SIGNIFICANT TERMS & DEFINITIONS

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1. Decree

A decree specifically means an announcement of the legal consequences of a particular act that is brought in after weighing both sides of the case, and further, it is a confirmation that the court's order is carried out.

But over the course of years, with the procedural merger of law and equity, the term judgment has slowly begun to replace the term decree in various jurisdictions. Historically, this distinction was quite prominent.

It was evident in the UK, but after the passage of the Judicature Act, this distinction has ceased to exist. Similarly, in the United States, this difference between a judgment and a decree has lost its relevance.

But this difference seems to quite concrete even in India even in this century and has been solidified by the Code of Civil Procedure, 1908, which recognizes this distinction completely.

Meaning

Defined under **Section 2(2) of the civil procedure code**, a decree is a formal expression which provides the determination of the interests of both the parties in a conclusive manner with regards to any of the controversial matters or concerns of the particular civil suit.

A decree may include rejection of a plaint or determination of any question under section 144, but it does not include the following:

- any adjudication from which an appeal lies as an appeal from an order
- any order of dismissal for default.

To understand the concept of a decree, we must view it as a subset of judgment. It is the decision arrived at by the judge after hearing the merits on both sides of the case, and also the expression of the same.

A decree forms the latter part of a judgment and is extracted from the same by a decree clerk after obtaining the basic results of the case.

Interestingly, the date of the decree is the date of the judgment for facilitating the process of execution and for the benefit of the judge succeeding.

However, the date on the decree can be changed within the next 15 days. A set-off or a counterclaim can also be obtained on the same decree.

Types of Decree

Following are the various kinds of Decree:

i. Preliminary Decree

It is a preliminary decree when the court decides on all the matters concerning the parties to a suit, but nonetheless, does not dispose of the suit.

This particularly happens when it is essential for the adjudication to adjudicate on certain matters of the suit before deciding on the rest.

Supreme Court, in the case Shankar v Chandrakant, said that a preliminary decree is in use when the court decides on the rights and liabilities of the parties without deciding on the result, and in fact, leaving the pronouncement of the result for further proceedings. CPC allows the passing of the preliminary decree in cases relating to the settlement of mortgage, suits for pre-emption, dissolution of a partnership, administration suit, etc.

But a case following this, the Narayanan vs Laxmi Narayan AIR 1953, case, said that this list aforementioned, which is given in the CPC is not exhaustive and that preliminary decree can be used in other matters as well.

ii. Final Decree

When the suit is completely disposed of by the decree so far as a separate judgment by a court is uncalled for, it is called a final decree. All the problems, controversies and differences between the parties to a suit are completely resolved by the passing of a final decree.

iii. Partly Preliminary and Partly Final

When certain issues prevalent in the civil suit are resolved but certain others are left for future adjudication, such decree is called partly preliminary and partly final. For example, a decree for possession and mesne profits can be preliminary for mesne profits but final with regards to possession.

iv. Deemed Decree

There is a fictitious implication in the word ‘deemed’ which usually means that a thing is assumed to be something that it usually isn’t. Here, any adjudication that does not fulfill the requisites under 2(2) cannot be deemed to be a decree.

However certain other orders and decisions are deemed to be decrees, for example, rejection of a plaint and determination of questions under Section 144.

v. Consent Decree

A consent decree is a decree that is brought about y the agreement between both the parties that puts disputes to rest without admission of liability. It is the result of an adjudication and the very reason for such adjudication is the consent of the parties.

vi. *Ex-Partee Decree*

A decree passed in the absence of the defendant is an ex- parte decree.

vii. *Decree passed in Appeal*

It is a decree passed in continuation of litigation between the parties.

viii. *Decree on Compromise Partition*

It is passed as a result of compromise petition filed by both the parties.

ix. *Conditional Decree*

It is a decree with certain inbuilt conditions that form part of the decree.

Conditions of Decree

There are a few basic conditions that have to be fulfilled so that an adjudication becomes a decree. They are:

- There has to be a formal expression of adjudication. If a decree has not been drawn up, then there is absolutely no scope for an appeal from the judgment.
- All adjudications arise from the institution of a suit. A suit arises by the filing of a plaint, and the most logical conclusion to a suit is the decree.
- All rights of the parties with respect to any or all of the matters controversial in a suit must have been dealt with. If this has not been the case, then the same cannot be deemed a decree.
- This determination of the rights of the parties must be one that is conclusive and not open to future speculation. It must be complete, absolute and final.

Amendment of Decree

Under **Section 152 of the CPC**, any clerical errors with regards to decrees can be corrected by the courts themselves or on application by the plaintiffs. But according to Section 153, the courts have a general power to amend, and may, at any time, as it deems fit, amend any error or defect proceeding in a suit.

The corrections that the courts are entitled to make are only relating to accidental omissions or clerical errors and no other errors which have been brought about due to gross negligence or mistake.

But before such a move, the court must be satisfied and it must be validly proven that such an error was something no more than an arithmetic error or a clerical mistake and nothing that changes or alters the very functioning of the suit or nothing that is done under malice.

Preparation of Decree

It is needless to say that the decree must be framed by the judge with utmost carefulness and impeccable clarity, leaving no ground for an obvious mistake.

The degree must be in consonance with the judgment and also should be clear, concise and precise.

The nature and extent of the relief granted must be explained in great detail, as also what each party is ordered to do. Such declaration of the rights of the parties must be accurate, simple and precise.

There are certain directions given with respect to decrees that have been mentioned below:

- In case of possession of any agricultural land, a prior directive has to be issued with regards to whether or not the possession is with respect to the entire land, wholly and immediately, or such possession can be effected only after removal of any crop standing on the property. This has to be confirmed in the decree.
- In cases of decrees that reach the appellate court, the court by way of language shall affirm to the standards set by law, and should mention whether the decree of the lower court stands affirmed, varied, set aside or reversed. In affirming the decree of a lower court, the terms of the decretal order shall be recited again, so as to confirm it. In varying a decree, the relief granted should be spelled out. Similarly, while reversing a decree, the relief accorded presently must be confirmed again.

Decree Holder: Any person in whose favour a decree has been passed or an order capable of execution has been made.

Judgment Debtor: Any person against whom a decree has been passed or an order capable of execution has been made.

2. Judgment

In legal world, judgment given by any court followed by its decree play an important role to define the scope and limitations of any individual. Daily various judgments are pronounced and decree following it took place in the courts of our country. Various civil cases are also being disposed of each working day. These judgments are important as they act as precedents for future declarations, so it is very necessary that they stick to the judicial reasoning without bringing their own discretionary power blindly. After so many judgments and backing it up

with the decree also, certain issues do arises which tends to confuse us. Civil Procedure Code, 1908 has been drafted very nicely but then also certain loopholes are there providing leeway for the creeping of unnecessary elements. As no law seems to perfect for us but then also effort should be made to take them somewhere close to the shell of perfectness.

Section 2(9) of CPC, defines judgment as "Judgment means the statement given by a judge on the basis of a decree or order."

Essentials

The essential element of a judgment is that there should be a statement for the grounds of the decision. Every judgment other than that of a court of small causes should contain:

i. A concise statement of the case
ii. The points for determination
iii. The decision thereon
iv. The reasons for such decision

A judgment in the court of small causes may contain only point b) and c). Sketchy orders which are not self-contained and cannot be appreciated by an appellate or revisional court without examining all the records are, therefore, unsatisfactory and cannot be said to be a judgment in that sense.

As pronounced by the hon'ble Supreme Court in **Balraj Taneja v. Sunil Madan**, a judge cannot merely say "suit decreed" or "suit dismissed". The whole process of reasoning has to be set out for deciding the case one way or the other. Even the Small Causes Courts judgments must be intelligible and must show that the judge has applied his mind. The judgment need not, however, be a decision on all the issues in a case. Thus, an order deciding a preliminary issue in a case, e.g. constitutional validity of a statute is a judgment.

Conversely, an order passed by the Central Administrative Tribunal cannot be said to be a judgment, even it has been described as such. Similarly the meaning of the term 'judgment' under the Letters Patent is wider than the definition of 'judgment' under the CPC.

Pronouncement of Judgment

After the hearing has been completed, the court shall pronounce the judgment in open court, either at once or at some future day, after giving due notice to the parties or their pleaders. Once the hearing is over there should not be a break between the reservation and pronouncement of judgment.

Before the Amendment Act 1976, no time limit was provided between hearing of arguments and delivery of the judgment. There was a persistent demand all over India for imposing a time limit for the delivery of the judgment after the conclusion of the hearing of the case.

Accordingly, it is provided that if a judgment isn't pronounced at once then it must be delivered within 30 days from the conclusion of the hearing. Where however it is not practicable to do

so due to exceptional and extraordinary circumstances, it may be pronounced within 60 days. Due notice of the day fixed for the pronouncement of the judgment shall be given to the parties or their pleaders. The judge need not read out the whole judgment and it would be sufficient only if the final order is pronounced. The judgment must be dated and signed by the judge. Rule 2 enables a judge to pronounce a judgment which is written but not pronounced by his predecessor.

A reference in this connection can be made to the case of **Anil Rai v. State of Bihar,** in which after arguments of the counsel were over but the judgment was reserved by the High Court which was pronounced after 2 years. The action was strongly deprecated by the Supreme Court.

The court was conscious that for High Court no particular period was prescribed for pronouncement of judgment, but the judgment must be pronounced expeditiously.

Moreover, the judgment must be based on the grounds and points in the pleadings and not outside the case put forward by the parties in their pleadings. On one hand the court should record findings on all the points raised by the parties and on the other hand, it should not decide any question which doesn't arise from the pleadings of the parties or is unnecessary.

Copy of Judgment

Where the judgment is pronounced, copies of the judgment shall be made available to the parties immediately after the pronouncement of the judgment for preferring an appeal on payment of such charges as may be specified in the rule made by the High Court.

Contents of Judgment(Rules 4-5)

Contents of judgment as per rule 4 order 20

i. Judgments of a court of small causes need not contain more than the points for determination and the decision thereon.
ii. Judgments of other courts—Judgments of other courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

In suits in which issues have been framed, the court must record its findings with each separate issue with reasons. Recording of reasons in support of judgement may or may not be considered to be one of the principles of natural justice, but it can't be denied that the recording of reasons in support of a decision is certainly one of the visible safeguards against possible injustice and arbitrariness and affords protection to the person adversely affected.

A judgment may be a self-contained document from which it should appear as to what the facts of the case were and what was the controversy which was tried to be settled by the court and in what manner. The process of reasoning by which the court came to a particular conclusion and decreed or dismissed the suit should certainly be reflected in the judgment.

