INITIAL STEPS FOR INSTITUTION OF CIVIL PROCEEDINGS

Table of Contents

1. Jurisdiction & Place of Suing – Institution of Suit & Cause of Action

Ubi Jus Ibi Remedium - **"Where there is a right, there is a remedy"**

The fundamental principle of English Law that wherever there is a right, there is a remedy, has been adopted by the Indian legal system. It means, whenever the rights of a person is infringed or curtailed or the person is stopped by anyone in enjoying the rights so guaranteed to him, there must be some judicial forum having authority to adjudicate on the matter and the rights so guaranteed should be restored or compensated as per the case.

To get the rights restored or claiming compensation or damage sustained, person has to approach the appropriate forum, which has the authority to adjudicate on the matter and award the relief so sought. So, the forum must have jurisdiction to deal with that matter.

Jurisdiction generally means the power or authority of the court of law to hear and determine a cause or a matter. In other words, jurisdiction is meant the authority which a court has to decide matter that are litigated before it or to take cognizance of matters presented in a formal way for its decision.

The extent of jurisdiction will be determined with reference to the subject-matter, pecuniary value and the local limits. So, while the question of jurisdiction of a court is determined, the nature of the case, the pecuniary value of the suit, and the territorial limitation of the court need to be taken into consideration.

Not only that, there may be a situation wherein the forum approached may have competency to deal with the subject-matter, the suit is falling well within the pecuniary limitation and within the local limits assigned with that court as well, but if the court is not competent to grant the relief sought then also the court cannot be considered as the court having jurisdiction as observed in **Official Trustee V. Sachindra Nath**, AIR 1969 SC 823; the supreme court observed:

> *"That before a court can be held to have jurisdiction to decide a particular matter it must not only have jurisdiction to try the suit brought but must also have the authority to pass the order sought for."*

Jurisdiction of A Civil Court:Sec-9

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: A 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 2: For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation 1 or whether or not such office is attached to a particular place.

As mentioned under sec-9 of the Code, the civil courts have jurisdiction to deal with all matters provided it is a matter of civil nature and it is not expressly or impliedly barred.

The word civil is not defined in the Code, however as per dictionary meaning it pertains to the private rights and remedies as distinguished from criminal and political. The word nature indicates the fundamental quality of a thing or person, its identity or the essential character. Hence, the suit of civil nature may be understood as a suit in which the fundamental question for determination, the matters in controversy primarily relating to the private rights and obligations, not to be related to political or religious rights and obligations; and if it is so the civil courts have the jurisdiction provided it is not expressly or impliedly barred.

The concept of jurisdiction under section 9 was explained by Supreme Court in **Most Rev. P.M.A. Metropolitan V. Moran Mar Marthoma**, AIR 1995 SC 2001, the Court stated:

i. Phraseology used in the section is both positive and negative.
ii. The earlier part opens the door widely and latter debars the entry of those which are expressly or impliedly barred.
iii. The two explanation, one from the inception and the second added in 1976 reflects the legislative intentions.
iv. That those religious matters in which rights of the property or the office is involved irrespective of the fact whether any fee is attached to the office or not is a matter of civil nature and the civil court is competent to try such suit.
v. Each word and expression casts an obligation on the court to exercise jurisdiction for enforcement of rights.
vi. The word 'shall' makes it mandatory.
vii. No Court can refuse to entertain a suit if it is of the description mentioned in the section.

However, the court cannot try any suit if its cognizance is either expressly or impliedly barred. A Suit is said to be expressly barred if it is barred by any enactment for the time being in force. It is open to the legislature to bar the jurisdiction of civil court with respect to a particular class of suit keeping itself within the ambit of power conferred on it by the Constitution of India.

The development of the tribunal has taken away the jurisdiction of the civil court with respect to the subject matter allotted to that tribunal on the first stage, however if any question of law so raised, or any provision of the act which has so created the tribunal that can be looked into by the civil court. Thus, matters falling within the exclusive jurisdiction of the Revenue Courts or under the Code of Criminal Procedure or matters dealt with by special tribunals under the relevant statutes, e.g. by Industrial Tribunal, Cooperative Tribunal, Income Tax Tribunal, Motor Accident Claims Tribunal, etc., are expressly barred from the cognizance of the Civil Courts.

A suit is said to be impliedly barred when it is barred by the general principle of law. In fact, certain suits, though of a civil nature, are barred from the cognizance of a civil court on the ground of public policy. The principle underlying is that a court ought not to countenance matters which are injurious to and against the public weal. Thus, no suit shall lie for recovery of costs incurred in a criminal prosecution or for enforcement of a right upon a contract hit by Section 23 of the Indian Contract Act, 1872; or against any judge for acts done in the course of his duties, etc.

Kinds of Jurisdiction and Place of Suing: Sec-15 To Sec-20

There are basically three kinds of jurisdictions on the basis of which the place of suing may be determined.

If the matter put forth by the litigant for adjudication in front of the court, and the court have all these (pecuniary, territorial and Subject-Matter) jurisdiction, then only that court can try the matters so brought by the litigants. In case, the court does not have any of the above mentioned jurisdiction and still try the suit, it will be either termed as irregular exercise of jurisdiction or lack of jurisdiction which may turn the decision void or voidable depending upon the situations. The concept of Irregular Exercise of Jurisdiction and Lack of Jurisdiction will be discussed separately at the end.

I. Pecuniary Jurisdiction – Sec 15

Every suit shall be instituted in the Court of the lowest grade competent to try it.

The word competent to try indicate the competency of the court with respect to the pecuniary jurisdiction. It means, the courts of lowest grade who has the jurisdiction with respect to pecuniary value shall try the suit at first.

Now, the biggest question is, who will determine the valuation of the suit for the purpose of determining the pecuniary jurisdiction of the court. In general, it is the valuation done by the plaintiff is considered for the purpose of determining the pecuniary jurisdiction of the court, unless the court from the very face of the suit find it incorrect. So, if the court finds that the valuation done by the plaintiff is not correct, that is either undervalued or overvalued, the court will do the valuation and direct the party to approach the appropriate forum.

So, prima facie, it is the plaintiff's valuation in the plaint that determines the jurisdiction of the court and not the amount for which ultimately decree may be passed. Thus, if the pecuniary jurisdiction of the court of lowest grade is, say, Rs. 10,000/- and the plaintiff filed a suit for accounts wherein the plaintiff valuation of the suit is well within the pecuniary jurisdiction of the court but court latter finds on taking the accounts that Rs. 15,000/- are due, the court is not deprived of its jurisdiction to pass a decree for that amount.

Usually, a court will accept a valuation of the plaintiff in the plaint and proceed to decide the matter on merits on that basis, however, that does not mean that plaintiff in all cases are at liberty to assign any arbitrary value to the suit, and to choose the court in which he wants to file the suit.

If it appears to the court that the valuation is falsely made in the plaint for the purpose of avoiding the jurisdiction of the proper court, the court may require the plaintiff to prove that the valuation are proper.

Next important question is the status of decision given by the court who does not have the pecuniary jurisdiction in the matter. That is, what if the Court proceeded with the matter and later come to know that it did not have the pecuniary jurisdiction. (The matter will be dealt under heading – irregular exercise of jurisdiction).

II. Territorial Jurisdictions: Sec 16-20

Immovable Property: Sec- 16-18

Sections 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 17: Suits for immovable property situate within jurisdiction of different Courts

Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different Court, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate:

Provided that, in respect of the value of the subject matter of the suit, the entire claim is cognizable by such Court.

Section 18: Place of institution of suit where local limits of jurisdiction of Courts are uncertain

i. Where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts any immovable property is situate, any one of those Courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the local limits of its jurisdiction: Provided that the suit is one with respect to which the Court is competent as regards the nature and value of the suit to exercise jurisdiction.

ii. Where a statement has not been recorded under sub-section (1), and objection is taken before an Appellate or Revisional Court that a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the Appellate or Revisional Court shall not allow the objection unless in its opinion there was, at the time of the institution of the suit, no reasonable ground for uncertainty as to the Court having jurisdiction with respect thereto and there has been a consequent failure of justice.

Movable Property: Sec 19

Section 19: Suits for compensation for wrongs to person or movables

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

B may sue A either in Calcutta or in Delhi.

Other Suits: Sec 20

Section 20: Other suits to be instituted where defendants reside or cause of action arises Subject to the limitations aforesaid, every suit shall be instituted in Court within the local limits of whose jurisdiction:

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

Explanation: A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Illustrations:

a) A is a tradesman in Calcutta, B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause of action has arisen or in Delhi, where B carries on business.
b) A resides at Simla, B at Calcutta and C at Delhi A, B and C being together at Benaras, B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C at Benaras, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Delhi, where C resides; but in each of these cases, if the non-resident defendant object, the suit cannot proceed without the leave of the Court.

When suit is related to moveable property, as we know moveable property follow the person and hence suit may be brought at the option of the plaintiff either at the place where the wrong is committed or where the defendant resides, carries on business or personally works for gain. Where such wrongs consists of series of acts, a suit may be filed at any place where any of the acts has been committed. Similarly, where a wrongful act is committed at one place and the consequence ensue at another place, a suit may be instituted at the option of the plaintiff where the action took place or the consequences ensued.

A suit for compensation for wrong (tort) to a person may be instituted at the option of the plaintiff either where such wrong is committed, or where defendant resides, carries on business or personally works for gain.

Section 20 provides for all other cases not covered under any of the foregoing rules.

III. Jurisdiction As To Subject-Matter

Different courts have been empowered to decide different types of suits. Certain courts have no jurisdiction to entertain certain suits. For examples, suits for testamentary succession, divorce cases, probate proceedings, insolvency matters, etc. cannot be entertained by a Court of Civil Judge (Junior Division). This is called jurisdiction as to subject matter.

I mean, every courts have been allotted the subject over which the court can entertain the matter, and the subject which is not within the preview of the court, that court cannot deal with that matters at all.

In case, court took up the matter which is not been allotted to it, that is the matter is beyond the subject matter competency, what will be the status of the decision given by the court in such situations.

Objection to Jurisdiction: Sec 21

i. 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 or settled at or before such settlement, and unless there has been a consequent failure of justice.
ii. No objection as to the competence of a Court with reference to the pecuniary limits of its 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 issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.
iii. 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 was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice.

It is a fundamental rule that a decree of a court without jurisdiction is nullity. Halsbury rightly states:

> *"where by reason of any limitation imposed by statute, charter or commission, a court is without jurisdiction to entertain any particular action or matter, neither the acquiesce nor the express consent of the parties can confer jurisdiction upon the court nor can consent give a court jurisdiction if a condition which goes to the root of the jurisdiction has not been performed or fulfilled."*

However, this does not apply to territorial or pecuniary jurisdiction. In case an error is committed by the court in exercising the jurisdiction with respect to pecuniary or territorial jurisdiction, the decision so given will not be void, it will be considered as irregular exercise of jurisdiction. No doubt, party has a right to raise the issue but at the earliest possible time and once the court proceeded with the matter and given the decision the same cannot be raised at the appellate stage at all as observed in the case of **Kiran Singh V. Chaman Paswan**, AIR 1954 SC 340.

However, when the error is committed by the court with respect to subject-matter jurisdiction, the decision so given by the court is null and void as it falls within the ambit of lack of jurisdiction. And the issue of such error can validly be raised at any stage of the proceedings, even at the appellate level as well.

Section 21-A: Bar on suit to set aside decree on objection as to place of suing

No suit shall lie challenging the validity of a decree passed in a former suit between the same parties, or between the parties under whom they or any of them claim, litigating under the same title, on any ground based on an objection as to the place of suing. Explanation.-The expression "former suit" means a suit which has been decided prior to the decision in the suit in which the

validity of the decree is questioned, whether or not the previously decided suit was instituted prior to the suit in which the validity of such decree is questioned.

2. Joinder, Non-Joinder & Mis-Joinder of Parties

Civil Law represents an individual's private right of action for redress. A civil suit (also referred to as a „civil proceeding" or simply „suit") is a process for recovery of an individual right or redress of an individual wrong. The essential requirements of any civil suit, according to the decision of the Bombay High Court in Krishnappa v. Shivappa[(1907) 5 Cal. L. J. 564] are the opposing parties, the subject matter in dispute, the cause of action and the relief claimed by the plaintiff. For the purposes of the paper, we shall be concerned only with the opposing parties.

The opposing parties quite logically would refer to the plaintiff and the defendant. The Code of Civil Procedure, the procedural law relating to civil suits can be classified into two parts, "Body of the Code" and "Rules". The latter deals with non-joinder of parties. Order 1 of the Code of Civil Procedure, 1908 deals with the parties to the suit and also contains provisions for addition, deletion and substitution of parties, joinder, non-joinder and misjoinder of parties and objections to misjoinder and non-joinder.

