Judicial & Administrative Framework

Lesson 9

KEY CONCEPTS

■ E-Courts ■ Jurisdiction of the Courts ■ Quasi-Judicial Bodies ■ Reference ■ Review ■ Revision

Learning Objectives

To understand:

- The Courts in India and their Jurisdictions
- Development of E-Courts systems in the country
- Quasi-Judicial Bodies and their role
- Various Appellate Forums
- Reference, Review and Revision
- Applicability of CPC on Tribunals

Lesson Outline

- Introduction
- Types of Courts and their Jurisdiction
- E-courts
- Types of Tribunals/Quasi-judicial Bodies
- Procedural aspects of working of Civil Courts
- Types of Criminal Trial Appellate Forums
- Reference and Revision under Criminal Procedure Code
- Reference, Review and Revision under Civil Procedure Code
- Applicability of Civil Procedure Code on Tribunals
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References (including websites/video links)

REGULATORY FRAMEWORK

- The Code of Civil Procedure, 1908
- Bharatiya Nagarik Suraksha Sanhita, 2023
- SEBI Act, 1992
- NCLT Rules, 2016

INTRODUCTION

In view of the multifarious activities of a welfare state, legislature is entrusted with the primary duty of making the Laws. However, the legislature cannot work out all the details to fit the varying aspects of complex situations. It must necessarily delegate the working out of details to the executive or any other agency. Therefore, one of the most significant developments of the present century is the growth in the legislative powers of the executives. There is no such general power granted to the executive to make law, it only supplements the law under the authority of legislature. This supplementary legislation is known as 'delegated legislation' or 'subordinate legislation'. The development of the legislative powers of the administrative authorities in the form of the delegated legislation occupies very important place in the study of the administrative law. However, the primary function of the executives are administration of the law.

After the role of executive i.e. implementation of the law, the judiciary in entrusted to administer the justice. [1]One of the unique features of the Indian Constitution is that, notwithstanding the adoption of a federal system and existence of Central Acts and State Acts in their respective spheres, it has generally provided for a single integrated system of Courts to administer both Union and State laws. At the apex of the entire judicial system, exists the Supreme Court of India below which are the High Courts in each State or group of States. Below the High Courts lies a hierarchy of Subordinate Courts. Panchayat Courts also function in some States under various names like Nyaya Panchayat, Panchayat Adalat, Gram Kachheri, etc. to decide civil and criminal disputes of petty and local nature. Different State laws provide for different kinds of jurisdiction of courts. Each State is divided into judicial districts presided over by a District and Sessions Judge, which is the principal civil court of original jurisdiction and can try all offences including those punishable with death. The Sessions Judge is the highest judicial authority in a district. Below him, there are Courts of civil jurisdiction, known in different States as Munsifs, Sub-Judges, Civil Judges and the like. Similarly, the criminal judiciary comprises the Chief Judicial Magistrates and Judicial Magistrates of First and Second Class.

'[2]Tribunal' is an administrative body established for the purpose of discharging quasi-judicial duties. An Administrative Tribunal is neither a Court nor an executive body. It stands somewhere midway between a Court and an administrative body. The exigencies of the situation proclaiming the enforcement of new rights in the wake of escalating State activities and furtherance of the demands of justice have led to the establishment of Tribunals. According to Law commission of Indian report, to overcome the situation that arose due to the pendency of cases in various Courts, domestic tribunals and other Tribunals have been established under different Statutes. A 'tribunal' in the legal perspective is different from a domestic tribunal. The 'domestic tribunal' refers to the administrative agencies designed to regulate the professional conduct and to enforce disciple among the members by exercising investigatory and adjudicatory powers. Whereas, Tribunals are the quasi-judicial bodies established to adjudicate disputes related to specified matters which exercise the jurisdiction according to the Statute establishing them.

---

1. https://main.sci.gov.in/constitution

2. Kagzi, M.C.J, The Indian Administrative Law, Metropolitan Book Co. Pvt. Ltd., Delhi, 3 rd edn., 1973 at pp. 276 and 279

TYPES OF COURTS AND THEIR JURISDICTION

Broadly speaking there are two types of courts- civil and criminal. The civil courts deal with matters of civil nature whereas the criminal courts deal with criminal matters. Then there are Constitutional Courts. The framework of the current legal system has been laid down by the Indian Constitution and the judicial system derives its powers from it but the system has been inherited from the British rule that preceded independence.

In India, we have courts at various levels – different types of courts, each with varying powers depending on the tier and jurisdiction bestowed upon them. They form a hierarchy with the Supreme Court of India at the top, followed by High Courts of respective states with District and Sessions Judges sitting in District Courts and Magistrates of Second Class and Civil Judge (Junior Division) at the bottom. The normal trend of the judiciary system is to start any general dispute in the lower court which is then escalated to the higher courts. The judgments can be challenged in the higher courts if the parties to the cases are not satisfied. The process of escalation is systematic.

Supreme Court

India has one of the oldest legal systems in the world. Its law and jurisprudence stretches back into the centuries, forming a living tradition which has grown and evolved with the lives of its diverse people. India's commitment to law is created in the Constitution which constituted India into a Sovereign Democratic Republic, containing a federal system with a Parliamentary form of Government in the Union and the States, an independent judiciary, guaranteed Fundamental Rights and Directive Principles of State Policy containing objectives which though not enforceable in law are fundamental to the governance of the nation.

According to Article 124 of the Constitution, there shall be a Supreme Court of India consisting of a Chief Justice of India and other Judges. Supreme Court of India is the highest level of court of Indian juridical system. It plays the role of the guardian of the Constitution of India. The present strength of Supreme Court is 34 including the Chief Justice of India.

The Supreme Court exercises original jurisdiction exclusively to hear the cases of disputes between the Central Government and the State Governments or between the States. The Supreme Court has original but not exclusive jurisdiction for enforcement of Fundamental Rights as per the provision of Constitution of India through the way of writs. This court is also an appellate court.

Supreme Court has the power to exercise extra ordinary jurisdiction to hear any appeal related to any matter for which any court or tribunal had decided with judgment through the option of special leave petition except the case of tribunal related to Armed Forces. Supreme Court has the power to withdraw or transfer any case from any High Court. The Supreme Court has the authority to review any verdict ordered. The order of Supreme Court is binding on all courts across India.

Advisory jurisdiction: The Supreme Court has the option to report its opinion to the President about any questions raised of public importance referred to it by the President.

High Courts

Article 226 of Constitution of India has given the power to the High Courts to issue different writs for the enforcement of Fundamental Rights guaranteed under the Constitution.

According to Article 226 of the Constitution of India, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

The power conferred above to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of

action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

However, the power conferred on a High Court by article 226 shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.

High Courts also hear appeals against the orders of lower courts. High courts are empowered to practice superintendence over all the courts and tribunals effective within the regional jurisdiction of the High Court. All the High Courts have the power to pronounce punishment for contempt of court. The High Courts are confined to the jurisdiction of State, group of States or Union Territory. The subordinate courts are covered by the administrative power of the High Courts under which they function.

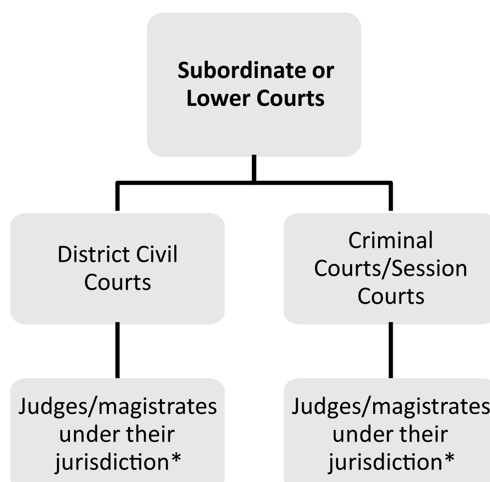
Lower Courts

The District Court in India are established by the respective State Government in India for every district or more than one district taking into account the number of cases, population distribution in the district. These courts are under administrative control of the High Court of the State to which the district concerned belongs.

The court at the district level has a dual structure that runs parallel- one for the civil side and one for the criminal side. The civil side is simply called the District Court and is headed by the district judge. There are additional district judges and assistant district judges who are there to share the additional load of the proceedings of District Courts. These district courts have the additional jurisdictional authority of appeal handling over the subordinate courts in their jurisdiction. The subordinate courts covering the civil cases, in this aspect are considered as Junior Civil Judge Court, Principal Junior and Senior Civil Judge Court, which are also known as Subordinate Courts. All these courts are treated with ascending orders.

The criminal court at the district level is headed by the Sessions Judge. Usually there are Additional Sessions Judges as well in the Court to share the workload of the Sessions Judge. The subordinate courts covering the criminal cases are Second Class Judicial Magistrate Court, First Class Judicial Magistrate Court, and Chief Judicial Magistrate Court along with family courts which are established to deal with the issues related to disputes of matrimonial issues only. The status of Principal Judge of family court is at par with the District Judge.

The court of the district judges is the highest civil court in a district. It exercises both judicial and administrative powers. It has the power of superintendence over the courts under its control. The parallel structure of law courts at the district level usually converges at the top and the head of the court has power of trying both civil and criminal cases. Thus he is designated as the District and Sessions Judge. It must also be borne in mind that name of the subordinate courts at the district level is not uniform across the States.



* District Judge, Sessions Judge, Chief Judicial Magistrate, Judicial Magistrate – 1st Class and 2nd Class

Revenue Courts

There is a government apparatus to deal with revenue matters. These are 'courts' but are not a part of Judiciary because they come under the administration of the State governments. Revenue courts deal with matters pertaining to stamp duty, registration etc.

