

INDEX
CODE OF CIVIL PROCEDURE, 1908
(RELEVANT SECTIONS/ ORDERS)

PRELIMINARY

Section-6.
Pecuniary jurisdiction

PART I : SUITS IN GENERAL

Jurisdiction of the Courts and Res Judicata

Section-9.
Courts to try all civil suits unless barred
Section-10.
Stay of suit
Section-11.
Res judicata
Section-13.
When foreign judgment not conclusive

Place of suing

Section-16.
Suits to be instituted where subject matter situate
Section-19.
Suits for compensation for wrongs to person or movables
Section-21.
Objections to jurisdiction
Section-22.
Power to transfer suits which may be instituted in more than one Court
Section-23.
To what Court application lies
Section-24.
General power of transfer and withdrawal
Section-25.
Power of the Supreme Court to transfer Suits, etc.

Summons and discovery

Section-27.
Summons to defendants
Section-28.
Service of summons where defendant resides in another State
Section-29.
Service of foreign summonses
Section-30.
Power to order discovery and the like
Section-31.
Summons to witness
Section-32.
Penalty for default

Interest

Section-34.
Interest

Costs

Section-35.
Costs
Section-35-A.
Compensatory costs in respect of false and vexatious claims or defences
Section-35-B.
Costs for causing delay

PART II : EXECUTION

Courts by which decrees may be executed

Section-38.
Court by which decree may be executed
Section-40.
Transfer of decree to Court in another State
Section-44-A.
Execution of decrees passed by Courts in reciprocating territory
Section-45.
Execution of decrees outside India
Section-46.
Precepts

Question to be determined by Court executing decree

Section-47.
Questions to be determined by the Court executing decree

Transferees and legal representatives

Section-49.
Transferee
Section-50.
Legal representative

Procedure in execution

Section-52.
Enforcement of decree against legal representative
Section-53.
Liability of ancestral property

Arrest and detention
Section-55.
Arrest and detention

Attachment

Section-60.
Property liable to attachment and sale in execution of decree
Section-63.
Property attached in execution of decrees of several Courts
Section-64.
Private alienation of property after attachment to be void

Distribution of assets
Section-73. n-sale to be rateably distributed among decree-holders

PART III: INCIDENTAL PROCEEDINGS

Commissions

Section-75.
Power of Court to issue commissions

Section-76.
Commission to another Court
Section-78.
Commissions issued by foreign Courts

PART IV: SUITS IN PARTICULAR CASES

Suits by or against the Government or Public Officers in their official capacity

Section-79.
Suits by or against Government
Section-80.
Notice

Suits by Aliens and by or against Foreign Rulers, Ambassadors and Envoys

Section-83.
When aliens may sue
Section-84.
When foreign States may sue
Section-86.
Suits against foreign Rulers, Ambassadors and Envoys

Suits against Rulers of former Indian States

Section-87-B.
Application of sections 85 and 86 to Rulers of former Indian States

Interpleader
Section-88.
Where interpleader suit may be instituted

PART V: SPECIAL PROCEEDINGS

Arbitration

Section-89.
Settlement of disputes outside the Court

Special case
Section-90.
Power to state case for opinion of Court

Public nuisance and other wrongful acts affecting the public

Section-91.
Public nuisances
Section-92.
Public Charities

PART VI: SUPPLEMENTAL PROCEEDINGS

Section-94.
Supplemental proceedings
Section-95.
Compensation for obtaining arrest, attachment or injunction on insufficient grounds

PART VII: APPEALS

Appeals from original decrees

Section-96.

Appeal from original decree

Section-97.

Appeal from final decree where no appeal from preliminary decree

Section-98.

Decision where appeal heard by two or more Judges

Section-99.

No decree to be reversed or modified for error or irregularity not affecting merit or jurisdiction

Section-99-A.

No order under section 47 to be reversed or modified unless decision of the case is prejudicially affected

Appeals from appellate decrees

Section-100.

Second appeal

Section-100-A.

No further appeal in certain cases

Section-101.

Second appeal on no other grounds

Section-102.

No second appeal in certain suits

Section-103.

Power of High Court to determine issues of fact

Appeals from orders

Section-104.

Orders from which appeal lies

Section-105.

Other orders

General Provisions relating to appeals

Section-107.

Power of Appellate court

Section-108.

Procedure in appeals from appellate decrees and orders

Appeals to the Supreme Court

Section-109.

When appeal lie to the Supreme Court

PART VIII: REFERENCE, REVIEW AND REVISION

Section-113.

Reference to High Court

Section-114.

Review

Section-115.

Revision

PART X : RULES

Section-121.

Effect of rules in First Schedule

Section-129.

Power of High Courts to make rules as to their original civil procedure
Section-131.
Publication of rules

PART XI: MISCELLANEOUS

Section-132.
Exemption of certain women from personal appearance
Section-133.
Exemption of other persons
Section-134.
Arrest other than in execution of decree
Section-135.
Exemption from arrest under civil Process
Section-135-A.
Exemption of members of legislative bodies from arrest and detention under civil process
Section-136.
Procedure where person to be arrested or property to be attached is outside district
Section-139.
Oath on affidavit by whom to be administered
Section-141.
Miscellaneous proceedings
Section-144.
Application for restitution
Section-145.
Enforcement of Liability of surety
Section-146.
Proceedings by or against representatives
Section-147.
Consent or agreement by persons under disability
Section-148.
Enlargement of time
Section-148-A.
Right to lodge a caveat
Section-149.
Power to make up deficiency of court-fees
Section-151.
Saving of inherent powers of Court
Section-152.
Amendment of judgments, decrees or orders
Section-153.
General power to amend
Section-153-A.
Power to amend decree or order where appeal is summarily dismissed

THE FIRST SCHEDULE

ORDER I : PARTIES OF SUITS

Rule-1.
Who may be joined as plaintiffs
Rule-2.
Power of Court to order separate trials
Rule-3.
Who may be joined as defendants
Rule-3-A.

Power to order separate trials where joinder of defendants may embarrass or delay trial
Rule-8.

One person may sue or defend on behalf of all in same interest
Rule-9.

Mis-joinder and non-joinder
Rule-10.

Suit in the name of wrong plaintiff, Court may strike out or add parties, Where defendant added, plaint to be amended
Rule-13.

Objections as to non-joinder or mis-joinder

ORDER II : FRAME OF SUIT

Rule-1.

Frame of suit

Rule-2.

Suit to include the whole claim, Relinquishment of part of claim, Omission to sue for one of several reliefs

Rule-3.

Joinder of causes of action

Rule-5.

Claims by or against an executor, administrator or heirs

Rule-6.

Power of Court to order separate trial

Rule-7.

Objections as to misjoinder

ORDER V : ISSUE AND SERVICE OF SUMMONS

Issue of Summons

Rule-3.

Court may order defendant or plaintiff to appear in person

Rule-4.

No part to be ordered to appear in person unless resident within certain limits

Rule-5.

Summons to be either to settle issues or for final disposal

Rule-7.

Summons to order defendant to produce documents relied on by him

Rule-8.

On issue of summons for final disposal, defendant to be directed to produce his witnesses

Service of summons

Rule-10.

Mode of service

Rule-13.

Service on agent by whom defendant carries on business

Rule-15.

Where service may be on an adult member of defendant's family

Rule-17.

Procedure when defendant refused to accept service, or can not be found

Rule-19.

Examination of serving officer

Rule-20.

Substituted service, Effect of substituted service, Where service is substituted, time for appearance to be fixed

Rule-23.

Duty of Court to which summons is sent

Rule-24.

Service on defendant in prison
Rule-25.
Service where defendant resides out of India and has no agent
Rule-26.
Service in foreign territory through Political Agent or Court
Rule-26-A.
Summonses to be sent to officers of foreign countries
Rule-28.
Service on soldiers, sailors or airmen
Rule-29.
Duty of person to whom summons is delivered or sent for service

ORDER VI : PLEADINGS GENERALLY

Rule-1.
Pleading
Rule-2.
Pleading to state material facts and not evidence
Rule-15.
Verification of pleadings
Rule-16.
Striking out pleadings
Rule-17.
Amendment of pleadings

ORDER VII : PLAINT

Rule-11.
Rejection of plaint
Rule-13.
Where rejection of plaint does not preclude presentation of fresh plaint

Documents relied on in plaint
Rule-17.
Production of shop-book, Original entry to be marked and returned

ORDER VIII : WRITTEN STATEMENT, SET-OFF AND COUNTER-CLAIM

Rule-1.
Written statement
Rule-2.
Now facts must be specially pleaded
Rule-3.
Denial to be specific
Rule-4.
Evasive denial
Rule-5.
Specific denial
Rule-6.
Particulars of set-off to be given in written statement, Effect of set - off
Rule-6-A.
Counter-claim by defendant
Rule-6-B.
Counter-claim to be stated

Rule-6-G.
Rules relating to written statement to apply
Rule-8.
New ground of defence
Rule-9.
Subsequent pleading
Rule-10.
Procedure when party fails to present written statement called for by Court

ORDER IX : APPEARANCE OF PARTIES AND CONSEQUENCE OF NON-APPEARANCE

Rule-3.
Where neither party appears, suit to be dismissed
Rule-4.
Plaintiff may bring fresh suit or Court may restore suit to file
Rule-6.
Procedure when only plaintiff appears
Rule-7.
Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance
Rule-8.
Procedure where defendant only appears
Rule-9.
Decree against plaintiff by default bars fresh suit
Rule-10.
Procedure in case of non-attendance of one or more of several plaintiffs
Rule-11.
Procedure in case of non-attendance of one or more of several defendants
Rule-12.
Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person

Setting aside decrees ex-parte

Rule-13.
Setting aside decree ex-parte against defendant
Rule-14.
No decree to be set aside without notice to opposite party

ORDER X : EXAMINATION OF PARTIES BY THE COURT

Rule-1.
Ascertainment whether allegation in pleadings are admitted or denied
Rule-1-A
Direction of the Court to opt for any one mode of alternative dispute resolution
Rule-1-B.
Appearance before the conciliatory forum or authority
Rule-1-C.
Appearance before the Court consequent to the failure of efforts of conciliation
Rule-2.
Oral examination of party, or companion of party
Rule-3.
Substance of examination to be written

ORDER XI: DISCOVERY AND INSPECTION

Rule-1.
Discovery by interrogatories
Rule-6.
Objections to interrogatories by answer
Rule-7.
Setting aside and striking out interrogatories
Rule-11.
Order to answer or answer further
Rule-12.
Application for discovery of documents
Rule-16.
Notice to produce
Rule-19.
Verified copies
Rule-21.
Non-compliance with order for discovery
Rule-22.
Using answers to interrogatories at trial

ORDER XII: ADMISSION

Rule-2.
Notice to admit documents
Rule-2-A.
Document to be deemed to be admitted if not denied after service of notice to admit documents
Rule-3.
Form of notice
Rule-4.
Notice to admit facts
Rule-6.
Judgment on admissions
Rule-8.
Notice to produce documents

ORDER XIII: PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS

Rule-1.
Original documents to be produced at or before the settlement of issues
Rule-10.
Court may send for papers from its own record or from other Courts

ORDER XIV: SETTLEMENT OF ISSUES AND DETERMINATION OF SUIT ON ISSUES OF LAW OR ON ISSUES AGREED UPON

Rule-3.
Material from which issues may be framed
Rule-4.
Court may examine witnesses or documents before framing issues
Rule-5.
Power to amend and strike out issues

ORDER XV: DISPOSAL OF THE SUIT AT THE FIRST HEARING

Rule-4.

Failure to produce evidence

ORDER XVI: SUMMONING AND ATTENDANCE OF WITNESSES

Rule-1.

List of witnesses and summons to witnesses

Rule-10.

Procedure where witness fails to comply with summons

Rule-19.

No witness to be ordered to attend in person unless resident within certain limits

ORDER XVI-A : ATTENDANCE OF WITNESSES CONFINED OR DETAINED IN PRISONS

Rule-2.

Power to require attendance of prisoners to give evidence

Rule-7.

Power to issue commission for examination of witness in prison

ORDER XVII: ADJOURNMENTS

Rule-1.

Court may grant time and adjourn hearing, Cost of adjournment

ORDER XVIII : HEARING OF THE SUIT AND EXAMINATION OF WITNESSES

Rule-3-A.

Party to appear before other witnesses

Rule-11.

Questions objection to and allowed by Court

Rule-12.

Remarks on demeanour of witnesses

Rule-17.

Court may recall and examine witness

Rule-18.

Power of Court to inspect

Rule-19.

Power to get statements recorded on commission

ORDER XIX: AFFIDAVITS

Rule-1.

Power to order any point to be provided by affidavit

Rule-2.

Power to order attendance of deponent for cross-examination

ORDER XXI: EXECUTION OF DECREES AND ORDERS

Stay of execution

Rule-26.

When Court may stay execution, Power to require security from, or impose conditions upon, judgment -debtor

Rule-29.

Stay of execution pending suit between decree -holder and judgment debtor

Mode of execution

Rule-32.

Decree for specific performance for restitution of conjugal rights, or for an injunction

Arrest and detention in civil prison

Rule-38.

Warrant for arrest to direct judgment - debtor to be brought up

Sale generally

Rule-64.

Power to order property attached to be sold and proceeds to be paid to the person entitled

Rule-69.

Adjournment or stoppage of sale

Sale of immoveable property

Rule-83.

Postponement of sale to enable judgment -debtor to raise amount of decree

Rule-89.

Application to set aside sale on deposit

Rule-90.

Application to set aside sale on ground of irregularity or fraud

Rule-91.

Application by purchaser to set aside sale on ground of judgment -debtor having no saleable interest

Rule-92.

Sale when to become absolute or be set aside

Resistance to delivery of possession to decree-holder or purchaser

Rule-106.

Setting aside orders passed ex parte, etc.

ORDER XXII: DEATH, MARRIAGE AND INSOLVENCY OR PARTIES

Rule-1.

No abatement by party's death, if right to sue survives

Rule-7.

Suit not abated by marriage of female party

Rule-10-A.

Duty of pleader to communicate to Court death of a party

ORDER XXV: SECURITY FOR COSTS

Rule-1.

When security for costs may be required from plaintiff

Rule-2.

Effect of failure to furnish security

ORDER XXVI: COMMISSIONS

Commissions to examine witnesses

Rule-1.

Cases in which Court may issue commission to examine witness

Rule-2.

Order for commission

Commissions for local investigations

Rule-9.

Commission to make local investigation

Commissions for scientific investigation, performance of ministerial act and sale of movable property

Rule-10-A.

Commission for scientific investigation

Commissions to examine accounts

Rule-11.

Commission to examine or adjust accounts

Commissions to make partitions

Rule-13.

Commission to make partition of immovable property

ORDER XXVII : SUITS BY OR AGAINST THE GOVERNMENT OR PUBLIC OFFICERS IN THEIR OFFICIAL CAPACITY

Rule-1.

Suits by or against government

ORDER XXVII-A : SUITS INVOLVING A SUBSTANTIAL QUESTION OF LAW AS TO THE INTERPRETATION OF THE CONSTITUTION OR AS TO THE VALIDITY OF ANY STATUTORY INSTRUMENT

Rule- 1.

Notice to the Attorney General or the Advocate-General.

ORDER XXVIII : SUITS BY OR AGAINST MILITARY OR NAVAL MEN OR AIRMEN

Rule-1.

Officers, soldiers, sailors or airmen who cannot obtain leave may authorise any person to sue or defend for them

ORDER XXIX : SUITS BY OR AGAINST CORPORATIONS

Rule- 1.

Subscription and verification of pleading

ORDER XXX: SUITS BY OR AGAINST FIRMS AND PERSONS CARRYING ON BUSINESS IN NAMES OTHER THAN THEIR OWN

Rule-1.

Suing of partners in name of firm

Rule-2

Disclosure of partners' names

ORDER XXXI: SUITS BY OR AGAINST TRUSTEES, EXECUTORS AND ADMINISTRATORS

Rule- 1.

Representation of beneficiaries In suits concerning property vested in trustees, etc.

ORDER XXXII: SUITS BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND

Rule-1.

Minor to sue by next friend

Rule-4.

Who may act as next friend or be appointed guardian for the suit

Rule-9.

Removal of next friend

Rule-11.

Retirement, removal or death of guardian for the suit

ORDER XXXII-A : SUITS RELATING TO MATTERS CONCERNING THE FAMILY

Rule-1.

Application of the Order

Rule-2.

Proceedings to be held in camera

Rule-3.

Duty of Court to make efforts for settlement

Rule-4.

Assistance of welfare expert

Rule-5.

Duty to inquire into facts

Rule-6.

'Family'-Meaning of

ORDER XXXIII: SUITS BY INDIGENT PERSONS

Rule_ 1.

Suits may be instituted by indigent person

ORDER XXXIV: SUITS RELATING TO MORTGAGES OF IMMOVABLE PROPERTY

Rule_1.

