalaya Paper (Machinery) Pvt. Ltd., New Delhi, AIR 1990 Rajasthan 120.**)

In **TASTE HOTELS PRIVATE LIMITED AND ORS V. MEDISETTY JAYASRI AND NAINALA CHAITANYA, 2012 AIR (AP) 4, 2011 (4) ALT 680** the Hon'ble High Court of Andhra Pradesh, it was held as under:

*"This is the time tested procedure emerging from ancient times. A sloka from **Vysa Dharmakosa** reads:*

*Purvottare kriya padam
Pramanam tatpareekshanam
Nigadam smrutbivakyam cha
Yadhasabhyam vinischitam*

*Ethassatvam samasena
Jayapatre abhilekha yeth*

Broadly, the meaning thereof is that a judgment is a document, which incorporates, (a) brief statement of the plaint and written statement; (b) gist of the evidence adduced by the parties; (c) discussion on issues involved; (d) consideration of the arguments advanced by the parties; (e) reference to the relevant provisions of law; (f) the opinion of the judge/judges and (f) the royal seal”.

2. DEFINITION AND MEANING OF JUDGMENT:

Judgment is an official and authentic decision of court of justice upon rights and claims of the parties to an action litigated and submitted to its determination and reasons therefor.

JUDGMENT ON CIVIL SIDE:

The word judgment as defined under **section 2(9) of C.P.C.** means **statement given by a Judge on the grounds for a decree or order.** What a judgment should contain indicated in **Order 20 Rule 4(2) C.P.C.**

JUDGMENT ON CRIMINAL SIDE:

Section 354 of Cr.P.C. requires that every judgment shall contain points for determination, the decision thereon and the

reasons for the decision. The judgment should reveal whether the evidence shows proof beyond reasonable doubt.

Chapter XXIX of BNSS deals with judgment and gives a detailed description of the judgment in Criminal matters. However, there is no definition of “Judgment” present in the code, but, it is to be understood as a final order of the court. **Section 392 of BNSS** speaks about form and contents of the judgment. Section 393 of BNSS states about language and contents of judgment.

Judgment is the most important document for the parties as well as the Judge and more important for the Judge the reasons in support of his Judgment. Clear thinking is the key to clear writing. Reasons given by a Judge in a Judgment indicate the working of his mind, his approach, his grasp of the question and law involved in the case and the depth of his knowledge of law. In short, the judgment reflects the personality of the Judge and, therefore, it is necessary that it should be written with care and after mature reflection. In the words of Honorable Former Chief Justice Mukharji:-

“The supreme requirement of a good judgment is reason. Judgment is of value on the strength of its reasons. The weight of a judgment, its binding character or its persuasive character depends on the presentation and articulation of reasons. Reason, therefore, is the soul and spirit of a good judgment.”

In civil matters, the judgments as the requirement of law goes, may be **broadly classified into two categories, namely, long and short judgments.** In original suits, the final decision of a case requires writing of a long and reasoned judgment. These includes suits for permanent or prohibitory injunction; possession and mesne profit; specific performance of contract; cancellation of documents; partition and possession; dissolution of firm and accounting; redemption or foreclosure of mortgage etc. As compared to it a Judge is required to write short judgments, in the matter of summary suits; preliminary issues and compromise etc.

The Code of Civil Procedure, 1908 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.

3. PURPOSE OF A JUDGMENT:

Main purpose of a judgment is to **let the party know about the reasons for which the matter has been decided** in his favour or against him, granting or refusing to grant relief. Another significant and equally important purpose of writing judgment are:

(1) REASONS FOR AN APPEAL COURT TO CONSIDER.

Judgment is to provide the reasons which have weighed with the Court in deciding the matter, one way or the other, for appreciation by the Appellate / superior court. So an important reason for writing judgments, if the least important, is so that court

findings of fact and legal reasoning are revealed for an appellate court to consider.

(2) INFORMATION TO THE PUBLIC.

Courts, unlike other organ of our society, do not commonly issue press releases for communication and information. We communicate to the public through the judgments that we write. In order to communicate, a judgment must be clear, precise, and say everything that needs to be said as to why a decision was reached and no more.

(3) COMMUNICATING WITH THE PARTIES

The parties and their lawyers, if they have them, need to know how and why a decision has been reached. It is particularly important that the losing party knows why he or she has lost the case. It is natural for someone who loses to feel disenchanted with the legal process so it is important that the reasons for judgment show that the losing party has been listened to, that the evidence has been understood, the submissions comprehended and a decision reached. This is particularly important in the case of an unrepresented litigant.

