Law relating to Civil Procedure

Lesson 6

KEY CONCEPTS

■ Judgement ■ Decree ■ Order ■ Adjudication ■ Decree-holder ■ Judgement- debtor ■ Acquiesce ■ Set-off ■ Counter-claim ■ Temporary Injunction ■ Interlocutory Orders ■ Commercial Courts

Learning Objectives

To understand:

- Basic definitions and concepts under Code of Civil Procedure
- Structure, Venue and Jurisdiction of Civil Courts
- The doctrine of *Res Judicata* and sub-judice
- The basics of Institution of Suits
- The stages of institution of civil suits
- The process of issue of summons
- The provisions relating to appeals, reference, review and revisions
- Procedure of institution of summary suits
- The applicability of Commercial Courts Act
- Pre institution mediation under Commercial Courts Act

Lesson Outline

- Introduction
- Aim and scope of Civil Procedure Code, 1908 [C.P.C.]
- Some important terms
- Structure of Civil Courts
- Stay of Suit (Doctrine of Res Sub Judice)
- Res Judicata
- Jurisdiction of Courts and Venue of Suits
- Place of Suing (Territorial)
- Set-off, Counter-claim and Equitable Set-off
- Temporary Injunctions and Interlocutory Orders (Order XXXIX)
- Detention, Preservation, Inspection etc. of Subject-matter of Suit
- Institution of Suit (Order IV)
- Important stages in Proceedings of a Suit
- Delivery of Summons by Court
- Appeals
- Reference, Review and Revision
- Suits by or Against a Corporation
- Suits by or against Minors and Lunatics
- Summary Procedure
- Powers of Civil Courts and their Exercise by Tribunals
- Commercial Courts Act, 2015
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings and References

The new criminal laws i.e. Bharatiya Nyaya Sanhita 2023, Bharatiya Nagarik Suraksha Sanhita 2023 and Bharatiya Sakshya Adhiniyam 2023 have repealed Indian Penal Code 1860, Criminal Procedure Code 1973 and Indian Evidence Act 1872 (old criminal laws) respectively.

Therefore, by virtue of Section 8 of General Clauses Act 1897, the references to the old criminal laws, unless a different intention appears, be construed as references to the provision of new criminal laws.

"Civil Procedure" means, body of law concerned with the methods, procedures and practices used in civil litigation.

- Black's Law Dictionary 6th Edn.

REGULATORY FRAMEWORK

- Code of Civil Procedure, 1908
- Orders under the Code of Civil Procedure, 1908

INTRODUCTION

The Company Secretary and the Secretarial Staff of a Company need to be familiar with the essentials of the basic procedural laws of the country. While the specific corporate, industrial, taxation, property and urban land laws have direct relevance for the efficient performance of the duties and responsibilities of the Company Secretary, the procedural law provides the parameters for the pursuance of legal action. It is therefore, necessary to keep in view the requirement of the procedural law. Such law is often termed "adjective law", in the handling of corporate business, even in initial stages, which could have legal implications at some subsequent stage. Such monitoring and guidance is required to be rendered by the Company Secretary and other Secretarial Executives to the line management for safeguarding the interests of the company. It has been endeavoured in this Chapter to summarise one of such aspects of Indian procedural laws which have to be referred to by the Company Secretaries.

AIM AND SCOPE OF CIVIL PROCEDURE CODE, 1908 [C.P.C.]

The Civil Procedure Code consolidates and amends the law relating to the procedure of the Courts of Civil jurisdiction. The Code does not affect any special or local laws nor does it supersede any special jurisdiction or power conferred or any special form of procedure prescribed by or under any other law for the time being in force. The Code is the general law so that in case of conflict between the Code and the special law the latter prevails over the former. Where the special law is silent on a particular matter the Code applies, but consistent with the special enactment.

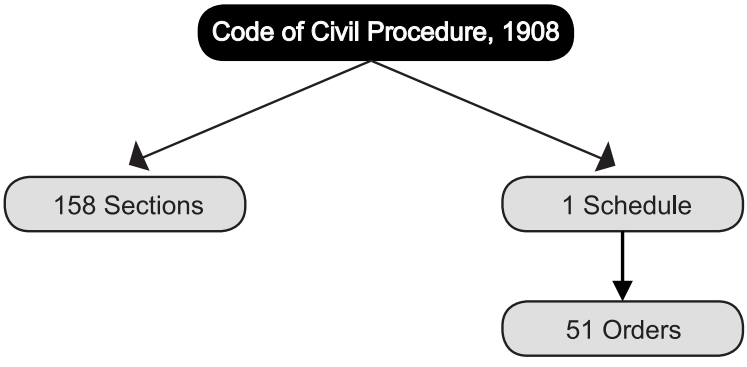
One of the defining characteristics of Indian judicial system is the time it takes to settle a dispute. While some of it is because of huge pendency of cases and lack of infrastructure, the procedural laws like Civil Procedure Code also have a role to play. With the current focus on Ease of Doing Business (EoDB) and 'enforcement of contract' being one of the sub-parameters for the determination of EoDB rank, judicial delays has been one of the focus areas of judicial reforms. Keeping this in mind the Government came up with 'The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015' (Commercial Courts Act, 2015 for short). Section 16 of this new Act has amended CPC in its application to Commercial Disputes which are covered under the Act.

Question: Where a general statute and a specific statute relating to the same subject matter cannot be reconciled, which law shall prevail?

Options: A. General Law B. the special or specific statute C. Both shall cease to operate

Answer: B

SCHEME OF THE CODE



The Civil Procedure Code consists of two segments. 158 Sections form the first segment and the rules and orders contained in Schedule I, form the second segment. The object of the Code generally is to create jurisdiction while the rules indicate the mode in which the jurisdiction should be exercised. Thus the two parts should be read together, and in case of any conflict between the body and the rules, the former must prevail.

Question: How many sections are in Code of Civil Procedure, 1908?

Options: (A) 156 (B) 157 (C) 158 (D) 159

Answer: (C)

SOME IMPORTANT TERMS

Cause of Action

"Cause of action" means every fact that it would be necessary for the plaintiff to prove in order to support his right to the judgement of the Court. Under Order 2, Rule 2, of the Civil Procedure Code it means all the essential facts constituting the rights and its infringement. It means every fact which will be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgement.

It may also be described as a bundle of essential facts which is necessary for the plaintiff to prove before he can succeed and is the foundation of suit.

Section 20 of CPC introduces the concept of cause of action. A cause of action in respect of a suit is essentially its *raison d'etre* – the factual circumstances which led to the dispute arising between the parties. Section 20(c) provides jurisdiction to the court which is located in the local limits of where the cause of action, "*wholly or in part*", arises. The phrase "*wholly or in part*" is an important qualifier. The Supreme Court, in *South East Asia Shipping v. Nav Bharat Enterprises*, has held that cause of action is essentially a bundle of facts which led to the genesis of the dispute, and to the plaintiff obtaining a right in law to approach the court for legal redress. The cause of action, therefore, necessarily includes an act of the defendant, in the absence of which the suit itself could not possibly exist. Mentioning the cause of action in pleadings is prerequisite under the CPC, with Order II Rule 2 and Order VII Rule 1.

Judgement, Decree and Order

Judgement

"Judgement" as defined in Section 2(9) of the Civil Procedure Code means the statement given by the Judge of the grounds of a decree or order. Thus a judgement must set out the grounds and reasons for the Judge to have arrived at the decision. In other words, a "judgement" is the decision of a Court of justice upon the respective

rights and claims of the parties to an action in a suit submitted to it for determination (*State of Tamilnadu* v. *S. Thangaval,* AIR (1997) S.C. 2283).

Decree

"Decree" is defined in Section 2(2) of the Code as:

(i) the formal expression of an adjudication which, so far as regards the Court expressing it;

(ii) conclusively;

(iii) determines the rights of the parties;

(iv) with regard to all or any of the matters in controversy;

(v) in the suit and may be either preliminary (i.e., when further proceedings have to be taken before disposal of the suit) or final.

The decree shall be deemed to include the rejection of a plaint and the determination of any question within section 144 (Application for restitution) of the Code.

But decree does not include:

(a) any adjudication from which an appeal lies as an appeal from an Order, or

(b) any order of dismissal for default.

Essentials of a decree are:

There must be formal expression of adjudication.

There must be a conclusive determination of the rights of parties.

The determination must be with regard to matters in controversy.

The adjudication should have been given in the suit.

According to the explanation to the definition, a decree may be partly preliminary and partly final. A decree comes into existence as soon as the judgement is pronounced and not on the date when it is sealed and signed. (Order 20 Rule 7)

A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. The preliminary decree is not dependent on the final. On the other hand, final decree is dependent and subordinate to the preliminary decree, and gives effect to it. The preliminary decree ascertains what is to be done while the final decree states the result achieved by means of the preliminary decree. If the preliminary decree is set aside the final decree is automatically superseded.

Example

In a matter of suit of possession of an agricultural land (immovable property), A approaches to the Court along with the evidence of title he claimed along with claim of mesne profit over the same, and the court may -

1. Pass a decree ascertaining the possession of the property.
2. Give a direction to conduct an enquiry regarding mesne profit.

Passing of a decree deciding the possession will be ***final decree,*** *whereas the part wherein the enquiry regarding the mesne profit is directed will be a* ***preliminary decree.***

Decree-holder

"Decree-holder" means any person in whose favour a decree has been passed or an order capable of execution has been made. [Section 2(3)]

Thus, a person who is not a party to the suit but in whose favour an order capable of execution is passed is a decree-holder.

Judgement-debtor

"Judgement-debtor" means any person against whom a decree has been passed or an order capable of execution has been made. [Section 2(10)]

The definition does not include legal representative of a deceased judgement-debtor.

Example

Due to negligence of Y, person X suffers some injuries and approaches to the court to claim compensation against Y for the same. Court decides the case in favor of X providing him the compensation for the injuries inflicted to him due to Y's negligence.

- *X will be the decree-holder here*
- *Y will be the judgment debtor*

Order

"*Order*" as set out in Section 2(14) of the Code means the formal expression of any decision of a Civil Court which is not a decree.

Appeals from Order

According to Section 104 of the Code, no appeal lies against orders other than what is expressly provided in the Code or any other law for the time being in force. Under the Code appealable orders are:

(i) an order under Section 35A, i.e., for compensatory costs in respect of false or vexatious claims within pecuniary jurisdiction of the Court, but only for the limited ground that no order should have been made, or that such order should have been made for a lesser amount.

(ii) an order under Section 91 or Section 92 refusing leave to institute a suit under Section 91 (Public nuisances and other wrongful acts affecting the public) or Section 92 (alleged breach of trust created for public purposes of a charitable or religious nature).

(iii) an order under Section 95, i.e., compensation for obtaining arrest attachment or injunction on insufficient grounds.

(iv) an order under any of the provisions of the Code imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution of a decree.

any order made under rules from which an appeal is expressly allowed by the rules. No appeal lies from any order passed in appeal under this section.

In the case of other orders, no appeal lies except where a decree is appealed from, any error, defect or irregularity in any order affecting the decision of the case which is to be set forth as a ground of objection in the memorandum of appeal.

A *decree*, shall be deemed to include the rejection of a plaint but not any adjudication from which an

appeal lies or any order of dismissal for default. A preliminary decree decides the rights of parties on all or any of the matters in controversy in the suit but does not completely dispose of the suit. A preliminary decree may be appealed against and does not lose its appellate character by reason of a final decree having been passed, before the appeal is presented. The Court may, on the application of any party to a suit, pass orders on different applications and any order which is not the final order in a suit is called an "interlocutory order". An interlocutory order does not dispose of the suit but is merely a direction to procedure. It reserves some questions for further determination.

Question: Which of the given is not an essential of Decree?

Options: (A) Formal expression of adjudication

(B) Adjudication should have been given in a suit

(C) It shall be made on the same day of pronouncement of Judgement

(D) Conclusive determination of the suit of the parties

Answer: (C)

The main difference between an order and a decree is that in an adjudication which is a decree appeal lies and second appeal also lies on the grounds mentioned in Section 100 of CPC. However, no appeal lies from an order unless it is expressly provided under Section 104 and Order 43 Rule 1. No second appeal in any case lies at all even in case of appealable orders [Section 104(2)]. A decree conclusively determines the rights and liabilities of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final but this is not the case in order.

A person in whose favour a decree has been passed not only includes a plaintiff but in cases like decree for specific performance of an agreement executable by either party, also includes a defendant.