At the lowest level, we have the 'Tehsildar' or Assistant Tehsildar. Above it is the office of the 'Sub-Divisional Officer' (SDO). Then comes the office of District Collector and above it is the 'Board of Revenue'. The Board of Revenue is the highest decision making body at the State level.

E-Courts

The eCourts Project was conceptualized on the basis of the "National Policy and Action Plan for Implementation of Information and Communication Technology (ICT) in the Indian Judiciary – 2005" submitted by eCommittee, Supreme Court of India with a vision to transform the Indian Judiciary by ICT enablement of Courts.

Ecommittee is a body constituted by the Government of India in pursuance of a proposal received from the than Hon'ble the Chief Justice of India to constitute an eCommittee to assist him in formulating a National policy on computerization of Indian Judiciary and advise on technological communication and management related changes.

The eCourts Mission Mode Project, is a Pan-India Project, monitored and funded by Department of Justice, Ministry of Law and Justice, Government of India for the District Courts across the country.

The objective of the ecourt mission project are:

- To provide efficient & time-bound citizen centric services delivery as detailed in eCourt Project Litigant's Charter.
- To develop, install & implement decision support systems in courts.
- To automate the processes to provide transparency in accessibility of information to its stakeholders.
- To enhance judicial productivity, both qualitatively & quantitatively, to make the justice delivery system affordable, accessible, cost effective, predictable, reliable and transparent.

With dynamic real time data generated and updated continuously, the NJDG is serving as a source of information of judicial delivery system for all the stakeholders. It is regularly analyzed for meaningful assistance in policy formation and decision making. The NJDG is working as National data warehouse for case data including the orders/judgments for Courts across the country with full coverage of District Courts.

There is an Online Analytical Processing, and Business Intelligence Tools that will help in the summation of multiple databases into tables with summarized reports for preparation of informative management system and dashboards for effective Court and Case Management. The Judicial Management Information System will be helpful in litigations and adjudication pattern analysis and also the impact analysis of any variation in governing factors relating to law, amendments, jurisdiction, recruitment etc. It will also serve as judicial performance enhancing measure for policy makers to be used for decision support system.

According to Objective Accomplishment Report of eCourts Project of eCommittee of Supreme Court of India, the success of eCourts mission Project can be attributed to three systemic and structural:

Firstly, the entire Project has been conceptualized and implemented in Free and Open Source Software. This is perhaps the largest FOSS based project in the world and has resulted in an estimated saving of Rs. 340 crore to the Exchequer excluding huge recurrent cost of license fee and maintenance, simultaneously providing freedom to customise and use the system software.

Secondly, the core-periphery model has been utilized and implemented in the software development. The core is sacrosanct and is decided by the eCommittee and contains data that is available for policy and decision making at the national level – Supreme Court, Parliament and Central Government. Of course, the core data

can be accessed and utilized for policy and decision making at the State level. The periphery modules are to be developed by each High Court and can be implemented through the available data in the core. Each High Court has full freedom to develop its periphery modules based on the High Court Rules, the Civil and Criminal Court Manuals. These periphery modules are intended for State level utilization – High Court and District Courts, State Legislature and State Government.

Thirdly, the eCourts Project has been focussed on being citizen-centric, keeping the litigant in mind. This focus has resulted in remarkable coordination and teamwork between hundreds of judicial officers (Trainers and Master Trainers) and court staff (District System Administrators and System Administrators). Appreciating the importance and significance of the eCourts Project for expeditious and affordable justice delivery, the Department of Justice, National Informatics Centre and other Central Government institutions coordinated and cooperated with the expert eCommittee team to bring success to the Project. It is through this teamwork that important software and applications such as Case Information System, eFiling, ePayment, National Service and Tracking of Electronic Processes, Video Conferencing, Virtual Court, National Judicial Data Grid, a variety of mobile applications and several others have been successfully tried, tested and implemented.

E-court Services

As per the data of March 2025, there are 39 High Courts Complexes and 3590 District and Taluka Court complexes under the e-court services. The website https://ecourts.gov.in/ecourts_home/index1.php provides the updated data with respect to High Court Complexes'/District and Taluka Court Complexes' Pending cases, disposed cases and cases listed as on date. The parties can search the status of the cases, caveats and courts orders online.

The services of the Supreme Courts are also available on the website *https://www.sci.gov.in/*. The services *inter alia* includes:

1. Cause List
2. Case Status
3. Daily Orders
4. Judgements
5. Office Report
6. Caveat
7. e-filing
8. Display Board

TYPES OF TRIBUNALS/QUASI-JUDICIAL BODIES

Tribunals in India are a part of the Executive branch of the Government which are assigned with the powers and duties to act in judicial capacity for settlement of disputes. Part XIV of the Constitution of India makes provisions for establishment and functioning of the Tribunals in India. They are quasi-judicial bodies that are less formal, less expensive and enable speedy disposal of cases.

There are tribunals for settling various administrative and tax-related disputes, including Central Administrative Tribunal (CAT), Income Tax Appellate Tribunal (ITAT), National Company Law Tribunal (NCLT), National Green Tribunal (NGT) and Securities Appellate Tribunal (SAT), among others.

Tribunals were added in the Constitution by Constitution (Forty-second Amendment) Act, 1976 as Part XIV-A, which has only two articles viz. 323-A and 323-B. Article 323A provides that a law made by the parliament may

provide for establishment of an Administrative Tribunal for the Union and a separate Administrative Tribunal for each state or two or more states. Article 323 B empowers the parliament or state legislatures to set up tribunals for matters other than those mentioned under Article 323A.

Some of the important Tribunals are as follows:

1. **Debt Recovery Tribunal (DRT)**

   The Recovery of Debts and Bankruptcy Act, 1993 (RDB Act) provides speedy redressal to lenders and borrowers through filing of Applications in Debts Recovery Tribunals (DRTs) and appeals in Debts Recovery Appellate Tribunals (DRATs).

   The Securitisation and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act) provides access to banks and financial institutions covered under the Act for recovery of secured debts from the borrowers without the intervention of the Courts at the first stage. Securitisation Appeals can be filed with the DRTs by those aggrieved against action taken by secured creditors under the SARFAESI Act.

   The e-DRT project has also been implemented in all DRTs and DRATs. This project aims to bring in improved access, efficiency and transparency. e-DRT provides access to e-filing, e-payment of fees, cause list generation and a case information system that enables viewing of case status, orders and judgments.

2. **National Company Law Tribunal**

   National Company Law Tribunal (NCLT) is a quasi-judicial body exercising equitable jurisdiction, which was earlier being exercised by the High Court or the Central Government. It has been established by the Central government under section 408 of the Companies Act, 2013 with effect from 1st June 2016. The Tribunal has powers to regulate its own procedures.

   The establishment of the National Company Law Tribunal (NCLT) consolidates the corporate jurisdiction of the following authorities:

   i) Company Law Board

   ii) Board for Industrial and Financial Reconstruction

   iii) The Appellate Authority for Industrial and Financial Reconstruction

   iv) Jurisdiction and powers relating to winding up restructuring and other such provisions, vested in the High Courts.

3. **Consumer Forum/Commissions**

   To protect the rights of the consumers in India and establish a mechanism for settlement of consumer disputes, a three-tier redressal forum containing District, State and National level consumer forums/ commissions have been set up. The District Consumer Forum/Commission deals with consumer disputes involving a value of upto Rs. 50 Lakh rupees. State Commission has jurisdiction in consumer disputes having a value of exceeds 50 lakh rupees but does not exceed 2 crore rupees. The National Commission deals in consumer disputes above Rs. 2 crores, in respect of defects in goods and or deficiency in service. It is important to note that consumer courts do not entertain complaints for alleged deficiency in any service that is rendered free of charge or under a contract of personal service.

   The Act also provides consumers the option of filing complaint electronically. To facilitate consumers in filing their complaint online, the Central Government has set up the E-Daakhil Portal, which provides a hassle-free, speedy and inexpensive facility to consumers around the country to conveniently

approach the relevant consumer forum, dispensing the need to travel and be physically present to file their grievance. E-Daakhil has many features like e-Notice, case document download link & VC hearing link, filing written response by opposite party, filing rejoinder by complainant and alerts via SMS/Email.

To provide a faster and amicable mode of settling consumer disputes, the Act also includes reference of consumer disputes to Mediation, with the consent of both parties.

4. Motor Accident Claims Tribunal (MACT)

The Motor Accidents Claims Tribunal deals with matters related to compensation of motor accidents victims or their next of kin. Victims of motor accident or legal heirs of motor accident victims or a representing Advocate can file claims relating to loss of life/property and injury cases resulting from Motor Accidents. Motor Accident Claims Tribunal are presided over by Judicial Officers from the State Higher Judicial Service and are under direct supervision of the Hon'ble High Court of the respective state.

5. Central Administrative Tribunal (CAT)

Central Administrative Tribunal is a multi-member body to hear on cases filed by the staff members alleging non-observation of their terms of service or any other related matters and to pass judgments on those cases. This Tribunal established in pursuance of the amendment of Constitution of India by Articles 323A.

6. National Green Tribunal (NGT)

National Green Tribunal was established for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation of damages to persons and property and for related matters.

NGT dedicated jurisdiction in environmental matters shall provide speedy environmental justice and help reduce the burden of litigation in the higher courts. The Tribunal is mandated to make and endeavour for disposal of applications or appeals finally within 6 months of filing of the same.

PROCEDURAL ASPECTS OF WORKING OF CIVIL COURTS

1. Jurisdiction

The Civil Procedure Code,1908 stipulates that the courts shall have jurisdiction to try all suits of a civil nature excepting suits of which cognizance is either expressly or impliedly barred. The inherent lack of jurisdiction cannot be cured even by consent of parties, which means if the court does not have any jurisdiction at all; the parties cannot subsequently confer it by an agreement. The onus of proving that the court does not have jurisdiction lies on the party who disputes the jurisdiction. The jurisdiction is basically of three types.

