# JUDGMENT WRITING

*by*

**Smt.K.Satya Kumari,**
II Additional District Judge,
Proddatur

## (1) Introduction:

The Judicial precedents define Judgment to mean a decision which affects the merits of the question between the parties determining some right of liability. It is understood as a statement given by the Judge on the grounds of a decree or order, as defined under Section 2 (9) of the Code of Civil Procedure.

## (2) What is a Judgment?

Judgment as defined in Section 2 (9) CPC 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) 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 exparte and is ultimately decided as an exparte 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].**

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. **[Gurdit Singh V. State of Punjab, (1974) 2 SCC 260].**

The word "**judgment**" has a concept of finality in a broader and not a narrower sense **[Shah Bahulal Khimji V. Hayaben D. Kania, (1981) 4 SCC 8].**

Section 2 (9) of Code of Civil Procedure defines the term **'Judgment'**, which means, the statement given by the Judge on the grounds of a Decree or Order. While pronouncing the judgment, a judge must keep in mind what a judgment should contain and what should not contain.

## (3) What is an Order?

Section 2 (14) CPC, defines order to mean the formal expressions of any decision of a Civil Court which is not a decree.

**(4) What is a Decree?**

A decree is a formal expression of an adjudication which conclusively determines the right of parties with regard to all or any of the matters in controversy in a suit, could be preliminary or final decree with the exceptions (see Section 2 (2) CPC). Thus essentially a Judgment/Order/Decree determines rights of parties to a 'lis'.

In the words of Socrates:-

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

**"Decree"** is defined in Section 2 (2) of Code of Civil Procedure. The decree may include preliminary or final. When the decree conclusively determines the rights of parties it is final and it is preliminary when further proceedings have to be taken before the suit can be completely disposed off. Sometimes it may be partly preliminary and partly final.

As the beginning of the judgment introduces the 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 previously been discussed.

Thus, Judge has gone through the pleadings, framed the issues, recorded the deposition, 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 decision 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.

Recommends 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

**Elaborating on the above structural form it is said**:-

a) Introduction section should state how the matter has come up before the Court, description of parties and their activities in brief, relationship of parties, etc and in precise terms what the case is about.

b) The facts of the case could be gathered from the pleadings, not a verbatim repetition, but to the extent necessary, and from the evidence placed before Court. At this stage it is convenient to set out the undisputed facts first. As far as the disputed facts it would be logical to defer it after the issues are identified and while considering each individual issue. You are liberty to discard evidence and facts which are not relevant to the issues in the case. Judges should see that their pronouncements are judicial in nature and do not normally depart from sobriety, moderation and reserve. They should refrain from being sarcastic in their judgments. The language of the judgment should be entirely devoid of anything approaching factiousness. Be precise, make your sentences short and adopt simple language. By developing a habit of summarizing in your own words will lead to a better and more accurate understanding of the case. When it comes to the disputed issues of fact, it is not just a question of clear and logical narrative, but bringing out one's Judgment to bear on the evidence and decide where the truth lies.

c) Identification of the law and the issues depends on the case and different situations. (i) Facts may be common and the decision will depend on how the disputed question is resolved (ii) Parties may agree on the law and its application, and the decision will depend on how the facts are determined (iii) Both, fact and law may be in dispute and both have to be resolved, (iv) Where there is no dispute about facts or law, but the case depends on how the law is to be applied to the facts.

d) The next stage is applying the law to the facts. It determines how the case is to be decided. Once the basic facts and law have been decided, the answer is clear. But, this may not be so in all cases, and when it is so the Court has to decide the principle of law which has to be applied by deciding the matter, by considering the circumstances of the case by adopting a fair, reasonable and proper interpretation.

e) Determining the relief (including costs) depends upon the findings of law and fact and the conduct of the proceedings.

f) Finally the order of the Court must be carefully drafted in the light of the findings as to the relief to be granted.

