WORK SHOP –II

IN VIZIANAGARAM

UNIT

ON 22.06.2025

Scanned with CamScanner

WORK SHOP- II

IN VIZIANAGARAM UNIT

ON 22.06.2025

Ex-Officio Chair Person of Work Shop

Hon'ble Sri Justice

Ravi Cheemalapati

Administrative Judge

***

Scanned with CamScanner

INDEX

Session No.1 : . Section 9 CPC with reference to Jurisdiction under various Special Enactments.			
1.	**1.**	**Smt.Ch.Srividya** Special Judicial Magistrate of First Class for trial of Cases under A.P Prohibition and Excise Act - cum - III Additional Civil Judge(Junior Division), Vizianagaram	**05-39**
Session No.2 : I.Lok Adalat award and Jurisdiction . Lok Adalat award – Presence of parities, GPA & Co-accused . Lok Adalat award – Ex.parte decree . Lok Adalat award – Registrations . Lok Adalat award – Executability . Whether award can contain conditions as to future compliance, consequences of violation etc. . Lok Adalat award – Hybrid mode- special reference to matrimonial matters. . Lok Adalat award – compoundable offences/ancillary non-compoundable offences.			
2.	**2.**	**Smt. Hema Sravanthi Janakiram** Principal Civil Judge(Junior Division) Bobbili	**40-63**
Session No. 3 : . Framing of issues . Necessity of framing of preliminary- issues			
3.	**3.**	**Sri. G.Harsha Vardhan** Civil Judge(Junior Division) Salur.	**64-77**
Session No. 4 : . Judgment writing			
4.	**4.**	**Sri. A.Vijay Raj Kumar** Civil Judge(Junior Division) Gajapathinagaram.	**78-102**

Scanned with CamScanner

CIVIL SIDE

Scanned with CamScanner

WORKSHOP-II

Paper Presentation on

SECTION 9 CPC WITH REFERENCE TO JURISDICTION UNDER VARIOUS SPECIAL ENACTMENTS

By
Smt. CH.SRIVIDYA,
Special Judicial Magistrate of I Class (Excise),
Vizianagaram

Scanned with CamScanner

SECTION 9 OF CPC WITH REFERENCE TO JURISDICTION UNDER VARIOUS SPECIAL ENACTMENTS

Jurisdiction of Civil Court:

The jurisdiction of Civil Court is defined under Section 9 C.P.C. as follows:

" **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, ...

The Courts obviously mean Civil Courts as C.P.C. applies on Civil Courts only. The preamble of the C.P.C. is to the following effect: -

'An Act to consolidate and amend the laws relating to the procedure of the Courts of civil judicature. '

Section 9 only deals with the jurisdiction of the Court to try suit. However, for instituting a suit two pre-requisites must be fulfilled. The first requirement which is fundamental to the maintainability of a Civil Suit is the existence of a **cause of action** as held in ***Bharat Aluminium Co. v. Kaiser Aluminium Technical services Inc***[1]. The cause of action must be live; neither dead nor in the womb. In para 175 of the same authority, it has been held that cause of action should not be contingent / speculative. If the plaint does not disclose a cause of action, it shall be rejected at the threshold under order 7 rule 11(a) C.P.C

Scanned with CamScanner

The other pre requisite for instituting a suit is that the plaintiff must have right to sue. In ***Ganga Bai v. Vijai Kumar***[2], it has been held as follows:

"There is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute one may, at one 's peril, bring a suit of one 's choice. It is no answer to a suit, howsoever frivolous the claim, that the law confers

1 2012 (9) SCC 552, para 173

2 AIR 1974 SC 1126 para 15

no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit."

In ***Shiv Kumar Chadha v. Municipal Corpn. Of Delhi***[3], it was held that under classical law the position is that where there is a right there is a remedy. The position regarding special Acts creating rights and liabilities was also clarified in same para 11 which is quoted below: -

"11. In the olden days the source of most of the rights and liabilities could be traced to the common law. Then statutory enactments were few. Even such enactments only created rights or liabilities but seldom provided forums for remedies. The result was that any person having a grievance that he had been wronged or his right was being affected, could approach the ordinary Civil Court on the principle of law that where there is a right there is a remedy-ubi jus ibi remedium. As no internal remedy had been provided in the different statutes creating rights or liabilities, the ordinary Civil Courts had to examine the grievances in the light of different statutes. With the concept of the Welfare State, it was realised that enactments creating liabilities in respect of payment of taxes obligations after vesting of estates and conferring rights on a class of citizens, should be complete codes by themselves. With that object in view, forums were created under the Acts themselves where grievances could be entertained on behalf of the persons aggrieved. Provisions were also made for appeals and revision to higher authorities."

Scanned with CamScanner

In this regard reference may also be made to the second principle mentioned in para 23 (quoted below) of Premier Automobiles v. K.S. Wadke AIR 1975 SC 2238 (which has also been quoted with approval in para 22 of Rajasthan SRTC v. B.M. Bairwa 2009 (4) SCC 299) where along with common law, general law was also mentioned

"23.....

(2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the civil court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy."

3 1993 (3) SCC 161

BAR OF JURISDICTION:

As far as expressed bar mentioned in Section 9 C.P.C is concerned it does not create much difficulty. However, the problem arises in the case of implied bar of suit by some other Act. This question has exhaustively been dealt with by the Constitution Bench (5 judges) judgment of the Supreme Court reported in ***Dhulabhai v. State of M.P., AIR 1969 SC 78***. In this regard Supreme Court enunciated 7 points which were summarized in para 32 of the judgment which is quoted below: -

32. ..... The result of this inquiry into the diverse views expressed in this Court may be stated as follows:-

(1) Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision,

Scanned with CamScanner

however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not. Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(3) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(4) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(5) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express

Scanned with CamScanner

prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(6) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply.

The above authority has been followed in almost all the subsequent authorities on the point, which are innumerable, out of which the following three require special mention:

i) Shiv Kumar Chadha v. Municipal Corporation of Delhi, 1993 (3) SCC 161 (Demolition of unauthorized constructions by municipal corporation)

ii) Rajasthan SRTC v. Bal Mukund Bairwa (2) 2009 (4) SCC 299 (Labour matters and service disputes)

iii) Ramesh Gobind Ram v. S.H.M. Waqf, AIR 2010 SC 2897 (Jurisdiction of tribunal Constituted under Waqf Act 1995 and / or of Civil Court)

. In Rajasthan SRTC v. Bal Mukund Bairwa[4], a three-Judge Bench of this Court observed in para 6 and 7[5]:

4 (2009) 4 SCC 299

5 Pabbojan Tea Co. Ltd. v. Dy. Commr (1968) 1 SCR 260
Ramesh Chand Ardawatiya v. Anil Panjwani 2003(2) R.C.R.(Civil) 828

"6. Even in cases where the statute accords finality to the orders passed by the Tribunals, the Court will have to see whether the Tribunal has the power to grant the reliefs which the Civil Courts would normally grant in suits filed before them. If the answer is in negative exclusion of the Civil Courts jurisdiction would not be ordinarily inferred."

"7. There is a presumption that a civil court has jurisdiction. Ouster of civil court's jurisdiction is not to be readily inferred. A person taking a plea

Scanned with CamScanner

contra must establish the same. Even in a case where jurisdiction of a civil court is sought to be barred under a statute, the civil court can exercise its jurisdiction in respect of some matters particularly when the statutory authority or tribunal acts without jurisdiction."

Jurisdiction cannot be conferred except by legislation:

In Rajasthan SRTC v. Bal Mukund Bairwa 2009 (4) SCC 299 (3 judges) it was held, following 7 judges Constitution Bench authority of A.R. Antulay v. R.S. Nayak AIR 1988 SC 1531, that if a court had no jurisdiction it could not be conferred jurisdiction even by Supreme Court. Relevant portion of para 50 (of Rajasthan SRTC) is quoted below:

"……either a Court has the requisite jurisdiction or it does not have. It is a well settled principle of law that the court cannot confer jurisdiction where there is none and neither can the parties confer jurisdiction upon a court by consent."

In S.K. Sharma v. S. Kumari, AIR 2008 SC 171 it has been held at the end of para 23 as follows:

"A civil court does not grant leave to file another suit. If the law permits, the plaintiff may file another suit but not on the basis of observations made by a superior court."

Dhulabhai v. State of M.P. (1968) 3 SCR 662,
Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536, State of A.P. v. Manjeti Laxmi Kantha Rao (2000) 3 SCC 689,
Dhruv Green Field Ltd. v. Hukam Singh and Ors. (2002) 6 SCC 416
Dwarka Prasad Agarwal v. Ramesh Chandra Agarwala, AIR 2003 SC 2696 State of Tamil Nadu v. Ramalinga Samigal Madam AIR 1986 SC 794

However, leave is required and may be granted under O. 2 R.2(3) and O. 23, R. 1(3).

Scanned with CamScanner

In Zuari Cement Ltd. v. Regional Director ESIC, Hyderabad, AIR 2015 SC 2764 the appellant sought exemption before the state government from the operation of Employees State Insurance Act (ESI Act). The High Court disposed of the writ petition with the direction to the appellant to approach ESI Court constituted under section 74. Thereafter the ESI Court granted the exemption holding that the Government had wrongly refused to grant exemption. The Supreme Court held that the order of the High Court permitting to raise the dispute before ESI Court was utterly wrong as jurisdiction cannot be conferred by a higher court. Before ESI Court the Government had not raised any objection regarding jurisdiction. In this regard also Supreme Court held that non-objection or consent cannot confer jurisdiction.

It further held that the principle that if a thing is required to be done in a particular manner, then it shall be done only in that manner applies to administrative law as well as to the exercise of jurisdiction by courts. Para 14 is quoted below:-

14. As per the scheme of the Act, appropriate government alone could grant or refuse exemption. When the statute prescribed the procedure for grant or refusal of exemption from the operation of the Act, it is to be done in that manner and not in any other manner. In State of Jharkhand and Others v. Ambay Cements and Another, (2005) 1 SCC 368, it was held that "It is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way". In Babu Verghese and Others v. Bar Council of Kerala and Others, (1999) 3 SCC 422, it was held as under:

"31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in

Scanned with CamScanner

Taylor v. Taylor, (45 LJCH 373) which was followed by Lord Roche in Nazir Ahmad v. King Emperor, (AIR 1936 PC 253) who stated as under: [W]here a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.

32. This rule has since been approved by this Court in Rao Shiv Bahadur Singh v. State of U.P., AIR 1954 SC 322 and again in Deep Chand v. State of Rajasthan (AIR 1961 SC 1527). These cases were considered by a three-Judge Bench of this Court

in 16 State of U.P. v. Singhara Singh (AIR 1964 SC 358) and the rule laid down in Nazir Ahmad case (AIR 1936 PC 253) was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognized as a salutary principle of administrative law."

Provincial Small cause court Act 1887

Section 16 of Provincial Small Causes Court Act (PSCC Act), is as follows

15. Cognizance of suits by Courts of Small Causes:

(1) A Court of Small Causes shall not take cognizance of the suits specified in the second schedule as suits excepted from the cognizance of a Court of Small Causes.

(2) Subject to the exceptions specified in that schedule and to the provisions of any enactment for the time being in force, all suits of a civil nature of which the value does not exceed five hundred rupees shall be cognizable by a Court of Small Causes.

(3) Subject as aforesaid, the State Government may, by order in writing, direct that all suits of a civil nature of which the value does not exceed one thousand rupees shall be cognizable by a Court of Small Causes mentioned in the order.

Scanned with CamScanner

The second schedule deals with the suits exempted from the cognizance of a court of small causes under **44** heads. Example (**4**) a suit for the possession of immovable property or for the recovery of an interest in such property; (5) a suit for the partition of immovable property; (6) a suit by a mortgagee of immovable property for the foreclosure of the mortgage or for the sale of the property, or by a mortgagor of immovable property for the redemption of the mortgage; (7) a suit for the assessment, enhancement, abatement or apportionment of the rent of immovable property; (15) a suit for the specific performance or rescission of a contract; (16) a suit for the rectification or cancellation of an instrument; (17) a suit to obtain an injunction; (35) a suit for compensation (44) a suit, the cognizance whereof by a Court of Small Causes is barred by any enactment for the time being in force.

All suits of a civil nature of which the value does not exceed five hundred rupees shall be cognizable by a Court of Small Causes. The state government by a written order direct that all suits of a civil nature of which the value does not exceed one thousand rupees shall be cognizable by a Court of Small Causes. Thus section 15 and 16 of the Act expressly bars the jurisdiction of the civil courts where the value of the subject matter is below Rs 500/- and Rs 1000/- in case of written order by the state government. Further the small cause court jurisdiction is ousted for some suits which were mentioned under second schedule of the Act.

Section 16 of Provincial Small Causes Court Act (PSCC Act), is as follows:

16. Exclusive jurisdiction of Courts of Small Causes:

Save as expressly provided by this Act or by any other enactment for the time being in force, a suit cognizable by a Court of Small Causes shall not

Scanned with CamScanner

be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable.

Bar created by C.P.C. itself:

Section 9 C.P.C. itself limits the jurisdiction of the Courts by making it subject to its provisions, as per its portion within brackets i.e. (subject to the provisions herein contained). Following provisions of C.P.C. bar the suits.

Under Section 11 C.P.C. it is provided as under:

—S. 11. Res judicata: No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanations I to VIII:.....

Section 12 C.P.C. provides as under:-

—S.12. Bar to further suit.- Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any Court to which this Code applies. Under Section 21-A, inserted in 1976-77 quoted in Appendix A it is provided that a decree cannot be challenged through another suit on the ground that the court which passed the disputed decree had no territorial (including pecuniary) jurisdiction.

Under Section 47 (1) it is provided as under:-

—Section 47(1) All questions arising between the parties to the suit in which the decree was passed or their representative and relating to the execution

Scanned with CamScanner

discharge or satisfaction of the decree shall be determined by the Court executing the decree and not by a separate suit.

Restitution on reversal of decree may be obtained only from the court which passed the decree as provided under Section 144(1) C.P.C. Suit for restitution is barred under Sub Section 2 thereof which is quoted below:

—144 (2) No suit shall be instituted for the purposes of obtaining any restitution or other relief which could be obtained by applicant under sub-section (1)

Order 2, Rule 2, C.P.C. provides that if part of the claim or some relief flowing from the cause of action is not claimed in the suit, it cannot be claimed through another suit. Order 2, Rule 2 to 4 are quoted in Appendix A.

Order 9, Rule 8 makes it obligatory upon the court to dismiss the suit if defendant appears and plaintiff does not appear. Thereafter it is provided under Order 9 Rule 9 (1) (first sentence) as follows:-

—Where a suit is wholly or partly dismissed under Rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action.

In case of resistance to execution of decree for possession of immovable property or dispossession of wrong person therein applications are to be filed under Order 21 Rule 97 and 99 which are to be decided under Rule 98 or 100. Such orders before 1976-77 amendment in C.P.C. (Act No. 104 of 1976 w.e.f. 1.2.1977) were subject to the result of the suit. However, through amendment of 1976-77 it was provided under Rule 101 that:

—All questions arising between the parties on an application under Rule 97 or Rule 99 shall be determined by the Court dealing with the application and not by a separate suit. Under Rule 103 such adjudication is given the status of decree subject to appeal.

