



# **TRIAL OF CIVIL CASES**



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§ The code of civil procedure is divided into two parts :-

- a) Section from 1 to 158.
- b) Schedule containing orders and rules from order 1 to 51.

§ The sections give the power to the judge to deal with civil cases and the orders and the rules specify how these powers are to be used.

§ Civil Court is a body established by law for administration of justice - Different kinds of law constitute different kinds of Courts - Which Court comes within definition of civil Court would depend on text and context of statute **AIR 2009 SC (Supp) 2474 'Nahar Indl. Enterprises Ltd. v. Hong Kong and Shanghai Banking Corpn.'**

# SUITS IN GENERAL JURISDICTION OF THE COURTS

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## 9. Courts to try all civil suits unless barred

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

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

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

# Jurisdiction of Court

§ Courts in India exercise jurisdiction both in equity as well as law - But exercise of equity jurisdiction is always subject to the provisions of law. **AIR 2008 SUPREME COURT 171**  
**"Shiv Kumar Sharma v. Santosh Kumari"**

§ The jurisdiction of the Civil Court to entertain any suit of a civil nature arising under a statute can be excluded only when cognizance is expressly or impliedly barred by the statute which gives rise to such suits. **2011 AIR SCW 6781**  
**"Dayaram v. Sudhir Batham"**

§ The plea regarding the maintainability of suit is required to be raised in the first instance in the pleading (written statement) then only such plea can be adjudicated by the Trial Court on its merits as a preliminary issue under Order 14 Rule 2 of the Code of Civil Procedure. Once a finding is rendered on the plea, the same can then be examined by the first or/and second appellate Court. **A. Kanthamani vs. Nasreen Ahmed AIR 2017 SC 1236**

§ The normal rule of law is that civil Courts have jurisdiction to try all suits of civil nature except those of which cognizance by them is either expressly or impliedly excluded as provided under Section 9 of the Code of Civil Procedure but such exclusion is not readily inferred and the presumption to be drawn must be in favour of the existence rather than exclusion of jurisdiction of the civil Courts to try civil suit.

§ The courts have to utilize their power in entertaining suits and applications to the extent of the powers invested in them meaning thereby to administer justice by means of law.

**Official trustee West Bengal Vs. Sachindra Nath Chatterji (AIR 1969 SC 823). Ujjain Bai Vs. State of U.P (AIR 1962 SC 1621).**

§ This power gives to the court an authority to enquire into the facts, to apply the law, pronounce the judgement and carry it into execution.

§ In the process of a suit filed before a court, the court has to first see whether it has a pecuniary, territorial and jurisdiction as to the subject matter. As the limitation to jurisdiction are imposed by the statute under which the court is constituted. The statute may impose restriction on court and where no restriction is imposed the jurisdiction becomes unlimited.

§ **Section 19** :- of the code of civil procedure specifies when a suit is for compensation for a wrong done to the person or to the movable property, if it was done within the local limits of the jurisdiction of one court and the defendant resides, or carries on business or personal work for gain within the local limits of the jurisdiction of another court the suit may be instituted at the option of the plaintiff in either of the said courts and it cannot be challenged by the defendant . **Shaji Verghese Vs. Bishop Vincent Barwa AIR (2014) 2 BBCJ 469.**

- § Court arriving at conclusion that it has no jurisdiction to try suit - Proper order to pass is not dismissal of suit but return of suit for presentation to proper Court. **AIR 1993 SC 2094 "R. S. D. V. Finance Co. Pvt. Ltd. v. Shree Vallabh Glass Works Ltd."**
- § The consent of the parties cannot create jurisdiction on a court having no jurisdiction . **AIR 2013 SUPREME COURT 3060 "Jagmittar Sain Bhagat v. Dir., Health Services, Haryana"**
- § Similarly Waiver, will not create jurisdiction and if the court has jurisdiction consent of the parties waiver, acquiescence's or estoppel cannot take it away. **AIR 1962 SC 199 Hira lal Patni Vs. Sri Kali Nath.**
- § At the first instance itself during the trial of the suit the court is entitled to determine its jurisdiction and if having jurisdiction it gains the power to grant interim relief which is discretionary and inherent in every court of competent jurisdiction . **Bina Murlidhar Henidev Vs. Kanhaiyalal Lokram Hemidev AIR 1999 SC 2171.**

## Exclusion of Jurisdiction

§ Not to be readily inferred - even if statute grants finality to order of tribunal - it has to be seen whether tribunal has power to grant relief which is normally granted by civil court. **AIR 2010 SUPREME COURT 2897 "RAMESH GOBINDRAM V. SUGRA HUMAYUN MIRZA WAKF"**

**The court shall not exercise its discretion in favour of decreeing a premature suit in the following cases :**

**(i) when there is a mandatory bar created by a statute which disables the plaintiff from filing the suit on or before a particular date or the occurrence of a particular event;**

**(ii) when the institution of the suit before the lapse of a particular time or occurrence of a particular event would have the effect of defeating a public policy or public purpose;**

**(iii) if such premature institution renders the presentation itself patently void and the invalidity is incurable such as when it goes to the root of the court's jurisdiction;**

# Ouster of Jurisdiction

§ Heavy burden of proof lies on the party who asserts that civil court's jurisdiction is ousted and some other court, tribunal or authority has been vested with jurisdiction. **2008 AIR SCW 3651**