Alteration of a Judgment

A judgment once signed cannot be amended afterwards or altered except:

a) To correct clerical or arithmetical errors
b) Errors due to accidental slips or omissions (section 152)
c) Or on review (section 114)

Judgment and Decree distinction

- Judgment is a statement given by a judge on the grounds of a decree or order. It is not necessary for a judge to give a statement in a decree though it is necessary in a judgment.
- It is not necessary that there should be a formal expression of the order in the judgment, though it is desirable to do so. Rule 6 order 20 states that last paragraph of the judgment should state precisely the relief granted.
- A judgment contemplates a stage prior to the passing of a decree or an order and after the pronouncement of the judgment, a decree shall follow.

3. Order

Section 2(14) of CPC, defines order as "order" means the formal expression of any decision of a Civil Court which is not a decree. Thus the adjudication of the court which is not a decree is an order. As a general rule, an order of a court is founded on objective considerations and as such the judicial order must contain a discussion of the question at issue and the reasons which prevailed with the court which led to the passing of the order.

Similarities of Order & Decree

The adjudication of a court of law may either be:

a. A decree
b. An Order

It cannot be both. There are some common elements in both of them.

- Both relate to matters in controversy;
- Both are decisions given by a court;
- Both are adjudications of a court of law;
- Both are formal expressions of a decision.

Order and Decree Distinction

i. A decree can only be passed in a suit which commenced by presentation of a plaint. An order may originate from a suit by presentation of a plaint or may arise from a proceeding commenced by a petition or application.
ii. A decree is an adjudication conclusively determining the rights of the parties with regard to all or any of the matters in controversy. An order on the other hand, may or may not finally determine such rights.

A decree may be preliminary or final or partly preliminary and partly final, but there can't be a preliminary order.

a) Except in certain suits, where two decrees, one preliminary and other final are passed, in every suit there can be only one decree; but in the case of a suit or a proceeding, a number of orders may be passed.
b) Every decree is appealable, unless otherwise expressly provided, but every order is not appealable. Only those orders are appealable as specified in this Code.
c) A Second Appeal lies to the High Court on certain grounds from the decree passed in the First Appeal. Thus there may be two appeals; while no Second Appeal lies in case of Appealable Orders.

4. Foreign Court & Foreign Judgment

A foreign Court is defined as a court situate outside India and not established or continued by the authority of the Central Government. And a Foreign Judgment means a judgment of a foreign court. In other words, a foreign judgment means adjudication by a foreign court upon a matter before it. Thus judgments delivered by courts in England, France, Germany, USA, etc. are foreign judgments.

Sections 13 and 14 enact a rule of res judicata in case of foreign judgments. These provisions embody the principle of private international law that a judgment delivered by a foreign court of competent jurisdiction can be enforced by an Indian court and will operate as res judicata between the parties thereto except in the cases mentioned in Section 13.

Nature And Scope of Sec. 13, C.P.C.

A foreign judgment may operate as res judicata except in the six cases specified in the section 13 and subject to the other conditions mentioned in Sec. 11 of C.P.C. The rules laid down in this section are rules of substantive law and not merely of procedure. The fact that the foreign judgment may fail to show that every separate issue, such as, the status of the contracting parties, or the measure of damages, was separately framed and decided, is irrelevant unless it can be shown that failure brings the case within the purview of one of the exceptions to Section 13.

Object of Section.13 And 14

The judgment of a foreign court is enforced on the principle that where a court of competent jurisdiction has adjudicated upon a claim, a legal obligation arises to satisfy that claim. The rules of private international law of each State must in the very nature of things differ, but by the comity of nations certain rules are recognized as common to civilized jurisdictions. Through part of the judicial system of each State these common rules have been

adopted to adjudicate upon disputes involving a foreign element and to effectuate judgments of foreign courts in certain matters, or as a result of international conventions. Such recognition is accorded not as an act of courtesy but on considerations of justice, equity and good conscience. An awareness of foreign law in a parallel jurisdiction would be a useful guideline in determining our notions of justice and public policy. We are sovereign within our territory but "it is no derogation of sovereignty to take account of foreign law."

As has been rightly observed by a great jurist: "We are not so provincial as to say that every solution of a problem is wrong because we deal with it otherwise at home"; and we shall not brush aside foreign judicial process unless doing so "would violate some fundamental principle of justice, some prevalent conception of good morals, some deep-rooted tradition of the common weal."

Jurisdiction To Foreign Courts

The following circumstances would give jurisdiction to foreign courts:

a) Where the person is a subject of the foreign country in which the judgment has been obtained;
b) Where he was a resident in the foreign country when the action was commenced and the summons was served on him;
c) Where the person in the character of plaintiff selects the foreign court as the forum for taking action in which forum he issued later;
d) Where the party on summons voluntarily appeared; and
e) Where by an agreement, a person has contracted to submit himself to the forum in which the judgment is obtained.

Binding Nature of Foreign Judgments: Principles

The Code of Civil Procedure provides that a foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties pr between parties under whom they or any of them claim litigating under the same title except -

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

Foreign Judgments When Not Binding: Circumstances: Sec. 13

Under Sec. 13 of the Code, a foreign judgment is conclusive and will operate as res judicata between the parties there to accept in the cases mentioned therein. In other words, a foreign judgment is not conclusive as to any matter directly adjudicated upon, if one of the conditions specified in clauses (a) to (f) of section 13 is satisfied and it will then be open to a collateral attack . Dicey rightly states:

"A foreign judgment is conclusive as to any matter thereby adjudicated upon and cannot be impeached for any error either

(1) Of fact; or

(2) Of law"

In the following six cases, a foreign judgment shall not be conclusive:

(3) Foreign not by a competent court;

(4) Foreign judgment not on merits;

(5) Foreign judgment against international or Indian law;

(6) Foreign judgment opposed to natural justice;

(7) Foreign judgment obtained by fraud;

(8) Foreign judgment founded on a breach of Indian law.

Foreign Judgment Not By A Competent Court

It is a fundamental principle of law that the judgment or order passed by the court, which has no jurisdiction, is null and void. Thus, a judgment of a foreign court to be conclusive between the parties must be a judgment pronounced by a court of competent jurisdiction . Such judgment must be by a court competent both by the law of state, which has constituted it and in an international sense and it must have directly adjudicated upon the "matter" which is pleaded as res judicata. But what is conclusive is the judgment, i.e. the final adjudication and not the reasons for the judgment given by the foreign court.

Thus if A sues B in a foreign court, and if the suit is dismissed, the decision will operate as a bar to a fresh suit by A in India on the same cause of action. On the other hand, if a decree is passed in favor of A by a foreign court against B and he sues B on the judgment in India, B will be precluded from putting in issue the same matters that were directly and substantially in issue in the suit and adjudicated upon by the foreign court.

The leading case on the point is **Gurdayal Sigh v. Rajah of Faridkot**.

In that case, A filed a suit against B in the court of the Native State of Faridkot, claiming Rs. 60,000 alleged to have been misappropriated by B, while he was in A's service at Faridkot. B did not appear at the hearing, and an ex parte decree was passed against him. B was a native of another Native State Jhind. In 1869, he left Jhind and went to Faridkot to take up service under A. But in 1874, he left A's service and returned to Jhind. The present suit was filed against him

in 1879; when he neither resided at Faridkot nor was he domiciled there. On these facts, on general principles of International Law, the Faridkot court had no jurisdiction to entertain a suit against B based on a mere personal claim against him. The decree passed by the Faridkot court in these circumstances was an absolute nullity. When A sued B in a court in British India, against B on the judgment of the Faridkot court, the suit was dismissed on the ground that Faridkot court has no jurisdiction to entertain the suit. The mere fact that the embezzlement took place at Faridkot, was not sufficient to give jurisdiction to the Faridkot court would have had complete jurisdiction to entertain the suit and to pass a decree against him.

Similarly, a court has no jurisdiction to pass a decree in respect of immovable property situated in a foreign State.

Foreign Judgment Not on Merits

In order to operate as res judicata, a foreign judgment must have been given on merits of the case. A judgment is said to have been given on merits when, after taking evidence and after applying his mind regarding the truth or falsity of the plaintiff's case, the Judge decides the case one way or the other. Thus, when the suit is dismissed for default of appearance of the plaintiff; or for non-production of the document by the plaintiff even before the written statement was filed by the defendant, or where the decree was passed in consequence of default of defendant in furnishing security, or after refusing leave to defend, such judgments are not on merits.

However, the mere fact of a decree being ex parte will not necessarily justify a finding that it was not on merits. The real test for deciding whether the judgment has been given on merits or not is to see whether it was merely formally passed as a matter of course, or by way of penalty for any conduct of the defendant, or is based upon a consideration of the truth or falsity of the plaintiff's claim, notwithstanding the fact that the evidence was led by him in the absence of the defendant.

Foreign Judgment Against International or Indian Law

A judgment based upon an incorrect view of international law or a refusal to recognize the law of India where such law is applicable is not conclusive. But the mistake must be

apparent on the face of the proceedings. Thus, where in a suit instituted in England on the basis of a contract made in India, the English court erroneously applied English law, the judgment of the court is covered by this clause in as much as it is a general principle of Private International Law that the rights and liabilities of the parties to a contract are governed by the place where the contract is made (lex loci contractus).

"When a foreign judgment is founded on a jurisdiction or on a ground not recognized by Indian law or International Law, it is a judgment which is in defiance pf the law. Hence, it is not conclusive of the matter adjudicated therein and, therefore, unenforceable in this country.

Foreign Judgments Opposed To Natural Justice

It is the essence of a judgment of a court that it must be obtained after due observance on the judicial process, i.e., the court rendering the judgment must observe the minimum requirements of natural justice - it must be composed of impartial persons, act fairly, without bias, and in good faith; it must give reasonable notice to the parties to the dispute and afford each party adequate opportunity of presenting his case. A judgment, which is the result of bias or want of impartiality on the part of a judge, will be regarded as a nullity and the trial "corum non judice".

Thus a judgment given without notice of the suit to the defendant or without affording a reasonable opportunity of representing his case is opposed to natural justice. Similarly, a judgment against a party not properly represented in the proceedings or where the judge was biased is contrary to natural justice and, therefore, does not operate as res judicata.

But the expression "natural justice" in clause (d) of Section 13 relates to the irregularities in procedure rather than to the merits of the case. A foreign judgment of a competent court, therefore, is conclusive even if it proceeds on an erroneous view of the evidence or the law, if the minimum requirements of the judicial process are assured; correctness of the judgment in law or evidence is not predicated as a condition for recognition of its conclusiveness by the municipal court. Thus, a foreign judgment is not open to attack on the ground that the law of domicile had not been properly applied in deciding the validity of adoption or that the court disagrees with the conclusion of the foreign court, if otherwise the principles of natural justice have been complied with.