CASE LAW

Vidyacharan Shukla vs. Khubchand Baghel and Ors. (20.12.1963 - SC) : 1964 AIR 1099

Court stated that "a decree is a formal expression of adjudication conclusively determining the rights of parties with regard to all or any of the controversies in a suit, whereas order is a formal expression of any decision of a civil court which is not a decree. Judgment is a statement given by the judge of his grounds in respect of a decree or order. Ordinarily judgment and order are engrossed in two separate documents. But the fact that both are engrossed in the same document does not deprive the statement of reasons and the formal expression of a decision of their character as judgment or order, as the case may be"

STRUCTURE OF CIVIL COURTS

Section 3 of the Civil Procedure Code lays down that for the purposes of this Code, the District Court is subordinate to the High Court and every Civil Court of a grade inferior, to that of a District and every Court of Small Causes is subordinate to the High Court and District Court.

STAY OF SUIT (DOCTRINE OF RES SUB JUDICE)

Section 10 provides that no Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties or between parties under whom they or any of them claim, litigating under the same title, where such suit is pending in the same or any other Court (in India) having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

However, the pendency of a suit in a foreign court does not preclude the Courts in India from trying a suit founded on the same cause of action.

To prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of same matter in issue, Section 10 is enacted. The purpose is also to avoid conflict of decision. It is really intended to give effect to the rule of *res judicata*. The institution of second suit is not barred by Section 10. It merely says that the trial cannot be proceeded with.

A suit was instituted by the plaintiff company alleging infringement by the defendant company by using trade name of medicine and selling the same in wrapper and carton of identical design with same colour combination etc. as that of plaintiff company. A subsequent suit was instituted in different Court by the defendant company against the plaintiff company with same allegation. The Court held that subsequent suit should be stayed as simultaneous trial of the suits in different Courts might result in conflicting decisions as issue involved in two suits was totally identical (*M/s. Wings Pharmaceuticals (P) Ltd. and another* v. *M/s. Swan Pharmaceuticals and others,* AIR 1999 Pat. 96).

Even though if a case is not governed by the provisions of the Section and matters in issue may not be identical, yet the courts have inherent powers to stay suit on principle analogous to Section 10.

Essential conditions for stay of *suits*:

- The matter must be two suits instituted at different times
- The matter in issue in the latter suit should be directly and substantially in issue in the earlier suit
- Such suit should be between the same parties
- Each earlier suit is still pending either in the same Court or in any other competent Court but not before a foreign Court

If these conditions exist, the later suit should be stayed till the disposal of earlier suit, the findings of which operate as *res judicata* on the later suit.

For the applicability of Section 10, the two proceedings must be suits, e.g. suit for eviction of tenant in a rent control statute cannot be sought to be stayed under Section 10 of Civil Procedure Code on the ground that tenant has earlier filed a suit for specific performance against the landlord on the basis of agreement of sale of disputed premises in favour of the tenant.

In such a case, it can not be said that the matter in earlier suit for specific performance is directly and substantially in issue in later suit for eviction. The reason is that a suit for specific performance of contract has got nothing to do with the question on regarding the relationship of landlord and tenant.

Regarding the inherent powers under Section 151, these would also not be used for staying the eviction suit as the same would frustrate the very purpose of the legislation. Therefore, invoking the powers of the Court under this Section, on the facts and circumstances of the case amounts to an abuse of the process of the Court and there can be no doubt that such a course cannot be said to subserve the ends of the justice (*N.P. Tripathi* v. *Dayamanti Devi*, AIR 1988 Pat. 123).

CASE LAW

In ***National Institute of MH & NS v. C.Parameshwara AIR 2005 SC 242,*** Supreme court stated- the fundamental test to attract section 10 is whether on final decision being reached in previous suit, such decision would operate as res judicata in subsequent suit.

Question: Which of the following section of Code of Civil Procedure, 1908 provides for Stay of Suits in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties?

Option: (A) Section 9

(B) Section 10

(C) Section 12

(D) Section 15

Answer: (B)

RES JUDICATA

Section 11 of the Civil Procedure Code deals with the doctrine of *Res Judicata.* According to this provision of no Court shall try any suit or issue in which the matter has been directly and substantially in issue in a former suit (i.e., suit previously decided) either 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 an finally decided by such Court. It is a pragmatic principle accepted and provided in law that there must be a limit or end to litigation on the same issues.

The doctrine underlines the general principle that no one shall be twice vexed for the same cause (*S.B. Temple* v. *V.V.B. Charyulu,* (1971) 1 SCJ 215). The doctrine of *res judicata* prevails over the doctrine of *lis pendens* where there is a conflict between the two.

It prevents two different decrees on the same subject. Section 11 says that once a *res* is *judicata*, it shall not be adjudged again. The principle applies to suits in Section 11 of the Code; but even where Section 11 does not apply, the principle of *res judicata* has been applied by Courts for the purpose of giving finality to litigation. For the applicability of the principle of *res judicata* embodied in Section 11, the following requirements are necessary:

(1) The matter directly and substantially in issue in former suit shall also be directly and substantially in issue in later suit. The expression "directly and substantially in issue" means an issue alleged by one party and denied or admitted by the other either expressly or by necessary implications (*Lonakutty* v. *Thomman*, AIR 1976 SC 1645).

In the matter of taxation for levy of municipal taxes, there is no question of *res judicata* as each year's assessment is final for that year and does not govern latter years (*Municipal Corporation* v. *Madan Mohan,* AIR 1976 43)

A suit for eviction on reasonable requirement was compromised and the tenant was allowed to continue as tenant for the subsequent suit for ejectment on the ground of reasonable requirement, it was found that some reasonable requirement had been present during the earlier suit. The second suit was not maintainable.

(2) The former suit has been decided – former suit means which is decided earlier.

(3) The said issue has been heard and finally decided.

The issue or the suit itself is heard and finally decided, then it operates as *res judicata* and not the reasons leading to the decision (*Mysore State E. Board* v. *Bangalore W.C. & S. Mills,* AIR 1963 SC 1128). However, no *res judicata* operates when the points could not have been raised in earlier suit. (See *Prafulla Chandra* v. *Surat Roit* AIR 1998 Ori. 41). But when a suit has been decided on merits, and the appeal is dismissed on a preliminary point, it amounts to the appeal being heard and finally decided

and the decision operates as *res judicata* (*Mukunda Jana* v. *Kanta Mandal,* AIR 1979 NOC 116).

(4) Such former suit and the latter are between the same parties or litigation under the same title or persons claiming under parties above (*Isher Singh* v. *Sarwan Singh,* AIR 1965 SC 948).

In short, this principle applies where an issue which has been raised in a subsequent suit was directly and substantially in issue in a former suit between the same parties and was heard and decided finally. Findings incidentally recorded do not operate as *res judicata* (*Madhvi Amma Bhawani Amma* v. *Kunjikutty P.M. Pillai,* AIR 2000 SC 2301).

Supreme Court in *Gouri Naidu* v. *Thandrothu Bodemma and others,* AIR 1997 SC 808, held that the law is well settled that even if erroneous, an inter party judgement binds the parties if the court of competent jurisdiction has decided the *lis*. Thus, a decision that a gift made by a coparceners is invalid under Hindu Law between coparceners, binds the parties when the same question is in issue in a subsequent suit between the same parties for partition.

A consent or compromise decree is not a decision by Court. It is an acceptance of something to which the parties had agreed. The Court does not decide anything. The compromise decree merely has the seal of the Court on the agreement of the parties. As such, the principle of *res judicata* does not generally apply to a consent or compromise decree. But when the court on the facts proved comes to a conclusion that the parties intended that the consent decree should have the effect of deciding the question finally, the principle of *res judicata* may apply to it.

The rule of *res sub judice* relates to a matter which is pending judicial enquiry while *res judicata* relates to a matter adjudicated upon or a matter on which judgement has been pronounced. *Res sub judice* bars the trial of a suit in which the matter directly or substantially is pending adjudication in a previous suit, whereas rule of *res judicata* bars the trial of a suit of an issue in which the matter directly and substantially in issue has already been adjudicated upon in a previous suit between the same parties under the same title. *Res judicata* arises out of considerations of public policy *viz.*, that there should be an end to litigation on the same matter. *Res judicata* presumes conclusively the truth of the former decision and ousts the jurisdiction of the Court to try the case. It is however essential that the matter directly and substantially in issue must be the same as in the former suit and not matters collaterally or incidentally in issue.

An application for amendment of a decree is not a 'suit' and may be entertained. But if such an application is heard and finally decided, then it will debar a subsequent application on general principles of law analogous to *res judicata*. However, dismissal of a suit for default, where there has been no adjudication on the merits of the application, will not operate as *res judicata*. Similarly an application for a review of judgment if refused does not bar a subsequent suit for the same relief on the same grounds. In the case of conflicting decrees, the last decree alone is the effective decree which can operate as *res judicata*.

According to Explanation to the Section, the expression 'former' suit has been set out as stated above. The competence of a Court to decide an issue or suit is to be determined irrespective of any provisions as to a right of appeal from the decision of such Court. It is stated in Explanation III that the matter must have been alleged by one party and either denied or admitted expressly or impliedly by the other. Constructive *res judicata* is the doctrine which has been provided for in Explanation IV. According to Explanation IV any matter which might or ought to have been made a ground of defence or attach in such former suit shall be deemed to have been a matter directly and substantially in issue in such (former) suit.

Example

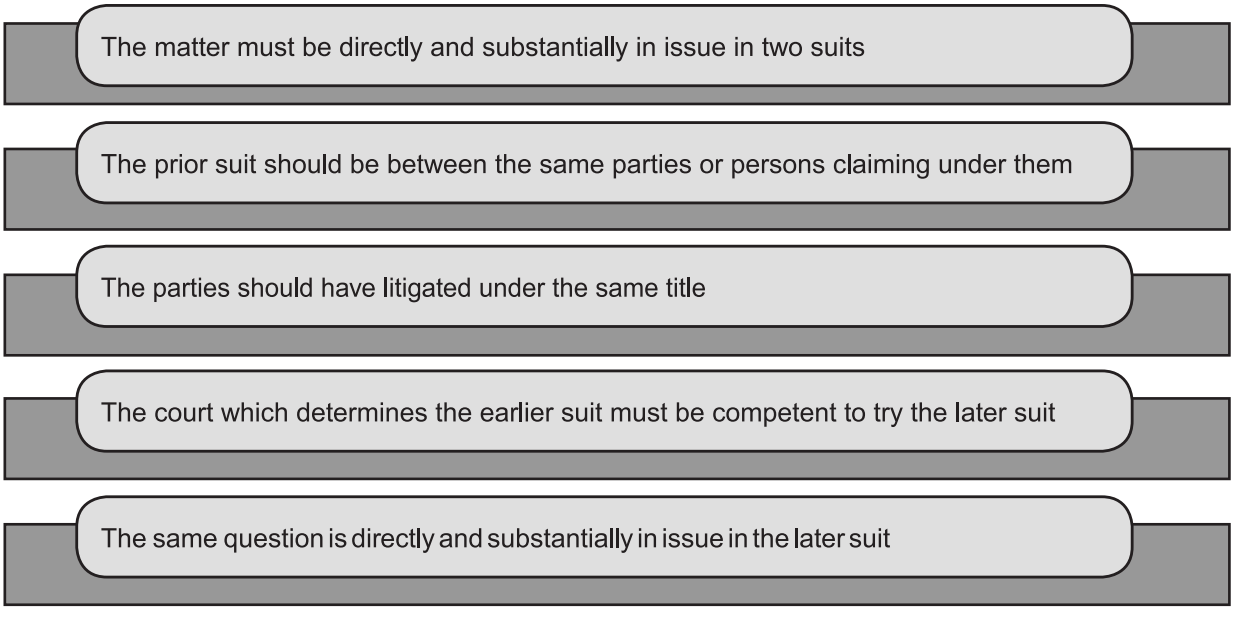
P sues Q for arrears on rent. Q contends that there are no arrears and therefore this suit is baseless and false. P's claim for arrears on rent here is therefore the matter directly and substantially in issue.

Doctrine of *Res Judicata* is based on these grounds of public policy			
There should be an end to litigation.	The parties to a suit should not be harassed to agitate the same issues or matters already decided between them	The time of Court should not be wasted over the matters that ought to have been and should have been decided in the former suit between the parties	It is a rule of convenience and not a rule of absolute justice.

Explanation V states that any relief claimed in the plaint but not expressly granted shall be deemed to have been refused. By Explanation VI it is provided that in the case of a representation suit or class action all persons interested in any public or private right claimed in common for themselves and others are to be deemed to claim under the persons so litigating and *res judicata* shall apply to them.

Explanations VII and VIII have been added by the Amendment Act of 1976. Explanation VII specifically lays down that the principles of *res judicata* apply to execution proceedings. The general summarized of *res judicata* have been summarized in Explanation VIII. It provides that the decisions of a "Court of limited jurisdiction competent to decide such issue" operates as *res judicata* in a subsequent suit though the former Court had no jurisdiction to try the subsequent suit. The general principle of *res judicata* is wider in scope than Section 11 which is applied when a case does not come within four corners of Section 11. However, when the case falls under Section 11 but the conditions are not fulfilled, the general principles of *res judicata* cannot be resorted to. The conditions may be summarized as follows:

Conditions of res judicata:



Example

District Court passed an order over a dispute. In this case, the matter cannot be reinstated in District Court again due to the principle of *Res Judicata*. However, it may be brought before Appellate Court as an appeal.

Bar to further suit

Section 12 puts a bar to every suit where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action. Section comes into force only when a plaintiff is precluded by rules.

JURISDICTION OF COURTS AND VENUE OF SUITS

Jurisdiction means the authority by which a Court has to decide matters that are brought before it for adjudication. The limit of this authority is imposed by charter, statute or a commission. If no such limit is imposed or defined, the jurisdiction is said to be unlimited.

A limitation on jurisdiction of a Civil Court may be of four kinds. These are as follows:-

Jurisdiction over the subject matter	*Place of suing or territorial jurisdiction*	*Jurisdiction over persons*	*Pecuniary jurisdiction depending on pecuniary value of the suit*
The jurisdiction to try certain matters by certain Court is limited by statute; Example: a small cause court can try suits for money due under a promissory note or a suit for price of work done.	A territorial limit of jurisdiction for each court is fixed by the Government. Thus, it can try matters falling within the territorial limits of its jurisdiction.	All persons of whatever nationality are subject to the jurisdiction of the Civil Courts of the country except a foreign State, its ruler or its representative except with the consent of Central Government.	Section 6 of the Code of Civil Procedure, 1908 deals with Pecuniary jurisdiction and lays down that save in so far as is otherwise expressly provided Courts shall only have jurisdiction over suits the amount or value of which does not exceed the pecuniary limits of any of its ordinary jurisdiction. There is no limit on pecuniary jurisdiction of High Courts and District Courts.

Jurisdiction may be further classified into following categories depending upon their powers:

Original Jurisdiction	*Appellate Jurisdiction*	*Criminal and appellate Jurisdiction*
A Court tries and decides suits filed before it.	A Court hears appeals against decisions or decrees passed by sub-ordinate Courts.	The Supreme Court, the High Courts and the District Courts have both original and appellate jurisdiction in various matters.

Courts to try all civil suits unless barred **:** Section 9 of Civil Procedure Code states that the Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognisance is either expressly or impliedly barred. The explanation appended to Section 9 provides that a suit in which the right to property or to an office is contested is a suit of civil nature, notwithstanding that such right may depend entirely on the decision on questions as to religious rites or ceremonies.

Civil Courts have jurisdiction to entertain a suit of civil nature unless barred by law. Every person has an inherent right to bring a suit of a civil nature. Civil Court has jurisdiction to decide the question of its jurisdiction although

as a result of the enquiry it may be found that it has no jurisdiction over the matter. Jurisdiction depends not on the truth or falsehood of facts, but upon their nature. Jurisdiction is determinable at the commencement not at the conclusion of the inquiry [*Rex* v. *Boltan,* (1841) 1 QB 66, 74].

A suit is expressly barred if a legislation expressly says so and it is impliedly barred if a statute creates new right or liability and prescribes a particular tribunal or forum for its assertion. When a right is created by a statute and a special tribunal or forum is provided for its assertion and enforcement, the ordinary Civil Court would have no jurisdiction to entertain such disputes.

Question: *Which of the given is not a criteria for determining jurisdiction of the courts under Code of Civil Procedure, 1908?*

Options: (A) Subject Matter

(B) Territorial Jurisdiction

(C) Pecuniary Jurisdictions

(D) Jurisdiction of Police station

Answer: (D)

Example

Pecuniary jurisdictions of the Courts may be decided on the basis of amounts involved in each case. This may be understood with the help of below example.

Suits amounting to –

- Rs. 1 Lakh – Rs. 3 Lakh may lie with Civil Judge in a particular state
- Rs. 3 Lakh – Rs. 2 crore may lie with District Court in a particular state
- Above Rs. 2 crore may lie with High Court in a certain state

CASE LAW

In A.R. Antulay vs. R.S. Nayak and Ors. (29.04.1988 - SC) : 1988 AIR 1531

The issue was whether the a case triable by Special Judge as provided under Criminal Law Amendment Act, 1952 could be transferred to High Court or not. It was held that Court by its directions cannot confer jurisdiction to High Court of Bombay to try any case by itself for which it does not possess such jurisdiction.

The power to create or enlarge jurisdiction is legislative in character, so also the power to confer a right of appeal or to take away a right of appeal. Parliament alone can do it by law and no Court, whether superior or inferior or both combined can enlarge the jurisdiction of a Court or divest a person of his rights of revision and appeal.

PLACE OF SUING (TERRITORIAL)

Section 15 lays down that every suit shall be instituted in the Court of the lowest grade competent to try it.

According to Section 16, subject to the pecuniary or other limitations prescribed by any law, the following suits (relating to property) shall be instituted in the Court within the local limits of whose jurisdiction the property is situated:

(a) for recovery of immovable property with or without rent or profits;

(b) for partition of immovable property;

(c) for foreclosure of sale or redemption in the case of a mortgage or charge upon immovable property;

(d) for the determination of any other right to or interest in immovable property;

(e) for compensation for wrong to immovable property;

(f) for the recovery of movable property actually distraint or attachment.

It has also been provided by a *proviso* that where relief could be obtained through personal obedience of the defendant such suit to obtain relief for compensation or respecting immovable property can be instituted either in a local Court within whose local limits of jurisdiction the property is situated or in the Court within whose local limits of jurisdiction the defendant voluntarily resides or carries on business or personally works for gain.

According to the Explanation, "property" means property situated in India.

***Where immovable property is situated within the jurisdiction of different Courts*:** Where the jurisdiction for a suit is to obtain relief respecting, or compensation for wrong to immovable property situated within the local limits of jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction the property is situated provided the value of the entire claim is cognizable by such Court. (Section 17)

***Where local limits of jurisdiction of Courts are uncertain*:** Where jurisdiction is alleged to be uncertain as within the local limits of the jurisdiction of which of two or more Courts, any immovable property is situated, then any of the said Courts may proceed to entertain the suit after having recorded a statement to the effect that it is satisfied that there is ground for such alleged uncertainty. (Section 18)

***Where wrong done to the person or to movable property*:** Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the Courts. (Section 19)

***Other suits*:** Subject to the limitations provided by Sections 15, 16, 18 and 19, every suit shall be instituted in a Court within local limits of whose jurisdiction the defendant, or each of the defendants (where there are more than one defendant) actually and voluntarily resides or carries on business or personally works for gain or where such defendants actually and voluntarily resides or carries on business or personally works for gain, provided either the leave of the Court is obtained or the defendant(s) who do not reside or carry on business or personally work for gain at such place acquiesce in such institution or, where the cause of action, wholly or in part, arises. (Section 20).

In the case of a body corporate or company it shall be deemed to carry on business at its sole or principal office in India, or in case of any cause of action arising at any other place, if it has a subordinate office, at such place.

Where there might be two or more competent courts which could entertain a suit consequent upon a part of cause of action having arisen therewith, if the parties to the contract agreed to vest jurisdiction in one such court to try the dispute such an agreement would be valid. (*Angile Insulations* v. *Davy Ashmore India Ltd.,* (1995) 3 SCALE 203).

SET-OFF, COUNTER-CLAIM AND EQUITABLE SET-OFF

Set-off

Order VIII, Rule 6 deals with set-off which is a reciprocal acquittal of debts between the plaintiff and defendant. It has the effect of extinguishing the plaintiff's claim to the extent of the amount claimed by the defendant as a counter claim.

Under Order VIII Rule 6 where in a suit for the recovery of money the defendant claims to *set off* against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff not exceeding the pecuniary jurisdiction of the Court and where both parties fill the same character as in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, present a written statement containing the particulars of the debt sought to be set-off.

Effect of Set-off

Under clause (2) the written statement shall have the same effect as a plaint in a cross-suit so as to enable the Court to pronounce a final judgement in respect both of the original claim and of the set-off, but this shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.

Counter-claim

A defendant in a suit may, in addition to his right of pleading a set-off under Rule 6, set up by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of claim for damages or not. Such counter-claim must be within the pecuniary jurisdiction of the Court. (Order VIII, Rule 6A)

Equitable set-off

Sometimes, the defendant is permitted to claim set-off in respect of an unascertained sum of money where the claim arises out of the same transaction, or transactions which can be considered as one transaction, or where there is knowledge on both sides of an existing debt due to one party and a credit by the other party found on and trusting to such debt as a means of discharging it. Generally the suits emerge from cross-demands in the same transaction and this doctrine is intended to save the defendant from having to take recourse to a separate cross-suit.

In India distinction between legal and equitable set-off is recognised. Order VIII, Rule 6 contains provisions as to legal set-off. Order VIII, Rule 6A recognises the counter-claim by the defendant. Still an equitable set-off can be claimed independently of the Code.

CASE LAW

Jitendra Kumar Khan and Ors. vs. The Peerless General Finance and Investment Company Limited and Ors. (07.08.2013 - SC) : 2013 ALL SCR 3259

The court stated that equitable set-off is different from legal set-off. Equitable set-off is based on principle of justice, equity and good conscience. It was stated:

"that equitable set-off is different than the legal set-off; that it is independent of the provisions of the Code of Civil Procedure; that the mutual debts and credits or cross-demands must have arisen out of the same transaction or to be connected in the nature and circumstances; that such a plea is raised not as a matter of right; and that it is the discretion of the court to entertain and allow such a plea or not."

TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS (ORDER XXXIX)

Temporary injunction

The Court may grant temporary injunction to restrain any such act (as set out below) or make such other order for the purpose of staying and preventing the wasting, damaging, alienation or sale or removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit; where it is proved by affidavit or otherwise:

a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

b) the defendant threatens, or intends to remove or dispose of his property with a view to defrauding his creditors, or

c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit.

It would be necessary for the plaintiff to satisfy the Court that substantial and irreparable harm or injury would be suffered by him if such temporary injunction (till the disposal of the suit) is not granted and that such loss or damage or harm cannot be compensated by damages.

Interlocutory orders

Power to order interim sale

The Court may, on the application of any party to a suit order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any movable property, being the subject-matter of such suit, or attached before judgement in such suit, which is subject to speedy and natural decay, or which for any other just and sufficient cause it may be desirable to be sold at once. (Rule 6)

CASE LAW

Dalpat Kumar and Ors. vs. Prahlad Singh and Ors. (16.12.1991 - SC) : AIR 1993 SC 276 Court held that three main requirements are to be satisfied while granting temporary injunction-

1. *There should be Prima facie case*
2. *If injunction not granted, it would lead to irreparable loss and,*
3. *Balance of convenience*

It was stated by the Court that :

"satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury. The third condition also is that "the balance of convenience" must be in favor of granting injunction.

Example

X file a suit to recover possession of a movable property against Y. During the hearing, X alleged that Y may dispose of the property to his benefit. Court may pass interlocutory order to deposit the same in safe custody as he may deem fit.

DETENTION, PRESERVATION, INSPECTION ETC. OF SUBJECT-MATTER OF SUIT

The Court may, on application of any party to a suit, and on such terms as it thinks fit:

(a) make an order for the detention, preservation or inspection of any property which is the subject-matter of such suit or as to which any question may arise therein;

(b) for all or any of the purposes as in (a) above, authorise any person to enter upon or into any land or building in the possession of any other party to such suit; and

(c) for all or any of the purposes as in (a) above authorise any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence. (Rule 7)

Application for such order to be after notice –

(1) An application by the plaintiff for an order under Rule 6 or Rule 7 may be made at any time after institution of the suit.

(2) An application by the defendant for such an order may be made at any time after appearance.

(3) Before making an order under Rule 6 or Rule 7 on an application made for the purpose, the Court shall, except where it appears that the object of making such order would be defeated by the delay, direct notice thereof to be given to the opposite party.

Deposit of money etc. in the Court

Where the subject-matter of a suit is money or some other thing capable of delivery, and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security subject to further direction of the Court. [Rule (10)]

In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgement, apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like nature arising out of the same contract or relating to the same property or right. The Court may grant an injunction on such terms including keeping of an account and furnishing security etc. as it may think fit.