**"MAHANT DOOJ DAS. V. UDASIN  
PANCHAYATI BARA AKHARA"**

§ A suit or proceeding initiated in accordance with law cannot be considered as an abuse of the process of court, only on the ground that such suit or proceeding is likely to cause hardship or is likely to be rejected ultimately. As there are specific provisions in the code, relating to costs, security for costs and damages, the court cannot invoke s. 151 on the ground that the same is necessary for ends of justice. **2010 AIR SCW 4860**  
**"VINOD SETH V. DEVINDER BAJAJ"**

# **Bar to Civil Courts jurisdiction**

§ A plea of bar to jurisdiction of a civil court must be considered having regard to the contentions raised in the plaint. For the purpose, averments disclosing cause of action and the reliefs sought for therein must be considered in their entirety.

**AIR 2005 SUPREME COURT 2544 "CHURCH OF NORTH INDIA V. LAVAJIBHAI RATANJIBHAI" = 2005 AIR SCW 2738**

§ Suit for recovery of possession by tenant - such suit neither expressly nor impliedly barred - civil court consequently would have jurisdiction to entertain suit. **AIR 2011 SUPREME COURT 244 "AMINA BEEVI V. THACHI**

# STEPS IN A SUIT

- § Every suit to be instituted by presenting a plaint to the court or such officer as appointed on its behalf personally or through the representatives duly authorised by him or by an advocate as per section 27 and Order 6 Rule 2 of the C.P.C.
- § The court in which the plaint is presented may accept the plaint or reject it or return it to the plaintiff.

§ **In a suit instituted and during its trial the court has to check the four essentials :-**

- 1. Parties**
- 2. Cause of action**
- 3. Subject matter**
- 4. Reliefs claimed by the plaintiff.**

# Parties

- § When the Plaintiff wants to implead certain persons as Defendants on the ground that they may be adversely affected by the outcome of the Suit, then interest of justice also requires allowing such a prayer for impleadment so that the persons likely to be affected are aware of the proceedings and may take appropriate defence as suited to their vendors **Robin Ramjibhai Patel Vs. Anandibai Rama and Ors. (2017) SCCR 14 see also Kasturi Vs. Iyyamperumal (2005) 6 SCC 733**
- § These must concern in every suit which is framed and if these ingredients are fulfilled the suit travels for trial and for deciding the prayer of the plaintiff.

# § GROUNDS OF REJECTION

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§ The plaint can be rejected under Order VII, Rule 11 if conditions enumerated in the said provision are fulfilled at any stage of the suit bases on the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power **Madanuri Sri Rama Chandra Murthy v. Syed Jalal AIR 2017 SUPREME COURT 2653**

§ An application for rejection the plaint may be filed on more than one ground and clear finding to effect must be arrived at by the court. **Kamala Vs. K.T Eshwara Sa (2008) 12 SCC 661 : AIR 2008 SC 3174.**

§ The respondents have suppressed crucial facts in the plaint, which if seen, the suit is only to be dismissed at the threshold. Rejection of a plaint on institutional grounds is different from dismissal of a suit at pre-trial stage on the ground of maintainability. For dismissal on a preliminary issue, the Court is entitled and liable to look into the entire documents including those furnished by the defendant. **2016 0 Supreme(SC) 781**

§ The provision under Order 7 Rule 11 is mandatory and the court has no discretion to reject the plaint once contingencies specified in the code occur, while rejecting the plaint the plaintiff should be given an opportunity to remove the grounds of objection wherever it is possible to do so.

§ After choosing one particular remedy the Plaintiff cannot avail the other remedy as well, in respect of the same relief founded on same cause of action. **State of Rajasthan Vs. Union of India (2017) SCCR 39**

§ The court has to consider only the plaint as a whole and if the entire plaint comes under the cover of Order 7 Rule 11 the same has to be rejected and the court cannot proceed with the trial without disposing the petition filed. **(2016) SCCR 739**

§ The court can only see whether the plaint, or rather the pleadings of the Plaintiff, constitute a cause of action. Pleadings in the sense where, even after the stage of written statement, if there is a replication filed, in a given situation the same also can be looked into to see whether there is any admission on the part of the Plaintiff. In other words, under Order VII Rule 11, the court has to take a decision looking at the pleadings of the Plaintiff only and not on the rebuttal made by the Defendant or any other materials produced by the Defendant. **Kuldeep Singh Pathania vs. Bikram Singh Jaryal AIR 2017 SC 593**

# SUMMON TO DEFENDANTS (Order 5)

- § The next step after the suit has been instituted and admitted as per amendment with effect from 11<sup>th</sup> July 2002 the defendant may be summoned to appear and answer the claim and he may be summoned to appear and answer the claim and he may be served with the summon as prescribed not beyond 30 days from the date of institution of the suit .
- § The day for the appearance of the defendant must be specified. The place of resident of the defendant and the time necessary for service of summons must be fixed in a manner as to allow the defendant sufficient time to appear and answer.
- § The summon must also order the defendant to produce all documents or copies thereof in his possession or power upon which he intends to rely in support of his case. Every summon must be accompanied with a copy of the plaint as substituted by amendment act 1999 W.e.f 1<sup>st</sup> July 2002. In absence of the copy of the plaint and other documents the defendant would be unable to file a written statement **Nahar Enterprises Vs. Hyderabad Allwyn Ltd. (2007) 9 SCC 466.**

# SERVICE OF SUMMON

§ The service of summons to the defendant is important so as that he can defend himself. The courts felt a major problem in the service of summons as it caused delay in the progress of the case.