4. PER-REQUISITES FOR JUDGING:

- (1) Conscious like Prudent person
- (2) Patient hearing
- (3) Prejudice free and
- (4) Open mind
- (5) Power of analysis
- (6) Fearlessness

- (7) Favour free approach
- (8) Free from perversity
- (9) Discipline

Thus, judgment is not written only for the benefit of the parties. It is also written for benefit of legal profession, other judges and appellate Courts. **The losing party is the primary focus of concern.** The winner is not much interested in the reasons for success, as he is convinced of the righteousness of the cause. The loser, however, in the expensive litigation is entitled to have a candid explanation of the reasons for the decision. It is not only for exercise of any appellate right but also to uphold the intellectual integrity of the system of law, impartiality and logical reasoning.

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.

5. GENERAL PRINCIPLES OF JUDGING:

- 1) Exclude all the irrelevant and inadmissible evidence
- 2) Examining statutory requirements of proof is fulfilled or not.
- 3) Then you forget you are a person with legal knowledge

- 4) Then look at the admissible evidence with the mind of a prudent persons without prejudice favour, fear and with open mind.
- 5) Bear in mind the principles of burden of proof.
- 6) Then analyse the evidence in the light of the circumstances.
- 7) Reach a conclusion fairly taking the probabilities in to the account.
- 8) Such an approach lead to correct conclusions and decisions
- 9) Conclusions have to be supported by the reasons.
- 10) Surmises conjectures and suspicion have to be excluded.
- 11) Consistently a sure test for proof.
- 12) Corroboration not a sine Quo non
- 13) Quality of evidence is necessary rather quantity.
- 14) Circumstances must support.
- 15) Natural conduct is a safe test.
- 16) Probabilities is a sure guide.

6. JUDGING CONSIDERATIONS/ BASIC PRINCIPLES OF PROOF:

Law under Indian Evidence Act as to Proved, Not Proved and Disproved are the judging considerations/ basic principles of adjudication of an issue by a judgment.

Proved: According to section 3 of Evidence Act a fact is said to be proved when, after considering the matter before it, the court

either believes it to exist, or considers its existence so **probable** that a **prudent man** ought under the circumstances of particular case, act upon this supposition that it exists.

Disproved: A fact is said to be disproved when, after considering the matters before it the court either believes that it does not exist, or considers its non-existence so **probable** that a **prudent man** ought under the circumstances of the case act, upon supposition that it does not exist.

Not proved: A fact is said to be not proved when it is neither proved nor disproved.

Therefore, **the general test is approach of a prudent man** and probable factor in arriving to a conclusion in judging the fact in issue.

7.

JUDGMENT WRITING **ON CIVIL AND CRIMINAL SIDE:**

Judgment writing and a judgment is to be divided into several parts for effective writing and communication. **Those parts are:-**

PART -I
PREAMBLE:

A judgment, at the top of it, should always contain the name of the Court, title and number of the case which is being decided and also the name and designation of the Judge concerned. This is necessary so that it is known as to judgment pertains to which matter and has been decided by which Court and Judge. It should also contain the date of delivery of judgment. **It is desirable to state the nature of the suit or criminal case or the proceeding in the first para of the judgment.**

PART-II:
PLEADINGS:

In Civil suits (i) brief facts averred in the plaint in support of the relief shall be stated,

(ii) Brief averments in the written statement without extracting whole pleadings or major part of the pleadings.

Criminal cases: The prosecution case in brief and offences together with Section and Act, plea and defence of the accused shall be stated.

PART-III:
BRIEF ACCOUNT OF THE EVIDENCE:

Brief account of the evidence shall be noted and it is not necessary to extract the whole evidence. It is suffice to state about the witnesses and the scope of the evidence including the nature of the documents and material objects admitted in evidence. The

purpose of noting the brief account of evidence is only to give a general idea of the evidence let in by the parties to the litigation.

PART-IV:
**ISSUES SETTLED TO BE STATED IN CIVIL MATTERS AND
POINT FOR CONSIDERATION IS CRIMINAL MATTERS.**

Issues to be framed in the light of principles stated under Order 14 C.P.C. The Presiding Officer should then proceed to frame issues and if it is a criminal trial, he may proceed to notice charges and in other matters, the points for determination. Framing of issues in a civil suit and charges in criminal trial are the requirements of law, but formulating points for determination in other matters also helps the Court to remain focused on the questions of law and facts which it is called upon to decide.