The grant of a temporary injunction is a matter of discretion of Courts. Such injunction may be granted if the Court finds that there is a substantial question to be investigated and that matter should be preserved in status until final disposal of that question. In granting injunction, the Court has to see the balance of convenience and inconvenience of both sides. If the object of granting a temporary injunction is liable to be defeated by the delay, the Court while passing an order granting interim or temporary injunction, has a notice served on the defendant to show cause why the order granting the interim injunction should not be confirmed. On hearing the objection of the defendant to such injunction, the Court either confirms the interim injunction or cancels the order of injunction.

INSTITUTION OF SUIT (ORDER IV)

Suit ordinarily is a civil action started by presenting a plaint in duplicate to the Court containing concise statement of the material facts, on which the party pleading relies for his claim or defence. In every plaint the facts must be proved by an affidavit.

The main essentials of the suit are –

The plaint consists of a heading and title, the body of plaint and the relief(s) claimed. Every suit shall be instituted in the Court of the lowest grade competent to try it, as to be determined with regard to the subject matter being either immovable or movable property or to the place of abode or of business or the defendant. A suit for a tort may be brought either where the wrong was committed or where the defendant resides or carries on business. A suit for a breach of contract may be instituted in a Court within the local limits of whose jurisdiction the defendant or each of the defendants (where there are more than one) at the time of commencement of the suit actually or voluntarily resides or carries on business or personally works for gain, or where any of the defendants so resides or works for gain or carries on business provided the leave of the Court is given or that the other defendants acquiesce in such situation. A suit for breach of contract may also be instituted where the cause of action arises that is, where the contract was made or where the breach was committed. A suit for recovery of immovable property can be instituted in a Court within the local limits of whose jurisdiction the property or any property of it is situate. Claim for recovery of any immovable property could be for:

(a) *mesne* profits or arrears of rent;

(b) damages for breach of contract under which the property or any part thereof is held; and

(c) claims in which the relief sought is based on the same cause of action.

Where a plaintiff omits to sue in respect of or intentionally relinquishes any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

Regarding other suits, they shall be instituted in a Court within the local limits of whose jurisdiction:

(a) the defendant or each of the defendants if there are more than one at the time of the commencement of the suit actually or voluntarily resides or carries on business or personally works for gain; or

(b) any of the defendants, where there are more than one at the time of the commencement of the suit, actually or voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given or the defendants who do not reside or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action wholly or in part arises.

'Necessary party' and 'Proper party'

A "necessary party" is one whose presence is indispensable for proceeding with the suit and for final decision thereof, on the other hand "proper party" is one in whose absence an effective order can be passed, but whose presence is required for complete and final decision of the suit.

In case of *Hardeva v. Ismail, AIR 1970 Raj 167* two tests have been mentioned for determining the question whether a particular party is a necessary party to a proceeding:

(1) there must be a right to some relief against such party in respect of the matter involved in the proceeding in question; and

(2) it should not be possible to pass an effective decree in absence of such a party.

Order I, rule 8 provides that there are numerous persons having the same interest in one suit, one or more or such persons may with the permission of court sue on behalf of or for the benefit of all persons so interested.

There is essential distinction between 'Necessary Party' and 'Proper Party'. A 'Necessary Party' is one whose presence is indispensable or against whom relief is sought and without whom no effective order can be passed. A 'Proper Party is one in whose absence an effective order can be passed but whose presence is necessary for complete and final decision on question involved in proceedings.

Order I, rule 9 of the Code of Civil Procedure, 1908 reads: No suit shall be defeated by reason of the mis-joinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it:

Provided that nothing in this rule shall apply to non-joinder of a necessary party.

Therefore, general rule is that no suit can be decided without necessary parties to it. However, rule 10 of Order I of the Code of Civil Procedure, 1908, provides for substitution or addition of parties to suit on either of the following two grounds:

(i) He ought to have been joined as plaintiff or defendant and is not so joined; or

(ii) without his presence, the question/issue involved in the suit cannot be completely decided.

Mis-joinder or non-joinder of parties (Order I, rule 9)

Order I, rule 9 says: "No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the court in every suit may deal with the matter in controversy so far as the rights and interests of the parties actually before it:

Provided that nothing in this rule shall apply to non-joinder of a necessary party.

So, where a person, who is necessary or proper party to a suit has not been joined as a party to the suit, it is a case of non-joinder. Conversely, if two or more persons are joined as plaintiffs or defendants in one suit in contravention of Order I, rules 1 and 3 respectively and they are neither necessary party nor proper party, it is a case of mis-joinder of the parties.

Order I, rule 13, provides that all the objections on the ground of non-joinder or mis-joinder of parties shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

Non-joinder (meaning) - Where a person who is a necessary party to a suit has not been joined as a party to the suit, it is a case of non-joinder. A suit should not be dismissed on the ground of non-joinder.

But if the decree cannot be effective without the absent parties, the suit is liable to be dismissed. In case where the joinder of a person as a party is only a matter of convenience, the absent party may be added or the suit may be tried without him.

Mis-joinder - Where there are more plaintiffs than one and they are joined together is one suit, but the right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions alleged to exist in such persons does not arise out of the same act, or transaction and if separate suits were brought, no common question of law or fact would arise, it is case of mis-joinder of plaintiff. Misjoinder of defendants takes place in reverse position.

In case of *B.P. Rao v. State of Andhra Pradesh, 1985 Supp (1) SCC 432: AIR 1986 SC 210: 1985 (51) FLR 501: 1985 Lab IC 1555: (1985) 2 SCALE 256: (1985) Supp 2 SCR 573*, it was held by the Supreme Court that, where the affected persons had not been joined as parties to the petition, and some of them only were joined, the interests

of the persons who were not joined as parties were identical with those persons who were before the court and were sufficiently and well represented, and therefore, the petition was not liable to be dismissed on that ground alone.

"*Cause of action*" means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support his right to the judgement of the Court. Thus, cause of action is a bundle of essential facts which the plaintiff has to prove in order to sustain his action. The cause of action must be antecedent to the institution of the suit. It consists of two factors (a) a right, and (b) an infringement for which relief is claimed.

Every breach of contract gives rise to a cause of action and a suit may be instituted to secure the proper relief in the place –

(a) where the contract was made, or

(b) where the breach has occurred, or

(c) the place where money is payable.

The place of breach is the place where the contract had to be performed or completed.

Where the place of payment is not specified, it is to be ascertained with reference to the intention of the parties and the circumstances of each case.

Misjoinder of Causes of Action – If the plaintiffs are not jointly interested in all the causes of action there is *misjoinder of causes of action*.

All objections regarding misjoinder of parties or of cause of action should be taken at the first hearing of the suit and before the settlement of causes unless the ground for objections had subsequently arisen.

Example: There is a property dispute between X and Y over a piece of land which is in possession of Y.

X filled a suit against Y and also made Z(a reputed businessman) the brother of Y as party to the suit. This is misjoinder of parties.

X filled a suit against Y not for the property in issue but referred to a property that was never in possession of Y. This is misjoinder of cause of action.

IMPORTANT STAGES IN PROCEEDINGS OF A SUIT

1. Presentation of Plaint - According to Order 4, of CPC, every suit shall be instituted by Presentation of Plaint.

2. Service of Summons - According to Order 5, when a suit has duly been instituted, a summons may be issued to the defendant by the court.

3. Filling of Written Statement, set off and Counter claims - According to order 8, the defendant shall, within 30 days from the date of service of summons on him, present a written statement to his defence. This is subject to the proviso to said rule, which may allow to file within 120 days on payment of costs.

4. Appearances of Parties - According to Order 9, the parties should appear on the day fixed by summons.

5. Examination of Parties - Order 10, the court examines the parties to the court.

6. Framing of Issues - The court frames the Issues according to Order 14.

7. Hearings - The court hears the parties according to Order 18.

8. Judgement - The court pronounces the decree according to Order 20.

Question: *Which of the given Order of Code of Civil Procedure, 1908 provides the provision relating to Institution of Suit?*

Option: (A) II (B) IV (C) IX (D) X

Answer: (B)

DELIVERY OF SUMMONS BY COURT

When the suit has been duly instituted, the Court issues an order (known as summons) to the defendant to appear and answer the claim and to file the written statement of his defence if any within a period of 30 days from the date of service of summons. No summons is to be issued when the defendant has appeared at the presentation of plaint and admitted the plaintiff's claim.

The defendant may appear in person or by a duly instructed pleader or by a pleader accompanied by some person to be able to answer all material questions relating to the suit.

Every summons must be signed by the judge or an authorised officer of the Court and sealed with the seal of the Court and be accompanied by a copy of the plaint. (Order 5)

If the requirement of personal appearance of the defendant or plaintiff is felt by the Court, then it has to make an order for such appearance. The summons must contain a direction that it is for the settlement of issues only or for the final disposal of the suit. Every summons must be accompanied by a copy of the plaint. Where no date is fixed for the appearance of the defendant, the Court has no power to dismiss the suit in default. The summons must also state that the defendant is to produce all documents in his possession or power upon which he intends to rely in support of his case.

The ordinary mode of service of summons, i.e., direct service is by delivery or tendering a copy of it signed by the judge or competent officer of the Court to the person summoned either personally or to his agent or any adult male or female member of his family, against signature obtained in acknowledgement of the services.

Order 5, Rule 9 substituted by the Code of Civil Procedure (Amendment) Act, 2002 provides that –

(1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent either to the proper officer, who may be an officer of a Court other than that in which the suit is instituted, to be served by him or one of his subordinates or to such courier services as are approved by the Court.

(2) The services of summons may be made by delivering or transmitting a copy thereof by registered post acknowledgement due, addressed to the defendant or his agent empowered to accept the service or by speed post or by such courier services as are approved by the High Court or by the Court referred to in sub-rule (1) or by any other means to transmission of documents (including fax message or electronic mail service) provided by the rules made by the High Court.

Provided that the service of summons under this sub-rule shall be made at the expenses of the plaintiff.

(3) Where the defendant resides outside the jurisdiction of the Court in which the suit is instituted, and the Court directs that the service of summons on that defendant may be made by such mode of service of summons as is referred to in sub-rule (3) (except by registered post acknowledgement due), the provisions of rule 21 shall not apply.

(4) When an acknowledgement or any other receipt purporting to be signed by the defendant or his agent is received by the Court or postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee or by any person authorised by the courier service to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons or had refused to accept the summons by any other means specified in sub-rule (3) when tendered or transmitted to him, the Court issuing the summons shall declare that the summons had been duly served on the defendant;

Provided that where the summons was properly addressed, pre-paid and duly sent by registered post acknowledgement due, the declaration referred to in this sub-rule shall be made notwithstanding the fact that the acknowledgement having been lost or mislaid, or for any other reason, has not been received by the Court within thirty days from the date of issue of summons.

Where the Court is satisfied that there is reason to believe that the person summoned is keeping out of the way for the purpose of avoiding service or that for any other reason the summons cannot be served in the ordinary way the Court shall order the service of the summons to be served by affixing a copy thereof in some conspicuous place in the Court house and also upon some conspicuous part of the house in which the person summoned is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit. (O.5, R.20, 'substituted service')

Where defendant resides in another province, a summons may be sent for service in another state to such court and in such manner as may be prescribed by rules in force in that State.

The above provisions shall apply also to summons to witnesses.

In the case of a defendant who is a public officer, servant of railways or local authority, the Court may, if more convenient, send the summons to the head of the office in which he is employed. In the case of a suit being instituted against a corporation, the summons may be served (a) on the secretary or on any director, or other principal officer of the corporation or (b) by leaving it or sending it by post addressed to the corporation at the registered office or if there is no registered office, then at the place where the corporation carries on business. (O.29, R.2)

Where persons are to be sued as partners in the name of their firm, the summons shall be served either (a) upon

one or more of the partners or (b) at the principal place at which the partnership business is carried on within India or upon any person having the control or management of the partnership business. Where a partnership has been dissolved the summons shall be served upon every person whom it is sought to make liable.

Defence

The defendant has to file a written statement of his defence within a period of thirty days from the date of service of summons. If he fails to file the written statement within the stipulated time period he is allowed to file the same on such other day as may be specified by the Court for reasons to be recorded in writing. The time period for filing the written statement should not exceed 90 days. Provision though negatively worded is procedural. It does not deal with power of Court or provide consequences of non-extension of time. The provision can therefore be read as directory. (*Shaikh Salim Haji Abdul Khayumsab* v. *Kumar & Ors,* AIR 2006 SC 398.)