§ This has been defined under section 27 to 29 and Order 5 of the C.P.C and has been thoroughly amended by amendment Act 2002 incorporating all technical and other developments to be used for service of summons as defined under Order 5 Rule 9(3) and all expenses of service of summon to the defendant has to be borne by the plaintiff ( as inserted by Amendment Act 2002 W.e.f 1<sup>st</sup> July proviso to Order 5 Rule 9 (3) ). In **P.T Thomas vs. Jacob AIR 2005 SC 3575**.

Where the summons was properly addressed prepaid and duly sent by registered post acknowledgement due, the summon shall be taken to be duly served if the acknowledgement has lost, not received back by the court within 30 days from the date of issue of summon as notice by registered cover as given and correct address it will be presumed as summon duly served.

§ **Order 5 Rule 9 A(2)** after amendment empowers the court to permit the plaintiff to effect service of summons on the defendant and deliver the same to the plaintiff, if the plaintiff moves the application for the same and if the summons delivered to the plaintiff is returned back as refused by the defendant the service of the summon shall be served by the court in the same manner as summons to the defendant **Order 5 Rule 9A(4)**.

§ The court has got a very wide discretion in service of summon in such other manner as it thinks fit as substituted service defined under **Rule 17,19,19A and 20**.

# WRITTEN STATEMENT

§ Order 6 is general in nature as it deals with pleadings i.e. plaints and written statement whereas, Order 7 exclusively deals with plaint and, Order 8 deals with the written statement. In **Dumtibai Vs. Paras finance company (2007) 10 SCC 82** The Supreme Court states that every party in case has a right to file a written statement which should be in accordance with natural justice. Further in **Food corporation of India Vs. Yadav Engineer and contractors AIR 1982 SC 1302** The Supreme Court describes written statement as a reply of the defendant to the plaint of the plaintiff and the defendant's pleadings which may contain new facts in his favour

§ The written statement must specifically deal with each of the allegations of fact made in the plaint. The failure to make specific denial amounts to an admission. **Jaspal Kaur Cheema & Another Versus M/s. Industrial Trade Links & Others –AIR (SC)2017 3995; 2017 8 SCC 592; 2017 0 Supreme(SC) 641;**

§ The Amendment of the C.P.C 2002 Order 8 Rule 1 specifies that the defendant has to present the written statement within 30 days of the date of service of summon to him, however the court may extend the time which shall not be beyond 90 days.

§ As in Salem Advocate bar association Vs. Union of India AIR 2005 SC 3353 see also AIR 2008 SUPREME COURT 2099 "Zolba v. Keshao" states that the maximum period of 90 days as fixed under Order 8 Rule 1 is ordinarily indicative of mandatory nature of the provision having regard to the context in which it is used it can be construed as directory. Under Order 8 Rule 10 the court in its discretion would have the power to allow the defendant to file written statement even after the expiry of 90 days. There is no restriction in Order 8 Rule 10 that after expiry of 90 days further time cannot be granted as the court has wide powers to make such order in relation to the suit as it thinks fit, thus the provision under Order 8 Rule 1 providing upper limit of 90 days is directory in nature. The order extending time to file the written statement cannot be made in routine the extension is to be made only in exceptionally hard cases.

# ENLARGEMENT OF TIME SECTION 148

Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the court may, in its discretion, from time to time, enlarge such period, not exceeding thirty days in total, even though the period originally fixed or granted may have expired.

§ Peremptory order for payment of deficit court-fee within time fixed- Court can extend time AIR 1961 SUPREME COURT 882 "Mahanth Ram Das v. Ganga Das

§ when any period or time is granted by the Court for doing any act, the Court has the discretion from time to time to enlarge such period even if the time originally fixed or granted by the Court has expired. It is evident from the language employed in the provision that the power given to the Court is discretionary and intended to be exercised only to meet the ends of justice. AIR 2010 SUPREME COURT 3356 "D. V. Paul v. Manisha Lalwani"

§ Before the extension of time is granted by the court ,  
two conditions must be fulfilled

§ A period must have been fixed by the court

§ Such period must be for doing an act prescribed by the Court

§ the Court has the discretion under S. 148, C.P.C. to extend the time even though the time fixed has already expired provided it is satisfied that the mistake is bona fide and was not indicative of negligence or inaction

§ If the conditions are not fulfilled section 148 has no applicability AIR 1989 SUPREME COURT 2073

## **INSPECTION OF DOCUMENT REFERRED TO IN PLAINT (ORDER 11 RULE 15)**

After the summon has been served the defendant has to file a written statement of his defense if the court orders before the written statement is filed by the defendant the plaintiff and the copies attached to it has to be examined carefully and if the annexures has not been supplied a notice is to be given to the plaintiff to produce them for inspection for the perusal of the defendant.