(a) Pecuniary: The purpose of Pecuniary jurisdiction is to decide the maximum monetrary limits for which a forum can entertain a cause of action.

(b) Territorial: The purpose of territorial jurisdiction is to ensure smooth and speedy trial of the matter with least inconvenience to the affected parties. Hence the suit cannot be filed at any place depending on wish of the party. The court concern should have territorial jurisdiction. The territorial jurisdiction is conferred on a court by following factors:-

(i) By virtue of the fact of residence of the Defendant.

(ii) By virtue of location of subject matter within jurisdiction of the court.

(iii) By virtue of cause of action arising within jurisdiction of such court.

(c) **As to subject matter:** For example, Motor Vehicles Act provides for special tribunal for matters under it. Similarly disputes relating to terms of service of government servants go to Administrative Tribunals.

The first and fundamental rule governing jurisdiction is that suit shall be instituted in the court of lowest grade competent to try it.

The Full Bench of Calcutta High Court in the case of Hriday Nath Roy, has mentioned that jurisdiction may have to be considered with reference to place, value and nature of the subject matter. The classification of jurisdiction into territorial jurisdiction, pecuniary jurisdiction and jurisdiction of the subject matter is of a fundamental character. In the Order of Reference to a Full Bench in the case of Sukh Lal v. Tara Chand 33 C. 68, it was stated that jurisdiction may be defined to be the power of a Court to hear and determine a cause, to adjudicate or exercise any judicial power in relation to it. In other words, by jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision.

2. Stay

With the object of preventing courts of concurrent jurisdiction simultaneously trying two parallel suit in respect of the same matter in issue, Civil Procedure Code has vested inherent power in the court to stay the suit. The pendency of a suit in Foreign Court does not preclude the courts in India for trying a suit founded on same cause of action. The application for stay of suit is maintainable at any stage of the suit. The court does not have option to refuse on ground of delay.

3. *Res Judicata* and bar to further Suits

The principle of res judicata aims at bringing finality to the litigation. The basic principle is that a final judgement rendered by a court of competent jurisdiction is conclusive on merits as to rights of the parties and constitutes an absolute bar against subsequent action involving the same claim. The principle of resjudicata applies only under following circumstances:

(i) The matter directly and substantially in issue has been directly and substantially in issue in a former suit between same parties or between whom they claim litigation under the same title.

(ii) The matter is in the court competent to try such subsequent suit or the suits in which such issue has been subsequently raised and has been heard and finally decided.

The word former suit means suit decided prior, irrespective of the date of institution. The matter must be decided on merits i.e. the issue was alleged by one party and denied by the other. The principle of resjudicata is one of convenience and not one of absolute justice and it should not be unduly conditioned and qualified by technical interpretations.

4. Plaint

The entire legal machinery under the Civil Law is set in motion by filing of plaint and hence plaint is the actual starting point of all pleadings in a case. Though the law has not laid down any tight jacket formats for plaints, its minimum contents have been prescribed.

The Plaintiff is required to annex list of documents which the Plaintiff has produced alongwith the plaint and shall also submit additional copies as may be required. Where the Plaintiff sues upon a document in his possession or power he shall produce it in the court when plaint is presented. If the document is not in his possession, the Plaintiff will state in whose possession it is. A document, which has to be produced and has not been produced at the time of presenting the plaint cannot be received in evidence at the hearing of the suit without permission from the concerned court.

If after submitting the plaint the court finds that it should be submitted before some other court the plaint is returned, and intimation thereof is given to the Plaintiff.

The court has power to reject the plaint on following grounds:

(i) Where it does not disclose the cause of action

(ii) Where the relief claimed is undervalued and Plaintiff fails to correct the valuation within the time fixed

(iii) If the relief is properly valued but insufficient court fee / stamp is paid and the Plaintiff fails to make good such amount

(iv) Where the suit appears to be barred by any law, from the statements in the plaint. The rejection of plaint on aforesaid grounds does not of its own force bar the Plaintiff from presenting a fresh plaint.

5. Summons

When the suit is duly instituted summons may be issued to Defendant to appear and answer the claim. Summons is an instrument used by the court to commence a civil action or proceedings and is a means to acquire jurisdiction over party. It is a process directed to a proper officer requiring him to notify the person named, that an action has been commenced against him, in the court from where process is issued and that he is required to appear, on a day named and answer the claim in such action.

Defendant to whom a summons has been issued may appear in person or by a pleader duly instructed or by a pleader accompanied by some person who is able to answer all questions. To expedite the filing of reply and adjudication of claim, the court may direct filing of written statement on date of appearance and issue suitable summons for that purpose. Failure to do so may result in Ex-parte judgement. The provisions of substituted service have to be resorted when the summons is not served by normal process through the court bailiff.

Where the court is satisfied that there is reason to believe that the Defendant is keeping out of the way for purpose of avoiding service or that for any others reason the summons cannot be served in ordinary way the court shall order summons to be served by affixing copy thereof in conspicuous part of the house. To expedite service of summons one more provision is relating to substituted service under which the court orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the Defendant last resided or carried on business or personally worked for gain. Where the service is substituted, the court shall fix time for appearance of the Defendant as the case may require.

6. Appearance of Parties

On the day fixed in the summons the Defendant is required to appear and answer and the parties shall attend the court unless the hearing is adjourned to a future day fixed by the court. If the Defendant is absent court may proceed ex-parte. Where on the day so fixed it is found that summons has not been served upon Defendant as consequence of failure of Plaintiff to pay the court fee or postal charges the court may dismiss the suit. Where neither the Plaintiff nor the Defendant appears the court may dismiss the suit. Such dismissal does not bar fresh suit in respect of same cause of action.

If the Defendant appears and Plaintiff does not appear and the Defendant does not admit the Plaintiff's claim wholly or partly, court shall pass order dismissing the suit. If Defendant appears and admits part or whole of the claim the decree will be passed accordingly. If the Plaintiff shows sufficient cause re-

opening of the matter is mandatory. What is sufficient cause depends upon facts and circumstances of each case and the court adopt liberal and generous construction which advances cause of justice and hence restoration is ordinarily not denied.

7. Adjournments

Courts have the power to adjourn a case and take it up on a future date. Adjournments frequently sought by the parties contribute significantly to the delays caused in deciding the matters. The granting of adjournments is at the discretion of the court. The rules governing adjournments are considerably strict if applied in their true spirit.

8. Ex-parte Decrees

A decree against the Defendant without hearing him or in his absence/in absence of his defence can be passed under the following circumstances:-

(i) Where any party from whom a written statement is required fails to present the same within the time permitted or fixed by the court, as the case may be the court shall pronounce judgement against him, or make such order in relation to the suit as it thinks fit and on pronouncement of such judgement a decree shall be drawn up.

(ii) Where Defendant has not filed a pleading, it shall be lawful for the court to pronounce judgement on the basis of facts contained in the plaint, except against person with disability.

(iii) Where the Plaintiff appears and Defendant does not appear when suit is called up for hearing and summons is property served the court may make an order that suit will be heard ex parte.

If an ex-parte decree is passed and the Defendant satisfies that he was prevented by sufficient cause then he has the following remedies open:

(i) Prefer appeal against decree.

(ii) Apply for Review.

(iii) Apply for setting aside the Ex-parte Decree.

The words "Sufficient Cause" has not been defined and it will depend on facts and circumstances of each case. The Defendant is not entitled to approach the court to set aside the ex-parte decree as a matter of right. An ex-parte decree is an equally effective decree unless set aside in appeal or by the same court. The court, which passed ex-parte decree, has the power to set aside the decree.

9. Interlocutory Proceedings

The period involved between initiation and disposal of litigation is substantially long. The intervention of the court may sometimes be required to maintain the position as it prevailed on the date of litigation. In legal parlance it is known as "status quo". It means preserving existing state of things on a given day. In that context interlocutory orders are provisional, interim, temporary as compared to final. It does not finally determine cause of action but only decides some intervening matter pertaining to the cause.

The procedure followed in the court is that the separate application for interim relief is moved at the time of filing of suit or at a subsequent stage. The court either grants the order ex-parte or issues urgent show cause notice and the reply is to be filed within short time.

One of the most common interlocutory reliefs sought is that of 'injunction'.

10. Written Statement

The Defendant is required to file a written statement of his defence at or before the first hearing or such time as may be allowed along with the list of documents relied upon by him. If Defendant disputes maintainability of the suit or takes the plea that the transaction is void it must be specifically stated. A

general denial of grounds alleged in the plaint is not sufficient and denial has to be specific. The denial should not be an evasive denial but it must be on point of substance. Every allegation of fact in the plaint if not denied specifically or by necessary implication or stated to be not admitted in the pleading shall be deemed to be admitted.

11. Examination of Parties

Examination of parties is an important stage after appearance. At first hearing of the suit the court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement. Such admissions and denials shall be recorded. The examination may be an oral examination.

Where admission of facts have been made either in the pleading or otherwise, whether orally or in writing, the court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for determination of any such question between the parties, make such order or give such judgement as it may think fit.

12. Production of documents

The parties or their pleaders shall produce at or before the settlement of issues, all documentary evidence of every description in their possession or power, on which they intend to rely, and which has not been filed in the court or ordered to be produced.

No documentary evidence in the possession or power of any party, which should have been but has not been produced in accordance with the aforesaid requirements, shall be subsequently admissible. Any objection as to mode of proof is to be raised at the time when document is sought to be proved in evidence. When document is exhibited without any objection as to mode of proof, it is not proper for the court to take any objection regarding the mode of proof for providing the document at final stage.