When can Joinder of Parties Take Place

"Joinder of Parties" means joining several parties as plaintiffs or defendants in the same suit. All or any of those persons can be joined to a suit as plaintiffs or defendants in whom the right to any relief is alleged to exist, or who is alleged to possess any interest in the subject-matter of litigation, or in the opinion of the court is a proper or a necessary party.

The question of joinder of parties may arise either as regards the plaintiffs or as regards the defendants.

Joinder of Plaintiffs: All persons may be joined in one suit as plaintiffs according the conditions required under Rule 1 of Order 1. The conditions which are required to be fulfilled are that the right to relief alleged to exist in each plaintiff arises out of the same act of transaction; and the case is such of a character that, if such person brought separate suits, any common question of law or fact would arise.

Joinder of Defendants: On the other hand, a person can be joined as a defendant according to the provisions of Rule 3 of Order 1. The conditions to be required to be satisfied in the case of defendant are that the right to relief alleged to exist against them arises out of the same act of transaction; and the case is of such a character that, if separate suits were brought against such person, any common question of law or fact would arise.

In **Mosley v. General Motors Corp. Ltd** [417 F.2d 1122]**,** the plaintiff (Nathaniel Mosley) along with 9 other persons joined in bringing an action individually and as class representatives alleging their rights under a statute were denied by General Motors, Local 25, United Automobile, Aerospace and Agriculture Implement Workers of America (Union), simply by

reason of their colour and race. The plaintiffs intended to bring about a joinder of defendants. On this point, the district court held that there could not be a joinder of defendants since there is no right of relief out of the same transaction, and issues of fact/law involved are common to all the plaintiffs.

In **Watergate Landmark Condominium Unit Owners' Association v. Wiss, Janey, Elestner Associates**[117 F R D 576 [1987]], the limits of the plaintiffs to join additional parties were laid down and it was held that there must be a balance of convenience between the right to speedy trial of the plaintiff and the right to fair trial of the defendant.

Necessary Parties

A. **Who Are The Necessary Parties To A Civil Suit?:** A necessary party is a party without impleading whom a claim cannot be legally settled by court. In other words, in the absence of a necessary party, no effective and complete decree can be passed by the court.
B. **Test for Determining The Necessary Parties To A Civil Suit:** In **Benares Bank Ltd. v. Bhagwandas**[A.I.R. 1947 All. 18], the full bench of the High Court of Allahabad laid down two tests for determining the questions whether a particular party is necessary party to the proceedings:
    a. There has to be a right of relief against such a party in respect of the matters involved in the suit.
    b. The court must not be in a position to pass an effective decree in the absence of such a party.

The above tests were described as true tests by Supreme Court in **Deputy Commr., Hardoi v. Rama Krishna**[AIR 1953 SC 521].

Generally, a party from whom no relief is sought is not a necessary party. In **Pravin v. State of Maharashtra**[2001 CriLJ 3417], the government bought a plot of land under a statute, and afterwards, sold it to the appellant. The sale was declared invalid by the Supreme Court. The original owner sought relief. It was held that the party which had purchased the plot of land from the government was not a necessary party, because no relief was claimed from it.

In **Gujarat SRTC v. Saroj**[2001 (2) SCC 9], the legal representatives of the deceased driver of a car which collided with a SRTC bus, claimed compensation from the SRTC. In the present suit, it was held that the owner of the car and its insurer were not necessary parties since no relief had been claimed from them. Thus, the nature of relief claimed is important in deciding who is a necessary party.

In relation to companies, and similar entities that exist independently of their members, a suit against the entity does not amount to a suit against its members. The principle of *"lifting the corporate veil"* is inapplicable in such cases, because the wrong being complained of is civil in nature. However, this legal principle shall not apply to partnership firms and trust, since they do not enjoy a legal existence independent of their members The government enjoys no immunity in so far as civil suits are concerned. If the government issues a notification, against which the plaintiff chooses to file a suit, the government shall also be a necessary party. In suits

that are filed against a public officer, for damages or for any other relief, in respect of an act done by him in official capacity, the government will also be a necessary party.

In **General Manager, South Central Railway, Secunderabad v. AVR Siddhantti** [1974 SCC (4) 335], there was a non-joinder of parties. The plaintiff claimed relief against the Railways by impleading it through its representatives. The appellants contended that the employees who were likely to be affected by the decision had not been impleaded. Further, it was contended that since they were necessary parties, their non-joinder was fatal to the petition. However, the Supreme Court turned down this preliminary objection, holding that the relief was being claimed against the Railways only and it had been impleaded through its representative. Employees who were likely to be affected by the decision were at best proper parties. Their non-joinder could not be said to be fatal to the petition. This supports the proposition that a necessary party is one against whom relief is claimed.

In **K Kamaraja Nadar v. Kunju Thevar** [(1958) 1 MLJ 139], the question of who are the necessary parties to an election petition was decided upon. An election petition can call into question any election, challenging the fairness of the election, and may be presented by any candidate or elector. A petitioner may further pray for a declaration that he or any other candidate has been duly elected. In such a situation, he must implead all contesting candidates other than the petitioner, and also anyone against whom he has alleged use of unfair practices. Such contesting candidates will have to be joined as respondents to such a petition. Any failure to do so will amount to nonjoinder of necessary parties. This defect cannot be cured by way of an amendment of the petition, since the Election Tribunal does not enjoy the authority to amend the petition after it has been presented.

In **Praveen Bhatia v. Dr. M Ghosh**[(1999) 2 MLJ 690], the plaintiff filed a suit against a doctor due to whose negligence his wife had died. The doctor was held to be a necessary party (since relief has been claimed from him). But the insurance company with whom the insurance has been obtained is neither a necessary nor a proper party, since no relief has been claimed from it.

Rule 9 of Order 1 lays down *that no suit shall be defeated by reason of misjoinder* or *nonjoinder of parties*. In such cases, the court may deal with the matter in controversy as regards the rights and interests of the parties actually before it. However, this Rule *does not apply to cases where there is a non-joinder of necessary party*.

If two or more persons are joined as plaintiffs or defendants in one suit in contravention of Order 1, Rules 1 and 3 respectively and they are neither necessary nor proper parties, it is a case of misjoinder of parties. On the other hand, where a person, who is necessary or proper party to a suit has not been joined as a party to the suit, it is a case of non-joinder.

The scope of this Rule was elaborately discussed by Allahbad High Court in **Maqsood Ali v. Zahid Ali** [AIR 1954 All 385] that except where there is a legal bar to the maintainability of a suit by reason, nonjoinder of a party, or where in his absence, the decree that may be passed might become infructuous or inexecutable, the court cannot dismiss a suit for non-joinder of a person.

Section 99 of the Code of Civil Procedure provides that no decree shall be reversed or substantially valid, 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 and, however, nothing in this section shall apply to non-joinder of a necessary party.

Mis-Joinder of Parties and its Effect

The joinder or inclusion of any person as a party to a suit contrary to the provisions of the code is called misjoinder. Reasons for a court ruling that there is misjoinder include:

- the parties do not have the same rights to a judgment;
- they have conflicting interests;
- the situations in each claim (cause of action) are different or contradictory; or
- the defendants are not involved (even slightly) in the same transaction. In a criminal prosecution the most common cause for misjoinder is that the defendants were involved in different alleged crimes, or the charges are based on different transactions.

Misjoinder may be misjoinder of plaintiffs; misjoinder of defendants and misjoinder of cause of actions.

A. Misjoinder of Plaintiff

Where two or more persons may have been joined as plaintiffs in one suit but the right to relief alleged to exist in each plaintiff does not arise out of the same act or transaction (or series of acts or transaction) and if separate suits were brought by each plaintiff no common question of fact or law would have been arisen, there is misjoinder of plaintiffs.

B. Misjoinder of Defendant

Likewise, where two or more persons have been joined as defendants in one suit but the right to relief alleged to exist against each defendant does not arise out of the same act or transaction (or series of acts or transactions) and if separate suits were brought against each defendant, no common question of fact or law would have arisen, there is misjoinder of defendants.

C. Misjoinder of Cause of Action

Misjoinder of causes of action may be coupled with the misjoinder of plaintiffs or misjoinder of defendants. Thus, the subject may be considered under the following three heads:

a. **Misjoinder of Plaintiffs and Cause of Action:** Where in a suit there are two or more plaintiffs and two or more causes of action, the plaintiffs should be jointly interested in all the causes of action. If the plaintiffs are not jointly interest in all the cause of action, the case is one of misjoinder of plaintiffs and cause of action.
b. **Misjoinder of Defendant and Causes of Action: Multifariousness:** Where in a suit, there are two or more defendants and two or more cause of action, the suit will be bad for misjoinder of defendants and causes of action, if different causes of

action are joined against different defendants separately. Such a misjoinder is technically called multifariousness.

c. **Misjoinder of Claims Founded on Several Causes of Actions:** Order 2 of the Code of Civil Procedure Code deals with the misjoinder of claims founded on several claims. According to the Rule, every suit must include the whole claim which the plaintiff is entitled to make in respect of that cause of action.

In **Patasibai v. Ratanlal** [1990 SCC (2) 42], an application for the correction of misdescription of the defendant (in the plaint) was allowed, the correction could not be incorporated in the plaint. But, the misdescription did not mislead any party. In fact, the written statement and the documents in appeal carried the correct name. It was held that decree was valid.

Non-Joinder of the Parties and its Effect

When a person who is a necessary party to a suit has not been joined as a party to the suit, it is a case of non-joinder. Thus non joinder can be defined as an omission to join some person as a party to a suit, whether as plaintiff or as defendant, who ought to have been joined according to the law. The Code does not define nonjoinder, but lays down "No suit shall be defeated by reason of … 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". The proviso to this Rule however excludes its applicability to cases of non-joinder of necessary parties.

Where a suit for possession was filed, and the defendant derived his title from the auction purchaser in liquidations proceedings of a company, but the plaintiff sued for declaration that the auction proceedings and the subsequent conveyance by auction purchaser to defendant were void in law under a certain Act, it was held by the Supreme Court in Vishnu v. Rajan Textile Mills, that the liquidator was a necessary party and in his absence the suit for declaration must fail.

Difference between Non-Joinder And Mis-Joinder

"Misjoinder" of parties means a joinder of a party who ought not to have been joined either as a plaintiff or as a defendant. In other words, it refers to impleading an unnecessary party. It may also refer to a situation in which a plaintiff is impleaded as a defendant and vice-versa (party wrongfully impleaded)21. However, "Nonjoinder" refers to a situation when a party who ought to have been impleaded according to the law is not impleaded. As opposed to presence of the wrong party, it refers to absence of a party. In case of non-joinder of necessary parties, the suit may be dismissed, but this is not so in case of misjoinder.

Consequences of Non - Joinder of Necessary Parties

Non-joinder of parties is not fatal to a suit. However, a distinction between non-joinder of someone who ought to have been joined and someone whose joinder is only necessary for convenience is necessary. The former are necessary parties, while the latter are only proper parties. Order 1, Rule 9 of the Code deals with nonjoinder of parties, but is only a procedural provision, which does not affect the substantive rights and duties of parties.

The absence of necessary parties means those parties from whom relief is being claimed are not present, due to which the court cannot pass any effective decree. In such circumstances, the suit can but does not have to be dismissed. If found legally justifiable, the court should grant the relief being claimed by the plaintiff by passing a decree between the parties actually before it, so long as that can be done legally and effectively. In **Laxmishankar Hairshankar Bhatt v. Yashram Vasta**[AIR 1993 SC 1587] court also upheld an important legal principle - in a suit claiming property, until and unless all the other co-owners are not impleaded, the suit shall not be maintainable.

The general principle of law is that the plea of non-joinder should be raised at the earliest available opportunity. However, an exception is partition suits, in which the plea of non-joinder of parties can be raised at any point of time. The reason for this, as laid down in **Shanmugham v. Saraswati** [2008 (2) CTC 573] is that this materially affects the subject - matter involved in the suit.

Holding that joinder or non-joinder of parties is too technical, it was held that this shall not operate to deny a person any benefit under any enactment. In **Narendra Singh v. Oriental Fire and General Insurance Co. Ltd., Delhi**[AIR 1987 Raj 77], the benefit of Section 39 of the Motor Vehicles Act was extended to the plaintiff even though the suit suffered from a non-joinder of parties. At the same time, non-joinder should not be construed too liberally; otherwise the parties shall stand to lose. If a partnership firm against another firm files a suit, all the partners have to be impleaded as plaintiffs but not their legal representatives.

For this reason, in **Brij Kishore Sharma v. Ram Singh**[Civil Appeal No. 1562 of 1980], the Supreme Court, reversing the decision of the trial court, held that the suit is not maintainable. Pending the suit, one of the parties died and his legal representatives were not brought on record. In the opinion of the court, the legal representatives should have been brought on record.