Point for determination in criminal cases should cover the main ingredients of the offence or the offence alleged and contentions raised. Single point for determination like “Whether the guilt of accused is proved beyond reasonable doubt” should be avoided and the points for determination in criminal cases should be in the light of contentions raised and the main ingredients of offence charged.

PART-V
APPRECIATION OF EVIDENCE:

Under this process of appreciation of evidence courts are bound to do following task for good judgment.

- (a) Finding on each issue or point for determination shall be stated.
- (b) Each issue or point for consideration has to be taken separately.
- (c) The pleadings of the both sides on that issue or point have to be stated in brief.
- (d) The evidence on that point or issue has to be stated.
- (e) Analysis or appreciation of evidence on that issue or point together in the light of the contentions of the both sides together with the relevant legal prepositions.
- (f) If one or two issues are interconnected they can be dealt with together to avoid repetition.
- (g) The conclusions together with reasons.
- (h) Separate paras together with numbering for clarity and to avoid confusion.
- (i) Repetition of evidence or contentions to be avoided.

While citing rulings, state the name of the parties and journal when it is reported. Extract the relevant para but not head note you can also state the ratio of ruling with extracting relevant portion of the ruling.

PART-VI:

FINAL CONCLUSIONS:

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 clearest 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 the forms** given in the appendices, which may be used as a guideline with such variation as the circumstances case may require, for the purpose therein mentioned.

At the end of the judgment, the Presiding Officer After answering all the issues or point for considerations **the conclusions must be drawn in accordance with findings on the issue** or point for consideration. In Civil suit the relief that are granted to be stated and desirable to state the relief which are rejected. **If the costs are not awarded the reasons must be stated if exemplary costs are awarded reasons must be stated.** If preliminary decree is granted only declaration is sufficient with consequential relief to be worked out in final decree.

8. BASIC STRUCTURE / TRINITY OF GOOD

JUDGMENT:

(A) BREVITY:

- (a) It means concise and exact use of words in writing. Judgment should be brief while not ignoring core issues as well as collateral issues.
- (b) Quality however cannot be sacrificed for quantity.
- (c) Repetition of the same point evidence, pleadings makes reading tortuous

(B) SIMPLICITY:

- (a) A Judgment written mainly for parties to the litigation therefore, it should be understandable to them.
- (b) Simplicity in use of the language in explaining the legal principles makes and opinion forcibly.
- (c) Judgment became vague if it contains long complex sentences and round about approach to the problem.

(C) CLARITY:

- (a) A clarity of the judgment can be achieved by thorough reading of facts and law.
- (b) Division of judgment under different headings helps for clarity.
- (c) Avoiding necessary quotations from the pleadings and law enhances clarity.

9. SOME TIPS IN ACHIEVING TRINITY:

- 1) Avoid use of cliches/overused expressions and rhetoric.
- 2) Be precise and to the point.
- 3) Use active voice
- 4) Be particular than vague.

- 5) Use simple and direct prose
- 6) Try to be interesting

10. FOR GOOD JUDGMENTS AND SOME DOS:

- 1) Adhere to the statutory requirements
- 2) Discuss the pleadings and evidence
- 3) Adopting precise method in precise method.
- 4) Considered all the issues in group or separately and record conclusions by giving reasons
- 5) Supportive reasons by statute precedent law
- 6) Use simple sentences to convey the reasons
- 7) Before pronouncing read and re read the final copy.
- 8) Employ cohesive, comprehensive and logical prose while writing judgment.
- 9) Avoid verbatim extracts from the pleadings and evidence. Do not ignore grammar of language or else sentences convey different meaning.
- 10) Be careful in using the negative words
- 11) Do not use rhetoric or hyperbola who emphasise a point
- 12) Do not exaggerate.
- 13) Do not take a discussion beyond the issue for consideration
- 14) Do not take a lengthy judgment

In an article on '**Judgment Writing**' by Justice Roslyn **Atkinson** of the Supreme Court of Queensland (available on internet), the author **advises:** (i) avoid use of cliches; (ii) be precise

and to the point; (iii) use the active voice rather than the passive; (iv) be particular rather than vague; (v) try not to use language that excludes; (vi) use simple and direct prose rather than abstruse wording; (vii) try to be interesting; (viii) avoid obvious errors.