**(5) <u>The requirements of a Judgment in Civil Suit</u>**:-

i. Cause-title
ii. Heading of the Judgment, including the title of suit
iii. Gist of Pleadings
iv. Issues
v. The particulars of the evidence relied on by both parties.
vi. Arguments advanced by the counsels.
vii. Evaluation of relevant evidence with the application of law (both procedural and substantive)
viii. Findings and reasons there for.

**(6) <u>General principles regarding judgment</u>**

**(i) <u>Language of the Judgment</u>**: - One has to keep in mind that the Judgment is not only for the parties but also for the appellate court to scrutinize the judgment on merits. A Judgment must be written in a form as may enable everyone to follow and understand it.

**(ii) <u>Proper use of English Grammar</u>**: - For easy understanding, proper use of Grammar and punctuation is always necessary. Proper use of grammar shows professionalism of a Judge and thereby it makes writing easier to understand. Judge should go through judgments by superior courts and senior judges to appreciate the use of style and language in making judgments more professional. British English must be used at all times and American English must be discouraged. Latin phrases could be used if and when it is necessary to do so.

- It is advised to use clear sentence structures and organization. It is better to Identify characters before telling what they did. It is desirable to use spot citations like exact pages. Be formal, clear, simple and free of jargon. It is always better to use plain English. Of course, Latin phrases may be used sparingly where necessary and inevitable.
- Section 354 of Cr.P.C (Sec.393 of BNSS) prescribes the language of the judgment and requires the points for determination, the decision thereon, the reasons for the decision that it shall be dated and signed in open court. His lordship **KRISHNA IYER, J**. observed as follows: The Justice System ceases to be functional if courts do not make the technology of statutory construction serve the betterment of society.

- It is always better to avoid use of complicated language or phraseology just for the fun of it. Use simple verbs and keep them as close to the subject which they refer as possible. A judgment should not be prolix or verbose. The language should be sober and temperate and not satirical or factious. It is always better to prefer to use active voice rather than using passive voice. Although good style is very much a matter of personal test, but the basic rules of grammar, structure and above all, common sense, should be applied.

**(iii)** **It should not be too long or too laboured and should not be repetitive**:- A judgment should not be a lengthy one and there should be no repetition of ideas or expressions and care should be taken while discussing the depositions of the parties. Judgment should be precise and concise. But it should not be sketchy or superficial. A judgment is a sketchy one, if a judge takes a few points from here and few points from there. While using the computers, one has to keep in mind, the commands of cut, copy and paste, because these controls are creating much inconvenience both to the parties and to the Hon'ble Appellate Courts. The findings should not be based on those sketchy points alone. The judgment should contain the points why the losing the party lost his case and why the prevailing the party won the case.

**(iv)** **Use of abbreviations or code words should be avoided**: The Judgment should not contain abbreviations or code words and they must be strictly avoided.

**(v)** **Judgment to be balanced**: A judgment should also be balanced, not only in ideas but also in arrangement of different topics discussed therein. Emotion or sentiment of a judge should not be reflected in Judgment. All issues of fact and law should be dealt in a proper manner. The judge should also not to be over-impressed by some aspects of the case so as to resulting other aspects, less important perhaps, being ignored altogether.

**(vi)** **Every issue has to be decided separately**. Whenever more than one issue is inter-linked, the evidence can be discussed together, but the findings of each issue should be separately mentioned. A judgment should be based on the evidence on record only. The personal knowledge of the judge should be avoided while evaluating the legally valid evidence.

**(vii)** A judgment should not be based on any new point (fact or law), which is within the exclusive knowledge of judge at the time of writing the judgment and opportunity must be given to the parties to adduce evidence or to advance arguments.

**(viii)** **Reference of parties and witnesses**: The parties and witnesses shall be referred in the same manner in the entire judgment. For Example:- If A is the plaintiff and he is examined as PW1, the entire judgment should contain the reference of plaintiff as PW1. Care should be taken to spell proper nouns, names, persons and places in the same manner throughout the judgment. Likewise, the documents referred in the judgment must also be referred as Ex.A1 and Ex.B1 like that.