D. Compulsory Joinder, and Addition of Parties

Compulsory joinder of parties obviously brings one to the question of whether certain persons not joined as parties actually have sufficient interests in the suit, to the extent that they must be joined. Also, if they cannot be joined, will the suit be allowed to proceed, or will it have to be dismissed. The history of the law governing compulsory joinder of parties is rather complicated. With reference to the American law on this point, some of the applicable principles, also recognized in India are:

- All those who are interested in a controversy are necessary parties to a suit involving that controversy, so that a complete disposition of the dispute may be made.

- Joinder of necessary parties is not necessary when it is impossible, impractical or involves undue complications.
- A party unless represented by one who is a party is not bound by the decree. The rule of indispensable party was based on the premise that a court should do "complete justice or none at all."

Therefore, if a party in the absence of whom a suit cannot be decided is not impleaded, the suit shall be dismissed. However, there was an inherent fallacy that the court could only deal with those parties actually before it. In Shields v. Barrow, the US Supreme Court held that parties to a suit can be classified into " necessary " and "indispensable ", according to the nature of their rights. In **Pulitzer Polster v. Pulitzer** [784 F.2d 1305], the plaintiff sought damages from her uncle, because of the alleged improprieties while he was acting as the sole voting trustee of Wembley Industries Inc. Prior to the suit, her mother and sister had brought a suit in Louisiana state court, out of the same dispute, wherein the suit was dismissed for non-joinder of necessary parties. The US Supreme Court held that the relevant federal rules intend to bring all those having an interest in the subject of an action together in one forum so that the suit may be disposed of fairly and completely. However, sometimes it is not feasible to join a party needed for adjudication. In such circumstances, it is for the judge to decide whether in equity or good conscience the judgment should stand.

As has already been noted, addition of necessary parties may be ordered by the court, in the interest of justice. In **Raja Ram v. Anant Ram** [1970 CriLJ 303], a suit had been filed for the dissolution of partnership and accounts in which one partner was the head of a joint Hindu family business. The son of such a partner was held to be a necessary party who could be impleaded to the suit. However, the court would not be adjudicating upon his rights so as to grant relief to the plaintiff.

The question of addition of parties is essentially a judicial discretion that shall have to be exercised in the light of the facts and circumstances of each case. This was held in **Setabi Devi v. Ramadhani Shaw** [AIR 1996 Guj 107]. The purpose of this provision is to give an opportunity to all parties to be heard. Thus, those parties from whom no relief has been claimed may also be added, since they may be affected as a consequence of the decree.

Consequences of Non-Joinder of Parties That Are Not Necessary Parties

Non-joinder is not sufficient reason to dismiss the suit if the parties not impleaded are not necessary parties. The court shall in such a situation first call upon the plaintiff to choose that he wants to proceed against with the suit. The plaintiff has to decide who he would like to claim relief from. If he does not implead a particular party that party shall not be a bound by the decree passed.

While a misjoinder can be solved simply by adding or deleting the names of parties, this cannot be done as far as non-joinder is concerned. Thus, there is an anomaly since both have the same consequence - the plaintiff is unable to effectively claim relief from the defendant. In case of a misjoinder, the suit shall have to be returned for the plaintiff to decide from whom he wants to

claim relief, whereas in cases of non-joinder, the suit shall ordinarily be dismissed if there is a non-joinder of n.ecessary parties.

Objections as to Misjoinder and Non-Joinder of Parties

As per **Rule 13 of Order 1** of the Code of Civil Procedure, *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.*

An objection as to non-impleadment of a party, in a writ petition has to be taken at the stage of counter-affidavit or second appeal and not at *the* belated stage of hearing.

Fraudulent Misjoinder: A Spin-Off of Federal Procedural Jurisdiction

Over the past decade, procedural misjoinder has emerged as a new and distinct type of fraudulent joinder and has given rise to removal jurisdiction in numerous complex civil cases, including many mass tort and multi-district litigation cases. Traditional fraudulent joinder occurs when a plaintiff sues a diverse defendant in state court and joins a non-diverse or in-state defendant, the jurisdictional spoiler, even though the plaintiff has no reasonable basis for the claim against the spoiler.36 The diverse defendant may then remove the case to federal court even though the case lacks complete diversity. The federal court will ignore the citizenship of the fraudulently joined defendant, assume jurisdiction over the case, and dismiss the claims against the spoiler.

Fraudulent misjoinder occurs when a plaintiff sues a diverse defendant in state court and joins a non-diverse or in-state defendant even though the plaintiff has no reasonable procedural basis to j join such defendants in one action.38 While the traditional fraudulent joinder doctrine inquires int o the substantive factual or legal basis for the plaintiff's claim against the jurisdictional spoiler, the fraudulent misjoinder doctrine inquiries into the procedural basis for the plaintiff's joinder of the spoiler.

End Note:

Non-Joinder or Mis-Joinder of parties is not fatal to the suit.

Order 1, Rule 9 of the Code of Civil Procedure lays down that no suit shall defeated by reason of the misjoinder or non-joinder of parties, and the court may in every suit deal with the matters of controversy so far as the regards the rights and interests of the parties actually before it40. The only exception provided to this Rule is furnished by the general Rule that a court will refrain from passing a decree which would be ineffective and infructuous. To sum up, in the case of non-joinder of necessary parties the Court cannot pass an effective decree in their absence. In such a case, the suit cannot proceed and is liable to be dismissed if the plaintiff on

being provided with an opportunity to amend the plaintiff refuses to do so. The two principals have been incorporated under the Code of Civil Procedure rightly in Order to provide justice and protect the rights of the individuals.

However an attempt needs to be made to diversify the doctrines of misjoinder and non-joinder as defined in the common legal jurisprudence and incorporate the expounding concept of fraudulent misjoinder as enunciated in the federal jurisdiction of USA, Canada and other nations.

3. Summons

A summon is a legal document that is issued by a Court on a person involved in a legal proceeding. When a legal action is taken against a person or when any person is required to appear in the court as a witness in a proceeding, to call upon such person and ensure his presence on the given date of the proceeding, summons are served.

A summon is served when a suit has been initiated by the plaintiff against the defendant, the court directs to issue summons to the defendant as this ensures a fair trial. If the summons are not duly served then no action can be taken against the defendant.

If on serving of the summon and the person against whom it had been issued does not appear in the court then this will be taken as a Contempt of Court and shall be punished accordingly.

The summons is the descendant of the writ of the common law. **Section 27 and Order 5** of the Code of Civil Procedure deals with the service of summons to the defendant and in the Code of Criminal Procedure, from section 61 to 69 deals with the topic of summons.

Content relating to summons under CrPc.

I. Section 61: How should be the form of Summons

Every summons issued by a court under this Code shall be in writing, in duplicate, signed by the presiding officer of such court or by such other officer as the High Court may, from time to time, by rule direct, and shall bear the seal of the court.

II. Section 62: Mode of Service of Summons

i. Every summons shall be served by a police officer, or subject to such rules as the State Government may make in this behalf, by an officer of the court issuing it or other public servant.
ii. The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.
iii. Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefore on the back of the other duplicate.

III. Section 63: Service of Summons on Corporate Bodies

Service of a summons on a corporation may be effected by serving it on the secretary, local manager or other principal officer of the corporation, or by letter sent by registered post, addressed to the chief officer of the corporation in India, in which case the service shall be deemed, to have been effected when the letter would arrive in ordinary course of post.

Explanation: In this section "corporation" means an incorporated company or other body corporate and includes a society registered under the Societies Registration Act.1860

IV. Section 64: Service of summons when person serving cannot be found

Where the person summoned cannot, by the exercise of due diligence be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family residing with him, and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefore on the back of the other duplicate.

Explanation: A servant is not a member of the family within the meaning of this section.

V. Section 65: Procedure when service cannot be effected as before provided

If service cannot by the exercise of due diligence be effected as provided in section 62, section 63 or section 64, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides, and thereupon the court, after making such inquiries as it thinks fit, may either declare that the summons has been duly served or order fresh service in such manner as it considers proper.

VI. Section 66: Service of Summons on a Government Servant

i. Where the person summoned is in the active service of the Government, the court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed: and such head shall thereupon cause the summons to be served in the manner provided by section 62, and shall return it to the court under his signature with the endorsement required by that section.
ii. Such signature shall be evidence of due service

VII. Section 67: Service of summons outside local limits

When a court desires that a summons issued by it shall be served at any place outside its local jurisdiction, it shall ordinarily send summons in duplicate to a Magistrate within whose local jurisdiction the person summoned resides, or is, to be there served.

VIII. Section 68: Proof of service in such cases and when serving officer not present

i. When a Summons issued by a court is served outside its local jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in the manner provided by section 62, or section 64) by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.
ii. The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the court.

IX. Section 69: Service of summons on witness by post

i. Notwithstanding anything contained in the preceding section of this Chapter, a court issuing a summons to a witness may in addition to and simultaneously with the issue of such summons, direct a copy of the summons to be served by registered post addressed to the witness at the place where he ordinarily resides or carries on business or personally works for gain.
ii. When an acknowledgment purporting to be signed by the witness or an endorsement purporting to be made by a postal employee that the witness refused to take delivery of the summons has been received, the court issuing the summons may declare that the summons has been duly served.

4. Pleadings

Order 6 deals with pleadings in general. The pleading is the beginning stage of a suit in which parties formally submit their claims and defences. Rule 1 denes pleading, while rule2 lays down the fundamental principles of pleadings. Rules 3 to 13 require the parties to supply necessary particulars. Rules 14 and 15 provide for singing and verification f pleadings. Rule 16 empowers a court to strike out unnecessary pleadings, rules 17 and 18 contain provisions relating to the amendment of pleadings.

Pleading is the beginning stage of the suit in which parties formally submit their claims and defences. In this, a plaintiff submits a complaint stating the cause of action, the issue or issues in controversy. The defendant submits an answer stating his or her defences and denials. The defendant may also submit a counterclaim stating a cause of action against the plaintiff. Pleadings serve an important function of providing notice to the defendant that a lawsuit has been instituted against him. It also provides notice to the plaintiff of the defendant's intentions in regards to the suit.

Definition of Pleadings w.r.t. Rule 1

"Pleading" is defined as a plaint or written statement.

According to the definition, we can say that a pleading is as follows:

- The act of a person who pleads.
- The advocating of a cause in a court of law.
- The art or science of setting forth or drawing pleas in legal causes.
- A formal statement usually written, setting forth the cause of action or defines of a case.

Pleadings, the successive statements delivered alternately by plaintiff and defendant until the issue is joined.

Object:

The whole object of pleadings is to bring parties to definite issue and to diminish expense and delay and to prevent surprise at the hearing. Further that the parties themselves know what are the matters in dispute and what facts they have to prove at the trial.

In fact, the whole meaning of the system is to narrow the parties to definite issues, and thereby to diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing.

Basic rules of pleadings rule 2

As per the sub-rule(1) of rule 2. And on analysis, of the lays down fundamental principles of pleadings, the following general principles emerge:

i. Pleadings should state facts and not law;
ii. The facts stated should be material facts;.
iii. Pleading should not state the evidence; and
iv. The facts should be stated in a concise form.

Signing and verification of pleadings rules 14-15

As a general rule, every pleading must be signed by the party or by one of the parties or by his pleader. But if the party is unable to sign the pleading, it can be signed by any person authorized by him. (rule -14). Similarly, every pleading must be veried by the party or by one of the parties pleading or by some other person acquainted with the facts to the case.

Amendment of pleadings rules 17-18

As already stated, material facts and necessary particulars must be stated in the pleading and the decision cannot be based on the grounds outside of the pleadings. But any time the party may find it necessary to amend his pleadings before or during the trial of the case. So there are some conditions of amendment of pleadings which are as follows:

i. That the amendment is necessary for the resolution of disputes between the parties.
ii. That there exist to possibility from the amendment to be harmful to any one of the parties.
iii. That the time, which is needed for the amendment would not cause damage to any legal right of the defendant.
iv. That the amendment does not in any way lead to any new proceeding.
v. That there must exist bona de belief on the part of the person who comes for the amendment.

Things for which amendment in pleadings is not allowed

i. Where their amendment changes the nature of the suit and introduces a totally different, new and inconsistent case or changes the fundamental character of the suit or defence
ii. Where new relief is added or asked
iii. Where the new cause of action is arisen by the new application
iv. Where the effect of the proposed amendment is to take away from the other side a legal right accrued in his favour
v. Where the application for amendment is not made in good faith.

Illustration: A being threatened to be dispossessed from his inherited property by B led a suit against B claiming in his pliant declaratory decree and permanent injunction relating to such property. Afterward, during the continuation of the suit, A lost the right of possession by B. and then, he wanted to add that matter in the plaint and the court granted it. This is considered as the amendment of the plaint. Likewise, the written statement can also be amended.

5. Plaint & Written Statements

Plaint

- A suit is instituted by presentation of plaint before the Court. A 'plaint' is written application made by plaintiff against defendant seeking relief from the Court.
- A plaint is pleading and should conform to the rules of pleading.
- Along with plaint, plaintiff shall file documents on which he relies for the relief.

Particulars to be contained in plaint [Order VII, Rule 1]

a. The name of the Court in which the suit is brought;
b. The name, description and place of residence of the plaintiff;
c. The name, description and place of residence of the defendant, so far as they can be ascertained;

d. Where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;
e. The facts constituting the cause of action and when it arose;
f. The facts showing that the Court has jurisdiction;
g. The relief which the plaintiff claims;
h. Where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and
i. A statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of Court fees, so far as the case admits. [O.VII, R.1]
    - In money suit state precise amount claimed. [O.VII, R.2]
    - In case of immovable property plaint shall contain a description of the property which shall be sufficient to identify it. [O.VII R.3]
    - Every plaint shall state specifically the relief claimed. Relief may be claimed either simply or in the alternative. [O.VII, R. 7]

Rejection of Plaint

- Where it does not disclose a cause of action;
- 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;
- 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;
- Where the suit appears from the statement in the plaint to be barred by any law;
- Where it is not filed in duplicate;
- Where the plaintiff fails to comply with provisions of Rule 9 (fails to provide copies of plaint). [O. VII, R 11]

Written Statement

- Pleading include written statement.
- Written statement is pleading on behalf of defendant wherein he gives his defence or reply to the allegation made by plaintiff.
- A written statement is pleading therefore should conform to rules of pleading.
- Written Statement shall be presented within 30 (maximum 90) days from service of summons.

Contents of Written Statement

I. ***New facts:*** New facts must be specifically pleaded. The defendant must raise by his pleading all matters which
    a. Show the suit not be maintainable, or
    b. Show that the transaction is either void or voidable in point of law,
    c. And all such grounds of defence as.[Order VIII Rule 2]

II. ***Denial:*** Denial to be specific. Defendant should not deny generally. But he must deal each allegation of fact to which he does not admit the truth. If is not so denied specifically, it shall be taken to be admitted.[Order VIII Rule 3, 5]

III. Denial should not be evasive. It should answer the point of substance.[Order VIII Rule 4]

Set-Off

- Set- off is a reciprocal acquittal of debt. It can be availed in money suit.
- If plaintiff has filed money suit against defendant and defendant also has a specific claim for money against plaintiff; set-off can be demanded by defendant.

Conditions for Set-Off

I. The suit must be for recovery of money,
II. The amount of set-off must be ascertained sum of money,
III. It must be legally recoverable from plaintiff,
IV. It must not exceeds pecuniary limits of the Court,
V. It must be recoverable by the defendant claiming set-off, (where there are more defendants) and against the plaintiff or all plaintiffs,
VI. Both plaintiff and defendant fill the same character as they fill in the plaintiff's suit. [Order VIII Rule 6]

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.
- The rules relating to a written statement by a defendant apply to a written statement in answer to a claim of set-off.. [Order VIII Rule 6]

S.No.	**Legal Set-Off**	**Equitable Set-Off**
1.	It is for ascertained sum of money.	It is for unascertained sum of money.
2.	Cross demand may or may not arise out of same transaction.	Cross demand must arise out of same transaction.
3.	Court is bound to entertain legal set-off.	Court is not bound to entertain equitable set-off.
4.	Amount claimed as set-off must be legally recoverable and not barred by limitation.	Amount claimed as set-off may not be legally recoverable and may be event barred by limitation.

Counter Claim

- Where defendant has a claim against plaintiff for which he can institute separate suit against the plaintiff but he can plead counter claim in the written statement.
- A defendant in a suit may, in addition to his right of pleading a set-off set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired. Whether such counter- claim is in the nature of a claim for damages or not.[Order VIII Rule 6A]

S.No.	**Set-Off**	**Counter Claim**
1.	It is a cross action.	It is statutory defence.
2.	It is a weapon of offence. (Like a sword).	It is a ground of defence. (Like a shield)
3.	Where plaintiff's suit is stayed, discontinued or dismissed; counter claim proceeds.	Where plaintiff's suit is stayed, discontinued or dismissed; set-off also extinguished.
4.	This is not arising out of same transaction.	This is arising out of same transaction.
5.	It can be availed in any type of suit.	It can be availed in money suit only.
6.	Where amount claimed by defendant is higher than plaintiff; it is counter claim.	Amount claimed by the defendant is always less than amount claimed plaintiff.

6. Discovery, Inspection, Production of documents, Admission & Affidavit

One of the essential elements of the rule of law is its procedures. To run a fair trial, equal opportunities shall be given to both parties to access the documents related to the case. In the Civil Procedure Code, 1908, separate chapters are provided so that a fair trial is attainable by both the parties of the suit. After the plaint has been filed by the plaintiff and written statement by the defendant, if the parties feel that proper facts were not disclosed in the suit, either of them can ask for the documents to obtain proper facts of the case.

There are two types of facts:

i. *'Facto probanda':* the facts which constitute a party's case.
ii. *'Facto probantia':* the facts which will be considered as evidence if proven.

Under the procedure of discovery, only Facto Probanda can be asked by the parties.

Discovery – Order 11

Under Civil Procedure Code, 1908 discovery basically means a pre-trial procedural aspect wherein each party is given an opportunity to obtain evidence from the opposite party or parties. In other words, we can say that it is a formal process wherein the parties get a chance to exchange information regarding the witnesses and evidence which will be presented before the court during the trial.

The main purpose of discovery is to make the parties aware of the case, that means there shall not be any ambiguity between parties while the trial is going on. Both the parties shall be clear about the plaint made and issues thereby.

There are various types of discovery:

Nature and Scope

The scope of this section is basically determined by the extent of discovery which can be made by the party with the intervention of the court. The information which is obtained during the discovery is not needed to be admissible in court. As per the requirement, parties can obtain an order from the court for the discovery of required facts/ documents from the opposite party to understand the purpose of the case. Thereby, the scope or extensibility of applying this section depends upon the nature of the case and material which is asked by the other party. So it is the discretion of the court to decide whether the application is covered as per the scope provided to the section under the code or not.

But there are certain limits to the extensibility of the discovery of the documents. If they are redundant or overly burdensome, they are not called for discovery.

Therefore, it is understood that this procedure is provided to compel the other party to produce documents on which they are relying on, other than the evidence. When such particulars regarding the case are asked through questions, then they are termed as **interrogatories**. And if the other party is requesting documents then it is the **discovery of documents**.

Interrogatories

Section 30 and Order XI Rule 1 to 11, 21 and 22 of CPC covers interrogatories. When, with the leave of the Court, parties administer a set of questions on the other party then it is called 'Interrogatories'. Interrogatories shall be confined to the facts, it shall not be conclusions of law, construction of words or documents, or inference from facts. Under CPC, this is known as the 'right to obtain information' by the parties. The party to whom the set of questions were administered shall give reply to another party in writing and under oath. 'Discovery of interrogatories' means when the party, while giving answers to the interrogatories, discloses the nature of the case, with affidavit .

As per the provisions of the code, any party in a suit can file an application to obtain an order from the court to ask interrogatories from the other party. So after filing the plaint, when the written statement is filed by the defendant and when the court sends summons to parties for the

first hearing, if any party feels that there is a gap in the facts, then they can file an application under this section and ask order from the court.

Objective

The objective of the interrogatories are:

1. To determine the nature of the case when it is not clear from the suit filed.
2. To make own case stronger by making the other party do admissions.
3. To destroy the case of the opponent.

Procedure

The willing party to deliver interrogatories shall apply for leave to the court and shall submit the proposed interrogatories to the court. As per Rule 2, the court shall decide the matter within 7 days of filing the application by the party.

While deciding the matter the court shall take into consideration the following points:

- Any offer which may be sought by the party to be interrogated to deliver particulars;
- To make an admission;
- To produce documents associated with the matters in question; or
- Any of them.

Further, the court shall consider whether it is necessary in a particular matter, to dispose of the suit fairly or for saving costs. After one set of interrogatories are served, the parties can not serve another set without the permission of the court. The set of questions shall be the 'question of fact' rather than the 'question of law'. Interrogatories shall not be allowed at the premature stage of the case.

Within 10 days of the service, the affidavit to answer shall be filed by the party to whom the interrogatories were administered. If the party fails to comply with such order of the court:

a) the suit will be dismissed if the party is the plaintiff; and
b) if he is the defendant, his defence can be struck off.

Who may administer interrogatories?

Any opposite party can apply for an order for allowing the party to deliver interrogatories to another party/ies in the suit. This means that the plaintiff can apply for an order from the court to be administered to the defendant. The defendant can also do the same. In some cases, the plaintiff/ defendant can administer the interrogatories to the co-plaintiff/ co-defendant.

Against whom interrogatories may be allowed?

As per Rule 5 of Order XI, any party to a suit which can be a:-

(i) Corporation; or

(ii) Body of persons;

which may be incorporated or not incorporated; empowered by the law to sue or to be sued; on its own name or giving any other person responsibility to sue or any officer, against whom interrogatories can be filed.

If a body corporate is a party to the suit, then in interrogatories it shall be specifically mentioned that to which person or the officer the questions are to be served.

Form of interrogatories

Interrogatories are filed as per the form provided in Appendix C Form No. 2 of CPC, with required variations as per requirement.

The reply to interrogatories is filed with an affidavit in the form provided in Appendix C Form No. 3 of CPC, with required variations as per need.

Objections to interrogatories

Objections can be raised by the parties on the following grounds:-

1. Questions are scandalous;
2. Questions are irrelevant;
3. Questions are not exhibited bona fide;
4. Matters which are inquired into are not sufficiently material at this stage;
5. On the ground of privilege; or
6. Any other ground.

Rules as to Interrogatories

While replying to the interrogatories, if the opposite party does not give sufficient answer, or ignore to give an answer, then the party who administered the interrogatories can apply for an order from the Court for ordering the other party to reply sufficiently, or reply further as the case may be. The Court shall pass such an order to the other party after giving them sufficient opportunity to be heard. If the party who fails to reply is the plaintiff, then the suit can be dismissed for want of prosecution. If the party is the defendant, then it will be considered that the fact has not been defended.

As per Rule 22 of Order XI, the opposite party can use the answers to the interrogatories as evidence, partly or in whole. But at the same time, the court shall check whether the part of the

answer which has been considered as evidence by the party is connected to the whole answer, or is it adverse in nature.

As per Rule 6, the parties can object some of the interrogatories but not all. If the parties want to object to the interrogatories, then within seven days of service of such interrogatories, the party shall file the application of the opposition as per Rule 7 of the Order XI of the Code.

At the same time as per Indian Evidence Act, 1872, if the parties refuse or object to produce any particular document or information in the court, then while using it as an evidence they shall inform the court and other parties. Without the consent of the court, such documents or information which were refused initially cannot be used as evidence later, unless it is lawful to do so.

Interrogatories Allowed

Interrogatories which are made to be related to "any matters in issue" can be questioned to another party. By "matter," it means a question or an issue which is related to the dispute in the suit. It need not be an issue which arises from the dispute.

Interrogatories shall not be disallowed or discarded merely on the ground that there are other ways to prove the fact in question. Interrogatories are not the same as pleading. They need not be material facts on which party will be relying, they can be evidence by which parties want to establish a particular fact at the trial.

Interrogatories not Allowed

Interrogatories are used when the facts laid down in the suit are not clear. However, under certain circumstances the discovery of the facts cannot be applied if:-

1. it constitutes evidence of the opposite party;
2. it involves the disclosure of public information or interests;
3. it contains any privileged or confidential information.

Interrogatories which are in the nature of fishing or roving enquiries are not allowed. Questions in the nature of cross-examination shall not be asked. Questions of law are not permitted. Questions which are not bona fide or irrelevant to the case shall not be asked.

Setting aside and Striking off Interrogatories can be made on the following grounds (Rule 7):

- Unreasonably or vexatiously exhibited;
- Prolix, Oppressive, Unnecessary or Scandalous.

The Application for setting aside or striking off interrogatories shall be made within 7 days after service of interrogatories.

Cases:

In the case of Govind Narayan and Ors. vs. Nagendra Nagda and Ors., the Rajasthan High Court observed the importance of interrogatories and the time period in which it shall be filed by the party. The court held the following:

- Reading section 30 with Order XI Rule 1 of the Code, it makes clear that the courts have the discretion to allow service on interrogatories at any stage of the suit. The court confers wide discretion, at the same time the discretion shall be exercised judiciously.
- The information asked under interrogatories shall have nexus with the dispute in question.
- The stage of the suit shall be significantly considered by the court. At the same time, it is to be understood that the main purpose of this procedure is to save time and cost by encompassing the issues or narrowing down the disputes.