Every document which a party is called upon to admit, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of that party or in his reply to the notice to admit documents shall be deemed to be admitted. The court may however at its discretion and for reasons to be recorded, require any document so admitted to be proved otherwise than by such admission.

13. Framing of Issues

The court shall at first hearing, after reading the plaint and written statement ascertain upon what material propositions of facts or law parties are at variance.

Court is required to pronounce judgement on all the issues. Issues may be framed from allegations made on oath by the parties or in answer to interrogatories or from contents of documents produced by either party. If the court is of the opinion that the case or any part thereof may be disposed of on issue of law only, it may first try it, if issue relates to:-

(i) Jurisdiction of the court,

(ii) Bar to the suit created by law for the time being in force.

Where the parties are at issue on some question of law or fact and issues have been framed by the court as herein-above provided, if the court is satisfied that no further argument or evidence than what the parties can at once adduce is required upon such of the issues as may be sufficient for decision of the suit and that no injustice will result from proceeding with the suit forthwith, the court may proceed to determine such issues and if the finding thereon is sufficient for the decision, may pronounce judgement accordingly.

14. Summoning and Attendance of Witnesses

On the date appointed by the court and not later than 15 days after the date on which issues are settled

parties shall present in court a list of witnesses whom they propose to call either to give evidence or to produce documents.

The judge shall make or dictate on a typewriter or cause to be mechanically recorded, a memorandum of the substance of deposition of witnesses. A witness may be examined on commission also. If signature of witness is not taken on any part of deposition or correction it does not make deposition invalid.

The court may at any stage of a suit inspect any property or thing concerning which any question may arise. The court also has the power to recall any witness who is already called earlier and put such questions as deemed fit. Court is also having suo motu powers. The court may of its own accord, summon and examine any witness including a party to the suit or strangers to the suit.

Where a person to whom summons has been issued either to attend or to give evidence or production of any documents and his deposition or production is material and person has failed to attend without lawful excuse, court may issue orders for arrest either with or without bail. If the witness appears such orders may be withdrawn.

15. Affidavits

The court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit or affidavit of any witness may be read at hearing, on such condition, as court thinks reasonable.

Affidavit shall contain only such facts as the deponent is able of his own knowledge to prove except on interlocutory applications on which statement of belief may be admitted provided grounds are stated. The affidavits have to be properly verified to avoid any dispute at a later stage. Need for verification of affidavits is to test genuineness and authenticity of allegations and also to make the deponent responsible for allegation made. Affidavit, which is not properly verified, is no affidavit at all. If affidavits are not in conformity with the rules, they can be rejected. Instead of rejecting the affidavit the court may give opportunity to the party to file proper affidavit. Interlocutory applications can also be decided on affidavits.

Even if evidence is given on affidavit the court may direct that such person will be produced for cross examination.

16. Final Argument

Once the documents have been exhibited in the court and the witness(es) of both the sides examined and cross-examined, the stage is set for ‘final arguments’.

It allows both the sides to present its case after taking into account the submissions made by the witnesses of the other party and the documents produced by it. It can, therefore, be said to be an opportunity for both the sides to present a summary of their case or defence, as the case may be.

17. Judgement

Judgement means the statement given by the judge on ground of which a decree is passed. The court after the case has been heard shall pronounce judgement in open court either within one month of completion of arguments or as soon thereafter as may be practicable, and when the judgement is to be pronounced judge shall fix a day in advance for that purpose. Where judgement is not pronounced within 30 days from the date on which hearing of case was concluded, the court shall record the reasons for such delay. The last paragraph of the judgement shall indicate in precise terms the relief, which has been granted by such judgement. Every endeavor shall be made to ensure that the decree is drawn as expeditiously as possible and in any case within 15 days from the date on which the judgement is

pronounced. The court also has the power to award 'cost'. If on any date fixed for hearing, a party to the suit fails to take step or obtains adjournment for producing evidence, the court may also award costs for causing delay. If the court, that the claim or defence as against the objector is false or vexatious to the knowledge of the party by whom it has been put forward, and if such claim is disallowed, abandoned or withdrawn, court holding the claim false or vexatious may order compensatory costs.

18. Decree and Execution

After the decree is passed the process of execution which involves actual implementation of the order of the court through the process of the court starts the entire process of executing of decree.

TYPES OF CRIMINAL TRIAL

According to the Bharatiya Nagarik Suraksha Sanhita, 2023(BNSS), a criminal trial is of three types. Depending upon the type of criminal trial the different stages of a criminal trial are discussed below.

1. Warrant Cases

According to section 2(1)(z) of BNSS, (z) "warrant-case" means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years. The trial in warrant cases starts either by the filing of FIR in a police station or by filing a complaint before a Magistrate. Later, if the Magistrate is satisfied that the offence is punishable for more than two years, he sends the case to the Sessions court for trial. The process of sending it to Sessions court is called "committing it to Sessions court".

Important features of a warrant case are:

- Charges must be mentioned in a warrant case
- Personal appearance of accused is mandatory
- A warrant case cannot be converted into a summons case
- The accused can examine and cross-examine the witnesses more than once.
- The Magistrate should ensure that the provisions of Section 230 are complied with. Section 230 of BNSS, include the supply of copies such as police report, FIR, statements recorded or any other relevant document to the accused.

The stages of trial in warrant cases are given from Section 261 to Section 273 of BNSS.

A. Different Stages of Criminal Trial in a Warrant Case when instituted by the police report

- First Information Report: Under Section 173 of BNSS, an FIR or First Information Report is registered by any person. FIR puts the case into motion. An FIR is information given by someone (aggrieved) to the police relating to the commitment of an offense.
- Investigation: The next step after the filing of FIR is the investigation by the investigating officer. A conclusion is made by the investigating officer by examining facts and circumstances, collecting evidence, examining various persons and taking their statements in writing and all the other steps necessary for completing the investigation and then that conclusion is filed to the Magistrate as a police report.
- **Charges:** If after considering the police report and other important documents the accused is not discharged then the court frames charges under which he is to be tried. In a warrant case, the charges should be framed in writing.
- Section 264 of BNSS talks about the plea of guilty. After framing of the charges the accused is given an opportunity to plead guilty, and the responsibility lies with the judge to ensure that the plea of guilt was voluntarily made. The judge may upon its discretion convict the accused.

- Prosecution evidence: After the charges are framed, and the accused pleads not guilty, then the court requires the prosecution to produce evidence to prove the guilt of the accused. The prosecution is required to support their evidence with statements from its witnesses. This process is called "examination in chief". The magistrate has the power to issue summons to any person as a witness or orders him to produce any document.
- Statement of the accused: Section 351 of BNSS gives an opportunity to the accused to be heard and explain the facts and circumstances of the case. The statements of accused are not recorded under oath and can be used against him in the trial.
- Defence evidence: An opportunity is given to the accused to produce evidence so as to defend his case. The defense can produce both oral and documentary evidence.
- Judgement: The final decision of the court with reasons given in support of the acquittal or conviction of the accused is known as judgement. In case the accused is acquitted, the prosecution is given time to appeal against the order of the court. When the person is convicted, then both sides are invited to give arguments on the punishment which is to be awarded. This is usually done when the person is convicted of an offence whose punishment is life imprisonment or capital punishment.

B. Stages of Criminal Trial in a Warrant Case when Private Complaint institutes case

It may sometimes happen that the police refuses to register an FIR. In such cases one can directly approach the criminal court under Section 175 of BNSS. On the filing of the complaint, the court will examine the complainant and its witnesses to decide whether any offence is made against the accused person or not. After examination of the complainant, the Magistrate may order an inquiry into the matter by the police and to get him submit a report for the same.

- After examination of the complaint and the investigation report, the court may come to a conclusion whether the complaint is genuine or whether the prosecution has sufficient evidence against the accused or not. If the court does not find any sufficient material through which he can convict the accused, then the court will dismiss the complaint and record its reason for dismissal
- After examination of the complaint and the inquiry report, if the court thinks that the prosecution has a genuine case and there are sufficient material and evidence with the prosecution to charge the accused then the Magistrate may issue a warrant or a summon depending on the facts and circumstances.

2. Summons Cases

According to section 2(1)(x) of BNSS, "summons-case" means a case relating to an offence, and not being a warrant-case.

A summons case does not require the method of preparing the evidence. Nevertheless, a summons case can be converted into a warrant case by the Magistrate if after looking into the case he thinks that the case is not a summon case.

Important points about summons case

- A summons case can be converted into a warrant case
- The person accused need not be present personally
- The person accused should be informed about the charges orally. No need for framing the charges in writing.
- The accused gets only one opportunity to cross-examine the witnesses.

The different stages of criminal trial in a summon case are given from Section 274 to Section 282 of BNSS.

Stages of Criminal Trial in a Summons Case

- Pre-trial: In the pre-trial stage, the process such as filing of FIR and investigation is conducted.
- Charges: In summons trials, charges are not framed in writing. The accused appears before the court or is brought before the court then the Magistrate would orally state the facts of the offense he is answerable.
- Plea of guilty: The Magistrate after stating the facts of the offence will ask the accused if he pleads guilty or has any defense to support his case. If the accused pleads guilty, the Magistrate records the statement in the words of the accused as far as possible and may convict him on his discretion.
- Plea of guilty and absence of the accused: In cases of petty offences, where the accused wants to plead guilty without appearing in the court, the accused should send a letter containing an acceptance of guilt and the amount of fine provided in the summons. The Magistrate can on his discretion convict the accused.
- Prosecution and defense evidence: In summons case, the procedure followed is very simple and elaborate procedures are eliminated. If the accused does not plead guilty, then the process of trial starts. The prosecution and the defense are asked to present evidence in support of their cases. The Magistrate is also empowered to take the statement of the accused.
- Judgement: When the sentence is pronounced in a summons case, the parties need not argue on the quantum of punishment given. The sentence is the sole discretion of the judge. If the accused is acquitted, the prosecution has the right to appeal. This right to appeal is also extended to the accused.