Parties to suits for foreclosure, sale and redemption

ORDER XXXV: INTERPLEADER

Rule-1.
Plaint in interpleaded suit

ORDER XXXVI: SPECIAL CASE

Rule-1.
Power to state case for court's opinion

ORDER XXXVII: SUMMARY PROCEDURE

Rule-1.
Courts and classes of suits to which the Order is to apply
Rule-2.
Institution of summary suit
Rule-3.
Procedure for the appearance of defendant
Rule-4.
Power to set aside decree
Rule-5.
Power to order bill, etc. to be deposited with officer of Court
Rule-6.
Recovery of cost of noting non-acceptance of dishonoured bill or note
Rule-7.
Procedure in suits

ORDER XXXVIII: ARREST AND ATTACHMENT BEFORE JUDGMENT

Rule-1.
Where defendant may be called upon to furnish security for appearance
Rule-5.
Where defendant may be called upon to furnish security for production of property.
Rule-6.
Attachment where cause not shown or security not furnished

ORDER XXXIX: TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS

Rule-1.
Cases in which temporary injunction may be granted
Rule-2.
Injunction to restrain repetition or continuance of breach
Rule-2A.
Consequence of disobedience or breach of injunction

ORDER XL: APPOINTMENT OF RECEIVERS

Rule-1.
Appointment of receivers

ORDER XLI: APPEALS FROM ORIGINAL DECREES

Rule-2.
Ground which may be taken in appeal
Rule-3-A.
Application for condonation of delay

Stay of proceedings and of execution

Rule-5.
Stay by Appellate Court, Stay by Court which passed the decree
Rule-6.
Security in case of order for execution of decree appealed from

Procedure on admission of appeal

Rule-10.
Appellate Court may require appellant to furnish security for costs, Where appellant resides out of India

Rule-11.
Power to dismiss appeal without sending notice to lower court

Procedure on hearing

Rule-17.
Dismissal of appeal for appellant's default, Hearing appeal ex parte

Rule-19.
Re-admission of appeal dismissed for default

Rule-21.
Re-hearing on application of respondent against whom ex parte decree made

Rule-23.
Remand of case by Appellate Court

Rule-25.
Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from

Rule-27.
Production of additional evidence in Appellate Court

Rule-28.
Mode of taking additional evidence

Rule-29.
Points to be defined and recorded

Rule-33.
Power of Court of appeal

ORDER XLII: APPEALS FROM APPELLATE DECREES

Rule- 1. Procedure
Rule- 2. Power of court to direct that the appeal be heard on the question formulated by it
Rule- 3. Application of rule 14 of Order XLI

ORDER XLIII : APPEALS FROM ORDERS

Rule-1. Appeal from orders
Rule-1A. Right to challenge non-appealable orders in appeal against decrees
Rule- 2. Procedure

ORDER XLIV : APPEALS BY INDIGENT PERSONS

Rule- 1. Who may appeal as an indigent person
Rule- 2. Grant of time for payment of court fee
Rule-3. Inquiry as to whether applicant is an indigent person

ORDER XLV : APPEALS TO THE SUPREME COURT

Rule- 1. "Decree" defined
Rule-2. Application to court whose decree complained of
Rule-3. Certificate as to value or fitness

ORDER XLVI : REFERENCE

Rule- 1.
Reference of question of High Court

ORDER XLVII : REVIEW

Rule-1.
Application for review of judgment

CONTENTS **CODE OF CIVIL PROCEDURE, 1908** (RELEVANT SECTIONS/ ORDERS)

Section- 6. Pecuniary jurisdiction.- Save in so far as is otherwise expressly provided, nothing herein contained shall operate to any Court jurisdiction over suits the amount or value of the subject matter of which exceeds pecuniary limits (if any) of its ordinary jurisdiction.

Section-9. Courts to try all civil suits unless barred .- The Courts shall (subject to the provisions herein contained) have jurisdiction to try all Suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation 1.—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.

STATE AMENDMENT

MAHARASHTRA.- In its application to the State of Maharashtra, the following new S. 9-A shall be inserted; -

“9-A. Where at the hearing of application relating to interim relief in a suit, objection to jurisdiction is taken, such issue to be decided by the Court as a preliminary issue.- (1) Notwithstanding anything contained in this Code or any other law for the time being in force, if, at the hearing of any application for granting or setting aside an order granting any interim relief, whether by way of stay, injunction, appointment of a receiver or otherwise, made in any suit, an objection to the jurisdiction of the Court to entertain such a suit is taken by any of the parties to the suit, the Court shall proceed to determine at the hearing of such application the issue as to the jurisdiction as a preliminary issue before granting or setting aside the order granting the interim relief. Any such application shall be heard and disposed of by the Court as expeditiously as possible and shall not in any case be adjourned to the hearing of the suit.

(2) Notwithstanding anything contained in Sub-section (1), at the hearing of any such application, the Court may grant such interim relief as it may consider necessary, pending determination by it of the preliminary issue as to be jurisdiction.” - Maharashtra Act (65 of 1977) (wet. 19-12-1977).

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

Explanation : The pendency of a suit in a foreign Court does not preclude the courts in India from trying a suit founded on the same cause of action.

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

Explanation I: The expression “former suit” shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II : For the purposes of this section, the competence of a court shall be determined irrespective of any provisions as to a right of appeal from the decision of such court.

Explanation III: The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV: Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V: Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI: Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Explanation VII: The provisions of this section shall apply to a proceeding for the execution of a decree and reference in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII :An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent Suit, notwithstanding that such court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been Subsequently raised.
Bar to further suit

Section-13. When foreign judgment not conclusive.- A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except,—

- (a) where it has not been pronounced by a Court of competent jurisdiction;
- (b) where it has not been given on the merits of the case;
- (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognize the law of India in cases in which such law is applicable;
- (d) where the proceedings in which the judgment was obtained are opposed to natural justice;
- (e) where it has been obtained by fraud;
- (f) where it sustains a claim founded on a breach of any law in force in India.

Section-16. Suits to be instituted where subject matter situate.- Subject to the pecuniary or other limitations prescribed by any law, suits—

- (a) for the recovery of immovable property with or without rent or profits,
- (b) for the partition of immovable property,
- (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,
- (d) for the determination of any other right to or interest in immovable property,
- (e) for compensation for wrong to immovable property,
- (f) for the recovery of movable property actually under distraint or attachment, shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant, may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation: In this section "property" means property situate in India.

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

Illustrations

- (a) A, residing in Delhi, beats B in Calcutta, B may sue A either in Calcutta or in Delhi.
- (b) A, residing in Delhi, publishes in Calcutta statements defamatory of B. B may sue A either in Calcutta or in Delhi.

Section-21. Objections to jurisdiction.- (1) No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(2) No objection as to the competence of a Court with reference to the pecuniary limits of jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the court of first instance at the earliest possible opportunity, and, in all cases where suits are settled, at or before such settlement, and unless there has been a consequent failure justice.

(3) No objection as to the competence of the executing court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection taken in the executing court at the earliest possible opportunity, and unless there has been a consequent failure of justice.

Section-22. Power to transfer Suits which may be Instituted in more than one court.- Where a suit may be instituted in any one of two or more courts and is instituted in one of such courts, any defendant, after notice to the other parties, may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to have suit transferred to another court, and the court to which such application is made, after considering the objections of the other parties (if any), shall determine in which of the several courts having jurisdiction the suit shall proceed.

Section-23. To what court application lies.- (1) Where the several courts having jurisdiction are subordinate to the same Appellate Court, an application under section 22 shall be made to the Appellate Court.

(2) Where such courts are subordinate to different Appellate Courts but to the same High Court, the application shall be made to said High Court.

(3) Where such courts are subordinate to different High Courts, the application shall be made the High Court within the local limits of whose jurisdiction the court in which the suit is brought situate.

Section-24. General power of transfer and withdrawal.- (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion, without such notice, the High Court or the District Court may, at any stage,—

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or

(b) withdraw any suit, appeal or other proceeding pending in any court subordinate to it; and

(i) try to dispose of the same: or (ii) transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or (iii) re-transfer the same for trial or disposal to the court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the court which is thereafter to try or dispose of such Suit or proceeding may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn. -

(3) For the purposes of this section,—

(a) courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) “proceeding” includes a proceeding for the execution of a decree or order.

(4) The court trying any suit transferred or withdrawn under this section from a court of small causes shall, for the purposes of such suit, be deemed to be a court of small causes.

(5) A suit or proceeding may be transferred under this section from a court which has no jurisdiction to try it.

Section-25. Power of Supreme Court to transfer suits, etc.- (1) On the application of a party, and after notice to the parties, and after hearing such of them as desire to be heard, the Supreme Court may, at any stage, if satisfied that an order under this section is expedient for the ends of justice, direct that any suit, appeal or other proceedings be transferred from a High Court or other Civil Court in one State to a High Court or other Civil Court in any other State.

(2) Every application under this section shall be made by motion which shall be supported by an affidavit.

(3) The court to which such suit, appeal or other proceeding is transferred shall, subject to any special directions in the order of transfer, either re-try it or proceed from the stage at which it was transferred to it.

(4) In dismissing any application under this section, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum, not exceeding two thousand rupees, as it considers appropriate in the circumstances of the case.

(5) The law applicable to any suit, appeal or other proceeding transferred under this section shall be the law which the court in which the suit, appeal or other proceeding was originally instituted ought to have applied to such Suit, appeal or proceeding.

Section- 27. Summons to defendants .- Where a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and may be served in manner prescribed on such day not beyond thirty days from date of the institution of the suit..

Section-28. Service of summons where defendant resides in another state .- (1) A summons may be sent for service in another State to such court and in such manner as may be prescribed by rules in force in that State.

(2) The Court to which such summons is sent shall, upon receipt thereof, proceed as if it had been issued by such court and shall then return the summons to the court of issue together with the record (if any) of its proceedings with regard thereto.

(3) Where the language of the summons sent for service in another State is different from the language of the record referred to in sub-section (2), a translation of the record,

(a) in Hindi, where the language of the court issuing the summons is Hindi, or (b) in Hindi or English where the language of such record is other than Hindi or English, shall also be sent together with the record sent under that sub-section.

Section-29. Service of foreign summonses.- Summonses and other processes issued by—

(a) any Civil or Revenue Court established in any part of India to which the provisions of this Code do not extend, or

(b) any Civil or Revenue Court established or continued by the authority of the Central Government outside India, or

(c) any other Civil or Revenue Court outside India to which the Central Government has, by notification in the Official Gazette, declared the provisions of this section to apply,

may be sent to the courts in the territories to which this Code extends, and served as if they were summonses issued by such courts.

Section-30. Power to order discovery and the like.- Subject to such conditions and limitations as may be prescribed, the court may, at any time, either of its own motion or on the application of any party,

(a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;

(b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;

(c) order any fact to be proved by affidavit.

Section- 31. Summons to witness.- The provisions in sections 27, 28 and 29 shall apply to summonses to give evidence or to produce documents or other material objects.

Section-32. Penalty for default.- The court may compel the attendance of any person to whom a summons has been issued under section 30 and for that purpose may—

(a) issue a warrant for his arrest;

(b) attach and sell his property;

(c) impose a fine upon him not exceeding five thousand rupees; and

(d) order him to furnish security for his appearance and in default commit him to the civil prison.

Section-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, 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:

Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalized banks in relation to commercial transactions.

Explanation I: In this sub-section, “nationalized bank” means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).

Explanation II: For the purposes of this section, a transaction is a commercial transaction, if it is connected with the, industry, trade or business of the party incurring the liability.

(2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have refused such interest, and a separate suit there for shall not lie.

Section-35. Costs.- (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the court, and the court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the court has no jurisdiction to try the suit shall be no bar to the exercise of such powers.

(2) Where the court directs that any costs shall not follow the event, the court shall state its reasons in writing.

Section-35A. Compensatory costs in respect of false or vexatious claims or defences.- (1) If in any suit or other proceeding, including an execution proceeding but excluding an appeal or a revision, any party objects to the claim or defence on the ground that the claim or defence or any part of it is, as against the objector, false or vexatious to the knowledge of the party by whom it has been put forward, and if thereafter, as against the objector, such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the Court, if it so thinks fit, may, after recording its reasons for holding such claim or defence to be false or vexatious, make an order for the payment to the objector by the party by whom such claim or defence has been put forward, of costs by way of compensation.

(2) No Court shall make any such order for the payment of an amount exceeding three thousand rupees or exceeding the limits of its pecuniary jurisdiction, whichever amount is less:

Provided that where the pecuniary limits of the jurisdiction of any court exercising the jurisdiction of a Court of Small Causes under the provincial Small Causes Courts Act, 1887 (9 of 1887), or under a corresponding law in force in any part of India to which the said Act does not extend and not being a court constituted under such Act or law, are less than two hundred and fifty rupees, the High Court may empower such court to award as costs under this section any amount not exceeding two hundred and fifty rupees and not exceeding those limits by more than one hundred rupees:

Provided further, that the High Court may limit the amount which any court or class of courts is empowered to award as costs under this section.

(3) No person against whom an order has been made under this section shall, by reason thereof, be exempted from any criminal liability in respect of any claim or defence made by him.

(4) The amount of any compensation awarded under this section in respect of a false or vexatious claim or defence shall be taken into account in any subsequent suit for damages or compensation in respect of such claim or defence.

Section-35B. Costs for causing delay.- (1) If, on any date fixed for the hearing of a suit or for taking any step therein, a party to the suit—

(a) fails to take the step which he was required by or under this Code to take on that date, or

(b) obtains an adjournment for taking such step or for producing evidence or on any other ground,

the court may, for reasons to be recorded, make an order requiring such party to pay to the other party such costs, as would, in the opinion of the court, be reasonably sufficient to reimburse the other party in respect of the expenses incurred by him in attending the court on that date, and payment of such costs, on the date next following the date of such order, shall be a condition precedent to the further prosecution of,—

(a) the suit by the plaintiff, where the plaintiff was ordered to pay such costs,

(b) the defence by the defendant, where the defendant was ordered to pay such costs.

Explanation : Where separate defences have been raised by the defendants or groups of defendants, payment of such costs shall be a condition precedent to the further prosecution of the defence by such defendants or groups of defendants as have been ordered by the court to pay such costs.

(2) The costs, ordered to be paid under sub-section (1), shall not, if paid, be included in the costs awarded in the decree passed in the suit; but, if such costs are not paid, a separate order shall be drawn up indicating the amount of such costs and the names and addresses of the persons by whom such costs are payable and the order so drawn up shall be executable against such persons.

Section- 38. Court by which decree may be executed.- A decree may be executed either by the court which passed it, or by the court to which it is sent for execution.

Section- 40. Transfer of decree to court in another State.- Where a decree is sent for execution in another State, it shall be sent to such court and executed in such manner as may be prescribed by rules in force in that State.

Section-44A. Execution of decrees passed by Courts in reciprocating territory.-(1) Where a certified copy of a decree of any of the superior courts of any reciprocating territory has been filed in a District Court, the decree may be executed in India as if it had been passed by the District Court.

(2) Together with the certified copy of the decree shall be filed a certificate from such superior court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.

(3) The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13.

Explanation I: "Reciprocating territory" means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of this section, and "Superior Courts", with reference to any such territory, means such courts as may be specified in the said notification.

Explanation II: "Decree" with reference to a superior Court means any decree or judgment of such court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, but shall in no case include an arbitration award, even if such an award is enforceable as a decree or judgment.

Section- 45. Execution of decrees outside India.- So much of the foregoing sections of this part as empowers a court to send a decree for execution to another court shall be construed as empowering a court in any State to send a decree for execution to any court established by the authority of the Central Government outside India to which the State Government has by notification in the official Gazette declared this section to apply.

Section-46. Precepts.- (1) Upon the application of the decree holder the court which passed the decree may, whenever it thinks fit, issue a precept to any other court which would be competent to execute such decree to attach any property belonging to the judgment debtor and specified in the precept.

(2) The court to which a precept is sent shall proceed to attach the property in the manner prescribed in regard to the attachment of property in execution of decree:

Provided that no attachment under a precept shall continue for more than months unless the period of attachment is extended by an order of the court which passed the decree or unless before the determination of such attachment the decree has been transferred to the court by which the attachment has been made and the decree holder has applied for an order for the sale of such property.

Section-47. Questions to be determined by the Court executing decree.- (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(2) omitted by Act 104 of 1976. effective from 1-2-1977

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the court

Explanation I: For the purposes of this section, a plaintiff whose Suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II: (a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) All questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.

Section- 49 Transferee.- Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment debtor might have enforced against the original decree holder.

Section-50. Legal representative.- (1) Where a judgment debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the court which passed it to execute the same against the legal representative of the deceased.

(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed

of; and, for the purpose of ascertaining such liability, the court executing the decree may, of its own motion or on the application of the decree holder, compel such legal representative to produce such accounts as it thinks fit.

Section-52. Enforcement of decree against legal representative.- (1) Where a decree is passed against a party as the legal representative of a deceased person, and the decree is for the payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property.

(2) Where no such property remains in the possession of the judgment debtor and he fails to satisfy the court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment debtor to the extent of the property in respect of which he has failed so to satisfy the court in the same manner as if the decree had been against him personally.

Section-53. Liability of ancestral property.- For the purposes of section 50 and section 52, property in the hands of a son or other descendant which is liable under Hindu law for the payment of the debt of a deceased ancestor, in respect of which a decree has been passed, shall be deemed to be property of the deceased which has come to the hands of the son or other descendant as his legal representative.