Foreign Judgment Obtained By Fraud

It is a well-established principle of Private International Law that if a foreign judgment is obtained by fraud, it will not operate as res judicata.

Lord Denning observed: " No judgment of a court, no order of a Minister, can be allowed to stand, if it has been obtained by fraud." Cheshire rightly states: "It is firmly established that a foreign judgment is impeachable for fraud in the sense that upon proof of fraud it cannot be enforced by action in England." All judgments whether pronounced by domestic or foreign courts are void if obtained by fraud, for fraud vitiates the most solemn proceeding of a court of justice.

Explaining the nature of fraud, de Grey, C.J. stated that though a judgment would be res judicata and not impeachable from within, it might be impeachable from without. In other words, though it is not permissible to show that the court was "mistaken", it might be shown that it was "misled". There is an essential distinction between mistake and trickery. The clear implication of the distinction is that an action to set aside a judgment cannot be brought on the ground that it has been wrongly decided, namely, that on the merits, the decision was one which should not have been rendered, but it can be set aside if the court was imposed upon or tricked into giving the judgment.

In the leading case of **Satya v. Teja Singh**, where a husband obtained a decree of divorce against his wife from an American Court averring that he was domiciled in America. Observing that the husband was not a bonafide resident or domicile of America, and he had played fraud on a foreign court falsely representing to it incorrect jurisdictional fact, the Supreme Court held that the decree was without jurisdiction and a nullity.

Again, in **Narsimha Rao v. Venkata Kakshmi**, A husband obtained a decree of divorce against his wife B again from an American High Court on the ground that he was a resident of America. Then he remarried C. B filed a criminal complaint against A and C for bigamy. A and C filed an application for discharge. Dismissing the application, the Supreme Court held that the decree of dissolution of Marriage was without jurisdiction in as much as neither the marriage was solemnized nor the parties last resided together in America. It was, therefore, unenforceable in India.

In **Chengalvaraya Naidu v. Jagannath**, the Supreme Court stated: " It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity

and non-est in the eyes of the law. Such a judgment/decree by the first court or by the highest court has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings."

The fraud may be either fraud on the part of the party invalidating a foreign judgment in whose favour the judgment is given or fraud on the court pronouncing the judgment. Such fraud, however, should not be merely constructive, but must be actual fraud consisting of representations designed and intended to mislead; a mere concealment of fact is not sufficient to avoid a foreign judgment.

Foreign Judgment Founded on Breach of Indian Law

Where a foreign judgment is founded on a breach of any law in force in India, it would not be enforced in India. The rules of Private International Law cannot be adopted mechanically and blindly. Every case, which comes before an Indian Court, must be decided in accordance with Indian law. It is implicit that the foreign law must not offend our public policy. Thus a foreign judgment for a gaming debt or on a claim, which is barred under the Law of Limitation in India, is not conclusive. Similarly, a decree for divorce passed by a foreign court cannot be confirmed by an Indian court if under the Indian law the marriage is indissoluble.

It is implicit that the foreign law and foreign judgment would not offend against our public policy.

Presumption As To Foreign Judgments: Section 14

Section 14 of the Code declares that the court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a court of competent jurisdiction, unless the contrary appears on the record, or is proved. However, if for admissibility of such copy any further condition is required to be fulfilled, it can be admitted in evidence only if that condition is satisfied.

Thus, in **Narsimha Rao v. Venkata Lakshmi**, the Supreme Court held that mere production of a Photostat copy of a decree of a foreign court is not sufficient. It is required to be certified by a representative of the Central Government in America.

Submission To Jurisdiction Of Foreign Court

It is well established that one of the principles on which foreign courts are recognized to be internationally competent is voluntary submission of the party to the jurisdiction of such foreign court. The reason behind this principle is that having taken a chance of judgment in his favour by submitting to the jurisdiction of the court, it is not open to the party to turn round when the judgment is against him and to contend that the court had no jurisdiction.

Submission to jurisdiction of a foreign court may be express or implied. Whether the defendant has or has not submitted to the jurisdiction of a foreign court is a question of fact, which must be decided in the light of the facts, and circumstances of each case.

Conclusiveness of Foreign Judgment

As stated above, a foreign judgment is conclusive and will operate as res judicata between the parties and privies though not strangers. It is firmly established that a foreign judgment can be examined from the point of view of competence but not of errors. In considering whether a judgment of a foreign court is conclusive, the courts in India will not require whether conclusions recorded by a foreign court are correct or findings otherwise tenable. In other words, the court cannot go into the merits of the original claim and it shall be conclusive as to any matter thereby directly adjudicated upon between the same parties subject to the exception enumerated in clauses (a) to (f) of Section 13.

Enforcement of Foreign Judgments

A foreign judgment, which is conclusive under Section 13 of the Code, can be enforced in India in the following ways:

i. By instituting a suit on such foreign judgment

A foreign judgment may be enforced by instituting a suit on such foreign judgment. The general principle of law is that any decision by a foreign court, tribunal or quasi-judicial authority is not enforceable in a country unless such decision is embodied in a decree of a court of that country. In such a suit, the court cannot go into the merits of the original claim and it shall be conclusive as to any mater thereby directly adjudicated upon between the same parties. Such a suit must be filed within a period of three years from the date of the judgment.

ii. Execution Proceedings

A foreign judgment may also be enforced by proceedings in execution in certain specified cases mentioned in Section 44-A of the Code. The said section provides that where a certified copy of a decree if any of the superior courts of any reciprocating territory has been filed in a District Court, the decree may be executed in India as if it had been passed by the District Court. When a foreign judgment is sought to be executed under Section 44-A, it will be open to the judgment-debtor to rake all objections, which would have been open to him under Section 13 if a suit had been filed on such judgment. The fact that out of six exceptions there has been due compliance with some of the exceptions is of no avail. The decree can be executed under Section 44-A only if all the conditions of Section 13 (a) to (f) are satisfied.

Foreign Awards

Principles laid down in the section do not apply- It is not open to the party, who is party to the award, to contend that the award was not given on merits of the case. Say that if the

award was given against the rules of natural justice or it was fraudulently obtained, the party may not be prevented from putting forward those contentions. But it is difficult to accept the view that because on a foreign judgment it is open to a party to contend that it was not given on the merits of the case, it is equally open to a party who is resisting the suit on the award to contend that the award was not given on the merits of the case.

Only if the award given in a foreign country is reinforced by a decree of the Court of that country the courts will be bound to take notice of it but without such a decree reinforcing such award, the award must be deemed to be non-existent.

5. Mesne Profits

As the "Mesne" name suggests are related to proprietary. Studying it exhaustively and etymologically, this term "Mesne" bears root origin from Scotland. During the Middle English era the term "menske" held the meaning of honour. The Old Norse holds meaning of "mennska" for humanity and akin to the old English man. As a whole Mesne means an honorary or proprietary interest which can be considered as a valid or genuine interest and if read together, the term Mesne profits bears the meaning of genuine interest profits which a person deserves.

Section 2(12) of C.P.C bearing elementary language defines the term. "Mesne profits of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession."

Like every provision of every statute is made by virtue of legislators having some specific purpose, this provision is based on the intent of legislators to protect the interest of person for his property. When a person is deprived of the right to possess his property, then the amount of delay that it takes for restoration of such property must also be considered. The amount of delay being accommodative in its nature of all the profits incurred by the wrongful possessor of such property must also be considered. These can be termed as compensatory profits paid to the possessor along with actual restoration of the property. It has been observed by the Supreme Court that the object of awarding a decree for Mesne profits is to compensate the person who

has been kept out of possession and deprived of enjoyment of his property even though he was entitled to possession thereof.

The general rule on which this concept is based is that a person in wrongful possession and enjoyment of immovable property is liable for Mesne profits. The subject matter for Mesne profits is not to be determined since on examination of language of section 2(12) it is very apparent that the subject matter for Mesne profits is only immovable property.

The liabilities which may arise for immovable property may be foreclosure against the decree, or redemption after a decree or against a reluctant tenant and even against the trespasser. The test which is to be accounted for is that what profits are being incurred by defendants gained or might have gained reasonably from such property by wrongful possession and not what plaintiff has lost being out of possession of such property. For example, where a suit is filed for possession and title of a property which is given for rent, the mense profits are to be provided by not for the value of property but for the rents which were due. It has also been considered that this does not mean that the tenant could derive maximum rents in cases like these. The standard amount of rent will only be provided to the plaintiff provided such amount is relevant when such premises of tenancy were lent out afresh. At the same time, the rule of standard amount of rent may be derived, but is not decisive. Therefore to ascertain the assessment of these profits, being in nature of damages, it varies from case to case since no liquidated damages can be affixed in cases for profits arising from immovable property. It has been held by Supreme Court that the court may mould it according to the justice of the case since it varies from case to case. But it should be deduced in realm of gross profits.

It must also be considered that the cases wherein the person is being dispossessed by several persons, every such person shall be liable for Mesne profits. The court in such cases may hold all the trespassers jointly and severally liable, leaving them to have their respective rights adjusted in a separate suit for contribution; or, may ascertain and apportion the liability of each of them.

There are provisos attached to the section as well which is the "…profits due to improvements made by the person in wrongful possession" This provides a justifiable and if deduced critically bears a lacunae for the favour of person being dispossessed of. At one point where it provides an equitable interest for the positive act of improvement done by the person in wrongful possession, it in fact creates a defence by shedding majority of profits under the umbrella of

profits incurred from improvements. In such circumstances the court has to apply its judicial mind in being decisive.

The last but an important factor in deducting the Mesne profits is also the interest. Interest can be called an integral element of mesne profits since it stands on the footings of reasonableness and fairness for person being deprived of his possession of immovable property. This rule has been observed to provide the actual value of loss which the person might have incurred at the time when he was disposed of and which have had been profited by the wrongful possessor. This could be years, quoting, for instance, a period of ten years during which a drastic devaluation of Rs. 10 would occur. The rate of interest is to be calculation along with the mesne profits at the discretion of the court. But it has been appreciably observed that the limitation to the said rate shall not exceed six per cent per annum and be allowed till the date of payment.

These are the provisions and rules regarding Mesne profits which can be perused in cases arising out of immovable property.

6. Affidavits

We often come across a situation when government departments and various other authorities such as the electricity department, water department, regional passport authorities, banks, or institutions ask for an affidavit declaring a certain statement such as date of birth, marriage, change of place of residence, etc.

Order 19 deals with the affidavits. An affidavit is a sworn statement of facts by a person who knows that such facts and circumstances have taken place. The person who makes such statement and signs it is known as a deponent. An affidavit is a written document signed by the deponent, confirming that the contents of the affidavit are true and correct to his knowledge and he has concealed nothing material therefrom. It is duly attested/ affirmed by the Notary or Oath Commissioner. Such Notary/ Oath Commissioners are appointed by the Court of Law. The duty of the Notary/ Oath Commissioners is to ensure that the signature of the deponent are not forged. Hence, the deponent himself needs to be present before the Notary/ Oath Commissioner during the attestation of the affidavit.

Though the expression "affidavit" has not been defined in the code, it has been commonly understood to mean "a sworn statement in writing made especially under oath or on affirmation before an authorized officer or Magistrate."

The affidavit must be paragraphed and numbered. The person making the affidavit (the deponent) must sign the bottom of each page in the presence of an authorized person, such as a lawyer. Further, the affidavit must contain the full name, address, occupation and signature of the person (deponent) making such affidavit and the date & place where such affidavit is made. The affidavit must contain facts and circumstances known to a person and must not set out the opinions and beliefs of the deponent. Further, one should avoid referring to facts that are based on information received from others (known as hearsay evidence). However, if the person is giving evidence as an expert; for instance, a psychologist or licensed valuer, then his opinion might be stated in the affidavit.

Essential Attributes of an Affidavit

a. It must be a declaration made by a person.

b. It must relate to facts and not inferences from the same.

c. It must be in the first person.

d. It must be in writing.

e. It must be a sworn statement made or affirmed before a Magistrate or any other authorized officer.

Contents of the affidavit

An affidavit should be confined to such facts as the deponent is able to prove to his personal knowledge except on interlocutory applications on which statements of his belief may be admitted. (R. 3)

Key-points of Affidavit

I. A Court may order that any fact may be proved by affidavit. Ordinarily, a fact has to be proved by oral evidence.
II. The definition of the affidavit is not defined under S. 3 of the Evidence Act. It can be used as evidence only if, for sufficient reason, the court invokes the provisions of Order 19 of the code.
III. Rule 1 is a sort exception to this rule and empowers the court to make an order that any particular fact may be proved by affidavit, subject, however, to the right of the opposite party to have the deponent produced for cross-examination.
IV. An affidavit should be confined to such facts as the deponent is able to prove to his personal knowledge except on interlocutory applications on which statements of his belief may be admitted. (R. 3)
V. Unless affidavits are properly verified and are in conformity with the rules, they will be rejected by the court. But, instead of rejecting an affidavit, a court may give an opportunity to a party to file a proper affidavit.
VI. Ordinarily interlocutory applications such as interim injunctions, the appointment of the receiver, etc, can be decided on the basis of an affidavit.

Consequences of Filling A false affidavit

Filling of a false affidavit before the court of law is an offence under Sections. 191, 193, 195, 199 of IPC, 1860. It is a grave and serious matter and lenient view is not warranted. Where such an affidavit is filed by an officer of the government very strict action should be taken. Further, criminal contempt of court proceedings can be initiated against the person filing a false affidavit.

Section 193 of the IPC provides the punishment for false evidence

Any person who intentionally gives false evidence at any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also, be liable to 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. Suit

The term suit is not defined under the CPC but on the basis of the various decisions, it can be said that 'suit ordinarily means a civil proceeding instituted by the presentation of a plaint. Civil suit is the institution of the litigation for enforcement of civil rights (or substantive rights, it may be against state or individual). A suit results in a decree. Without a suit, there can be no decree.

According to the dictionary meaning, "suit" is a generic term of comprehensive signification referring to any proceeding by one person or persons against another or other in a court of law wherein, the plaintiff purses the remedy which the law affords him for the redress of any injury or the enforcement of a right, whether at law or in enquiry.

So far as the Code of Civil Procedure is concerned, the term "suit" means a civil proceeding instituted in a civil court by the presentation of a plaint (S. 26), and it would not be possible to call any proceeding a suit even if it is a proceeding instituted in the Civil Court, if it is not done by a plaint.

Essentials of a Suit

i. Name of Parties

There must be at least two parties the plaintiff (who claims) and the defendant (against whom plaintiff claim). There is no limitation with regards to the number on either side.

ii. Cause of Action

Without a cause of action there is no existence of the suit. Cause of action is a set of fact or circumstance that a plaintiff is required to prove. Means that set of facts and circumstances constituting the right and its infringement.

The cause of action means every fact which is necessary for the plaintiff to be proved with a view to obtain a decree in his favour.

Where a plaint is not disclosing a cause of action, it is the duty of the court to reject the plaint under Or. 7 R.11.

iii. Subject Matter

The third essential for a suit is subject matter, means in what respect or aspect a civil dispute is related.

iv. Relief Claimed by the Plaintiff

The fourth essential is relief claimed by the plaintiff in his suit. No will grant relief unless it is specifically claimed by the party.

Relief is of two types:

1. Specific Relief
2. Alternative Relief

8. Plaint

A plaint is a legal document which contains the written statement of the plaintiff's claim. A plaint is the first step towards the initiation of a suit. In fact, in the very plaint, the contents of the civil suit is laid out.

Through such a plaint, the grievances of the plaintiff are spelled out, as well as the possible causes of action that can arise out of the suit. A plaint which is presented to a civil court of appropriate jurisdiction contains everything, including facts to relief that the plaintiff expects to obtain.

Although it hasn't been defined in the CPC, it is a comprehensive document, a pleading of the plaintiff, which outlines the essentials of a suit, and sets the legal wheels up and running.

Order VII of the CPC particularly deals with a plaint. A few of the essentials of a plaint implicit in itself are those only material facts, and not all facts or the law as such is to be stated, the facts should be concise and precise, and no evidence should be mentioned.

Particulars of a Plaint

General Particulars

- The name of the particular court where the suit is initiated.
- Name, place, and description of the plaintiff's residence
- Name, place, and description of the defendant's residence.
- A statement of unsoundness of mind or minority in case the plaintiff or the defendant belongs to either of the categories.
- The facts that led to the cause of action and when it arose.
- The facts that point out to the jurisdiction of the court.
- The plaintiff's claim for relief.

- The amount allowed or relinquished by the plaintiff if so.
- A statement containing the value of the subject matter of the suit as admitted by the case.

Additional Particulars

- Order VII, Rule 2 states that the plaintiff shall state the exact amount of money to be obtained from the defendant if the case is so. On the other hand, if the exact amount cannot be arrived at, as is then case with mesne profits, or claim for property from the defendant, an approximate figure must be mentioned by the plaintiff.
- Order VII, Rule 3 states that when immovable property is the subject matter of the plaint, the property must be duly described, that is sufficient in the ordinary course to identify it.
- Order VII, Rule 3 states that when the plaintiff has initiated the suit in a representative capacity, it has to be shown that he/ she has sufficient interest in doing the same as well as has taken the required steps to ensure the same.
- The plaint should adequately show the involvement of the defendant, including his/ her interests in the same and thereby justifying the need to bring him/ her forward.
- If the plaintiff files the suit after the expiration of the period of limitation, he/ she must show the reason for which such an exemption from law is being claimed.

Procedure for Admission of the Plaint

When the court serves the summons for the defendant, according to Order V , Rule 9, the plaintiff must present copies of then plaint according to the number of defendants, and should also pay the summons fee, within seven days of such a summons.

The particulars of a plaint can be divided into three important parts such as heading and title, body of the plaint, and relief claimed.

A. Heading and Title

Name of the Court

The name of the court should be written as the heading. It is not necessary to mention the presiding officer of the court. The name of the court would be sufficient. E.g. In the Court of District Judge, Kolkata.

Parties to the Suit

There are two parties to every suit, the plaintiffs and the defendants. For the purpose of the suit, the name, place, and description of the residence of both the plaintiffs and the defendants have to be mentioned in the particular plaint.

When there are several plaintiffs, all of their names have to be mentioned and have to be categorically listed, according to their pleadings, or in the order in which their story is told by the plaintiff.

Minors cannot sue nor can be sued. So if one of the parties is a minor or of unsound mind, it will have to be mentioned in the cause title.

Title of the Suit

The title of the suit contains the reasons for approaching the court and the jurisdiction before which the plaint Is initiated.

B. Body of the Plaint

This is the body of the plaint wherein the plaintiff describes his/ her concerns in an elaborative manner. This is divided into short paragraphs, with each paragraph containing one fact each. The body of the plaint is divided into two further parts which are:

i. Formal Portion

The formal portion contains the following essentials:

a) A statement regarding the date of cause of action. It is necessary for every plaint to contain the date when the cause of action arose. The primary objective behind this is to determine the period of limitation.
b) There should be a statement regarding the jurisdiction of the court. The plaint must contain all facts that point out the pecuniary or territorial jurisdiction of the court.
c) The value of the subject matter of the suit must be stated properly in this part of the plaint.
d) Statement regarding minority.
e) The representative character of the plaintiff.
f) The reasons why the plaintiff wants to claim exemptions under the law if the suit is initiated after the period of limitation.

ii. Substantial Portion

This portion of the plaint must contain all the necessary and vital facts, which constitute the suit. If the plaintiff wishes to pursue a course of action on any other grounds, such grounds must be duly mentioned.

a) It should be shown in the plaint that the defendant is interested in the subject matter and therefore must be called upon by the court.
b) If there is more than one defendant, and if the liability is not joint, then the individual liability of each and every defendant must be shown separately.
c) In the same way, if there is more than one plaintiff, and their cause of action is not joint, then too, the same has to be mentioned separately.

C. Relief

The last part of the plaint is the relief. The relief claimed must be worded properly and accurately. Every plaint must state specifically the kind of relief asked for, be it in the form of damages, specific performance or injunction or damages of any other kind. This has to be done with utmost carefulness because the claims in the plaint cannot be backed by oral pleadings.

D. Signature and Verification

The signature of the plaintiff is put towards the end of the plaint. In case the plaintiff is not present due to any legitimate reason, then the signature of an authorized representative would suffice.

The plaint should also be duly verified by the plaintiff. In case the plaintiff is unable to do so, his/ her representative may do the same after informing the court.

The plaintiff has to specify against the paragraphs in the pleadings, what all he/ she has verified by his/ her own awareness of the facts, and what has been verified as per information received, and subsequently believed to be true.

The signature of the plaintiff/ verifier, along with the date and the place, at the end of the plaint is essential.

The verification can only be done before a competent ourt or in front of an Oath Commissioner.

Where the language of the plaint is beyond the comprehension of the plaintiff, the same has to be translated, or made known to the plaintiff, and only after that can he/ she put his/her signature and get the plaint verified by the Oath Commissioner.

Return of Plaint

Order VII, Rule 10 states that the plaint will have to be returned in such situations where the court is u able to entertain the plaint, or when it does not have the jurisdiction to entertain the plaint.