Scanned with CamScanner

Under Rule 104 it is provided that if any suit was pending on commencement of the proceedings under Rule 101 or Rule 103 then orders passed under the said rules shall be subject to the result of the suit.

Order 23 Rule 1(4) quoted below bars fresh suit in case of abandonment of earlier suit or its withdrawal without permission to institute fresh suit.-

—Rule 1(4). Where the plaintiff-

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3)

he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject — matter or such part of the claim.

Under Order 23 Rule 3-A C.P.C. it is provided as follows:-

—No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.

Bar Created by Specific Relief Act

In Union of India v. Millenium Mumbai Broad Cost Ltd.[6], that the Act does not apply to statutory contracts. Para 33 is quoted below:

"33. So far as the contention of the learned Additional Solicitor General that the direction issued by the Tribunal, as quoted supra, is contrary to

Scanned with CamScanner

Section 14(1)(c) of the Specific Relief Act, 1963, is concerned, the same is stated to be rejected. The provisions of the Specific Relief Act would not apply to the contracts, which are governed by the statutory provisions."

6 AIR 2006 SC 2751

By virtue of Section 41 of the Specific Relief Act 1963, certain suits for injunction are barred which include a suit to restrain any person from instituting or prosecuting any proceedings in a court not subordinate to that from which the injunction is sought (b), to prevent the breach of a contract the performance of which would not be specifically enforced(e), when equally efficacious relief can certainly be obtained by any other usual mode of proceedings except in case of breach of trust
(h) and when the conduct of the plaintiff disentitles him to the assistance of the Court

(i). In Cotton Corp. of India v. United Industrial Bank[7], interpreting clause (b), it was held that neither perpetual nor interim injunction could be granted in a suit by the High Court (Bombay) to restrain the defendant appellant from initiating winding up proceedings under Companies Act before the High Court. Suit for restraining a municipal body from realizing House Tax will be barred by clause (h) as under the Relevant Acts remedy of objection and appeal is provided vide Municipal Corp. of Delhi v. S.C. Jaipuria[8].

In Sangram Singh v. State of U.P[9]. it has been held that in view of section 14(1)(d), supra, no injunction can be issued restraining any person or authority from lodging F.I.R.

Under section 34, proviso, suit for declaration alone when further relief which may be claimed is not claimed, is not maintainable:- —Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Benami Transactions (Prohibition) Act 1988

Scanned with CamScanner

Section 4 of Benami Transactions (Prohibition) Act 1988, quoted below, bars the suit to enforce any right in respect of benami property: -

"Section 4. Prohibition of the right to recover property held benami-

(1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

7 AIR 1983 SC 1272

8 AIR 1976 SC 2621

9 AIR 2010 All 65

(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

(3) Nothing in this section shall apply:

(a) where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or

(b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity.

The section is prospective and does not affect suit or other proceedings pending on the date of its enforcement (19.5.1988) vide R. Rajagopal Reddy

Scanned with CamScanner

v. Padmini Chandrasekharan AIR 1996 SC 238 (overruling Mithilesh Kumari v. Prem Behari Khare AIR 1989 SC 1247),

However, the Act does not prohibit such suit, defence or plea if property is purchased by a person in favour of his wife or unmarried daughter vide Nand Kishore Mehra v. Sushila Mehra AIR 1995 SC 2145 and Rebti Devi v. Ram Dutt AIR 1998 SC 310

In C. Gangacharan v. C. Narayanan[10], supra, it has also been held that suit for possession on the plea that plaintiff sent money to defendant from abroad to purchase property in plaintiff 's name but defendant purchased in his own name is not barred by the Act as the suit is against trustee is not barred by the Act.

Public Money Recovery

Recovery of Debts Due to Banks and Financial Institutions Act (RDDB Act) 1993, by virtue of its Section 18 prohibits the Civil Court to exercise any jurisdiction in relation to the matters specified in Section 17. Under Section 17 of the Act Tribunal

10 AIR 2000 SC 589

is to exercise the jurisdiction to entertain and decide applications from the banks and financial institutions for recovery of debts (by virtue of Section 1(4) of the Act, the provisions of the Act do not apply where the amount of debt due to any bank etc. is less than Rs. 10 lacs).

Under Section 31 of the Act it is provided that —every suit or other proceeding pending before any court immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding cause of action where on it is based is such that it would have been if it had arisen after such establishment within the jurisdiction of such tribunal shall stand transferred on that date to such Tribunal.

Scanned with CamScanner

It has been held in Bhanu Construction Company v. Andhra Bank, AIR 2001 SC 477 that under Section 18 of the Act the jurisdiction of the Civil Court stands barred from the appointed date which is the date on which Tribunal was constituted and not the date on which the Act was passed. In the said case the Tribunal was constituted/ established on 30.11.1994 and Civil Court had passed the order on 30.9.1994 which was held to be valid.

In Punjab National Bank v. O.C. Krishnan AIR 2001 SC 3208 interpreting Sections 17 and 20 of RDDB Act it has been held in para 6 as follows: -

"6. The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this fast track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the Court under Articles 226 and 227 of the Constitution, nevertheless when there is an alternative remedy available judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act."
Under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act) of 2002 jurisdiction of the Civil Court is barred under Section 34 which is quoted below:

"No civil Court shall have jurisdiction to entertain any suit or proceedings in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted any court or other authority in respect of any action

Scanned with CamScanner

taken or to be taken in pursuance of any power conferred by or under this Act or under RDDB Act 1993."

Under Section 17 of the Act, it is provided that any person (including borrower) aggrieved by any of the measures referred to in Section 13(4) taken by the secured creditor may make an application to the DRT. Thereafter, under Section 18 it is provided that any person aggrieved by any order made by the DRT may also prefer an appeal to Debt Recovery Appellate Tribunal. The Supreme Court in Mardia Chemicals Ltd. v. Union of India, AIR 2004 SC 2371 examined the scope of Section
34 and held that the jurisdiction of the Civil Court is barred even in respect of measures which have not been taken but may be taken in future. Accordingly, suit is barred even if no measure has yet been taken under SARFAESI Act 2002 and remedy of approaching DRT would be available only when action is taken. In Jagdish Singh v. Hiralal, AIR 2014 SC 371, following the authority of Mardia Chemicals it was held that suit seeking declaration of title to the mortgaged property, partition and injunction is not maintainable if the matter is covered by SARFAESI Act. In the said case auction had taken place in November, 2005. It was also confirmed but possession had not been granted to the auction purchaser when civil suit was instituted in 2007.

Labour Matters:

In respect of labour matters, suit is not maintainable if grievance is made regarding violation of rights which are created by Industrial Disputes Act 1947 or sister laws like Industrial Employment (standing orders) Act 1946(Standing Orders certified there under). Such grievance can be made only before the forum created under the Industrial Disputes Act i.e. Labour

Scanned with CamScanner

Court or Industrial Tribunal. This aspect has been considered by the Supreme court in several authorities including Premier Automobiles Ltd. v. K.S. Wadke of Bombay, AIR 1975 SC 2238:1976(1) SCC 496. (The findings were summed up in para 23) and Rajasthan SRTC v. Krishna Kant, 1995 (5) SCC 75 (3 judges) (principles were summarized in para 35). Slightly dissenting view was expressed in other authorities hence matter was referred by Division Bench of 2 judges to 3 Judge Bench. Ultimately the controversy was resolved by a three judges Bench authority of the Supreme Court in Rajasthan SRTC v. Bal Mukunda Bairwa (2) 2009 (4) SCC 299 approving P. Automobiles fully and Krishna Kant substantially. Paras 36, 37, 41 and 42 of the said authority are quoted below:

"36. If an employee intends to enforce his constitutional rights or a right under a statutory regulation, the civil court will have the necessary jurisdiction to try a suit. If, however, he claims his right and corresponding obligations only in terms of the provisions of the Industrial Disputes Act or the sister laws so called, the civil court will have none. In this view of the matter, in our considered opinion, it would not be correct to contend that only because the employee concerned is also a workman within the meaning of the provisions of the 1947 Act or the conditions of his service are otherwise governed by the standing Orders certified under the 1946 Act, ipso facto the civil court will have no jurisdiction. This aspect of the matter has recently been considered by this court in Rajasthan SRTC v. Mohar Singh, (2008) 5 SCC
542. The question as to whether the civil court 's jurisdiction is barred or not must be determined having regard to the facts of each case.

37. If the infringement of the standing Orders or other provisions of the Industrial Disputes Act are alleged, the civil court 's jurisdiction may be held to be barred but if the suit is based on the violation of principles of common law or constitutional provisions or on other grounds, the civil court 's jurisdiction may not be held to be barred. If no right is claimed under a special statute in

Scanned with CamScanner

terms whereof the jurisdiction of the civil court is barred, the civil court will have jurisdiction.

41. There is another aspect of the matter which cannot also be lost sight of, namely where the conditions of service are governed by two statutes, the effect thereof on an order passed against an employee / workman in violation of a rules which would attract both the statutes. An attempt shall be made in a case of that nature to apply the principles of —harmonious construction.

42. When there is a doubt as to whether the civil court has jurisdiction to try a suit or not, the courts shall raise a presumption that it has such jurisdiction."

Wakf Act 1995:

Sections 6 and 7 of the Act provide for determination of certain disputes regarding waqf only by the Waqf Tribunal. (The Act was extensively amended by Act No. 27 of 2013). Section 83 provides for the constitution of Tribunals and matters cognizable by them. Section 83 (1) before and after its amendment in 2013 is quoted below:-

Before amendment:

83. Constitution of Tribunals, etc.- (1) The state Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a wakf or wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunal.

After amendment

83. Constitution of Tribunals, etc.- (1) The state Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and

Scanned with CamScanner

obligations of the lessor and the lessees of such property, under this Act and define the local limits and jurisdiction under this Act of each of such Tribunal.‖(underlining supplied; underlined portion was added in 2013) Section 85 provides for bar of jurisdiction of Civil Court etc. The section, before and after its amendment in 2013 is quoted below:

Before amendment:

85. Bar of jurisdiction of Civil Court: No suit or other legal proceedings shall lie in any Civil Court in respect of any dispute, question or other matter relating to any Wakf property or other matter which is required by or under this Act to be determined by a Tribunal.

After amendment:

85. Bar of jurisdiction of Civil Court, revenue Court and any other authority: - No suit or other legal proceedings shall lie in any Civil Court, Revenue Court and any other authority in respect of any dispute, question or other matter relating to any Waqf property or other matter which is required by or under this Act to be determined by a Tribunal.

The Honourable Supreme Court has considered these provisions in the following cases: -

1. Sardar Khan v. Syed Nazmul Hasan (Seth), AIR 2007 SC 1447 [The jurisdiction of Waqf Tribunal does not extend to the suits pending on the date on which Waqf Act was enforced in view of Section 7(5)]

2. Board of Wakf , West Bengal v. Anis Fatma Begum, 2010 (14) SCC 588 (Waqf Tribunal has got exclusive jurisdiction to deal with the questions relating to demarcation of waqf property)

Scanned with CamScanner

3. A.J.P.P. Committee v. P.V. Ibrahim Haji, AIR 2013 SC 3530 (Dispute with regard to management and peaceful enjoyment of Mosque and Madarsa and assets relating to waqf is to be decided by the Tribunal and not Civil Court)

4. Bhanwar Lal v. Rajasthan Board of Muslim Wakf, AIR 2014 SC 758 (It was held that suit for cancellation of sale-deed, rent, possession is to be tried by Civil Court and not by the Waqf Tribunal, and for rendition of account and for removal of trustees by the Tribunal)

EVICTION OF TENANT

5. Ramesh Gobindram v. Sugra Humayun Mirza Wakf, AIR 2010 SC 2897 (It was held that suit for eviction against the tenant from the property which is admittedly waqf property has to be filed before the Civil Court and not before the Waqf Tribunal.) Haryana Wakf Board v. Mahesh Kumar, AIR 2014 SC 501 (Land in dispute was claimed by the Waqf Board to be part of graveyard. It had been given on lease by the Waqf Board in 1969.In 1970 the entire land had been declared as waqf property by notification under section 5(2) of previous Waqf Act of 1954. Suit for eviction was instituted by the waqf board. The tenant denied the character of the property being waqf (para 2). The Supreme court held that as the question involved was as to whether property was waqf property or not hence only the Tribunal had the jurisdiction and not the civil Court where the suit had been instituted. (para 10) With respect it is submitted that the Supreme Court did not take into consideration two things. Firstly, it is mentioned in para 1 of the judgment itself that the Waqf Board had allotted the land to the lessee. Accordingly, the lessee or his sub-lessee/ assignee could not deny the character of the property to be waqf property and the right of the Wakf Board in view of Section 116 of Evidence Act. Secondly, as the property had been declared as waqf property by notification under the previous Wakf Act of 1954, hence, there was no sense in asking Waqf Board to again seek declaration from the Waqf Tribunal that the property was waqf property. If the tenant or the subtenant was questioning the character of the

Scanned with CamScanner

property and asserting that it was not waqf property then it was for him to approach the tribunal if under the Wakf Act it was permissible for him to do and if such claim was within the limitation under the said Act. Thirdly, mere declaration of property to be waqf by the Tribunal would not be sufficient for eviction of the tenant for which purpose suit had to be filed as under the un-amended Section 83(1) of Waqf Act 1995 Waqf Tribunal had no jurisdiction to entertain suit for eviction of tenant of waqf property. None of the authorities relied upon in the judgment has held that relief for eviction of tenant of allegedly waqf property could be granted by the Tribunal under any circumstances, even if the tenant asserts that the property in dispute is not waqf property and ultimately Tribunal holds that the property is waqf property.

6. Faseela M. v. Munnerul Islam Madrasa Committee, AIR 2014 SC 2064, (Mutawalli, Madrassa Committee had filed a suit for eviction against the tenant before the Waqf Tribunal. The tenant denied that the property was Waqf's property. The Supreme Court held that Waqf Tribunal had no jurisdiction and Civil Court was competent to entertain the suit.)

7. TAX MATTERS:

The leading authority of Dhulabhai 1969 relates to tax matters. Placing reliance thereupon it has been held in Commissioner, Income Tax v. Parmeshwari Devi Sultania, AIR 1998 SC 1276 that Section 293 of Income Tax Act provides a specific bar against suits by providing that —no suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under this Act.

In NDMC v. Satish Chandra AIR 2003 SC 3187, it was held that civil suit to challenge the assessment and levy of property tax on a property under Punjab Municipal Act was not maintainable. Under the Act appeal is provided under Section 84 against assessment etc. Under Section 86 of the Act it is provided that no objection regarding valuation or assessment shall be taken nor liability

Scanned with CamScanner

of any person to be taxed be questioned in any other manner than provided by the Act. The Supreme Court held that the jurisdiction of Civil Court was impliedly barred as Section 84 provided right of appeal.