In a recent case of 2018, Samir Sen v Rita Ghosh, the petitioner filed an application under Order XI after five months of the closure of the plaintiff's – respondent's evidence in the trial court. Because of the delay, the lower court dismissed the application for which an appeal has been filed by the aggrieved. The Jharkhand High Court observed that as per the scheme laid down for the trials in the Order XIII CPC, it requires parties to produce their original documents as per their claim founded during the time of presentation of the plaint or filing of the written statement. And because of this, the interrogatories are given under Order XI of the Code. And held that the defendant failed to file the application on time, thereby the order of the trial court was right and the writ petition was dismissed.

Appeal and Revision

There is no appeal allowed in the cases where an order for granting or rejecting prayer to administer interrogatories to the other parties pronounced by the trial court. The order which is granted or rejected under this provision is not considered as 'decree' and therefore, are not appealable.

The revision under this section is not encouraged normally by the High Courts. As per section 115, the matter decided by the court is at the discretion of the court and said to be 'case decided'. The High Court interferes only when the order is clearly illegal or wrong.

Discovery of Documents

When the adversary party is simply compelled to disclose the documents which are under its possession or power, then that is called as the discovery of documents. The discovery of documents is covered under the Rule 12-14 Order XI of the code.

Who may seek discovery?

Any party to a suit under oath may apply for an order from the court for the discovery of documents which are related to the matter in question of the suit from the adversary party.

Against whom discovery may be ordered?

An appropriate court can order any party of the suit to dispose of the documents which are in its power or possession to the asking party. However, the party need to be related to the suit.

Conditions

While the discovery of documents is being asked, two conditions need to be taken care of by the court:

1. The discovery ordered is necessary for the fair disposal of the suit.
2. The discovery will save costs.

Objection Against Discovery

The party can raise an objection if the documents required to submit comes under the purview of the privileged documents. However, objecting by filing an affidavit would not be enough, the party who is objecting also needs to give proper reasoning behind such objection. The proper reasoning will enable the court to decide the objection raised by the party. It is open to the court to inspect the documents and check the viability of the objection raised by the party. Another objection which can be filed is that discovery is not necessary at this stage of the suit.

Admissibility of Document

The documents which are asked under the discovery of documents are not always admissible in court. The documents may be admissible in the case if they are relevant to the case and which may have some impact on the issues dealt under the case.

In Gobinda Mohun v. Magneram Bangur & Co, it was held that:

> *"Rule 12 of Order 11 is considerably wider than Order 13, Rule 1 of the Code. The right to obtain discovery of an adversary's documents is a very wide one and is not limited merely to those documents which may be held to be admissible in evidence when the suit is ultimately tried.*
>
> *It is true that in a suitable case a defendant may object to the production of a document on the ground that it relates solely to his title, but if on the other hand, that document may have some bearing in support of the plaintiff's title, such objection cannot be validly raised. If an order for discovery is made under Rule 12 of Order 11 all the documents relating to the case should be embodied in the affidavit of documents by the person against whom the order for discovery is made. If however, the defendant*

> *considers that he is entitled to protection in respect of the production of any particular documents which may be entered in the affidavit under Order 11, Rule 13 of the Code, he will be at liberty to raise such objection at the proper stage of the proceedings if and when he is ordered to produce such documents under Order 11, Rule 14 or to give inspection of them under Order 11, Rule 18."*

The Calcutta High Court sought to distinguish the Judgment of the A.P. High Court in P. Varalakshmamma v. P. Bala Subramanyam 1958 wherein it was held that:

> *"It is lawful for the Court, under Order 11, Rule 14, Civil P.C., at any time during the pendency of any suit to order the production of a document. The words "at any time" are very significant and important. Rule 14 does not require that the order for production should be made only after an order of discovery is obtained under Order 11 Rule 12 C.P.C.".*

Documents Disclosing Evidence

The document which is related to the evidence of the adverse party can not be ordered by the court. Such orders can be detrimental to the administered party which is restricted under the code.

Affidavit of Documents

The documents under this rule are provided with the affidavit as under the Form No. 5 in Appendix C with required variations as per circumstances.

Privileged Documents

Privileged documents are covered under "crown privilege" which is based on the doctrine of "public welfare is the highest law". However, even if this doctrine is given the importance, it does not mean that justice shall not be paramount. Thereby when parties use it as an umbrella of defence, then under such circumstances, the court has the right to verify the admissibility of such defence. After checking the document, the court can decide on the matter. Mere assertion by the party will not be entertained or accepted by the court.

Oppressive Discovery

While ordering the discovery of the documents it shall not be an oppressive order by the court. The court while using its discretion power shall consider two questions:

1. Whether it is important to order such discovery;
2. Whether it is impossible for the administered party to give the documents ordered under discovery.

Rules as to Discovery

The general rules for the discovery of the documents are as follows:

1. Any party can get an order from the court for the discovery of the documents or for inspection of documents.
2. It is the discretion of the court to pass such an order.
3. The court can use its power any time during the suit, either suo moto or by the application of the party.
4. The court shall not pass an order for the discovery, inspection or production until the written statement has been filed by the defendant.
5. No such order shall be passed if the application is made by the defendant until he has not filed a written statement.
6. Discovery of the document shall not be made if the court is not of the opinion that this order will lead to fair disposal of the suit or useful for saving cost.
7. A party to whom an order of discovery of documents has been passed, as a general rule, shall produce all the documents which are under his possession related to the suit.
8. If the parties are taking any legal protection under the privileges provided under the code, then the court shall verify such documents and give the protection.
9. Failure to comply or default from the side of the parties to the order for discovery, production or inspection, can lead to adverse inference on the party.

Inspection of Documents

Under Order XI Rule 12-21 of the CPC, the rule for the inspection of discovery is provided. As per Rule 12 of the code the party can compel other parties to produce the documents without filing an affidavit to apply to the court, relating to any matter of question-related to the suit. However, such documents need not be admissible in court unless they give out some connection in a matter of controversy.

As per the Rule 15-19 of Order XI of the code, the inspection of documents can be divided into two categories:

1. The documents which are referred to in the affidavits or pleadings of the parties.
2. The documents which are not referred to in the pleadings of the party but are in the power or possession of the parties.

And the parties are allowed to get the inspection of the former category documents, not the latter one.

Privileged Documents

Privileged documents are :

1. Public records;
2. Confidential communication;
3. Documents which have exclusive evidence of the parties' title.

Such mentioned privileged documents are protected from the production. So to get benefit from this privilege and to avoid the risk of repetition, the court can order the parties to produce the document to the court. And the court can inspect such documents and ascertain the validity of the claims which were made to make that set of documents underprivileged.

Premature Discovery

As per Rule 20, a discovery is termed as premature discovery or inspection:

- When the right to discovery is based on the determination of any issue or question in dispute; or
- For any reason, it is desirable that any issue or question in a suit should be determined before deciding upon the right of discovery.

Non-Compliance with Order of Discovery or Inspection

As per Rule 21, the order of the court is binding in nature, and the parties who do not comply shall be liable to pay the penalty. Hereby, we can understand that the intent of the legislature to provide such provision is:

1. To compel the parties to disclose all the material documents and facts on oath.
2. To restrict the parties from coming up with new documents which are actually in power or possession of the party during the trial.

The court has the discretion to postpone a premature inspection or discovery. Under such circumstances the first thing court shall do is to determine that question or issue and afterwards, deal with the discovery. The main logic of this provision is to enable the court to distinguish between the difference of deciding an issue in suit from deciding the suit itself. However, it needs to be kept in mind that this provision will not work if the discovery in itself is necessary for solving the issue or question.

The importance of such provision is that if the defendant denies complying with the provision it will be deemed that the defence from the defendant's side will be struck off and that will restore the position of the defendant to where he had been as if he has not defended. In the case, if the plaintiff does not comply to the provisions then it will lead to an adverse effect that means the plaintiff will disentitle to file a case as a fresh suit on the same cause of action and res judicata will be applicable. Therefore, non-compliance will impact the case adversely.

Admissions – Order 12

Admission basically means the voluntary acknowledgement made by the person against his own interest. It can be an important piece of evidence against a person. It can either be in oral, electronic form or documentary in nature. Admissions are different from the confession which is made under the criminal law. Admission is weaker than confession because the parties have the right to prove that admission made earlier was false.

However, assertions are different from admission. It can be made in favour of themselves. It can be true or false, therefore assertions are not considered as an important piece of evidence which can be used against a person.

Importance

As per the case of Bharat Singh And Anr vs Bhagirathi, the Supreme Court held that:

Admissions are substantive evidence by themselves. But as per section 17 and section 21 of the Indian Evidence Act, they are not conclusive in nature. However, if admission is proved beyond doubt and duly proved, then irrespective of the fact if the witness appeared in the witness box or not, the admission can be considered admissible.

In the case of Biswanath v Dwarka Prasad, the Apex Court observed that:

1. The admissions are made by the maker against himself unless otherwise proved or explained.
2. The admissions are considered as proprio vigore that means a phrase which by its own force.

In another case of Supreme Court, Bhogilal Chunilal Pandya vs The State Of Bombay, it has been stated that even if admissions made are not communicated to the other person, then also that can be used against him. For example: if the person has written in the accounts book regarding debt, then if such evidence is available then that will be considered as an admission even if the debt was not communicated to other people.

Kinds of Admissions

Under the Code, the admissions are admitted in three ways:-

1. By agreement or by notice;
2. Actual admissions, oral or by documents;
3. The express or implied admissions from the pleadings or by non-traverse by agreement.

Conclusiveness of Admission

The admissions are not conclusive in nature. They can be erroneous or gratuitous. Admissions made can be withdrawn or explained away. It can be proved wrong. The context of the

admission can be made after hearing the pleadings in entirety. Oral admissions prevail over documentary or records of rights. Even the admission, if made earlier, can be proved to be collusive or fraudulent. And one more important thing is, if the admissions are made by the co-defendant then that cannot be used against other defendants.

Notice to Admit Case

As per Rule 1, any party to the suit can admit the whole or part of the case of the other side in writing.

Notice to Admit Documents

Within seven days of the notice served by the other party to admit the documents, the party shall respond to the notice. If not responded on the mentioned time then the party which fails to do so will be liable to answer the delay and the costs of providing them.

Every document which was called upon to admit if:

1. Not denied specifically or by necessary implication, or
2. Not stated to be admitted by the party in their pleading, or
3. Not replied during the reply to the notice;

   shall be deemed to be admitted.

One exception to the above provision is the person under disability.

If a person without any valid reason refuses or neglects to admit documents then that person shall be penalised and will be made to pay to the opposite party. The court can suo moto call the party to admit the documents. The form of the notice to submit the documents shall be in Form No. 9 in Appendix C, with variations as per requirement.

Notice to Admit Facts

Any party in the suit can call the other party to admit facts of the case by giving them notice which shall not be later than nine days before the day fixed for the hearing.

And the other party if refuses or neglects to admit the facts then within six days after service of notice or as per the time prescribed by the court, shall be informed to the court. However, the costs of proving such fact or facts shall be paid by the party.

Further admissions shall be used only for the purpose of the suit for which it has been made. It shall not be used against the party on any other occasion or in favour of any person other than the party giving the notice.

The form of the notice shall be as per Form No.10 in Appendix C and the admissions made thereby shall be in Form No. 11 in Appendix C, as per the requirements needed.

Judgment on Admissions

As per Rule 6 Order 12, Judgment on admissions can be read as-

Where admissions are made during:

1. Facts or pleading or otherwise;
2. May be in oral or in writing;

The court at any stage of the suit-

1. Either on the application or of its own motion;
2. Without waiting for the determination of questions by parties;

can give out judgment as it may think fit, with regard to such admissions.

The relief which is provided under this section is discretionary in nature. It gives wide discretion to the court by giving it the power to give decree in the suit and at the same time, it is not bound to pass a decree in a reasonable and proper manner. Even the court can call for evidence before passing such decree. But if averments are made in the written statement which leads to trivial issues then under such circumstances the decree under this provision shall not be passed. In case of R.K. Markan vs. Rajiv Kumar Markan, wherein it was observed as under:-

"For passing a decree on the basis of admission of the defendants in the pleadings, the law is well settled that the admission has to be unequivocal and unqualified and the admission in the written statement should also be taken as a whole and not in part…."

While we talk about judgments which are relied upon by the court passing decree, those must be clear, unequivocal and categorical, it shall not be vague and conditional.

However, in the case of Razia Begum v. Sahebzadi Anwar Begum, the Apex Court discouraged the courts to pass a decree under this provision which not only affects the parties but which also affects the generations.

The court observed that while passing a decree under Rule 6 Order 12, the judge should also look at Rule 5 Order 7 of the code. By reading both sections at the same time it shall be concluded that decree passed under Rule 6 is applicable to commercial transactions only, not otherwise where the claim is based on documents which need proof. So in the matters of will, gift, sale or coparcenary documents admissions can be proved to be erroneous, hence, they shall not be treated as proved on the basis of such admissions.