Section-55. Arrest and detention.- (1) A judgment debtor may be arrested in execution of a decree at any hour and on any day, and shall, as soon as practicable, be brought before the Court, and his detention may be in the civil prison of the district in which the court ordering the detention is situate, or, where such civil prison does not afford suitable accommodation, in any other place which the State Government may appoint for the detention of persons ordered by the courts of such district to be detained:

Provided, firstly that for the purpose of making an arrest under this section, no dwelling house shall be entered after sunset or before sunrise:

Provided, secondly, that, no outer door of a dwelling house shall be broken open unless such dwelling house is in the occupancy of the judgment debtor and he refuses or in any way prevents access thereto, but when the officer authorised to make the arrest has duly gained access to any dwelling house, he may break open the door of any room which he has reason to believe the judgment debtor is to be found:

Provided, thirdly, that, if the room is in the actual occupancy of a woman who is not the judgment debtor and who according to the customs of the country does not appear in public, the officer authorised to make the arrest shall give notice to her that she is at liberty to withdraw, and, after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, may enter the room for the purpose of making the arrest:

Provided, fourthly, that, where the decree in execution of which a judgment debtor is arrested, is a decree for the payment of money and the judgment debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

(2) The State Government may, by notification in the Official Gazette, declare that any person or class of persons whose arrest might be attended with danger or inconvenience to the public shall not be

liable to arrest in execution of a decree otherwise than in accordance with such procedure as may be prescribed by the State Government in this behalf.

(3) Where a judgment debtor is arrested in execution of a decree for the payment of money and brought before the court, the court shall inform him that he may apply to be declared insolvent, and that he may be discharged if he has not committed any act of bad faith regarding the subject of the application and if he complies with the provisions of the law of insolvency for the time being in force.

(4) Where a judgment debtor expresses his intention to apply to be declared an insolvent and furnishes security, to the satisfaction of the court, that he will within one month so apply, and that he will appear, when called upon, in any proceeding upon the application or upon the decree in execution of which he was arrested, the court may release him from arrest, and, if he fails so to apply and to appear, the court may either direct the security to be realised or commit him to the civil prison in execution of the decree.

Section-60. Property liable to attachment and sale in execution of decree.- (1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank notes cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment debtor or by another person in trust for him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale, namely:—

(a) the necessary wearing apparel, cooking vessels, beds and bedding of the judgment debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman;

(b) tools of artisans, and, where the judgment debtor is an agriculturist, his implements of husbandry and such cattle and seed grain as may in the opinion of the court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section;

(c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist or a labourer or a domestic servant and occupied by him;

(d) books of account;

(e) a mere right to sue for damages;

(f) any right of personal service;

(g) stipends and gratuities allowed to pensioners of the Government or of a local authority or of any other employer, or payable out of any service family pension fund notified in the Official Gazette by the Central Government or the State Government in this behalf, and political pension;

(h) the wages of labourers and domestic servants, whether payable in money or in kind;

(i) salary to the extent of the first one thousand rupees and two-thirds of the remainder in execution of any decree other than a decree for maintenance:

Provided that where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months, and, where such attachment has been made in execution of one and the same decree, shall, after the attachment has continued for a total period of twenty four months, be finally exempt from attachment in execution of that decree;

(ia) one-third of the salary in execution of any decree for maintenance;

(j) the pay and allowances of persons to whom the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957, applies;

(k) all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, 1925 (19 of 1925), for the time being applies, in so far as they are declared by the said Act not be liable to attachment;

(ka) all deposits and other sums in or derived from any fund to which the Public Provident Fund Act, 1968 (23 of 1968), for the time being applies, in so far as they are declared by the said Act as not to be liable to attachment;

(kb) all moneys payable under a policy of insurance on the life of the judgment debtor;

(kc) the interest of a lessee of a residential building to which the provisions of law for the time being in force relating to control of rents and accommodation apply;

(l) any allowance forming part of the emoluments of any servant of the Government or of any servant of a railway company or local authority which the appropriate Government may, by notification in the Official Gazette, declare to be exempt from attachment, and any subsistence grant or allowance made to any such servant while under suspension;

(m) an expectancy of succession by survivorship or other merely contingent or possible right or interest;

(n) a right to future maintenance;

(o) any allowance declared by any Indian law to be exempt from liability to attachment or sale in execution of a decree; and

(p) where the judgment debtor is a person liable for the payment of land revenue, any movable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue.

Explanation 1.—The moneys payable in relation to the matters mentioned in clauses (g), (h), (l), (la), (j), (l) and (o) are exempt from attachment or sale, whether before or after they are actually payable, and, in the case of salary, the attachable portion thereof is liable to attachment, whether before or after it is actually payable.

Explanation 11.—In clauses (l) and (ia), “salary” means the total monthly emoluments, excluding any allowance declared exempt from attachment under the provisions of clause (l), derived by a person from his employment whether on duty or on leave.

Explanation III.—In clause (l) “appropriate Government” means—

(i) as respects any person in the service of the Central Government, or any servant of a Railway Administration or of a cantonment authority or of the port authority of a major port, the Central Government;

[Clause (ii) omitted by AO 1948]

(iii) as respects any other servant of the Government or a servant of any others local authority, the State Government.

Explanation I V—For the purposes of this proviso, “wages” includes bonus, and “labourer” includes a skilled, unskilled or semi skilled labourer.

Explanation V: For the purposes of this proviso, the expression “agriculturist” means a person who cultivates land personally and who depends for his livelihood mainly on the income from agricultural land, whether as owner, tenant, partner or agricultural labourer.

Explanation VI: For the purposes of Explanation V, an agriculturist shall be deemed to cultivate land personally, if he cultivates land—

(a) by his own labour, or

(b) by the labour of any member of his family, or

(c) by servants or labourers on wages payable in cash or in kind (not being as a share of the produce), or both.

(1A) Notwithstanding anything contained in any other law for the time being in force, an agreement by which a person agrees to waive the benefit of any exemption under this section shall be void.

(2) Nothing in this section shall be deemed to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building, site or land.

Section-63. Property attached in execution of decrees of several courts.- (1) Where property not in the custody of any court is under attachment in execution of decrees of more courts than one, the court which shall receive or realise such property and shall determine any claim thereto and any objection to the attachment thereof shall be the court of highest grade, or, where there is no difference in grade between such courts, the court under whose decree the property was first attached.

(2) Nothing in this section shall be deemed to invalidate any proceeding taken by a court executing one of such decrees.

Explanation: For the purposes of sub-section (2), “proceeding taken by a court” does not include an order allowing, to a decree holder who has purchased property at a sale held in execution of a decree, set off to the extent of the purchase price payable by him.

Section-64. Private alienation of property after attachment to be void.- (1) Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment debtor of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment.

(2) Nothing in this section shall apply to any private transfer or delivery of the property attached or of any interest therein, made in pursuance of any contract for such transfer or delivery entered into and registered before the attachment.

Explanation : For the purposes of this section, claims enforceable under an attachment include claims for the rateable distribution of assets.

Section-73. Proceeds of execution sale to be ratably distributed among decree holders.- (1) Where assets are held by a court and more persons than one have, before the receipt of such assets, made application to the court for the execution of decrees for the payment of money passed against the same judgment debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realization, shall be ratably distributed among all such persons:

Provided as follows:—

(a) where any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not be entitled to share in any surplus arising from such sale;

(b) where any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the consent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same interest in the proceeds of the sale as he had in the property sold;

(c) where any immovable property is sold in execution of a decree ordering its sale for the discharge of an encumbrance thereon, the proceeds of sale shall be applied— firstly, in defraying the expenses of the sale;

secondly, in discharging the amount due under the decree;

thirdly, in discharging the interest and principal moneys due on subsequent incumbrances (if any); and

fourthly, rateably among the holders of decrees for the payment of money against the judgment debtor, who have, prior to the sale of the property, applied to the court which passed the decree ordering such sale for execution of such decrees, and have not obtained satisfaction thereof.

(2) Where all or any of the assets liable to be rateably distributed under this section are paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

(3) Nothing in this Section affects any right of the Government.

Section-75. Power of court to issue commissions.- Subject to such conditions and limitations as may be prescribed, the court may issue a commission—

(a) to examine any person;

(b) to make a local investigation;

(c) to examine or adjust accounts; or;

(d) to make a partition;

(e) to hold a scientific, technical, or expert investigation;

(f) to conduct sale of property which is subject to speedy and natural decay and which is in the custody of the court pending the determination of the suit;

(g) to perform any ministerial act.

Section-76. Commission to another court.- (1) A Commission for the examination of any person may be issued to any court (not being a High Court) situated in a State other than the State in which the court of issue is situate and having jurisdiction in the place in which the person to be examined resides.

(2) Every court receiving a commission for the examination of any person under sub-section (1) shall examine him or cause him to be examined pursuant thereto, and the commission, when it has been duly executed, shall be returned together with the evidence taken under it to the court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order.

Section-78. Commissions issued by foreign courts.- Subject to such conditions and limitations as may be prescribed, the provisions as to the execution and return of commissions for the examination of witnesses shall apply to commissions issued by or at the instance of—

(a) courts situate in any part of India to which the provisions of this code do not extend; or

(b) courts established or continued by the authority of the Central Government outside India; or

(c) courts of any State or country outside India.

Section-79. Suits by or against Government.- In a Suit by or against the Government, the authority to be named as plaintiff or defendant, as the case may be, shall be—

(a) in the case of a suit by or against the Central Government, the Union of India, and

(b) in the case of a suit by or against a State Government, the State.

Section-80. Notice.- (1) Save as otherwise provided in sub-section (2), no suit shall be instituted against the Government (including the Government of the State of Jammu and Kashmir) or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of—

(a) in the case of a suit against the Central Government, except where it relates to a railway, a Secretary to that Government;

(b) in the case of a suit against the Central Government where it relates to a railway, the General Manager of that railway;

(bb) in the case of a suit against the Government of the State of Jammu and Kashmir, the Chief Secretary to that Government or any other officer authorised by that Government in this behalf;

(c) in the case of a suit against any other State Government, a Secretary to that Government or the Collector of the district;

and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the court, without serving any notice as required by sub-section (1); but the court shall not grant relief in the suit, whether interim or otherwise, except after giving to the government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:

Provided that the court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1).

(3) No suit instituted against the government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity shall be dismissed merely by reason of any error or defect in the notice referred to in sub-section (1), if in such notice—

(a) the name, description and the residence of the plaintiff had been so given as to enable the appropriate authority or the public officer to identify the person serving the notice and such notice had been delivered or left at the office of the appropriate authority specified in sub-section (1), and

(b) the cause of action and the relief claimed by the plaintiff had been substantially indicated.

Section-83. When aliens may sue.- Alien enemies residing in India with the permission of the Central Government, and alien friends, may sue in any court otherwise competent to try the suit, as if they were citizens of India, but alien enemies residing in India without such permission, or residing in a foreign country, shall not sue in any such court.

Explanation: Every person residing in a foreign country, the Governor of which is at war with India and carrying on business in that country without a licence in that behalf granted by the Central Government, shall, for the purpose of this section, be deemed to be an alien enemy residing in a foreign country.

Section-84. When foreign States may sue.- A foreign State may sue in any competent court:

Provided that the object of the suit is to enforce a private right vested in the Ruler of such State or in any officer of such State in his public capacity.

Section-86. Suits against foreign Rulers, Ambassadors and Envoys.- (1) No foreign State may be sued in any court otherwise competent to try the suit except with the consent of the Central Government certified in writing by a secretary to that government:

Provided that a person may, as a tenant of immovable property, sue without such consent as aforesaid a foreign State from whom he holds or claims to hold the property.

(2) Such consent may be given with respect to a specified suit or to several specified suits or with respect to all suits of any specified class or classes, and may specify, in the case of any suit or class of suits, the court in which the foreign State may be sued, but it shall not be given, unless it appears to the Central Government that the foreign State—

(a) has instituted a suit in the court against the person desiring to sue, it, or

(b) by itself or another, trades within the local limits of the jurisdiction at the court, or

(c) is in possession of immovable property situate within those limits and is to be sued with reference to such property or for money charged thereon, or

(d) has expressly or impliedly waived the privilege accorded to it by this section.

(3) Except with the consent of the Central Government, certified in writing by a secretary to 'a Government, no decree shall be executed against the property of any foreign State.

(4) The preceding provisions of this section shall apply in relation to— (a) any Ruler of a foreign State;

(aa) any Ambassador or Envoy of a foreign State;

(b) any High Commissioner of a Commonwealth country; and

(c) any such member of the staff of the foreign State or the staff or retinue of the Ambassador or Envoy of a foreign State or of the High Commissioner of a Commonwealth country as the Central Government may, by general or special order, specify in his behalf,

as they apply in relation to a foreign State.

(5) The following persons shall not be arrested under this Code, namely:—

(a) any ruler of a foreign State;

(b) any Ambassador or Envoy of a foreign State;

(c) any High Commissioner of a Commonwealth country;

(d) any such member of the staff of the foreign State or the staff or retinue of the Ruler, Ambassador or Envoy of a foreign State or of the High Commissioner of a Commonwealth country, as the Central Government may, by general or special order, specify in this behalf.

(6) Where a request is made to the Central Government for the grant of any consent referred to in sub-section (1), the Central Government shall, before refusing to accede to the request in whole or in part, give to the person making the request a reasonable opportunity of being heard.

Section-88. Where interpleaded suit may be instituted.-Where two or more persons claim adversely to one another the same debt, sum' of money or other property, movable or immovable,

from another person, who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute a suit of interpleader against all the claimants of the obtaining of obtaining a decision as to the person to whom the payment or delivery shall be made and of obtaining indemnity for himself:

Provided that where any suit is pending in which the rights of all parties can properly be decided, no such suit of interpleader shall be instituted.

Section-89. Settlement of disputes outside the Court.- (1) Where it appears to the court that there exist elements of a settlement which may be acceptable to the parties, the court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the court may reformulate the terms of a possible settlement and refer the same for—

- (a) arbitration;
- (b) conciliation;
- (c) judicial settlement including settlement through Lok Adalat; or
- (d) mediation.

(2) Where a dispute has been referred—

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;

(b) to Lok Adalat, the court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authority Act, 1987 and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

(c) for judicial settlement, the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(d) for mediation, the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

Section-91. Public nuisances.- (1) In the case of a public nuisance or other wrongful act affecting or likely to affect, the public, a suit for a declaration and injunction or for such other relief as may be appropriate in the circumstances of the case, may be instituted,—

(a) by the Advocate-General, or

(b) with the leave of the court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.

(2) Nothing in this section shall be deemed to limit or otherwise affect any right of Suit which may exist independently of its provisions.

Section-92. Public charities.- (1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the court is deemed necessary for the administration of any such trust, the Advocate General, or two or more persons having an interest in the trust and having obtained the leave of the court, may institute a suit, whether contentious or not, in the principal civil court of original jurisdiction or in any other court empowered in that behalf by the State Government within the local limits of whose jurisdiction whole or any part of the subject matter of the trust is situate to obtain a decree—

(a) removing any trustee;

(b) appointing a new trustee;

(c) vesting any property in a trustee;

(cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;

(d) directing accounts and inquiries;

(e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;

(g) settling a scheme; or

(h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863 (20 of 1863), or by any responding law in force in the territories which, immediately before the 1st November, 1956, were comprised in Part B States, no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

(3) The Court may alter the original purposes of an express or constructive trust created for purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied cypress in one or more of the following circumstances, namely:—

(a) where the original; purposes of the trust, in whole or in part,—

(i) have been, as far as may be, fulfilled; or

(ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust; or

(b) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or

(c) where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or

(d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or

(e) where the original purposes, in whole or in part, have, since, they were laid down,—

(i) been adequately provided for by other means, or

(ii) ceased, as being useless or harmful to the community, or

(iii) ceased to be, in law, charitable, or

(iv) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust.

Section-94. Supplemental proceedings.- In order to prevent the ends of justice from being defeated the court may, if it is so prescribed,—

(a) issue a warrant to arrest the defendant and bring him before the court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to the civil prison;

(b) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the court or order the attachment of any property;

(c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold;

(d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;

(e) make such other interlocutory orders as may appear to the court to be just and convenient.

Section-95. Compensation for obtaining arrest, attachment or injunction on insufficient grounds.-

(1) Where, in any suit in which an arrest or attachment has been effected or a temporary injunction granted under the last preceding section.—

(a) it appears to the court that such arrest, attachment or injunction was applied for on insufficient grounds, or

(b) the suit of the plaintiff fails and it appears to the court that there was no reasonable or probable ground for instituting the same, the defendant may apply to the court, and the court may, upon such application, award against the plaintiff by its order such amount, not exceeding fifty thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury (including injury to reputation) caused to him;

Provided that a court shall not award, under this section, an amount exceeding the limits of its pecuniary jurisdiction.

(2) An order determining any such application shall bar any suit for compensation in respect of such arrest, attachment or injunction.

Section-96. Appeal from original decree.- (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any court exercising original jurisdiction to the court authorized to hear appeals from the decisions of such court.

(2) An appeal may lie from an original decree passed ex parte.

(3) No appeal shall lie from a decree passed by the court with the consent of parties.

(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by courts of small causes, when the amount or value of the subject matter of the original suit does not exceed ten thousand rupees.

Section-97. Appeal from final decree where no appeal from preliminary decree.- Where any party aggrieved by a preliminary decree passed after the commencement of this Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree.

Section-98. Decisions where appeal heard by two or more Judges.- (1) Where an appeal is heard by a Bench of two or more Judges, the appeal shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges.

(2) Where there is no such majority which concurs in a judgment varying or reversing the decree appealed from, such decree shall be confirmed:

Provided that where the Bench hearing the appeal is composed of two or other even number of Judges belonging to a court consisting of more Judges than those constituting the Bench, and the Judges composing the Bench differ in opinion on a point of law, they may state the point of law upon which they differ and the appeal shall then be heard upon that point only by one or more of other Judges, and such point shall be decided according to the opinion of the majority (If any) of the Judges who have heard the appeal, including those who first heard it.