11. CORRECTION OF JUDGEMENT UNDER SEC.152 CPC:-

Petition under section 152 CPC is not maintainable to grant the relief impliedly rejected. Section 152 CPC provides for correction of clerical arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission only. (**Dwaraka Das Vs. State of Madhya Pradesh and Anr. AIR 1999 SC 1031**)

12 . JUDGMENTS/PRECEDENTS ON JUDGMENT WRITING:

A. Timelines in pronouncing Judgments

In Anil Rai vs. State of Bihar (2001) 7 SCC 318, the honorable_Supreme Court took notice of the observations of the Arrears Committee constituted by Govt. of India on the recommendation of Chief Justices Conference. The Committee recommended that the **reserved judgments should ordinarily be pronounced within a period of six weeks from the date of conclusion of the arguments.** While dealing with the delay in pronouncing the judgment, the Hon'ble Supreme Court of India held as hereunder:

“Time and again that justice should not only be done but should also appear to have been done. Similarly, whereas

justice delayed is justice denied, justice withheld is even worse than that.

Once the case is finished being heard, the Court will announce its decision publicly, either immediately or at a later date after providing sufficient notice to the involved parties or their legal representatives. ***(Surendra Singh case, (1953) 2 SCC 468, 196-97; Nirankar Nath Wahi v. Vth ADJ, (1984) 3 SCC 531, 537; Anil Rai v. State of Bihar, (2001) 7 SCC 318.)***

B. Avoid undue sympathy in sentencing

Undue sympathy to impose inadequate sentence would do more harm to justice system so as to undermine public confidence. ***(State of Madhya Pradesh v. Sheikh Shahid - AIR 2009 SC 2951)***

Sentence To be decided as per facts and circumstances of each case – Imposition of inadequate sentence does more harm to justice system – Social impact of crime – Relevant in deciding sentence. ***(Ankush Maruti Shinde v. State of Maharashtra - AIR 2009 SC 2609)***

C. Oral pronouncement of judgement:-

Where Sessions Judge first orally pronounced the Order acquitting the accused thereafter proceeded to dictate the judgment which was not completed on account of application filed by the complainant is a clear contrary to the section 353 and 354 Cr.P.C. ***(Udaya Narayan Vs. State of U.P. 2000(1) ALT (Crl.) 80.)***

D. Reasons of judgment:

The court shall give reasons for a decision arrive even in a case where no issues are framed or when the matter is decided on exparte (***Satyanarayana Vs., Walf board of Andhra Pradesh, 1994(2) An.W.R 325.***)(***Kedarisetti Atmaram Vs., N.Seetharamaraju, 2011(1) ALT 87***)

A judgment for its sustenance must contain not only findings on the points, but must also contain what evidence consists of, and how does not prove plaintiff's case. A judgment unsupported by reasons is no judgment in the eye of law. It is well settled that the reasons are the links between the material on record and the conclusion arrived at by the court.(***Commissioner of Income Tax Vs. Surendra Singh Pahwa, AIR 1995 All 259.***)

Since reasons are vital for the appeal process, their absence renders a judgment flawed and violates fundamental fairness principles of natural justice. Recognising this, the Supreme Court in the country has mandated that all courts must provide explanations for their decisions. Failing to provide reasons for a decision is equivalent to denying justice.(***State of U.P. v. Munshi, (2008) 9 SCC 390, para 5; Union of India v. Jai Prakash Singh, (2007) 10 SCC 712, para 7.***)

A judgment as culmination of the action declares the existence of the right, recognizes the commission of the injury, or negative the allegation of one or the other. (***Gurdit Singh Vs. State of Punjab, (1974)2 SCC 260***)

"Court cannot come to abrupt conclusions, without addressing basic issues" (**Special Deputy Collector (L.A.) Vs. N. Vasudeva Rao and Ors. AIR 2008 SC 944**).

E. Lengthy judgments :

Writing unnecessarily lengthy judgments than required should be avoided. It is not the number of pages in a judgment but sufficiency of reasons in support of the conclusions arrived at by the judge that is relevant. Judgments or orders must be reasoned and speaking to justify the conclusion. (**Union of India vs. Essel Mining & Industries Ltd., 2005 (6) SCC 675**)

The law requires a concise statement of the case by the court mentioned in the judgment. This requirement makes it convenient for laymen who are not familiar with the legal etymology to understand the judgment. Conciseness is essential to minimize the burden on those reading the judgment. Producing an excessively long judgment by reiterating factual matters is both time-consuming and burdensome. (**Kalthuri Mallikarjuna v. State of A.P., 1995 SCC OnLine AP 67, para 52.**)

F. Refer and quote correct judgements:

Judicial officers should give correct citations of reported cases in their judgments. The proper way to do this is to state the names of parties first followed by the citation within brackets as indicated below : **State of Bombay vs. United Motors, (1955) SCR 1069**

G. Language of judgments:

Maintenance of judicial independence is characterized by maintaining a cool, calm and poised mannerism as regards every action and expression of the members of the judiciary and not by using in appropriate, unwarranted and contumacious language. (**State of Gujarat Vs. Justice (retired) R.A. Mehta, (2013) 3 SCC 1 (para 104).**)

A judgment should have certain other features as well which are more or less equal in weight to these elements. The honorable Supreme Court, in **CIT v. Saheli Leasing and Industries Ltd. ((2010) 6 SCC 384, para 5.)**, laid out the guidelines for writing judgments. It held that a judgment or order should be concise and relevant to the case, clearly stating the legal basis for the decision. After drafting, it should be carefully reviewed for completeness. The judgment should be well-structured and engaging, avoiding excessive legal citations. Key precedents should be cited, but excessive citations can be confusing. **The Judge should consider the reader's perspective, using clear and straightforward language.** Judgments should be delivered promptly to avoid delays and public dissatisfaction. All these points are particularly relevant for improving the writing style of a judgment.

H. Additional or alternative relief including mesne profits:-

Plaintiff who sought relief of specific performance alone is not entitled for refund of amount paid as advance sale consideration, unless he pleads for such alternative relief in plaint.

(Dhanraj(died) rep., by LRs Vijendar Kumar Kedia Vs. Satesh 2016(2) ALT 417)

In the absence of specific prayer the court should not order for enquiry for ascertaining mesne profits. **(Ganapathi Madav Sawanth(died) Vs., Dattur Madav Savanth, 2008(2) APLJ 44)**

In Kaniz Fatima v. Shah Naim Ashraf, **(1983 SCC OnLine All 17, para 10.)** the Court held that it cannot delve into and make a determination on a particular point unless it is specifically raised as an issue in the case, even if that point seems crucial for a correct decision. This is again important for reducing the time consumption of the court to not bother about the irrelevant issues which are not directly concerned with the matter in issue.

I. Formate of judgment:

The specific format for presenting facts **can vary from case to case**. While simpler cases require straightforward factual summaries, more complex cases demand detailed and carefully crafted factual narratives due to their increased significance in determining the outcome. Therefore, the judgment must include a precise summary of the material facts..**(S.D. Singh, Judgments and How to Write them (Eastern Book Company, 2018) p. 28.)**

J. Decision on each issue:-

Essential element of a judgment, the Court is required to give its decision on each issue. Rule 2 of Order 14 also mandates

the courts to state their decision on each issue separately. **(Civil Procedure Code, 1908, Or. 14 R. 2.)**

K. Signature of Judge:-

It is to be noted that judgments that have been **pronounced in court but not yet signed by the Judge are still legally valid** and enforceable, just as if they had been signed. The act of signing a judgment is merely a procedural step that comes after the decision has been made. The judgment becomes legally effective immediately upon delivery and does not depend on the Judge's signature. **(Phool Kumari v. Nandu Ram, 2002 SCC OnLine HP 32, para 28. and Vinod Kumar Singh v. Banaras Hindu University, (1988) 1 SCC 80, para 8.)**

L. Consequential/Ancillary Relief:

In a Civil suit when main relief prayed was refused to grant, court cannot grant ancillary or consequential or corrolary relief prayed along with main relief. **(State of Punjab and another Vs. Bal Karan Singh AIR 2007 SC 641 = (2006)12 SCC 709)**

M. Perverse/Lazy Judgment:

If the findings of court are based on no evidence or on evidence which is not legally admissible, those findings can be termed as perverse and these perverse findings have no legal sanctity. **(G. Satyanarayana Vs Eastern Power Distribution Company Ltd., Visakapatnam 2016 (4) ALT 530)**

N. Judgment and Calendar on Criminal side:

Where in a judgment on criminal side, the operative portion of judgment and the result portion in calendar of that judgment differs, the operative portion of judgment prevails over the calendar portion prepared by the staff. (**Kundeti Durga Rao Vs. State of A.P., 2011(2)**)

ALD (Crl.) 631 AP.