Production, Impounding and Return of Documents - Order 13

Production of Documents

As per Rule 1 of Order XIII, the parties or their pleaders shall produce the documents at or before the settlement of disputes.

Admission of Documents

Subject to the provisions of the Code the admission of the documents are allowed as evidence in the suit when the following particulars are made:

1. The number and title of the suit,
2. The name of the person producing the document,
3. The date on which it was produced, and
4. A statement of it having been so admitted;

The endorsed documents shall be signed by the Judge.

Where the admission of documents in evidence is:

- An entry in a letter-book or a shop book; or
- Other accounts which are in current use, or
- Entry in a public record produced from the public office or by a public officer, or
- An entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced; under such circumstances, the person can produce a copy of the document, after the proper examination, comparison and certification as per Rule 17 of Order VII of the Code.

Further, the documents admitted into evidence shall be part of the record of the suit.

Return of Documents

If any party to the suit or not is having the desire to receive back any of the documents submitted by him in the suit which is placed on the record is entitled to receive the documents unless it is impounded by the court under Rule 8.

The court can return the documents on the following grounds:-

1. Where the suit is one in which an appeal is not allowed, when the suit has been disposed of, and;
2. where the suit is one in which an appeal is allowed when the Court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or if an appeal has been preferred when the appeal has been disposed of;
3. During the pendency of the suit, the party can receive the documents if the following conditions are fulfilled:
    - the party is substituting the original document with a certified copy from a proper officer;
    - Undertakes to produce the original copy if required.

While returning the document which has been admitted in evidence, a receipt shall be given to the person who is receiving it.

Rejection of Documents

Rule 3 gives the discretion to the court to reject the documents on the basis of inadmissibility or irrelevance of the document. The court while rejecting the documents shall also mention the grounds of such rejection.

Impounding of Documents

The court can order the parties in the suit to produce any documents or book before the court as per Rule 8 notwithstanding Rule 5 or Rule 7 of Order 13 or Rule 17 of Order 7 of the code.

The documents or books impounded by the court shall be in the custody of an officer of the court, for such period with subject to conditions if required.

Affidavits – Order 19

Affidavits are dealt under Order 19 of the Code. It is a sworn statement made by the person who is aware of the facts and circumstances which has been taken place. The person who makes and signs is known as 'Deponent'. The deponent makes sure that the contents are correct and true as per his knowledge and he thereby concealed no material therefrom. After signing the document, the affidavit must be duly attested by the Oath Commissioner or Notary appointed by the court of law.

The person who gives attestation to the affidavit shall make sure that the sign of the deponent is not forged. The affidavit shall be drafted as per the provisions of the code. It must be paragraphed and numbered properly.

Even though the "affidavit" has not been defined in the code, it basically means "a sworn statement in writing made specifically under oath or affirmation before an authorized officer or Magistrate."

Essentials

There are some basic essentials which are required to be fulfilled while submitting the affidavit in the court:

1. It must be a declaration by a person.
2. It shall not have any inferences, it shall contain facts only.
3. It must be in the first person.
4. It must be in writing.
5. It must be statements which are taken under oath or affirmed before any other authorized officer or a Magistrate.

Contents of Affidavit

As per Rule 3, an affidavit shall contain only those facts to which the deponent is aware off as true to his personal knowledge. However, interlocutory applications can be filed wherein he can admit his belief.

Evidence on Affidavit

As per section 3 of the Evidence Act, affidavits are not considered as evidence. When there is a need to prove the facts, oral evidence is normally taken into consideration by the court. However, Rule 1 Order 19 is invoked by the Court when it finds that it is necessary to make an order for any particular fact which may be proved by affidavit. If a person provides evidence under the affidavit then the opposing counsel has the right to cross-examine or reply-in-affidavit.

Further, the person who is making an affidavit shall put on those facts only to which he has true personal knowledge. If he gives a statement, not to his personal knowledge then in such case he shall mention the true source. The counsel shall advise the deponent to make sure that he puts facts which he knows rather than what he believes.

The court can reject the affidavit if it is not properly verified and not in conformity with the rules of the code. At the same time court can also give an opportunity to the party to file the affidavit properly.

In the interlocutory applications like interim injunctions, the appointment of receiver, attachment of property wherein the rights of the parties are not determined conclusively, can be decided on the basis of the affidavit.

False Affidavit

Under Section 191, 193, 195, 199 of IPC,1860, filing a false affidavit is an offence. Giving a lenient view will undermine the value of the document and it will harm the proceedings and will provide no justice to the parties. Criminal contempt of court proceedings can be initiated by the court against the person who files false affidavits in the court of law. Strict actions are taken against public officials who files false affidavits.

As per section 193 of the IPC:

- a person who intentionally gives false evidence or fabricates false evidence during a judicial proceeding, he shall be punished with seven years of imprisonment and fine;
- and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

7. Appearance and Non-appearance of Parties

Appearance and non-appearance of the parties in a civil suit is the important factor upon which the fate of any case depends. A mere non-appearance of a party in front of the court on a determined day may result in an adverse decision with respect to the non-appearing party. The general provisions contained in the Civil Procedure Code of 1908 is based on the principle that no proceedings which are detrimental to the interest of any of the parties to the suit shall be conducted in the court of law. It is the duty of the parties to the suit to show up before the court of law on a due date which has been fixed by the court. In case of non-appearance of any of the parties to the suit, the judgement of the court may turn in favour of the party appearing in front of the court. However, in situations where a suit is determined irrespective of the fact that any of the parties to the suit are absent on the due date. Then, the non-appearing party in order to safeguard its interest can revive the suit by following the provisions of Civil Procedure Code, 1908.

The provisions with respect to the consequences in case of non-appearance of parties and other related provisions are contained in the Order IX of Civil Procedure Code, 1908. The rules regarding the consequences of appearance and non-appearance of parties to the suit under the Order IX of CPC are as follows:

- Rule 2– the consequences of non-deposition of fees by the plaintiff.
- Rule 3 and Rule 4– the consequences of non-appearance of both the parties to the suit.
- Rule 8, Rule 9 and Rule 9(A)– consequences of non-appearance of the plaintiff to the court of law.
- Rule 6, Rule 13 and Rule 13(A)– provisions with respect to non-appearance of the defendant to the court of law.

Appearance of Parties

The word "appearance" under civil cases has a well-known meaning. It means the appearance of the party to the suit before a court of law. The appearance can be by the party in person or through his advocate or through any person along with the advocate of the party.

The mere presence of the party before the court of law is not what the word "Appearance" under the Order IX of the CPC,1908 means. But the word "appearance" under CPC means the appearance made by the pleader who is able to answer all the material questions which are relevant to the judicial proceedings in question before the court of law in a duly prescribed and recognized manner and on the date allotted by the court to each party unless the court has adjourned the proceedings of the case to some other day.

Rule 1 of Order IX is related to the appearance of the parties on the date of first hearing of the case. It declares the mandatory presence of the parties before the court of law on the day fixed by the court under the summon issued on the defendant.

According to Rule 2 of the Order IX, the failure on the part of the plaintiff to submit any processing fee determined by the court of law on any stipulated date. Then such a failure would result in the dismissal of the suit by the court. However, no such dismissal to the case can be made where the defendant in person or through his agent attend the proceedings of the court and answers all the material questions possessed by the court.

Where Neither Party Appears

Rule 3 and Rule 4 of Order IX of Civil Procedure Code, 1908 deals with the cases where neither of the parties in a case appears before the court of law on the date fixed by the court of law. According to Rule 3 of the Order IX of CPC. In such a case, the suit shall be dismissed by the court and according to Rule 4, the plaintiff can file a new suit in the court of law if he is able to satisfy the court that there was a sufficient cause for his non-appearance in court.

In Damu Diga v. Vakrya Nathu, the plaintiff sued the defendants, D1 and D2. on the date fixed by the court for appearance of the parties to the suit only D2 appeared in the court. The subordinate court erred while passing the order of dismissal of the case. However in an appeal against the decision of the court. It was held that the present case comes under the purview of Rule 4 of Order IX of CPC and court should take into consideration the fact that not only the plaintiff in the case was absent from the proceedings. But, defendant number 1 was also absent and the according to Rule 4, the court must allow the plaintiff to apply for an order setting aside the dismissal of the case by the court.

Where only the Defendant Appears

Rule 8 of the Order IX of the CPC talks about the legal consequences of the non-appearance of the plaintiff and the appearance of the defendant in the court of law. According to the rule, in a case where the defendant makes an appearance in the court of law on the due date and the plaintiff remains absent from the proceedings. The court shall make an order of dismissal of the case unless the defendant admits a claim or parts thereof as in such a case the court can pass a decree against the defendant upon such admission or where only the part of the claim is admitted. If the case of the plaintiff has been dismissed by the court under Order IX of the CPC then the plaintiff has two options to revive his case in the court of law. Which are as follows:

- The plaintiff can file a fresh suit in the court of law if the same has not been barred by any law in force; or
- The plaintiff can file a petition under Rule 4 of Order IX of Civil Procedure Code, 1908. According to Rule 4 of the Order where a case has been dismissed in pursuance of Rule 2 or Rule 3 of the Order IX then the plaintiff can apply for an order for the dismissal of the case by the court.

In the case of The Secretary, Department of Horticulture, Chandigarh and Anr. Vs. Raghu Raj, the court held that the plaintiff should not suffer because of the non-appearance of the counsel appointed by him with good faith that he will make an appearance without any reasonable cause in the court of law whenever the plaintiff is called for in the court. As such non-appearance by the counsel representing the plaintiff without any reasonable cause is not only unprofessional

and unfair to the plaintiff but is also unfair and discourteous towards the court of law. And so the plaintiff should not suffer because of the fault of the counsel he has hired in good faith.

Where a Summons is not served

Rule 6 of Order IX, when the plaintiff is present but the defendant is absent on the date of peremptory hearing on a prescribed date. According to Rule 6 of Order IX, when the plaintiff is present but the defendant is absent on the date of peremptory hearing on a prescribed date of hearing then the court takes the decision about the consequence of such non-appearance with respect to the status of summon which is served to the parties in the case by the court of law. Following are the consequences of non-appearance of the defendant and the appearance of the plaintiff with respect to varying statuses of the summon which is served:

- In the case where the summon is duly served the court can declare that the suit shall be heard ex-parte;
- In the case where the summon is not duly served then, the court can order the issue of a second summon and that the same to be served to the defendant;
- When the summon is served to the defendant but the sufficient time was not given to him to make an appearance in the court of law and answer the material questions in the case on the day fixed by the court. The court shall postpone and fix the hearing of the case to some other day which shall be notified to the defendant;
- When in a case the delay in issuance to the defendant is caused due to the fault of the plaintiff, the court may order the plaintiff to pay the costs occasioned by the delay in the proceedings.

Ex Parte Decree

Rule 6(1)(a) of Order IX of the Civil Procedure Code empowers the court to pass any judgement ex parte in case the defendant party in a case absents himself from the proceedings on the due date fixed by the court of law which has been informed to him by the summon duly served on him of the case. An Ex parte decree is neither void nor inoperative but it is voidable at the option of one party which may seek the order of annulment of the decree.

Remedies

The Code provides the following remedies to the defendant against whom an ex parte decree by the court has been passed:

- An application under Order IX, Rule 13 of the Code;
- Annulment of the decree under Section 12 of the Code by proving that the decree has been obtained on the ground of any of the vitiating factors like a fraud;
- Filing of a review petition under Section 114 of the Code;

- Filing the application for rehearing of the case on the grounds of violation of the principles of natural justice;
- Filing of an appeal under Section 96 of the Code.

Setting aside Ex-Parte Decree

Rule 13 of order 9 of the Civil Procedure Code contains provisions related to Setting aside of the Ex parte decree passed by the court. The Rule specifies that the defendant against whom the ex parte decree has been issued can apply for setting it aside. In case there are more than two defendants any one or more than one defendant can apply for setting it aside.

The court in the case of Santosh Chopra V. Teja Singh held that the meaning of the expression "defendant" under the Rule is wide enough to include a person who is adversely affected by the ex parte decree and therefore, even a purchaser of mortgaged property can make an appeal of setting aside an ex parte decree.

An application for setting aside the ex parte decree can be filed in front of the court which has passed such an order. However, in a case where the ex parte decree has been affirmed by any superior court then the appeal for setting aside the decree can be made in that superior court. The following are the grounds for applying for the order of setting aside decree against the ex parte judgement of the court:

- **The defendant has to prove in front of the court of law that the summon was not duly served on him:** Rule 6 of order 9 mandates that an ex parte order against the defendant can be passed by the court if the plaintiff is able to prove in the court of law that the defendant has absented himself from the proceedings of the court even when the summon was duly served on him.
- **The defendant has to prove in front of the court that there was a sufficient cause which prevented him from appearing in the proceedings on the due date:** The term "sufficient cause" is nowhere defined under the code and therefore, the meaning of the term 'sufficient cause' has to be determined by the courts liberally keeping in view the facts and circumstances of the case. No party should be condemned unheard unless there has been something equivalent to misconduct or gross negligence on his part.