# AMENDMENT OF PLEADINGS AND PARTICULARS

- § After the written statement is filed the plaintiff has to consider whether the plaint requires an amendment which can be done by filing a petition for amending the pleading at any stage.
- § This petition for amendment can be made both by the plaintiff to amend the plaint and subsequently by the defendant to amend the written statement, the admission made in written statement can be explained through an amendment. **Sushil Kumar Jha Vs. Manoj Kumar AIR 2009 SC 2544.**
- § The amendment in C.P.C makes it clear no application for amendment of plaint or written statement will be allowed after the commencement of the trial unless the court is satisfied that in spite of diligence a party could not have raised the matter before commencement of trial.
- § The question whether the party seeking the amendment has acted with due diligence will depend upon the facts and circumstances of each case.

§ The Supreme Court in **Chandrakant Bansal Vs. Rajendar Singh Anand (2008) 5 SCC 117** explains due diligence meaning reasonable diligence which a prudent man would exercise in the conduct of his own affairs.

§ The question arises whether the said bar can be utilized during the intervening period of framing the issue and the date fixed for evidence. The opinion in the trial does not commence and to an application for amending the pleading the proviso shall not apply. The preferential right can ordinarily be claimed within one year **Ashutosh Chaturvedi Vs. Parno Devi AIR 2008 SC 2171**.

§ In **Rajkumar Vs. Dipendar Kumar** The Supreme Court holds that generally all amendments would be allowed which are necessary for the purpose of determining the real question in controversy between the parties or for correction of defects or error in any proceeding subject to it does not substitute as new cause of action and where injury caused to the opposite party may be compensated by any cost. **Bollepanda P. Poonacha Vs. K. M Madapa (2008) 13 SCC 179**.

# FRAMING OF ISSUES

- § Considering the plaint and the written statement , which constitutes pleadings. The dispute between the parties come into light and thus the court considering both frame issues accordingly.
- § Issues generally means a point subject to debate in a litigation and for the court to decide whether the claim of the plaintiff is to be decided in his favour or not.
- § The issues are divided into two:-
  - A. Issue of fact
  - B. Issue of law

§ The Supreme Court in **AIR 1971 SUPREME COURT 2355 "Mathura Prasad Sarjoo Jaiswal v. Dossibai N. B. Jeejeebhoy"** observes that the issues may be mixed also i.e. issue of facts and issue of law.

§ The court has to pronounce the judgment on all the issues framed, but if the court feels that the suit may be disposed of on only one issue i.e. its jurisdiction, bar to the suit created by any law it may decide the said issue first and keep the other issue in abeyance. **AIR 2003 SUPREME COURT 716 "Dugar Electronics v. Collector of Central Excise, Calcutta"**

§ The court is duty bound for framing of the issues and the parties are to assist the court in the process of framing of issues. The question of maintainability of suit by itself does not give rise to a triable issue. **Ajay Mohan Vs. H. N Rai AIR 2008 SC 804.**

§ During trial no issue is to be raised on subsidiary matter of facts as the main object in framing of issues is to direct the attention of the parties to the principle question on which they are in dispute :-

1. Ascertain from the parties or through their lawyer which material facts in the pleadings are admitted and denied by the other so as to examine if necessary any person on their behalf who is able to answer material questions relating to the suit. The amendment further states that if any parties refuses or is unable to answer any material question the hearing must be postponed for not more than 7 days and direct the parties to appear in person and,

2. Direct to opt for one mode of settlement of dispute outside the court either through Arbitration, Conciliation, Settlement through lok adalat, and Mediation.

§ After framing of the issues in the first hearing the court will proceed for examination of witnesses under Order 18 wherein the plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or some additional facts alleged by the defendant the plaintiff is not entitled to any part of relief which he seeks.

§ Under Order 18(2) the court will start examining the statements and the evidences produced on the fixed date. Any party may address oral arguments and on the permission granted by the court submit within argument in support of his case with a copy to other side.

# FACTS WHICH ARE RELEVANT TO AN ENQUIRY

1. Facts when identity the parties .
2. Facts showing state of mind or body.
3. Which are necessary to prove or disapprove a fact in issue.
4. Relevant facts to be accepted by court is either directly or inferentially lead to one of the conclusions necessary to prove or disapprove the facts.
5. The facts which lead to a conclusion are essential to the issues.
6. The facts which inferentially lead to a conclusion are those which raise a presumption as to the existence of fact essential to the issue. Thus the evidence may be given of the facts which are taken to be relevant by the courts.

The plea regarding the maintainability of suit is required to be raised in the first instance in the pleading (written statement) then only such plea can be adjudicated by the Trial Court on its merits as a preliminary issue under Order 14 Rule 2 of the Code of Civil Procedure. Once a finding is rendered on the plea, the same can then be examined by the first or/and second appellate Court. **A.**

**Kanthamani vs. Nasreen Ahmed MANU/SC/0234/2017**

# SPECIFIC DENIAL

§ Denial for want of knowledge is no denial at all. The provisions Under Order 8 Rule 5 requires pleadings to be answered specifically in written statement.