In the case of disputes covered under the Commercial Courts Act, 2015 if the defendant fails to file the written statement within a period of 30 days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but within 120 days from the date of service of summons and on expiry of the said period, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.

Where the defendant bases his defence upon a document or relies upon any document in his possession in support of his defence or claim for set-off or counter claim, he has to enter such document in a list and produce it in Court while presenting his written statement and deliver the document and a copy thereof to be filed within the written statement.

Any document which ought to be produced in the Court but is not so produced, such document shall not be received in evidence at the time of hearing of the suit without the leave of the Court (O.8, R.1 and 1A). However this rule does not apply to documents produced for the cross-examination of the plaintiff witnesses or handed over to a witness merely to refresh his memory.

Besides, particulars of set-off must be given in the written statement. A plea of set-off is set up when the defendant pleads liability of the plaintiff to pay to him, in defence in a suit by the plaintiff for recovery of money. Any right of counter claim must be stated. In the written statement new facts must be specifically pleaded. The defendant must deal specifically with each allegation of fact of which he does not admit the truth. An evasive denial is not permissible and all allegations of facts not denied specifically or by necessary implication shall be taken to be.

Appearance of parties and consequence of non-appearance

If both the parties do not appear when the suit is called on for hearing, the Court may make an order that the suit be dismissed (O.9, R. 3 and 4). If the defendant is absent in spite of service of summons and the plaintiff appears, the Court may proceed *ex-parte*.

In case the defendant is not served with summons, the Court shall order a second summon to be issued. If the summons is served on the defendant without sufficient time to appear, the Court may postpone the hearing to a further date. If the summon was not served on the defendant in sufficient time due to the plaintiff's default, the Court shall order the plaintiff to pay costs of adjournment. Where the hearing of the suit is adjourned *ex-parte* and the defendant appears at or before such hearing and assigns a good cause for his previous non-appearance, the defendant may be heard in answer to the suit on such terms as to costs or otherwise.

The defendant is not precluded from taking part in the proceedings even though he may not be allowed to file a written statement. If the plaintiff is absent and the defendant is present at the hearing of the suit, the Court shall make an order for the dismissal of the suit, unless the defendant admits the claim of the plaintiff or a part

thereof in which case the Court shall pass a decree in favour of the plaintiff in accordance with the admission of the defendant and shall dismiss the suit to the extent of the remainder (O.9, R.8).

In any case in which a decree is passed *ex-parte* against a defendant he may apply for setting aside the decree on the ground that the summons was not duly served on him or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing and the Court shall set aside the decree on such terms as to costs payment into Court or otherwise as it deems proper and shall appoint a day for proceeding with the suit (O.9, R.13).

A defendant has four remedies available if an ex-parte decree is passed against him:

(i) He may file an appeal against the ex-parte decree under Section 96 of the C.P.C.

(ii) He may file an application for review of the judgement. (O.47, R.1)

(iii) He may apply for setting aside the ex-parte decree.

(iv) A suit can also be filed to set aside an ex-parte decree obtained by fraud but no suit shall lie for non-service of summons.

It is open to a party at the trial of a suit to use in evidence any one or more of the answers or any part of the answer of the opposite party to interrogatories without putting in the others or the whole of such answers. But the court may direct that any connected answer should also be put in.

Example

Suit between A (plaintiff) and B (respondent) was initiated. Court decided in favor of A on account of non-appearance by B. Court here passed an ex-parte decree. B can apply for setting aside ex-parte order stating sufficient cause.

Discovery and interrogatories and production of documents

"Discovery" means finding out material facts and documents from an adversary in order to know and ascertain the nature of the case or in order to support his own case or in order to narrow the points at issue or to avoid proving admitted facts. Discovery may be of two kinds – (a) by interrogatories (b) by documents.

The objects of discovery are to:

(a) ascertain the nature of the case of the adversary or material facts for the adversary's case.

(b) obtain admissions of the adversary for supporting the party's own case or indirectly by impeaching or destroying the adversary's case.

(c) narrow the points at issue.

(d) avoid expense and effort in proving admitted facts.

Discovery by interrogations

Any party to a suit, by leave of the Court, may deliver interrogatories in writing for the examination of the opposite parties. But interrogatories will not be allowed for the following purposes:

(i) for obtaining discovery of facts which relates exclusively to the evidence of the adversary's case or title.

(ii) to interrogate any confidential communications between the adversary and his counsel.

(iii) to obtain disclosures injurious to public interests.

(iv) Interrogatories that are of a 'fishing' nature, i.e., which do not relate to some definite and existing state of circumstances but are resorted to in a speculative manner to discover something which may help a party making the interrogatories.

Discovery by documents

All documents relating to the matters in issue in the possession or power of any adversary can be inspected by means of discovery by documents. Any party may apply to the Court for an order directing any other party to the suit to make discovery on oath the documents which are or which have been in his possession or powers relating to any matter in question. The Court may on hearing the application either refuse or adjourn it, if it is satisfied that such discovery is not necessary at all or not necessary at the stage. Or if it thinks fit in its discretion, it may make order for discovery limited to certain classes of documents.

Every party to a suit may give notice to the other party at or before the settlement of issues to produce for his inspection any document referred to in the pleadings or affidavits of the other party. If the other party refuses to comply with this order he shall not be allowed to put any such document in evidence (O.11, R.15), unless he satisfies the Court that such document relates only to his own title, he being a defendant to the suit or any other ground accepted by the Court. Documents not referred to in the pleadings or affidavits may be inspected by a party if the Court allows (O.11, R.18).

A party may refuse to produce the document for inspection on the following grounds:

(i) where it discloses a party's evidence;

(ii) when it enjoys a legal professional privilege;

(iii) when it is injurious to public interest;

(iv) denial of possession of document.

If a party denies by an affidavit the possession of any document, the party claiming discovery cannot cross-examine upon it, nor adduce evidence to contradict it, because in all questions of discovery the oath of the party making the discovery is conclusive [*Kedarnath* v. *Vishwanath,* (1924) 46 All. 417].

Admission by parties

"Admission" means that one party accepts the case of the other party in whole or in part to be true. Admission may be either in pleadings or by answers to interrogatories, by agreement of the parties or admission by notice.

Issues

Issues arise when a material proposition of fact or law is affirmed by one party and denied by the other. Issues may be either of fact or of law.

It is incumbent on the Court at the first hearing of the suit after reading the plaint and the written statement and after ascertaining and examination of the parties if necessary regarding the material propositions of law and facts, to frame the issues thereon for decision of the case. Where the Court is of the opinion that the suit can be disposed off on issues of law only, it shall try those issues first and postpone the framing of the other issues until after that issue has been determined and may deal with the suit in accordance with the decision of that issue.

Issues are to be framed on material proportions of fact or law which are to be gathered from the following –

(i) Allegations made in the plaint and written statement,

(ii) Allegations made by the parties or persons present on their behalf or their pleaders on oath,

(iii) Allegations in answer to interrogatories,

(iv) Contents of documents produced by the parties,

(v) Statements made by parties or their representatives when examined,

(vi) From examination of a witness or any documents ordered to be produced.

Hearing of the suit

The plaintiff has the right to begin unless the defendant admits the fact alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant, the plaintiff is not entitled to any part of the relief sought by him and in such a case the defendant has a right to begin (O.18, R.1). Where there are several issues, the burden of proving some of which lies on the other party, the party beginning has an option to produce his evidence on those issues or reserve it by way of an answer to the evidence produced by the other party, and in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence. Care must be taken that no part of the evidence should be produced on those issues for which the plaintiff reserves a right to produce evidence after the defence has closed his evidence, otherwise the plaintiff shall lose his right of reserving evidence (O.18, R.3).

Affidavit

An affidavit is a written statement of the deponent on oath duly affirmed before any Court or Magistrate or any Oath Commissioner appointed by the Court or before the Notary Public. An affidavit can be used in the following cases:

(i) the Court may at any time of its own motion or on application of any party order that any fact may be proved by affidavits (Section 30).

(ii) the Court may at any time order that the affidavit of any witness may be read at the hearing unless either party *bona fide* desires to cross-examine him and he can be produced (O.19, R.1).

(iii) upon application by a party, evidence of a witness may be given on affidavit, but the court may at the instance of either party, order the deponent to attend the court for cross-examination unless he is exempted from personal appearance. Affidavits are confined to such facts as the deponent is able of his own knowledge to prove except on interlocutory applications. (O.19, R.2&3).

Judgement

The Court after the case has been heard shall pronounce judgement in an open court either at once or on some future day as may be fixed by the court for that purpose of which due notice shall be given to the parties or their pleaders (Order XX, Rule 1). The proper object of a judgement is to support by the most cogent reasons that suggest themselves final conclusion at which the judge has conscientiously arrived.

If the judgement is not pronounced at once every endeavour shall be made by the Court to pronounce the judgement within a period of 30 days from the date on which the hearing of the case was concluded. However, if it is not practicable to do so on the ground of exceptional and extra ordinary circumstances of the case, the Court must fix a future day which should not be a day beyond sixty days for the pronouncement of the judgement giving due notice of the day so fixed to the concerned parties. In *Kanhaiyalal* v. *Anup Kumar,* AIR 2003 SC 689, where the High Court pronounced the judgment after two years and six months, the judgment was set aside by the Supreme Court observing that it would not be proper for a Court to sit tied over the matter for such a long period.

Following the decision of the Supreme Court in the above mentioned case, the Gujarat High Court in *Ramkishan Guru Mandir* v. *Ramavtar Bansraj,* AIR 2006 Guj. 34, set aside the judgment which was passed after two and a half years after conclusion of arguments holding that where a judgment was delivered after two years or more, public at large would have reasons to say bad about the Court and the judges.

The judgement must be dated and signed by the judge. Once the judgement is signed it cannot afterwards be altered or added to except as provided under Section 152 or on review.

It is a substantial objection to a judgement that it does not dispose of the question as it was presented by the parties [*Reghunatha* v. *Sri Brozo Kishoro,* (1876) 3 I.A., 154].

If a judgement in unintelligible, the appellate court may set it aside and remand the case to the lower court for the recording of judgement according to law after hearing afresh the arguments of the pleaders (*Harbhagwan Ahmad,* AIR 1922 Lah. 12)

Decree

On judgement a decree follows. Every endeavour must be made to ensure that decree is drawn up expeditiously and in any case within a period of 15 days from the date on which the judgement is pronounced. It should contain the:

(i) number of the suit(s);

(ii) names and descriptions of the parties and their registered addresses;

(iii) particulars of the claim;

(iv) relief granted or other determination of the suit;

(v) amount of cost incurred and by whom is to be paid.

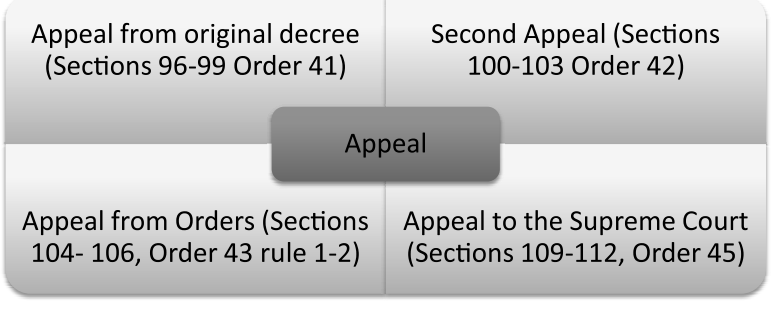
Execution

Execution is the enforcement of decrees or orders of the Court. A decree may be executed either by the Court which passed it or by the Court to which it is sent for execution. (Section 36. For details refer Order 21)

APPEALS

Right of appeal is not a natural or inherent right attached to litigation. Such a right is given by the statute or by rules having the force of statute (*Rangoon Botatoung Company* v. *The Collector, Rangoon*, 39 I.A. 197).

There are four kinds of appeals provided under the Civil Procedure Code:



Appeals from original decrees

These appeals may be preferred in the Court superior to the Court passing the decree. An appeal may lie from an original decree passed *ex parte*. Where the decree has been passed with the consent of parties, no appeal lies. The appeal from original decree lies on a question of law. No appeal lies in any suit of the nature cognizable by Courts of small causes when the amount or value of the subject matter of the original suit does not exceed ten thousand rupees.

Second appeal

As per Section 100 of the Civil Procedure Code, an appeal lies to the High Court from every decree passed in appeal by any subordinate Court if the High Court is satisfied that the case involves a substantial question of law. Under this Section, an appeal may lie from an appellate decree passed *ex parte*.