(3) Nothing in this section shall be deemed to alter or otherwise affect any provision of the Letters Patent of any High Court.

Section-99. No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction.- No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder or non-joinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the court:

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

Section-99A. No order under section 47 to be reversed or modified unless decision of the case is prejudicially affected .- Without prejudice to the generality of the provisions of section 99, no order under section 47 shall be reversed or substantially varied, on account of any error, defect or

irregularity in any proceeding relating to such order, unless such error, defect or irregularity has prejudicially affected the decision of the case.

Section-100. Second appeal.- (1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed ex parte.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law formulated by it, if it is satisfied that the case involves such question.

Section-100A. No further appeal in certain cases.- Notwithstanding anything contained in any Letters Patent for any High Court or in any instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a High Court no further appeal shall lie from the judgment and decree of such Single Judge.

Section-101. Second appeal on no other grounds.- No second appeal shall lie except on the grounds mentioned in section 100.

Section-102. No second appeal in certain cases.- No second appeal shall lie from any decree, when the subject matter of the original suit is for recovery of money not exceeding twenty-five thousand rupees.

Section-103. Power of High Court to determine issue of fact.- In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal,—

(a) which has not been determined by the lower appellate court or both by the court of first instance and the lower appellate court, or

(b) which has been wrongly determined by such court or courts by reason of a decision on such question of law as is referred to in section 100.

Section-104. Orders from which appeal lies.- (1) An appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force, from no other orders:—

[Cls. (a) to (f) omitted by Act 10 of 1940]

(if) an order under section 35A;

(ffa) an order under section 91 or section 92 refusing leave to institute a suit of the nature referred to in section 91 or section 92, as the case may be;

(b) an order under section 95;

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

(i) any order made under rules from which an appeal is expressly allowed by rules: Provided that no appeal shall lie against any order specified in clause (if) save on the ground that no order, or an order for the payment of a less amount, ought to have been made.

(2) No appeal shall lie from any order passed in appeal under this section.

Section-105. Other orders.- (1) Save as otherwise expressly provided, no appeal shall lie from any order made by a court in the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

(2) Notwithstanding anything contained in sub-section (1), where any party aggrieved by an order of remand from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.

Section-107. Powers of appellate court.- (1) Subject to such conditions and limitations as may be prescribed, an appellate Court shall have power—

(a) to determine a case finally,

(b) to remand a case;

(c) to frame issues and refer them for trial;

(d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the appellate court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on courts of original jurisdiction in respect of suits instituted therein.

Section-108. Procedure in appeals from appellate decrees and orders.- The provisions of this Part relating to appeals from original decrees shall, so far as may be, apply to appeals—

(a) from appellate decrees, and

(b) from orders made under this Code or under any special or local law in which a different procedure is not provided.

Section-109. When appeals lie to the Supreme Court.- Subject to the provisions in Chapter IV of Part V of the Constitution and such rules as may, from time to time, be made by the Supreme Court regarding appeals from the Courts of India, and to the provisions hereinafter contained, an appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court, if the High Court certifies—

(i) that the case involves a substantial question of law of general importance and

(ii) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.

Section-113. Reference to High Court.- Subject to such conditions and limitations as may be prescribed, any court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit:

Provided that where the 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 therefore, and refer the same for the opinion of the High Court.

Explanation: In this section, "Regulation" means any Regulation of Bengal, Bombay or Madras Code of Regulation as defined in the General Clauses Act, 1897 (10 of 1897), or in the General Clauses Act of a State.

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

Section-115. Revision.- (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 illegally 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.

Section-121. Effect of rules in First Schedule.- The rules in the First Schedule shall have effect as if enacted in the body of this Code until annulled or altered in accordance with the provisions of this Part.

Section-129. Power of High Courts to make rules as to their original civil procedure.- Notwithstanding anything in this Code, any High Court not being the Court of a Judicial Commissioner may make such rules not inconsistent with the Letters Patent or order or other law establishing it, to regulate its own procedure in the exercise of its original civil Jurisdiction as it shall think fit, and nothing herein contained shall affect the validity of any such rules in force at the commencement of this Code.

Section-131. Publication of rules.- Rules made in accordance with section 129 or section 130 shall be published in the Official Gazette and shall from the date of publication or from such other date as may be specified have the force of law.

Section-132. Exemption of certain women from personal appearance.- (1) Women who, according to the customs and manners of the country, ought not to be compelled to appear in public shall be exempt from personal appearance in court.

(2) Nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process in any case in which the arrest of women is not prohibited by this Code.

Section-133. Exemption of other persons.- (1) The following persons shall be entitled to exemption from personal appearance in court, namely;—

(i) the President of India;

(ii) the Vice-President of India;

(iii) the Speaker of the Houses of the People;

(iv) the Ministers of the Union;

- (v) the Judges of the Supreme Court;
- (vi) the Governors of States and the Administrators of Union Territories;
- (vii) the Speakers of the State Legislative Assemblies;
- (viii) the Chairman of the State Legislative Councils;
- (ix) the Minister of States;
- (x) the Judges of the High Courts; and
- (xi) the persons to whom section 87B applies.

(2) Sub-section (2) omitted vide Act 66 of 1956

(3) Where any person claims the privilege of such exemption and it is consequently necessary to examine him by commission, he shall pay the costs of that commission, unless the party requiring his evidence pays such costs.

Section-134. Arrest other than in execution of decree.- The provisions of sections 55, 57 and 59 shall apply, so far as may be, to all persons arrested under this Code.

Section-135. Exemption from arrest under civil process.- (1) No judge, Magistrate or other judicial officer shall be liable to arrest under civil process while going to, presiding in, or returning from, his court.

(2) Where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtars, revenue- agents and recognised agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under civil process other than process issued by such tribunal for contempt of court while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal.

(3) Nothing in sub-section (2) shall enable a judgment debtor to claim exemption from arrest under an order for immediate execution or where such judgment debtor attends to show cause why he should not be committed to prison in execution of a decree.

Section-135A. Exemption of members of legislative bodies from arrest and detention under civil process.- (1) No person shall be liable to arrest or detention in prison under civil process—

(a) if he is a member of—

(i) either House of Parliament, or

(1) the Legislative Assembly or Legislative Council of a State, or

(iii) a Legislative Assembly of a Union territory, during the continuance of any meeting of such Houses of Parliament or, as the case may be, of the Legislative Assembly or the Legislative Council;

(b) if he is a member of any committee of—

- (i) either House of Parliament, or
- (ii) the Legislative Assembly of a State or Union territory, or
- (iii) the Legislative Council of a State, during the continuance of any meeting of such committee;
- (c) if he is a member of

(i) either House of Parliament, or

(ii) a Legislative Assembly or Legislative Council of a State having both such Houses, during the continuance of a joint sitting, meeting, conference or joint committee of the Houses of Parliament or Houses of the State Legislature, as the case may be;

and during the forty days before and after such meeting, sitting or conference.

(2) A person released from detention under sub-section (1) shall, subject to the provisions of the said sub-section, be liable to re-arrest and to the further detention to which he would have been liable if he had not been released under the provisions of sub-section (1).

Section-136. Procedure where person to be arrested or property to be attached is outside district.-

(1) Where an application is made that any person shall be arrested or that any property shall be attached under any provision of this Code not relating to the execution of decrees, and such person resides or such property is situate outside the local limits of the jurisdiction of the court to which the application is made, the court may, in its discretion, issue a warrant of arrest or make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

(2) The District Court shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by a court sub-ordinate to itself, and shall inform the court which issued or made such warrant or order of the arrest or attachment

(3) The court making an arrest under this section shall send the person arrested to the court by which the warrant of arrest was issued, unless he shows cause to the satisfaction of the former court why he should not be sent to the latter court, or unless he furnishes sufficient security for his appearance before the latter court, or for satisfying any decree that may be passed against him by that court, in either of which cases the court making the arrest shall release him.

(4) Where a person to be arrested or movable property to be attached under this section is within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal or at Madras or at Bombay, the copy of the warrant of arrest or of the order of attachment, and the probable amount of the costs of the arrest or attachment, shall be sent to the court of small causes of Calcutta, Madras or Bombay, as the case may be, and that court, on receipt of the copy and amount, shall proceed as if it were the District Court.

Section-139. Oath on affidavit by whom to be administered .- In the case of any affidavit under this Code—

(a) any court or magistrate, or

(aa) any notary appointed under the Notaries Act, 1952 (53 of 1952); or

(b) any officer or other person whom a High Court may appoint in this behalf, or

(c) any officer appointed by any other court which the State Government has generally or specially empowered in this behalf, may administer the oath to the deponent.

Section-141. Miscellaneous proceedings.- The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any court of civil jurisdiction.

Explanation: In this section, the expression "proceedings" includes proceedings under Order IX, but does not include any proceeding under article 226 of the Constitution.

Section-144. Application for restitution.- (1) Where and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the court which passed the decree or order shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or order or such part thereof as has been varied, reversed, set aside or modified and, for this purpose, the court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are property consequential on such variation; reversal, setting aside or modification of the decree or the decree or order.

Explanation: For the purposes of sub-section (1), the expression "court which passed the decree or order" shall be deemed to include,—

(a) where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdiction, the court of first instance;

(b) where the decree or order has been set aside by a separate suit, the court of first instance which passed such decree or order;

(c) where the court of first instance has ceased to exist or has ceased to have jurisdiction to execute it, the court which, if the suit wherein the decree or order was passed were instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit.

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1).

Section-145. Enforcement of liability of surety.- Where any person has furnished security or given a guarantee—

(a) for the performance of any decree or any part thereof, or

(b) for the restitution of any property taken in execution of a decree, or

(c) for the payment of any money, or for the fulfillment of any conditions imposed on any person, under an order of the court in any suit or in any proceeding consequent thereon, the decree or order may be executed in the manner herein provided for the execution of decrees, namely:—

(i) if he has rendered himself personally liable, against him to that extent;

(ii) if he has furnished any property as security, by sale of such property to the extent of the security;

(iii) if the case falls both under clauses (i) and (ii), then to the extent specified in those clauses,

and such person shall be deemed to be a party within the meaning of section 47:

Provided that such notice as the court in each case thinks sufficient has been given to the surety.

Section-146. Proceedings by or against representatives.- Save as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him.

Section-147. Consent or agreement by persons under disability.- In all suits to which any person under disability is a party, any consent or agreement, as to any proceeding shall, if given or made with the express leave of the court by the next friend or guardian for the suit, have the same force and effect as if such person were under no disability and had given such consent or made such agreement.

Section-148. Enlargement of time.- 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.

Section-148-A. Right to lodge a caveat.- (1) Where an application is expected to be made, or has been made, in a suit or proceeding instituted, or about to be instituted, in a court, any person claiming a right to appear before the court on the hearing of such application may lodge a caveat in respect thereof.

(2) Where a caveat has been lodged under sub-section (1), the person by whom the caveat has been lodged (hereinafter referred to as the caveat or) shall serve a notice of the caveat by registered post, acknowledgement due, on the person by whom the application has been, or is expected to be, made under sub-section (1).

(3) Where, after a caveat has been lodged under sub-section (1), any application is filed in any suit or proceeding, the court shall serve a notice of the application on the caveat or.

(4) Where a notice of any caveat has been served on the applicant, he shall forthwith furnish the caveat or, at the caveator's expense, with a copy of the application made by him and also with copies of any paper or document which has been, or may be, filed by him in support of the application.

(5) Where a caveat has been lodged under sub-section (1), such caveat shall not remain in force after the expiry of ninety days from the date on which it was lodged unless the application referred to in sub-section (1) has been made before the expiry of the said period.

Section-149. Power to make up deficiency of court fees.- Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court fees has not been paid, the court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.

Section-150. Transfer of business.- Save as otherwise provided, where the business of any court is transferred to any other court, the court to which the business is so transferred shall have the same powers and shall perform the same duties as those respectively conferred and imposed by or under this Code upon the court from which the business was so transferred.

Section-151. Saving of inherent powers of court.- Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the court.

Section-153. General power to amend.- The court may, at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.

Section-153A. Power to amend decree or order where appeal is summarily dismissed.- Where an Appellate Court dismisses an appeal under rule 11 of Order XLI, the power of the court to amend, under section 152, the decree or order appealed against may be exercised by the court which had passed the decree or order in the first instance, notwithstanding that the dismissal of the appeal has the effect of confirming the decree or order, as the case may be, passed by the court of first instance.

THE FIRST SCHEDULE ORDER I : PARTIES OF SUITS

Order-I, Rule-1. Who may be joined as plaintiffs.- All persons may be joined in one suit as plaintiffs where—

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and

(b) if such persons brought separate suits, any common question of law or fact would arise.

Order-I, Rule-2. Power of court to order separate trials.- Where it appears to the court that any joinder of plaintiffs may embarrass or delay the trial of the suit, the court may put the plaintiffs to their election or order separate trials or make such other order as may be expedient.

Order-I, Rule-3. Who may be joined as defendants.- All persons may be joined in one suit as defendants where—

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and

(b) if separate suits were brought against such persons, any common question of law or fact would arise.

Order-I, Rule-3A. Power to order separate trials where joinder of defendants may embarrass or delay trial.- Where it appears to the court that any joinder of defendants may embarrass or delay the trial of the suit, the court may order separate trials or makes such other order as may be expedient in the interests of justice.

Order-I, Rule-8. One person may sue or defend on behalf of all in same interest.- (1) Where there are numerous persons having the same interest in one suit,—

(a) one or more of such persons may, with the permission of the court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested;

(b) the court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.

(2) The court shall, in every case where a permission or direction is given under sub-rule (1), at the plaintiff's expense, give notice of the institution of the suit to all persons so interested, either by personal service, or, where, by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the court in each case may direct.

(3) Any person on whose behalf, or for whose benefit, a suit is instituted, or defended, under sub-rule (1), may apply to the court to be made a party to such suit.

(4) No part of the claim in any such suit shall be abandoned under sub-rule (1), and no such suit shall be withdrawn under sub-rule (3) of rule 1 of Order XXIII, and no agreement, compromise or satisfaction shall be recorded in any such suit under rule 3 of that Order, unless the court has given, at the plaintiff's expenses notice to all persons so interested in the manner specified in sub-rule (2).

(5) Where any person suing or defending in any such suit does not proceed with due diligence in the suit or defence, the court may substitute in his place any other person having the same interest in the suit.

(6) A decree passed in a suit under this rule shall be binding on all persons on whose behalf, or for whose benefit, the suit is instituted, or defended, as the case may be.

Explanation: For the purpose of determining whether the persons who sue or are sued, or defend, have the same interest in one suit, it is not necessary to establish that such persons have the same cause of action as the persons on whose behalf, or for whose benefit, they sue or are sued, or defend the suit, as the case may be.

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

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

Order- I, Rule- 10. Suit in name of wrong plaintiff.- (1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the Suit has been instituted through a bone fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the court thinks just.

(2) Court may strike out or add parties—The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where defendant added, plaint to be amended—Where a defendant is added, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendant.

(5) Subject to the provisions of the Indian Limitation Act, 1877 (15 of 1877), section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.

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

ORDER II : FRAME OF SUIT

Order-II,Rule- 1. Frame of suit.- Every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them.

Order-II,Rule- 2. Suit to include the whole claim.- (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

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

(3) Omission to sue for one of several reliefs—A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs, but if he omits except with the leave of the court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation: For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

Illustration.- A lets a house to B at a yearly rent of Rs. 1,200. The rent for the whole of the years 1905, 1906 and 1907 is due and unpaid. A sues B in 1908 only for the rent due for 1906. A shall not afterwards sue B for the rent due for 1905 or 1907.

Order-II,Rule- 3. Joinder of causes of action.- (1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

(2) Where causes of action are united, the jurisdiction of the court as regards the suit shall depend on the amount or value of the aggregate subject matters at the date of instituting the suit.

Order-II,Rule-5. Claims by or against an executor, administrator or heir.- No claim by or against an executor, administrator or heir, as such, shall be joined with claims by or against him personally, unless the last mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor, administrator or heir, or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents.

Order-II,Rule- 6. Power of court to order separate trials.- Where it appears to the court that the joinder of causes of action in one suit may embarrass or delay the trial or is otherwise inconvenient, the court may order separate trials or make such other order as may be expedient in the interests of justice.

Order-II,Rule-7. Objections as to mis-joinder.- All objections on the ground of mis-joinder of causes of action shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

ORDER V : ISSUE AND SERVICE OF SUMMONS

Order-V, Rule-3. Court may order defendant or plaintiff to appear in person.- (1) Where the court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in court on the day therein specified.

(2) Where the court sees reason to require the personal appearance of the plaintiff on the same day, it shall make an order for such appearance.

Order-V, Rule-4. No party to be ordered to appear in person unless resident within certain limits.- No party shall be ordered to appear in person unless he resides,—

(a) within the local limits of the Court's ordinary original jurisdiction, or

(b) without such limits but at place less than fifty or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the court is situate) less than two hundred miles distance from the court house.

Order-V, Rule-5. Summons to be either to settle issues or for final disposal.- The court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly:

Provided that, in every Suit heard by a court of small causes, the summons shall be for the final disposal of the suit.

Order-V, Rule-7. Summons to order defendant to produce documents relied on by him.- The summons to appear and answer shall order the defendant to produce all documents or copies thereof specified in rule 1A of Order VIII in his possession or power upon which he intends to rely in support of his case.

Order-V, Rule-8. On issue of summons for final disposal, defendant to be directed to produce his witnesses.- Where the summons is for the final disposal of the suit, it shall also direct the defendant to produce, on the day fixed for his appearance, all witnesses upon whose evidence he intends to rely in support of his case.