O. Benefit of Acquittal in appeal:

The benefit of appeal judgment of acquittal on an appeal preferred by one of the accused against conviction, is to be given to the other accused also and the court can suo motto extend that benefit to non appealed accused when the court disbelieves the very occurrence of crime itself. (**Sahadevan and others Vs. State of Tamil Nadu 2012(2) ALD (Crl) 397 SC**)

13. SOME IMPORTANT CIRCULARS
OF HON'BLE HIGH COURT ON JUDGMENTS

1. ROC No.2423/23-CPS, dated 22-03-2024 :- The font size for a Judgment is 'Arial' with letter size 13 and Line spacing 1.5 ;

2. ROC.No.925/SO/76, dated 08-11-1976 :- Avoid abbreviations in Judgment ;

3. ROC.No.1006/2001/Vigilance Cell, dated 18-10-2001 :- Till last day before Transfer a Judge Can pronounce Judgment ;

4. **ROC.No.1261/2001/Vigilance Cell, dated 18-10-2001 :-**
Every order in Interlocutory Application **shall be a speaking order** (Reasoned Order) ;

5. **ROC.No.4456/2003/OP Cell_E, dated 11-09-2003 :-** Don't pronounce Judgment till Fair copies are ready ;

6. **ROC.No.216/2023-VIGILANCE CELL dated 17.01.2023 :-**
When accused is sentenced to imprisonment a **copy of judgment** shall immediately after pronouncement of Judgment be given to her / him free of cost ;

14. **SUMMARY:-**

To summarize, a few rules gathered from and out of above with regard to writing the reasoning part of the judgment are ::

1. Judgments are, more than anything else, written for the losing party. Therefore, it is very important to adequately highlight and deal with the Losing Party's Position (LOPP) and further demonstrate, with clarity, the Flaws in the Losing Party's Position **(FLOPP)**.

2. Reasoning should be intelligent and intelligible.

3. Use of strange or difficult words and complex sentences should be avoided.

4. If the law on the subject is clear and settled or the issue is simple, which does not require a lot of explanation, quoting one judgment on that subject may sufficient.
5. Steer clear of moral judgments and majoritarian bias. Personal opinions of the judge on the subject matter should not translate in the judgment.
6. While making remarks on the basis of demeanor, always we should be cautious. Demeanor is a double-edged sword.
7. Above all, appreciation of evidence and reasoning should be objective, while remaining sensitive and responsive and mindful of the social context.
8. Reflection of all the arguments advanced by parties point wise and answering them shall be necessary.
9. Avoid quoting editors note in Judgments. Mentioning of citations with ratio decendi with specific reference to paragraph where such ratio is decided is the criteria.
10. The conclusion drawn on one issue shall not be conflicting with the conclusion drawn on other issues & the ultimate conclusion of the case.
11. There shall not be common answering for Two or more issues together unless they are interlinked and we are able to explain how they are interlinked.

12. Operative portion shall be in clear terms, leaving no scope for ambiguity.
13. There shall be appendix of evidence to the judgment with all clarity & certainty as to witness numbers and clear description of the witnesses and in criminal cases the judgment shall contain proper disposal order to property and material objects.
14. Each judge has an individual manner of expression. Judgments should be expressed in a language and style which is natural to the judgment writer.
15. Do not conflate style with substance. Substance is always more important than form.
16. Be wary of broad generalizations based on personal experiences /world-view and things not before the Court in the form of hard evidence.
17. Resist the temptation to go beyond the issue before the Court.
18. Be temperate; think twice before recording adverse remarks.
19. Distinguish each case law relied upon by the parties.
20. Talk in active voice as far as may be and not passive voice **and**

21. Use maps, pictures, lists, paragraphs and clear headings.

15. CONCLUSION.

There cannot be exhaustive guidelines for writing of a judgment But a Judge has to constantly ask himself whether in giving his judgment he is doing justice. Therefore, in every case a judge hears, he has to bear in mind the majesty of the Law, the contribution that it can make to the betterment of society and the protection it can give to the humble and weak who is pitted against the rich and the powerful. (M.C.Chagla, Former Honourable Chief Justice, Bombay High Court)

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Complied and Submitted by

T. VASUDEVAN

Civil Judge (Senior Division),
Penukonda, Ananthapuramu unit.