**(ix)** **Decree to agree with judgment**: A decree must always be agree with judgment and shall be drawn up in terms of the language used by the judge in operative portion of the judgment. If the relief claimed by the plaintiff in the plaint is in clear and simple words, it might be sufficient for Judge to extract the same wording in the operative portion of the Judgment. If the relief claimed is in the complicated words or in an ambiguous manner and vague, it becomes the duty of Judge to make the operative portion of the judgment in a clear, specific manner.

**(x)** When a suit is partly dismissed and partly decreed the judgment should be in specific words relating to the relief granted and the relief denied and should not be ambiguous.

**(xi)** **Grant of installments**: If the court directs a decree to be paid by installment, the order with respect thereto should again be clear and specific. Whenever installments are granted, the amount of installments and the period for their payment should be specifically stated without any confusion. Future interest shall also be mentioned with specific commencement of date.

**(7) A judgment must follow a structured format:**

Introduction, Facts, Charges/Issues, Evidence Analysis, Findings, and Decision. Use simple, precise, and reader-friendly language. The judgment should be understandable to a layperson and reflect judicial reasoning, not verbosity. Analyzing each piece of evidence individually (appreciation) and then group the accepted ones under relevant issues or facts (marshaling). Provide brief reasoning

for each finding. Use legal provisions, illustrations, and case precedents (if required) to explain why a certain conclusion is drawn. Each paragraph should add something new either a fact, analysis, or conclusion. Use clear language in the last paragraph.

For example: ***"Hence, the suit is decreed with costs."*** **or** ***"The accused is convicted under Section 325 IPC and sentenced to rigorous imprisonment for 2 years".*** Revise bare acts and standard case laws for each subject. Use provisions like Section 101-114 of the Indian Evidence Act (Now Section 104 – 119 of Bharatiya Sakshya Adhiniyam, 2023) in criminal cases or Order XIV Rule 1 CPC in civil cases.

**(8) <u>Framing of Issues</u>:-**

An issue is a proposition of law or fact made by one party but opposed by the other. Framing of issues is probably the most significant part of the trial. Order 14 of CPC describes about framing of issues. In a civil case, each issue must be stated distinctly. Issues are of fact or law. Issues may also arise from mixed question of fact and law. It is always feasible to decide preliminary issues like jurisdiction of Court before going into the merits of the case. Issues of law may dispose of the case and may be tried first. Remember even after taking evidence, additional issues may be framed. However, as was pointed out in **Desi Kedri v. Huzurabad Co-operative Marketing Society Ltd.**, it was held that Issues need not be framed when there is no dispute with regard to material averments in the plaint.

The judgment should set forth the evidence on each issue sufficiently to show its nature, what it proposes to establish, and its credibility. Judge should frame issues properly. Any error or mistake in framing of issues, value time of court would be wasted and hereby adjudication of such case would be delayed. Loaded issues should not be framed. Issues must be clear and specific. The formulation of issues, should be initiated as early in the proceedings as possible. In **Board of Trustees of the Port of Mormugao v. V.M. Salgaokar and Brothers** it has been laid down that Draft issues submitted by one party should not be mechanically adopted by the Court as it is primarily the duty of the judge to frame the issues in the cases. Once the parties are clear in their mind about the essential questions, they may shorten the proceedings. It also helps to focus the mind of the Judge on the precise matters to be determined.

**(9) Judgments in Criminal Cases:-**

While rending Judgments in Criminal cases, the following are to be observed as required under Section 354 Cr.P.C. (Sec.393 of BNSS). The Judgment shall contain the point or points for determination, the decision and the reasons for the decision, the Section of I.P.C. or other law under which the accused is convicted and punishments to which he is sentenced. Separate sentence must be passed by the Court in each proved offence. The Judgment should also indicate (1) whether the sentence to run concurrently or consecutively (2) whether the accused is entitle for set-off or not, the period of detention, if any, undergone by him as under trial. (Sec. 427 and 428 Cr.P.C.) (Sec.467 and 468 of BNSS). In case of acquittal, the Court shall state the offence of which the accused is acquitted and direct that he be said at liberty.