Appeal

Section 96 to 112 of Part VII of the Civil Procedure Code, 1908 deals with an appeal. Appeal means the removal of a cause from a subordinate court to a superior court in order to test the soundness of the decisions passed by the inferior court. It is the continuation of original proceedings before the superior court which is approached. The superior court need not always be high court as it can even be a subordinate district court. Following people can file an appeal against any order in the court of law:

- Party to the suit who has been adversely affected by the orders of the case;

- An auction purchaser in the exercise of a decree in order to annul the purchase on the grounds that he was defrauded or so on;
- Any person who is bound by any decree which operates res judicata against him and the person has been allowed by the appellate court to file an appeal.

The right of appeal empowers the superior court to rehear the whole dispute unless it has been expressly prohibited under any of the statutes. The superior court is not bound by the ratio decidendi of the subordinate court based on which the judgement was passed by the court. According to Section 96 of the Civil Procedure Code, an appeal can lie against all the decrees passed in exercise of civil jurisdiction exercised by the court. However, this Section is not applicable to the following decrees:

- Consent decree,
- The decree passed by the court under Section 9 of the Specific Relief Act,
- A final decree passed by the court, the preliminary decree of which was not challenged.

Revision

The dictionary meaning of the word revise is to examine something again in order to improve its present state. Revision is the act of revising anything. Section 115 confers the revisional jurisdiction to the High courts in the country. Under the revisional jurisdiction, the High Courts can entertain any revisional petition filed by any party which is aggrieved by any judgement, order or decree passed by any subordinate court in the country. The limitation period for filing any revisional petition against any order, decree or judgment is 90 days from the passage of such an order, decree or judgement. The main objective behind the incorporation of the provision of revision petition against the order of the subordinate court is to prevent them from acting arbitrarily, capriciously, and unlawfully by ensuring the check on their actions by the High courts. The following conditions are required to be satisfied before the exercise of the revision jurisdiction of the courts can be made by the High Courts:

1. The judgement of the case must be passed by a court of competent jurisdiction;
2. The court which has decided the case must be subordinate to the High Court;
3. The order which is passed by the court must be the one against which an appeal can be made;
4. The court passing the judgement must have exceeded the jurisdiction vested upon him, or has failed to exercise the jurisdiction vested on it.

Review

The literal meaning of the review is to study or examine something again. In the legal sense, the meaning of review is to examine the facts and judgment of any case again. The power of review of facts and judgments are vested only on the courts. The provisions with respect to review are contained in Section 115 of the Civil Procedure Code. There are no specific

conditions or limitations specifically provided for review. Under Section 115 of the Civil Procedure Code. However, order 47 of the Civil Procedure Code provides for the limitations and conditions with respect to the review of the cases. The Supreme Court Rules, 1966, provides that the limitation period for filing a review petition against any decision passed by the court is 30 days from the date of passage of such an order.

The grounds for review of judgement are as follows:

- When the applicant discovers a new evidence material to the determination of judgment of the case which due to negligence or any other reason was not able to present the evidence in front of the court of law when it passed the decree;
- The order of review is passed only in such cases where the error is in the face of records and not with respect to the facts of the case. What constitutes the face of records has to be determined by the courts on a case to case basis keeping in view the facts and circumstances of the case;
- Any misconception on the part of the court may be regarded as a sufficient cause to review the judgement.

Suit

The word review has not been defined under the provisions of the Civil Procedure Code but by the various judgements passed by a court of law, the meaning of the term suit ordinarily means the civil proceedings initiated by the means of the institution of plaint. The decree is the outcome of a suit as without suit there cannot be any decree issued. There are four essentials of a suit. Which are as follows:

- Name of parties: In any suit, there have to be two parties contending different claims. One is the defendant and the other is the plaintiff party. There is no limitation on the number of people representing either of the parties.
- Cause of action: Cause of action is the set of facts and circumstances which a plaintiff has to prove. Any person becomes a party to the suit when the cause of actions are proved against him. Cause of action is basically the set of those events, acts and circumstances which results in the institution of civil proceedings in the court of law. Every plaint must essentially disclose the cause of action and if a plaint fails to disclose the same then the court shall reject such a plaint.
- The subject matter of the case: There must be an express declaration of the subject matter of the case which basically is the reason for the filing of the plaint and thus, bringing the matter in front of the case. Section 9 of the Civil Procedure Code empowers the court to try all the cases unless they are expressly or impliedly barred from being tried by the statutes.

Relief: Relief is the compensation or damages which are paid to the plaintiff by the defendant on the express orders of the court to do so. The courts are not obliged to provide relief to the plaintiff unless he has expressly asked for it. Reliefs are of two types which are alternative relief and specific relief.

8. First Hearing

After a suit is instituted with the plaint and a written statement is given by the defendant there comes a stage called first hearing. But what does the first hearing comprise of? What exactly happens when summons which were served to both parties appear to the court? All these are important questions and it is equally important to understand its object and at the same time why issues are so important.

Basically after the presentation of plaint by the plaintiff and filing of written statement by the defendant, there arrives a stage called first hearing. Order 14 of the Code of Civil Procedure, 1908 deals with the first hearing. The word first hearing as such is nowhere defined in the Code, but the literal meaning of the term is the day on which the court goes into the pleadings of parties in order to understand their contentions. While Order 10 of the Code enjoins the court to examine parties with a view to ascertain matters in controversy in the suit. It has been held by the Supreme Court that First hearing is the day on which the court applies its mind to the case either for framing issues or for taking evidence.

The Order X Rule 1 provides that the court shall, at the first hearing of the suit, ascertain from each party or his pleader whether he admits or denies such allegations or facts as are made in the plaint or in the written statement, if any, of the opposite party. After recording admissions and denials, the court shall direct the parties to the suit to settle out of court through conciliation, arbitration, mediation or Lok Adalat. If there is no settlement, the case will again be referred to the court. Rule 2 further provides that for oral examination of parties to the suit with a view to elucidating matters in controversy in the suit. The court, thus, ascertain with precision the propositions of law or fact on which the parties are at variance and on such questions issues are required to be framed. The main purpose behind these rules is to understand and inform the parties about their real dispute so that the area of conflict can be dealt with between the parties at the same time, later on if any party come to realise about these issues, it would not be surprise to them.

Therefore, on the first hearing, the main task of framing of issues is done. Issue means a point in question or some important subject of discussion. Issues are points of contradictory averments made by the parties and decide by the court. When one fact is asserted by the party and the same is denied by other, that is oppositions, such per se facts, which will be called material propositions will constitute issues. Order X Rule 1(2) and 1(3) provides that material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence. Each material proposition affirmed by one party and denied by the other shall form the subject-matter of a distinct issue.

Basically the framing of issues requires some conditions and material which is inclusive of mainly three things. Firstly, the allegations made on oath by the parties, or by any persons present on their behalf, or statements made by the pleaders appearing for the parties. Secondly, the allegations made in pleading or in answers to interrogatories and thirdly, documents produced by the parties. Therefore their important has been realised appropriately in leading judgement in State of Gujarat v. Jaipalsingh Jaswantsingh Engineers and Contractors wherein it was stated that “such framing of issues in the first instance would facilitate the applicant to

lead necessary evidence in support of the claim and the reliefs prayed pursuant thereto. In the second instance, it will avail the opponent an opportunity to confront and contradict the particular witness and thereafter to lead the evidence if he so desires to bring home the defence pleaded, and in the third instance, enlighten the trail court to test and appreciate the same in proper perspective to enable it to reach a just decision. It is hardly required to be told that issues are backbone of a suit. They are also the lamp-post which enlightens the parties to the proceedings, the trial court and even the appellate court- as to what is the controversy, what is evidence and where the way to truth and justice lies."

Therefore the framing of issues is the duty of the court since only the court can frame the issues in a suit. They are decided by the Presiding Officer of the court that is the Judge. At the same time, parties and their pleaders thereof must also assist the court in framing the issues wherever required. While issues are supposed to be clear and specific, vague and evasive issues creates irregularities in the administration of justice. Order X also provides that the court may examine witnesses or inspect documents before framing issues, to amend the issues or to frame additional issues or to strike out issues that may appear to the court to be wrongly framed.

But in circumstances wherein there is the omission of court to framing of issues, such is not considered fatal to the suit. But in case, such omissions leads to affect the disposal of suits on merits then the case must be remanded to the trail court for fresh trial. While on the other hand, it was held that where the parties knew that certain point of proposition would have been an issue and yet its disposition would not be fatal to the suit, such omission of court on framing issue is acceptable provided it has caused no prejudice or substantial injustice. Order 15 deals with various situations where a suit can be disposed-off on the first hearing itself. Therefore, issues are extremely important for a proper proceeding of a suit and right decision of the case and omission thereto can be caused, bearing valid reasons and while if framed properly, all issue must be normally decided at one and same time. This constitutes all we need to know about first hearing.

9. Procedure of Trial

The Indian constitution says that the nation will try to guarantee "Equality", be it social, political and justice to its citizens". This value of social, political and fiscal components is commonly suggested as the possibility of "Natural Justice".

Binmore in his article 'Characteristic Justice' discusses that "the Apex Court of the country has set down principles for all of the Courts to ensure reasonable ground during a genuine proceeding and that Courts while giving a judgment should secure decency, should act sensible in all propensities, should not be uneven at all and the choices must be passed as per some essential trustworthiness.

Moreover, the courts must give reasonable time to both the social occasions to respond to the authentic notice. They should also give a sensible and proportionate open entryway to present their case. "For regular equity, the procedural code of the country needs to embody the spirit of the sensible path or else the whole thought won't have the alternative to take nearness.

Encroachment of these norms is truly considered as the encroachment of Article 14 of the Constitution of India which includes the Right to Balance (Equity)".

In the CPC, Order 41 Rule (2), (3) fights and shields the eagerness of an affirmation holder. It communicates that, before care is mentioned by the Court, it should ensure that there was no deceptive nature in mentioning such confinement. It ought to recollect that this guardianship was not allowed simply dependent on oversight. Thus, measures of ordinary value are kept up.

In the past, the Court expressed that "The standard of reasonable preliminary presently educates and empowers numerous regions of the law. It is reflected in various guidelines and practices. Reasonable preliminary clearly would mean a preliminary under the watchful eye of a fair-minded judge, a reasonable investigator and an environment of legal quiet. Reasonable principal strategies a starter wherein predisposition or bias possibly in support of the denounced, the observers, or the reason which is being attempted is eliminated."

Truth be told, in a 2010 case, the Court held "the privilege to a free and sensible fundamental similarly as assessment concerning Article 21 of the Constitution, which accordingly guarantees 'singular opportunity' and has been meant to consolidate the sensibility of procedure which is to be used by a Court so as to ensure its consistency with the models of regular equity." The two elements of Natural equity are:

a. *Privilege to be known*

The articulation 'Audi alteram partem' implies hear the contrary side too or hear the elective party also. This is a huge fixing in the possibility of customary value and free primer as this ensures a person's privilege to be heard. The entirety of the Courts support letting both the social events heard as it ensures the reasonable idea of the Courts. Since it is such a critical component, it must be associated with the regular procedural laws and codes.

In the Code of Civil Procedure too, there are certain game plans which relate to the benefit of being heard in a freeway and in an unbiased way. Rule 13 of Order IX says that if the solicitation isn't served properly or if sufficient explanation exists, the ex parte declaration should be spared. The advantage of such a standard is that both the social affairs of a case get an opportunity to show their side. And the disputes under the steady gaze of the Court and get a sensible starter as per the technique for the Court. This disregarding there being the nearness of an ex-parte directing.

b. *Nobody will be a judge in his own case*

Ignoring the manner in which that it may appear, apparently, to be so clear now with explicit Articles like 21 of the Indian Constitution which oversees sensible fundamental that such a fixing ought to be definite, it is of a critical sort that such a part isn't neglected. The articulation 'Nemo debet esse propria causa' connotes "no one should be a judge in their own one of a kind inspiration". Figuratively speaking, worth ought not exclusively to be done in any case ought to be seen that it is finished.

This benefit to an impartial hearing is consolidated under Section 100A of the CPC, by morals of which if any interest from a novel or insightful profession is heard and picked by a single judge of the High Court, he would have the chance to have a fixed and consistent inclination on the issues. His conclusion is saved from further favouritism because no further interest lies from such solicitation of such single judge.

Summoning and Attendance of Witnesses

Order XVI, Rules 1, 1-A, and 6

The major arrangement under Order XVI, Rules 1 and 1-A, C.P.C. is that after the Court traces issues and informs the get-together enabling them to make sense of what verification, oral and account, they should lead, a social affair can act either according to Rule 1 or Rule 2. Where the social event needs the assistance of the Court to verify closeness of an onlooker on being brought through the Court, it is obligatory on the get together to archive the overview with the pith of evidence of the eyewitness in Court as facilitated by sub-rule (1) of Rule 1 and make an application as given by sub-rule (2) of Rule 1.