Order-V, Rule-10. Mode of service.- Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the court

Order-V, Rule-13. Service on agent by whom defendant carries on business.- (1) In a Suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the court from which the summons is issued, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

(2) For the purpose of this rule the master of a ship shall be deemed to be the agent of the owner or charterer.

Order-V, Rule-15. Where service may be on an adult member of defendant's family.- Where in any suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf, service may be made on any adult member of the family, whether male or female, who is residing with him.

Explanation: A Servant is not a member of his family within the meaning of this rule.

Order-V, Rule-17. Procedure when defendant refuses to accept service, or cannot be found.-

Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, who is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and 'whose presence the copy was affixed.

Order-V, Rule-19. Examination of serving officer.- Where a summons is returned under rule 17, the court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further enquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

Order-V, Rule-20. Substituted service.- (1) Where the court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the court house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the court thinks fit.

(1A) Where the court acting under sub-rule (1) orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain.

(2) Effect of substituted service—Service substituted by order of the court shall be as effectual as if it had been made on the defendant personally.

(3) Where service substituted, time for appearance to be fixed—Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

Order-V, Rule-23. Duty of court to which summons is sent.- The court to which a summons is sent under rule 21 or rule 22 shall, upon receipt thereof, proceed as if it had been issued by such court and shall then return the summons to the court of issue, together with the record (if any) of its proceedings with regard thereto.

Order-V, Rule-24. Service on defendant in prison.- Where the defendant is confined in a prison, the summons shall be delivered or sent or by post or by such courier service as may be approved by the High Court, by fax message or by electronic mail service or by any other means as may be

provided by the rules made by the High Court) to the officer in charge of the prison for service on the defendant.

Order-V, Rule-25. Service on defendant resides out of India and has no agent.- Where the defendant reside out of India and has not agent in India empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him or by post or by such courier service as may be approved by the High Court, by fax message or by electronic mail service or by any other means as may be provided by the rules made by the High Court, if there is postal communication between such place and the place where the court is situate:

Provided that where any such defendant resides in Bangladesh or Pakistan, the summons, together with a copy thereof, may be sent for service on the defendant, to any court in that country (not being the High Court) having jurisdiction in the place where the defendant resides:

Provided further that where any such defendant is a public officer in Bangladesh or Pakistan (not belonging to the Bangladesh or, as the case may be, Pakistan military, naval or air forces) or is a servant of a railway company or local authority in that country, the summons, together with a copy thereof, may be sent for service on the defendant to such officer or authority in that country as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Order-V, Rule-26. Service in foreign territory through political agent or court.- Where—

(a) in the exercise of any foreign jurisdiction vested in the Central Government, a political agent has been appointed, or a court has been established or continued, with power to serve a summons, issued by a court under this Code, in any foreign territory in which the defendant actually and voluntarily resides, carries on business or personally works for gain, or

(b) the Central Government has, by notification in the Official Gazette, declared, in respect of any court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid, that service by such court of any summons issued by a court under this Code shall be deemed to be valid service, the summons may be sent to such political agent or court, by post, or otherwise, or if so directed by the Central Government, through the Ministry of that Government dealing with foreign affairs, or in such other manner as may be specified by the Central Government for the purpose of being served upon the defendant; and, if the political agent or court returns the summons with an endorsement purporting to have been made by such political agent or by the Judge or other officer of the court to the effect that the summons has been served on the defendant in the manner hereinbefore directed, such endorsement shall be deemed to be evidence of service.

Order-V, Rule-26A. Summonses to be sent to officers of foreign countries.- Where the Central Government has, by notification in the Official Gazette, declared in respect of any foreign territory that summonses to be served on defendants actually and voluntarily residing or carrying on business or personally working for gain in that foreign territory may be sent to an officer of the government of the foreign territory specified by the Central Government, the summonses may be sent to such officer, through the Ministry of the Government of India dealing with foreign affairs or in such other manner as may be specified by the Central Government; and if such officer returns any such summons with an endorsement purporting to have been made by him that the summons has been served on the defendant, such endorsement shall be deemed to be evidence of service.

Order-V, Rule-28. Service on soldiers, sailors or airmen.- Where the defendant is a soldier, sailor or airman, the court shall send the summons for service to his commanding officer together with a copy to be retained by the defendant.

Order-V, Rule-29. Duty of person to whom summons is delivered or sent for service.- (1) Where a summons is delivered or sent to any person for service under rule 24, rule 27 or rule 28, such person shall be bound to serve it if possible, and to return it under his signature, with the written acknowledgement of the defendant, and such signature shall be deemed to be evidence of service. (2) Where from any cause service is impossible, the summons shall be returned to the court with a full statement of such cause and of the steps taken to procure service, and such statement shall be deemed to be evidence of non-service.

ORDER VI : PLEADINGS GENERALLY

Order-VI, Rule-1. Pleading.- "Pleading" shall mean plaint or written statement.

Order- VI, Rule-2. Pleading to state material facts and not evidence.- (1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

(2) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph.

(3) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.

Order- VI, Rule-15. Verification of pleadings.- (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

(4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings.

Order- VI, Rule- 16. Striking out pleadings.- The court may at any stage of the proceedings order to be struck out or amended any matter An any pleading—

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the court.

Order- VI, Rule-17. Amendment of Pleadings.- the Court may at any stage at the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

ORDER VII : PLAINT

Order-VII, Rule-11. Rejection of plaint.- The plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails comply with the provision of Rule 9.

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.

Order-VII, Rule-13. Where rejection of plaint does not preclude presentation of fresh plaint.-

The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

Order-VII, Rule-17. Production of shop book.- (1) Save in so far as is otherwise provided by the Bankers' Books Evidence Act, 1891 (18 of 1891), where the document on which the plaintiff sues is an entry in a shop book or other account in his possession or power, the plaintiff shall produce the book or account at the time of filing the plaint, together with a copy of the entry on which he relies.

(2) Original entry to be marked and returned—The court, or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification, and, after examining and

comparing the copy with the original, shall, if it is found correct, certify it to be so and return the book to the plaintiff and cause the copy to be filed.

ORDER VIII : WRITTEN STATEMENT, SET-OFF AND COUNTER-CLAIM

Order-VIII-,Rule- 1. Written statement.- The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty day, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.

Order-VIII -,Rule-2. New facts must be specially pleaded.- The defendant must raise by his pleading all matters which show the suit not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release payment, performance, of facts showing illegality.

Order-VIII -,Rule-3. Denial to be specific.- It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

Order-VIII -,Rule-4. Evasive denial.- Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

Order-VIII -,Rule-5. Specific denial.- (1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:

Provided that the court may in its discretion require any fact so admitted to be proved otherwise than by such admission,'

(2) Where the defendant has not filed a pleading, it shall be lawful for the court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the court may, in its discretion, require any such fact to be proved.

(3) In exercising its discretion under the proviso to sub-rule (1) or under sub-rule (2), the court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

(4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced.

Order-VIII -,Rule-6. Particulars of set off to be given in written statement.- (1) Where in a suit for the recovery of money the defendant claims to set off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, of exceeding to pecuniary limits of the jurisdiction of the court, and both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the court, present a written statement containing the Particulars of the debt sought to be set off.

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

(3) The rules relating to a written statement by a defendant apply to a written statement in answer to a claim of set off. —

Illustrations

(a) A bequeaths Rs. 2,000 to B and appoints C his executor and residuary legatee. B dies and D takes out administration to B's effects. C pays Rs. 1,000 as surety for D; then D sues C for the legacy. C cannot set off the debt of Rs. 1,000 against the legacy, for neither C nor D fills the same character with respect to the legacy as they fill with respect to the payment of the Rs. 1000.

(b) A dies intestate and in debt to B. C takes out administration to A's effects and B buys part of the effects from C. In a suit for the purchase money by C against B, the latter cannot set off the debt against the price, for C fills two different characters, one as the vendor to B, in which he sues B and the other as representative of A.

(c) A sues B on a bill of exchange. B alleges that A has wrongfully neglected to insure B's goods and is liable to him in compensation which he claims to set off. The amount not being ascertained cannot be set-off,

(d) A sues B on a bill of exchange for Rs. 500. B holds a judgment against A for Rs. 1000, The two claims being both definite, pecuniary demands may be set off.

(e) A sues B for compensation on account of trespass. B holds a promissory note for Rs. 1,000 from A and claims to set off that amount against any sum that A may recover in the suit. B may do so, for as soon as A recovers, both sums are definite pecuniary demands.

(f) A and B sue C for Rs. 1,000. C cannot set off a debt due to him by A alone.

(g) A sues B and C for Rs. 1,000. B cannot set off a debt due to him alone by A.

(h) A owes the partnership firm of B and C, Rs. 1,000, B dies, leaving C surviving A sues C for a debt of Rs. 1,500 due in his separate character. C may set off the debt of Rs. 1,000,

Order-VIII -,Rule-6A. Counter claim by defendant.- (1) A defendant in a suit may, in addition to his right of pleading a set off under rule 6, set up, by way of counter claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff

either before or after the filing of to suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter claim is in the nature of a claim for damages or not:

Provided that such counter claim shall not exceed the pecuniary limits of the jurisdiction of the court.

(2) Such counter claim shall have the same effect as a cross suit so as to enable the court to pronounce a final judgment in the same suit, both on the original claim and on the counter claim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counter claim of the defendant within such period as may be fixed by the court.

(4) The counter claim shall be treated as a plaint and governed by the rules applicable to plaints.

Order-VIII -,Rule-6B. Counter claim to be stated.- Where any defendant seeks to rely upon any ground as supporting a right of counter claim, he shall, in his written statement, state specifically that he does so by way of counter claim.

Order-VIII -,Rule-6G. Rules relating to written statement to apply.- The rules relating to a written statement by a defendant shall apply to a written statement filed in answer to a counter claim.

Order-VIII -,Rule-8. New ground of defence.- Any ground of defence which has arisen after the institution of the Suit or the presentation of a written statement claiming a set off or counter claim may be raised by the defendant or plaintiff, as the case may be, in his written statement.

Order-VIII -,Rule-9. Subsequent pleadings.- No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit: but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same.

Order-VIII -,Rule-10. Procedure when party fails to present written statement called for by Court.- Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order is relating to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up.

ORDER IX : APPEARANCE OF PARTIES AND CONSEQUENCE OF NON-APPEARANCE

Order-IX, Rule- 3. Where neither party appears, suit to be dismissed.- Where neither party appears when the suit is called on for hearing, the court may make an Order that the Suit be dismissed.

Order- IX, Rule- 4. Plaintiff may bring fresh suit or court may restore Suit to file.- Where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit; or he may apply for an Order to set the dismissal aside, and if he satisfies the court that there was sufficient cause for such failure as is referred to in rule 2, or for his non appearance, as the case may be, the court shall make an Order setting aside the dismissal and shall appoint a day for proceeding with the suit.

Order- IX, Rule- 6. Procedure when only plaintiff appears.- (1) Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then

(a) When summons duly served—if it is proved that the summons was duly served, the court may make an Order that the suit be heard ex parte;

(b) When summons not duly served—if it is not proved that the summons was duly served, the court shall direct a second summons to be issued and served on the defendant;

(c) When summons served but not in due time—if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the court shall postpone the hearing of the Suit to a future day to be fixed by the court, and shall direct notice of such day to be given to the defendant.

(2) Where it is owing to the plaintiff's default that the summons was not duly served or was not served in sufficient time, the court shall Order the plaintiff to pay the costs occasioned by the postponement.

Order IX-, Rule- 7. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non appearance.- Where the court has adjourned the hearing of the Suit ex parte, and the defendant, at or before such hearing, appears and assigns good cause for his previous non appearance, he may, upon such terms as the court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

Order- IX, Rule- 8. Procedure where defendant only appears.- Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the court shall make an Order that the suit be dismissed, unless the defendant admits the claim, or part thereof, in which case the court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

Order- IX, Rule- 9. Decree against plaintiff by default bars fresh suit.- (1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action, But he may apply for an Order to set the dismissal aside, and if he satisfies the court that there was sufficient cause for his non appearance when the suit was called on for hearing, the court shall make an Order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(2) No Order shall be made under this rule unless notice of the application has been served on the opposite party.

Order- IX, Rule- 10. Procedure in case of non-attendance of one or more of several defendants.- Where there are more plaintiffs than one, and one or more of them appear, and the others do not appear, the court may, at the instance of the plaintiff or plaintiffs appearing. pet suit to proceed in the same way as if all the plaintiffs had appeared, or make such Order as it thinks fit.

Order- IX, Rule- 11. Procedure in case of non attendance of one or more of several defendants.- Where there are more defendants than one, and one or more of them appear, and the others do not appear, the suit shall proceed, and the court shall, at the time of pronouncing judgment, make such Order as it thinks fit with respect to the defendants who do not appear.

Order- IX, Rule- 12. Consequence of non attendance, without sufficient cause shown, of party ordered to appear in person.- Where a plaintiff or defendant, who has been ordered to appear in person, does not appear in person, or show sufficient cause to the satisfaction of the court for failing so to appear, he shall be subject to all he provisions of the foregoing rules applicable to plaintiffs and defendants, respectively, who do not appear.

Order- IX, Rule- 13. Setting aside decree ex parte against defendant.- In any case in which a decree is passed ex parte against a defendant, he may apply to the court by which the decree was passed for an Order to set it aside; and if he satisfies the court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the court shall make an Order setting aside the decree as against him upon such terms as to costs, payment into court or otherwise as it thinks fit, and shall appoint a day for proceeding with the
suit:

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be sent aside as against all or any of the other defendant also:

Provided further that no court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.

Explanation : Where there has been an appeal against a decree passed ex parte under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule of setting aside the ex parte decree.

Order- IX, Rule- 14. No decree to be set aside without notice to opposite party.- No decree shall be set aside on any such application as aforesaid unless notice thereof has been served on the opposite party

ORDER X : EXAMINATION OF PARTIES BY THE COURT

Order-X, Rule- 1. Ascertainment whether allegations in pleadings are admitted or denied.- At the 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 (if any) of the opposite

party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The court shall record such admission and denials.

Order-X, Rule- 1A. Direction of the court to opt for any one mode of alternative dispute resolution.- After recording the admissions and denials, the Court shall direct the parties to the suit to opt either mode of the settlement outside the court as specified in sub-section (1) of section 89. On the option of the parties, the court shall fix the date of appearance before such forum or authority as may be opted by the parties.

Order-X, Rule- 1B. Appearance before the conciliatory forum or authority.- Where a suit is referred under rule 1A, the parties shall appear before such forum or authority for conciliation of the suit.

Order-X, Rule- 1C. Appearance before the Court consequent to the failure of efforts of conciliation.- Where a suit is referred under rule 1A and the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then, it shall refer the matter again to the court and direct the parties to appear before the court on the date fixed by it.

Order-X, Rule- 2. Oral examination of party, or companion of party.- (1) At the first hearing of the suit, the court—

(a) shall, with a view to elucidating matters in controversy in the suit, examine orally such of the parties to the suit appearing in person or present in court, as it deems fit; and

(b) may orally examine any person, able to answer any material question relating to the suit, by whom any party appearing in person or present in court or his pleader is accompanied.

(2) At any subsequent hearing, the court may orally examine any party appearing in person or present in court, or any person, able to answer any material question relating to the suit, by whom such party or his pleader is accompanied.

(3) The court may, if it thinks fit, put in the course of an examination under this rule questions suggested by either party.

Order-X, Rule- 3. Substance of examination to be written.- The substance of the examination shall be reduced to writing by the judge, and shall form part of the record.

ORDER XI : DISCOVERY AND INSPECTION

Order-XI, Rule- 1. Discovery by interrogatories.- In any Suit the plaintiff or defendant by leave of the court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof

stating which of such interrogatories each of such persons is required to answer:

Provided that no party shall deliver more than one set of interrogatories to the same party without an Order for that purpose:

Provided also that interrogatories which do not relate to any matters in question in the Suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross examination of a witness.

Order- XI, Rule- 6. Objections to interrogatories by answer.- Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited bona fide for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on the ground of privilege or any other ground may be taken in the affidavit in answer.

Order- XI, Rule- 7. Setting aside striking Out interrogatories.- Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck Out on the ground that they are prolix, oppressive, unnecessary or scandalous; and any application for this purpose may be made within seven days after service of the interrogatories.

Order- XI, Rule- 11. Order to answer or answer further.- Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the court for an Order requiring him to answer, or to answer further, as the case may be. And an Order may be made requiring him to answer, or to answer further, either affidavit or by viva voce examination, as the court may direct.

Order- XI, Rule- 12. Application for discovery of documents.- Any party may, without filing any affidavit, apply to the court for an Order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion, be thought fit:

Provided that discovery shall not be ordered when and so far as the court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

Order- XI, Rule- 16. Notice to produce.- Notice to any party to produce any documents referred to in his pleading or affidavits shall be in Form No. 7 in Appendix C, with such variations as circumstances may require.

Order- XI, Rule- 19. Verified copies.- (1) Where inspection of any business books is applied for, the court may, if it thinks fit, instead of ordering inspection of the original books, Order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the

copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations:

Provided that, notwithstanding that such copy has been supplied, the court may Order inspection of the book from which the copy was made.

(2) Where on an application for an Order for inspection privilege is claimed for any document it shall be lawful for the court to inspect the document for the purpose of deciding as to the validity of the claim of privilege unless the document relates to matters of State.