The memorandum of appeal must precisely state the substantial question of law involved in the appeal. If the High Court is satisfied that a substantial question of law is involved, such question shall be formulated by it and

the appeal is to be heard on the question so formulated. The respondent is allowed to argue that the case does not involve such question. The High Court is empowered to hear the appeal on any other substantial question of law not formulated by it if it is satisfied that the case involves such question.

As a general rule the second appeal is on questions of law alone (Section 100). The Privy Council in *Durga Choudharain* v. *Jawaher Singh*, (1891) 18 Cal. 23 P.C., observed that there is no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, however gross or inexcusable the error may seem to be. Where there is no error or defect in procedure, the finding of the first appellate Court upon a question of fact is final, if that Court had before it evidence proper for its consideration in support of the finding.

Appeal from orders

These appeals would lie only from the following orders on grounds of defect or irregularity in law –

(i) an order under Section 35A of the Code allowing special costs, and order under Section 91 or Section 92 refusing leave to institute a suit of the nature referred to in Section 91 or Section 92,

(ii) an order under Section 95 for compensation for obtaining attachment or injunction on insufficient ground,

(iii) an order under the Code imposing a fine or directing the detention or arrest of any person except in execution of a decree.

(iv) appealable orders as set out under Order 43, R.1. However no appeal shall lie from following orders –

a) any order specified in clause (a) and

b) from any order passed in appeal under Section 100.

Appeals to the Supreme Court

These appeals would lie in the following cases:

(i) from any decree or order of Civil Court when the case is certified by the Court deciding it to be fit for appeal to the Supreme Court or when special leave is granted under Section 112 by the Supreme Court itself,

(ii) from any judgement, decree or final order passed on appeal by a High Court or by any other court of final appellate jurisdiction,

(iii) from any judgement, decree or final orders passed by a High Court in exercise of original civil jurisdiction.

The general rule is that the parties to an appeal shall not be entitled to produce additional evidence whether oral or documentary. But the appellate court has a discretion to allow additional evidence in the following circumstances:

(i) When the lower court has refused to admit evidence which ought to have been admitted.

(ii) When the appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgement.

(iii) for any other substantial cause.

but in all such cases the appellate court shall record its reasons for admission of additional evidence.

The essential factors to be stated in an appellate judgement are (a) the points for determination, (b) the decision thereon, (c) the reasons for the decision, and (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled (O.41, R.31).

The judgement shall be signed and dated by the judge or judges concurring therein.

REFERENCE, REVIEW AND REVISION

Reference to High Court

Subject to such conditions as may be prescribed, at any time before judgement a court in which a suit has been instituted may state a case and refer the same for opinion of the High Court and the High Court may make such order thereon as it thinks fit. (Section 113. Also refer to Rule 1 of Order 46).

Example

In a particular matter, the District court intends to state a case foe opinion of High Court. It may refer the same for the opinion under Section 113 of CPC.

Review

The right of *review* has been conferred by Section 114 and Order 47 Rule 1 of the Code. It provides that any person considering himself aggrieved by a decree or order may apply for a review of judgement to the court which passed the decree or made the order on any of the grounds as mentioned in Order 47 Rule 1, namely –

(i) discovery by the applicant of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or

(ii) on account of some mistake or error apparent on the face of the record, or

(iii) for any other sufficient reason, and

The Court may make such order thereon as it thinks fit

Example

X, aggrieved by the order against him passed by District Court. He may file a review application in the same court for the review of that particular order.

Revision

Section 115 deals with *revision*. The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-

(i) to have exercised a jurisdiction not vested in it by law, or

(ii) to have failed to exercise a jurisdiction so vested, or

(iii) to have acted in the exercise of its jurisdiction illegally or with material irregularity, The High Court may make such order as it thinks fit.

Provided that the High Court shall not vary or reverse any order made or any order deciding an issue in the course of a suit or proceeding except where the order, if it had been made in favour of the party applying for revision would have finally disposed off the suit or other proceedings.

The High Court shall not vary or reverse any decree or order against which an appeal lies either to the High Court or any Court subordinate thereto.

Question: *Which of the following courts have the power of revision under Code of Civil Procedure, 1908?*

Options: (A) District Court

(B) High Court

(C) Executive Magistrate

(D) Judicial Magistrate of First Class

Answer: (B)

A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or proceeding is stayed by the High Court.

Example

On discovering that District Court erred in making a decision by exercising wrongful jurisdiction for which no further appeal lies, High Court may order revision of such decree.

SUITS BY OR AGAINST A CORPORATION

Signature or verification of pleading

In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation, by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case. (O.29, R.1)

Service of summons

Subject to any provision regulating service of process, where the suit is against a corporation, the summons may be served:

(a) on the secretary or any director or other principal officer of the corporation, or

(b) by leaving it or sending it by post addressed to the corporation at the registered office or if there is no registered office then at the place where the corporation carries on business. (O.29, R. 2)

Question: *Which of the following officer is not recognized to sign and verify any pleading on behalf of the corporation?*

Options: (A) Secretary

(B) Principal Officer

(C) Director

(D) Senior Manager

Answer: (D)

Power of the Court to require personal attendance

The Court may at any stage of the suit, require the personal appearance of the secretary or any director, or other principal officer of the corporation who may be able to answer material questions relating to the suit. (O.29, R.3)

SUITS BY OR AGAINST MINORS AND LUNATICS

A minor is a person (i) who has not completed the age of 18 years and (ii) for whose person or property a guardian has been appointed by a Court, or whose property is under a Court of Wards, the age of majority is completed at the age of 21 years.

A suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor. The next friend should be a person who is of sound mind and has attained majority. However, the interest of such person is not adverse to that of the minor and that he is not in the case of a next friend, a defendant for the suit. (O.32, Rules 1 and 4).

Where the suit is instituted without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented. (O.32, R.2).

Where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor [O.32, R.3(1)]. An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff [O.32, R.3(2)].

A person appointed as guardian for the suit for a minor shall, unless his appointment is terminated by retirement, removal or death, continues as such throughout all proceeding arising out of the suit including proceedings in any appellate or revisional court and any proceedings in the execution of a decree [O.32, R.3(5)]

When minor attains majority

When the minor plaintiff attains majority he may elect to proceed with the suit or application or elect to abandon it. If he elects the former course, he shall apply for an order discharging the next friend and for leave to proceed in his own name and the title of the suit will be corrected. If he elects to abandon the suit or application, he shall, if a sole plaintiff or sole applicant apply for an order to dismiss the suit on repayment of the costs incurred by the defendant or opposite party etc. (For details see Rules 12 and 13 - Order 32)\

Suits by or against persons of unsound mind

Order 32, Rule 15 states that all the provisions of rule 1 to 14, applicable to minors except for rule 2A shall be applicable to a person of unsound mind or lunatics. If a person before or during the pendency of the suit are found to be of unsound mind. It shall also be applicable to persons who, though not so adjudged, are found by the Court on enquiry to be incapable, by reason of any mental infirmity, of protecting their interest when suing or being sued.

CASE LAW

In Ram Chandra Arya vs. Man Singh and Ors. (08.12.1967 - SC) : 1968 AIR 954

The Court held that a decree passed against a minor or lunatic without appointed legal guardian is void and not voidable. It was stated that

> *"if a decree is passed against a minor without appointment of a guardian, the decree is a nullity and is void and not merely voidable. This principle becomes applicable to the case of a lunatic in view of Rule. 15 of Order. 32 of the Code of Civil Procedure, so that the decree obtained against Ram Chandra was a decree which had to be treated as without jurisdiction and void. In these circumstances, the sale held in execution of that decree must also be held to be void"*

SUMMARY PROCEEDINGS/PROCEDURE

Order 37 provides for a summary procedure in respect of certain suits. A procedure by way of summary suit applies to suits upon bill of exchange, hundis or promissory notes, or to suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising,--

(i) on a written contract; or

(ii) on an enactment, where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or

(iii) on a guarantee, where the claim against the principal is in respect of a debt or liquidated demand only. The object is to prevent unreasonable obstruction by a defendant.

The rules for summary procedure are applicable to the following Courts:

(1) High Courts, City Civil Courts and Small Courts;

(2) Other Courts: In such Courts, the High Courts may restrict the operation of Order 37 by issuing a notification in the Official Gazette.

The debt or liquidated demand in money payable by the defendant should arise on a written contract or on an enactment or on a guarantee.

In the case of *Navinchandra Babulal Bhavsar vs Bachubhai Dhanabhai Shah, AIR 1969 Guj 124, (1968) GLR*

409, the Gujarat High Court has observed that the relevant provisions prima facie show that the object of the summary procedure is that in a large commercial town certain types of litigation concerning the commercial community should be expeditiously handled and brought to an end, including the realisation of the decretal amount, if a decree is passed. This is intended to give impetus to commerce and industry and thereby benefit the place as a whole by inspiring confidence in the large commercial population of the town that their causes in respect of monetary claims of liquidated amounts would be justly and expeditiously disposed of and their claims will not hang on for years blocking their money and transactions for long periods with a comparatively greater disadvantage to them than in litigation of other types.

Institution of summary suits

Such suit may be instituted by presenting a plaint containing the following essentials:

(1) a specific averment to the effect that the suit is filed under this order;

(2) that no relief which does not fall within the ambit of this rule has been claimed;

(3) the inscription immediately below the number of the suit in the title of the suit that the suit is being established under Order 37 of the CPC.

Order 37, Rule 1, sub rule 2 provides that subject to the provisions of sub-rule 1, the Order applies to the following classes of suits, namely:—

a) suits upon bills of exchange, hundies and promissory notes;

b) in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising,—

(i) on a written contract, or

(ii) on an enactment, where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or

(iii) on a guarantee, where the claim against the principal is in respect of a debt or liquidated demand only.

Leave to defend

Order 37 Rule 3 prescribes the mode of service of summons etc. and leave to defend. The defendant is not entitled to defend the suit unless he enters an appearance within 10 days from the service of summons. Such leave to defend may be granted unconditional or upon such terms as the Court or the Judge may think fit. However, such leave shall not be granted where:

(1) the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence or that the defences are frivolous or vexacious, and

(2) the part of the amount claimed by the plaintiff and admitted by the defendant to be due from him is deposited by him in the Court.

At the hearing of such summons for judgement, the plaintiff shall be entitled to judgement provided the defendant has not applied for leave to defend or if such application has been made and is refused or where the defendant is permitted to defend but he fails to give the required security within the prescribed time or to carry out such other precautions as may have been directed by the Court.

After decree, the Court may, under special circumstances set-aside the decree and if necessary stay or set-aside execution, and may give leave to the defendant to appear and to defend the suit. (Rule 4 order 37)

The summary suit must be brought within one year from the date on which the debt becomes due and payable, whereas the period of limitation for suits for ordinary cases under negotiable instrument is three years.

CASE LAW

Uma Shankar Kamal Narain and Ors. vs. M.D. Overseas Ltd. (2007) 4 SCC 133

This appeal was filed against the order passed by the Delhi High Court granting conditional leave to the appellants to defend in a summary suit. The appellants filed an application for leave to defend in the same suit. Learned Single Judge of the High Court found that the grounds taken in the application for leave to defend were sham and moonshine. The appellants were directed to deposit the amount of Rs. 39,30,856/- to the registry of the division bench of High Court. Conditional leave to defend was granted to the appellants. Respondent wanted liberty to withdraw the amount on deposit. High Court refused to accede to the prayer.

The position of law was noted and highlighted relating to summary suits by the Supreme Court as under:

(a) If the defendant satisfied the Court that he has a good defence to the claim on merits, the defendant is entitled to unconditional leave to defend.

(b) If the defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence, although not a possibly good defence, the defendant is entitled to unconditional leave to defend.

(c) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is, if the affidavit discloses that at the trial he may be able to establish a defence to the plaintiff's claim, the Court may impose conditions at the time of granting leave to defend the conditions being as to time of trial or made of trial but not as to payment into Court or furnishing security.

(d) If the defendant has no defence, or if the defence is sham or illusory or practically moonshine, the defendant is not entitled to leave defend.

(e) If the defendant has no defence or the defence is illusory or sham or practically moonshine, the Court may show mercy to the defendant by enabling him to try to prove a defence but at the same time protect the plaintiff imposing the condition that the amount claimed should be paid into Court or otherwise secured.

Supreme Court directed to deposit a sum of Rs. 20,00,000/- within a period of three months in the registry of the High Court.