In a criminal case the framing of the charge is most important. The Magistrate or the Judge should see that a proper charge is framed and for this purpose he may consult the draft charges given in the Law of Crimes by Ratanlal. In the matter of offences under other Acts, it should be seen that all the ingredients of the offences are specified in the charge with all material particulars.

Courts should only deal with the subject-matter of the case and issues involved therein. The courts should desist from issuing directions affecting executive or legislative policy, or general directions unconnected with the subject-matter of the case. A court may express its views on a particular issue in appropriate cases only where it is relevant to the subject-matter of the case. ***[Som Mittal Vs. Government of Karnataka, (2008) 3 SCC 574].***

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.

Judgments should be expressed in a language and style which suits the decision-maker. What is more essential is lucidity rather than style. Lucidity should be the prime aim in Judgment writing. Eminent jurists recommend using short sentences, without packing too many ideas in a single sentence. While setting out facts try to maintain a simple straight forward flow. Repetition of words or phrases to be avoided and observe normal rules of grammar. Flowery language and literary allusion may be avoided and such over indulgence may detract from the seriousness of the Judgment. For easier reading, employ the active rather than the passive voice. This creates a more direct impact eg., *Passive voice: "he was acquitted by the Court", Active voice: "The Court acquitted him"* "I shall always remember my first day as a Magistrate" This is much better than "My first day as a

Magistrate will always be remembered by me". In writing a Judgment it is often necessary to refer to the Judgments of superior Courts which would aid in your reasoning.

**(10) <u>Edit the Judgment</u>**:-

It is commonly said that there is no such thing as good writing, there is only good rewriting. Preparing a draft judgment is hard work. But the hardest work begins when the draft Judgment is finished. Good editing ensures that a judgment is lucid, thorough, coherent, concise and has transparent reasoning. It identifies flaws, such as the use of discriminatory language. Editing is a manifold task that should include:-

- using a checklist of topics or issues to ensure that the judgment embraces all that it should and that all issues are resolved
- checking names, dates, figures and other data for accuracy
- eliminating repetition
- excluding irrelevant findings of fact
- pruning lengthy quotations of law, passages of transcript, or extracts from affidavits or documents tendered in evidence
- removing and replacing Latin expressions, jargon or outmoded expressions
- eliminating explanations of the obvious
- using the active voice rather than the passive voice, wherever possible
- simplifying lengthy, complex sentences and adopting short sentences, where appropriate
- checking the use of punctuation to avoid ambiguity and facilitate comprehension scrutinizing the length and content of paragraphs.

Of course, time is a factor in determining how much editing is possible. But even when a decision must be delivered urgently, some editing is still required, especially to ensure that the decision covers all the issues raised for determination. Where there is no immediate pressure of time (other than the imperative to deliver a decision as expeditiously as practicable), a more thorough revision should be undertaken. The more a judgment is edited or revised, the better it will be, within reason.

**(11) <u>Set out points for determination</u>:-**

In a criminal case, it is the duty of judge to set out points for determination and to give decisions on each points in the judgment (Ref: **Swaminathan Ambalam v. P.K.Nagaraja Pillai**, 1973 Mad.110). It is the duty of the trial Court to refer to the evidence in respect of the points of the points at issue between the parties before he arrives at his findings; (Ref: **R.K.Lukhoisna Singh v. Yumnam Laingam Singh**, AIR 1961 Mani 10). A judgment containing findings without proper pleading and necessary issues is bad. Language of the judgment should not be unbalanced; Ref: **D.Morcopollo and Co. (P) Ltd. v. D.D.Marcopollo and Co. (P) Ltd., Employees Union**, 1958 SC 1012. A party, who has raised a contention which is available to him under the law, is entitled to a fair and proper hearing on that and to finding by the courts of fact on such contention; Ref: **Minala v. Anchi Devi**, AIR 1965 Pat 66. If it is a criminal trial, he may proceed to notice charges and in other matters, the points for determination within the periphery of which the evidence led by the parties can be marshalled and sifted and the arguments of their counsel examined. As to criminal case is concerned, Section 354 of the Code of Criminal Procedure (Sec.393 of BNSS) provides that the judgment should contain points for determination for decision and the reasons for such decision. Framing of issues in a civil case and charges in criminal trial are the essential requirements of law.

**(12) <u>Burden of proof</u>:-**

It is always essential to remember to state clearly and correctly who bears the burden to prove the case or issue stated and to what standard. In criminal cases, the principle is beyond all reasonable doubt whereas in civil cases, it is on the preponderance of probabilities with some exceptions where fraud is pleaded. Application of the law to the facts of the case:- Judgment should refer to the principles applicable as to the case law and the statutory law. Application of the law the facts of a case is the crux of judgment writing.

What we call appreciation of evidence in the judgment is done at this stage. Judge should evaluate the evidence as a whole for the both sides. This is where the ratio decidendi is stated and the case is decided finally.

**(13) <u>Avoid Loading Judgment with Citations/Authorities</u>**:-

When several authorities are brought before court, Judge should apply only relevant cases and distinguish those he considers not applicable. It is significant to note that judgment should not be loaded with several authorities. Only relevant

authorities must be referred to in the judgment. It is good to avoid loading judgment with authorities. While writing a judgment, the task of the Judge is such that reference should be made to arguments for both sides, apply the law objectively and draw a conclusion on each issue/point for determination. No doubt, it is true that the case annotations are an important research tool. While referring to a case citation, if authority is required, it is suggested that only the leading or most cogent authority is used. Do not write in the case of Y v Z. This is tautologous. Rather use In Y v Z or Y v Z decided that . . . Where there are several parties the reference in the reports will be to others or another. The preferred citation **M/s. Kranti Asso. Pvt.Ltd. and another vs. Masood Ahmed Khan and others**. In subsequent references to a case omit another and others unless either is necessary to make sense of what is being written.

**(14) <u>How to quote citations:</u>**

Avoid quoting editor s not in judgments. The Editors do not deliver judgments but prepare Head-note/placitum according to their understanding. (**Akhilesh Jindani (Jain) and another v. State of Chhattisgarh**, 2002 CriLJ 1660). In **Prakash Amichand Shah v. State of Gujarat and others**, 1986 AIR 468, the Hon'ble Five Judges Bench held that a decision ordinarily is a decision on the case before the Court, while the principle underlying the decision would be bindings as a precedent in a case which comes up for decision subsequently. Hence, while applying the decision to a later case, the Court which dealing with it should carefully try to certain the true principle laid down by the previous decision. A decision often takes its colour from the questions involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. Presiding officer must go through the entire judgment to understand the ratio laid down in it.

**(15) <u>Potent factors while writing judgment in criminal side</u>:-**

Essential elements that constitute a crime charged are to be considered. Generally, every crime except fort ose crimes of strict liability, have elements for both the mesrea and actusrue.

Ingredients should be stated clearly and fully resolved one by one in logical order to ensure the judgment flows. Remember that judge speaks through judgment to the parties and other stakeholders. The judgment should quote the charges as the case may be immediately after the narration of facts of the case.

Chapter XXVII of the Code of Criminal Procedure, 1973 provides for the

Judgment. Section 353 (Sec.392 of BNSS) requires the judgment in every trial to be pronounced in open Court immediately after the termination of the trial, or at some subsequent time of which notice shall be given to the parties or their pleaders.