Consumer Protection Act 1986:

Consumer Protection Act 1986 through its section 3 provides an additional forum for the relief to a consumer and does not bar the jurisdiction of the Civil Court vide Ethiopian Air Lines v. Ganesh Narain Saboo, AIR 2011 SC 3495 (3 judges) para 14 of which is quoted below:

"14. The learned counsel for the appellant submitted that the Act specifically states in Section 3 that —the provisions of this Act shall be in addition to and not in derogation to any other law for the time being in force.‖ The learned counsel for the appellant also submitted that this court in the case of State of Karnataka v. Vishwabharathi House Building Co-operative Society and other (2003) 2 SCC 412 in paragraphs 46 and 47 observed as under:

46. By reason for the provisions of Section 3 of the Act, it is evident that remedies provided there under are not in derogation of those provided under other laws. The said Act supplements and not supplants the jurisdiction of the civil courts or other statutory authority.

47. The said Act provides for a further safeguard to the effect that in the event a complaint involves complicated issues requiring recording of evidence of experts, the complainant would be at liberty to approach the civil court for appropriate relief. The right of the consumer to approach the civil court for necessary relief has, therefore, been provided under the act itself."

Section 75 of Employees' State Insurance Act 1948 bars the jurisdiction of Civil Court but not of the forum created under Consumer Protection Act vide Kishori Lal v. Chairman E.S.I. Corporation, AIR 2007 SC 1819 (3 judges)

Scanned with CamScanner

A Government employee is not consumer hence he cannot approach the forum under the Act raising any dispute regarding his service conditions or for getting retiral benefits. For such relief either suit may be instituted or claim before Tribunal concerned, if any, may be filed vide Dr. Jagmittar Sain Bhagat v. Dir. Health Services, Haryana AIR 2013 SC 3060 (paras 16 and 17)

Local Bodies:

Articles 243-O and 243-Z G of the Constitution (Contained in part IX added through 73rd amendment 1992 w.e.f. 24.4.1993) are quoted below:

243-O. Bar to interference by courts in electoral matters.-

Notwithstanding anything in this Constitution,-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243K, shall not be called in question in any court;

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.]

243ZG. Bar to interference by courts in electoral

matters. Notwithstanding anything in this

Constitution, -

the validity of any law relating to the delimitation of

constituencies or the allotment of seats to such

constituencies, made or purporting to be made

under article 243ZA shall not be called in question in

any court;

Scanned with CamScanner

(a) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

After addition of part IX in the Constitution in 1992 — 93 all the States including A.P (in 1994) amended their respective Local Bodies Acts to bring them in consonance with the amendment of the Constitution.

Section 462 of the Greater Hyderabad Municipal Corporation Act, 1955 says that No court shall have jurisdiction in any matter for which provision is made in this Chapter for appeal to the Tribunal

RENT CONTROL ACTS:

By virtue of Section 108 (q) T.P. Act —on the determination of the lease, the lessee is bound to put the lessor into possession of the propertyll. If he does not do so, suit for eviction may be instituted against him. However, if the tenanted building is governed by Rent Control Act, the landlord cannot institute suit (or institute other proceedings) for eviction except on one of the grounds available to him under the relevant Rent Control Act. For enforcement of rights and liabilities created under such Acts proceedings may be taken only before the authorities created there under for such purpose e.g. for allotment and release of vacant building.

The Supreme Court has held that the jurisdiction of civil courts is excluded from landlord-tenant disputes when they are specifically covered by the provisions of the State Rent Acts, which are given an overriding effect over other laws.

The honourable Supreme Court held this while explaining the interplay between the Burmah Shell (Acquisition of Undertakings) Act, 1976 and the Haryana (Control of Rent & Eviction) Act, 1973 in the case Subhash Chander And Ors. v. M/s. Bharat Petroleum Corporation Ltd 2022 LiveLaw (SC) 101

Scanned with CamScanner

The Court observed that it was undisputed that the appellants were owners of the subject property and it being situated within the municipal limits of Kaithal were governed by the 1973 Act. It was noted that in terms of Section 3 of the 1976 Act, right, title, interest of Burmah Shell, inter alia, in the subject property stood vested in the Central Government, which was conferred on Bharat Petroleum. On perusal of the 1976 Act, the Court was of the view that under Section 7(3), Bharat Petroleum was a statutory tenant. Referring to the Constitutional Bench judgment, V. Dhanapal Chettiar v. Yesodai Ammal (1979) 4 SCC 214, the Court reiterated that even after the expiry of the period of contractual tenancy or expiry of the term as per Section 106 of the Transfer of Property Act, 1882, a tenant can be evicted only in terms of provisions of the State Rent Act. Even though Section 11 of 1976 Act had an overriding effect, it was held that jurisdiction of Civil Court was barred from the field covered specifically by the provisions of the 1973 Act, which was a complete code on the subject matter.

"...that being the complete code determining the rights of a tenant/landlord to the exclusion of the other laws, we find no error in the view expressed by the High Court in the impugned judgment holding that the jurisdiction of the Civil Court is held to be barred and remedial mechanism for ejectment could be possible only under the provisions of the Act 1973."

Earlier the view of the Supreme Court was that if eviction order against tenant was passed on the basis of compromise, without there being any independent material on record regarding existence of some ground under the relevant Rent Control Act then the decree / order was nullity and could be successfully challenged by the tenant in execution even after enjoying the benefit of time to vacate granted under the compromise decree vide Bahadur Singh v. Muni Subrat 1969 (2) SCR 432 (2 judges), Ferozi Lal Jain v. Shri Man Mal AIR 1970 SC 794 (3 judges) and Shrimati Kaushalya Devi v. Shri K.L. Bansal AIR 1970 SC 838 (3 judges). However in K.K. Chari v. R.M.

Scanned with CamScanner

Seshodhri AIR 1973 SC 1311 and Nagin Dass v. Dalpat Ram AIR 1974 SC 471 (both by three judges) the earlier three authorities were distinguished and it was held (particularly in Nagin Dass) that admissions in pleading stand on higher footing than evidentiary admissions and former, by themselves, can be made the foundation of the rights of the parties. Accordingly even if, apart from compromise, there is no evidence on record and even if in the compromise nothing has been said regarding bonanfide need of the landlord or other ground e.g. default in payment of rent or subletting still if under compromise sometime to vacate is granted to the tenant and thereupon the tenant agrees that the eviction proceedings may be allowed, it is sufficient and such decree cannot be said to be nullity. This principle will apply to all the Rent Control Acts. Same view has been taken in H.M.L. Doshi v. B.R.L. Ranchhod Das AIR 1993 SC 1449 (2 judges) relying upon K.K.Chari, Nagin Dass, Supra, Roshan Lal v. Madan Lal AIR 1975 SC 2130 (3 judges) and Suleman Noormohamed v. Umarbhai Janubhai AIR 1978 SC 952 (2 judges). However, contrary view has been taken in Sushil K. Mehta v. Gobind Ram Bohra 1990 (1) SCC 193 (3 judges) without noticing K.K. Chari and Nagin Dass, supra. It is submitted that the view taken in H.M.L. Doshi and the authorities mentioned therein is correct view as the contrary authorities have not taken into consideration the legal position that admission of one party is best evidence of the other party and best proof of the facts admitted as per Nagin Das 1974, supra (see also Supreme Court on Rent Control by me)

Companies Act 1956:

In Dwarka Prasad Agarwal v. R.C.Agarwal, AIR 2003 SC 2697 (paras 18 to 25) after quoting sections 9 and 10 of Companies Act it has been held that suits before civil court against alleged illegal dispossession of one party by the other from company premises (printing press) and for injunction and possession in respect thereof are maintainable. Following observation of Delhi High Court was quoted with approval in earlier part of para 24, infra:

Scanned with CamScanner

Yet again in Maharaja Exports and another v . Apparels Exports promotional Council, (1986 (60) CC 353) the Delhi High Court held:

"Under Section 9 of the Civil Procedure Code, 1908, civil Courts have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is expressly or impliedly barred. Unlike some statutes, the Companies Act does not contain any express provision barring the jurisdiction of the ordinary civil Courts in matters covered by the provisions of the Act. In certain cases, like winding-up of companies, the jurisdiction of civil Courts is impliedly barred. Where a person objects to the election of Directors and claims a decree for declaration that he was one of the Directors, there is no provision which bars the civil Court, either expressly or by implication, from trying such a suit."

In Nazir Hoosein v. D. Bhattena AIR 2000 SC 2327 maintainability of suit challenging resolution of meeting of Board of Directors of a company (Indian Automotives Racing Club) was not doubted.

E.S.I. Act

Under Section 75 (3) of Employees'State Insurance Act 1948 "no Civil Court shall have jurisdiction to decide or deal with any question or dispute as aforesaid or to adjudicate on any liability which by or under this Act is to be decided by a medical board or by a medical appeal tribunal or by the Employees'Insurance Courtll (Constituted under section 74). However, under Section 78 (4) it is provided that

—an order of the E.S.I. Court shall be enforceable as if it were a decree passed in a suit by a Civil Court."

It has been held in Kishori Lal v. Chairman ESI Corporation AIR 2007 SC 1819 (3 judges) that the above section does not bar the jurisdiction of the forum under Consumer Protection Act. In the same authority it has further

Scanned with CamScanner

been held that even civil suit is not barred if damages are claimed for the negligence of the doctor in the ESI hospital/dispensary.

"19. A bare perusal of the provisions of clauses (a) to (g) of Section 75(1) clearly shows that it does not include claim for damages for medical negligence, like the present case which we are dealing with. Although the question does not directly arise before us, we shall consider what in the ordinary course shall constitute negligence."

Sections 53 and 61 of ESI Act bar the jurisdiction of any other court or authority to entertain a claim for compensation etc

Electricity Act:

Under Section 126 of Electricity Act 2003 assessing officer is required to assess electricity charges payable in case of unauthorized use of electricity. Against his final order appeal is provided under Section 127. Thereafter, under Section 145 it is provided as under:

"145. Civil court not to have jurisdiction- No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in section 126 or an appellate authority referred to in section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

Interpreting Section 52 of old/repealed Electricity Act of 1910 it was then that suit for damages against Electricity Board for laying higher power transmission lines over the property/ construction of the plaintiff without his consent is maintainable before the Civil Court as no provision of the Act barred the same vide M.P. Electricity Board Jabalpur v. M/s Vijaya Timber Co. AIR 1997 SC 236

Scanned with CamScanner

Land Acquisition:

Civil Court has got no jurisdiction to decide the validity or legality of Sections 4 and 6 notifications of Land Acquisition Act, 1894 through which land is acquired, vide Shri Girish Vyas v. State of Maharastra AIR 2012 SC 2043 (para 98) placing reliance upon State of Bihar v. Dhirendra Kumar AIR 1995 SC 1955. Similar view has been taken in Laxmi Chand v. Gram Panchayat, Kararia, AIR 1996 SC 523. Similar will be the position in respect of corresponding sections of new land acquisition Act i.e. Sections 11, 12 and 19 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

Family Courts:

The Family Courts Act 1984 confers jurisdiction upon a family court in respect of matrimonial disputes defined under Explanation to Section 7(1) Explanation to Section 7(1) and sub section (2) of Section 7 are quoted below:

"Section 7 (1).....

Explanation: The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely, a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(a) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(b) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

Scanned with CamScanner

(c) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(d) a suit or proceeding for a declaration as to the legitimacy of any person;

(e) a suit or proceeding for maintenance;

(f) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise-

(a) the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment.

Section 8 (a) and (b) quoted below excludes the jurisdiction of District court or any subordinate Civil Court in respect of matrimonial matters:

8. Exclusion of jurisdiction and pending proceedings-Where a Family Court has been established for any area,

(a) no district court or any subordinate civil court referred to in sub-section (1) of section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the explanation to that sub-section; no magistrate shall, in relation to such area, have or exercise any jurisdiction or power under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);

Suit relating to property of divorced spouses is maintainable before Family Court

K.A. Abdul Jaleel v. T.A. Shahida, AIR 2003 SC 2525

Scanned with CamScanner

Motor Vehicles Act:

Section 175 of the Act provides as under:

"Where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area and no injunction in respect of any action taken or to be taken by or before the claims tribunal in respect of claim for compensation shall be granted by the Civil Court."

Partnership Act:

Section 69 of Partnership Act 1932, quoted below, bars certain suits by or against unregistered firms:

"69. Effect of non-registration (1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms or partners in the firm. (3) The provisions of sub-section (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect-

Scanned with CamScanner

(a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realize the property of a dissolved firm, or

(b) the powers of an official assignee, receiver or Court under the Presidency-towns Insolvency Act, 1909, or the Provincial Insolvency Act, 1920, to realize the property of an insolvent partner.

(c) This section shall not apply

(d) to firms or partners in firm which have no place of business in the territories to which this Act extends, or whose places of business in the said territories are situated in areas to which, by notification under section 56 this Chapter does not apply, or

(e) to any suit or claim of set-off not exceeding one hundred rupees in value which, in the presidency towns, is not of a kind specified in section 19 of the Presidency Small Cause Courts Act, 1882, or outside the Presidency towns, is not of a kind specified in the Second Schedule to the Provincial Small Cause Courts Act, 1887, or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim.[11]

Payment of Wages Act:

Section 22 of the Act provides that no court shall entertain any suit for the recovery of wages or of any deduction from wages. Section 22 is quoted below:

22. Bar of Suits: No Court shall entertain any suit for the recovery of wages or of any deduction from wages insofar as the sum so claimed:-

(a) forms the subject of an application under section 15 which has been presented by the plaintiff and which is pending before the authority appointed under that section or of an appeal under section 17; or

Scanned with CamScanner

(b) has formed the subject of a direction under section 15 in favour of the plaintiff; or

(c) has been adjudged, in any proceeding under section 15, not to be owed to the plaintiff; or

(d) could have been recovered by an application under section 15

However, the Act applies only to the payment of wages to persons employed in any factory or railways or in the industrial or other establishments as defined under Section 2(ii). The further restriction regarding applicability of the Act is that the wages shall be less than Rs. 18000/- per month. (Section 1(6) and notification of Central Government S.O. No. 2260 (E), dated 11/20 Sept., 2012).

11Broucher on jurisdiction of civil court and its bar by Honourable Justice Su Khan

Religious Matters:

In Ugam Singh v. Kesrimal AIR 1971 SC 2540 it has been held that

"It is clear therefore that a right to worship is a civil right, interference with which raises a dispute of a civil nature."

In P.M.A. Metropolitan v. M.M. Marthoma AIR 1995 SC 2001 it has been held

that:

"Ex-communication by a Christian religious authority can be challenged through suit. In this authority, in the judgment by justice R.M. Sahai, the aspect of maintainability of suit in religious matters has been thoroughly examined in paras 27 to 35 and reference has also been made to Article 25 of the Constitution which guarantees freedom of conscience and the right freely to profess practice and propagate religion to every person."

Scanned with CamScanner

LOK ADALAT

By

Smt J. Hema Sravanthi,

Principal Civil Judge
(Junior Division), Bobbilli.