Southern Sales and Services and Ors vs. Sauermilch Design and Handels GMBH: 1982 AIR 1518

According to the ratio decidendi of this case "Deposit of amount admitted in the court is an essential for granting Unconditional leave to defend a suit"

CASE LAW

B.L. Kashyap and Sons Ltd. vs. JMS Steels and Power Corporation and Ors. (18.01.2022 - SC) : (2022) 3 SCC 294

Supreme Court held that leave to defend should only be granted in exceptional cases. The leave to defend shall be denied only on the grounds that there is no fair or reasonable defence. It was stated that:

"application seeking leave to defend, it would not be a correct approach to proceed as if denying the leave is the Rule or that the leave to defend is to be granted only in exceptional cases or only in cases where the defence would appear to be a meritorious one. Even in the case of raising of triable issues, with the Defendant indicating his having a fair or reasonable defence, he is ordinarily entitled to unconditional leave to defend unless there be any strong reason to deny the leave"

Summary Judgment

One of the significant amendments which has been brought into the CPC by the Commercial Courts Act, 2015 is the insertion of Order 13A for summary judgment. Order 13A of the the Commercial Courts Act, 2015 provides that disputes which are recognized as commercial dispute under the Act, can be disposed off by the commercial court established under the Act without a full-fledged trial. Previously, suits which had more or less a clear outcome based on merits would still have to go through the entire procedure enumerated under the CPC before the case could be disposed.

The technicalities led to inordinate delays for the parties concerned and also clogged the entire docket. The amendment is on similar lines to summary suits provided in the CPC with the primary difference that application for summary judgment can be in respect of any relief in a commercial dispute while summary suits relate to such relief relating to liquidated demand or fixed sum of debt.

Under mechanism as provided under Order XIII-A, the application for summary judgment can be made by either party after the service of summons to the defendant and before the framing of issues. Upon consideration and satisfaction of the Court, a summary judgment may be given that (a) the plaintiff/defendant has no real prospect of succeeding on the claim/defence, as the case may be; and (b) there is no other compelling reason as to why the claim should not be disposed of before the recording of oral evidence.

Saving of inherent powers of Court.

Section 151 of the Civil Procedure Code says **'**Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.'

Though it does not confer any specific power to the Courts, it is one of the most used sections of the Code in litigations. Any situation that is not covered under the Code can be brought under this Section. The scope of Section 151 CPC has been explained by the Supreme Court in the case *K.K. Velusamy* v. *N. Palanisamy* (2011) 11 SCC 275 as follows:

(a) Section 151 CPC is not a substantive provision which creates or confers any power or jurisdiction on courts. It merely recognises the discretionary power inherent in every court as a necessary corollary for rendering justice in accordance with law, to do what is "right" and undo what is "wrong", that is, to do all things necessary to secure the ends of justice and prevent abuse of its process.

(b) As the provisions of the Code are not exhaustive, Section 151 recognises and confirms that if the Code does not expressly or impliedly cover any particular procedural aspect, the inherent power can be used to deal with such situation or aspect, if the ends of justice warrant it. The breadth of such power is coextensive with the need to exercise such power on the facts and circumstances.

(c) A court has no power to do that which is prohibited by law or the Code, by purported exercise of its inherent powers. If the Code contains provisions dealing with a particular topic or aspect, and such provisions either expressly or by necessary implication exhaust the scope of the power of the court or the jurisdiction that may be exercised in relation to that matter, the inherent power cannot be invoked in order to cut across the powers conferred by the Code or in a manner inconsistent with such provisions. In other words the court cannot make use of the special provisions of Section 151 of the Code, where the remedy or procedure is provided in the Code.

(d) The inherent powers of the court being complementary to the powers specifically conferred, a court is free to exercise them for the purposes mentioned in Section 151 of the Code when the matter is not covered by any specific provision in the Code and the exercise of those powers would not in any way be in conflict with what has been expressly provided in the Code or be against the intention of the legislature.

(e) While exercising the inherent power, the court will be doubly cautious, as there is no legislative guidance

to deal with the procedural situation and the exercise of power depends upon the discretion and wisdom of the court, and in the facts and circumstances of the case. The absence of an express provision in the Code and the recognition and saving of the inherent power of a court, should not however be treated as a *carte blanche* to grant any relief.

(f) The power under Section 151 will have to be used with circumspection and care, only where it is absolutely necessary, when there is no provision in the Code governing the matter, when the *bona fides* of the applicant cannot be doubted, when such exercise is to meet the ends of justice and to prevent abuse of process of court.

POWERS OF CIVIL COURTS AND THEIR EXERCISE BY TRIBUNALS

Tribunals are quasi-judicial authorities established by law. Generally, they are established for speedy disposal of cases and possesses expertise on certain subject matters. These tribunals are empowered with certain powers of Civil Procedure in order to effectively discharge the functions assigned to them.

Example

National Company Law Tribunal and National Company Law Tribunal has, for the purposes of discharging their functions under the Companies Act or under the Insolvency and Bankruptcy Code, 2016, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) dismissing a representation for default or deciding it ex parte;

(g) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and

(h) any other matter which may be prescribed.

Few major enactments empowering the tribunals with the power of civil court are:

1. The Companies Act, 2013
2. The Securities and Exchange Board of India Act, 1992
3. Income-tax Act, 1961
4. The Information Technology Act, 2000
5. The Prevention of Money-Laundering Act, 2002

The respective tribunal may exercise these powers of the Civil Court to discharge the functions assigned to them under respective statute. However, the tribunals should exercise due care while using these powers ensuring the powers used are for the purpose of achieving the object of legislation delegating the powers.

CASE LAWS

Padam Sen and Ors. vs. The State of Uttar Pradesh (27.09.1960 - SC) : 1961 AIR 218

The Court held that inherent powers of court are not defined anywhere, it shall be freely exercised at the discretion of the Court, as it may deem fit, but it shall not be in conflict or against the intention of legislature. It was stated that:

> *"The inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Code. They are complementary to those powers and therefore it must be held that the Court is free to exercise them for the purposes mentioned in s. 151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the Legislature."*

Yashpal Jain v. Sushila Devi & Others decided by Supreme Court on 20th October, 2023

In this case, in the preface of the Judgement, Hon'ble Supreme Court has stated that:

Even after 41 years, the parties to this lis are still groping in the dark and litigating as to who should be brought on record as legal representative of the sole plaintiff. This is a classic case and a mirror to the fact that litigant public may become disillusioned with judicial processes due to inordinate delay in the legal proceedings, not reaching its logical end, and moving at a snail's pace due to dilatory tactics adopted by one or the other party.

Further in this case, the Supreme Court has issued the following 12 directions for Speedy Trial of Civil Cases:

i. All courts at district and taluka levels shall ensure proper execution of the summons and in a time bound manner as prescribed under Order V Rule (2) of CPC and same shall be monitored by Principal District Judges and after collating the statistics they shall forward the same to be placed before the committee constituted by the High Court for its consideration and monitoring.

ii. All courts at District and Taluka level shall ensure that written statement is filed within the prescribed limit namely as prescribed under Order VIII Rule 1 and preferably within 30 days and to assign reasons in writing as to why the time limit is being extended beyond 30 days as indicated under proviso to sub-Rule (1) of Order VIII of CPC.

iii. All courts at Districts and Talukas shall ensure after the pleadings are complete, the parties should be called upon to appear on the day fixed as indicated in Order X and record the admissions and denials and the court shall direct the parties to the suit to opt for either mode of the settlement outside the court as specified in sub-Section (1) of Section 89 and at the option of the parties shall fix the date of appearance before such forum or authority and in the event of the parties opting to any one of the modes of settlement directions be issued to appear on the date, time and venue fixed and the parties shall so appear before such authority/forum without any further notice at such designated place and time and it shall also be made clear in the reference order that trial is fixed beyond the period of two months making it clear that in the event of ADR not being fruitful, the trial would commence on the next day so fixed and would proceed on day-to-day basis.

iv. In the event of the party's failure to opt for ADR namely resolution of dispute as prescribed under Section 89(1) the court should frame the issues for its determination within one week preferably, in the open court.

v. Fixing of the date of trial shall be in consultation with the learned advocates appearing for the parties to enable them to adjust their calendar. Once the date of trial is fixed, the trial should proceed accordingly to the extent possible, on day-to-day basis.

vi. Learned trial judges of District and Taluka Courts shall as far as possible maintain the diary for ensuring that only such number of cases as can be handled on any given day for trial and complete the recording of evidence so as to avoid overcrowding of the cases and as a sequence of it would result in adjournment being sought and thereby preventing any inconvenience being caused to the stakeholders.

vii. The counsels representing the parties may be enlightened of the provisions of Order XI and Order XII so as to narrow down the scope of dispute and it would be also the onerous responsibility of the Bar Associations and Bar Councils to have periodical refresher courses and preferably by virtual mode.

viii. The trial courts shall scrupulously, meticulously and without fail comply with the provisions of Rule 1 of Order XVII and once the trial has commenced it shall be proceeded from day to day as contemplated under the proviso to Rule (2).

ix. The courts shall give meaningful effect to the provisions for payment of cost for ensuring that no adjournment is sought for procrastination of the litigation and the opposite party is suitably compensated in the event of such adjournment is being granted.

x. At conclusion of trial the oral arguments shall be heard immediately and continuously and judgment be pronounced within the period stipulated under Order XX of CPC.

xi. The statistics relating to the cases pending in each court beyond 5 years shall be forwarded by every presiding officer to the Principal District Judge once in a month who (Principal District Judge/ District Judge) shall collate the same and forward it to the review committee constituted by the respective High Courts for enabling it to take further steps.

xii. The Committee so constituted by the Hon'ble Chief Justice of the respective States shall meet at least once in two months and direct such corrective measures to be taken by concerned court as deemed fit and shall also monitor the old cases (preferably which are pending for more than 05 years) constantly.

COMMERCIAL COURTS ACT, 2015

Introduction

The Government of India introduced the 'The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015' (Commercial Courts Act, 2015 for short) to reduce the burden on judiciary with respect to commercial disputes. This not only unburdened the judiciary but also enable prospective foreign investors to gain more trust over their investments in Indian market.

Its main emphasis is on Commercial disputes which are special in nature since they affect the economy of a nation, directly or indirectly. To expedite the process of disposal of cases of large economic value or commercial cases, the Commercial Courts Act, 2015 (the Act) was introduced. It is an Act to provide for the constitution of Commercial Courts, Commercial Division and Commercial Appellate Division in the High Courts for adjudicating commercial disputes of specified value and matters connected therewith or incidental thereto.

The Commercial Courts Act, 2015 came into force on 23rd October, 2015. It enables speedy redressal of cases holding large economic value.

Commercial Courts

According to Section 3 of the Act, the State Government may with the consultation of respective High Court constitute the constitute Commercial Courts at District level, as it may deem necessary for the purpose of exercising the jurisdiction and powers conferred on those Courts under this Act.

State Government, after consultation with the High Court may-

1. specify pecuniary value which shall not be less than three lakh rupees or such higher value. [Section 3(1A)]
2. extend, alter, and reduce the jurisdiction of such court within local limits. [Section 3(2)]
3. appoint one or more persons having experience in dealing with commercial disputes to be the Judge or Judges, of such Courts.

Jurisdiction

According to Section 6 of the Act, the Commercial Court shall have jurisdiction to try all suits and applications relating to a commercial dispute of a Specified Value arising out of the entire territory of the State over which it has been vested territorial jurisdiction by State Government with the assistance of concerned High Court.

According to Section 7 of the Act, all suits and applications relating to commercial disputes of a Specified Value filed in a High Court having ordinary original civil jurisdiction shall be heard and disposed of by the Commercial Division of that High Court.

According to Section 10 of the Act, in case of matters of international commercial arbitration pertaining to Arbitration and Conciliation Act, 1996 the matters shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court. In matters of arbitration other than international commercial arbitration under Arbitration and Conciliation Act, 1996 that have been filed on the original side of the High Court, matters shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.

Determination of Specified Value

The Specified Value of the subject-matter of the commercial dispute in a suit, appeal or application shall be determined by –

- **In case of recovery of money** – the value should include interest accrued so far, upto the date of filing of application or suit.
- **In case of Movable Property or right in it** – the value shall be computed taking into account market value of the movable property as on the date of filing of the suit or application.
- **In case of immovable Property or right in it** - the value shall be computed taking into account market value of the immovable property as on the date of filing of the suit or application.
- **In case of other intangible right** - the value shall be computed taking into account estimated market value of such right by plaintiff as on the date of filing of the suit or application.

Pre-Institution Mediation and Settlement

The very purpose of this Act was to resolve the commercial disputes without bringing them to the court of law through mediation. Prior to approaching a commercial court for dispute commercial in nature, the Act requires that parties attempt to settle their issues through mediation. The Central Government may, authorise the Authorities constituted under the Legal Services Authorities Act, 1987 for the purposes of pre-institution

mediation.