The judgment as provided in Section 354 (Sec.393 of BNSS), is to be written in the language of the Court, and shall contain the point or points for determination, the decision thereon and the reasons for the decision. The section further provides that the judgment shall specify the offence (if any) of which, and the section of IPC, or other law under it, accused is convicted and punishment to which he is sentenced. If the judgment is of acquittal, it shall state the offence of which the accused is acquitted and direct that accused should be set at liberty, if he is in judicial custody and his presence is not required in other case. Property order should carefully noted in the result portion. In case of conviction for an offence punishable with death or in the alternative with imprisonment for life, the judgment has to state the reasons for sentence awarded and special reasons for death sentence. In case of conviction with imprisonment for a term of one year or more, a shorter term of less than three months, also requires the Court to record reasons for awarding such sentence unless the sentence is one of imprisonment, till the rising of the Court or unless the case was tried summarily under the provisions of the Code. For orders under Section 117 (for keeping peace and for good behaviour), Section 138(2) (confirming order for removal of nuisance),

Section 125 (for maintenance) (Sec.144 of BNSS) and Section 145 or 147 (Sec.164 or 166 of BNSS) (disputes as to immovable properties), the Code provides in sub-section (6) that order shall contain the point or points for determination, the decision thereon and the reasons for the decision.

Section 355 (It was deleted in BNSS) explains a summary method of writing judgment by Metropolitan Magistrate, giving only particulars regarding the case, name, parentage and residence of the accused and complainant, the offence complained of or proved; plea of the accused and his examination (if any); the final order and the date of order, and where appeal lies, a brief statement of the reasons for the decision.

The order to pay compensation where the Court imposes sentence or fine; order of compensation for groundless arrest and the order to pay cost in non-cognizable cases, may be made with the judgment under Sections 357 (Sec.395 of BNSS), 358 (Sec.399 of BNSS) and 359 (Sec.400 of BNSS) of the Code. Section 360 (Sec.401 of BNSS) provides for order to release on probation and special

reasons in certain cases where the Court deals with accused person under Section 360 (Sec.401 of BNSS) or Probation of Offenders Act, 1958. Section 357-A (Sec.396 of BNSS) of Cr.P.C should be considered for awarding compensation to the victim.

As was held by the Hon'ble Supreme Court of India, even interim compensation can be granted to victim in criminal cases. Name of the victim in cases like rape, outrage of woman etc., should be avoided.

**(16) <u>Appreciation of evidence</u>:-**

Appreciation of evidence in criminal case differs to that of the appreciation of evidence in civil case because in criminal cases, the prosecution has t prove the guilt of accused beyond all reasonable doubt whereas in civil case, the case should be disposed of on principle of preponderance of probabilities. The truth or otherwise of the evidence has to be weighed pragmatically.

A salient feature is such that a court ought to satisfy itself from the evidence whether the conditions under which the identification is claimed to have been made were or were not difficult and to warn itself of the of the possibility of mistaken identity. The Court should then proceed to evaluate the evidence cautiously and carefully so that it does not convict or uphold a conviction, unless it is satisfied that mistaken identity is ruled out. To fulfill this task, the Court must consider the evidence as a whole, namely the evidence if any, of factors favouring correct identification together with those rendering it difficult. It is trite law that no piece of evidence should be weighed except in relation to all the rest of evidence. The court would be required to analyze the evidence of related witnesses and those witnesses who are inimically disposed towards the party.

After careful analysis and scrutiny of their evidence, the version given by the witnesses appears to be clear, cogent and credible, there is no reason to discard the same.