(3) The Court may, on the application of any party to a suit at any time and whether an affidavit of documents shall or shall not have already been ordered or made, make an Order requiring any other party to state by affidavit whether any one or more specific documents, to be specified in the application, is or are, or has or have at any time been, in his possession or power; and, if not then in his possession, when he parted with the same and what has become thereof. Such application shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has, or has at some time had, in his possession or power the document or documents specified in the application, and that they relate to the matters in question in the suit, or to some of them.

Order- XI, Rule- 21. Non compliance with Order for discovery.- (1) Where any party fails to comply with any Order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the court for an Order to that effect, and an Order may be made on such application accordingly, after notice to the parties and after giving them a reasonable opportunity of being heard.

(2) Where an Order is made under sub-rule (1) dismissing any suit, the plaintiff shall be precluded from bringing a fresh suit on the same cause of action.

Order- XI, Rule- 22. Using answers to interrogatories at trial.- Any party may, at the trial of a suit, use in evidence any one or more of the answers or any part of an answer-of the opposite party to interrogatories without putting in the others or the whole Of such answer:

Provided always that in such case the court may look at the whole of the answers, and if it shall be of opinion that any others of them are so connected with those put in that the last mentioned answers ought not to be used without them, it may direct them to be put in.

ORDER XII : ADMISSION

Order-XII,Rule- 2. Notice to admit documents.- Either party may call upon the other party to admit, within seven days from the date of service of the notice any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the court otherwise directs; and no costs of proving any document shall be allowed unless such notice is given, except where the omission to give the notice is, in the opinion of the court, a saving of expense.

Order- XII, Rule- 2A. Document to be deemed to be admitted if not denied after service of notice to admit documents.- (1) 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 except as against a person under a disability:

Provided that the court may, in its discretion and for reasons to be recorded, require any document so admitted to be proved otherwise than by such admission.

(2) Where a party unreasonably neglects or refuses to admit a document after the service on him of the notice to admit documents, the court may direct him to pay costs to the other party by way of compensation.

Order- XII, Rule- 3. Form of notice.- A notice to admit documents shall be in Form No. 9 in Appendix C, with such variations as circumstances may require.

Order- XII, Rule- 4. Notice to admit facts.- Any party, may, by notice in writing, at any time not later than nine days before the day fixed for the hearing, call on any other party to admit, for the purposes of the suit only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the court, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the court otherwise directs:

Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of this particular suit, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice.

Order- XII, Rule- 6. Judgment on admissions.- (1) Where admissions of fact 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 a party or of its own motion and without waiting for the determination of any other question between the parties, make such Order or give such judgment as It may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.

Order- XII, Rule- 8. Notice to produce documents.- Notice to produce documents shall be in Form No. 12 Appendix C, with such variations as circumstances may require. An affidavit of the pleader, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served.

ORDER XIII : PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS

Order-XIII, Rule- 1. Original documents to be produced at or before the settlement of issues.-

(1) The parties or their pleader shall produce on or before the settlement of issues, all the documentary evidence in original where the copies thereof have been filed along with the plaint or written statement.

(2) The court shall receive the documents so produced:

Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

(3) Nothing in sub-rule (1) shall apply to documents—

(a) produced for the cross-examination of the witnesses of the other party; or (b) handed over to a witness merely to refresh his memory.

Order- XIII, Rule- 10. Court may send for papers from its own records or from other courts.- (1)

The court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other court, the record of any other suit or proceeding, and inspect the same.

(2) Every application made under this rule shall (unless the court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain duly authenticated copy of the record or of such portion thereof as to applicant requires, or that the production of the original is necessary for the purposes of justice.

(3) Nothing contained in this rule shall be deemed to enable the court to use in evidence any document which under the law of evidence would be inadmissible in the suit.

ORDER XIV : SETTLEMENT OF ISSUES AND DETERMINATION OF SUIT ON ISSUES OF LAW OR ON ISSUES AGREED UPON

Order- XIV, Rule- 3. Materials from which issues may be framed.- The court may frame the issues from all or any of the following materials:—

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

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

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

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

Order- XIV, Rule- 5. Power to amend and strike out, issues.- (1) The Court may at anytime before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

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

ORDER XV : DISPOSAL OF THE SUIT AT THE FIRST HEARING

Order- XV,Rule- 4. Failure to produce evidence.- Where the summons has been issued for the final disposal of the suit and either party fails without sufficient cause to produce the evidence on which he relies, the court may at once pronounce judgment, or may, if it thinks fit, after framing and recording issues, adjourn the suit for the production of such evidence as may be necessary for its decision upon such issues.

ORDER XVI : SUMMONING AND ATTENDANCE OF WITNESSES

Order-XVI, Rule- 1. List of witnesses and summons to witnesses.- (1) On or before such date as the court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in court.

(2) A party desirous of obtaining an summons for the attendance of any person shall file in court an application stating therein the purpose for which the witness is proposed to be summoned.

(3) The court may, for reasons to be recorded, permit a party to call, whether by summoning through court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.

(4) Subject to the provisions of sub-rule (2), summonses referred to in this rule may be obtained by the parties on an application to the court or to such officer as may be appointed by the court in this behalf within five days of presenting the list of witnesses under sub-rule (1).

Order- XVI, Rule- 10. Procedure where witness fails to comply with summons.- (1) Where a person to whom a summons has been issued either to attend to give evidence or to produce a document, fails to attend or to produce the document in compliance with such summons, the court—

(a) shall, if the certificate of the serving officer has not been verified by affidavit, or if service of the summons has been effected by a party or his agent, or

(b) may, if the certificate of the serving officer has been so verified, examine on oath the serving officer or the party or his agent, as the case may be, who has effected service, or cause him to be so examined by any court, touching the service or non-service of the summons.

(2) Where the court sees reason to believe that such evidence or production is material, and that such person has, without lawful excuse, failed to attend or produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named, therein; and a copy of Such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

(3) In lieu of or at the time of issuing such proclamation, or at any time afterwards, the court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an Order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under rule 12:

Provided that no court of small causes shall make an Order for the attachment of immovable property.

Order- XVI, Rule- 19. No witness to be ordered to attend in person unless resident within certain limits.- No one shall be ordered to attend in person to give evidence unless he resides—

(a) within the local limits of the court's ordinary original jurisdiction, or

(b) without such limits but at a place less than one hundred or (where there is railway or steamer communication or other established public conveyance for five sixths of the distance between the place where he resides and the place where the court is situate) less than five hundred kilometers distance from the court house:

Provided that where transport by air is available between the two places mentioned in this rule and the witness is paid the fare by air, he may be ordered to attend in person.

ORDER XVI-A : ATTENDANCE OF WITNESSES CONFINED OR DETAINED IN PRISONS

Order- XVI-A, Rule- 2. Power to require attendance of prisoners to give evidence.- Where it appears to a court that the evidence of a person confined or detained in a prison within the State is material in a suit, the court may make an Order requiring the officer in charge of the prison to produce that person before the court to give evidence:

Provided that, if the distance from the prison to the court house is more than twenty five kilometers, no such Order shall be made unless the court is satisfied that the examination of such person on commission will not be adequate.

Order- XVI-A, Rule- 7. Power to issue commission for examination of witness in prison.- (1) Where it appears to the court that the evidence of a person confined or detained in a prison, whether within the State or elsewhere in India, is material in a suit but the attendance of such person cannot be secured under the preceding provisions of this order, the court may issue a commission for the examination of that person in the prison in which he is confined or detained.

(2) The provisions of Order XXVI shall, so far as may be, apply in relation to the examination on commission of such person in prison as they apply in relation to the examination on commission of any other person.

ORDER XVII : ADJOURNMENTS

Order- XVII, Rule- 1. Court may grant time and adjourn hearing.- (1) The court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the Suit for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the suit.

(2) Costs of adjournment—in every such case the court shall fix a day for the further hearing of the suit, and shall make such orders as to costs occasioned by the adjournment or such higher costs as the court deems fits:

Provided that,—

(a) when the hearing of the suit has commenced, it shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the court finds that, for the exceptional reasons to be recorded by it, the adjournment of the hearing beyond the following day is necessary,

(b) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party,

(C) the fact that the pleader of a party is engaged in another court, shall not be a ground for adjournment,

(d) where the illness of a pleader or his inability to conduct the case for any reason, other than his being engaged in another court, is put forward as a ground for adjournment, the court shall not grant the adjournment unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time,

(e) where a witness is present in court but a party or his pleader is not present or the party or his pleader, though present in court, is not ready to examine or cross-examine the witness, the court may, if it thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination in chief or cross-examination of the witness, as the case may be, by the party or his pleader not present or not ready as aforesaid.

ORDER XVIII : HEARING OF THE SUIT AND EXAMINATION OF WITNESSES

Order- XVIII, Rule- 3A. Party to appear before other witnesses.- Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the court, for reasons to be recorded, permits him to appear as his own witness at a later stage.

Order- XVIII, Rule- 11. Questions objected to and allowed by Court.- Where any question put to a witness is objected to by a party or his pleader, and the court allows the same to be put, the Judge

shall take down the question, the answer, the objection and the name of the person making it, together with the decision of the court thereon.

Order- XVIII, Rule- 12. Remarks on demeanour of witnesses.- The court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

Order- XVIII, Rule- 17. Court may recall and examine witness.- The court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the court thinks fit.

Order- XVIII, Rule- 18. Power of court to inspect.- The court may at any stage of a Suit inspect any property or thing concerning which any question may arise and where the court inspects any property or thing it shall, as soon as may be practical, make a memorandum of any relevant facts observed at such inspection and such memorandum shall form a part of the record of the suit.

Order-XVIII, Rule- 19. Power to get statements recorded on commission.- Notwithstanding anything contained in these rules, the court may, instead of examining witnesses in open court, direct their statements to be recorded on commission under rule 4A of Order XXVI.

ORDER XIX : AFFIDAVITS

Order-XIX, Rule- 1. Power to Order any point to be proved by affidavit.- Any court may at any time for sufficient reason Order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the court thinks reasonable:

Provided that where it appears to the court that either party bona fide desires the production of a witness for cross examination, and that such witness can be produced, an Order shall not be made authorizing the evidence of such witness to be given by affidavit.

Order-XIX, Rule- 2. Power to Order attendance of deponent for cross examination.- (1) Upon any application evidence may be given by affidavit, but the court may, at the instance of either party, Order the attendance for cross-examination of the deponent.

(2) Such attendance shall be in court, unless the deponent is exempted from personal appearance in court, or the court otherwise directs.

ORDER XXI : EXECUTION OF DECREES AND ORDERS

Order-XXI, Rule-26. When court may stay execution.- (1) The court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment debtor to apply to the court by which the decree was passed, or to any court having appellate jurisdiction in respect of the decree or the execution thereof, for an Order to stay execution, or for any other order relating to the decree or execution which might have been made by such court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto,

(2) Where the property or person of the judgment debtor has been seized under an execution, the court which issued the execution may order the restitution of such property or the discharge of such person pending the result of the application.

(3) Power to require security from, or Impose conditions upon, judgment debtor:—Before making an order to stay execution or for the restitution of property or the discharge of the judgment debtor, the court shall require such security from, or impose such conditions upon, the judgment debtor as it thinks fit,

Order-XXI, Rule-29. Stay of execution pending suit between decree holder and judgment debtor.- Where a suit is pending in any court against the holder of a decree of such court or of a decree which is being executed by such court, on the part of the person against whom the decree was passed, the court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided:

Provided that if the decree is one for payment of money, the court shall, if it grants stay without requiring security, record its reasons for so doing.

Order-XXI, Rule-32. Decree for specific performance for restitution of conjugal rights, or for an injunction.- (1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has willfully failed to obey it he decree may be enforced the case of decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction by his detention in the civil prison, or by the attachment of his property, or by both.

(2) Where the party against whom a decree for specific performance or for an injunction has been passed in a corporation the decree may be enforced by the attachment of the property of the corporation or with the leave of the court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.

(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force month ,if the judgment debtor has not obeyed the decree and the decree holder has applied to have attached property sold, such property may be sold; and out of the proceeds the court may award to the decree holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment debtor on his application.

(4) Where the judgment debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of six months from the date of the attachment, no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree holder or some other person appointed by the court, at the cost of the judgment debtor, and upon the act being done the expenses

incurred may be ascertained in such manner as the court may direct and may be recovered as if they were included in the decree.

[Explanation.—For the removal of doubts, it is hereby declared that the expression “the act required to be done” covers prohibitory as well as mandatory injunction.]

Illustration

A, a person of little substance, erects a building which renders uninhabitable a family mansion belonging to B. A, in spite of his detention in prison and the attachment of his property, declines to obey a decree obtained against him by B and directing him to remove the building. The court is of opinion that no sum realizable by the sale of A's property would adequately compensate B for the depreciation in the value of his mansion. B may apply to the court to remove the building and may recover the cost of such removal from A in the execution proceedings.

Order-XXI, Rule-38. Warrant for arrest to direct judgment debtor to be brought up.- Every warrant for the arrest of a judgment debtor shall direct the officer entrusted with its execution to bring him before the court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs (if any) to which he is liable, be sooner paid.

Order-XXI, Rule-64. Power to Order property attached to be sold and proceeds to be paid to person entitled.- Any court executing a decree may Order that any property attached by it and liable to sale, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

Order-XXI, Rule-69. Adjournment or stoppage of sale.- (1) The court may, in its discretion, adjourn any sale hereunder to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment:

Provided that, where the sale is made in, or within the precincts of, the court house, no such adjournment shall be made without the leave of the court.

(2) Where a sale is adjourned under sub-rule (1) for a longer period than thirty days, a fresh proclamation under rule 67 shall be made, unless the judgment debtor consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the court which ordered the sale.

Order-XXI, Rule-83. Postponement of sale to enable judgment debtor to raise amount of decree.- (1) Where an Order for the sale of immovable property has been made, if the judgment debtor can satisfy the court that there is reason to believe that the amount of the decree may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the judgment debtor, the court may, on his application postpone the sale of the property comprised in the Order for sale on such terms and for such period as it thinks proper, to enable him to raise the amount.

(2) In such case the court shall grant a certificate to the judgment debtor authorizing him within a period to be mentioned therein, and notwithstanding anything contained in section 64, to make the proposed mortgage, lease or sale:

Provided that all moneys payable under such mortgage, lease or sale shall be paid, not to the judgment debtor, but, save in so far as a decree holder is entitled to set off such money under the provisions of rule 72, into court:

Provided also that no mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Court.

(3) Nothing in this rule shall be deemed to apply to a sale of property directed to be sold in execution of a decree for sale in enforcement of a mortgage of, or charge on, such property.

Order-XXI, Rule-89. Application to set aside sale on deposit.- (1) Where immovable property has been sold in execution of a decree, any person claiming an interest in the property sold at the time of the sale or at the time of making the application, or acting for or in the interest of such person,] may apply to have the sale set aside on his depositing in court,—

(a) for payment to the purchaser, a sum equal to five per cent of the purchase money, and

(b) for payment to the decree holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree holder.

(2) Where a person applies under rule 90 to set aside the sale of his immovable property, he shall not, unless he withdraws his application, be entitled to make or prosecute an application under this rule.

(3) Nothing in this rule shall relieve the judgment debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale.

Order-XXI, Rule-90. Application to set aside sale on ground of irregularity or fraud.- (1) Where any immovable property has been sold in execution of a decree, the decree holder, or the purchaser, or any other person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it.

(2) No sale shall be set aside on the ground of irregularity or fraud in publishing or conducting it unless, upon the facts proved, the court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

(3) No application to set aside a sale under this rule shall be entertained upon any ground which the applicant could have taken on or before the date on which the proclamation of sale was drawn up.

Explanation : The mere absence of, or defect in, attachment of the property sold shall not, by itself, be a ground for setting aside a sale under this rule.

Order-XXI, Rule-91. Application by purchaser to set aside sale on ground of judgment debtor having no saleable interest.- The purchaser at any such sale in execution of a decree may apply to the court to set aside the sale, on the ground that the judgment debtor had no saleable interest in the property sold.

Order-XXI, Rule-92. Sale when to become absolute or be set aside.- (1) Where no application is made under rule 89, rule 90 or rule 91, or where such application is made and disallowed, the court shall make an Order confirming the sale, and thereupon the sale shall become absolute:

Provided that, where any property is sold in execution of a decree pending the final disposal of any claim to, or any objection to the attachment of, such property, the court shall not confirm such sale until the final disposal of such claim or objection.

(2) Where such application is made and allowed, and where, in the case of an application under rule 89, the deposit required by that rule is made within 1 [sixty days] from the date of sale, or in cases where the amount deposited under rule 89 is found to be deficient owing to any clerical or arithmetical mistake on the part of the depositor and such deficiency has been made good within such time as may be fixed by the court, the court shall make an Order setting aside the sale:

Provided that no Order shall be made unless notice of the application has been given to all persons affected thereby:

Provided further that the deposit under this sub-rule may be made within sixty days in all such cases where the period of thirty days, within which the deposit had to be made, has not expired before the commencement of the Code of Civil Procedure (Amendment) Act, 2002.

(3) No suit to set aside an Order made under this rule shall be brought by any person against whom such Order is made.

(4) Where a third party challenges the judgment debtor title by filing a suit against the auction purchaser, the decree holder and the judgment debtor shall be necessary parties to the suit.

(5) If the suit referred to in sub-rule (4) is decreed, the court shall direct the decree holder to refund the money to the auction purchaser, and where such an Order is passed the execution proceeding in which the sale had been held shall, unless the court otherwise directs, be revived at the stage at which the sale was ordered.