§ If defendant did not know of a fact denial of knowledge of a particular fact is not a denial of fact. (2016)

SCCR588

## COUNTER CLAIM

- § Cause of action in respect of which a counter claim can be filed should accrue before the defendant has given his defence that is before the filing of the written statement because one cause of action cannot be allowed to be substituted by another.
- § The Courts must discourage belated counter claim (2016) SCCR 425

# ADMISSIBILITY

- § Order 12 of the Code Of Civil Procedure talks about admissions and it applies to facts only and not law
- § Admissions are the strongest evidence possible and even a wrong construction of document will be assumed to be correct in view of the admission **AIR 1914 PC 220**
- § If the admissions are made subject to condition , they are to be accepted with conditions **AIR 1915 PC 2**
- § As admission in pleading is the admission of averment by the Opp. Parties and thus it has to be taken as a whole **AIR 1986 SC 1509 See also AIR 1975 Pat 168 (D.B.)**
- § An admission made by a co-defendant cannot be used against other defendants and a party is not bound by an admission in his pleading except for the purposes of the suit it has been delivered **AIR 1980 SC 1255**

# ADMISSION

OF  
FACT

DURING EXAMINATION  
BY COURT O.10.R.1

OF  
DOCUMENT  
ON NOTICE  
UNDER O.12  
R.2

IN  
PLEADING

EXPRESSLY

CONSTRUCTIVELY  
O. 8 R. 5

IN ANSWERS TO  
INTERROGATORIES  
O.11.R.8

ON NOTICE O.12. R.4

OATH UNDER O.12. R.4  
AND UNDER O.14 R.3

ON AGREEMENT OF  
PARTIES.

# **ADMISSION OF FACT**

- § Under Order 10 of the Code of Civil Procedure the court has to ascertain whether allegations in pleading are admitted or denied.
- § Order X, CPC in an enabling provision providing that the court at the first hearing of the suit shall ascertain from each party about their pleadings. It does not in any manner place any bar on the powers of the court to seek clarification from any party in an appropriate case, at any date earlier than one fixed for framing of issues so as to advance the interest of justice. It would not be in violation of Order X, CPC or in conflict thereof. **AIR 2002 SUPREME COURT 1796 "Vikas Aggarwal v. Anubha"**

# DOCUMENTS AND WITNESSES

- § The courts use the documents and witnesses of the parties to obtain necessary information regarding obtaining of material facts constituting the case and examining of the witnesses in support of the issues raised by both the parties.
- § If the court finds certain documents necessary, notice to produce them before the settlement of issue must be given to the parties at or before the settlement of the issues as per 2002 Amendment. Explaining this the Hon'ble Supreme Court in **Salem Advocate bar association Vs. Union of India AIR 2005 SC 3353** The Supreme Court states that the stipulation in Order 9 Rule 15 is nothing but directory and does not mean that inspection cannot be allowed after the settlement of issues . Order 11 Rule 21 of the court provides that if an order for recovery and inspection of documents has not been complied by the plaintiff his suit is liable to be dismissed and if on the part of defendant defense is liable to be struck off.

## NOTICE TO ADMIT FACTS OR DOCUMENTS(ORDER 12)

- § It has been specified facts admitted by the parties need not to be proved and it has been specified by Supreme Court in **Sitaram Motilal Kalal Vs. Sanatanu Prasad Jaishankar Bhatt AIR 1996 SC 1697** makes it clear that admissibility of the document means admission of facts contained in the document.
- § There cannot be part admissibility and part rejection. The document produced has to be considered and construed as a whole as the intent and intention of the document can be found by reading the entire document **C.I.T West Bengal iii Calcutta Vs. Sri Jagannathjee AIR 1977 SC 1523**.
- § The inspection of the document is necessary as it explains the intention of the executor **Usha Subbaroa Vs. B.N Vishvewaraian AIR 1996 SC 2260**.
- § As one has to be guided by the terms of the document **AIR 1992 SC 1236**.

# IN ANSWERS TO INTERROGATORIES

§ The admission of facts can be derived in answer of interrogatories under Order 11 Rule 8 , which states that interrogatories shall by way of affidavits with 10 days of the time specified by the court and the courts can act accordingly

# OBJECT

The object of the Order XII , Rule 6 and reasons set out while amending the said rule, it is stated that "where a claim is admitted, the Court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled." **AIR 2000 SUPREME COURT 2740 "Uttam Singh Dugal and Co. Ltd. v. Union Bank of India"**

Order XII Rule 6, C.P.C. is enacted for the purpose of and in order to expedite the trials if there is any admission on behalf of the defendants or an admission can be inferred from the facts and circumstances of the case without any dispute; then, in such a case in order to expedite and dispose of the matter such admission can be acted upon. **AIR 2005 SUPREME COURT 2765 "Charanjit Lal Mehra v. Kamal Saroj Mahajan"**

# THE DUTY OF THE COURT

- § Where the court has a doubt as to Admissibility of a document or a fact it is better to admit it than to exclude in doubtful cases.
- § The court should always lead in favour of the defendant and exclude all evidence tendered by the plaintiff which is doubtful or and of remote relevance.
- § As a general rule argument on Admissibility of evidence should not be heard when the case is opened.
- § An objection of admissibility should be taken when the evidence is tendered and not before.
- § In case of an objection of proving a particular document the court should treat the document as inadmissible.
- § The court should decide the question of admissibility then and there and the ruling as to admissibility must be very brief and there should be no interruption of trial once the ruling has been given.

§ The court is not concerned as to how the evidence was obtained it is only concerned with the admissibility of the facts and documents placed before it (1970)2 SCC889.

§ The question of admissibility of Evidence is a question of law to be declared by a judge and its relevancy relies upon the evidences laid.

§ The Supreme Court is of the view that pre judicial effort would not be out of proportion to its evidentiary value thus it may be ignored AIR 1987 SC 1748.

# LIMITATION

- § The Limitation Act is a consolidating and amending statute relating to the limitation of suits, appeals and certain types of applications to courts and must, therefore, be regarded as an exhaustive Code.
- § It is a piece of adjective or procedural law and not of substantive law. Rules of procedure, whatever they may be, are to be applied only to matters to which they are made applicable by the legislature expressly or by necessary implication
- § It cannot be extended by analogy or reference to proceedings to which it doesnot expressly apply or could be said to apply by necessary implication.
- § It would, therefore, not be correct to apply any of the provision of the Limitation Act to matters which do not strictly fall within the purview of those provisions. **AIR 1964 SUPREME COURT 227**

# WHAT IS DONE BY THE LIMITATION LAW

1. It merely bars remedies.
2. It does not destroy Primary or Substantive Right of the Parties.
3. Judicial remedy available for the enforcement of the above mentioned right is barred.
4. It does not bar defence. It allows the defendant to set up a plea in defence, which he may not be able to enforce by filing a suit **AIR 1916 PC 172**
5. By showing of sufficient cause the limitation is waived.

§ The Substantive part of the Act contains Section 1 to 32

§ The schedule prescribes the period limitation.

§ The Schedule stands divided in **three divisions**.

§ The First Division relates to suits of various types, which are mentioned therein and prescribes the period of limitation for filing of such suits. It also provides the time from which such period begins to run.

§ The Second Division applies to appeals

§ The Third Division deals with applications of different types.

§ Over all the sections of the Act govern and control the Articles in the Schedule and binds the courts from traveling beyond the provisions of the Act.

§ A specific Article in the Limitation Act which covers a particular case, it is not proper to apply another Article, the application of which is not free from doubt and the suit cannot be held to be barred by time on the analogy of a matter, which is governed by a particular Article **AIR 1953 SC 125**

# ABETMENT

- § Order 22 Of the Code of Civil Procedure deals with abatement
- § The trial under the suit cannot continue or proceed without following the procedure laid down under Rule 2,3, or 4 as the case may be.
- § The question of abatement of a suit can arise only if the suit is pending. It is futile to suggest that on the death of defendant, when the suits to disposed off there will be any question of abatement **AIR 1979 PAT 319.**
- § In personal action where the death of the person cause of action does not survive the suit abates but where the right to sue survives against the legal representatives it does not. It does not abate **(1996) 2 SCC 205.**

## **WAIVER OF OBJECTION OR CONSENT**

- § A document can be treated as duly admitted where its admission without any proof is not objected by the party effected.
- § But consent of parties cannot make a piece of evidence relevant and admissible which is not under the law and in civil cases consent of parties can validate mode of recording evidence even though irregular but after the recording of the evidence it cannot be objected.

# RECEIVER

A receiver is appointment by the court under order 40 of code of civil procedure

1. Appointment of receivers.—(1) where it appears to the court to be just and convenient, the court may by order—

(A) appoint a receiver of any property, whether before or after decree;

(B) remove any person from the possession or custody of the property;

(C) commit the same to the possession, custody or management of the receiver, and

(D) Confer upon the receiver all such powers,

§

The appointment of the receiver , like injunction is an equitable relief and a discretionary power of the court.

§

A receiver is an officer or representative of the court

§

He is subject to the orders of the court

§

A court may appoint a receiver , when it doesnot deem it reasonable that either party should collect or receive rent, profits and to enable its distribution to the persons entitled in a suit filed for its adjudication **AIR 1993 SC 1721**

# SUMMONING OF WITNESSES (ORDER 16)

§ Under Rule 1 the parties are supposed to submit a list of witnesses and to obtain the summons to such persons on or before the day appointed by the court which not be later than 15 days after the date on which issues were settled. It has been clarified in **Mange Ram Vs. Brij Mohan AIR 1983 SC 925** that it is not expected that names of witnesses be given in the list if he is going to attend voluntarily. The list is required only for those witnesses for whom summon must be issued if there is any delay or omission the courts may adopt a liberal approach and condone the delay in the interest of justice.

# CROSS EXAMINATION

§ It is a matter of substance not of procedure. One has to put his own version in cross examination of opponent . If no such version is put the court will presume that the witness account has been accepted (2016) SCCR 588

# RECALL OF WITNESS

- § This power can be exercised at any stage of the suit. Power under Order 18 Rule 17 cannot be invoked to fill up omission and lacuna in evidence already led by a witness.
- § The recall of the witness is basically for clarification.
- § The rigour under Rule 17 doesnot affect the inherent power of the Court to pass orders for end of justice to reopen evidence for further examination or cross examination of witnesses or even from production of fresh evidence and for this the inherent power of the law court is the only recourse. (2016) SCCR 463

# HEARING AND DISPOSAL OF THE CASE

- § After finishing of the above procedure the suit is ready for hearing. The term “First Hearing” of the suit is at which the issues are settled and the court applies its mind and goes to the pleading of the parties in order to understand their contention. **Arjun Khiamal Makhijani Vs. Jamnadas Tuliani AIR 1989 SC 1599. Siraj Ahmad Siddiqui Vs. Premnath Kapoor AIR 1993 SC 2525.**
- § The framing of issues is taken to be an important stage where the scope of the trial is determined and it shows the direction in which the trial is to proceed including departures and diversions there from **Makhan Lal Bangal Vs. Manas Bhunia AIR 2001 SC 490.**

§ The written argument will form part of the record. The 2002 Amendment in the C.P.C has proposed certain changes in taking of evidences.