**(17) <u>Avoid harsh or disparaging remarks against persons and authorities:</u>**

As was pointed **Niranjan Patnaik v. Sashibhusam Kar and another**, 1986 (2) SCR 47, harsh or disparaging remarks are not to be made against persons and authorities whose conduct comes into consideration before courts of law unless it is really necessary for the decision of the case. Use of intemperate language or making disparaging remarks against any one unless that be the requirement for deciding the case, is inconsistent with judicial behaviour. In the case of **State of M.P. v. Nandlal Jaiswal and others, (1986) 4 SCC 566**, his

Lordship Bhagwati, Hon'ble Chief Justice, held:

> *We may observe in conclusion that judges should not use strong and carping language while criticizing the conduct of parties or their witnesses. They must act with sobriety, moderation and restraint. They must have the humility to recognize that they are not infallible and any harsh and disparaging strictures passed by them against any party may be mistaken and unjustified and if so, they may do considerable harm and mischief and result in injustice*.

**(18) <u>The decision on each and every issue framed or points formulated</u>**:

The Judge/Magistrate may thereafter proceed to decide the issues or the points for determination, in the order they are framed. Likewise if it is a criminal trial, findings should be recorded charge wise. He should discuss the arguments of each party with reference to their evidence relevant to the issue / point in the question. Evidence of each of the issue / point should be sifted in the context of arguments raised. The Presiding Officer should record his finding on each of such issues by supplying his own reasons and giving logic for his doing so and not just by accepting the case of one party or rejecting that of the other.

Findings on each of the points should be recorded in such a manner that they remain cohesive and linked to each other. The judgment should be sound reasoned. As was pointed out in **Makhan Lal Bangal v. Manas Bhunia [(2001) 2 SCC 652]**, the issues are important as they determine the scope of a trial by laying down the path for the trial to proceed, free from diversions and departures.

**(19) <u>Reasons for decision</u>**:

A bald decision unsupported by any reasons has not really been countenanced or recognized as a judicial decision. **(See. Bansi and others v. Hari Singh and others AIR 1956 All 297)**. What is required is a reasoned judgment and not reasons for the judgment. As was observed by the Hon'ble Apex Court in catena rulings, the necessity of giving reasons flows as a necessary corollary from the rule of law which constitutes one of the basic principles of our constitutional set up. **(Ref: Ram Murti Saran vs State of U.P. and others; AIR 1971 All 54)**. It is bad to consider only one side in isolation of the other. Judge should give clear and sound reasons for the decision and demonstrate that both sides have had their propositions considered. In the judicial sphere reasons

have always formed an integral part of the decision in a broad sense. Never consider one side in isolation of the other.

**(20) <u>Justice delayed is Justice denied</u>**:

Time is of the essence in the delivery of justice. Delay in handing down the decision increases their agony and frustration. Of course, Justice hurried is Justice buried. What is more important is that litigants must have complete confidence in the results of litigation. This confidence tends to be shaken if there is excessive delay between hearing of arguments and delivery of judgments. **(Ref: R.C.Sharma v. Union of India (1976) 3 SCC-574**. It is the duty of the Court that judgment should be delivered at the earliest possible time. Order XX Rule 1 of CPC in its proviso requires that every endeavour should be made by the Court to pronounce the judgment within thirty days from the date on which the hearing of the case is concluded and if it is not practicable to do so on the ground of the exceptional and extraordinary circumstances of the case, the Court should fix a future date for pronouncement of the judgment which should ordinarily be not beyond sixty days from the date on which the hearing of the case was concluded. Coming to criminal cases are concerned, the Hon ble Supreme Court in **Hussainara Khatoon v. State of Bihar [AIR 1979 SC 1364]** has held that a system of criminal procedure which did not prescribe a speedy trial could not be said to be either fair or reasonable and speedy trial is of essence to criminal justice and there can be no doubt that the delay in trial by itself constitutes denial of justice.

**(21) <u>Clerical and arithmetical mistakes</u>**:-

The presiding officer should take care to ensure that there are no substantial/major change in the judgment. However, if any clerical or arithmetical errors are found, those can be rectified in the interest of both parties. Sections 152 and 153 of CPC can be invoked to correct the clerical and arithmetical mistakes or to make clerical corrections. Ref: **Smt. Thimmamma v. Sri H.Eshwarappa** (2015). The Hon ble Apex Court in **Hari Singh Mann v. Harbhajan Singh Bajwa**, (2001) 1 SCC 169: (2000 AIR SCW 3848: AIR 2001 SC 43: 2001 Cri.LJ 128), held that *Section 362 of the Criminal Procedure Code (Sec.403 of BNSS) mandates that no Court, when it has signed its judgment or final order disposing of a case shall alter or the same except to correct a clerical or an arithmetical error and that this section is based on an acknowledged principle of law that once a matter is finally disposed of by a Court, the said Court*

*in the absence of a specific statutory provision becomes functus officio and disentitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by the Court of competent jurisdiction*.

**Hon'ble Mr.Justice R.V.Raveendran,** Judge, Supreme Court of India in a recent lecture delivered at the National Judicial Academy, Bhopal, on "Rendering Judgments – Some Basics" (Decision making & Judgment writing) has set out elaborately on the topic of the day. The following paragraphs would be relevant for the Judges assembled there.

- 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. External pressures are those which lead to bias or prejudice on account of friendship, hostility, enmity, relationship, caste, community, religion, political affiliation, or promised or expected financial benefits. Internal pressures arise on account of a Judge's ideology or philosophy or attitude. A Judge should not allow these to cloud his judicial impartiality. Many a Judge whose honesty and integrity are not doubted, give room for being branded as Judges with recognized disposition or ideology. Depending on his ideology or leaning, he ends up earning the sobriquet: a "landlord Judge" or a "tenant Judge"; or as a "convicting Judge" or an "acquitting Judge"; or as a "pro-government Judge", or an "anti-establishment Judge"; or as a "pro-rich Judge" or "pro-poor Judge"; or as a "pro-labour Judge" or a "pro-management Judge"; or as a "relief-oriented Judge" or a "technical Judge"; or as a "liberal Judge" or a "negative Judge". Of course each Judge, as a human being, is bound to have convictions, prejudices, notions, philosophies and views which may unconsciously influence and mould his decision and reflect upon the manner in which he administers justice.
    - When a Judge ceases to have an open and impartial mind, he ceases to be fair and just. In short, he ceases to be a Judge.
    - When a Judge puts on his judicial robes, he should put off not only friendships, relationships, caste, community, religion, political sympathies, but also put off his prejudices, per notions, and personal

philosophies. He cannot owe any kind of allegiance to anything other than impartiality, truth and justice. Impartiality is a virtue, which is not easy to achieve, acquire or maintain. It requires consent effort and sacrifice.

- Integrity is one of the building blocks which makes up impartiality.
- Litigation is diverse-civil, criminal, family commercial, tort, administrative, constitutional, labour, taxation, etc. Judges will have to adopt different approaches for different types of cases. An understanding of human feelings may be necessary in family disputes.
- 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.

➢ In dealing with Criminal Cases, [Common sense, logic, respect for moral values and an understanding of human psychology, are necessary for a Judge to render effective justice. Sound common sense, perception as to what is right and wrong, and commitment to justice are the tools that would assist in criminal cases]

- The main functions of a reasoned judgment are:(i) to inform the parties (litigants) the reasons for the decision; (ii) to demonstrate fairness and correctness of the decision; (iii) to exclude arbitrariness and bias; and (iv) to ensure that justice is not only done, but also seen to be done. 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 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.

**Conclusion**:

Judgment writing is the most practical test of our legal aptitude, and avoiding these common mistakes can make a substantial difference in our final score. The key is to practice regularly, follow a standard format, and apply the law logically and clearly.

Judge should consider the evidence as a whole before deciding case finally. After judgment is ready, and before pronouncing judgment in open court, the presiding officer must carefully check the entire judgment and in case of any spelling mistakes are found, those should be corrected then and there itself. Beware of copying data from the computers. At most care should be taken while copying text from the computers/internet. It is always to profit worth to avoid referring to the educational qualifications of a judge in the judgment. Parties come to Court because they are aggrieved.

* * *