Order-XXI, Rule-106. Setting aside orders passed ex parte, etc.- (1) The applicant, against whom an Order is made under sub-rule (2) of rule 105 or the opposite party against whom an Order is passed ex parte under sub-rule (3) of that rule or under sub-rule (1) of rule 23, may apply to the court to set aside the order, and if he satisfies the court that there was sufficient cause for his non-appearance when the application was called on for hearing, the court shall set aside the order on such terms as to costs or otherwise as it thinks fit, and shall appoint a day for the further hearing of the application.

(2) No Order shall be made on an application under sub-rule (1) unless notice of the application has been served on the other party.

(3) An application under sub-rule (1) shall be made within thirty days from the date of the order, or where, in the case of an ex parte order, the notice was not duly served, within thirty days from the date when the applicant had knowledge of the order.]

ORDER XXII : DEATH, MARRIAGE AND INSOLVENCY OR PARTIES

Order-XXII, Rule- 1. No abatement by party's death, if right to sue survives.- The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

Order- XXII, Rule-7. Suit not abated by marriage of female party.- (1) The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may notwithstanding be proceeded with to judgment, and, where the decree is against a female defendant, it may be executed against her alone.

(2) Where the husband is by law liable for the debts of his wife, the decree may, with the permission of the court, be executed against the husband also; and, in case of judgment for the wife, execution of the decree may, with such permission, be issued upon the application of the husband, where the husband is by law entitled to the subject matter of the decree.

Order- XXII, Rule- 10A. Duty of pleader to communicate to court death of a party.- Whenever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the court about it, and the court shall thereupon give notice of such death to the other party, and, for this purpose, the contract between the pleader and the deceased party shall be deemed to subsist.

ORDER XXV : SECURITY FOR COSTS

Order-XXV, Rule-1. When security for costs may be required from plaintiff.- (1) At any stage of a suit, the court may, either of its own motion or on the application of any defendant, order the plaintiff, for reasons to be recorded, to give within the time fixed by it security for the payment of all costs incurred and likely to be incurred by any defendant:

Provided that such an order shall be made in all cases in which it appears to the court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are residing out of India and that such plaintiff does not possess or that no one of such plaintiffs possesses any sufficient immovable property within India other than the property in suit.

(2) Whoever leaves India under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of India within the meaning of the proviso to sub-rule (1).

Order- XXV, Rule-2. Effect of failure to furnish security.- (1) In the event of such security not being furnished within the time fixed, the court shall make an order dismissing the suit unless the plaintiff or plaintiffs are permitted to withdraw there from.

(2) Where a suit is dismissed under this rule, the plaintiff may apply for an order to set the dismissal aside, and, if it is proved to the satisfaction of the court that he was prevented by any sufficient cause from furnishing the security within the time allowed, the court shall set aside the dismissal upon such terms as to security, costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(3) The dismissal shall not be set aside unless notice of such application has been served on the defendant.

ORDER XXVI : COMMISSIONS

Order- XXVI, Rule- 1. Cases In which court may issue commission to examine witness.- Any court may in any suit issue a commission for the examination on interrogatories or otherwise of any person resident within the local limits of its jurisdiction who is exempted under this Code from attending the court or who is from sickness or infirmity unable to attend it:

Provided that a commission for examination on interrogatories shall not be issued unless the court, for reasons to be recorded, thinks it necessary so to do.

Explanation : The court may, for the purpose of this rule, accept a certificate purporting to be signed by a registered medical practitioner as evidence of the sickness or infirmity of any person, without calling the medical practitioner as a witness.

Order- XXVI, Rule- 2. Order for commission.- An order for the issue of a commission for the examination of a witness may be made by the court either of its own motion or on the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be examined.

Order- XXVI, Rule- 9. Commissions to make local investigations.- In any suit in which the court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property, or the amount of any mesne profits or damages or annual net profits, the court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the court:

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the court shall be bound by such rules.

Order- XXVI, Rule- 10A. Commission for scientific investigation.- (1) Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the court, be conveniently conducted before the court, the court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the court.

(2) The provisions of rule 10 of this Order shall, as far as may be, apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9.

Order-, Rule- 11. Commission to examine or adjust accounts.- In any suit in which an examination or adjustment of the accounts is necessary, the court may issue a commission to such person as it thinks fit directing him to make such examination or adjustment.

Order- XXVI, Rule- 13. Commission to make partition of immovable property.- Where a preliminary decree for partition has been passed, the court may, in any case not provided for by section 54, issue a commission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree.

ORDER XXVII : SUITS BY OR AGAINST THE GOVERNMENT OR PUBLIC OFFICERS IN THEIR OFFICIAL CAPACITY

Order- XXVII, Rule- 1. Suits by or against government.- In any suit by or against the government, the plaint or written statement shall be signed by such person as the government may, by general or special order, appoint in this behalf, and shall be verified by any person whom the government may so appoint and who is acquainted with the facts of the case.

ORDER XXVII-A : SUITS INVOLVING A SUBSTANTIAL QUESTION OF LAW AS TO THE INTERPRETATION OF THE CONSTITUTION OR AS TO THE VALIDITY OF ANY STATUTORY INSTRUMENT

Order- XXVII-A, Rule- 1. Notice to the Attorney General or the Advocate-General.- In any suit in which it appears to the court that any such question as is referred to in clause (1) of article 132, read with article 147, of the Constitution, is involved, the court shall not proceed to determine that question until after notice has been given to the Attorney-General for India, if the question of law concerns the Central Government and to the Advocate-General of the State if the question of law concerns a State Government.

ORDER XXVIII : SUITS BY OR AGAINST MILITARY OR NAVAL MEN OR AIRMEN

Order- XXVIII, Rule- 1. Officers, soldiers, sailors or airmen who cannot obtain leave may authorise any person to sue or defend for them.- (1) Where any officer, soldier, sailor or airman actually serving under the government in such capacity is a party to a suit, and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorise any person to sue or defend in his stead.

(2) The authority shall be in writing and shall be signed by the officer, soldier, sailor or airman in the presence of (a) his commanding officer, or the next subordinate officer, if the party is himself the commanding officer, or (b) where the officer, soldier, sailor or airman is serving in military naval or air force staff employment, the head or other superior officer of the office in which he is employed. Such commanding or other officer shall countersign the authority, which shall be filed in court.

(3) When so filed the countersignature shall be sufficient proof that the authority was duly executed, and that the officer, soldier, sailor or airman by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the suit in person.

Explanation: In this order the expression "commanding officer" means the officer in actual command for the time being of any regiment, corps, ship, detachment or depot to which the officer, soldier, sailor or airman belongs.

ORDER XXIX : SUITS BY OR AGAINST CORPORATIONS

Order-, Rule- 1. Subscription and verification of pleading.- In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation- by the secretary or by any director or 'other principal officer of the corporation who is able to dose to the facts other case.

ORDER XXX : SUITS BY OR AGAINST FIRMS AND PERSONS CARRYING ON BUSINESS IN NAMES OTHER THAN THEIR OWN

Order- XXX, Rule-1. Suing of partners in name of firm.- (1) Any two or more persons claiming or being liable as partners and carrying on business in India may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing the cause of action, and any party to a suit may in such case apply to the court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the court may direct.

(2) Where persons sue or are sued as partners in the name of their firm under sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice if such pleading or other document is signed, verified or certified by any one of such persons.

Order- XXX, Rule-2. Disclosure of partners' names.- (1) Where a suit is instituted by partners in the name of their firm, the plaintiffs or their pleader shall, on demand in writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted.

(2) Where the plaintiffs or their pleader fail to comply with any demand made under sub-rule (1), all proceedings in the suit may, upon an application for that purpose, be stayed upon such terms as the court may direct.

(3) Where the names of the partners are declared in the manner referred to in sub-rule (1), the suit shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as plaintiffs in the plaint:

Provided that all proceedings shall nevertheless continue in the name of the firm, but the names of the partners disclosed in the manner specified in sub-rule (1) shall be entered in the decree.

ORDER XXXI : SUITS BY OR AGAINST TRUSTEES, EXECUTORS AND ADMINISTRATORS

Order- XXXI, Rule- 1. Representation of beneficiaries In suits concerning property vested in trustees, etc..- In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the court may, if it thinks fit, order them or any of them to be made parties.

ORDER XXXII : SUITS BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND

Order- XXXII, Rule-1. Minor to sue by next friend.- Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor.

Explanation: In this Order, "minor" means a person who has not attained his majority within the meaning of section 3 of the Indian Majority Act, 1875 (9 of 1875), where the suit relates to any of the matters mentioned in clauses (a) and (b) of section 2 of that Act or to any other matter.

Order- XXXII, Rule-4. Who may act as next friend or be appointed guardian for the Suit.- (1) Any person who is of Sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit:

Provided that the interest of such person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant, or, in the case of a guardian for the suit, a plaintiff.

(2) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or be appointed his guardian for the suit unless the court considers, for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act or be appointed, as the case may be.

(3) No person shall without his consent in writing be appointed guardian for the suit.

(4) Where there is no other person fit and willing to act as guardian for the suit, the court may appoint any of its officers to be such guardian and may direct that the costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in court in which the minor is Interested, or out of the property of the minor and may give directions for the repayment or allowance of such costs as justice and the circumstances of the case may require.

Order- XXXII, Rule- 9. Removal of next friend.- (1) Where the interest of the next friend of a minor is adverse to that of the minor or where he is so connected with a defendant whose interest is adverse to that of the minor as to make it unlikely that the minor's interest will be properly protected by him, or where he does not do his duty, or during the pendency of the suit, ceases to reside within India, or for any other sufficient cause, application may be made on behalf of the minor or by a defendant for his removal; and the court, if satisfied of the sufficiency of the cause assigned, may order the next friend to be removed accordingly, and make such other order as to costs as it thinks fit.

(2) Where the next friend is not a guardian appointed or declared by an authority competent in this behalf, and an application is made by a guardian so appointed or declared, who desires to be himself appointed in the place of the next friend, the court shall remove the next friend unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor, and shall thereupon appoint the applicant to be next friend in his place upon such terms as to the costs already incurred in the suit as it thinks fit.

Order- XXXII, Rule-11. Retirement, removal or death of guardian for the suit.- (1) Where the guardian for the suit desires to retire or does not do this duty, or where other sufficient ground is made

to appear, the court may permit such guardian to retire or may remove him, and may make such order as to costs as it thinks fit.

(2) Where the guardian for the suit retires, dies or is removed by the court during the pendency of the Suit, the court shall appoint a new guardian in his place.

ORDER XXXII-A : SUITS RELATING TO MATTERS CONCERNING THE FAMILY

ORDER XXXIII : SUITS BY INDIGENT PERSONS

Order- XXXII-A, Rule-1. Application of the Order.- (1) The provisions of this order shall apply to suits or proceedings relating to matters concerning the family.

(2) In particular, and without prejudice to the generality of the provisions of sub-rule (1), the provisions of this Order shall apply to the following Suits or proceedings concerning the family, namely:—

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

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

(c) a suit or proceeding in relation to the guardianship of the person or the custody of any minor or other member of the family, under a disability;

(d) a suit or proceeding for maintenance;

(e) a suit or proceeding as to the validity or effect of an adoption;

(f) a suit or proceeding, instituted by a member of the family, relating to wills, intestacy and succession;

(g) a suit or proceeding relating to any other matter concerning the family in respect of which the parties are subject to their personal law.

(3) So much of this Order as relates to a matter provided for by a special law in respect of any suit or proceeding shall not apply to that suit or proceeding.

Order- XXXII-A, Rule- 2. Proceedings to be held in camera.- In every Suit or proceeding to which this Order applies, the proceedings may be held in camera if the Court so desires and shall be so held if either party so desires.

Order- XXXII-A, Rule-3. Duty of court to make efforts for settlement.- (1) In every suit or proceeding to which this order applies, an endeavour shall be made by the court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist the parties in arriving at a settlement in respect of the subject matter of the suit.

(2) If, in any such suit or proceeding, at any stage it appears to the court that there is a reasonable possibility of a settlement between the parties, the court may adjourn the proceeding for such period as it thinks fit to enable attempts to be made to effect such a settlement.

(3) The power conferred by sub-rule (2) shall be in addition to, and not in derogation of, any other power of the court to adjourn the proceedings.

Order- XXXII-A, Rule- 4. Assistance of welfare expert.- In every Suit or proceeding to which this order applies, it shall be open to the court to secure the services of such person (preferably a woman where available), whether related to the parties or not, including a person professionally engaged in promoting the welfare of the family as the court may think fit, for the purpose of assisting the court in discharging the functions imposed by rule 3 of this order.

Order- XXXII-A, Rule- 5. Duty to Inquire into facts.- In every suit or proceeding to which this order applies, it shall be the duty of the court to inquire, so far it reasonably can, into the facts alleged by the plaintiff and into any facts alleged by the defendant.

Order- XXXII-A, Rule- 6. "Family"—Meaning of.- For the purposes of this order, each of the following shall be treated as constituting a family:—

(a) (i) a man and his wife living together,

(ii) any child or children, being issue of theirs; or of such man or such wife,

(iii) any child or children being maintained by such man and wife;

(b) a man not having a wife or not living together with his wife, any child or children, being issue of his, and any child or children being maintained by him;

(c) a woman not having a husband or not living together with her husband, any child or children being issue of hers, and any child or children being maintained by her;

(d) a man or woman and his or her brother, sister, ancestor or lineal descendant living with him or her; and

(e) any combination of one or more of the groups specified in clause (a), clause (b), clause (c) or clause (d) of this rule.

Explanation: For the avoidance of doubts, it is hereby declared that the provisions of rule 6 shall be without any prejudice to the concept of "family" in any personal law or in any other law for the time being in force.

ORDER XXXIII : SUITS BY INDIGENT PERSONS

Order- XXXIII, Rule- 1. Suits may be instituted by indigent person.- Subject to the following provisions, any suit may be instituted by an indigent person.

Explanation I: A person is an indigent person,—

(a) if he is not possessed of sufficient means (other than property exempt from attachment in execution of a decree and the subject matter of the suit) to enable him to pay the fee prescribed by law for the plaint in such suit, or

(b) where no such fee is prescribed, if he is not entitled to property worth one thousand rupees other than the property exempt from attachment in execution of a decree, and the subject matter of the suit.

Explanation II: Any property which is acquired by a person after the presentation of his application for permission to sue as an indigent person, and before the decision of the application, shall be taken into account in considering the question whether or not the applicant is an indigent person.

Explanation III: Where the plaintiff sues in a representative capacity, the question whether he is an indigent person shall be determined with reference to the means possessed by him in such capacity.

ORDER XXXIV : SUITS RELATING TO MORTGAGES OF IMMOVABLE PROPERTY

Order- XXXIV, Rule-1. Parties to suits for foreclosure, sale and redemption.- Subject to the provisions of this Code, all persons having an interest either in the mortgage security or in the right of redemption shall be joined as parties to any suit relating to the mortgage.

Explanation: A puisne mortgagee may sue for foreclosure or for sale without making the prior mortgagee a party to the suit; and a prior mortgagee need not be joined in a suit to redeem a subsequent mortgage.

ORDER XXXV : INTERPLEADER

Order- XXXV, Rule-1. Plaint in interpleaded suit.- In every suit of interpleaded the plaint shall, in addition to the other statements necessary for plaints, state—

(a) that the plaintiff claims no interest in the subject matter in dispute other than for charges or costs;

(b) the claims made by the defendants severally; and

(c) that there is no collusion between the plaintiff and any of the defendants.

ORDER XXXVI : SPECIAL CASE

Order- XXXVI, Rule-1. Power to state case for court's opinion.- (1) Parties claiming to be interested in the decision of any question of fact or law may enter into an agreement in writing stating such question in the form of a case for the opinion of the court, and providing that, upon the finding of the court with respect to such question,—

(a) a sum of money fixed by the parties or to be determined by the court shall be paid by one of the parties to the other of them; or

(b) some property, movable or immovable, specified in the agreement, shall be delivered by one of the parties to the other of them; or

(c) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.

(2) Every case stated under this rule shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and specify such documents as may be necessary to enable the court to decide the question raised thereby.

ORDER XXXVII : SUMMARY PROCEDURE

Order- XXXVII, Rule- 1. Courts and classes of suits to which the Order is to apply.- (1) This Order shall apply to the following courts, namely:—

(a) High Courts, City Civil Courts and Courts of Small Causes; and

(b) other courts;

Provided that in respect of the courts referred to in clause (b), the High Court may, by notification in the Official Gazette, restrict the operation of this order only to such categories of suits as it deems proper, and may also, from time to time, as the circumstances of the case may require, by subsequent notification in the Official Gazette, further restrict, enlarge or vary, the categories of suits to be brought under the operation of this order as it deems proper.

(2) Subject to the provisions of sub-rule (1), the order applies to the following classes of Suits, namely:

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

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

(i) on a written contract; or

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

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

Order- XXXVII, Rule- 2. Institution of summary Suits.- (1) A suit, to which this Order applies, may, if the plaintiff desires to proceed hereunder, be instituted by presenting a plaint which shall contain,—

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

(b) that no relief, which does not fall within the ambit of this rule, has been claimed in the plaint; and

(c) the following inscription, immediately below the number of the suit in the title of the suit, namely:—

(Under Order XXXVII of the Code of Civil Procedure, 1908)".

(2) The summons of the suit shall be in form No. 4 in Appendix B or in such other Form as may, from time to time, be prescribed.