§ The evidence of the witness of examination shall be on an affidavit and copies shall be supplied to the other sides, however under Order 18 Rule 16 a witness may be examined before the hearing if he is to leave the jurisdiction of the court or any other sufficient reason for him to be examined immediately.


§ The witness may be examined on commission as per Order 26 Rule 1, 4, and 5 in cases specified therein. The amendment further provides that in cases where the witnesses reside within its jurisdiction may also be examined on commission in the interest or justice of expeditious disposal.

§ Order 18 Rule 4(2) speaks about cross examination and re examination of witnesses which can even be done by commission appointed by the court. He has the right to record the objections raised during objection but has no power to decide them as it is to be decided by the court at the stage or argument.

§ Under Order 18 Rule 17 the court have the power to recall any witness already examined to be re examined at any stage of the proceedings, but it does not permits a party to re examine the party to fill up the lacuna in the case as the power granted under Order 18 Rule 17 is to be used sparingly and the said order of recall should not prejudice the party, as the recall of the witness to clear the ambiguity that might have occurred in the course of his examination. **Vadiraj Naggappa Vernekar Vs. Sarad Chandra Prabhakar Gogate AIR 2009 SC 1604.**

# WITHDRAWAL OF SUIT

- § As per Order XXIII Rule 1(3) Code of Civil Procedure, suit may only be withdrawn with permission to bring a fresh suit when the Court is satisfied that the suit must fail for reason of some formal defect or that there are other sufficient grounds for allowing the Plaintiff to institute a fresh suit.
- § The power to allow withdrawal of a suit is discretionary.
- § In the application, the Plaintiff must make out a case in terms of Order XXIII Rule 1 (3) (a) or (b) Code of Civil Procedure and must ask for leave.
- § The Court can allow the application filed under Order XXIII Rule 1 (3) Code of Civil Procedure for withdrawal of the suit with liberty to bring a fresh suit only if the condition in either of the Clauses (a) or (b) that is, existence of a "formal defect" or "sufficient grounds".
- § The principle under Order XXIII Rule 1 (3) Code of Civil Procedure is founded on public policy to prevent institution of suit again and again on the same cause of action. **V. Rajendran and Anr. v. Annasamy Pandian (D) Thr. LRs. Karthyayani Natchiar** AIR2017SC685



§ The amendment of 2002 makes it clear that after the conclusion of the evidences of the parties, the parties shall submit written arguments and the court shall fix the time limit for oral arguments as per Order 18 Rule 2(3D).

# JUDGEMENT (ORDER 20)

- § The court may pronounce the judgment at once after the parties have closed their arguments or reserve the case for judgment and pronounce it within 30 days or the conclusion of the hearing and in special circumstances as per the amendment the period may be extended to 60 days and the copies of the judgment should be made available to the parties immediately after pronouncement of the judgment.
- § In **Anil Rai Vs. State of Bihar AIR 2001 SC 3173** the Hon'ble Supreme Court states that the court is to record the reason for the delay in pronouncing the judgment after 30 days of hearing and the judgment delivered after a long delay is liable to be set aside without examining the merits. **Kanhaiya Lal Vs. Anup Kumar AIR 2003 SC 689.**
- § The Apex Court makes it clear further the reliefs allowed by the court should be specific and not in general terms. **State of Bihar Vs. Secretariat Press Ministerial Staff of Union AIR 2002 SC 2145.**

# S.34. Interest

- § (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit,<sup>1</sup>[with further interest at such rate not exceeding six per cent per annum as the Court deems reasonable on such principal sum], from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:
- § Interest cannot be awarded for period during which plaint was not re-presented - Even grant of interest at lesser rate for such period not justified. **AIR 2011 SC (Supp) 455**
- § Principle of S.34 would apply even though power is discretionary **AIR 2009 SUPREME COURT 3171**
- § Interest - Is not penalty or punishment - It is normal accretion on capital **AIR 2007 SUPREME COURT 1198**

§ Award of interest - Is within discretion of court  
**AIR 2016 SUPREME COURT 553**

§ S. 34 of Civil P. C., S. 60 of Sale of Goods Act and S. 3 of Interest Act makes it clear that the award of interest is in discretion of the Court. S. 34 of Civil P.C. is the main provision under which interest could be awarded and S. 60 of the Sales of Goods Act is its offshoot. S. 3 of Interest Act also makes the Interest Act subject to provisions of Civil P. C. As such award of interest in suit for recovery of money is in discretion of the Court **AIR 2012 SUPREME COURT 3167**

# DECREE

- § On the basis of the judgment pronounced a decree is to be drawn which is clear by section 33 of the C.P.C within 15 days from the date of pronouncement of such judgment as per Order 20 Rule 6A of the Code of Civil Procedure.
- § The courts at the time of drawing the decree will see that the decree agrees with the judgment. **Om Prakash Verma Vs. State of A.P (2010) 13 SC 158** and if does not the court has inherent power to amend it explaining the judgment to the extent by rectifying the mistake if any. **S. Satnam Singh Vs. Surendar Kaur (2009) 2 SC 562**. Thus the drawing of the decree brings the trail of a suit to a rest and right of the parties to challenge it in appeal begins from the day the decree has been signed.