Time Period

The process of pre-litigation mediation shall be completed within a period of three months from the date of application made. It can be extended for a further period of two months with the consent of the parties.

Award/Settlement

The award or settlement of pre-litigation mediation shall be in writing and signed by the parties to the dispute and the mediator. The award shall have the same status and effect as of an arbitral award under section 30(4) of the Arbitration and Conciliation Act, 1996.

Appeals

Any person aggrieved by the judgment or order of a Commercial Court shall within sixty days of such judgment may file an appeal -

- If he is aggrieved by the judgment of Commercial court below District Judge, he may appeal to the Commercial Appellate Court.
- If he is aggrieved by the judgment of Commercial court at District Judge or Commercial Division of a High Court, he may appeal to the Commercial Appellate Division of that High Court

All the appeals filed shall be disposed of within a period of six month from the date of filing.

Amendments to the Provisions of the Code of Civil Procedure, 1908

Section 16 of the Act provides that the provisions of Code of Civil Procedure 1908 shall in their application to any suit in respect of a commercial dispute of specified value stands amended in manner provided under the schedule. The following provisions have been amended by the Schedule in their application-

- Section 26 – Institution of Suits
- Section 35-A- Compensatory Costs
- Section 35- Costs
- Order 5 – Issuance and Service of Summons
- Order 6, 7 and 8 – Pleadings
- Order 11- Discovery and Inspection of Documents
- Order 18 – Examination of Witness
- Order 20 – Judgment and Decree, etc.

Certain provisions were also inserted to enable the fast track process of Commercial Courts.

CASE LAWS

1. Daimler Financial Services India Pvt. Limited vs. Vikash Kumar and Ors. (24.06.2020 - JHRHC) : W.P. (C). No. 3941 of 2019

The petitioner is a non-banking finance company. The opposite parties obtained loan which they failed to repay and the matter was then referred to sole arbitrator. On being dissatisfied with the arbitral award they approached to Commercial Court, Dhanbad. The Commercial Court dismissed the petition on grounds of having no pecuniary jurisdiction. The court stated,

"The learned Court below observed that the said Court below is at present having pecuniary jurisdiction of one crore rupees or such higher value as may be notified by the Central Government as there is no notification of the State in compliance of Section 3(1-A) of the Commercial Courts Act, 2015 as amended by the amendment Act of 28 of 2018, and came to a conclusion that the Court below has no jurisdiction to decide the execution petition and dismissed the same for being non-maintainable."

2. Telangana State Tourism Development Corporation Limited vs. A.A. Avocations Pvt. Ltd. (09.06.2022 - TLHC) : 2022 SCC OnLine TS 1266

The court held that if the specified value of commercial suit is one crore and above it shall be referred to Commercial Courts Act under Section 9 of Arbitration and Conciliation Act 1996.

"On a cumulative reading of Section 2(1)(C)(vii), Section 101 and Section 122, it is apparent that if a dispute arising out of an agreement concerning immovable property which is exclusively used in trade or commerce and whose 'specified value' is more than one crore, then, it is a 'commercial dispute' and only the commercial Court has jurisdiction to deal with application filed under Section 9 of the Act, 1996."

3. The Court cited ***T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467*** to reiterate that the answer to an irresponsible suit or litigation would be a vigilant judge and comment that "an onerous responsibility rests on the shoulders of the presiding officer of every court, who should be cautious and vigilant against such indolent acts and persons who attempt to thwart quick dispensation of justice. A response is expected from all parties involved, with a special emphasis on the presiding officer. The presiding officer must exercise due diligence to ensure that proceedings are conducted efficiently and without unnecessary delays." The Court also suggested members of the Bar to be circumspect in seeking adjournments, particularly regarding old matters or those pending for decades....

The Court issued following directions towards curbing judicial delay: All courts at district and taluka levels to ensure proper and time bound execution of the summons as per Order V Rule (2) of CPC; Principal District Judges to monitor the same, collate the statistics and forward them to committee constituted by High Court for consideration and monitoring. All courts at district and taluka levels to ensure filing of written statement within the time prescribed under Order VIII Rule 1, preferably within 30 days, assign reasons in case of extending the limit beyond 30 days as per Order VIII sub-Rule (1) of CPC. All courts at district and taluka levels to ensure that after completion of pleadings, parties are called upon to appear on the day fixed as per Order X, and record admissions/denials; to direct parties to either opt for mode of settlement outside the Court as per Section 89(1) and fix date for appearance before appropriate forum/authority and make it clear in the reference order the date fixed in case of failure of ADR. In case of parties not opting for ADR as per Section 89(1), the Court to frame issues for its determination within 1 week, preferably in open court. Fix date of trial in consultation with advocates appearing for the parties, enabling them to adjust their calendar, and proceed with trial on a day-to-day basis to the possible extent. Trial Judges of district and taluka courts to maintain diary to ensure that only such number of cases are handled on a given day for trial and complete recording of evidence to avoid overcrowding of cases which as a sequence would result in adjournment sought and preventing inconvenience to stakeholders. Counsels representing parties to be enlightened of provisions under Order XI and XII to narrow down the scope of dispute, also the onerous responsibility of the Bar Associations and Bar Councils to have periodical refresher courses, preferably in virtual mode. Trial Courts to comply with Order XVII Rule 1 scrupulously, meticulously and without fail, and once commenced, trial to be proceeded with on a day-to-day basis as per Rule 2. Courts to give meaningful effect to effect to provisions for payment of cost to ensure no adjournment is sought for procrastination of litigation, and opposite party gets suitably compensated in case of adjournment so granted. On conclusion of trial, oral arguments to be heard immediately and continuously, and judgment to be pronounced within the period

stipulated under Order XX of CPC. Every presiding officer to forward statistics related to cases pending before each Court beyond 5 years to the Principal District Judge once in a month, who has to collate the data and forward it to review committee constituted by High Courts, enabling it to take further steps.

4. The Supreme Court in ***Eldeco Housing and Industries Limited v. Ashok Vidyarthi and Others (Special Leave Petition (C) No. 19465 of 2021)*** ruled that when invoking Order 7 Rule 11(d) of the CPC, the court cannot consider any evidence. The court also ruled that the issues of merit between the parties are not within the court's purview at that stage.

5. In *Civil Appeal No. 2308-2309 of 2016 (Arising out of SLP(C) No. 8536-8537 of 2008)* ***Vijay Prakash Jarath v. Tej Prakash Jarath*****it** was ruled that the cause of action in respect of which a counter claim can be filed, should accrue before the defendant has delivered his defence, namely, before the defendant has filed a written statement.

6. In *Civil Appeal No. 3190 of 2016 (Arising out of S.L.P. (Civil) No. 6662 of 2016)* ***Raghavendra Swamy Mutt v. Uttaradi Mutt***, it was stated that Appeal under Section 100 CPC is required to be admitted only on substantial question/questions of law. It cannot be formal admission like an appeal under Section 96 CPC. That is the fundamental imperative. It is peremptory in character, and that makes the principle absolutely cardinal.

7. In *Civil Appeal No. 4543 of 2016 (Arising out of S.L.P.(C) No. 538 of 2014)* ***Rishabh Chand Jain & Another v. Ginesh Chandra Jain*****,** it was stated that the impugned order dismissing the suit on the ground of Res Judicata does not cease to be a decree on account of a procedural irregularity of non-framing an issue. The court ought to treat the decree as if the same has been passed after framing the issue and on adjudication thereof, in such circumstances. What is to be seen is the effect and not the process. Even if there is a procedural irregularity in the process of passing such order, if the order passed is a decree under law, no revision lies under Section 115 of the Code in view of the specific bar under sub-Section (2) thereof. It is only appealable under section 96 read with Order XLI of the Code.

LESSON ROUND-UP

- The Civil Procedure Code consists of two parts. 158 Sections form the first part and the rules and orders contained in Schedule I form the second part. The object of the Code generally is to create jurisdiction while the rules indicate the mode in which the jurisdiction should be exercised.
- The Code defines important terms that have been used thereunder and deals with different types of courts and their jurisdiction. Jurisdiction means the authority by which a Court has to decide matters that are brought before it for adjudication.
- Under the Code of Civil Procedure, a civil court has jurisdiction to try a suit if two conditions are fulfilled:
  - (i) the suit must be of a civil nature; and
  - (ii) the cognizance of such suit should not have been barred. Jurisdiction of a court may be of four kinds:
    - (a) jurisdiction over the subject matter;
    - (b) local or territorial jurisdiction;
    - (c) original and appellate jurisdiction;
    - (d) pecuniary jurisdiction depending on pecuniary value of the suit.

- The Code embodies the doctrine of res-judicata that is, baror restraint on repetition of litigation of the same issues between the same parties. It enacts that since a matter is finally decided by a competent court, no party can be permitted to reopen it in a subsequent litigation. It is a pragmatic principle accepted and provided in law that there must be a limit or end to litigation on the same issues. In the absence of such a rule there would be no end to litigation and the parties would be put to constant trouble, harassment and expenses.
- The grant of a temporary injunction is a matter of discretion of Courts. Such injunction may be granted if the Court finds that there is a substantial question to be investigated and that matter should be preserved in status until final disposal of that question.
- The Code also provides for making certain interlocutory orders. The court has power to order sale of any moveable property which is the subject-matter of the suit or attached before judgement in such suit which is subject to speedy and natural decay or for any just and sufficient cause desirable to be sold at once.
- Suit ordinarily is a civil action started by presenting a plaint in duplicate to the Court containing concise statement of the material facts, on which the party pleading relies for his claim or defence. In every plaint the facts must be proved by an affidavit.
- The main essentials of the suit are: (i) the opposing parties; (ii) the cause of action; (iii) the subject matter of the suit, and (iv) the relief(s) claimed.
- Every suit shall be instituted in the Court of the lowest grade competent to try it. The Code specifies the categories of suits that shall be instituted in the court within the local limits of whose jurisdiction the property is situated. This is subject to the pecuniary or other limitations prescribed by any law. The various stages in proceedings of a suit have been elaborately laid down under the Code.
- Commercial Courts were established for speedy adjudication of commercial disputes of specified value and matters pertaining to large economic interest.

GLOSSARY

Misjoinder of Parties: Where more than one persons joined in one suit as plaintiffs or defendants in whom or against whom any right to relief does not arise or against whom separate suits are brought, no common question of law or fact would arise, it is a case of 'misjoinder of parties'.

Reference: A court in which a suit has been instituted may state a case and refer the same for opinion of the High Court

Review: It provides that any person considering himself aggrieved by a decree or order may apply for a review of judgement to the court which passed the decree or made the order on any of the grounds as mentioned in Order 47 Rule 1

Revision: In revision, the High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto.

Cause of Action: "Cause of action" means every fact that it would be necessary for the plaintiff to prove in order to support his right to the judgement of the Court.

Territorial jurisdiction: A territorial limit of jurisdiction for each court is fixed by the Government.

Pecuniary jurisdiction: Section 6 of Code of Civil Procedure, 1908 deals with Pecuniary jurisdiction and lays down that save in so far as is otherwise expressly provided Courts shall only have jurisdiction over suits the amount or value of which does not exceed the pecuniary limits of any of its ordinary jurisdiction.

Original Jurisdiction: A Court tries and decides suits filed before it.

Appellate Jurisdiction: A Court hears appeals against decisions or decrees passed by sub-ordinate Courts.

Doctrine of Res judicata: No Court shall try any suit or issue in which the matter has been directly and substantially in issue in a former suit either 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 an finally decided by such Court.

Specified Value: In relation to a commercial dispute, it means the value of the subject-matter in respect of a suit which shall not be less than three lakh rupees.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

1. Discuss Jurisdiction of Civil Courts.
2. Define the terms:
   - (i) Order
   - (ii) Judgement
   - (iii) Decree
   - (iv) Revision
   - (v) Appeal
   - (vi) Reference
   - (vii) Review.
3. What is *res judicata* and stay of suits?
4. Briefly discuss the provisions relating to inherent powers of the Court.
5. Explain in brief Summary Procedure.
6. Explain the important stages in proceeding of a suit
7. Write a short note on Commercial Court Act, 2015.
8. Discuss the provision related to pre mediation under the Commercial Courts Act, 2015.

LIST OF FURTHER READINGS

- Bare Act of Civil Procedure Code, 1908
- Civil Procedure Code, 1908; Allahabad Law Agency, Allahabad, M.P. Tandon
- AIR Manual of CPC

OTHER REFERENCES (INCLUDING WEBSITES / VIDEO LINKS)

- https://www.indiacode.nic.in/bitstream/123456789/2191/1/A1908-05.pdf