INTRODUCTION :

The concept of Lok Adalat is an innovative Indian contribution to the world jurisprudence. The introduction of Lok adalats added a new chapter to the justice dispensation system of this country and succeeded in providing a supplementary forum to the victims for satisfactory settlement of their disputes. This system is based on Gandhian principles. It is one of the components of ADR systems. In ancient times the disputes were used to be referred to "panchayat" which were established at village level. Panchayats used to resolve the dispute through arbitration. It has proved to be a very effective alternative to litigation. This very concept of settlement of dispute through mediation, negotiation or through arbitral process known as decision of "Nyaya-Panchayat" is conceptualized and institutionalized in the philosophy of Lok Adalat. It involves people who are directly or indirectly affected by dispute resolution.

Scanned with CamScanner

The institution of Lok Adalat in India, as the very name suggests, means, People's Court. "Lok" stands for "people" and the term "Adalat" means court. India has a long tradition and history of such methods being practiced in the society at grassroots level.

Cases suitable for Lok Adalath :

Lok Adalats have competence to deal with a number of cases like –

a) Compoundable civil cases

b) Revenue cases

c) criminal cases

d) Motor accident compensation claims cases

e) Partition Claims

f) Damages Cases

g) Matrimonial and family disputes

h) Mutation of lands case

i) Land Pattas cases

j) Bonded Labour cases

k) Land acquisition disputes

l) Bank's unpaid loan cases

m) Arrears of retirement benefits cases

Scanned with CamScanner

n) Family Court cases

o) Cases which are not sub-judice

Need for Lok Adalats :

Increase in flow of cases in recent years due to multifarious Acts enacted by the Central and State Governments, high cost involved in prosecuting or defending a case in a court of Law, due to heavy court fee, lawyer's fee and incidental charges, delay in disposal of cases resulting in huge pendency in all the courts etc are the problems being faced by Law courts in India necessitated to establishment of Lok adalats.

Justice Ramaswamy said *"Resolving disputes through Lok Adalat not only minimizes litigation expenditure, it saves valuable time of the parties and their witnesses and also facilitates inexpensive and prompt remedy appropriately to the satisfaction of both the parties*".

Constitution of Lok Adalath :

Section 19 of the Legal Service Authority Act, 1987 provides about the constitution of Lok Adalats. According to Section 19(1), every state authority, district authority, Supreme Court Legal Services Committee, High Court Legal Services Committee, Taluk Legal Services Committee can constitute Lok Adalats, from time to time or at such intervals, as they may deem fit.

Scanned with CamScanner

Thus Section 19(1) provides authority to the following authorities and committees to constitute Lok Adalats.

A) State Legal Services Authority

B) District Legal Services Authority

C) Supreme Court Legal Services Committee

D) High Court Legal Services Committee

E) Taluk Legal Services Committee

Section 19(2) provides about the Constitution of Lok Adalats. According to it, the Lok Adalat will constitute by merger of the following :

A) Serving or retired judicial officers.

B) Other persons

The number of the member will be as decided by State authority, District authority, Supreme Court Legal Services Committee, High Court Legal Services or Taluk Legal Services Committee.

The qualification and experience of the person participating in the Lok Adalats will be decided by the followings :

a) By Central Government with the consultation Chief Justice of India in case of Supreme Court Legal Services Committee [Section 19(3)].

b) In other conditions, by Central Government with the consultation of Chief Justice of High Court [Section 19(4)].

Scanned with CamScanner

Working of the Lok Adalats :

Section 20 of Legal Services Authority Act 1987 provides about the working of Lok Adalats. According to it :

a) If any party desires to settle his case by Lok Adalat, there such parties may appeal to the court to settle the case by Lok Adalat.

b) On such appeal, the court will observe and it is satisfied to the court that

i) There is possibility of compromise between parties, or

ii) The case is worthy of hearing by Lok adalats then court will send the case to the Lok adalat.

c) Whenever the case is send to lok adalat, on appeal of party, then reasonable opportunity will be provided to opposite party before it.

d) Lok Adalat will hear the case after the cases come to it and endeavors shall be done for the compromise or settlement.

e) At the time of endeavor of settlement :

i) Principles of equity, justice and good conscience

ii) Principles of natural justice will be followed by Lok Adalats

In **Moni Mathai, S/o. E.C.Mathai vs. The Federal Bank Limited, AIR 2003, Kerala 164**, the Hon'ble High court of Kerala observed that -

"Lok Adalats are bound to follow principles of justice, equity, fair play and other principles of law"

Scanned with CamScanner

This is the case where the petitioner has filed a petition for quashing of award passed by Lok Adalath held by District Legal Service Authority constituted under Kerala State Legal Services Authority Act. This is a case where there is no Civil suit pending before any court and it is the contention of the petitioner that the Lok Adalath has passed award without notice to him. The Hon'ble High court has quashed the Lok Adalath award passed by District Legal Service Authority observing that notice was not served to the petitioner and it is a violation of Regulation no.28 of Chapter VI of Kerala State Legal Services Authority Regulations, 1998 as Regulation no.28 casts a duty on the Secretory of the District Authority to inform every party concerned whose case is referred to Lok Adalath so as to afford an opportunity to prepare himself.

The same is the case in **Chapter IX of Andhra Pradesh State Legal Service Authority Regulations, 1996.** Chapter IX of the above regulation deals with procedure for organizing Lok Adalaths which also mandates notice to the parties concerned.

f) If settlement does not happen then the case will be returned to the court again from where it came and the court will move to settle the case.

g) The court will again start hearing the case from the stage in which it was send to Lok adalat.

In the case of Reliance General Insurance Company Limited vs. Vijay Kumar AIR 2012 Punjab and Haryana 58, it has been held that Lok Adalats will make efforts to settle the cases in friendliness environment by following the

Scanned with CamScanner

principles of justice, equity and good conscience and according to settlement will pass the award. If settlement does not happen then the case will be returned back to the court, from where it came.

Jurisdiction of Lok adalats :

According to Section 19(5) of Legal Services Authority Act, 1987, lok adalats can decide case by compromise and settlement. The cases are -

a) Any case pending before or

b) Any matter which is falling within the jurisdiction of, and is not brought before, any court for which the lok adalats are organized.

Thus Lok adalats have jurisdiction on all cases which are pending in the court and have not been placed before any court. We can call it pre-litigation conciliation and settlement, but the cases which are not able for compromise legally do not come in the jurisdiction of lok adalats. Generally, such cases are criminal cases which are not compoundable under section 320 of C.P.C. 1973, Lok Adalats can only settle the cases which comes within the ambit of section 320 of C.P.C. 1973.

Award by Lok Adalath :-

1. Every award of Lok Adalat shall be deemed to be a decree of a civil court.

2. It shall be signed by all the parties to the dispute and the panel constituting the Lok Adalat.

3. It shall form part of the judicial records.

Scanned with CamScanner

4. It shall be in the regional language or in English.

5. A certified copy of the award will be given free of cost, to all the parties.

6. It shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award.

7. If a pending case is settled at Lok Adalat, any court fee already paid will be refunded as provided by the Court Fees Act, 1870

The Hon'ble Apex court observed in **P.T.Thomas vs. Thomas Job AIR 2005 Supreme Court 3575** that "*The Lok Adalat will pass the award with the consent of the parties, therefore there is no need either to reconsider or review the matter again and again, as the award passed by the Lok Adalat shall be final. Even under Section 96(3)of C.P.C no appeal shall lie from a decree passed by the Court with the consent of the parties.*

In **Punjab National Bank vs. Lakshmichand Rah AIR 2000 Madhya Pradesh 301, the Hon'ble High Court** held that "*Lok Adalat is conducted under an independent enactment and once the award is made by Lok Adalat the right of appeal shall be governed by the provisions of the Legal Services Authorities Act when it has been specifically barred under Provisions of Section 21(2) of the said Act. It is further observed that "It may incidentally be further seen that even C.P.C does not provide for an appeal under Section 96(3) against a consent decree. The code also intends that once a consent decree is passed by Civil Court finality is attached to it. Such finality cannot be permitted to be destroyed, particularly under the Legal Services Authorities*

Scanned with CamScanner

Act, as it would amount to defeat the very aim and object of the Act with which it has been enacted, hence, we hold that the appeal filed is not maintainable."

The Hon'ble High Court of Andhra Pradesh held in **Board of Trustees of the Port of Visakhapatnam vs. Presiding Officer, Permanent, Lok Adalat-cum-Secretary, District Legal Services Authority, Visakhapatnam and another 2000(5) ALT 577** that "*Though the award of Lok Adalath is not result of a contest suit, it is as equal and on par with a decree on compromise and will have the same binding effect*".

However, the Hon'ble High court has observed in supra case that "the award of lok adalath cannot be challenged by any regular remedies available under Law including article 226 of Constitution of India on any ground".

What is the remedy available to the person aggrieved of the award passed by Lok Adalath under section 20 of the Act ?

The Hon'ble Supreme court observed in **State of Punjab and Anr. vs Jalour Singh and Ors. AIR 2008 Supreme Court 1209 (3 Judges bench) in para no.12** that "*It is true that where an award is made by Lok Adalat in terms of a settlement arrived at between the parties, (which is duly signed by parties and annexed to the award of the Lok Adalat), it becomes final and binding on the parties to the settlement and becomes executable as if it is a decree of a civil court, and no appeal lies against it to any court. If any party wants to challenge such an award based on settlement, it can be done only by filing a*

Scanned with CamScanner

petition under Article 226 and/or Article 227 of the Constitution, that too on very limited grounds. But where no compromise or settlement is signed by the parties and the order of the Lok Adalat does not refer to any settlement, but directs the respondent to either make payment if it agrees to the order, or approach the High Court for disposal of appeal on merits, if it does not agree, is not an award of the Lok Adalat. The question of challenging such an order in a petition under Article 227 does not arise."

The same observation was reiterated by **Hon'ble Apex court in Bhargavi Constructions vs. Kothakapu Muthyam and Ors. 2018 SCC 480 in Para no.27** that "*the Law laid down State of Punjab Supra by this court is binding on all the courts in the country by virtue of mandate of Article 141 of the constitution*". By observing so, the Hon'ble Apex court has held that Lok Adalath award can be challenged by filing a writ petition under Article 226 and/or Article 227 of the Constitution of India in the High Court and that too on very limited grounds.

Presence of parties / GPA Holder :

(e) The Hon'ble High court of Karnataka, Dharwad Bench has extensively dealt with all the intricacies of award by Lok Adalath **in para no. 20 of Smt. Renuka W/O Anand @ Anantsa Bakale vs Sri. Ramanand S/O Ramkrishnasa Basawa in Writ petition number 103766 of 2018 dt. 31.03.2022** by way of following general directions-

Scanned with CamScanner

(f) " *(i) When a compromise is filed before the Court, it is for the Court to record the compromise and not to refer the matter to the Lok Adalat.*

(g) *(ii) It is only if there is no settlement arrived at before the Court and the parties request for the matter to be referred to Lok-Adalat to enable a settlement then in such event the parties are to be referred to the Lok-Adalat and in the event of a compromise being arrived at before the Lok- Adalat, the same could be recorded by the lok- Adalat.*

(h) *(iii) When the matter is referred to Lok-Adalat, separate order sheets would have to be opened and maintained by the said Lok-Adalat and the order sheet of the Court in the suit cannot be used by the Lok-Adalat.*

(i) *(iv) The trial Court and or the Lok-Adalat while recording compromise is required to ascertain if the parties are present personally as also to ascertain and verify their identities by production of suitable documentary proof.*

(j) *(v) In the event of a power of attorney appearing, it would be the bounden duty of the Court or the Lok-Adalat to ascertain if the concerned party has been served with notice.*

(k) *(vi) The Court as also the Lok-Adalat would always have to be suspicious if the party were to enter appearance even*

Scanned with CamScanner

before service of notice which is a red flag that there is something that is fishy in the matter.

(l) *(vii) When recording a compromise being entered into by a power of attorney, the original of the power of attorney is required to be examined by the Court and the Lok-Adalat and necessary endorsement made in the order to that effect and the original power of attorney returned to the parties.*

(m) *(viii) As far as possible the trial Court and or the Lok-Adalat to secure the presence of the party and obtain signature of such party rather than the power of attorney.*

(n) *(ix) The Trial Courts shall ensure that proper and acceptable proof of identity of the parties to proceedings as mandated by the Government for various purposes (such as Aadhar Card, Driving, License, Passport Copy, Election Identity card, etc.,) are obtained as a matter of rule."*

- The above general directions enlightens about the importance off securing the parties while passing award and the precautions to be followed while one of the party before Lok Adalath is GPA holder.

Scanned with CamScanner

Whether a suit in which compromise petition under order 23 Rule 3 of C.P.C is filed can be referred to Lok Adalath ?

(o) The Hon'ble High court of Karnataka, Dharwad Bench in **Smt. Akkubai W/O. Siddanaik Patil vs Shri. Venkatrao, S/O. Gourav Shindur WP.No. 63372/2012 dt. 21.02.2014** has categorically observed **in para no.11** that *"when parties has filed an application under order 23 Rule 3 of C.P.C and admitting the terms of compromise and execution of the terms and conditions, then the court before which it is presented, is the competent court to record the compromise dispose of the suit in terms of compromise. The question of refering the said dispute to Lok Adalath would not arise. If it is referred it is a farce."*

(p) The Hon'ble court has mentioned this case as a classic case of abuse of the wonderful concept of Lok Adalath which is used as an instrument to deprive an uneducated and poor lady of her valuable right to immovable property conferred by Hindu Succession Act. In this case the Hon'ble court has observed that the trial court has endorsed in the order sheet about registration of the suit, filling of vakalath for defendants, taking up the case before Lok Adalath in the presence of conciliator, endorssment that parties has settle the matter by mentioning terms of compromised and also the suit is decreed in terms of compromise petition. No separate order sheets were maintained for proceedings before regular court and Lok Adalath and also the matter was referred to Lok Adalath when the parties has already settled in terms of

Scanned with CamScanner

compromise mentioned in compromise petition. This order of the trial court has been strongly criticised by the Hon'ble High court.

In the case of **State of Kerala v. Ernakulum District Legal Services Authority(AIR 2008 Kerala 70)** it has been stated by the Hon'ble Kerala High Court that "*no efforts for settlement can be made by Lok Adalat in such cases which are not compoundable under the law*". Similarly, in the case of **Union of India v. Annatto (AIR 2007 SC 1561)** it has been held by Hon'ble Supreme court that "*Lok Adalats can only pass the orders in such cases where the settlement between the parties has been held legally*".

In Sholapur Municipal Corporation vs. Ramakrishna V. Relekar AIR 1970 Bombay 333, it was held that *"compromise can only be done in the cases which are not described in Section 320 of C.P.C 1973."*

<u>Can a case be reopened on non - compliance of award ?</u>

B.P.Moideen Sevamandir & Anr vs A.M.Kutty Hassan AIR 2008 SC (SUPP) 1123 answers this issue

This is the suit for Declaration and Mandatory Injunction having been decreed in trial court and upheld in 1st Appellate court, the defendants has filed 2nd appeal before Hon'ble High court of Kerala and obtained interim stay of execution. Later, during pendency of 2nd appeal, the matter was referred to Lok Adalath organized by Hon'ble Kerala High court, legal services committee on 25.05.2007 where in parties apparently arrived at a tentative settlement and the Lok Adalath has passed the following award "*the parties have settled the*

Scanned with CamScanner

dispute and agreed to file a memorandum of settlement before the High Court to obtain orders for disposal of this appeal and for refund of court fee". As the matter was referred to bench, there the appellants / defendants has alleged that terms of settlement was not finalized and hence the Hon'ble High court has again referred the case to Lok Adalath on 10.04.2008 wherein the Lok Adalath has endorsed that negotiations were unsuccessful and there is no chance for settlement. During the course of hearing 2nd appeal on regular bench, after few days the appeal was dismissed for default. Further, restoration of the appeal was also dismissed and hence, the matter came before Hon'ble Supreme Court by way of special writ. The Hon'ble Apex court after extensively discussing about the role of Lok Adalaths, role of conciliator, how an award should be by referring to its own observations in **State of Panjab vs. Jalour Singh** and observed in Para No.10 that "*Proceedings dt. 25.05.2007 in the supra case is turned as an award. It is also described as an order directing the appellants to do certain act which is* aronious. *The Hon'ble court has condemned the Lok Adalath for directing to parties to file a compromise in regular court for refund of court fee*." On thorough understanding of discussion made by the Hon'ble Apex court leaves a conclusion that there is no reopen of case due to non-compliance of award and the only remedy is proceeding under Article 226 / 227 of Constitution of India.

Scanned with CamScanner

Can Lok Adalath adjudicate ?

- It is observed by Hon'ble Apex court in Para no.8 of **State of Panjab and Anr. vs. Jalour Singh and Other AIR 2008 Supreme court 1209** that "*Lok Adalats have no adjudicatory or judicial functions. Their functions relate purely to conciliation. A Lok Adalat determines a reference on the basis of a compromise or settlement between the parties at its instance, and put its seal of confirmation by making an award in terms of the compromise or settlement. When the Lok Adalat is not able to arrive at a settlement or compromise, no award is made and the case record is returned to the court from which the reference was received, for disposal in accordance with law. No Lok Adalat has the power to "hear" parties to adjudicate cases as a court does. It discusses the subject matter with the parties and persuades them to arrive at a just settlement*". According to the Hon'ble Apex court making of the award is merely an administrative Act of incorporating the terms of settlement or compromise agreed by parties in the presence of the Lok Adalat, in the form of an executable order under the signature and seal of the Lok Adalat.

- **What is the role of courts ?**

- It is observed by Hon'ble Apex court in Para No.13 of **B.P.Moideen Sevamandir & Anr vs A.M.Kutty Hassan AIR 2008 SC (SUPP) 1123** that "*Lok Adalats is an alternative dispute resolution mechanism. Having regard to section 89 of Code of Civil Procedure, it is the duty of court to ensure that*

Scanned with CamScanner

parties have recourse to the Alternative Dispute Resolution processes and to encourage litigants to settle their disputes in an amicable manner and there should be no pressure, force, coercion or threat to the litigants to settle disputes against their wishes. Judges also require some training in selecting and referring cases to Lok Adalats or other ADR processes. Mechanical reference to unsuited mode of ADR process may well be counter productive. A plaintiff who comes to court alleging unlawful encroachment by a neighbor may well ask what kind of settlement he should have with an encroacher in a Lok Adalat. He cannot obviously be asked to sacrifice a part of his land for purposes of amicable settlement". It is further observed that court cannot carry ill-will against a litigant because he did not settle his case. No party can be punished for failing to reach the settlement before Lok Adalath.

- **<u>Lok Adalath Award - Exparte decree</u>** :

- Lok Adalath and an exparte decree are different types of legal outcomes. Lok Adalath requires voluntary consent of both the parties and the proceedings aim at amicable settlements. An exparte decree is a court decision made in the absence of one party. A successful settlement in Lok Adalath results in a binding award which is treated as decree of a civil court and non-appealable except in specific circumstances. An exparte decree shall be issued only after considering evidence and arguments and it can be challenged by the defendant if the service is improper. No court fee is required for filing a case in Lok Adalath.

Scanned with CamScanner

- **<u>Lok Adalath Award and Execution</u> :**

- A Lok Adalath award under Legal Services Authorities Act 1987 is deemed a decree of Civil court and executable by that court. The Lok adalath awards are considered final and binding. Execution of Lok Adalath award follows the same procedure outlined in C.P.C as any other civil court decree. Now the question arises is whether Lok Adalath award passed in a criminal case can also be considered as a decree of Civil Court and executable. In **K.N. Govindan Kutty Menon vs C.D.Shaji (2012) 2 SCC 51** the Lok adalat at Ernakulam has passed an award in the case under section 138 of Negotiable Instruments Act for Rs.6,000/-. However, the accused has paid only Rs.500/- on the same day and agreed to pay the rest in five installments each Rs.1,100/- but failed to do so. The complainant filed Execution petition before Principal Munsif Judge at Ernakulam which was dismissed and the said order was upheld by Hon'ble High court at Kerala. When the matter was placed before Hon'ble Apex court it is observed that-

- *"section 21 of Legal Services Authorities Act does not make out any such distinction between the reference that is made by a civil court and one made by a criminal court. They also pointed out that there isn't any restriction on the power that is possessed by the Lok Adalat to pass an award based on the compromise that has arrived at between the parties in respect of cases referred to by various courts (civil as well as criminal tribunals, rent control court, family court, consumer redress forum, the motor accidents claims*

Scanned with CamScanner

tribunal, and other such forums)." The Hon'ble Supreme Court has further observed that "*even if under Section 138 of the Negotiable Instruments Act a matter of criminal court is referred, and by virtue of the deeming provisions, the award that would be passed by the Lok Adalat based on a compromise has to be treated as a decree that would be capable of execution by a civil court*".

- It is also observed that while dealing with cases relating to dishonour of cheques *"the court can grant installments to pay the agreed amount"*.

- It is held by **Hon'ble High court of Andhra Pradesh (Pre Telangana) in Alla Venkata Krishna Reddy vs Noone Krishna Veni Civil Revision Petition no. 4886/2015 dt. 11.12.2015** according to Rule 18 of AP State Legal Atuhorities Rules, 1995 *"the awards passed by Lok Adalats in respect of pending cases shall be executed by the courts in which those matters were pending prior to passing of award by the adalaths. Provided that the awards passed by Lok Adalaths in respect of matters at Pre litigative stage shall be executable to the court of District Judge's of the District in which Lok Adalath is held"*.

- **<u>What is the Limitation for execution of award</u> ?**

- A Lok adalat award can be enforced within 12 years from the date of award becomes enforceable as per Limitation Act. This is because the award is considered a decree of a civil court and is executable through civil court.

Scanned with CamScanner

- **<u>Whether the award need Registration ?</u>**

- In **Veedam Redappa reddy vs. Yennavoyina Vani and othrs. 2011 (56) ALT 471** the Hon'ble HIgh court of Andhra Pradesh at Hyderabad has observed in para no.5 that "*the award of Lok Adalath need not be sent for registration. In case if any document involved in the terms of compromise entered by the parties requires registration, it shall be done according to Law and there is no requirement for the court to send the award at Lok adalat for registration*".

- In this case there was a lease agreement for 11 months in the terms of compromise agreed between the parties and when the Lok Adalath award was put to execution, the question raised is that the award requires registration and it contains lease agreement for more than 11 months. The Hon'ble High court has observed that there is no need for registration of the award and if the party who takes benefit under the lease agreement is at liberty to proceed according to Law for registration of the lease agreement. The Lok Adalat award is final and binding on the parties to the dispute and no appeal lies to any court against the award (Bargavi constructions supra case). However an award can be challenged based on allegations of fraud, misrepresentation or collusion in obtaining the award. The third party not directly involved in Lok Adalat proceedings when challenged the award on limited grounds by filing writ petition under Article 226 / 227 of Constitution of India. The third party must

Scanned with CamScanner

present prima facie evidence of fraud or misrepresentation to justify the writ petition".

- "*If the allegations involve complex questions of fact requiring extensive evidence, the third party may also be directed to quick remedy in a civil court instead of perusing writ petition*" as held in **B.Lavanya @ B.Shoba vs. State of Telangana dt 16.12.2023**

- In **Gorentla Kishan vs. Kancha Ramakka dt 27.04.2022** it is held by Hon'ble High court of Telangana that "*If the award goes beyond scope of agreed terms of compromise, it may be challenged on grounds of illegality or coercion*".

- If the lok adalath order is not based on a compromise or settlement between the parties which may not be considered a valid award and can be challenged (**Jalour Singh supra case)**

- In **S.P.Changalvarao Naidu vs. Jaganadh 1994 AIR 853** and in **Union of India vs. Chaturbhai M.Patal and co 1976 AIR 712** it is observed that

- "*the factum of fraud must be established beyond reasonable doubt. However suspicious may be the circumstances, however strange the coincidences and however grave the doubt, the suspicion alone can never take the place of proof*". According to the observations in Bhargavi constructions (supra case) a civil suit can also be filed to set aside the award of Lok Adalath if the same was obtained by fraud.

Scanned with CamScanner

•

Lok Adalth award - Hybrid mode -Special reference to matrimonial matters :

Hybrid mode of Lok Adalat involves both physical and virtual sittings for conciliation and settlement of cases, enabling flexibility in dispute resolution. Parties can participate in Lok Adalat hearings either in a person at physical location or remotely through virtual platforms. Virtual platforms enables parties to participate remotely using technology of video conference and other online communication tools. Hybrid mode is flexible and the parties can choose the best mode suitable for their needs and circumstances. Virtual sittings can be particularly efficient, enabling faster dispute resolution and reduced travel time for the parties. Even pre-conciliation process can be conducted in hybrid mode.

However, the hybrid mode of conciliation does not applies to the cases which are not suitable for referring to Lok Adalat. No doubt matrimonial and family disputes can be dealt in Lok Adalats and they can be done in Hybrid mode, cases relating to divorce and non-compoundable offences which are not possible to refer to Lok Adalat cannot be dealt even in hybrid mode. But, the other matrimonial issues which are capable of settlement at Lok adalat can be very conveniently dealt in Hybrid mode even though one of the party is in other place including Abroad. This avoids continuation of litigation and dispute in the family.

Scanned with CamScanner

Whether award can be passed in a compoundable criminal case in the absence of accused ?

In the absence of accused even if NBW is pending against the accused, a compromise can be recorded if defacto complainant / victim comes forward and reports compromise as held in **Y.P. Baiju vs. State of Kerala and others 2008 Crl.L.J.928.**

Lok adalath award in binding on all parties including a co-accused who was absent unless there are strong grounds for setting it aside. The absence of party does not necessarily invalidate the award if the Lok Adalat has followed proper procedures and the award is based on a valid settlement or compromise.

Lok Adalath award – compoundable offences / Ancillary non compoundable offences :

All compoundable offences mentioned in the two tables under section 320 of Cr.P.C / 359 of BNSS are compoundable. Rest of the cases which are not identified as compoundable cannot be referred to Lok Adalat. However, if a case involves both compoundable and non-compoundable offences and the main case being compoundable is compromised by the parties, the rest of the offences, though non compoundable are ancillary offences and hence they too can be compounded along with main offences as held by **Hon'ble High court of Judicature, Telangana and Andhra Pradesh at Hyderabad in B. Vinod Kumar and another Vs. State of A.P., rep., by Public Prosecutor High Court of A.P, Hyderabad in Crl.P.No.4868 of 2003.**

Scanned with CamScanner

Does Lok Adalath has power to withdraw a criminal case under section 321 of Cr.P.C / 360 of BNSS ?

Lok adalats are primarily meant for disposing disputes upon settlement and there cannot be any disposal without compromise the Hon'ble Supreme Court in **State of Panjab Vs. Ganpat Raj (2006) 8 SCC 364** has observed that "*if no compromise is possible the Lok Adalath cannot pass any order and must advice the parties to seek remedy in a court of Law*". It is also observed that " *a petition for withdrawal of prosecution under section 321 of Cr.P.C can only be examined by regular court but not Lok Adalat*".

Whether breach of Lok Adalath award amounts to contempt of court ?

The Hon'ble Division Bench of Hon'ble Punjab and Haryana High court has held that Lok Adalath does not hold the trappings of a court and the award passed by Lok Adalaths has become infringed, do not generate contempt proceedings.

CONCLUSION :

The two sayings " *Justice delayed is justice denied*" and *"Justice hurried is justice buried" highlight the critical balance between timely and fair justice in legal systems. Delays in legal process can weaken the impact of justice and at the same time rushed judgments can lead to errors. A presiding officer should balance both the situations and resolve the dispute through amicable settlement encouraging cooperation and compromise between the parties.*

Scanned with CamScanner

WORKSHOP-II

Paper Presentation on

. Framing of issues
. Necessity of framing of preliminary - issues

By
GUDURI HARSHA VARDHAN
Civil Judge(Junior Division),
Salur.

Scanned with CamScanner

[i]ORDER XIV-SETTLEMENT OF ISSUES AND DETERMINATION OF SUIT ON ISSUES OF LAW OR ON ISSUES AGREED UPON

ORDER XIV

Settlement of Issues and Determination of Suit on Issues of Law or on Issues agreed upon

1. Framing of issues.—(1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions arc 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.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of distinct issue.

(4) Issues are of two kinds:

(a) issues of fact,

(b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements if any, and 1[after examination under rule 2 of Order X and after hearing the parties or their pleaders], ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing is this rule requires the Court to frame and record issued where the defendant at the first hearing of the suit makes no defence.

2. Court to pronounce judgment on all issues.—

(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

Scanned with CamScanner

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if the issue relates to—

(a) the jurisdiction of the Court, or

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

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

3. Materials from which issues may be framed.—

The Court may frame the issues from all or any of the following materials:—

(a) allegations made on oath by the parties, or by any persons present on their behalf, or made by

the pleaders of such parties;

(b) allegations made in the pleadings or in answers to interrogatories delivered in the suit;

(c) the contents of documents produced by either party.

4. Court may examine witnesses or documents before framing issues.—Where the Court is of opinion that the issues cannot be correctly framed without the examination of some person not before the Court or without the inspection of some document not, produced in the suit, it [may adjourn the framing of issues to a day not later than seven days] and may (subject to any law for the time being in force)compel the attendance of any person or the production of any document by the person in whose possession or power it is by summons or other process.

5. Power to amend and strike out, issues.—

(1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

Scanned with CamScanner

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

6. Questions of fact or law may by agreement be stated in form of issues.—(1) Where the parties to a suit are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing that, upon the finding of the Court in the affirmative or the negative or such issue,—

(a) a sum of money specified in the agreement or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject some liability specified in the agreement;

(b) some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct; or

(c) one or more of the parties shall do or abstain from doing some particular act specified in the agreement and relating to the matter in dispute.

7. Court, if satisfied that agreement was executed in good faith, may pronounce judgment.—

Where the Court is satisfied, after making such inquiry as it deems proper,—

(a) that the agreement was duly executed by the parties,

(b) that they have a substantial interest in the decision of such question as aforesaid, and

(c) that the same is fit to be tried and decided, it shall proceed to record and try the issue and state its finding or decision thereon in the same manner as if the issue had been framed by the Court; and shall, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement; and, upon the judgment so pronounced, a decree shall follow.

Scanned with CamScanner

Definition of issues

According to the dictionary meaning, "issue" means a point in question;

an important subject of debate, disagreement, discussion, argument or litigation. Issues mean a single material point of fact or law in litigation that is affirmed by one party and denied by the other party to the suit and that subject of the final determination of the proceedings.

When issues are framed?

According to rule 1, issues are framed and recorded by the court at the first hearing after reading the plaint, written statement, examining and hearing of parties and their pleaders.

Where the Court finds that the issues cannot be correctly framed without the examination of some person not before the Court or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day (maximum of 7 days).

The issues may be framed by the Court from all or any of the following materials:

1.Allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties;

2.Allegations made in the pleadings or in answers to interrogatories delivered in the suit;

3.The contents of the documents produced by either party.

Order XIV Rule 1: Framing of Issues

- **Sub-rule (1):**Issues arise when material propositions of fact or law are affirmed by one party and denied by the other.
- **Sub-rule (2):**Material propositions are those essential for establishing the plaintiff's right to sue or the defendant's defense.
- **Sub-rule (3):**Each material proposition affirmed by one party and denied by the other must form a distinct issue.
- **Sub-rule (4):**Issues are classified into issues of fact and issues of law.
- **Sub-rule (5):**At the initial hearing, the court must ascertain the material propositions on which the parties disagree and frame the issues accordingly.

Scanned with CamScanner

- **Sub-rule (6):**If the defendant fails to present a defense at the initial hearing, the necessity to frame issues may be obviated.

Order XIV Rule 2: Pronouncement on All Issues

- **Sub-rule (1):**The court must render judgment on all issues, even if the case can be disposed of on a preliminary issue.
- **Sub-rule (2):**If an issue of law pertains to jurisdiction or constitutes a statutory bar, it may be tried first.

Order XIV Rule 3: Materials for Framing Issues

The court may frame issues by considering the following:

1. **Allegations on oath:**Statements made by parties or their legal representatives.
2. **Pleadings and Interrogatories:**Assertions contained within pleadings or responses to interrogatories.
3. **Documents Produced:**Contents of documents submitted as evidence.

Order XIV Rule 4: Examination Before Framing Issues

The court may adjourn the framing of issues and compel the attendance of individuals or production of documents necessary for accurate issue framing.

Order XIV Rule 5: Amendment and Striking Out of Issues

- **Sub-rule (1):**The court may amend or frame additional issues at any time before passing a decree.
- **Sub-rule (2):**The court may strike out improperly framed issues.

Order XIV Rule 6: Agreed Issues

Litigants may submit agreed-upon factual or legal questions as issues through a written agreement.(draft issues)

Order XIV Rule 7: Judgment on Agreed Issues

If satisfied with the good faith of the agreement, the court may try the issue and render judgment accordingly.

Steps in Framing Issues:

1. Initial Hearing:

- The court examines the plaint and written statements.
- It may conduct an examination under Order X rule 2 and hear the parties to identify material points of dispute.

Scanned with CamScanner

2. Formation of Issues:

- The court formulates and records the critical issues for adjudication.

3. Sources for Framing Issues:

- Allegations on oath by parties or representatives.
- Assertions made in pleadings or interrogatory responses.
- Evidence contained within submitted documents.

4. Examination of Witnesses or Documents:

- The court may defer framing issues to examine witnesses or inspect documents when necessary.

5. Amendment and Striking Out of Issues:

- The court may amend existing issues or frame additional ones, striking out improperly framed issues when required before passing decree.

6. Agreed Issues:

- Parties may identify agreed-upon factual or legal questions.
- Upon verifying the sincerity of such agreements, the court may record and adjudicate those issues.

What are the material propositions?

According to Rule 1 (2), material propositions are those propositions of fact or law which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defense. Each material proposition affirmed by one party and denied by the other shall form the subject - matter of a distinct issue.

Kinds of issues:

As per the Order 14 Rule 1(4) of the C.P.C. issues are of two kinds:

A. Issues of fact

B. Issues of Law.

Issues of Fact:

- These involve disputes over factual elements within the case.

Scanned with CamScanner

●**Example:**In a contractual dispute, whether the defendant executed the contract in question constitutes an issue of fact.

Issues of Law:

●These pertain to disagreements concerning the interpretation or application of legal principles or statutory provisions.

●**Example:**Whether a statute of limitations applies to a particular claim would be an issue of law.

Both types of issues are crucial as they delineate the boundaries of judicial inquiry and ensure that the trial remains concentrated on substantive disputes.

Rule 2(1) of Order 14 provides that where issues both of law and fact arise in the same suit, notwithstanding that a case may be disposed of on a preliminary issue, the court should pronounce judgment on all issues. But if the court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first, if that issue relates to:

i.The jurisdiction of the court; or

ii.A bar to the suit created by any law for the time being in force,

For that purpose, the court may, if it thinks fit, postpone the settlement of the other issues until the issues of law have been decided.

Object of framing of issues

The main object of framing issues is to ascertain the real dispute between the parties by narrowing down the area of conflict and determine where the parties differ.

An obligation is cast on the court to read the plaint and the written statement and then determine with the assistance of the learned counsel for the parties, material propositions of fact or of law on which the parties are at variance. The issue shall be formed on which the decision of the case shall depend.

The evidence shall be confined to the issues. The object of an issue is to tie down the evidence and arguments and decision to a particular question so that there may be no doubt on what the dispute is. The judgment then proceeding issue-wise would be able to tell precisely how the dispute was decided.

Scanned with CamScanner

The Court should not determine an issue which does not arise on the pleadings and should not decide a suit on a matter on which no issue has been raised. No issue need be framed on a point of law which is perfectly clear.

In Akha Ram v LR of Ram Sahai, decided on 15-01-2009, vide two Writ petitions no: 4208/2004 and 3793/2004, by honourable sri justice Prakash Tatia, judge the honourable High court of Rajasthan held that where broader issue framed having mixed facts, some facts relating to plaintiff and some facts relating to defendant, the trial Court allowing plaintiff to lead evidence of defendant was not improper.

It does not, however, believe that this authority must be used when an application is made; rather, it places a duty on the Court to use this authority suo moto "for determining the matters in controversy between the parties" if it were necessary to do so.

Amendment of issues framed:
Order 14 Rule 5, C.P.C. empowers the court to amend issues framed or frame additional issues at any stage of proceedings. Issues can be amended at any stage of the trail. They can also be amended by appellate or revisional court.

Omission to frame issues:
Even though it is the duty of the court to frame proper issues, mere omission to frame an issue is not necessarily fatal to the suit. Omission to frame an issue is an irregularity which may be or may not be a material one. If such an omission affects the disposal of the suit on merits, the case must be remanded to the trial court for a fresh trial.

Where the parties went to trail with full knowledge that a particular point was at issue, they have not been prejudiced and substantial justice has been done, absence of an issue is not fatal to the case so as to vitiate the proceedings.

In Nagubai Ammal v. B. Shama Rao in Civil Appeal No. 216 of 1953, Honourable Supreme Court of India observed that, a trail does not get vitiated on wrong, improper or defective issues when there is absence of specific pleadings.

Scanned with CamScanner

Duty of the court :

The duty in relation to framing of the issue is that of the court which it has to discharge because it has to try the suit and it has to give notice to parties to lead evidence with the context of the issues framed.

Siddhi Chunilal vs. Suresh Gopkishan (2009(6) BCR 857, Second Appeal no. 193/1990, by Honourable sri justice P.R.Borkar,judge Hon'ble High Court of Bombay, In this case, it was observed that if correct and accurate issues were not framed, it leads to gross injustice, delay and waste of the court's valuable time in deciding the matter. If defendant makes no defense, framing and recording issue by the Court does not arise, in such a case, a Court need not frame and record issue in as much as the defendant makes no defense at the first hearing of the suit.

Fiza Developers & Inter-Trade (P) Ltd. v. Amci (I) (P) Ltd., (2009) 17 SCC 796 , civil Apeeal no: 5139/ 2009 in Honourable Supreme Court of India by Hon'ble Sri justice R.V.Raveendran held that The object of issues is to focus upon the questions on which evidence has to be led and to indicate the party on whom the burden of proof lies.

Court cannot refuse to decide issues

The court cannot refuse to decide any issue if the issue is framed and evidence is given, even though the point finds no mention in the pleadings.

The court should not frame any issue which does not arise in the pleadings. The issue must be confined onto the material questions of fact or law.

Significance of Framing Issues

- **Efficient Trial Management:** Framing issues narrows the trial's focus, expediting judicial proceedings.
- **Enhanced Clarity:** Proper issue framing ensures that all material questions are distinctly identified and addressed.
- **Judicial Economy:** Streamlining disputes prevents protracted litigation.
- **Fair Adjudication:** Accurate issue framing safeguards litigants' rights by ensuring comprehensive and just judicial determinations.

Scanned with CamScanner

Notable Case Laws:

1.Bhagwati Prasad Vs. Shrichandramaul [1965] INSC 218 (19 October 1965), 1966 AIR 735 1966 SCR (2) 286 in Civil Appeals Nos. 964 and 965 of 1964 by Honourable Supreme Court of India

- The court held that a decision cannot be based on a matter not put in issue, underscoring the importance of framing issues.

2.Ram Sarup Gupta (Dead) By Lrs vs Bishun Narain Inter College & Ors on 8 April, 1987, 1987 AIR 1242, 1987 SCR (2) 805, AIR 1987 SUPREME COURT 1242, Civil Appeal No. 638 of 1980 by Honourable Supreme Court of India

- This case emphasized that all essential questions should be framed as issues to avoid prejudice.

3.Major S. S. Khanna vs Brig. F.J. Dillon on 14 August, 1963, 1964 AIR 497, 1964 SCR (4) 409, AIR 1964 SUPREME COURT 497, Civil Appeal No. 320 of 1963., by Honourable Supreme Court of India

- The court held that all material contentions must be framed as issues to ensure a comprehensive trial.

Conclusion

The framing of issues is a fundamental procedural step under the Code of civil procedure, guiding trials toward efficient and fair resolutions. Courts must exercise diligence in this task to avoid ambiguity and foster effective judicial proceedings.

Scanned with CamScanner

PRELIMINARY ISSUE

A question of law on which no evidence is to be brought in by the parties can be tried as a preliminary issue. It is being done when the issue involves a question of law alone. To decide to try anything as a preliminary issue is a matter of discretion for the court, but it is not an obligation (O XIV R 2(2).

When determination of a 'question of law' depends on a 'question of fact', then the issue of law should not be tried as a preliminary issue. The plea of limitation, estoppel, res judicata etc, raised in the beginning of a case can be tried as preliminary issue.

Discretionary Nature: The court has discretion to decide whether to treat an issue as a preliminary issue. It is not mandatory to do so, even if the issue falls under the categories specified in the Code of Civil Procedure.

Types of Issues Suitable for Preliminary Decision:

1.Jurisdictional Issues: Questions regarding the jurisdiction of the court can be decided as preliminary issues, provided they do not require evidence.

2.Legal Bar to Suit: Issues that present a legal bar to the suit, such as res judicata, can also be considered as preliminary issues, but they must not involve mixed questions of fact and law.

3.Pure Questions of Law: Issues that are purely legal and do not necessitate factual investigation can be decided as preliminary issues

4.Limitations: The court held that the question of limitation requires consideration of both facts and law, and should be decided alongside other issues rather than as a preliminary issue

5.Mixed Questions of Fact and Law: If an issue involves both factual and legal questions, it cannot be decided as a preliminary issue. Such issues require a full trial to assess the evidence.

6.Issues Requiring Evidence: Any issue that necessitates the presentation of evidence cannot be treated as a preliminary issue

7.Res Judicata: The issue of res judicata was deemed a mixed question of fact and law, thus not suitable for preliminary determination, however, on admission or plea can be tried as preliminary issue.

Scanned with CamScanner

8.Maintainability of Suit: A question regarding the maintainability of a suit can be decided as a preliminary issue if it is based on admitted facts

- **Assess the Nature of the Issue**: Before seeking to have an issue decided as a preliminary issue, evaluate whether it is purely legal or involves mixed questions of fact and law.

- **Consider Evidence Requirements**: If the issue requires evidence, it is advisable to address it during the main trial rather than as a preliminary issue.

- **Utilize Discretion Wisely**: Courts have the discretion to decide on preliminary issues; thus, strategic arguments should be made to persuade the court to consider certain issues as preliminary.

Case law:

- Honourable Himachal Pradesh High Court, in CMPMO No. 336 of 2023 , between Govind Singh Kanwar And Another vs Ranjeet Singh And Others on 5 January, 2024

Once the learned trial Court, after having framed issues on 29.11.2022, had permitted the plaintiffs to lead evidence and plaintiffs had also supplied the copies of evidence by way of affidavits of the witnesses proposed to be examined by them, coupled with the fact that learned trial Court had neither framed nor perceived any preliminary issue at the first instance, rather framed all the issues in one go, order passed by learned trial Court on 16.5.2023, thereby permitting the defendants to lead evidence only qua issue No.8, at the first instance, is not tenable in the eye of law, being wholly unjustified and against the settled provisions of law.

- Honourable Supreme Court of India in Ramrameshwari Devi & Ors vs Nirmala Devi & Ors on 4 July, 2011,Civil Appeal no.. 4912-4913 of 2011.

Sub Rule 2 of order 14 refers to the discretion given to the court where the court may try issue relating to the jurisdiction of the court or the bar to the suit created by any law for the time being in force as preliminary issue. It further relates to disposal of the suit treating these points as preliminary issues and also relates to deferring the settlement of other issues, but there is no such case. The entire evidence has been led, the matter is at the stage of final arguments and the point raised does not relate to the point pertaining to Sub

Scanned with CamScanner

Rule 2. Neither it relates to bar created by any law nor the jurisdiction of the court to entertain the suit. It is just an averment made in the plaint. Contention of the appellants for treating the said issue as preliminary issue is against the spirit of law as referred in Order 20 Rule 5 and order 14 Rule 5 of the CPC.

- Honourable Supreme Court of Inidia, in Civil Appeal No 814 of 2022, between M/s Mongia Realty and Buildwell Private Limited vs Manik Sethi.

The issue was whether the issue of limitation can be determined as a preliminary issue under Order XIV Rule 2.Court observed that if the issue of limitation is based on an admitted fact, it can be decided as a preliminary issue under Order XIV Rule(2)(b).However, if the facts surrounding the issue of limitation are disputed, it cannot be decided as a preliminary issue.Since the determination of the issue of limitation in this case is not a pure question of law, it cannot be decided as preliminary issue under Order XIV Rule 2 of the CPC.

In conclusion, while preliminary issues can expedite judicial proceedings, careful consideration must be given to the nature of the issues at hand to ensure compliance with procedural requirements and judicial discretion.

Scanned with CamScanner

I

WORKSHOP - II

Subject : **CIVIL SIDE**

Topic : **JUDGMENT WRITING**

Ref : **Hon'ble High Court's letter in ROC No.960/2023- RC, 07-03-2025**

HUMBLY SUBMITTED BY

A. VIJAY RAJ KUMAR

CIVIL JUDGE (JUNIOR DIVISION), GAJAPATHINAGARAM,

VIZIANAGARAM DISTRICT

Scanned with CamScanner

"All the world over true peace depends not upon gun-power, but upon pure justice" --- ***Mahatma Gandhi***

"Four things belong to a Judge;
to hear courteously,
to proceed wisely,
to consider soberly and
to decide impartially." --- ***Socrates***

It is most respectfully submit that in due obedience to the Hon'ble High Court's proceedings issued in ROC.NO.960/2023-RC dated:07.03.2025, the Hon'ble Principal District and Sessions Judge, Vizianagaram pleased to pass an order dated: 02-05-2025 to proposed to conduct Workshop-II on the topic **"CIVIL SIDE"**, in which the topic assigned to me is "**JUDGMENT WRITING**".

INTRODUCTION:-

A Judgment forms the concluding part of the civil suit and it determines the rights and liabilities of the parties. Basically judgment is followed by a decree which is its operating part. Historically, there was distinction between judgment and decree.

Common Law adheres to the judgment while the Equity Court of Law deals with the decree. But in U.K. the distinction between judgment and decree merged. In U.S. also, distinction between judgment and decree has

Scanned with CamScanner

lost its relevance but in India, the distinction between judgment and decree has still maintained its position from the initiation of the old Code of Civil Procedure, 1859. The present Code of Civil Procedure, 1908 also recognizes this distinction.

Judgment as defined in Section 2(9) C.P.C means the statement given by the judge of the grounds for a decree or order. A judgment is an affirmation of a relation between a particular predicate and a particular subject.

The pre-requisite for a good Judgment is a good hearing. The process of reasoning by which the court comes to the ultimate conclusion and decrees the suit should be reflected clearly in the judgment. Judgment is the most important document for the parties as well as the Judge and more important for the Judge are the reasons in support of his/ her judgment.

RELEVANT PROVISIONS RELATING TO 'JUDGMENT':

Civil Procedure Code: Section 2(9) of CPC

Order XX Rules 1 to 5 of CPC

Order XIV Rule 1 & 2 of CPC:

Order VIII Rule 10 of CPC

Rule 142 and 143 of A.P.Civil Rules of Practice

Section 152 of CPC

What is a Judgment?

Scanned with CamScanner

Judgment as defined in Section 2(9) CPC means the statement given by the Judge of the grounds for a decree or order. The term judgment includes an equitable decree and any order from which an appeal lies. What a judgment should contain is indicated in Order 20 Rule 4(2) CPC. The process of reasoning by which the court came to the ultimate conclusion and decreed the suit should be reflected clearly in the judgment. Whether it is a case which is contested by the defendants by filing a written statement, or a case which proceeds ex parte and is ultimately decided as an ex parte case, or is a case in which the written statement is not filed and the case is decided under Order 8 Rule 10, the court has to write a judgment which must be in conformity with the provisions of the CPC or at least set out the reasoning by which the controversy is resolved. **[Balraj Taneja V. Sunil Madan, (1999) 8 SCC 396]**

English law: According to English Law, the meaning of **'Judgment'** is an opinion delivered by a member of the appellate committee of the House of Lords; a Law Lord's judicial opinion.

- An action is instituted for the enforcement of a right or the redress of an injury. Hence a judgment, as the culmination of the action declares the existence of the right, recognizes the commission of the injury, or negatives the allegation of one or the other. But as no right can exist without a correlative duty, nor any invasion of it without a corresponding obligation to make amends, the judgment necessarily affirms, or else denies, that such a duty or such a liability rests upon the person against whom the aid of law is invoked.ll

Scanned with CamScanner

22. **Essentials of a Judgment**: According to **Order 20, rule 4(2) CP**C, the essential elements of a judgment are :

(a) concise statement of the case

(b) points for determination (issues)

(c) decision thereon

(d) reasons for such decision

23. **Components for Judgment writing**: Clear thinking is the key to clear writing. A clearly expressed judgment demonstrates the interest of the subject and the exposition of legal reasoning. Reasons given by a judge in a judgment indicate the working of his/ her mind, approach, his/ her grasp of the question of fact and law involved in the case and the depth of his knowledge of law. In short, a judgment reflects the personality of the judge and, therefore, it is necessary that it should be written with care and after mature reflection.

24. Equity, justice and good conscience are the hallmark of judging. One who seeks to rely only on principles of law, and looks only for the decided cases to support the reasons to be given in a case or acts with bias or emotions, loses rationality in deciding the cases. The blind or strict adherence to the principles of law sometimes carries away a judge and deviates from the objectivity of judging issues brought before him.

25. As the beginning of the judgment introduces the facts of the case and subject matter, the conclusion should resolve each of the issues identified at the start. The ending should contain no new material, whether factual or legal, which has not been previously discussed.

Scanned with CamScanner

26. Thus, a judge has gone through the pleadings, framed the issues, recorded the depositions, made notes on the arguments, and is now ready to prepare the judgment. A judge has to speak through his judgment therefore there should be clarity in his delivery and decisions to be supported by reasons. Lengthy judgments invite criticism and are boring.

Hon'ble Mr. Justice M.M. Corbett, Former Chief Justice of the Supreme Court of South Africa, recommended a basic structural form for judgment writing:

(a) Introduction section:

(b) Setting out of the facts:

(c) The law and the issues:

(d) Applying the law to the facts:

(e) Determining the relief; including costs;

(f) Finally, the order of the Court.

Hon'ble Justice Roslyn Atkinson, Judge, Supreme Court of Queensland,

in her ladyship speech once stated that there are four purposes for any judgment that is written:

(a) to spell out judges own thoughts;

(b) to explain your decision to the parties;

(c) to communicate the reasons for the decision to the public; and

(d) to provide reasons for an appeal court to consider

Scanned with CamScanner

The meaning of 'Judgment' elucidated by the Hon'ble Apex Court in **Cellular Operators Association of India Vs. Union of India, AIR 2003 SC 899, wherein held that**

In Balraj Taneja and Anr. v. Sunil Madan and Anr. [(1999) 8 SCC 396] it has been held :

> "Judgment" as defined in section 2(9) of the Code of Civil Procedure means the statement given by the Judge of the grounds for a decree or order. What a judgment should contain is indicated in Order 20 Rule 4(2) which says that a judgment "shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision." It should be a self-contained document from which it should appear as to what were the facts of the case and what was the controversy which was tried to be settled by the court and in what manner. The process of reasoning by which the court came to the ultimate
>
> conclusion and decreed the suit should be reflected clearly in the judgment."

In **Union of India and Ors. v. Manager, M/s Jain and Associates [(2001) 3 SCC 277]**, the Hon'ble Court held as follows :

> "The result is before pronouncing judgment, the court has to apply its mind to arrive at the conclusion whether there is any cause to modify or remit the award. Further the phrase "pronounce judgment" would itself indicate judicial determination by reasoned order for arriving at the conclusion that decree in terms of award be passed. One of the meanings given to the word "judgment" in Webster's Comprehensive Dictionary [International Edn., Vol. I (1984)] reads thus : "the result of judging; the decision or conclusion reached, as after consideration or deliberation". Further, Order 20 Rule 4(2) CPC in terms provides that "judgment" shall contain a concise statement of case, the points for determination, the decision thereon, and the reasons for such decision. This is antithesis to pronouncement of non-speaking order."

Scanned with CamScanner

Relevant Provisions For Judgment

(a) ORDER XX Rule 1 of CPC r/w Rule 142 of A.P.Civil Rules of Practice: **Judgment when pronounced**

It is the court's obligation to pronounce a judgment after hearing a case.This judgment must be pronounced in open court, either immediately or on a future date, with due notice to the parties or their legal representatives. The court should endeavor to pronounce the judgment within 15 days, and at most within 30 days, of the case's conclusion. If a delay exceeds 30 days, the reasons must be recorded, and a new date fixed for pronouncement.

Where it is not practicable so to do on the ground of the exceptional and extraordinary circumstances of the case, the Court shall fix a future day for the pronouncement of the judgment, and such day shall not ordinarily be a day beyond sixty days from the date on which the hearing of the case was concluded, and due notice of the day so fixed shall be given to the parties or their pleaders. The fair copy of the judgment required for the record in court

shall be prepared with in five days of the date on which on which judgment is pronounced. NOTE:- In the case of Small Cause Suits "Fair" judgments will be required only in contested suits

(b) ORDER XX Rule 2 of CPC: **Power to pronounce judgement written by judge"s predecessor: -** A Judge shall pronounce a judgment written, but not pronounced, by his predecessor.

Reference: **AIR 1990 SC 1737**

Belgees Begum etc., vs Govt. of A.P. and others, (1994) 1 LS 244,

wherein Hon'ble High Court of Andhra Pradesh held thus:

Scanned with CamScanner

Para No.12.The learned Judges further observed as follows :

"That would mean that the Judgment to be operative does not await signing thereof by the Court."

To a similar effect is the Judgment of the Supreme Court supra. In the said case, a Division Bench consisting of Kidwai and Bhargava, JJ. heard the arguments in a Criminal Appeal on 11-12-1952 and reserved the judgment. Before it could be delivered, Justice Bhargava, J. was shifted to Allahabad from Lucknow. While at Allahabad, Bhargava, J. dictated a judgment treating it to be a judgment of both and signed on every page of the Judgment as well as at the end and sent it to Kidwai, J. at Lucknow. On 24-12-1952, before the Judgment was delivered, Bhargava, J. passed away. However, on 5-1-1953, Kidwai, J, delivered the Judgment at Lucknow and signed it and put the dated as well. A question arose as to whether the Judgment was a valid one since by the time it was delivered, Bhargava, J. died. It is not a case where the Judgment was pronounced in open Court. While considering the said question, Bose, J. who spoke for the Supreme Court, stated as follows at Page 196; of AIR :

"In our opinion, a Judgment within the meaning of these sections is the final decision of the Court intimated to the parties and to the world at large by formal "pronouncement" or "delivery" in the open Court. It is a judicial act which must be performed in judicial way. Small irregularities in the manner of pronouncement or the mode of

delivery do not matter but the substance of the thing must be there; that can neither be blurred nor left to inference and conjecture nor can it be vague. All the rest - the manner in which it is to be recorded, the way in which it is to be authenticated, the signing and the sealing, all the rules designed to secure certainity about

Scanned with CamScanner

its content and matter - can be cured; but not the hard core, namely the formal intimation of the decision and its content for ally declared in a judicial way in open Court."

(c) ORDER XX Rule 3 of CPC: **Judgment to be signed**

State Bank Of India & Ors vs S.N. Goyal (2008) 8 SCC 92 wherein the Hon'ble Apex Court dealt with Order XX of the Code of Civil Procedure, 1908 that deals with Judgments and Decrees. It was observed that Order XX Rule 1 (3) provides that a judgment may be dictated in open court and its transcript forms a part of the record of the case, after making such corrections as may be necessary. And Order XX Rule 3 provides that once a judgment has been pronounced and signed, it shall afterwards be altered or added to only according to law.

Hence, mere dictation does not amount to pronouncement and "therefore, a Judge becomes functus officio when he pronounces, signs and dates the judgment (subject to Section 152 and power of review).

Section 152 of CPC: Judgment cannot be altered or added except under section 152 or on review. In cases where the judgment was pronounced in open court and signed, it cannot be altered or added except under section 152 of CPC or on review.

(d) ORDER XX RULE 4 OF CPC:-**specifies the content of a judgment, with different requirements for judgments of Small Cause Courts and other courts.**

Judgment of Small Cause Court: A judgment of a Small Cause Court need not set out reasons for the decision though as a matter of practice it is usual to given reasons except in unimportant cases.

Scanned with CamScanner

But the judgment must set out the point for determination and the decision on each court.

Ramesh Chand Ardawatiya Vs Anil Pajwani, **AIR 2003 SC 2508**, while considering the provisions of Order IX, Rule 6 and Order VIII, Rule 10 of the CPC, it was observed that even if the suit proceeds *ex-parte* under Order IX, Rule 6 of the CPC, the necessity of proof by the plaintiff of its case cannot be dispensed with.

Meenakshisundaram Textiles Vs Valliammal Textiles, **2011 (3) CTC 168**, it was held that, even an *ex-parte* judgment should contain reasons. The Civil Procedure Code does not say that the Court is bound to grant a decree in case the defendant is absent."

Maya Devi Vs Lalta Prasad, **(2015) 5 SCC 588**,

it was held that *the absence of defendant to contest the suit does not invite a punishment in the form of an automatic decree*.

Berger Paints India Ltd., rep by its Senior Vice President and anr vs Syed Vicaruddin 2005 (1) ALT 614, wherein his Lordship held that

Para No. 12. The definition of judgment under sub-section (9) of Section 2 itself mandates that the judgment should be self- contained and from a reading of the same, the facts, the nature of controversy, the decision of the Court and the reasons therefor, must be evident. After referring to Rule 4(ii) of Order 20 and the definition u/s 2(9), the Supreme Court held in **Balraj Taneja and Another Vs. Sunil Madan and Another**.

"Judgment should be a self-contained document from which it should appear as to what were the facts of the case

Scanned with CamScanner

and what was the controversy which was tried to be settled by the

Court and in what manner. The process of reasoning by which the Court came to the ultimate conclusion and decreed the suit should be reflected clearly in the judgment. Whether it is a case which is contested by the defendants by filing a written statement, or a case which proceeds ex parte and is ultimately decided as an ex parte case, or is a case in which the written statement is not filed and the case is decided under Order 8, Rule 10, the Court has to write a judgment which must be in conformity with the provisions of the Code or at least set out the reasoning by which the controversy is resolved."

(e) **ORDER XX Rule 5 r/w XIV Rule 2 of CPC r/w :**

Court to state its decision on each issue. In suits in which issue, have been framed, the Court shall state its finding or decision, with the reasons therefore, upon separate issue, unless the finding upon any one or more of the issue is sufficient for the suit.

Kavanna Vana Kowndappa Mudali vs Vanjammal AIR 1936 Mad 278

wherein held that "A judge cannot import his own private knowledge or opinion into a case but must decide it on the evidence before him."

Ajit Mohan vs Legislative Assembly, Delhi, 2021 SCC OnLine SC 495 wherein held that "it is the need of the hour to write clear and short judgments which the litigant can understand. The Wren & Martin principles of

Scanned with CamScanner

precis writing must be adopted."

Surjeet Singh v. Sadhu Singh, (2019) 2 SCC 396

wherein held that "there was no need to cite several decisions and that too in detail. Brevity being a virtue, it must be observed as far as possible while expressing an opinion."