# SUIT AGAINST GOVERNMENT

§ It shall be the duty of the Court to assist the parties in arriving at the settlement in respect of subject matter of the suit as per the mandate of Order 27 Rule 5B of the C.P.C. and on its failure the case should have been finally decided in accordance with law (2016) SCCR

# **Transfer of Property Act (4 of 1882)**

**§ A suit for sale, foreclosure or redemption of a mortgaged property, should only be tried by a public forum, and not by an arbitral tribunal. Consequently, it follows that the court where the mortgage suit is pending, should not refer the parties to arbitration. Thus the suit being one for enforcement of a mortgage by sale, it should be tried by the court and not by an arbitral tribunal. AIR 2011 SUPREME COURT 2507 "BOOZ ALLEN AND HAMILTON INC. V. SBI HOME FINANCE LTD."**

## **Tenancy Act (18 of 1956)**

§ Suit for possession and mesne profit - plaintiff's claim that suit land was given by him on lease to defendant for cultivating same - defendant claimed ownership by adverse possession and denied being cultivating tenant under plaintiff - suit was not for eviction of a cultivating tenant - mere denial of title of plaintiff by defendant would not mean that only authorities under act will have jurisdiction - civil suit is maintainable.

**Air 2009 sc (supp) 690 "kurella naga druva vidya bhaskara RAO V. GALLA JANI KAMMA"**

# **Wakf Act, 1995**

**§ Section 83(5) of the wakf act, 1995 the wakf tribunal is deemed to be a civil court and has the same powers as are exercised by civil court under the code of civil procedure, 1908 while trying a suit or executing a decree or order. The civil courts are in turn competent to issue injunctions in terms of order xxxix, rules 1 and 2 and section 151, c.P.C. Similar orders can, therefore, be passed by the wakf tribunal also in suits that are legally triable by it if a case for grant of such injunction or direction is made out by the party concerned **2011 AIR SCW 3568 "SYED MOHIDEEN V. RAMANATHAPURA PERIA MOGALLAM JAMATH"****

# **Specific Relief Act (47 of 1963),**

**§ Suit for possession - plaintiff had title and she only wanted possession - she was entitled to sue for possession to evict defendant, a 'trespasser' - mere claim by defendant that he had perfected his title by adverse possession - would not imply that there is serious doubt as to title of plaintiff - no need for plaintiff to make prayer for declaration of title as well - suit for mere possession was maintainable. 2008 AIR SCW 5682 "KURELLA NAGA DRUVA VIDYA BHASKARA RAO V. GALLA JANI KAMMA"**

§ Injunction is a judicial remedy, by which a person is ordered to refrain from doing or to do a particular act, which may be wrong or injurious to the person seeking the said remedy. In the present it is known as the mandatory injunction, in place of restrictive injunction

§ **It is defined as a remedy of an equitable nature and more definitely as a prohibitory writ restraining a person from committing an act, which appears to be against conscience other than a criminal act.**

§ Injunction proceedings are prima facie in nature and their effect remains confined to the disposal of the interlocutory proceedings only. Such findings, in our view, do not, in any manner, affect and come in the way of disposal of the Civil Suit on merits which is decided on the basis of the pleadings and evidence adduced by the parties in the suit. **Ayan Chatterjee VERSUS Future Technology Foundation Inc. & Ors 2017 0 Supreme(SC) 366; (2017) SCCR 541 SEE ALSO Akriti Land Con Vs. Krishna Bhagwan**

**Court cannot issue mandatory injunction against the state to denotify the acquisition under section 48, (1997) 11 scc 250, 251 s.P. Subramanya shetty and others vs. Karnataka state road transport corporation and others**

**Civil court has no jurisdiction to go into the question of legality / validity of notification under section 4(1) or declaration under section 6, only high court can do so under article 226 of the constitution. (1995) 4 SCC 229,230 state of bihar vs. Dhirendra kumar and others (1996) 7 SCC 218 laxmi chand and others vs. Gram panchayat, kararia and others (2007) 2 SCC 159 state of A.P. Vs. V. Sarma rao and others.**

§ **Blacks dictionary defines it as a court's order commanding or preventing an action.**

§ **To get an injunction the complainant has to show that there is no plain, adequate and complete remedy in law and an irreparable injury will result unless the relief is not granted by the competent court having jurisdiction.**

§ **The court while granting will have to be satisfied that the general purpose behind the prayer of is injunction is to restrain some wrongful act.**

§ **Injunction is not a matter of right but a discretion of the court thus it cannot be demanded as a right.**

§ **Under the specific relief act 1963, for injunction specific pleading and proof thereof is necessary.**

# Land Acquisition Act, 1984

- § Civil Suit Relating To Acquisition Proceedings Is Not Maintainable Cognizance Under Section 9 Is Impliedly Barred. (1997) 11 Scc 250, 251 S.P. Subramanya Shetty And Others Vs. Karnataka State Road Transport Corporation And Others ; (2007) 2 Scc 159 State Of A.P Vs. V. Sarma Rao And Others.
- § Civil court has no jurisdiction to entertain suits relating to land acquisition proceedings; high court has under article 226 of the constitution (1995) 4 scc 229,230: a 1995 sc 1955 state of bihar vs. Dhirendra kumar and others ; (2007) 2 scc 159 state of a.P. Vs. V. Sarma rao and others.



ØTHANK YOU

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