The courts can exercise the power of returning the plaint for presentation before the appropriate court if it feels that the trial court itself did not have the appropriate jurisdiction in the first place.

Once the appellate court finds out that the trial court decided on the civil suit without proper jurisdiction, such decision would be nullified.

Dismissal of Suit

If the plaint is to be returned to the parties after its rejection, the court has to fix a date for the same where the parties can arrive for this purpose.

This was mentioned in Rule 10, inserted by the amendment act of 1976. If the court does not have the adequate jurisdiction, the proper course is to return the plaint and not to dismiss it.

Nature of Returned Plaint

When a plaint has been returned for want of proper jurisdiction, it is to be treated as a fresh plaint. This fresh plaint can be amended and no consequences can arise as a result of it. This amended plaint cannot be rejected by stating that the averments were not present in the original plaint. This argument will not be taken into consideration and the plaint will be allowed to stand.

When can a Plaint be Rejected?

A plaint can be rejected under the following scenarios:

- Where the cause of action is not disclosed
- When the relief claimed by the plaintiff is undervalued, and he/ she is not able to correct it even after being instructed by the court to do so.

- When the relief claimed is proper, but the plaintiff proceeds with the plaint on a paper which has not been stamped sufficiently and fails to do so even after the court's instruction.
- Where the suit stems from a statement which has been essentially barred by law.

Application for the rejection of the plaint can be in instituted at any time, even after the issues have been solidified in the said plaint.

9. Written Statement

A 'Written Statement' is a pleading of the defendant in the answer of the plaint led by the plaintiff against him. It is a reply statement of the defendant in a suit specially denying the allegations made against him by the plaintiff in his plaint. The provision regarding the written statement has provided in the Code of Civil Procedure, 1908.

The expression "Written Statement" has not been denied in this code. It is a term of specific meaning ordinarily signifying a reply to the plaint led by the plaintiff. In other words, it is the pleading of the defendant wherein he deals with the material fact alleged by the plaintiff in his plaint and also states any new fact in his favour or takes legal objections against the claim of the plaintiff.

A written statement may be led by the defendant or by his duly authorized agent. In the case of more than one defendants, the common written statement led by them must be signed by all of them. But it is succinct if it is verified by one of them who is aware of the facts of the case and is in a position to file an affidavit. But a written statement led by one defendant does not bind other defendants.

A written statement should be led within thirty days from the service of the summons on him. The said period, however, can be extended up to ninety days,(Rule -1). A defendant should present a written statement of his defence in the said period.

In written statement defendant can specifically deny the allegations made in the plaint by the plaintiff against him. Besides this, he also can claim to set-o any sums of money payable by the plaintiff to him as a counter defence (Order 8 Rule 6). Further, if the defendant has any claim against the plaintiff relating to any matter in the issue raised in the plaint, then he can separately le a counter-claim along with his written statement. It is provided in Order 8 Rule 6A to 6G of the code.

Particulars: Rules 1-5 and 7-10: Drafting a written statement is an art so it should be drafted carefully and artistically. Before proceeding to draft a written statement it is absolutely necessary for the defendant to examine the plaint carefully.

Special Rules of Defence

Rules 2 to 5 and 7 to 10 deal with special points regarding the ling of a written statement;

a) New facts, such as the suit is not maintainable, or that the transaction is either void or voidable in law, and all such grounds of defence as, if not raised, would take the plaintiff by surprise, or would raise issues of fact not arising out of the plaint, such as fraud, limitation, release, payment, performance or facts showing illegality, etc. must be raised. (Order 8 Rule 2).
b) The denial must be specific. It is not sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but he must deal specifically with each allegation of fact which he does not admit, except damages.
c) The denial should not be vague or evasive. Where a defendant wants to deny any allegation of fact in the plaint, he must do so clearly, specifically and explicitly and not evasively or generally.
d) Where every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted except as against a person under disability. The court may, however, require proof of any such fact otherwise than by such admission.
e) Where the defendant relies upon several distinct grounds of defence or set-o or counterclaim founded upon separate and distinct facts, they should be stated separately and distinctly.
f) Any new ground of defence which has arisen after the institution of the suit is a presentation of a written statement claiming a set-o or counterclaim may be raised by the defendant or plaintiff in his written statement as the case may be.
g) If the defendant fails to present his written statement within the time permitted or fixed by the court, the court will pronounce the judgment against him or pass such order in relation to the suit as it thinks t and a decree will be drawn up according to the said judgment.
h) No pleading after the written statement of the defendant other than by way of defence to set-o or counterclaim can be led.

At last, it is clear that the written statement is a reply statement of the defendant to the plaintiff. In this defendant state his defence and deny the allegation of the plaintiff as per his material facts. It is a method to disclosed both sides of the suit in both the party present his favour by the way of the plaint, the plaintiff and by the way of written statement, the defendant in the court.

10. Suit of Civil Nature

Section 9 of CPC provides that the civil courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is expressly or impliedly barred.

What are the suits of civil nature has been explained by the Explanation I and II of section 9.

According to the explanation I , a suit in which right to property or to an office is contested is a suit of civil nature notwithstanding that such rights may depend entirely upon the decision of question as to religious rites or ceremonies.

Explanation II says that for the purpose of this section , it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.

Therefore , it is clear from the Explanation I of section 9 that it will not make any difference if such right to property or to an office depends entirely on the decision of questions as to religious rites or ceremonies.

In the case of **Vanamalia Ramanuja Jeer Vs. Shri Ranga Ramanuja Jeer**, Hon'ble Supreme Court of India laid down that the following principles are to be borne in mind when deciding the question as to whether a right to a religious office would be a right of a civil nature:

i. A declaratory suit simpliciter for religious honour and privileges is not a suit of a civil nature.
ii. A suit for a declaration and to establish one's right to an office in a temple and to honours , privileges , remuneration or requisites attached to such an office , is a suit of civil nature.
iii. In order to mean an office the holder of the office should be under a legal obligation to discharge the duties attached to the said office and for non-observance of which penalties can be inflicted on him.

The general rule of law is that when a religious office is situated in a temple , shrine , etc. , the right to such office is a right of a civil nature , even though no fees are attached to it but when such an office is not attached to any place the right will not be of a civil nature unless a fee is attached to the office.

The caste question is related to social privilege and so it is not a legal right but when it relates to the property of a caste , the civil court will have jurisdiction to interfere .The suits for vindication of dignity attached to an office are not suits of a civil nature . The right to bury a corpse is a civil right , therefore , a suit to establish such right is a suit of civil nature.

By the words "suits expressly barred " section 9 of CPC means to say that there are certain types of suits which are barred by the code itself , such as:

i. Section 11 of CPC or resjudicata barred the trial of a suit , in which the matter or issue of the parties has already been decided by a competent court .
ii. Section 47 barred the determination of all questions relating to execution , satisfaction , and discharge of decrees .
iii. Section 10 , Section 95 , Order 2 Rule 2 , Order 9 Rule 9 and Order 22 Rule 11 also barred to file fresh suit .

And by the words "Suits impliedly barred " section 9 of CPC means to say that there are certain types of suits which are:

i. barred by general principles of law , and
ii. barred on the ground of public policy.

Some statutes also barred the jurisdiction of civil courts and conferred the jurisdiction on Tribunals.

Suit Against Intruder

According to the Explanation I of section 9 of CPC a suit in which the right to property or to an office is contested is a suit of a civil nature. An office may be either secular or religious. Fees may be or may not be attached to the religious office. Explanation II to section 9 of CPC says that it is immaterial whether or not i) any fees are attached to the office, or ii) such office is attached to any particular place. Therefore a suit , according to the explanations I and II of section 9 of the CPC, against an intruder for a declaration that the office of a religious order is vested in the plaintiff is a suit of civil nature and so such suit lies in the civil court.

11. Res sub Judice

Section 10 deals with Doctrine of Res Sub-Judice. 'Res' means matter or litigation and Sub-Judice means pending (under judgment). Conjoining the two, it implies that the rule of Res Sub-Judice relates to a matter which is pending judicial enquiry. In other words, this rule applies where a matter is already pending before a competent court for the purpose of adjudication Section 10 of CPC deals with the stay of civil suits.

Stay on Suit

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

1. *Court shall proceed with the trial of any suit*

It is such court where subsequent litigation has been instituted and not the court which has taken the adjudication for previous litigation. Technically speaking, section 10 applies to those litigations which come within the ambit of section 9 read with section 26(2) of the Code. The term 'trial' in this sense implies to all the proceedings of a civil suit. So, the subsequent litigation needs to be stayed notwithstanding the stage at which it is.

It were intended to bar the separate trial of any suit in which the matter in issue was also directly and substantially in issue in a previously instituted suit between the same parties. But these words do not apply to the simultaneous hearing of a late and earlier suit after the consolidation of the two. Suit with the meaning of section 10 includes a pending appeal and even if second appeal is lying undecided it is a previously instituted suit for the purposes of the section.

2. *Matter directly and substantially in issue*

It means the rights litigated between the parties i.e. the facts on which the right is claimed and the law applicable to the determination of that issue. The words "matter in issue" used in Section 10 do not mean that entire subject-matter of the subsequent suit and the previous suit must be the same. These words mean all disputed material questions in the subsequent suit which are directly and substantially in question in the previous suit.

'Matter in issue' with respect to the Evidence Act, 1872 is of two types:

- ***Matter directly and substantially in issue***:-'directly' means immediately, without intervention. 'Substantially' implies essentially or materially.
- **Matter collaterally and incidentally in issue**

3. *Same Parties*

The previously instituted suit must have been a suit between the same parties or between the parties under whom they or any of them is claiming. Party is a person whose name appears on the record at the time of the decision.

4. *Same Title*

It means same capacity. Title refers to the capacity or interest of a party that is to say whether he sues or is sued for himself in his own interest or for himself as representing the interest of another.

5. *Previously instituted suit must be pending*

The previously instituted suit between the parties must be a pending one: (a) in the same Court in which the subsequent suit is brought, or (b) in any Court in India, or (c) in any Court beyond the limits of India established or constituted by the Central Government, or (d) before the Supreme Court.

Illustrations:

- 'A' an agent of 'S' at Jaipur agreed to sell S's goods in Bangalore. 'A' the agent files suit for balance of accounts in Bangalore. 'S' sues the agent 'A' for accounts and his negligence in Jaipur; while case is pending in Bangalore. In this case, Jaipur Court is precluded from conducting trial and can petition Bangalore Court to direct stay of proceedings against Jaipur Court.
- 'A' and 'B' entered into contract for the sale of machine. 'A' first filed a suit against 'B' at court Bombay, demanding recovery of the entire amount paid. Subsequently, 'B' filed a suit against 'A' at court Delhi demanding Rs.18, 000 as outstanding balance. In A's suit, 'B' took the defence that since both the suits are on similar issues, A's suit should be stayed. However, court Delhi held that since A's suit is the first suit and the subsequent suit had issues similar to the first suit, it is the subsequent suit that is liable to be stayed.

Nature & Scope

Section 10 declares that no Court should proceed with the trial of any suit in which the matter in issue is directly and substantially in issue in a previously instituted suit between the same parties and the Court before which the previously instituted suit is pending is competent to grant the relief sought.

The Rule applies to trial of a suit and not the institution thereof. It also does not preclude a Court from passing interim orders, such as, grant of injunction or stay, appointment of receiver. It, however, applies to appeals and revisions.

Object

The object of the rule contained in Section 10 is to prevent courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of the same cause of action, the same subject-matter and the same relief. The policy of

law is to confine a plaintiff to one litigation, thus obviating the possibility of two contradictory verdicts by one and the same court in respect of the same relief.

12. Res Judicata

The doctrine of the Rest Judicata is one of the oldest doctrines in the history of the world. Res judicata "is as old as the law itself". "Res judicata pro veritate accipitur" is the Latin maxim for the doctrine of the Res Judicata. Roots of the doctrine of Res Judicata can be found in the various ancient legal systems. Starting from the issue preclusion in the Germanic estoppel to the latter on the Roman res judicata which was instigating the truth by looking into the judgmental effect. Romanic view changes the evolution of res judicata from issue preclusion to claim preclusion.

In the early days of England, courts were disorganized and underdeveloped and there was no existence of concept like res judicata. But after this doctrine of Res Judicata has been emerged in England. At the initial stages, courts in England was using foreign analogies but after court revised and drafted their own doctrine of the Res Judicata.

Indian Legal system adopted the doctrine of Res Judicata from the common law. The principle of res judicata was included in Section 11 of the Civil Procedure Code. After the Civil Procedure code, Administrative Law accepted the applicability of the res judicata. Afterward, it was accepted by other statutes and acts and the doctrine of res judicata started growing in the Indian Legal System.

The doctrine of Res Judicata is originated from 3 Roman maxims:

- Nemo debet lis vaxari pro eadem causa – It means that no person should be vexed annoyed, harassed or vexed two times for the same cause;
- Interest republicae ut sit finis litium – It means that it is in the interest of the state that there should be an end of litigation; and
- Re judicata pro veritate occipitur – Decision of the court should be adjudged as true.

<u>Res Judicata under Section 11 Civil Procedure Code, 1908</u>

The doctrine of Res Judicata has been defined in Section 11 of the Civil Procedure Code. The doctrine of the Res Judicata means the matter is already judged. It means that no court will have the power to try any fresh suit or issues which has been already settled in the former suit between the same parties. Also, the court will not try the suits and issue between those parties under whom the same parties are litigating under the same title and matter are

already been judged and decided by the competent court. When the court finds any suits or issues which has been already decided by the court and there is no appeal pending before in any court, the court has the power to dispose of the case by granting a decree of Res Judicata. This doctrine is based on the premises that if the matter is already decided by the competent court then no one has rights to reopen it with the subsequent suit. It also enacts the conclusiveness of the judgments as to the points decided, in every subsequent suit between the same parties[Satyadhyan Ghosal v. Deorajin Devi, AIR 1960 SC 941:(1960) 3 SCR 590]. The doctrine of Res Judicata is applied by the court where issues directly and substantially involved between the same parties in the former and present suit, are same. For eg, It may be that in former suit only part of the property was involved whereas in present or subsequent suit whole property of the parties is involved Than court will grant a decree of Res Judicata.

Scope: The scope of the Res Judicata is not restricted to Section 11. Res Judicata is the principle which is also applied to Administrative Law, constitutional law & Criminals matters. It is applicable to other legislation and acts too. In the case of the Sheoprasad Singh v. Ramnandan Prasad Singh[AIR 1916 PC 78], Sir Lawerence Jenkins observed the rule of Res Judicata as "the rule..while finding on ancient precedent is dictated by a wisdom which is for all time." In the case of Daryao vs. the State of UP[AIR 1961 SC 1457 : (1962) 1 SCR 574 : (1962) 2 MLJ (SC) 6], the court stated that for this rule there would be no end to litigation and no security for any person; the rights of the person is involved in the endless confusion and great injustice done under the cover of the law. The doctrine of the Res Judicata is based on the Public policy and this principle is intended not only to prevent a new decision but also to prevent a new investigation so that the same person cannot be harassed again and again in various suits upon the same question.

Essentials of Res Judicata under Section 11 CPC

Before granting a decree of Red Judicata following conditions should be satisfied first:

i. There must be two suits one former (previously decided) suit and the other subsequent suit.
ii. Parties of the former and subsequent suit or the parties under whom they or any of them claim should be the same.
iii. The subject matter of the subsequent suit should be identical or related to the Former suit either actually or constructively.
iv. The case must be finally decided between the parties.
v. The former suit should be decided by the court of competent jurisdictions.
vi. Parties in the former as well as in Subsequent suit must have litigated under the same title.

Exceptions to the Plea of Res Judicata

1. **Judgment in original suit obtained by the fraud:** if a court thinks that the judgment of former suit is obtained by the fraud, then the doctrine of the res judicata is not applied.

2. **When previous SLP is dismissed: W**hen special leave petition is dismissed without adjudication or decision then res judicata should not be applied. For obtaining Doctrine of Res Judicata, the formal suit should be decided finally by the competent court.

3. **Different cause of action:** Section 11 will not be applied when there is a different cause of action in the subsequent suits. The court cannot bar subsequent suit if it contains the different cause of action.

4. **When there is Interlocutory Order:** Interlocutory order is the interim order, decree or sentence passed by the court. A principle of the Res Judicata will be not applied when an interlocutory order is passed on the former suit. It is because in Interlocutory order immediate relief is given to the parties and it can be altered by subsequent application and there is no finality of the decision.

5. **Waiver of a decree of Res Judicata:** Decree of Res Judicata is a plea in the bar which party must waive. If a party did not raise the plea of res judicata then the matter will be decided against him. It is the duty of an opposite party to make the court aware about the adjudication of matter in former suit. If a party fails to do so, the matter is decided against him.

6. **Court not competent to decide:** When the former suit is decided by the court who has no jurisdiction to decide the matter then the doctrine of res judicata is not applied to the subsequent suit.

7. **When there is a change in Law:** When there is a change in the law and new laws bring new rights to the parties then such rights are not barred by Section 11.

Courts failure to apply this doctrine: If the court fails to apply for the res judicata and orders a contradictory decision on the same issue and Afterwards matter is listed to the third court then the third court will apply res judicata on the basis of the decision on the previous suit. Thus it is the duty and responsibility of the parties to the suit to bring the earlier case to the attention of the court and Judge will decide on whether a plea of Res judicata should be granted or not.

<u>Res Judicata w.r.t. Writ Proceedings</u>

A writ has been defined in Article 32 and Article 226 of the Constitution of India. Article 32 has given power to Supreme court to issue writs whereas same power is granted to High courts

in Article 226. There are 5 types of writs – Certiorari, Mandamus, Habeas Corpus, Prohibition & Quo Warranto.

The question that whether the doctrine of Res Judicata applies to the writ proceedings is still disputable. If we study the explanations of section 141 of the Civil Procedure Code, 1908 we can find that Section 11 is not applicable to the proceedings under Article 226 of the constitution. But the doctrine or the principle of Res Judicata can be applied to the writ proceedings when there is no applicability of Section 11 of the code6. Once the question which has been decided by the Writ Petition cannot be reopened by subsequent appeal[State of Gujarat v. Bhater Devi Ramniwas Sanwalram (2002) 7 SCC 500]. It is settled law that the doctrine of Res Judicata is applied in the Writ proceedings but there is one exception to this is that plea of Res Judicata should not violate any fundamental rights of the citizen[Ashok Kumar Srivastava v. National Insurance Company Ltd. (1998) 4 SCC]. The court can apply the principle of Res Judicata in the writ petition but it is necessary for the court to pass a speaking order[Rabindra Nath Biswas v. General manager, N.F. Rly AIR 1988 Pat 138]. The court should give proper reasoning while applying the res judicata. For the writ of the Habeas corpus, the doctrine of constructive Res Judicata would not apply. If the petition is dismissed as withdrawn it cannot be a bar to a subsequent petition under Article 32, because in such a case there has been no decision on the merits by the Court[Daryao v. The State of U.P. AIR 1961 SC 1457].

Res Judicata w.r.t. PIL, Arbitration and Awards and Income tax Proceedings

i. In the case of Rural Litigation & Entitlement Kendra v. the State of U.P.[AIR 1988 SC 2187 (2195) : 1989 Supp (1) SCC 504], the court held that the doctrine of the res judicata cannot be applied in the cases of Public Interest Litigation.
ii. In the case of K.V. George v. Secretary to Govt[AIR 1990 SC 53(59)]., the court held that plea of Res Judicata cannot be raised in the cases of Arbitration and Rewards.
iii. The doctrine of Res Judicata is not been applied in the income tax proceedings. In the case of B.S.N.L vs. Union of India[AIR 2006 SC 1383 (1390)], the court held that the decision given for one assessment year does not operate as res judicata in the Subsequent year.

Res Judicata between Co- Plaintiffs

Conditions required for a decision to become res judicata between co-plaintiff are same conditions which require for the co-defendant. They are:

1. The must be a conflict of interest between the defendants concerned.
2. It must be necessary to decide the conflict in order to plaintiff relief he claims
3. The co-defendants must be necessary or proper parties to the suit
4. The question between the defendant must have been finally decided between them.

Short comings of this doctrine as applied u/s 11 of CPC

1. The doctrine of Res Judicata is not applied in appeals.
2. Rule of Res Judicata restricts the process of delivering justice.
3. Sometimes Res Judicata is applied to the Judgments which is contrary to law.
4. There are limited exceptions to the doctrine of Res Judicata
5. Cases decided on the plea of res judicata can be re-litigated

End Note: Res Judicata is the concept which is prevalent in all the Jurisdictions of the world. The doctrine of Res Judicata has become one of an important part of Indian Legal System. Section 11 of Civil Procedure Court, 1908 states that court can apply Res Judicata when he thinks that matter is already decided by the former suit. This doctrine is not only applied to the Civil courts but also to the administrative law and other legislation in India. The principle of finality on which plea of res judicata lies is the matter of public policy. The doctrine of Res Judicata is to prevent multiple judgments and protects the rights of the other party by restricting the plaintiff to recover the damages twice from the defendant on the same injury.

S.No.	**Res Sub-Judice**	**Res Judicata**
1.	It bars trial of a suit which is pending decision in a previously instituted suit.	It bars the trial of a suit or an issue which has been decided in a former suit.
2.	It applies to a matter pending trial.	It applies to a matter adjudicated upon.

13. Restitution

The term 'restitution' has not been defined under the civil procedure code. But there is a direct mention of the term under Section 144 of the code. Hence, the imported definition of restitution is 'an act of restoring a thing to its proper owner'. Restitution under the code refers to the act of restoring a benefit that has been obtained by one party under a decree to the other party. Why should the benefit under the decree be restored, this can be answered by reading the text of Section 144 of the civil procedure code.

Section 144 of the code primarily talks about 2 things, Decree and Order. It provides that when either a decree or an order has been either of the following:

1. Varied or reversed in an Appeal
2. Varied or reversed in a Revision
3. Varied or reversed in any other proceeding
4. Set aside
5. Modified in any suit instituted for the purpose

When any of the above mentioned happens, then the party who is entitled to the benefit under the decree or order so reversed, modified or set aside can submit an application for restitution to the court which passed the original decree or order which has been subsequently modified, reversed or set aside. This has been provided as an explanation to Section 144 of the Civil Procedure Code. Over this, the court will put the parties on the same position that they held before the unfavorable order or decree was passed against them i.e. position prior to the decree against them.[C.K. Takwani, Civil Procedure with Limitation Act, 1963 (8thedn, Eastern Book Company 2017) 726]

Remedies that the court can grant

For the purpose of granting remedies as a part of restitution, the court has been given wide powers phrased as 'the court may make any orders'. This means that the court can pass any order to meet the ends of justice. The section provides some type of orders that the court may typically pass over an application for restitution. They are:

i. Orders for the refund of costs
ii. For the payment of Interest
iii. For the payment of Damages
iv. For the payment of Compensation
v. For the payment of Mesne profits

The only bar to this remedy is that these remedies must arise as a consequence of the variation, setting aside or modification of the decree or order.

Illustration: 1 – Mr. Aobtained a decree of Rs. 1 Lakh against Mr. B. Mr. B being dissatisfied by the decree appeals against the decree. The appellate court thereby reverses the decree. Though the appellate court doesn't mention about restitution in the decree so reversing the original decree, Mr. B as a matter of right can move to the court of first instance to claim a refund of Rs. 1 Lakh.

Illustration: 2 – Mr. A obtains a decree against Mr. B over the possession of a house. Mr. B being dissatisfied appeals against the decree. The appellate court thereby sets aside the original decree and decrees the possession of the house in favour of Mr. B. Mr. B thereby has a right to restitution of mesne profits arising out of the house for the duration till the house remained in possession of Mr. A.

Nature of Section 144 under CP

Section 144 entirely governs on the premises of equity. It is merely an enabling section to do justice to the parties in the most possible manner. Though restitution has been embodied under Section 144, the power of the court to grant restitution is equally derivable from its inherent powers.[Kavita Trehan and Another v Balsara Hygiene Products ltd. [1994] 5 SCC 380] The proceedings of restitution are considered as execution proceedings.[Mahijibhai Mohanbhai Barot v Patel Manibhai Gokalbhai And Ors[1965] 6 GLR 901]

When an application for restitution has been dismissed, res judicata applies and a fresh application is not maintainable unless the dismissal was on technical grounds.[C.K. Takwani, Civil Procedure with Limitation Act, 1963 (8thedn, Eastern Book Company 2017) 732] Under Section 144(2), if the remedy for restitution can be claimed by making an application under Section 144, then a separate suit to claim the remedy shall be barred. Hence, a party can only file an application for restitution and cannot institute a separate suit if the circumstances are covered by section 144 of the code. Restitution is in fact an execution of the new decree. It is only its connection with the original decree that the term restoration comes into picture.

In a recent case of Citibank N.A. v. Hiten P. Dalal & Ors, the Supreme Court has commented on the nature of restitution.In this case, a money decree was passed in favour of the plaintiff in respect of which the defendant had either to deliver the bonds to the plaintiff or return the money value of the bonds to the plaintiff. The defendant chose to deliver the bonds to the defendant. Later on in an appeal against the money decree, the money decree was reversed. Thereby the Plaintiff had to restore the benefit of the money decree to the defendant. But the Plaintiff had already sold the bonds in the open market.

Over an application of restitution, the Special court determined the amount payable by plaintiff to the defendant on the premise that the defendant would have retained the bonds till the date of maturity in spite of the evidence that the defendant would have further sold the bonds in open market only and the value of bonds could be determined on the basis of the market price of the bonds on the date when they were sold by plaintiff to third parties. The Hon'ble Court rightly held that the special court has erred in determining the amount payable on such premises. The Plaintiff cannot be burdened to pay what the third parties have gained by selling the bonds further. The Court rightly held that "It is also one of the established propositions that in the context of restitution the court should keep under consideration not only the loss suffered by the party entitled to the restitution but also the gain, if any, made by other party who is obliged to make restitution"

The court has rightly pointed out the nature of restitution saying that it is an expansive power granted to the courts which should be exercised to give equity, fairness and justice to both the parties. The court must bear in mind the hardships that may be faced by the party obliged to make restitution.

End Note: The principle of restitution is a natural form of justice and Section 144 is merely an embodiment of that principle taking a statutory form. Restitution provides that the benefit obtained by a party under a decree should be restored to the other party because the decree has become infructuous on account of a subsequent decree. The court has been given wide powers to pass any orders in an application of restitution that it may deem fit to meet the ends of justice.

14. Caveat

Caveat application in the Indian court means that you are requesting any court that if in case a specified person or organisation files a case in the court in which you are having some valid interest, than no order should be passed by that Hon'ble court without giving you a notice about that case being filed and also without listening your side in that matter.

Caveat petition is a precautionary measure which is undertaken by people usually when they are having very strong apprehension that some case is going to be filed in the court regarding their interest in any manner.

The caveat petition remains in force only for 90 days and if during that duration no case gets filed from the opposite side than, you have to again file a fresh caveat petition as new in the court.

You have to clearly specify the name of the opposite party, whom you apprehend to file a case against you.

A Caveat is a Latin term which means, 'let a person beware' originated in the mid-16th century. In law, it may be understood as a notice, especially in probate, that certain actions may not be taken without informing the person who gave the notice. It may simply be understood as a warning. In the Civil Procedure Code of 1908 (hereinafter, the Code) it was inserted under section 148A by the recommendations of the Law Commission of India's 54th Report and was inserted by the CPC (Amendment) Act 104 of 1976.

The Section talks in brief about the caveat petition. A caveat petition is a precautionary measure which is undertaken by people usually when they are having a very strong apprehension that some case is going to be filed in the Court regarding their interest in any manner.

The word 'Caveat' is not defined in the Code. The Court had defined the word Caveat, wherein it said, A Caveat is a caution or warning given by a person to the Court not to take any action or grant relief to the other side without giving notice to the caveator and without affording opportunity of hearing him.

The Section 148A of the Code reads as under,

148A. Right to lodge a caveat.

1. *Where an application is expected to be made, or has been made, in a suit or proceedings instituted, or about to be instituted, in a Court, any person claiming a right to appear before the Court on the hearing of such application may lodge a caveat in respect thereof.*
2. *Where a caveat has been lodged under sub-section (1), the person by whom the caveat has been lodged (hereinafter referred to as the caveator) shall serve a notice of the caveat by registered post, acknowledgement due, on the person by*

whom the application has been or is expected to be, made, under sub-section (1).

3. *Where, after a caveat has been lodged under sub-section (1), any application is filed in any suit or proceeding, the Court, shall serve a notice of the application on the caveator.*
4. *Where a notice of any caveat has been served on the applicant, he shall forthwith furnish the caveator at the caveator's expense, with a copy of the application made by him and also with copies of any paper or document which has been, or may be, filed by him in support of the application.*
5. *Where a caveat has been lodged under sub-section (1), such caveat shall not remain in force after the expiry of ninety days from the date on which it was lodged unless the application referred to in sub-section (1) has been made before the expiry of the said period.*

There are five basic ingredients to the section:

I. Who may lodge a Caveat? (Clause 1)

Any person claiming a right to appear before the Court,

- Where an application is expected to be made
- Where an application has already been made
- In a suit or proceeding instituted
- In a suit or proceeding which is about to be instituted

May lodge a caveat thereof. It is substantive in a nature.

II. Duties of the Caveator (Clause 2)

This clause is directive in nature. The person by whom the Caveat has been lodged is called a Caveator. He shall,

- Serve a notice of the Caveat by registered post, acknowledgement due
- On the person by whom the application has been made
- On the person by whom the application is expected to be made

III. Duty of the Court (Clause 3)

After a Caveat has been lodged under Clause 1, if any application is filed in any suit or proceeding, the Court shall serve a notice of the application on the Caveator. This clause is mandatory in nature.

IV. Duties of the Applicant (Clause 4)

It is directive in nature and says that, where a notice of any Caveat has been served on the applicant, he shall furnish, at the expense of the Caveator,

- A copy of the application made by him.
- Copies of any paper or document which has been filed by him in support of his application.
- Copies of any paper or document which may be filed by him in support of his application.

V. Life of a Caveat Petition (Clause 5)

The life of the petition is 90 days, from the date on which it was lodged. The only exception is, if the application already exists, or has been made before the said period, the clause ceases to exist.

All the above five ingredients are vital to a Caveat petition all the above are to be followed austerely.

The object of this section is to safeguard the interest of the Caveator, who is ready to face the suit or proceedings which is expected to be instituted by his opponent, affording an opportunity to be heard, before an ex-parte order is made. Also, to avoid multiplicity of proceedings, so as to save the costs and conveniences of the Courts.

15. Inherent Powers of Court

Courts duty to do justice in all cases, whether provided for or not, carries with it the necessary power to do justice in the absence of express provision. This power is referred to as the inherent power possessed by the court, though not conferred. Sec 151 of the Civil Procedure Code deals with the inherent powers. This provision being a part of procedural law requires a liberal interpretation to advance the cause of justice and further it ends or to effect enforcement of substantive rights. The inherent powers are considered necessary to do the right and undo the wrong in the course of administration of justice and to be regarded as „supplementary to specially conferred powers. Inherent powers have roots in necessity and they are co-extensive with necessity in order to do complete justice.

Law has always been an essential element of society. It was there even when men was uncivilized and it is even today when we have entered into much sophisticated world. The presence of law is made much known to us with the existence of courts. The Courts existed when there was no written statue on the fundamental principle to do justice and to peacefully settle the matter. They are not as old as law but law got a recognition by courts only. They hold a very high position in society by virtue of its duty to do justice between the parties. Every

court is constituted for the purpose of administering justice between the parties and, therefore must be deemed to possess all such powers as may be necessary to do the right and to undo the wrong in the process of administering the justice. The Code of Civil Procedure is a procedural or adjective law and the provisions thereof must be liberally construed to advance the cause of justice and further its ends since the basic function of the courts is to do justice rather than focusing on the procedural part of the parties.

The Code of Civil Procedure acknowledges the powers along with limitations on the courts but there are some powers which are vested in the court but not prescribed in the code and those are the Inherent powers. The inherent powers of the court are in addition to the powers specifically conferred by the code on the court. They are complementary to those powers. The court is free to exercise them for the ends of the justice or to prevent the abuse of the process of court. The main aim of this study is to find out the relevant sections dealing with inherent powers of court under CPC, to analyse how the court exercise its inherent powers, to find out the scope of inherent powers exercised by the court under section 151 of the CPC, to understand what are the limitations of the inherent powers of the court.

The word "Inherent" is very wide in itself. It means existing and inseperable from something, a permanent attribute or quality, an essential element, something intrinsic, or essential, vested in or attached to a person or office as a right of privilege. Hence, inherent powers are such powers which are inalienable from courts and may be exercised by a court to do full and complete justice between the parties before it.

There are many sections in the CPC that provides for the same.

Section 148 of CPC, reads as Enlargement of time:- Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period [not exceeding thirty days in total], even though the period originally fixed or granted may have expired.

Section 148-A of CPC, gives right to lodge a caveat.

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

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

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

Section 152 of CPC, Amendment of judgements, decrees or orders:- Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.

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

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

Exercise of Inherent Powers by the Court

Principle of Judicial Interpretations.

In the cases where the C.P.C does not deal with, the Court will exercise its inherent power to do justice. If there are specific provision of the C.P.C dealing with the specific issue and they expressly or by basic implication, then the inherent powers of the Court cannot be invoked as inherent powers itself means those which are not specified in C.P.C.

The section confers on the judges to make such orders that may be necessary to make justice achievable. The Power can be invoked to support the provisions of the code but not to override or evade other express provisions as C.P.C. is the basic law which governs the functioning of the courts.

Alternative for 'No other remedy'

In the absence of any special circumstances which amount to abuse of the process of the Court, it cannot grant a relief in exercise of its inherent power when the justice can be served by another remedy is available to the party concerned provided by the Code.

1. No Powers over the Substantive Rights

The inherent powers saved by s. 151 of the Code are not over the substantive rights which any litigant possesses. Specific powers have to be conferred on the Courts for passing such orders.

In Ram Chand and Sons Sugar Mills v. Kanhayalal : the SC held that the Court would not exercise its inherent power under S.151 CPC if it was inconsistent with the powers expressly or impliedly conferred by other provisions of Code. It had opined that the Court had an undoubted power to make a suitable order to prevent the abuse of the process of the Court.

The Apex Court in M/s Jaipur Mineral Development Syndicate v. The Commissioner of I.T, has maintained that the Courts had power under Section 151, in the absence of any express or implied prohibition, to pass an order as may be necessary for the ends of justice or to prevent the abuse of the process of the Court.

2. To Advance Interests of Justice

In M/s. Ram Chand & Sons Sugar Mills Pvt. Ltd. Barabanki (U.P.) v. Kanhayalal Bhargava, the appellant contended that during the pendency of the first suit, certain subsequent events had taken place due to which the first was not fruitful and in law the said suit could not be kept pending and continued solely for the purpose of continuing an interim order made in the said suit. While examining the question the Supreme Court was to consider whether the court can take cognizance of a subsequent event to decide whether the pending suit should be disposed or not. The question arose was whether, a defendant could make an application under Section 151 CPC for dismissing the pending suit on the ground that the said suit has lost its cause of action. The Court upheld the contention.

3. Restoration of Money Suit

Bahadur Pradhani v. Gopal Patel. In this case the plaint of a Money Suit was rejected for nonpayment of deficit court fee within the time granted by the court. The plaintiff filed a petition under Section 151, C.P.C. for restoration of the suit in the ends of justice. The court allowed the petition and the suit was restored to file. This Court examined the scope of the inherent powers of the Court and expressed that the provisions of the Code do not control the inherent powers of the court by limiting it or otherwise affecting it. It is a power inherent in the court by virtue of its duties to do justice between the parties before it.

4. When there is no scope for getting any relief

It was held in the case of Manoharlal v. Seth Hiralal that the provisions of the Code are not exhaustive as the legislature is incapable of contemplating all possible circumstances which may arise in future litigation.

5. Enlargement of Time: Section 148

The court has power to enlarge the said period even if the original period fixed has been expired. Where the court in exercise of its jurisdiction can grant time to do a thing, in the absence of the specific provision to the contrary, denying or withholding such jurisdiction, the jurisdiction to grant time would include in its ambit the jurisdiction to extend time initially fixed by it. This power is discretionary and so the court is entitled to take into account the conduct of the party praying for such extension. The party cannot claim this power as their right.

In the words of J. Hidayatullah, "conditional orders are not like the laws of Medes and Persians". As J. Desai states, "the danger inherent in passing conditional orders becomes self-evident because that by itself may result in taking away jurisdiction conferred on the court for just decision of the case. The true purpose of conditional orders is that such orders merely create something like a guarantee or sanction for obedience of the court's order but would not take away the court's jurisdiction to act according to the mandate of the statute or the relevant equitable considerations if the statute does not deny such considerations".

6. Payment of Court Fees: Section 149

The Section 149 of the Code authorizes the court to allow a party to make up the deficiency of court fees payable on a plaint, memorandum of appeal, etc. even after the expiry of the period of limitation prescribed for filing of such suit, appeal etc. Under the provisions of S. 149, C.P.C., as a practice, the courts grants time for payment of the court-fee on coming to an adverse conclusion on a pauper application. Section 4 of the Court Fees Act, 1870 provides that no document chargeable with court fee under the act shall be filed or recorded on any court of justice, unless the requisite court fee is paid.

7. Amendment of Judgement, Decrees, Orders and other Records: Sec. 152, 153-153A

Sec. 152 of the Code of Civil Procedure endorses that clerical or arithmetical mistakes in judgements, decree or orders arising from any accidental slip or omission may at any time be corrected by court suo motu or on application of any other parties. The section is based upon two essential principles:

- It is duty of the court to see that their records are true and they present the correct state of affairs.
- An act of court should not prejudice any party.

Scope of Inherent Power u/s 151, CPC

More than seven decades back, the Privy Council in the case of Emperor v. Khwaja Nazir Ahmed, observed that Section 561A (corresponding to Section 482 of the Code) had not given increased powers to the Court which it did not possess before that section was enacted. It was observed:

> *"The section gives no new powers, it only provides that those which the court already inherently possess shall be preserved and is inserted lest, as their Lordships think, it should be considered that the only powers possessed by the court are those expressly conferred by the Criminal Procedure Code and that no inherent power had survived the passing of the Code."*

In the very recent verdict of K.K. Velusamy v. N. Palaanisamy, the Hon'ble Supreme Court upheld that Section 151 of the Code recognizes the discretionary power inherited by every court as a necessary corollary for rendering justice in accordance with law, to do what is "right" and undo what is "wrong".

The Court summarized the scope of Section 151 of the CPC as follows:

a. Section 151 is not a substantive provision which confers any power or jurisdiction on courts. It merely recognizes the discretionary power of every court for rendering justice in accordance with law, to do what is `right" and undo what is `wrong", that is, to do all things necessary to secure the ends of justice and prevent abuse of its process.
b. The provisions of the Code are not exhaustive; section 151 says that if the Code does not expressly or impliedly cover any particular procedural aspect, the inherent power can be used by the court to deal with such situation, to achieve the ends of justice, depending upon the facts and circumstances of the case.
c. A Court has no power to do things which is prohibited by law or the Code, in the exercise of its inherent powers. The court cannot make use of the special provisions of Section 151 of the Code, where the remedy or procedure is expressly provided in the Code.
d. The inherent powers of the court being complementary to the powers specifically conferred, a court is free to exercise them and the court should exercise it in a way that it should not be in conflict with what has been expressly provided in the Code.
e. While exercising the inherent power, there is no such legislative guidance to deal with those special situations of the case and so the exercise of power depends upon the discretion and wisdom of the court, and also upon the facts and circumstances of the case. So, such consequential situation should not however be treated as a carte blanche to grant any relief.
f. The power under section 151 will have to be used with care, only where it is absolutely necessary, when there is no provision in the Code governing the matter or when the bona fides of the applicant cannot be doubted or when such exercise is to meet the ends of justice and to prevent abuse of process of court.

Limitations of these Powers

i. They can be exercised only in the absence of express provisions in the code.
ii. They can't be exercised in conflict with expressly provision in the code.
iii. They can be exercised in exceptional cases.
iv. While exercising the powers, the court has to follow the procedure prescribed by the legislature.
v. Courts cannot exercise jurisdiction not vested in them by law;39 vi) To abide by the doctrine of Res Judicata i.e., not to open the issues which have already been decided finally.
vi. To direct an arbitrator to make an award afresh.
vii. Substantive rights of the parties shall not be taken away.
viii. To restrain a party from taking proceedings in a court of law.
ix. To set aside an order which was right at the time of its issuance.

16. Limitations in Civil Suits

- For every appeal, there is a limited period, within which appeal should be filed. Such a limitation is provided under the Limitation Act, 1963.
- For appeal, in case of a decree passed by lower court in civil suit, the limitation is :
- Appeal to High Court - 90 days from the date of decree Or order.
- Appeal to any other court - 30 days from the date of Decree or order.
- In case there are more than one plaintiffs or defendants, then any one of them can file on appeal against all of them respectively.
- Merely because an appeal is filed, does not mean that the order or decree of lower court is stayed. In case of temporary stay of decree or order, it has to be specifically asked, and stay will operate only if court grants it.
- In case of execution of decree, the court, which passed the decree, can itself stay the execution for time being on sufficient reasons shown.
- The court may require the appellant to deposit some sort of security.
- The appellate court may, on the day fixed for hearing the appellant dismiss the appeal, or issue notice to the opposite party to appear on next day.
- If on the first day of hearing, appellate court issues summons to the opposite party, then :
- It shall fix a date for next hearing, and such date shall be published in the court house.

- Notice shall also be sent to the lower court, whose decree or order has been appealed.
- To appellant is required to file " Process Fee " which is very nominal in amount, and on such filing, the notice shall also be sent to opposite party.
- In case of appeal, the one who files the appeal is known as appellant, and against whom it is filed, is known as "Respondent".

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