3. Summary Trial

Cases which generally take only one or two hearings to decide the matter comes under this category. The summary trials are reserved for small offences to reduce the burden on courts and to save time and money. Those cases in which an offence is punishable with an imprisonment of not more than six months can be tried in a summary way. The point worth noting is that, if the case is being tried in a summary way, a person cannot be awarded a punishment of imprisonment for more than three months.

The trial procedure is provided from Section 283 to Section 288 of BNSS.

Stages of Criminal Trial in Summary Cases

- The procedure followed in the summary trial is similar to summons-case.
- Imprisonment up to three months can be passed.
- In the judgement of a summary trial, the judge should record the substance of the evidence and a brief statement of the finding of the court with reasons.

APPELLATE FORUMS

Any society that claims to uphold the supremacy of law will definitely have an elaborate provision for appeal under its various laws. This is because the majesty of judiciary notwithstanding, at the end of the day, judges are human beings and they can also be at fault just like any other individual. It is a fundamental tenet of a just society that the shortcomings of men should not operate to the disadvantage of fellow human beings in the courts of law. The system of Appeal provides an opportunity to correct judicial orders which otherwise would operate unjustly. Indian legal system has made sufficient provisions for appeal both under the Civil Procedure Code as well as the Bharatiya Nagarik Suraksha Sanhita. Various laws themselves have specific provisions for appeal.

Under the Civil Procedure Code, an appeal may be an appeal from order or an appeal from decree. All orders are not appealable and complete description of the appellable orders has been given in Order 43 of the Code of Civil Procedure. The appeal has to be preferred within prescribed limitation period before the appellate court. The limitation period for appeal to High Court is 90 days and appeal to District Court is 30 days. If the period of limitation is expired, then application for condonation of delay also is required to be moved.

Bharatiya Nagarik Suraksha Sanhita, 2023 also contains elaborate provisions on appeals against a judgment or order of the criminal courts. Appeals to the Sessions Court and to the High Court are largely governed by the same set of rules and procedure. But the High Court being the highest appellate court within a state, has been given primacy in many cases where appeal is permissible.

Thus, District and Sessions Court and High Courts are the most common appellate forums.

The Supreme Court is the appellate court of last resort and enjoys very wide plenary and discretionary powers in the matters of appeal. Under Article 136 of the Constitution, the Supreme Court also enjoys a plenary jurisdiction in matters of appeal. However, Article 136 is not a regular forum of appeal at all. It is a residual provision which enables the Supreme Court to interfere with the judgment or order of any court or tribunal in India in its discretion.

Indian laws that have constituted Tribunals for dispute settlement or grievance redressal have constituted appellate forum. For example, under the Companies Act, 2013 the appellate forum is National Companies Law Appellate Tribunal (NCLAT) if one wants to challenge the order of National Company law Tribunal. Similarly, the appellate tribunal for Securities Exchange Board of India (SEBI) is Securities Appellate Tribunal (SAT) and for Debt Recovery Tribunal is Debt Recovery Appellate Tribunal (DRAT). Some of the laws like the Companies Act provide that matters from appellate tribunal (NCLAT) will go directly to the Supreme Court and not to the High Courts.

As appeal by itself shall not operate as stay of proceedings under the decree or order, except when directed otherwise by the appellate court, the execution of decree passed by the lower court also shall not be stayed for the mere reason that appeal is preferred.

REFERENCE AND REVISION UNDER BHARATIYA NAGARIK SURAKSHA SANHITA

Reference

According to section 436(1) of BNSS, where any Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefor, and refer the same for the decision of the High Court.

The section does not intend a reference with a view to resolve a conflict of authority where different views on a certain point of law have been expressed by some High Court, the reason being that the Court desiring to make a reference is supposed to follow the law laid down by the High Court to which it is subordinate.

It is necessary for the Court making a reference to give its own opinion on the law which is sought to be referred to for clarification because the High Court is not expected to answer hypothetical questions of law however interesting or important they might be.

Revision

Sections 438 to 445 of BNSS deals with the revisional jurisdiction of the High Court and the Sessions Court. Revision lies both in pending and decided cases and it can be filed before a High Court or a Court of Session. Very wide discretionary powers have been conferred on the Sessions Court and the High Court.

The object of the revision is to confer upon superior criminal courts a kind of paternal or supervisory jurisdiction in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions of apparent harshness of treatment which has resulted on the one hand in some injury to the due maintenance of law and order, or on the other hand in some undeserved hardship to individuals. The purpose of revision is to enable the revision court to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of the inferior criminal court.

Section 438 of BNSS empowers the High Court and the Sessions Judge to call for records of any inferior Criminal Court and examine them for themselves as to whether a sentence, finding or order of such subordinate Court is legal, correct or proper and whether the proceedings of such Court are regular or not, with a view to prevent miscarriage of justice and perpetuation of illegality.

The High Court or the Sessions Judge have the power to interfere at any stage of the proceeding, i.e., the case and they are under a legal duty to interfere when it is brought to their notice that some person has been illegally prosecuted or subjected to harassment, or some material error of law or procedure has been committed by an inferior Court which has resulted in miscarriage of justice.

According to section 438(1), the High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on his own bond or bail bond pending the examination of the record.

The revisional jurisdiction of the High Court or a Sessions Judge under Section 438 extends only to the 'inferior Criminal Courts' and it does not include a civil or revenue Court acting under Section 379 of BNSS. The Sessions Judge is inferior to the High Court and, therefore, the High Court can call for and examine the record of any proceeding before the Sessions Judge.

Proceeding

The term 'proceeding' used in Section 438(1) of BNSS has a very wide connotation. It is not only confined to cases related to a commission or trial of an offence but include all judicial proceedings taken before an inferior Criminal Court even though they are not related to any specific offence. The real test is not the nature of the proceeding but nature of Court in which such proceeding is held. If it is held in an inferior Criminal Court, the revisional jurisdiction of the High Court or Sessions Judge would extend to such proceeding under Section 438 (1).

The revisional Court has the power to order the release of offender on bail or bond under Section 438(1). The discretion in this regard should, however, be used judicially considering all the circumstances of the case.

Dismissal of revision by the High Court without assigning reasons is not sustainable and matter may be remitted to the Court for reconsideration.

Interlocutory Order

Section 438(2) bars the exercise of revisional power in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding. The statutory bar on the power of revision in relation to interlocutory orders is intended with the object of eliminating inordinate delay in the disposal of criminal cases and to ensure expeditious trials.

What is an interlocutory order has always been a debatable issue, more so, because it has not been defined anywhere in BNSS. An order which is not final but merely provisional or temporary is generally called an

interlocutory order. But the true test of determining whether or not, an order is interlocutory in nature is whether the order in question finally disposes of the rights of the parties or leaves the case still alive and undecided. For instance, grant or cancellation of bail, adjournment of cases, etc. are interlocutory orders.

The Supreme Court has, however, held that the term 'interlocutory order' as used in Section 438(2) should be given liberal construction in favour of the accused in order to ensure fairness of the trial and the revisional power of the High Court or the Sessions Judge could be attracted to 'intermediate' or 'quasi-final' orders which are not purely interlocutory in nature.

No Second revision

Section 438(3) permits only one revision therefore if an application is made to a Sessions Judge and he is of the opinion that it should be referred to the High Court, then a fresh application for revision can be made to the High Court. But the sub-section bars an application for the revision to the High Court if a person has already applied for it to the Sessions Judge or vice versa. A person can directly move a revision application to the High Court without first approaching the Sessions Judge. But if he moves the Sessions Judge he cannot thereafter approach the High Court for another revision.

The general rule in this regard is that a concurrent jurisdiction is conferred on two Courts, the aggrieved party should ordinarily first approach the inferior Court, i.e., the Sessions Judge in the context of Section 438(3) unless exceptional grounds for taking the matter directly to the higher Court (High Court in this case) are made out.

Under Section 439 of BNSS, the revision Court may make an order for further inquiry. Further inquiry entails supplemental inquiry upon fresh evidence. The power under Section 439 of BNSS is not co-extensive with Section 438 of BNSS but extends far wider as the record can 'otherwise' be examined by the revision Court without recourse to Section 438 of BNSS.

Sessions Judge's powers of revision (Section 440 of BNSS)

(1) In the case of any proceeding the record of which has been called for by himself, the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under Section 442(1) of the Sanhita.

(2) Where any proceeding by way of revision is commenced before a Sessions Judge under subsection (1), the provisions of sub-sections (2), (3), (4) and (5) of Section 442 shall, so far as may be, applied to such proceeding and references in the said sub-sections to the High Court shall be construed as references to the Sessions Judge.

(3) Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court.

Thus, while hearing a case records of which have been called for revision by himself, the Sessions Judge has the same powers as the High Court has under Section 442 of the Sanhita. It would appear from Section 440(3) of the Sanhita that, while a person has the choice to move either the High Court or the Sessions Judge under Section 438 of Sanhita, if he chooses to go before the Sessions Judge, he cannot thereafter go before the High Court even if the Sessions Judge rejects his revision application.

An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him by or under any general or special order of the Sessions Judge.

Section 442 deals with the powers of the High Court as a Court of revision. It is a discretionary jurisdiction vested

in the High Court which should be exercised sparingly to decide questions as to legality, propriety, regularity or correctness of any finding, sentence or order recorded or passed by the inferior Criminal Court. The section also empowers the High Court to direct tender of pardon to the accused as contemplated by Section 344.

The High Court can exercise revisional powers under this section either suo motu, that is, on its own initiative or on a petition of any aggrieved party or any other person. The exercise of revisional power by the High Court is, however, subject to two limitations which are as follows:

(1) Where a person or someone on his behalf has made an application for revision before the Sessions Judge under Section 440 (3), no further revision can be entertained by the High Court at the instance of such person; and

(2) Where an appeal lies but it was not availed of by the person, no revision can be entertained by the High Court at the instance of the party who could have appealed but did not do so.

The High Court may even direct additional evidence to be taken in case of a revision against discharge of the accused in the interest of justice. But otherwise the jurisdiction of the High Court in a criminal revision is drastically restricted and it cannot embark upon re-appreciation of the evidence.

Section 442(1) provides that in the exercise of revisional jurisdiction the High Court may exercise any of the powers conferred on it as a Court of Appeal subject to exceptions specified there under.

These exceptions are:

(1) In an appeal, the High Court is empowered under Section 427(a) to reverse an order of acquittal into conviction and vice versa, but in its revisional power it cannot convert a finding of acquittal into a conviction as per sub-section (3) of Section 442. It has no jurisdiction to convert finding of acquittal into one of conviction by seeking recourse to indirect method of ordering retrial.

(2) In appeal, the High Court will interfere if it is satisfied about the guilt of the accused but in revision it may interfere only when it is brought to its notice that there has been miscarriage of justice.

(3) An appeal cannot be dismissed unless the accused or his pleader is afforded an opportunity to be heard but in revision the accused is to be given opportunity to be heard only if the order to be passed is going to be prejudicial to him.

The revisional power of the High Court may be said to be wider in scope than its appellate powers in the sense that the High Court can correct irregularities or improprieties of procedure which come to its notice. Again, the provision of abatement of appeal on death of the accused does not apply to revision petition and it can exercise its revisional power even after the death of the accused

As already discussed in the context of Section 438 (2) the High Court shall not use its revisional power in relation to an interlocutory order passed by an inferior criminal Court in any appeal, inquiry, trial or other proceeding.

Though the High Court is not empowered to set aside an order of acquittal in exercise of its revisional jurisdiction but where the acquittal is based on compounding of an offence and the compounding is invalid in law, such an acquittal may be set aside by the High Court in the exercise of revisional powers.

Though the High Court has no power to set aside an order of acquittal and convert it into conviction of the accused under this section but it has the power to direct re-trial of the case when there has been patent illegality or gross miscarriage of justice in the findings of the inferior Court.

The High Court should order re-trial of the case under its revisional jurisdiction only in very exceptional cases where the "interests of public justice require interference for the correction of gross miscarriage of justice". It cannot be exercised merely because the inferior Court has misappreciated the evidence or taken a wrong view in interpreting any provision of law.

No Revision where right to Appeal exists

Section 442(4) provides that the party having right of appeal cannot apply for revision. BNSS provides a remedy, by way of appeal under Chapter XXXII and if the party does not file an appeal against an order of the inferior criminal Court, he will not be permitted to prefer a revision against that order. But legal bar does not stand in the way of High Court's exercise of power of revision suo motu. It can itself call for the records of proceedings of any inferior criminal Court and has power to enhance the sentence by exercising its revisional jurisdiction.

Revision may be treated as Appeal

Section 442(5) vests a discretionary power in the High Court to treat a revision petition as an appeal and deal with it under its appellate jurisdiction under Chapter XXXII. But it can do so when an appeal against the order of the inferior Court lies but the petitioner has filed a revision under an erroneous belief that an appeal does not lie and when it is in the interest of justice to do so.

Enhancement of Sentence

The High Court, under its revisional jurisdiction does not exercise power of enhancing the sentence in every case in which the sentence passed appears to be inadequate. It would interfere when it is convinced that the sentence passed is manifestly and grossly inadequate.

The District Magistrate, a Sessions Judge or the Government pleader may draw the attention of the High Court to a sentence which is inadequate and deserves to be enhanced or the High Court can also *suo motu* call for the record of a particular case where it is of the opinion that the sentence awarded is grossly inadequate.

There is no limitation on the power of the High Court as regards enhancement of sentence to the extent of maximum prescribed by the Indian Penal Code, except in cases tried by Magistrates.

But before doing so, the Court has to be issued a show-cause notice against the enhancement of his sentence.

Reduction of Sentence

If after hearing the State, i.e., the Government pleader, the High Court comes to a conclusion that the sentence imposed on the accused is too severe and needs to be reduced, it may reduce it exercising its revisional jurisdiction. However, it cannot be reduced below the prescribed statutory limit, if any, provided in the Bharatiya Nyaya Sanhita or the relevant Act.

Fact finding

The jurisdiction of the High Court in revision of criminal cases is severely restricted and confined only to the questions of law. It cannot embark upon a re-appreciation of evidence. The High Court does not normally interfere with a concurrent finding of fact. The High Court in exercise of its revisional power will not go into the question of sufficiency of material before the lower Court for its decision or order. Where the trial has dealt with the matter fully, the High Court will not interfere and disturb the order of the trial Court. While disposing of revision petition the High Courts must ensure that the principles of natural justice are not violated.

REFERENCE, REVIEW AND REVISION UNDER CIVIL PROCEDURE CODE

References

Reference under Section 113 and Order XLVI, Civil Procedure Code:

(a) A reference should be made to the High Court by a District Judge or Judge of a Court of Small Causes, under the provisions of Section 113 and Order XLVI, Rule I of the Code of Civil Procedure, only when the presiding Judge entertains a reasonable doubt on the point of law or usage having the force of law referred, and not merely on the importunity of pleaders.

(b) A proviso has been added to Section 113 of the Code by the Codes of Civil Procedure and Criminal Procedure (Amendment) Act, 1951 (No. XXIV of 1951). Now where a Court finds that it is necessary for the disposal of a case to decide a question about the validity of any Act, Ordinance or Regulation and the Court is of the opinion that the Act, Ordinance of Regulation is invalid or inoperative but has not been so declared by the High Court of that State or the Supreme Court, the Court shall refer the matter in the manner laid down for the opinion of the High Court.

"Reasonable doubt on a point of law"

A subordinate Court cannot be supposed to entertain a reasonable doubt on a point of law if it has been decided clearly in a ruling of the High Court, unless some doubt has been thrown on the correctness of the same by a ruling of the Supreme Court. Nor has an Appellate Court, which has no jurisdiction to hear an appeal, any jurisdiction to make a reference.

Mode of reference

In making a reference the presiding Judge should be careful to conform to the requirements of Order XLVI, Rule I, of the Code of Civil Procedure by:

(i) drawing up a statement of the facts;

(ii) stating the point on which doubt is entertained; and

(iii) stating his opinion on such point.

Each of the above statement should be precise and clear, or the High Court will find itself compelled to return the reference for amendment under Order XLVI, Rule 5, of the Code of Civil Procedure.

References under Order XLVI, Rule 7

It should also be noted that, by the terms of Order XLVI, Rule 7, a reference may be made only when it appears to the District Court that a Court subordinate to it has by reason of erroneously holding a suit to be cognizable by a Court of Small Causes, or not to be so cognizable, failed to exercise a jurisdiction vested in it by law, or exercised a jurisdiction not so vested; unless this condition is fulfilled – that is, unless the Court is itself of opinion that one of these errors has been committed, – it has no power to refer; when that condition is fulfilled, the Court still has a discretion to make or refuse to make a reference unless it be required to make it by a party. In the latter case, the Court is bound to make a reference.

References by Sub-Judge as a Court of appeal

If a Subordinate Judge sitting as a Court of appeal is of opinion that a reference ought to be made under Order XLVI, Rule 7, of the Code of Civil Procedure, he should submit the record of the case to the District Judge for orders with a statement of reasons.

Character of suit to be described in reference

It is essential that the true character of the suit should be described with precision and accuracy in the heading of the reference.

Parties should be heard before making reference

A reference by a Civil Court under Order XLVI, Rule 6 or 7, of the Code of Civil Procedure shall not be made until the parties to the suit have had an opportunity of showing cause against such reference in the Court which proposes to make it.

Objections of parties to be placed of record

The Court making a reference under any of the sections mentioned in the preceding paragraph shall in its order of reference, certify that such opportunity has been given, and shall place on record the objections, oral or written (if any), of any party against the making of such reference.

Notice of references to parties

The Court making the reference shall give notice, either orally or in writing, to such parties as attended or are represented in Court when the order of reference is made –

(i) that the attendance of the parties in the High Court at the hearing of the reference is not obligatory; (ii) that any party desirous of attending at such hearing must enter an appearance at the office of the Deputy Registrar on or before a date to be specified in the notice.

Date fixed for appearance in High Court

The date specified shall be such as to allow a reasonable time for the parties to appear in the High Court, and shall be a date not less than one month in advance of the date of making the reference.

Court shall satisfy that parties have been informed

The Court shall certify in its order

(1) that the notice required by paragraph 12 has been duly given, orally or in writing as the case may be, and

(2) the date specified in such notice.

While making reference under this rule court is not to submit its opinion on merits. Ganga Datt and others v. Mandir Narayan Deota, AIR 1953 HP 31. Necessary records to be sent along with order of reference The Court making the reference shall forward, with its order, the record of the suit in which the reference is made and of all proceedings (if any) by way of execution or otherwise in such suit subsequent to the decree, and also the records of any other connected proceedings necessary for consideration of the reference in the High Court.

Necessary records to be sent along with order of reference

The Court making the reference shall forward, with its order, the record of the suit in which the reference is made and of all proceedings (if any) by way of execution or otherwise in such suit subsequent to the decree, and also the records of any other connected proceedings necessary for consideration of the reference in the High Court.

Reminder from High Court if no reply received

Whenever it is found that a reference made to the High Court has not been replied to, or intimation of a date having been fixed given within two months of making such reference, the attention of the Registrar should be drawn to the fact.

Review: Section 114 of Code of Civil Procedure, 1908

Review means re-examination or re-consideration of its own decision by the very same court. An application for review may be necessitated by way of invoking the doctrine ‘actus curiae neminem gravabit’ which means an act of the court shall prejudice no man. The other maxim is, ‘lex non cogit ad impossibillia’ which means the law does not compel a man to do that what he cannot possibly perform.

Section 114 of the Code of Civil Procedure provides for a substantive power of review by a civil court and consequently by the appellate courts. Section 114 of the code although does not prescribe any limitation on the power of the court but such limitations have been provided for in Order 47, Rule 1 of the CPC.

The section is worded as follows:

114. Review- Subject as aforesaid, any person considering himself aggrieved –

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed by, this Code, or

(c) by a decision on a reference from a Court of Small Causes,

may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.

An 'aggrieved' person is one who has suffered a legal grievance, i.e., against whom a decision has been pronounced which has wrongfully affected his title or wrongfully deprived him of something which he was entitled to.

All decrees or orders cannot be reviewed. The right of review has been conferred by section 114 and Order XLVII of the Code.

Condition precedent

The conditions to invoke Section 114 have been dealt with in Order XLVII Rule 1 of the CPC. They are:

1. **Discovery of new and important matter or evidence**

   An application for review on the ground of discovery of new evidence should show that:

   (i) such evidence was available and of undoubted character;

   (ii) that the evidence was so material that its absence might cause a miscarriage of justice; and

   (iii) that it could not with reasonable care and diligence have been brought forward at the time of the decree.

   The applicant has, however, to satisfy that there was no remissness on his part.

2. **Mistake or error apparent on the face of the record**

   Whether there is a mistake or error apparent on the face of record in a case depends on individual facts. However, it must be borne in mind, that in order to come to the conclusion that there is a mistake or error apparent on the face of record, it must be one which is manifest on the face of record. The error or mistake be so manifest, so clear, that no court would permit such an error or mistake to remain on the record. In coming to the finding that a mistake or error is apparent on the face of record, the court is not required to look into other evidence. Such mistake or error should appear in the order itself or from any other document, which it referred in the said order. If such error occurs then the court is definitely bound to review such judgment.

   The mistake is not limited to a mistake of fact. It may be of law. It should be an error which can be seen by a mere perusal of the record without reference to any other extraneous matter. Where, therefore, the legal position is clearly established by a well-known authority, but the Judge has by some oversight failed to notice the same and thus gone wrong, it will be a case coming within the category of an error apparent on the face of the record. The error has to be patent, and an ordinary error of law or a mere failure to interpret a complicated point of law correctly is not an error of law apparent on the face of the record.

   Failure of the court to take into consideration an existing decision of the Supreme Court taking a different or contrary view on a point covered by its judgment would amount to a mistake or error apparent on the

face of the record. But a failure to take into consideration a decision of the High Court would not amount to any mistake or error apparent on the face of the record.

In view of the Explanation added by the amendment of 1976, a subsequent decision of the Supreme Court or a larger Bench of the same court taking a contrary view on the point covered by the judgment does not amount to a mistake or error apparent on the face of the record.

3. **Any other sufficient reason**

The phrase "any other sufficient reason" means a reason at least analogous to those specified in the rule immediately previously, namely, excusable failure to bring to the notice of the court new and important matter or evidence or mistake or error apparent on the face of the record. These words have been interpreted in Chajju Ram v. Neki, to mean a reason sufficient on grounds at least analogous to those specified in 1 and 2.

Difference between Appeal and Review

It is well-settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII, Rule 1, C.P.C. There are definitive limits to the exercise of the power of review and it cannot be exercised on the ground that the decision was erroneous on merits. That is the province of a Court of Appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate Court.

Scope of an application for review is much more restricted than that of an appeal. The Supreme Court in Lily Thomas vs. Union of India, AIR 2000 SC 1650, has held that the power of review can only be exercised for correction of a mistake and not to substitute a view and that the power of review could only be exercised within the limits of the statute dealing with the exercise of such power. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained.

Where an appeal has been preferred a review application does not lie. But an appeal may be filed after an application for review. In such event the hearing of the appeal will have to be stayed. If the review succeeds the appeal becomes infructuous for the decree appealed from is superseded by a new decree. No court can, however, review its order after it has been confirmed on appeal.

A party who is not appealing from a decree or order may, however, apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.

Order XLVII of CPC deals with Review

Rule 1 is the primary rule that has been discussed above. Some of the other important rules under Order XLVII are:

Order XLVII, Rule 4: No application for review, however, shall be granted without previous notice to the opposite party to appear and oppose the application. It shall also not be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge at the time of the passing of the decree or order, without strict proof of such allegation.

Order XLVII, Rule 6: Where the application for a review is heard by more than one judge and the court is equally divided, the application shall be rejected. Where there is a majority, the decision shall be according to the opinion of the majority.

Order XLVII, Rule 7: An order of the court rejecting the application for review shall not be appealable, but an

order granting the application may be objected to at once by an appeal from the order granting the application or in any appeal from the decree or order finally passed or made in the suit.

In case the application has been rejected on failure of the applicant to appear, the court may restore the rejected application to the file on being satisfied that the applicant was prevented by sufficient cause from appearing upon such terms as to costs or otherwise as it thinks fit.

Order XLVII, Rule 9: No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained.

Revision

Section 115 of Code of Civil Procedure 1908

Section 115 reads as under:

(1) 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-

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

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

(c) To have acted in the exercise of its jurisdiction illegality or with material irregularity;

the High Court may make such order in the case as it thinks fit.

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

(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any court subordinate thereto.

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

Explanation: In this section, the expression "any case which has been decided" includes any order made, or any order deciding an issue, in the course of a suit or other proceeding.

Scope

Section 115 applies to jurisdiction alone, the irregular exercise or non-exercise of it or the illegal assumption of it. Section 115 empowers the High Court to satisfy itself on three matters:

(a) that the order of the subordinate court is within its jurisdiction;

(b) that the case is one in which the court ought to exercise jurisdiction; and

(c) that in exercising jurisdiction the court has not acted illegally, that is, in breach of some provision of law, or with material irregularity by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision.

In order for Section 115 to come into picture, it is necessary to establish three conditions precedent for calling upon and for requesting the revisional court to exercise the revisional jurisdiction. These conditions are as under:

(a) That the order impugned amounts to be a case decided;

(b) That the order impugned is not directly liable to be challenged by way of appeal from the order itself before the same court before which the revision has been filed;

(c) That the order impugned suffers from jurisdictional error.

The power to interfere under Section 115 is much circumscribed. The section is not directed against conclusion of law or fact in which the question of jurisdiction is not involved. Unless the lower appellate court had exercised jurisdiction where it had none or exercised it illegally or with material irregularity, the High Court cannot interfere with the order of the lower appellate court even when the order sought to be revised be erroneous or not in accordance with the law.

In the exercise of revisional powers it is not the duty of the High Court to enter into the merits of the evidence; it has only to see whether the requirements of the law have been duly and properly obeyed by the court whose order is the subject of the revision and whether the irregularity as to failure or exercise of jurisdiction is such as to justify interference with the order.

The decision of the subordinate court on all questions of law and fact not touching its jurisdiction is final and however erroneous such a decision may be, it is not revisable under sub-section (a) and (b) of Section 115. On the other hand, if by an erroneous decision on a question of fact or law touching its jurisdiction, e.g., on a preliminary fact upon the existence of which its jurisdiction depends, the subordinate court assumes a jurisdiction not vested in it by law or fails to exercise a jurisdiction so vested, its decision is not final, and is subject to review by the High Court in its revisional jurisdiction under the sub-section.

The words 'acting illegally' would mean acting in breach of some provisions of law and the words 'acting with material irregularity' would mean committing some error of procedure and in the course of proceedings, which is material in the sense that it may have affected the ultimate decision. Therefore, it is only when a court decides a case perversely that it can be said to act illegally or with material irregularity in the exercise of its jurisdiction and the other errors of questions of law or procedure are outside the scope of clause (c) of Section 115(1) of the Civil Procedure Code. The mere fact that the decision of the lower court is erroneous, whether it be upon a question of fact or law, does not amount to an illegality or material irregularity. To come to an erroneous conclusion does not amount to acting with material irregularity or illegality and a court has much jurisdiction to pass a correct order as a wrong one.

It may be pointed out that the jurisdiction under Section 115 of the Code is a discretionary one. The Supreme Court has observed in *Major S.S. Khanna* v. *F.J. Dhillon*, A.I.R. 1964 S.C. 497, that the exercise of jurisdiction under Section 115, C.P.C., is discretionary and that the court is not bound to interfere merely because the conditions in clauses (a), (b) and (c) of Section 115(1) are satisfied. The fact that another remedy is available to an aggrieved party by way of any appeal from the ultimate judgment or decree, is one of the relevant considerations for refusing to exercise discretion under Section 115(1), C.P.C.

Under Section 115, the High Court can call for the record of the case suo motu and revise the same if it finds that the subordinate court exercised a jurisdiction not vested in it by law or failed to exercise the jurisdiction so vested or acted in the exercise of its jurisdiction illegally or with material irregularity. Therefore, if the case is not presented by a duly authorised person and the court finds that the impugned order falls within the purview of Section 115, it can suo motu revise it.

'Any case which has been decided'

The power of the High Court under Section 115 is exercisable in respect of 'any case which has been decided'. The word "case" is something wider but not wide enough to include every order passed by a court during the pendency of a suit. It would include a decision on any substantial question in controversy between the parties affecting their rights, even though such order is passed in the course of the trial of the suit.

A case can be said to have been decided when any rights or obligations for the parties are adjudicated upon. The orders which are passed in a routine manner and do not decide any substantial right or question affecting rights of the parties cannot be said to amount to a case decided.

The Supreme Court observed in *Major S.S. Khanna* v. *Brig. F.J. Dhillon*, that the expression 'case' is a word of

comprehensive import; it includes a civil proceeding and is not restricted by anything contained in Section 115 of the Code to the entirety of the proceeding in a civil court. To interpret the expression 'case' as an entire proceeding only and not a part of the proceeding imposes an unwarranted restriction on the exercise of powers of superintendence and may result in certain cases in denying relief to the aggrieved litigant.

The "case decided" is to be construed in its wider amplitude giving realistic meaning to these words. "Case decided" does not necessarily mean case finally adjudicated, rather each decision which terminates a part of the controversy though the suit or the case may not be finally decided, shall come within the ambit of the term "case decided".

Illegally or with material irregularity

The words 'illegally' and 'material irregularity' in Section 115 do not cover either error of fact or of law. These words do not refer to the decision arrived at but to the manner in which it is reached. The errors as contemplated relate to material defects of procedure.

Section 115 empowers the High Court to satisfy itself upon three matters, viz.,

(a) that the order of the subordinate court is within its jurisdiction,

(b) that the case is one in which the court ought to exercise jurisdiction, and

(c) that in exercising jurisdiction the court has not acted illegally that is in breach of some provision of law, or with material irregularity.

If the High Court is satisfied upon those three matters, it has no power to interfere because it differs, however profoundly, from the conclusions of the subordinate court upon questions of fact or law. The High Court will not interfere with an incorrect decision of the lower court where there is no question of lack of jurisdiction or material irregularity in procedure. Where there is a willful disregard or conscious violation of a rule of law or procedure the case is one of material irregularity calling for interference in revision.

APPLICABILITY OF CIVIL PROCEDURE CODE ON TRIBUNALS

The Code of Civil Procedure is applicable on the Tribunals in a restricted manner. There is no straight jacketed rule which can be applied to find out which provision of the Civil Procedure Code is applicable on a particular tribunal. The provisions of Civil Procedure Code are made applicable on the tribunals by the legislations (including delegated legislation) controlling the functioning of the tribunal.

Applicability of Civil Procedure Code on National Company Law Tribunal

Rule 57 of NCLT Rules: Issue of process of execution

According to rule 57 of NCLT Rules, on receipt of an application under rule 56 the NCLT shall issue a process for execution of its order in such Form as provided in the Code of Civil Procedure, 1908. Further, NCLT shall consider objection, if any, raised by the respondent and make such order as it may deem fit and shall issue attachment or recovery warrant in such form as provided in the Code of Civil Procedure, 1908.

Rule 126 of NCLT Rules: Form and contents of the affidavit

An affidavit before NCLT shall conform to the requirements of order XIX, rule 3 of Civil Procedure Code, 1908.

Rule 131 of NCLT Rules: Application for production of documents, form of summons

Except otherwise provided in the NCLT Rules, discovery or production and return of documents shall be regulated by the provisions of the Code of Civil Procedure, 1908.

Rule 135 of NCLT Rules: Procedure for examination of witnesses, issue of Commissions

The provisions of the Orders XVI and XXVI of the Code of Civil Procedure, 1908, shall mutatis mutandis apply

in the matter of summoning and enforcing attendance of any person and examining him on oath and issuing commission for the examination of witnesses or for production of documents.

Applicability of Civil Procedure Code on SEBI and SAT

SEBI

According to section 11(3) of SEBI Act, 1992, **n**otwithstanding anything contained in any other law for the time being in force while exercising the powers under clause (i) or clause (ia) of sub-section (2) or sub- section (2A) of section 11 which is relating to function, SEBI shall have 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 :

(i) the discovery and production of books of account and other documents, at such place and such time as may be specified by the Board;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) inspection of any books, registers and other documents of any person referred to in section 12, at any place;

(iv) inspection of any book, or register, or other document or record of the company referred to in sub-section (2A)

(v) issuing commissions for the examination of witnesses or documents.

SAT

According to section 15U of SEBI Act, 1992, the Securities Appellate Tribunal (SAT) shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of SEBI Act, and of any rules, the Securities Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

Further, the Securities Appellate Tribunal shall have, for the purposes of discharging their functions under SEBI Act, 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) issuing commissions for the examination of witnesses or documents;

(e) reviewing its decisions;

(f) dismissing an application for default or deciding it ex parte;

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

(h) any other matter which may be prescribed.

In the case of *Shri G.S. Rathore* vs *The Union of India (UOI)* decided on 21st June, 2007, it has been decided by the Bombay High Court that it is not the Legislative intent that the provisions of the Code should be applicable stricto senso. The paramount precept of administrative procedure before the tribunal is the principle of natural justice, added by the own prescribed procedure of the tribunal. (Of course, further to add to the same provision of Section 22(3) of the Act, to what extent the tribunal shall be vested with the power of the civil court). The application of the provisions of the Code would, therefore, be limited and restricted to the extent specified specifically in the provisions of Section 22(3) of the Act.

LESSON ROUND-UP

- The word jurisdiction is used in various contexts. It means legal authority, extent of power and limitation on such powers. It is a term of comprehensive import embarrassing every kind of judicial action. It means power and authority of the court to hear and determine a judicial proceeding and power to render particular judgement in question.
- The eCourts Project was conceptualized on the basis of the "National Policy and Action Plan for Implementation of Information and Communication Technology (ICT) in the Indian Judiciary – 2005" submitted by eCommittee, Supreme Court of India with a vision to transform the Indian Judiciary by ICT enablement of Courts.
- In view of the multifarious activities of a welfare state, the legislature cannot work out all the details to fit the varying aspects of complex situations. It must necessarily delegate the working out of details to the executive or any other agency. Therefore, one of the most significant developments of the present century is the growth in the legislative powers of the executives. There is no such general power granted to the executive to make law, it only supplements the law under the authority of legislature.
- Under the Constitution of India, Articles 245 and 246 provide that the legislative powers shall be discharged by the Parliament and State legislature. The power of Legislature to delegate its legislative power is not prohibited in the Constitution.
- Law making by the administration can take various forms. It can be in the form of rules, regulations, bye-laws etc. In the case of this normal type of delegated legislation, the limits of the delegated power are clearly defined in the enabling statute and they do not include such exceptional powers as the power to legislate on matters of principle or to impose taxation or to amend an act of legislature.
- In India, we have courts at various levels – different types of courts, each with varying powers depending on the tier and jurisdiction bestowed upon them. They form a hierarchy with the Supreme Court of India at the top, followed by High Courts of respective states with District and Sessions Judges sitting in District Courts and Magistrates of Second Class and Civil Judge (Junior Division) at the bottom.
- Bharatiya Nagarik Suraksha Sanhita, 2023 is the procedural law for conducting a criminal trial in India. The procedure includes the manner for collection of evidence, examination of witnesses, interrogation of accused, arrests, safeguards and procedure to be adopted by police and courts, bail, the process of criminal trial, a method of conviction, and the rights of the accused of a fair trial by principles of natural justice.
- A reference to the High Court by a District Judge or Judge of a Court of Small Causes, under the provisions of Section 113 and Order XLVI, Rule I of the Code of Civil Procedure, should be made only when the presiding Judge entertains a reasonable doubt on the point of law or usage having the force of law referred, and not merely on the importunity of pleaders.
- Review means re-examination or re-consideration of its own decision by the very same court. An application for review may be necessitated by way of invoking the doctrine 'actus curiae neminem gravabit' which means an act of the court shall prejudice no man. The other maxim is, 'lex non cogit ad impossibillia' which means the law does not compel a man to do that what he cannot possibly perform.

- The Code of Civil Procedure is applicable on the Tribunals in a restricted manner. There is no straight jacketed rule which can be applied to find out which provision of the Civil Procedure Code is applicable on a particular tribunal. The provisions of Civil Procedure Code are made applicable on the tribunals by the legislations (including delegated legislation) controlling the functioning of the tribunal.

GLOSSARY

Delegated Legislation: This supplementary legislation is known as 'delegated legislation' or 'subordinate legislation'. These legislations confer legislative powers upon administrative authorities.

Ultra Vires: The term ultra vires means outside and beyond the authority.

Ex-Parte: Ex-parte means deciding a matter without hearing the other party.

Summary Trial: Cases which generally take only one or two hearings to decide the matter comes under this category. The summary trials are reserved for small offences to reduce the burden on courts and to save time and money.

Precedent: Precedents are previously settled position of Law by adjudication.

Review: Review means re-examination or re-consideration of its own decision by the very same court.

Revision: According to Section 115 of Code of Civil Procedure, 1908, 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.

Reference: In reference, a Court subordinate to the Court to make a reference to that Court, if certain conditions are satisfied.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. The development of the legislative powers of the administrative authorities in the form of the delegated legislation occupies very important place in the present day. Comment.
2. Enumerate various types of delegation of legislative power.
3. Discuss modes of control over delegated legislation.
4. Discuss procedural aspects of working of Civil Courts.
5. The summary trials are reserved for small offences to reduce the burden on courts and to save time and money. Discuss Briefly.
6. Discuss Reference, Review and Revision under Civil Procedure Code, 1908.
7. Whether Tribunals are bound by the Civil Procedure Code, 1908. Comment.

LIST OF FURTHER READINGS

- The Law of Pleadings in India (1987); 14th Ed. Rev. by Justice K.N. Goyal, etc. Eastern Law House, Calcutta.

  P.C. Mogha

- Drafting, Conveyancing and Pleadings (1982); 2nd Ed., N.M. Tripathi (P.) Ltd., Bombay.

  G.M. Kothari and Arvind G. Kothari