Form of Judgment:- Rule 143 of AP Civil Rules of Practice :

a. The judgment of the court shall be headed with the full cause-title of the suit, appeal or mater, the name of the Judge, and the date on which it was passed, and shall state the names of the parties or their advocates who appeared at the hearing and be drawn up in consecutive numbered paragraphs and shall also state the dates on which the case was heard as in Form No. 24 and a list of exhibits filed and witnesses examined shall be annexed thereto.

Some important points to be remember while writing judgments:-

(a) **UNIFORM PARAGRAPH NUMBERING FOR JUDGMENTS**

In **BS Hari Commandant vs UOI & ors 2023 SCC online SC 413**, the Hon'ble Apex court held that

46. In Shakuntala Shukla v State of Uttar Pradesh, 2021 SCC OnLine SC 672, this Court had the occasion to observe: "35.

Scanned with CamScanner

... A judgement should be coherent, systematic and logically organised ...".

47. Likewise, in *State Bank of India v Ajay Kumar Sood, 2022 SCC OnLine SC 1067, this Court* opined: "21. It is also useful for all judgments to carry paragraph numbers as it allows for ease of reference and enhances the structure, improving the readability and accessibility of the judgments. A Table of Contents in a longer version assists access to the reader." (emphasis supplied)

48. It is desirable that all Courts and Tribunals, as a matter of practice, number paragraphs in all Orders and Judgments in seriatim, factoring in the judgments afore extracted.

- **THE CASTE OR RELIGION of a litigant should never be mentioned in the cause title of the judgment.**

Very recent landmark judgment of Hon'ble Apex Court in **State of Rajasthan Vs Gautam, S/o Mohanlal 2023 SCC Online SC 1306** wherein their Lordships held :

> **Para No.15** : **The caste or religion of a litigant should never be mentioned in the cause title of the judgment.** We have already observed in our order dated 14th March 2023 that such practice should never be followed. The cause title in this judgment has been amended accordingly. Formal amendment be carried out after pronouncement of this judgment.

1. **LANGUAGE OF THE JUDGMENT: Simple and easier reading**

Each judge has a different way of writing judgments, and there may be wide variation in style. Each judge has an individual manner of expression. A Judge while writing the judgment should express in a language and style which suits him. What is more important is lucidity rather than style. Lucidity should be the prime aim in Judgment writing. Eminent jurists

Scanned with CamScanner

recommend using short sentences, without packing too many ideas in a single sentence. While setting out facts, a judge should try to maintain a simple straight forward flow.

Repetition of words or phrases should be avoided and normal rules of grammar should be observed. Flowery language and literary allusion should be avoided as such over indulgence may detract from the seriousness of the judgment. For easier reading, active rather than passive voices should be used. While writing a judgment, it is often necessary to refer to the judgments of superior courts which would contribute in reasoning.

The Hon'ble Apex Court in the case of **JOINT COMMISSIONER OF INCOME TAX, SURAT VS SAHELI LEASING AND INDUSTRIES LTD** **(2010) 6 SCC 384** **laid out the guidelines for writing judgments** in the following terms:-

> **"7.** These guidelines are only illustrative in nature, not exhaustive and can further be elaborated looking to the need and requirement of a given case:-
>
> (a)It should always be kept in mind that nothing should be written in the judgment/order, which may not be germane to the facts of the case; It should have a co-relation with the applicable law and facts. The ratio decidendi should be clearly spelt out from the judgment / order.
>
> (b) After preparing the draft, it is necessary to go through the same to find out, if anything, essential to be mentioned, has escaped discussion.
>
> (c) The ultimate finished judgment/order should have sustained chronology, regard being had to the concept that it has readable, continued interest and one does not feel

Scanned with CamScanner

like parting or leaving it in the midway. To elaborate, it should have flow and perfect sequence of events, which would continue to generate interest in the reader.

(d)Appropriate care should be taken not to load it with all legal knowledge on the subject as citation of too many judgments creates more confusion rather than clarity. The foremost requirement is that leading judgments should be mentioned and the evolution that has taken place ever since the same were pronounced and thereafter, latest judgment, in which all previous judgments have been considered, should be mentioned. While writing judgment, psychology of the reader has also to be borne in mind, for the perception on that score is imperative.

(e) Language should not be rhetoric and should not reflect a contrived effort on the part of the author.

(f)After arguments are concluded, an endeavor should be made to pronounce the judgment at the earliest and in any case not beyond a period of three months. Keeping it pending for long time, sends a wrong signal to the litigants and the society.

(g) It should be avoided to give instances, which are likely to cause public agitation or to a particular society. Nothing should be reflected in the same which may hurt the feelings or emotions of any individual or society."

(a) **REASONING:** Reasoning is the heart and soul of the judgment. The main object of reasoning in the judgment explained by the **Hon'ble Justice R.V. Raveendran**, in **"Rendering Judgments- Some Basics"**, **(2009) 10 SCC (J)**

The main functions of a reasoned judgment are:

- to inform the parties(litigants) the reasons for the decision;
- to demonstrate fairness and correctness of the decision;

Scanned with CamScanner

- to exclude arbitrariness and bias;
- to ensure that justice is not only done but also seen to be done; and
- to facilitate the higher forums of appeal to appreciate/examine the issues involved in any case more appropriately. The very fact that a judge has to give reasons that will have to stand scrutiny by the Bar and the public as also by the higher courts, brings in certain amount of care and caution on the part of the judge and transparency in decision making.

In very recent judgment of Hon'ble Apex Court in

State Project Director, UP Education for All Project Board & Ors. vs Saroj Maurya & Ors (2024 SCC Online SC 2602), wherein held that : by relying on the judgment of **CCT v. Shukla & Bros. (2010) 4 SCC 785**

"Reason is the very life of law. When the reason of a law once ceases, the law itself generally ceases (Wharton's Law Lexicon). Such is the significance of reasoning in any rule of law. Giving reasons furthers the cause of justice as well as avoids uncertainty. As a matter of fact it helps in the observance of law of precedent. Absence of reasons on the contrary essentially introduces an element of uncertainty, dissatisfaction and give

entirely different dimensions to the questions of law raised before the higher/appellate courts."

2. **NEUTRALITY AND IMPARTIALITY:-** There is a difference between neutrality and impartiality. Impartiality requires cool reason uncontaminated thinking without being influenced by personal commitments, biases and preconceptions. The neutrality on the other hand means the Judge is non-aligned. A Judge may begin being

Scanned with CamScanner

neutral and continue to be so in the process of the trial, but at the end he has to decide the case in favour of either of the parties without any partiality. Impartiality requires a Judge to rise above all values and perspectives.

(a) **EVIDENCE AND ITS APPRECIATION:**

Only that much part of oral or documentary evidence including electronic records should be quoted and analytically appreciated in the judgments or orders which is really needed for deciding the rights and liabilities of the parties or the controversies involved in a case. Unnecessary or irrelevant part of the evidence should normally be avoided and need not be discussed. The derivative or the conclusion derived from the appreciation of evidence should be recorded in the form of findings with clarity in the judgments or orders.

(b) **CLARITY IN FINDINGS:** There must be clarity in the views or findings recorded by the judge in his judgment or order and it should be devoid of ambiguity or confusions.

Pramina Devi (D) thr. Lrs. V. State Of Jharkhand 2022 LL (SC) 273

The judgment must have a clarity on the exact relief that is granted by the Court so that it may not create further complication and/or difficulty in the execution. Every litigant must know what actual relief he has received from the Court.

Scanned with CamScanner

M/s Trojan & Co.Ltd vs Rm.N.N.Nagappa Chettiar, AIR 1953 SC 235

It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the Court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case.

(c) The relief granted or refused for the liability etc. imposed and the ultimate result or fate of the case should be clearly recorded in the last part of the judgment or order which is generally called operative part and it should be given a separate paragraph.

Reference case law: **Shakuntala Shukla vs State of Uttar Pradesh, AIR 2021 SC 4384**

(d) **USE OF DIGNIFIED & PROPER WORDS FOR LAWYERS :**

Use of only dignified language and words for the lawyers conducting the case has been very long drawn tradition of the courts. Use of words like "Learned or Ld." for the lawyers for the parties has been the tradition of courts and therefore whenever and wherever there is a need to mention the word counsel or advocate, it should be prefixed by the dignified word learned or Ld.

(1) **QUOTING RULINGS IN JUDGMENTS :-**

Scanned with CamScanner

In **State of Bombay vs. United Motors**, (1955) SCR 1069, wherein held that 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 here.

(e) **JUDGMENT TO BE PRONOUNCED ONLY IN THE OPEN COURT:**

In miscellaneous proceedings as well as in suits and appeals, judgment must not only be pronounced in open court, but also dated and signed in open court at the time when it is pronounced and before the decree or order in pursuance of such judgments is drawn up.

Puvvada Narasimhamurthy vs Gadi Satyavathi, AIR 1976 AP 400

Para No. 10.Moreover under Order 20, Rule 1, C.P.C. the court after the case has been heard, shall pronounce judgment in open court by dictation to Shorthand Writer, wherever it is permissible. It bears the date on which it is pronounced. The date of the judgment is never altered by the date on which the signature has been put subsequently. The date of the decree under Order 20, Rule 7, C.P.C. would also be the date on which the judgment was pronounced. It is therefore clear that under the C.P.C. stress is laid upon the pronouncement or delivery of the judgment as a judicial act, which has got legal effect.

(f) **HARSH AND OFFENDING WORDS AND LANGUAGE SHOULD BE AVOIDED IN JUDGMENTS:**

Recording harsh or offending or critical or derogatory remarks against the parties, their counsel, witnesses or against any other person in judgments

Scanned with CamScanner

and orders should be avoided. Judges must act independently and boldly while deciding a case but should not make atrocious remarks against the party or a witness or even against the subordinate court.

(g) **NO REPETITIONS:**

There should be no repetitions of the views already expressed by the judge in his judgment/order. Judgment must not contain self-contradictory passages into it: A judgment should not be inconsistent in itself and should not incorporate passages repugnant to each other.

Reference case law: **State of West Bengal Vs. Kesoram Industries Ltd, AIR 2005 SC 1646.**

(h) **ABBREVIATIONS, CODE WORDS AND DIFFICULT WORDS IN JUDGMENTS SHOULD BE AVOIDED:**

A common man cannot and shall not be able to understand the abbreviations and the code words used in the judgment. It is well settled that the use of abbreviations and the code words should be strictly avoided. It is equally well settled that the judgment should be so precise and so clear that a common man or a litigant must understand the judgment. The language should be sober, temperate and clear.

Rule 65. of AP Criminal Rules of Practice: No Abbreviations in Judgments:- Abbreviations shall not be used in Judgments or Orders

Reference: Smt. Hina Singh Vs. Satya Kumar Singh, AIR 2007 Jharkhand 34 (DB).

Scanned with CamScanner

(i) **TIME LIMIT FOR PRONOUNCING JUDGMENT FROM THE DATE OF CONCLUSION OF ARGUMENTS :**

Where argument is heard day after day or arguments are heard afresh, cases in which judgments are delivered more than one month after the close of evidence have to be entered in the quarterly return though no explanation need be furnished in the last column of the said return if the judgment is pronounced within one month of the commencement of argument i. e. within one month of the first date on which the arguments were heard.

➔ **UPLOADING JUDGMENTS AND DIGITAL SIGNATURE :**

It is relevant to note the Judgment of Hon'ble Apex Court in **State Bank of India vs. Ajay Kumar Sood, (2023) 7 SCC 282** wherein their Lordships held that

Para No.22 Courts must ensure uploading of their judgments and orders and their accessibility by using digital signatures, but not mere their scanned versions of printed copies: The importance of making judgments accessible to persons from all section of society, especially persons with disability, needs emphasis. All judicial institutions must ensure that the judgment and orders being published by them do not carry improperly placed watermarks as they end up making the documents inaccessible for persons with visual disability who use screen readers to access them. On the same note, courts and tribunals must also ensure that the version of the judgment and orders uploaded is accessible and signed using digital signatures.

Scanned with CamScanner

Hon'ble Justice R.V.Raveendran, Judge, Supreme Court of India in a lecture delivered at the National Judicial Academy, Bhopal, on **"Rendering Judgments – Some Basics"** **(Decision making & Judgment writing)**

The following paragraphs would be relevant:-

➔ Cases are not disposable commodities to be treated as mere statistics. Their purpose is not to provide a livelihood for lawyers or provide monthly disposal quota to Judges. Cases have to be decided purely on merits. A Judge should remain impartial. He should shun bias or prejudice. He should not be affected by pressures — either external or internal.

➔ It is better to ask questions, understanding the issue and then decide rather than attempting a decision without fully grasping the issues or the finer nuances of law involved. The object of your questions and observations, of course, should be to elicit relevant clarifications and not to exhibit your knowledge and learning.

➔ The very fact that a Judge has to give reasons that will have to stand scrutiny by the Bar and the public as also by the higher courts, brings in certain amount of care and caution on the part of the Judge and transparency in decision-making.

➔ Several lengthy judgments which purport to be reasoned judgments but do not contain any reasons. They extract the pleadings, catalogue the documents, refer to the evidence in detail, set out the arguments, and then proceed to, or rather jump to a conclusion or decision, without analysis or reasons for the conclusion. A judgment, howsoever detailed or lengthy, will be unintelligible or "non-speaking", if it fails to disclose

Scanned with CamScanner

the reasons for the decision.

➔ Simple words, short sentences, brief statement of relevant facts, thorough analysis of the evidence, clear enunciation of the legal position, proper application of the law to the facts and grant of appropriate reliefs warranted by the case in clear terms, are the hallmarks of a properly written judgment or order.

Before parting, I am curious to note the quote relating to 'Judgment writing' by **LORD DENNING**:

I try to make my judgments live…

I start my judgment, as it were with a prologue – as the chorus does in one of Shakespeare's plays – to introduce the story. Then I go from act to act as Shakespeare does – each with its scenes drawn from real life…

I draw the characters as they truly were – using their real names… I avoid long sentences like the plague because they lead to obscurity. It is no good if the hearer cannot follow them…

I know that people are prone not to accept my view unless they have support in the books. But never at much length. Only a sentence or two. I avoid all reference to pleadings and orders.

They are mere lawyers' stuff, they are unintelligible to everyone else. I finish with a conclusion – an epilogue – again as the chorus does in Shakespeare. In it I gather the threads together and give the result.

CONCLUSION:-

Scanned with CamScanner

Judgment writing reflects the personality of the judge and, therefore, it is necessary that it should be written with care and after mature reflection. Reasoning is the heart and soul of the Judgment.

It is my bounden duty to expres my heartfelt gratitude and thanks to the **Hon'ble Principal District & Sessions Judge Smt.M.Babita Madam and the Hon'ble High Court of Andhra Pradesh** for giving me this opportunity for presenting paper on "Judgment Writing".

References:-

1. Code of Civil Procedure, 1908
2. Andhra Pradesh Civil Rules of Practice
3. National Judicial Academy web, Bhopal (the art & craft of writing judgments)
4. Rendering Judgments – Some Basics by Hon'ble Justice R.V.Raveendran
5. Law helpline

Scanned with CamScanner