Be that as it may, where the social event would be in a circumstance to convey its onlookers without the assistance of the Court. It can do all things considered under Rule 1-An of Order XVI free of the truth whether the name of such spectator is referenced in the once-over or not. The Court has no ward to diminish to take a gander at such eyewitnesses.

Sub-rule (3) of Rule 1 and Rule 1-A work in two unmistakable regions and consider two one of a kind conditions, and there is no internal conflict between the two. Sub-rule (3) of Rule 1 presents a logically expansive ward on the Court to oblige a condition where the get-together has neglected to name the observer in the quick overview yet then the social gathering can't pass on the individual being alluded to with no other individual under Rule 1-An and in such a situation the get-together of need to search for the assistance of the Court under sub-rule (3) to procure the closeness of the onlooker.

An individual may moreover be assembled to convey a record without being brought to give confirmation and that individual will be respected to have consented to the sales on the off chance that he makes such document be made as opposed to going to in a little while to make the indistinguishable. (Solicitation XVI, Rule 6).

Adjournment

A putting off or deferring of procedures; a closure or rejection of further business by a Court, the governing body, or open authority—either briefly or for all time.

In the event that an adjournment is conclusive, it is said to be sine kick the bucket, "without day" or without a period fixed to continue the work. A dismissal is not quite the same as a break, which is just a brief break in procedures.

In assemblies, adjournment formally denotes the finish of an ordinary session. Both state and government administrators vote to decide when to suspend. The careful planning relies on numerous elements, for example, outstanding burden, political decision plans, and the degree of comity among officials. Since a session can end with incomplete authoritative business, dismissal is generally utilized as methods for political influence in verifying or postponing activity on significant issues.

In the U.S. Congress, where the single yearly administrative session, as a rule, finishes in the fall, the President may call an intermission (adjournment) if the House and Senate can't agree upon a date.

When adjournment can be granted and refused?

An officers' Court (Magistrate Court) may defer the procedures whenever. The Court must adjust the interests of equity while thinking about any application for dismissal. The Court can't have immovable standards for the conceding or refusal of dismissals.

A case ought not to be dismissed on the grounds that common procedures are pending and might be biased. On the off chance that a deliberate observer neglects to go at the knowledge about the request, you should demand an intermission and make an application for an observer summons. You ought to likewise be in a situation to show that the observer vowed to visit.

At the point when a case is deferred, you should guarantee that you concur another consultation date with the Court and that the observers are told the new date. You ought to decide observer accessibility before consenting to another preliminary date.

Inherent Power and Duty of Court

"Intrinsic" is a wide concept in itself. It recommends existing from something, a constant property or quality, a basic section, something trademark, or focal, vested in or joined to an individual or office as an advantage of the advantage. Therefore, inborn forces are such powers which are fundamental from Courts and might be practised by a Court to do full and finish an incentive between the parties before it. Area 151 discussions about the inherent intensity of the Court.

Section 151 of the Civil Procedure Code

Sparing of standard forces of the code, nothing in this code will be regarded to control or generally sway the basic forces of the Court to make such requests as might be major for the bits of the arrangements or to obstruct maltreatment of the strategy for the Court.

In the persistent decision of K.K. Velusamy v. N. Palaanisamy, the Hon'ble Supreme Court kept up that Section 151 of the Code sees the optional force secured by each Court as a significant conclusive outcome for rendering an incentive as indicated by law, to do what is 'correct' and fix what isn't right'. The Court describes the level of Section 151 of the CPC as follows:

1. Section 151 is unquestionably not a substantive course of action which gives any force or ward on Courts. It just observes the optional power of each Court for rendering an incentive as indicated by law, to do what is 'correct' and fix what isn't right', 'that is, to do everything basic to affirm the bits of the arrangements ruin maltreatment of its method.
2. The courses of action of the Code are not finished; Section 151 says that if the Code doesn't unequivocally or impliedly spread a specific procedural point of view, the natural force can be utilized by the Court to manage such circumstances, to accomplish the bits of the arrangements, upon the substances and conditions of the case.
3. A Court has no capacity to do things which are declined by law or the Code, in the activity of its common forces. The Court can't utilize the exceptional plans of Section 151 of the Code, where the fix or technique is unequivocally given in the Code.
4. The trademark forces of the Court being indispensable to the forces explicitly gave, a Court is allowed to practice them and the Court ought to practice it to such a degree, that it ought not to be fighting with what has been unequivocally given in the Code.
5. While practising the trademark power, there is no such complete going to manage those extraordinary states of the case everything considered the headway of force relies on the thought and smarts of the Court, what's more upon the substances and conditions of the case. Subsequently, such an astounding condition should not, eventually, be treated as an authentic capacity to give any assistance.
6. The force under section151 should be utilized with care, precisely where it is completely major, when there is no strategy in the Code controlling the issue or when the bona fides of the up-and-comer can't be tended to or when such exercise is to meet the bits of the arrangements to forestall maltreatment of philosophy of Court.

Adjournment Limit

The Court may, if a satisfactory explanation is showed up, at any period of the suit grant time to the social events, or to any of them, and may now and again, suspend the knowledge about the suit for motivations to be recorded as a hard copy.

Given that no deferment will be allowed multiple occasions to a gathering during the becoming aware of the suit.

Costs of Adjournment

In each such case, the Court will fix a day for the future hearings of the suit may make such request, as it thinks fit concerning the expenses occasioned by the interval:

1. When the thinking about the suit has begun, it will be continued regularly until all the eyewitnesses in cooperation have been dissected, with the exception of, if the Court finds that, for the great inspirations to be recorded by it, the suspension of the social occasion past the next day is basic.

2. No dismissal will be yielded in accordance with a social occasion, besides where the conditions are outside the capacity to control of that get-together.
3. The way wherein the pleader of a social event is occupied with another Court, won't be a ground for delay.
4. Where the illness of a pleader or his inability to coordinate the case in any way at all.
5. The way wherein the leader of a social event is occupied with another Court, won't be a ground for the delay.
6. Where the illness of a pleader or his inability to coordinate the case in any way at all, other than his being busy with another Court, is progressed as a ground for a break. The Court won't give the suspension aside from in the event that it is satisfied that the social occasion applying for the delay couldn't have attracted another pleader in time.
7. Where an observer (eyewitness) is available in Court, at any rate, a social event or his pleader is missing or the party or his pleader, in any case, present in Court, isn't set up to look at or question the passer by, the Court may, on the off chance that it thinks fit, record the revelation of the observer (eyewitness) and pass such requests as it would conjecture fit shedding the evaluation in-chief or interrogation (cross-examination) of the spectator, everything considered, by the get-together or his pleader not present or not set up as recently referenced.

Failure to Appear

Certain conditions throughout your life may expect you to show up in Court. For instance, you may need to show up in court on the off chance that you:

1. Get a traffic ticket to perpetrate wrongdoing,
2. Affirm as an observer in a legal dispute,
3. Sued by someone else in a claim, or called for jury obligation.

As a rule, the circumstance calls for you to show up in Court at a planned date and time.

For instance, in the event that you are given a traffic ticket, generally, that ticket incorporates a "Court date," which reveals to you when you are required to come to Court. If you miss your assigned Court date, at that point the Court accuses you of failure to appear in Court. This is viewed as a criminal offence that can bring about criminal accusations.

Hearing of the Suit

The offended party has the privilege to start except if the litigant concedes the realities affirmed by the offended party and fights that either in purpose of law or on some extra certainties asserted by the respondent the offended party isn't qualified for any piece of the help which he looks for, in which case the litigant has the option to start.

The trial in Open Court

Section 153B of the CPC talks about the "place of a trial should be deemed to be in an open Court".

The spot wherein any Civil Court is held, to endeavour any suit will be regarded to be an open Court, to which individuals as a rule generally may approach so far as the identical can accommodatingly contain them:

Given that the directing judge may, on the off chance that he thinks fit, request at any phase of any investigation into or preliminary of a specific case, that the open by and large or a specific individual, will not approach, or be or stay in, the room or building utilized by Court.

Trial in Camera

Place of preliminary to be regarded as an open Court: The spot where any respectful Court is held to attempt any suit will be considered to be an open Court, to which people in general by and large may approach so far as the equivalent can advantageously contain them:

Given that the presiding Judge may, in the event that he thinks fit, request at any phase of any investigation into or preliminary of a specific case, that the open by and large, or a specific individual, will not approach, or be or stay in, the room or building utilized by the Court.

Recording of Evidence

i. For every circumstance, the appraisal in-leader of an eyewitness will be on sworn articulation and copies thereof will be given unexpectedly party by the social occasion who calls him for confirmation: Provided that where reports are recorded and the get-togethers rely on the chronicles, the check and adequacy of such records which are archived nearby attestation will be reliant upon the arrangements of the Court.
ii. The confirmation (addressing and reconsideration) of the onlooker in investment, whose evidence (appraisal in-chief) by declaration has been furnished to the Court, will be taken either by the Court or by the Commissioner assigned by it: Provided that the Court may, while appointing a commission under this sub-rule, considering such proper factors as it would hypothesize fit.
iii. The Court or the Commissioner, overall, will record verification either recorded as a printed copy or correctly inside seeing the Judge or of the Commissioner, all around, and where such confirmation is recorded by the Commissioner he will return such evidence together with his report recorded as a printed copy set apart by him to the Court designating him and the confirmation taken under it will outline some part of the record of the suit.
iv. The Commissioner may record such remarks as it would associate material in regards to the air with any eyewitness while under appraisal: Provided that any dissent raised during the record of confirmation before the Commissioner will be recorded by him and picked by the Court at the period of conflicts.

v. The report of the Commissioner will be submitted to the Court naming the commission within sixty days from the date of issue of the commission except for if the Court for motivations to be recorded as a printed duplicate develops the time.
vi. The High Court or the District Judge, overall, will set up a leading group of Commissioners to record the confirmation under this standard.
vii. The Court may by general or exceptional solicitation fix the total to be paid as remuneration for the organizations of the Commissioner.
viii. The courses of action of Rules 16, 16A, 17 and 18 of Order XXVI, to the degree, that they are appropriate, will apply to the issue, execution and return of such commission under this standard."

Appealable Cases

Rule 5 Order XVIII of the CPC discusses how the proof can be taken in appealable cases.

In cases in which intrigue is allowed, the confirmation of each witness will be:

(a) Brought down in the language of the Court.

- Recorded as a printed copy by, or in the proximity and under the individual heading and superintendence of, the Judge,
- From the correspondence of the Judge honestly on a typewriter.

(b) If the Judge, for inspirations to be recorded, so arranges, recorded absolutely in the language of the Court inside seeing the Judge.

Non Appealable Cases

While interpreting Order 18 Rule 4 and 5 for recording of proof (evidence) from the wording of Order-18 Rule-4-for each case the assessment (examination) in leader of an observer will be on insistence – held that it doesn't make any difference among appealable and non-appealable cases so far as method of recording proof is concerned. Such a distinction is to be discovered uniquely in Rules-5 and 13 of Order-18 CPC.

In non-appealable cases, the Affidavit can be taken on record by resort to the arrangements of Order 18 Rule 13. As it was, negligible creation of affirmation by witness will engage the Court to accept such testimony on record as framing some portion of the proof by recording the notice in regard of generation of such sworn statement in all cases with the exception of in the appealable cases wherein it is vital for the Court to record proof of generation of Affidavit in regards of assessment in boss by making the deponent deliver such oath according to Rule 5.

Order 18 Rule 13 says in non-appealable cases the technique in Rule 4 excess. Initially (2002 Amendments) Order 18 Rule 4 likewise talked about the account of proof of an observer present in open Court.

Examination De Bene Esse

A temporary assessment (examination) of a witness. An assessment of an observer whose declaration is significant and may some way or another be lost, held out of Court and before the preliminary, with the stipulation that the statement so taken might be utilized on the preliminary on the off chance that the observer can't go to face around then or can't be created.

Oral and Written Arguments

Amendment of Order XVIII.- In the First Schedule, all together XVIII,- (an) in rule 2, after sub-rule (3), the going with sub-rules will be introduced, explicitly:-

> (3A) Any social affair may address oral conflicts for a circumstance, and will, before he wraps up the oral disputes, assuming any, submit if the Court so allows briefly and under unmistakable headings composed contentions on the side of his case to the Court and such composed arguments will shape some portion of the record.
>
> (3B) A duplicate of such composed contentions will be at the same time outfitted to the contrary party.
>
> (3C) No deferment will be conceded to document the composed contentions except if the Court, for motivations to be recorded as a hard copy, thinks of it as important to give such intermission.

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