(3) The defendant shall not defend the suit referred to in sub-rule (1) unless he enters an appearance and in default of his entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, up to the date of the decree and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf and such decree may be executed forthwith.

Order- XXXVII, Rule- 3. Procedure for the appearance of defendant.- (1) In a suit to which this Order applies, the plaintiff shall, together with the summons under rule 2, serve on the defendant a copy of the plaint and annexure thereto and the defendant may, at any time within ten days of such service, enter an appearance either in person or by pleader and, in either case, he shall file in court an address for service of notice on him.

(2) Unless otherwise ordered, all summonses, notices and other judicial processes, required to be served on the defendant, shall be deemed to have been duly served on him if they are left at the address given by him for such service.

(3) On the day of entering the appearance, notice of such appearance shall be given by the defendant to the plaintiff's pleader, or, if the plaintiff sues in person, to the plaintiff himself, either by notice delivered at or sent by a prepaid letter directed to the address of the plaintiff's pleader or of the plaintiff, as the case may be.

(4) If the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summons for judgment in Form No. 4A in Appendix B or such other Form as may be prescribed from time to time, returnable not less than ten days from the date of service supported by an affidavit verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the suit.

(5) The defendant may at any time within ten days from the service of such summons for his affidavit or otherwise disclose such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally or upon such terms as may appear to the court or judge to be just:

Provided that leave to defend shall not be refused unless the court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious:

Provided further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in court.

(6) At the hearing of such summons for judgment,—

(a) if the defendant has not applied for leave to defend, or if such application has been made and is refused, the plaintiff shall be entitled to judgment forthwith; or

(b) if the defendant is permitted to defend as to the whole or any part of the claim, the court or judge may direct him to give such security and within such time as may be fixed by the court or judge and that, on failure to give such security within the time specified by the court or judge or to carry out such

other directions as may have been given by the court or judge, the plaintiff shall be entitled to judgment forthwith.

(7) The court or judge may, for sufficient cause shown by the defendant, excuse the delay the defendant in entering an appearance or in applying for leave to defend the suit.

Order- XXXVII, Rule- 4. Power to set aside decree.- under special circumstances, set aside the decree, and if necessary stay or set aside execution, and may give leave to the defendant to appear to the summons and to defend the suit, if it seems reasonable to the court so to do, and on such terms as the court thinks fit.

Order- XXXVII, Rule- 5. Power to Order bill, etc., to be deposited with officer of court.- In any proceeding under this Order the court may Order the bill, hundi or note on which the suit is founded to be forthwith deposited with an officer of the court, and may further Order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

Order- XXXVII, Rule- 6. Recovery of cost of noting non-acceptance of dishonoured bill or note.- The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this Order for the recovery of the amount of such bill or note.

Order- XXXVII, Rule- 7. Procedure in Suits.- Save as provided by this order, the procedure in suits hereunder shall be the same as the procedure in suits instituted in the ordinary manner.

ORDER XXXVIII : ARREST AND ATTACHMENT BEFORE JUDGMENT

Order- XXXVIII, Rule- 1. Where defendant may be called upon to furnish security for appearance.- Where at any stage of a suit, other than a suit of the nature referred to in section 16, clauses (a) to (d), the court is satisfied, by affidavit or otherwise,—

(a) that the defendant, with intent to delay the plaintiff, or to avoid any process of the court or to obstruct or delay the execution of any decree that may be passed against him,—

(i) has absconded or left the local limits of the jurisdiction of the court, or

(ii) is about to abscond or leave the local limits of the jurisdiction of the court, or

(iii) has disposed of or removed from the local limits of the jurisdiction of the court his property or any part thereof, or

(b) that the defendant is about to leave India under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not furnish security for his appearance:

Provided that the defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiff's claim; and such sum shall be held in deposit by the court until the suit is disposed of or until the further Order of the court.

Order- XXXVIII, Rule- 5. Where defendant may be called upon to furnish security for production of property.- (1) Where, at any stage of a suit, the court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,—

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the court, the court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

(4) If an order of attachment is made without complying with the provisions of sub-rule (1) of this rule, such attachment shall be void.

Order- XXXVIII, Rule- 6. Attachment where cause not shown or security not furnished.- (1) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the court, the court may Order that the property specified, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, be attached.

(2) Where the defendant shows such cause or furnishes the required security, and the property specified or any portion of it has been attached, the court shall order the attachment to be withdrawn, or make such other order as it thinks fit.

ORDER XXXIX : TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS

Order- XXXIX, Rule- 1. Cases in which temporary injunction may be granted.- Where in any Suit it is proved by affidavit or otherwise—

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

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

(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may by Order grant a temporary injunction to restrain such act, or make such other Order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the court thinks fit, until the disposal of the suit or until further orders.

Order- XXXIX, Rule_2. Injunction to restrain repetition or continuance of breach.- (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The court may by Order grant such injunction, on such terms, as to the duration of the injunction, keeping an account, giving security, or otherwise, as the court thinks fit.

Sub-rules (3) and (4) omitted by Act 104 of 1976, w.e.f. 1-2-1977.

Order- XXXIX, Rule-2A. Consequence of disobedience or breach of injunction.- (1) In the case of disobedience of any injunction granted or other Order made under rule 1 or 2 or breach of any of the terms on which the injunction was granted or the Order made, the court granting the injunction or making the order, or any court to which the Suit or proceeding is transferred, may Order the property of the person guilty of such disobedience or breach to be attached, and may also Order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.

ORDER XL : APPOINTMENT OF RECEIVERS

Order-XL, Rule_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, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the court thinks fit.

(2) Nothing in this rule shall authorise the court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove.

ORDER XLI : APPEALS FROM ORIGINAL DECREES

Order- XLI, Rule-2. Grounds which may be taken in appeal.- The appellant shall not, except by leave of the court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal; but the Appellate Court, in deciding the appeal, shall not be confined to the grounds of objection set forth in the memorandum of appeal or taken by leave of the court under this rule:

Provided that the court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground.

Order- XLI, Rule-3A. Application for condonation of delay.- (1) When an appeal is presented after the expiry of the period of limitation specified there for, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the court that he had sufficient cause for not preferring the appeal within such period.

(2) If the court sees no reason to reject the application without the issue of a notice to the respondent, notice thereof shall be issued to the respondent and the matter shall be finally decided by the court before it proceeds to deal with the appeal under rule 11 or rule 13, as the case may be.

(3) Where an application has been made under sub-rule (1), the court shall not make an order for the stay of execution of the decree against which the appeal is proposed to be filed so long as the court does not, after hearing under rule 11, decide to hear the appeal.

Order- XLI, Rule-5. Stay by Appellate Court.- (1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

Explanation An order by the Appellate Court for the stay of execution of the decree shall be effective from the date of the communication of such order to the court to first instance, but an affidavit sworn by the appellant, based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the Appellate Court shall, pending the receipt from the Appellate Court of the order for the stay of execution or any order to the contrary, be acted upon by the court of first instance.

(2) Stay by court which passed the decree :—Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing there from, the court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the court making it is satisfied—

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or as may ultimately be binding upon him.

(4) Subject to the provisions of sub-rule (3), the court may make an ex parte order for stay of execution pending the hearing of the application.

(5) Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in sub-rule (3) of rule 1, the court shall not make an order staying the execution of the decree.

Order- XLI, Rule- 6. Security in case of order for execution of decree appealed from.- (1) Where an order is made for the execution of a decree from which an appeal is pending, the court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be taken for the restitution of any property which may be or has been taken in execution of the decree or for the payment of the value of such property and for the due performance of the decree or order of the Appellate Court, or the Appellate Court may or like cause direct the court which passed the decree to take such security.

(2) Where an order has been made for the sale of immovable property in execution of a decree, and an appeal is pending from such decree, the sale shall, on the application of the judgment debtor to the court which made the order, be stayed on such terms as to giving security or otherwise as the court thinks fit until the appeal is disposed of.

Order- XLI, Rule-10. Appellate Court may require appellant to furnish security for costs.- (1) The Appellate Court may, in its discretion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both:

Where appellant resides out of India—Provided that the court shall demand such security in all cases in which the appellant is residing out of India, and is not possessed of any sufficient immovable property within India other than the property (if any) to which the appeal relates.

(2) Where such security is not furnished within such time as the court orders, the court shall reject the appeal.

Order- XLI, Rule-11. Power to dismiss appeal without sending notice to lower court.- (1) The Appellate Court, after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day may dismiss the appeal;

(2) If on the day fixed or any other day to which the hearing may be adjourned the appellant does not appear when the appeal is called on for hearing, the court may make an order that the appeal be dismissed.

(3) The dismissal of an appeal under this rule shall be notified to the court from whose decree the appeal is preferred.

(4) Where an Appellate Court, not being the High court, dismisses an appeal under sub-rule (1), it shall deliver a judgment, recording in brief its grounds for doing so, and a decree shall be drawn up in accordance with the judgment.

Order- XLI, Rule-17. Dismissal of appeal for appellant's default.- (1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the court may make an order that the appeal be dismissed.

Explanation: Nothing this sub-rule shall be construed as empowering the court to dismiss the appeal on the merits.

(2) Hearing appeal ex parte. — Where the appellant appears and the respondent does not appear, the appeal shall be heard ex parte.

Order-XLI, Rule-19. Re-admission of appeal dismissed for default.- Where an appeal is dismissed under rule 11, sub-rule (2) or rule 17 [***, the appellant may apply to the Appellate Court for the re-admission of the appeal; and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit.

Order-XLI, Rule-21. Re-hearing on application of respondent against whom ex parte decree made.- Where an appeal is heard ex parte and judgment is pronounced against the respondent, he may apply to the Appellate Court to re-hear the appeal; and, if he satisfies the court that the notice was not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the court shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.

Order- XLI, Rule- 23. Remand of case by Appellate Court.- Where the court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

Order- XLI, Rule- 25. Where Appellate Court may frame issues and refer them for trial to court whose decree appealed from.- Where the court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the court from whose decree the appeal is preferred and in such case shall direct such court to take the additional evidence required; and such court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons there for within such time as may be fixed by the Appellate Court or extended by it from time to time.

Order- XLI, Rule- 27. Production of additional evidence in Appellate Court.- (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

(a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Whenever additional evidence is allowed to be produced, by an Appellate Court, the court shall record the reason for its admission.

Order- XLI, Rule- 28. Mode of taking additional evidence.- Wherever additional evidence is allowed to be produced, the appellate court may either take such evidence, or direct the court from whose decree the appeal is preferred, or any other subordinate court, to take such evidence and to send it when taken to the appellate court.

Order- XLI, Rule- 29. Points to be defined and recorded.- Where additional evidence is directed or allowed to be taken, the Appellate Court shall specify the points to which the evidence is to be confined, and record on its proceedings the points so specified.

Order- XLI, Rule-33. Power of court of Appeal.- The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection, and may, where there have been decrees in cross suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees:

Provided that the Appellate Court shall not make any order under section 35A, in pursuance of any objection on which the court from whose decree the appeal is preferred has omitted or refused to make such order.

ORDER XLII : APPEALS FROM APPELLATE DECREES

Order- XLII, Rule- 1. Procedure.- The rules of Order XLI shall apply, so far as may be, to appeals from appellate decrees.

Order- XLII, Rule- 2. Power of court to direct that the appeal be heard on the question formulated by it.- At the time of making an order under rule 11 of Order XLI for the hearing of a second appeal, the court shall formulate the substantial question of law as required by section 100, and in doing so, the court may direct that the second appeal be heard on the question so formulated and it shall not be open to the appellant to urge any other ground in the appeal without the leave of the court, given in accordance with the provisions of section 100.

Order- XLII, Rule-3. Application of rule 14 of Order XLI.- Reference in sub-rule (4) of rule 14 of Order XLI to the court of first instance shall, in the case of an appeal from an appellate decree or order, be construed as a reference to the court to which the appeal was preferred from the original decree or order.

ORDER XLIII : APPEALS FROM ORDERS

Order- XLIII, Rule- 1. Appeal from orders.- An appeal shall lie from the following orders under the provisions of section 104, namely:— (a) an order under rule 10 of Order VII returning a plaint to be presented to the proper court except where the procedure specified in rule 10A of Order VII has been followed;

(b) Omitted by Act 104 of 1976, w.e.f. 1-2-1977

(c) an order under rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a Suit;

(d) an order under rule 13 of Order IX rejecting an application (in a case open to appeal) for an Order to set aside a decree passed *ex parte*;

(f) an order under rule 21 of Order XI;

(i) an order under rule 34 of order XXI on an objection to the draft of a document or of an endorsement;

(j) an order under rule 72 or rule 92 of Order XXI setting aside or refusing to set aside a sale;

(ja) an order rejecting an application made under sub-rule (1) of rule 106 of order XXI, provided that an order on the original application, that is to say, the application referred to in sub-rule (1) of rule 105 of that order is appealable;

(k) an order under rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit;

(l) an order under rule 10 of Order XXII giving or refusing to give leave;

(n) an order under rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;

(na) an order under rule 5 or rule 7 or Order XXXIII rejecting an application for permission to sue as an indigent person;

(p) order in interpleader suits under rule 3, rule 4 or rule 6 of Order XXXV;

(q) an order under Rule 2, Rule 3 or Rule 6 of Order XXXVIII;

(r) an order under Rule 1, Rule 2, Rule 2A Rule 4 or Rule 10 of Order XXXIX;

(s) an order under Rule 1 or Rule 4 of Order XL;

(t) an order of refusal under Rule 19 of Order XLI to re-admit, or under Rule 21 of Order XLI to re-hear, an appeal;

(u) an order under Rule 23 or Rule 23A or Order XLI remanding a case, where an appeal would lie from the decree of the Appellate Court;

(v) Omitted by Act 104 of 1976, w.e.f. 1-2-1977

(w) an order under Rule 4 of Order XLVII granting an application for review.

Order- XLIII, Rule- 1A. Right to challenge non-appealable orders in appeal against decrees.-

(1) Where any order is made under this Code against a party and thereupon any judgment is pronounced against such party and a decree is drawn up, such party may, in an appeal against the decree, contend that such order should not have been made and the judgment should not have been pronounced.

(2) In an appeal against a decree passed in a suit after recording a compromise or refusing to record a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise should, or should not, have been recorded.

Order- XLIII, Rule- 2. Procedure.- The rules of Order XLI shall apply, so far as may be, to appeals from orders.

ORDER XLIV : APPEALS BY INDIGENT PERSONS

Order- XLIV, Rule- 1. Who may appeal as an indigent person.- (1) Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeal, and may be allowed to appeal as an indigent person, subject, in all matters, including the presentation of such application, to the provisions relating to suits by indigent persons, in so far as those provisions are applicable:

Order- XLIV, Rule- 2. Grant of time for payment of court fee.- Where an application is rejected under rule 1, the court may, while rejecting the application, allow the applicant to pay the requisite court fee, within such time as may be fixed by the court or extended by it from time to time; and upon such payment, the memorandum of appeal in respect of which such fee is payable shall have the same force and effect as if such fee had been paid in the first instance.

Order- XLIV, Rule- 3. Inquiry as to whether applicant is an indigent person.- (1) Where an applicant, referred to in rule 1, was allowed to sue or appeal as an indigent person in the court from whose decree the appeal is preferred, no further inquiry in respect of the question whether or not he is an indigent person shall be necessary if the applicant has made an affidavit stating that he has not ceased to be an indigent person since the date of the decree appealed from; but if the government pleader or the respondent disputes the truth of the statement made in such affidavit, an inquiry into the question aforesaid shall be held by the Appellate Court, or, under the orders of the Appellate Court, by an officer of that court.

(2) Where the applicant, referred to in rule 11, is alleged to have become an indigent person since the date of the decree appealed from, the inquiry into the question whether or not he is an indigent person shall be made by the Appellate Court or, under the orders of the Appellate Court, by an officer of that court unless the Appellate Court considers it necessary in the circumstances of the case that the inquiry should be held by the court from whose decision the appeal is preferred.

ORDER XLV : APPEALS TO THE SUPREME COURT

Order- XLV, Rule- 1. "Decree" defined.- In this order, unless there is something repugnant in the subject or context, the expression, "decree" shall include a final order.

Order- XLV, Rule- 2. Application to court whose decree complained of.- (1) Whoever desires to appeal the Supreme Court shall apply by petition to the court whose decree is complained of.

(2) Every petition under sub-rule (1) shall be heard as expeditiously as possible and endeavour shall be made to conclude the disposal of the petition within sixty days from the date on which the petition is presented to the court under sub-rule (1).

Order- XLV, Rule- 3. Certificate as to value or fitness.- (1) Every petition shall state the grounds of appeal and pray for a certificate— (i) that the case involves a substantial question of law of general importance, and

(ii) that in the opinion of the court the said question needs to be decided by the Supreme Court.

(2) Upon receipt of such petition, the court shall direct notice to be served on the opposite party to show cause why the said certificate should not be granted.

ORDER XLVI : REFERENCE

Order-XLVI, Rule- 1. Reference of question of High Court.- Where, before or on the hearing of a suit or an appeal in which the decree is not subject to appeal, or where, in the execution of any such decree, any question of law or usage having the force of law arises, on which the court trying the sutor appeal, or executing the decree, entertains reasonable doubt, the court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court.

ORDER XLVII : REVIEW

Order-XLVII, Rule- 1. Application for review of judgment.- (1) Any person considering himself aggrieved,—

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

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

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

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may 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.

Explanation : The fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment.