SPECIAL SUITS

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1. Suits by or against Government

Section 79 to 82 and Order 27 of the Civil Procedure Code, 1908 lay down procedure where suits are brought by or against the Government or Public officers. The provisions provides for the procedure only not about rights and liabilities. Substantive right has to be find accordance with the provisions of the Constitution. These provisions gives no cause of action but only declares the mode of procedure when a cause of action has arisen. Under Civil Procedure Code, 1908 Section deal with provisions of a substantive nature and lays down general principles and Orders deals with procedure, manner and mode in which general principle can be exercised. Similarly Section 79 to 82 provides for the general principles and Order 27 prescribe the procedure in which general rules provided under Section 79 to 82 can be exercised.

Name of party in Suit

Section 79 of the Code provides that in a suit by or against the Government the authority to be named as Plaintiff & Defendant in case of (i) Central govt. Union of India & (ii) State Government the State.

Section 79 being a procedural provision, substantial compliance with the requirements thereof is Sufficient. The Supreme Court declared that procedural law clearly specifies the situation in which Government is required to be made a party and the law to this regard is settled that if the Government is not made a party, the litigation cannot be proceeded.

In **Chief Conservator of Forests, Government of A.P. v. Collector**, Supreme Court has observed that the requirement of provision contained in Section 79 CPC is not merely a procedural formality, but is essentially a matter of substance and of considerable significance whereby the special provision as to how the Central Government or the State Government may sue or be sued has been indicated, the authority to be named as plaintiff or defendant, as the case may be, shall be

a. in the case of a suit by or against the Central Government, the Union of India, and
b. in the case of a suit by or against a State Government, the State.

Notice under Section 80 of Civil Procedure Code, 1908:

In suits between individuals and individuals, notice need not be given to the defendant by the plaintiff before filing a suit but under Section 80 it is provided that notice has to be given in a suit against Government or public officer in respect of any act purporting to be done by such public officer in his official capacity.

Section 80 of the Code provides that no suit shall be instituted against the Government or against a public officer in respect of any act purporting to be done by such public office in his official capacity until the expiration of two month next after notice in writing has been delivered to, or left at the office of:

i. in case of the suit against the Central Govt., except where it relates to a railway, a Secretary to that Govt;
ii. in the case of a suit against the Central Govt. where it relates to a railway, the General manager to that railway;
iii. in the case of a suit against the Govt. of the State of Jammu and Kashmir, the Chief Secretary to that Govt. or any other officer authorized by that Govt. in that behalf;
iv. in the case of a suit against any other state Govt.. a Secretary to that Govt. or the Collector of the district; and
v. in the case of a public officer, such public officer.

Further it provides that with the permission of the Court, a suit can be instituted without serving the notice where an urgent or immediate relief is needed. Provided that Court shall return the Plaint if found that there is no need of immediate or urgent relief.

The Section enumerates two types of case:

1. Suit against Government; and
2. Suit against public officers in respect of acts done or purporting to be done by such public officers in their official capacity.

Regarding the first class of cases the notice must be given in all cases. Regarding the second class of cases, however, notice is necessary only where the suit is in respect of any act "purporting to be done" by such public officer in the discharge of his duty, and not otherwise.

The three essential requirements of S. 80 are: first, the addressee should be identified and must have received the communication; secondly, there should be no vagueness or indefiniteness about the person giving the notice, who must also be the person filing the suit and the notice must also give the details which are specified in S. 80; and, thirdly, the two months" time allowed must expire before the suit is laid. Once these requirements are fulfilled minor details like the mis description of the person to whom the communication is addressed should not make it an improper notice which does not comply with the requirements of S. 80, C.P.C.

The object of the notice required by this section is to give the Secretary of State or the public officer an opportunity to reconsider his legal position and make amends or settle the claim, if so advised, without litigation6 or afford restitution without recourse to a court of law. When a statutory notice is issued to public authorities, they must take the notice in all seriousness and they should not sit over it and force the citizen to the vagaries of litigation. They are expected to let the claimant (who has given notice), know, what stand they take, within the statutory period, or, in any case before the plaintiff embarks upon litigation.

The Government, unlike private parties, is expected to consider the matter covered by the notice in a most objective manner, after obtaining such legal advice as they may think fit, and take a decision in public interest within the period of two months allowed by the section as to whether the claim is just and reasonable and the contemplated suit should, therefore, be avoided by speedy negotiations and settlement or whether the claim should be resisted by fighting out the suit if and when it is instituted7 The aim is to that the researcher focused on salient features

of limitation Act it also deals with objectives and Halsbury's laws in England which relates with case laws.

In **Bihari Chowdhary v. State Of Bihar**, Supreme Court has Highlighted the object of Section 80 of the civil procedure code "When we examine the scheme of the Section it becomes obvious that the Section has been enacted as a measure of public policy with the object of ensuring that before a suit is instituted against the Government or a public officer, the Government or the officer concerned is afforded an opportunity to scrutinize the claim in respect of which the suit is proposed to be filed and if it be found to be a just claim, to take immediate action and thereby avoid unnecessary litigation and save public time and money by settling the claim without driving the person, who has issued the notice, to institute the suit involving considerable expenditure and delay. The Government, unlike private parties, is expected to consider the matter covered by the notice in a most objective manner, after obtaining such legal advice as they may think fit, and take a decision in public interest within the period of two months allowed by the Section as to whether the claim is just and reasonable and the contemplated suit should, therefore, be avoided by speedy negotiations and settlement or whether the claim should be resisted by fighting out the suit if and when it is instituted. There is clearly a public purpose underlying the mandatory provision contained in the Section insisting on the issuance of a notice setting out the particulars of the proposed suit and giving two months" time to Government or a public officer before a suit can be instituted against them. The object of the Section is the advancement of justice and the securing of public good by avoidance of unnecessary litigation."

Scope and its Applicability

This section is explicit and mandatory and admits of no implications or exceptions. the language of this section is imperative and absolutely debars a court from entertaining a suit instituted without compliance with its provisions. If the provisions of the section are not complied with, the plaint must be rejected under O. 7, R. 11(d).

Notice under Section 80(1) of CPC, 1908 is the first step in the ligation against govt. or public officer.

A statutory body may be an instrumentality of the state within the meaning of Art. 12 of the Constitution, nevertheless, it would not answer the description of "government" as it is understood in law and in the context of S. 80.

A notice given before the cause of action has arisen is invalid. Issuance of a notice is a condition precedent for the institution of a suit but it does not become a part of the cause of action. Whether or not a notice forms an integral part of the cause of action against the govt. depends upon the scheme of the relevant statue and no rule of universal application can be laid down.

The question has to be decided by reading the whole notice in totality and in a reasonable manner. If the notice on such a reading the court is satisfied that the information which was necessarily to be provided to the defendants by the plaintiff was in fact provided, inconsequential defects or error is immaterial and will not vitiate the notice. The provisions of the section are not intended to be use as booby-traps against ignorant and illiterate persons.

A plaintiff who gives notice under Section 80 and institutes a suit before two month, but is allowed to withdraw the same with liberty to file a fresh suit, is entitled to institute a fresh suit without a fresh notice.

Where notice of a proposed suit is once given, it is not necessary to give a fresh notice of two month, if the plaint has to be amended owing to discovery of facts not within the plaintiff's knowledge at the time of institution of the suit or for adding further grounds for the case of action already discovered or when new facts have arisen subsequent to the suit. But no amendment will be allowed if the effect of the amendment is to convert the suit into another of a different character. The suit must be brought after giving fresh notice as required by this section.

A writ petition under Article 32 or 226 of the Constitution cannot be said to be a "suit" within the meaning of Section 80 of the Code. Hence giving prior notice to the government or public officer is not necessary before filing a petition in the Supreme Court or in a High Court.

Section 80 provision is made for the benefit of the party, namely, the State or the public officer, as the case may be and in a given case it is open to the party for whose benefit the provision has been made to waive the compliance with the requirements of such a provision. The Judicial Committee held that Section 80 of the Code of Civil Procedure was explicit and mandatory; but still it held that it could be waived by the authority for whose benefit that was provided. There is no reason why the notice should not be waived if the authority concerned thinks fit to waive it.

This provision cast an implied duty on all concerned governments and States and statutory authorities to send appropriate reply to such notices. Having regard to the existing state of affairs, Court has direct all concerned governments, Central or State or other authorities, whenever any statute requires service of notice as a condition precedent for filing of suit or other proceedings against it, to nominate, an officer who shall be made responsible to ensure that replies to notices under Section 80 or similar provisions are sent within the period stipulated in a particular legislation. The replies shall be sent after due application of mind. Despite such nomination, if the Court finds that either the notice has not been replied or reply is evasive and vague and has been sent without proper application of mind, the Court shall ordinarily award heavy cost against the Government.

Public Officer

Section 2(17) of CPC, 1908 provides for the exhaustive list of public officer. It provides that who all are public officer. According to that list this Section applies on Public Officers.

According to the concise Oxford Dictionary, to "purport" in this context means to "be intended to seem". Applying this meaning, the word "any act purporting to be done by such public officer in his official capacity" means any act "intended to seem" to be done by him in his official capacity. If the act was one such as is ordinarily done by officer in the course of his official duties, and he considered himself to be acting as a public officer and desired other persons to consider that he was so acting, the act clearly "purports to be done in his official capacity" within the ordinary meaning of the term "purport. It follows that notice to a public officer is not necessary where the act done by him is not within his sphere of duties.

The Suits referred to in section are suits against the public officer personally in respect of acts done in his official capacity. The public officer cannot be sued in his official name, unless he is a corporation sole.

The latest decisions of all the High Courts are in favour of the view that notice is necessary even if the act is done mala fide; and it has been held that a notice is necessary when a suit is filed against a police officer for malicious prosecution.

Institution of Suit without Notice against Government or Public officer

Section 80(2) is in the nature of an exception to Section 80(1) and enables the plaintiff to file a suit to obtain an urgent and immediate relief without serving any notice as required by Subsection (1) subject to the condition that such a suit has to be filed with leave of the Court. The most important condition envisaged under Section 80(2) is relating to urgency in the matter. Where the Court is satisfied that urgent on immediate relief is required and the plaintiff would not be in a position to wail for the period of notice to expire, leave may be granted to a plaintiff to file suit against the State without service of notice contemplated under Section 80(1). Even in such cases where leave is granted, the Court is enjoined not to grant relief in the suit, whether interim or otherwise, without giving the State reasonable opportunity of showing cause in respect of the relief sought for in the suit. As indicated in the proviso, if upon hearing the parties, the Court is satisfied that no urgent or immediate relief need be granted, the Court is to return the plaint for presentation after complying with the requirement regarding service of notice contemplated under Section 80(1).

While considering the application under Section 80(2), CPC, and plaintiff must plead and prove that the suit is filed to obtain urgent or immediate relief against the Government or any public officer in respect of any act purporting to be done by such public officer in his official capacity, suit can be instituted with the leave of the Court. Thus, it is necessary to consider urgency and immediate relief against the Government or public officer. Basic requirement is that if such urgent and immediate relief is not granted then the plaintiff is likely to suffer irreparable injury or loss which cannot be compensated. In the matter of recovery, if some amount is paid, that is liable to be refunded. As such, there was no urgency in the matter. Until and unless urgency or immediate relief is shown to the Court, the Court cannot grant permission mechanically.

The mode or form of request or grant are not material. What is material is only the substance, whether there was a proper request and whether it was considered and granted. Request with grounds, if any, must be there and there need only be indications as to whether it is allowed or not, even though a reasoned order may be good and an application is also appreciable.

A plaintiff intending to institute a suit against the Govt. has two options before him, either he may file a suit after serving two months' notice under Section 80 C.P.C. or he may file the suit without serving the notice but in that event he must satisfy the court that an urgent and immediate relief is required and also obtain previous leave of the court. In the event of the first course being adopted the suit cannot be filed before the expiry of the two months of giving of the notice and this explains the reason for using the word 'shall' in Sub-clause (1) of Section 80 C.P.C. by the Parliament. However, in the second case he has the choice to file the suit without giving the requisite notice but only after obtaining leave of the court and it is for this purpose that the word 'may' has been used in Clause (2) of Section 80 C.P.C.

Technical defect or error in notice: Section 80(3):

Section 80(3) provides that no suit instituted against the Govt. or Public officer shall be dismissed merely on ground of error or defect in the notice, if, in such, the name, description and residence of the plaintiff had been so given as to enable the authority or public officer to identify the person serving the notice and such notice had been delivered or left at the office of the authority or public officer and the cause of action and the relief claimed by the plaintiff had been substantially indicated therein.

The amendment to the code was made with the intention that justice is not denied to the aggravated parties on the grounds of technical defects. Therefore, a notice under section 80 cannot be held to be invalid and no suit can be dismissed on the grounds that there has been a certain technical defect or error in the notice delivered or on the ground that such notice was served in an improper way.

Exemption from arrest and personal appearance (Section 81):

Section 81 of the code provides that in a suit against a public officer of any act purporting to be done in his official capacity i.e. act of public officer as mentioned above, he has an exemption from arrest and from attachment of his property until execution of decree. Further if defendant that is public officer cannot absent himself from his duty, then he has exemption from personal appearance during ongoing suit.

Execution of decree (Section 82):

Section 82 provides that in a suit by or against govt. or public officer, decree is pass against govt. or public officer it will not be executed unless it remains unsatisfied for the period of three months computed from the date of such decree. Further it provides that this provision regarding execution of decree will apply on an order or award passed by any court or by any other authority or if it were capable of being executed under this code or under any other law in force as if it were a decree.

The section has been amended so as to eliminate certain cumbersome requirements. Before amendment a court had to send a report to the state government before ordering. The decree cannot be executed unless all the condition are complied with.

Procedure (Order 27):

Order 27 Rule 1 of CPC, 1908 provides that in a suit by or against govt. a plaint or written statement shall be signed by a person who has appointed for this by govt. Further it shall be verified by a person who is acquainted with the facts and appointed by govt. for verification.

The sanction to sign must be prior to the institution otherwise the signing shall be by an incompetent person. A retrospective sanction cannot cure the defect.

Order 27 Rule 2 provides that Person authorized to act for the Govt. in respect of any judicial proceeding shall be deemed to be recognized agent by whom appearance, acts and applications under this code may be made or done on behalf of Government.

Order 27 Rule 3 provides that in a plaint of a suit by or against govt. instead of providing all detail of plaintiff or defendant it is sufficient to insert appropriate name as provided in section 79 of CPC, 1908.

Order 27 Rule 4 provides that Government Pleader shall be the agent of Govt. for the purpose of receiving processes against the Govt. by Court.

Govt. Pleader is only to intimate the court that he is representing the Govt. No stamped power of attorney or vakalatnama is required. A person other that the Govt. pleader can act only when the latter intimates to the court that the former is acting under his direction. The Government like any other litigant can engage as many as advocates as it thinks necessary.

Order 27 Rule 5 provides that court will allow a reasonably time to govt. to answer the plaint so as to make necessary communication between govt. and govt. pleader. The time shall not be exceeded more than 2 months.

The benefit of Rule 5 is available to the govt. after it has made it appearance also.

Order 27 Rule 5A provides that in suit against a public officer in respect of any act alleged to have been done by him in his official capacity, the govt. shall be joined as a party to a suit.

Order 27 Rule 5B provides that it is a duty of a court in any case against a govt. or public officer acting in his official capacity to make attempt at first instance for the settlement of disputes between parties. Further if finds at any stage of proceeding that there is reasonable possibility for settlement between parties court will adjourn the case for such a time to enable attempt to solve a dispute.

Order 27 Rule 6 provides that court can direct attendance of person who is able to answer any material question relating to the suit against a govt.

2. Suits by Indigent Persons

Order 33 deals with suits filed by '*indigent persons*'. The provisions of Order 33 are intended to enable indigent persons to institute and prosecute suits without payment of any court fees. Generally, a plaintiff suing in a court of law is bound to pay court fees prescribed under the Court Fees Act at the time of presentation of plaint. But a person may be too poor to pay the requisite court fee. This order exempts such person from the court fee at the first instance and allows him to prosecute his suit in *forma pauperis,* provided he satisfies certain conditions laid down in the order.

An indigent person is defined in explanation one to Rule 1 according to which is a person is an 'indigent' person:

- if he is not possessed of sufficient means (other than property exempt from attachment in execution of a decree and the subject-matter of the suit) to enable him to pay the fee prescribed by law for the plaint in such suit, or
- where no such fee is prescribed, if he is not entitled to property worth one thousand rupees other than the property exempt from attachment in execution of a decree, and the subject-matter of the suit.

Any property which is acquired by a person after the presentation of his application for permission to sue as an indigent person, and before the decision of the application, shall be taken into account in considering the question whether or not the applicant is an indigent person.

In **A.A. Haja Muniuddin v. Indian Railway**, Hon'ble Supreme Court has observed:

> *"Access to justice cannot be denied to an individual merely because he does not have the means to pay the prescribed fee."*

In **Union Bank of India v. Khader International Construction**, Hon'ble Supreme Court has held:

> *"Order 33 CPC is an enabling provision which allows filing of a suit by an indigent person without paying the court fee at the initial stage. If the plaintiff ultimately succeeds in the suit, the court would calculate the amount of court fee which would have been paid by the plaintiff if he had not been permitted to sue as an indigent person and that amount would be recoverable by the State from any party ordered by the decree to pay the same. It is further provided that when the suit is dismissed, then also the State would take steps to recover the court fee payable by the plaintiff and this court fee shall be a first charge on the subject- matter of the suit. So there is only a provision for the deferred payment of the court fees and this benevolent provision is intended to help the poor litigants who are unable to pay the requisite court fee to file a suit because of their poverty.*
>
> *Explanation I to Rule 1 Order 33 states that an indigent person is one who is not possessed of sufficient amount (other than property exempt from attachment in execution of a decree and the subject-matter of the suit) to enable him to pay the fee prescribed by law for the plaint in such suit. It is further provided that where no such fee is prescribed, if such person is not entitled to property worth one thousand rupees other than the property exempt from attachment in execution of a decree and the subject-matter of the suit he would be an indigent person."*

<u>Inquiry into the Means of an Indigent Person</u>

Order 33 rule 1-A states that in the first instance, an inquiry into the means of the applicant should be made by the Chief Ministerial Officer of the court. The court may adopt the report submitted by such officer or may itself make an enquiry.

Order 33 rule 4 states that where the application submitted by the applicant is in proper form and is duly represented, the court may examine the applicant regarding the merits of the claim and the property of the applicant.

Order 33 rule 6 states that the court shall then issue notice to the opposite party and to the Government pleader and fix a day for receiving evidence as the applicant may adduce in proof of his indigency or in disproof thereof by the opposite party or by the Government Pleader. On the day fixed, the court shall examine the witnesses (if any), produced by either party, hear their arguments and either allow or reject the application.

Contents of Application

As per Order 33 Rule 2, every application for permission to sue as an indigent person should contain the following particulars:

1. The particulars required in regard to plaints to suits;
2. A schedule of any movable or immovable property belonging to the applicant with the estimated value thereof; and
3. Signature and verification as provided in Order 6 Rules 14 and 15.

The application should be presented by the applicant to the court in person unless exempted by the court. Where there are two or more plaintiffs, it can be presented by any of them. The suit commences from the moment an application to sue in forma pauperis is presented.

Rejection of Application

As per Order 33 Rule 5, the court will reject an application for permission to sue as an indigent person in the following cases:

1. Where the application is not framed and presented in the prescribed manner; or
2. Where the applicant is not an indigent person; or
3. Where the applicant has, within two months before the presentation of the application, disposed of any property fraudulently or in order to get permission to sue as an indigent person; or
4. Where there is no cause of action; or
5. Where the applicant has entered into an agreement with reference to the subject-matter of the suit under which another person has obtained interest; or
6. Where the suit appears to be barred by law; or
7. Where any other person has entered into an agreement with the applicant to finance costs of the litigation.
8. When permission is granted: Rules 8-9A
9. Where an application to sue as a indigent person is granted, it shall be deemed to be a plaint in the suit and shall proceed in the ordinary manner, except that the plaintiff will not have to pay court fees or process fees.

The court may assign a pleader to an indigent person if he is not represented by a pleader. The central government or the State government may make provisions for rendering free legal aid and services to indigent persons to prosecute their cases. A defendant can also plead set-off or counter claim as an indigent person.

Where permission is rejected: Rules 15-15A

Where the court rejects an application to sue as an indigent person, it will grant time to the applicant to pay court fees. An order refusing to allow an applicant to sue as an indigent person shall be a bar to a subsequent similar application. However, this does not debar him from suing in an ordinary manner, provided he pays the costs incurred by the Government pleader and the opposite party in opposing the application.

Revocation of Permission

Order 33 Rule 9 states that the court may, on an application by the defendant or by the Government pleader, revoke permission granted to the plaintiff to sue as an indigent person in the following cases:

1. Where he is in guilty of vexatious or improper conduct in the course of the suit; or
2. Where his means are such that he ought not to continue to sue as an indigent person; or
3. Where he has entered into an agreement under which another person has obtained an interest in the subject-matter of the suit.

Costs

Order 33 Rule 16 states that the costs of an application to sue as an indigent person shall be the costs in the suit.

1. ***Where indigent person succeeds:*** As per Rule 10 where the plaintiff (indigent person) succeeds in the suit, the court shall calculate the amount of court fees and costs and recover from the party as ordered by the court.
2. ***Where indigent person fails:*** As per Rule 11 and Rule 11-A where the plaintiff (indigent person) fails or the suit abates, the court shall order him (plaintiff) to pay court fees and costs.

Realization of Court Fees

Where an indigent person succeeds in a suit, the state government can recover court fees from the party as per the direction in the decree and it will be the first charge on the subject-matter of the suit. Where an indigent person fails in the suit, the court fees shall be paid by him. Where the suit abates on account of the death of a plaintiff, such court fees would be recovered from the estate of the deceased plaintiff.

Appeals by Indigent Persons

As per Order 44 Rule 1, any person entitled to prefer an appeal, who is unable to pay court fee required for memorandum of appeal, may present an application accompanied by a memorandum of appeal, and may be allowed to appeal as an indigent person.

The present position is that an indigent person may also file an appeal on all the grounds available to an ordinary person. An indigent person can also file cross-objections.

3. Interpleader Suits

An interpleader suit is one in which the real dispute is between the defendants only and the defendants interplead, that is to say plead against each other instead of pleading against the plaintiff as in ordinary suit. In every interpleader suit, there must be some debt or sum of money or other property in dispute between the defendants only, and the plaintiffs must be a person who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to such of the defendants as may be declared by the court to be entitled to it.

Who claims no interest other than for charges or costs. These words indicate that the plaintiff in an interpleader suit must be in a real position of impartiality.

Illustration: A holds in his hands a sum of Rs. 10,000 which is claimed by B and C adversely to each other. A institutes an interpleader suit against B and C. It is found at the hearing that A had entered into an agreement with B before the institution of the suit that if B succeeded in the suit he should accept from A Rs. 9,000 only in full satisfaction of his claim. Here A has, by virtue of the agreement, an interest in the subject matter of the suit, and he is not, therefore, entitled to institute an interpleader suit. The suit must be dismissed.

A party who has taken an indemnity from one of the claimants is not entitled to file an interpleader suit. A suit is not necessarily an interpleader suit and subject to the provisions of this section, merely because one of the reliefs claimed by the plaintiff requires the defendants to interplead together concerning certain claims. A plaint in an interpleader suit can be amended by inclusion of new properties and joiner of new parties.

Interpleader Suit when Initiated

Section-88: Where two or more persons claim adversely to one another the same debt, sum of money or other property, movable or immovable, from another person, who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made and of obtaining indemnity for himself:

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

"To interplead" means "to litigate with each other to settle a point concerning a third party." Meaning thereby, an 'interpleader suit' is a suit in which the real dispute is not between the plaintiffs and defendants but between the defendants only and the plaintiff is not really interested in the subject-matter of the suit.

Conditions to Institute Interpleader Suit

Following conditions must be satisfied to institute an interpleader suit:

a) there must be some debt, sum of money or other property movable or immovable in dispute;
b) two or more persons must be claiming it adversely to one another;
c) the person from whom such debt, money or property is claimed, must not be claiming any interest therein other than the charges and costs and he must be ready to pay or deliver it to rightful claimant; and
d) there must be no suit pending in which the rights of the rival claimants can be properly decided.

Test

In order to determine whether a suit is an interpleader suit under the section the Court must have regard to all the prayers in the plaint. The mere fact that the plaintiff requires the defendants to interplead as regards one of the reliefs claimed would not necessarily make it an interpleader suit.

Order 35, Rule 5 does not bar all interpleader suits as against the landlord. It bars such a suit when a claim adverse to the landlord is put forward by a person not claiming through the landlord himself i.e. when such an adverse claim is put forward on a title independent of the landlord.

Claims must be Bonafide and Adverse to one another

The claims of the defendants must be bonafide ones, though they need not have a common origin. The Court must be satisfied that there is a real question to be tried. A mere pretext of conflicting claims is not sufficient. Where there was no claim or counter claim between the parties, the provisions of S. 88 would not apply. The defendants must also claim the money or property adversely to one another from the plaintiff. A decision given on the claims of the co-defendants in an interpleader suit will operate as res-judicata between them. It is, however, not necessary that the plaintiff must show the existence of an apparent title in each of the defendants claiming the property in dispute. Nor is it necessary that the claims should be legal claims or rights. Equitable claims and rights can be entertained and given effect to.

Claims must be with reference to the same subject-matter

The rival claims must be with reference to the same debt, sum of money, or other property, but not necessarily to the same extent. It is thus not necessary that each of the defendants should claim the whole of the subject-matter of the suit. Similarly, it is not necessary that the plaintiff should admit the claim as made by the rival claimants in its entirety. He may ask them to interplead to the extent he admits liability. Order 6, R. 17 applies to an interpleader suit and if it appears from the pleadings that there is some further property besides the subject-matter of the interpleader suit which is part of the estate but has somehow been omitted from it, it can be brought within the suit by way section does not prevent such a procedure being adopted.

Plaintiff should claim no interest in the subject-matter

The plaintiff must be in an impartial position. If he has, in some way, identified himself with one of the parties, in the sense that it will make a difference to him which of the two succeeds, an interpleader suit will not lie. Thus, a person who has taken an indemnity from one of the claimants, cannot file a suit under this section, though he will not be refused relief, if he has merely a natural affinity for one side rather than the other.

Interpleader Suit Plaint

The conditions necessary for the institution and maintainability of the interpleader suit are;

1. Some debt or money or other property, movable or immovable, is due from the plaintiff,
2. Two or more persons bonafide claim the same adversely to one another from the plaintiff who is not able to know who the rightful claimant is,
3. Plaintiff should not have any interest therein other than for charges or costs,
4. He must be prepared to payor deliver the same to the rightful claimant and for that purpose unconditionally place it at the disposal of the Court and
5. The suit must be instituted bonafide without any collusion for a decree as to the rightful claimant and for obtaining indemnity for himself.

In an interpleader suit it is not open for the Court with limited jurisdiction to direct that the amount deposited should be paid over to one or the other party and such payment is permissible provided the disputing party establishes the claim in Civil Court. Where the plaintiff claims any interest in the concerned property the interpleader suit has to fail.

The Court does not have jurisdiction to travel beyond what-has been admitted by the plaintiff as due from him/her or it. The Court cannot direct any further payment or investigate into any question relating to the transaction alleged between the parties. Tenant cannot file interpleader suit against his landlord.

Payment of thing claimed in court

"May be required to so pay or place it."

Where the subject-matter of the dispute is a chose in action its disposition as the Court may direct is a sufficient compliance with the rule. The Court has a discretion to make such orders as regards the subject-matter in dispute and the party is bound to obey the order before he can ask for any relief in the suit. This is a further condition that will be imposed upon the party to test his bonafides or disinterestedness. If he is not ready to pay or deliver the property to one of the defendants but disputes his title, the suit is not an interpleader suit. But if the plaintiff complies with the order of the Court he is fully discharged from liability. Thus, where the plaintiff pays the amount in dispute into-Court for payment to the right person, but the Court pays it to the wrong person the plaintiff cannot be made responsible for the mistake of the Court but is fully discharged from liability.

Payment to one of the contestants on security

The money paid into Court cannot be handed over to one of the parties pending the suit even on security after the original plaintiff is discharged and one of the rival defendants to the interpleader suit is made a plaintiff. It must be kept under the control of the Court available for payment at any time to the successful party.

Procedure at first hearing

The question whether a party to an interpleader issue shall be treated as plaintiff or defendant must be decided by the real merits of the case and not by the mere form of the issue itself. The Court may in its discretion add a party claiming to be interested in an suit upon his own application.

First hearing

The expression "first hearing" in this rule means the date on which the Court goes into the pleadings in order to understand the contentions of the parties. Hence, the plaintiff in an interpleader suit is entitled to apply to the' Court, as soon as the pleadings have been completed, for being discharged from the suit.

Non-appearance of claimants

On the non-appearance of claimants in a properly instituted interpleader suit the proper course for the Court is laid down under sub-rule (1). It is competent to the Court-

1. to discharge the plaintiff from all liability to the claimants-defendants in respect of the subject-matter in dispute and dismiss him from the suit,

2. to direct the plaintiff to pay the amount into Court to the credit of the proper claimant after deducting his costs.
3. to direct the claimants-defendants to apply for payment and when they appear make one of them a plaintiff and raise an issue, and
4. to restrain by injunction either defendant in a proper case from taking any proceeding against the plaintiff.

Sub-rule. (3)

The sub-rule expressly provides that once the suit has proceeded on trial it shall be tried like any other suit in the ordinary manner, thus attracting the provisions of O.1, R.10 and O.6, R.17 of the Code. The Court can, therefore, allow amendment of plaint by inclusion of certain property in the subject-matter of the suit and by addition of certain parties as defendants.

An appeal lies from an order under this rule.(O.43, R.1, cl.(p).) An order dismissing the interpleader suit itself or an adjudication upon the claims of the defendants in the interpleader suit will, however, be a decree and appealable as such under Section 96 of the Code. An order adding a defendant to an interpleader suit on his application is one passed under O. 1, R. 10 and not under this rule and, as such, is not appealable.

Exceptions as to Agents and Tenants

Interpleader suits by agents

This rule declares a prohibition and its concluding part provides an exception. The reason for the rule seems to be that an agent cannot ordinarily dispute the title of his principal. As to the definitions of agent and principal, see Section 182 of the Contract Act. The relationship between a bank and a customer depositing money in the savings bank account is that of debtor and creditor and not that of agent and principal. Hence, on a dispute as to the ownership of the deposit arising between the customer and a third person, the interpleader suit filed by the Bank would not come within the prohibition of this rule.

Interpleader suits by railway company

A railway company by accepting goods for carriage does not become the agent of the consignor. It merely enters into an independent contract with the consignor. It can therefore file an interpleader suit against the consignor and another party claiming adversely to the consignor.

Interpleader suits by tenants

The prohibition that a tenant cannot file an interpleader proceeding against his landlord is based on the principle that he cannot dispute the title of his landlord during the subsistence of the

tenancy. A tenant cannot therefore bring a suit against his landlord for the purpose of compelling him to interplead with any person other than a person making claim through such landlord.

Charge for plaintiff's costs

This rule provides for the award of costs to the original plaintiff. Such costs when awarded will be deducted from the fund on its being brought to Court or will be a first charge upon the fund or subject-matter. Thus in an interpleader suit which is not properly instituted or which was instituted malafide or with ulterior motive the discretion of the Court in awarding costs as against the plaintiff is not in any way taken away.

But the plaintiff will not be entitled to costs which have been unnecessarily incurred. Appeal. An appeal lies from an order under this rule. (Or.43, R.1, cl.(p).)

End Note:

An 'interpleader suit' is a suit in which the real dispute is not between the plaintiffs and defendants but between the defendants only and the plaintiff is not really interested in the subject-matter of the suit. A suit under this section is called an interpleader suit because the plaintiff is really not interested in the matter, but only the defendants interplead as to their claims. In fact each of the defendants so interpleading is virtually in the position of a plaintiff and his claim will be governed by the rules of the Limitation Act. A reading of S. 88, CPC, would clearly show that the court does not have jurisdiction to travel beyond what has been admitted by the plaintiff as due from him/her or it. The Court cannot direct any further payment or investigate into any question relating to the transaction alleged between the parties.

The claims of the defendants must be bonafide ones, though they need not have a common origin. The Court must be satisfied that there is a real question to be tried. A mere pretext of conflicting claims is not sufficient. Where there was no claim or counter claim between the parties, the provisions of S. 88 would not apply. The defendants must also claim the money or property adversely to one another from the plaintiff. A decision given on the claims of the co-defendants in an interpleader suit will operate as res-judicata between them. It is, however, not necessary that the plaintiff must show the existence of an apparent title in each of the defendants claiming the property in dispute. Nor is it necessary that the claims should be legal claims or rights. Equitable claims and rights can be entertained and given effect to.

4. Summary Procedure

Summary suit or summary procedure is provided under order XXXVII of the Code of Civil Procedure, 1908. The summary suit is a unique legal procedure used for enforcing a right in an efficacious manner as the courts pass judgement without hearing the defence.

While this prima facie would appear to be violative of the cardinal principle of natural justice, Audi Alteram Partem, nobody should be condemned unheard, this procedure is only used in cases where the defendant has no defence and is applicable to only limited subject matters.

Therefore, this gives rise to an interesting question which forms the crux of this paper: What amounts to having no defence? This question is central to the practical application of Or.37 and has been analysed in this paper after considering a catena of recent judgments and provisions under this order.

Nature

A summary suit under order 37 of the Code of Civil Procedure is a legal procedure used for enforcing a right that takes effect faster than ordinary suits as unlike in ordinary suits the courts do not hear the defence.

However it does not violate the principles of Audi Alteram Partem, *nobody should be condemned unheard* as it is used only in certain limited cases (elaborated below under scope) where the defendant has no tenable defence, which is a complex question of law and fact and has been elaborately analysed subsequently.

Object

The object underlying the summary procedure is to ensure an expeditious hearing and disposal of the suit and to prevent unreasonable obstruction by the defendant who has no defence or a frivolous and vexatious defence and to assist expeditious disposal of cases.

The Gujarat High Court in outlining the object of summary suits opined that the sheer purpose of enacting Summary Suits is to give impetus to commerce and industry by inspiring confidence in commercial population that their causes in respect of money claims of liquidating amounts (ascertained amount) would be expeditiously decided and their claims will not hang on for years blocking their money for a long period.

Scope and Extent of Applicability

A summary suit can be instituted in High Courts, City Civil Courts, Courts of Small Causes and any other court notified by the High Court. High Courts can restrict, enlarge or vary the categories of suits to be brought under this order.

As explained above that the object of Summary suits is to aid commercial transactions by a swift redressal mechanism these suits can be instituted only in case of certain specified documents.

The documents such as a bill of exchange, hundies, and promissory notes and suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising on a written contract; or on an enactment, where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a

penalty; or on a guarantee, where the claim against the principal is in respect of a debt or liquidated demand only.

The procedure of Summary Suits

Rules 2 and 3 provide the procedure of summary suits. Under rule 2 after the summons of the suit has been issued to the defendant. The defendant is not entitled to defend Summary suit unless he enters an appearance.

In default of this, the plaintiff will be entitled to an ex-parte decree which is on a different footing to an Ex-Parte decree passed in ordinary suits(the differences have been analysed subsequently).

In the case that the defendant appears, the defendant must apply for leave to defend within ten days from the date of service of summons upon him and such leave will be granted only if the affidavit filed by the defendant discloses such facts as may be deemed to entitle him to defend.

The cases where leave to defend should and shouldn't be granted have been analysed subsequently.

Analysing Summary Suits

Types of interpretations to be applied

As the purpose of summary suits is to act as a welfare mechanism to achieve justice in an expedient manner, the language under Or.37 is to be interpreted liberally, which has been reflected in numerous judgments.

An illustrative example would be the phrase written contracts that have been given the widest possible interpretation as even Invoices/Bills are written contract within the contemplation of Order 37. [KIG Systel Ltd v. Fijitsu ICIM Ltd.]

Difference between a summary suit and original suit

The major difference between ordinary suits and summary suits is that in the later the defendant will get a chance to defend himself only if leave to defend is granted.

Unlike ordinary suits, summary suits are restricted to matters related to bills of exchange, promissory notes and contracts, enactments, guarantees of specified nature. Interestingly Res Judicata is not applicable to summary suits, i.e. summary suits can be filed on the matter directly and substantially in issue in a previous ordinary suit.

In summary suits in the case of non-appearance of the defendant, a decree in favour of the plaintiff is passed easily, whilst in ordinary suits usually, multiple summonses are served and only then an ex-parte order is passed.

Therefore, in Summary, suits setting aside an ex-parte decree is stricter and more stringent and special circumstances for non-appearance need to be set out, while in ordinary suits only

sufficient cause needs to be shown. The difference between special circumstances and sufficient cause has been elucidated below.

Special circumstances and sufficient cause

The two terms have been lucidly juxtaposed in **Karumili Bharathi v. Prichikala Venkatchalam**. The reasons offered by the defendant to explain the special circumstances should be such that he had no possibility of appearing before the Court on a relevant day.

For instance, there was a strike and all the buses were withdrawn and there was no other mode of transport. This may constitute "special circumstances". But if the defendant were to plead that he missed the bus he wanted to board and consequently he could not appear before the Court.

It may constitute a 'sufficient cause', but not a 'special circumstance'. Thus a 'special circumstance' would take with it a 'cause' or 'reason', which prevents a person in such a way that it is almost impossible for him to attend the Court or to perform certain acts which he is required to do.

Thus the 'reason' or 'cause' found in "special circumstances" is stricter or more stringent than in "sufficient cause" and depends on the facts of each case.

Analysing what constitutes no defence

As mentioned above, to proceed with summary suits the defendant must have no tenable defence.

What constitutes conditions when a leave to defend must be granted has been dealt with recently(2016) by the Supreme court in **IDBI Trusteeship Services Ltd v. Hubtown Ltd** held that the position in law with respect to granting of leave to defend a summary suit is that the trial Judge is vested with a discretion which has to result in justice being done on the facts of each case.

The Court explained that at one end of the spectrum is unconditional leave to defend, granted in all cases which present a substantial defence. However, it must be borne in mind that on the other end of the spectrum are frivolous or vexatious defences, which should result in a refusal of leave to defend.

In between these two extremes are various kinds of defences raised which yield conditional leave to defend in most cases. The judgement lays out principles that have been summarized below.

- If the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the plaintiff is not entitled to sign the judgment, and the defendant is ordinarily entitled to unconditional leave to defend;

This reiterates the position laid out in **Precision Steel & Engg. Works vs Prem Deva Niranjan Deva Tayal** where it was held that mere disclosure of facts, not a substantial defence

is the sine qua non. What is a substantial defence depends upon facts and circumstances of each case.

- Even if the defendant raises triable issues, if a doubt is left with the trial judge about the defendant's good faith or the genuineness of the triable issues, or if they are plausible but not probable, the trial judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security.

Moreover, recently in **Uma Shankar Kamal Narain v. MD overseas limited**, the Supreme court upheld previous judgements like **Southern Sales and Sevices v. Sauermilch Design and Handles GMBH**, and the **Sunil Enterprise v. SBI**, and reiterated the principles to be adhered to in the case of a leave to defend summary suit relating to the dishonoured cheques.

It has been held that "Unconditional leave to defend a suit shall not be granted unless the amount as admitted to be due by the Defendant is deposited in Court."

End Note:

It is humbly opined that summary suits act like an ingenious solution to help prevent unreasonable obstructions by a defendant who has no tenable defence.

Summary suits would be beneficial to businesses as unless the defendant is able to demonstrate that he has a substantial defence, the plaintiff is entitled to a judgment.

Order 37 engineers an appropriate mechanism that ensures that the defendant does not prolong the litigation especially as in commercial matters time is of the essence and helps further the cause of Justice.

5. Suits Relating to Public Nuisance

Whether it is the noise of the loudspeakers or the dug up roads, the occurrences of public nuisance are numerous. Unnecessary and incessant honking of horns to blocking the sun in a public park, the concept of nuisance is spanned in a vast sphere of our lives. While earlier, nuisance claims were generally instituted by individuals for damages, public nuisance claims through class litigation and public interest litigations are a relatively new addition in the Indian context. It has to be realized that Environment protection is not a pre-occupation of the educated and the affluent and the disposal and control of toxic waste and governmental regulation of polluting industries is public interest oriented. It is nothing but immense insensitivity of the Indian society that the biggest issue of public nuisance, environment-deterioration, goes unnoticed by most of the people, save a few public spirited people, who take up this responsibility of preserving the environment upon themselves. Public interest litigations (hereinafter PILs) have emerged as an instrument to set the wheels into action and work towards a sustainable environment.

The present paper proceeds in two parts. Part I deals with the concept of public nuisance for the purpose of section 91 of the Code of Civil Procedure 1908. It discusses at length the

procedural of a claim for public nuisance as enlisted in section 91, supported with case laws. Further, it discusses various legal remedies available in a nuisance claim. Part II aims to illuminate the concept of public nuisance with special focus on the spate of litigation directed towards the preservation of environment through the instrument of PILs(public interest litigation).

The Concept Of Nuisance In Indian Jurisprudence

Like major other fields in civil jurisprudence, India borrowed the concept of nuisance from Common Law. Before the conceptualization of the Code of Civil Procedure in 1908, the liabilities incurred in the offence of nuisance emanated from the common law interpretation of 'civil wrongs' that imposed a tortious liability on the wrong-doer. This tortious liability was a capable ground for claiming damages for the injury caused due to the prevalence of the cause of nuisance for a considerable span of time. Therefore, the concept of nuisance is not statutorily developed in the Indian civil jurisprudence. However, through a spate of adjudication on the same, as well as elaborated criminal interpretation of nuisance as well as its application in tort law has given it a definite dimension.

There is no universally accepted definition on nuisance. In fact the term 'nuisance' is incapable of an exact definition. But its concept is well understood. There must be interference with the use or enjoyment of land, or some right over or in connection with it, causing damage to the plaintiff. Halsbury defines it as an injury to the right of a person in possession of property to undisturbed enjoyment of it and results from an improper use by another of his own property. According to Blackstone, it is something that "worketh hurt, inconvenience or damage". The act must result into both danger and injury to cause an actionable nuisance. Acts which seriously interfere with the health, safety, comfort or convenience of the public generally or which tend to degrade public morals have always been considered public nuisances and wrongful acts affecting public. Speaking generally, such acts arise from callous disregard of other people's welfare and interest.

Nuisance can be broadly classified into two categories: private nuisance and public nuisance.

Private nuisance: Nuisance in its conventional sense refers to the offence of private nuisance emanating from the customary right to enjoyment of one's own property without interruption to the extent that the rights of another do not stand to be abridged in the course. Reasonableness plays a crucial role in deciding whether an act constitutes actionable nuisance or not. Since private nuisance is categorically the nuisance caused to individual and not the public at large, it cannot be made the subject of an indictment. However, it can constitute a sufficient cause of action of a civil suit claiming damages and injunction.

Public nuisance: Public nuisance has not categorically been defined in the Code of Civil Procedure, 1908. However, for the purpose of adjudication of the cause, the definition has been borrowed from section 268 of the Indian Penal Code, 1860. According to section 268, a person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

The distinction between private and public nuisance is a matter of fact and not law and can collapse in situations where the right being violated is a public right but the injury is caused to an individual and not the public at large. In many cases it essentially is a question of degree. An example of such a situation is obstruction of a highway affecting houses adjacent to it. In such cases, even though the number of people being affected is not large, the right being violated is public in nature. Unlike private nuisance, public nuisance does not consider easement rights as acceptable defence for nuisance. Merely the fact that the cause of nuisance has been in existence for a long time does not bar any challenge against it as no length of time can legalize a public nuisance.

Public Nuisance In C.P.C.

Public nuisance derives support from section 91 of CPC that lays down the procedure for initiation of a civil suit for the offense of public nuisance. Being purely procedural, the section gives the flexibility of seeking parallel remedies in criminal jurisdiction or damages under law of torts. The marginal note of section 91 reads: public nuisance and other wrongful acts affecting the public. Inclusion of 'other wrongful acts affecting public' besides public nuisance widens the scope of the section to incorporate various situations which although do not fall under the accepted straitjacket definitions of nuisance, yet are a cause of discomfort and inconvenience to the public. For instance, courts have read slaughtering of cattle on a public street or encroachment upon a public street by construction of buildings as legitimate cause of action for a claim for public nuisance by the virtue of it being a wrongful act against public.

Section 91 of CPC states that

1. In the case of a public nuisance the Advocate General or two or more persons having obtained the consent in writing of the Advocate General, may institute a suit, though no special damage has been caused, for a declaration and injunction or for such other relief as may be appropriate to the circumstances of the case.
2. Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.

As per the General Clauses Act 1897, the definition of nuisance for the purpose of section 91, CPC has to be borrowed from section 268 IPC. The definition of nuisance excludes from its ambit the instances of legalized nuisance. Legalized nuisance are cases when the nuisance cause is statutorily approved and in the interest of greater good and social welfare. For instance, the running of railway engines and trains or establishment of the yard, despite being a legitimate cause of nuisance, is not punishable under IPC or a valid ground for invoking Section 91.

Though much hasn't been said about the inclusion of clause 1 in section 91, it is believed that inclusion of the Advocate General as the initiator of the suit for public nuisance was to act as a safety check arrangement to the expansive and broad definition of nuisance and the subjectivity of 'wrongful acts against the public'. Later, by the 1976 amendment, the provision of two or more persons filing a suit for public nuisance with the consent of the advocate general was added to section 91. Such active involvement of the Advocate General in public nuisance suits was to ensure that suits are not initiated with malicious intentions, with the sole purpose of creating impediments for the party alleged with causing nuisance. This rule however does not extend to representative cases when a member of the community whose rights are being

restricted by the act of public nuisance files the claim. In such suits, the leave of the court is not necessary. Even in cases when certain rights are provided to the entire community, but immediate damage by the nuisance occurs to an individual, leave of court is not mandatory.

Clause 2 of Section 91 permits the existence of a parallel suit for the same cause of action in criminal jurisdiction through a PIL or as a civil suit for private claims. It also allows an individual aggravated by the nuisance to file for damages his individual suit. This is primarily so because section 91 in its entirety does not create any rights or deprive anyone of their existing rights. It merely states the procedural guidelines for instituting a civil suit when the cause of action is public nuisance. Consequently, it does not control representative suits under order I, rule 8 or modify the right of a person to sue apart from the provision of this section. This means that if a group initiates a suit for declaration of a particular right, it does not fall under the category of suit for public nuisance and hence mandates the prior approval of the advocate general. However, the existence of such right is a necessary prerequisite. For instance, a suit against a religious procession is maintainable under Section 91 only if the infringement of some right and even if the consequent damage caused is not proved. Similarly, member of the public can maintain a suit for removal of obstruction of a public highway, if his right of passage through it is obstructed, without proof of special damage.

Remedies In Cases Of Public Nuisance

As mentioned above, section 91, clause 2 permits the concomitant existence of individual as well as suits under other laws for relief for public nuisance. Since public nuisance is an offence both in civil and criminal jurisprudence, the reliefs range from punitive to pecuniary (generally in case of private claims). In public nuisance cases, the most common relief is the injunction order for continuing the act causing nuisance or an order for removal of the cause by the magistrate. Therefore, the remedies for public nuisance are:

1. *Criminal Prosecution under such section of chapter XIV of the Indian Penal Code as may be applicable to the case.*

Sections 269 to section 291 enlist provisions for punitory remedies with imprisonment, fine or both. For attracting provisions of chapter XIV, it is not necessary that the annoyance should injuriously affect every single member of the public within the range of operation, it is sufficient that nuisance disturbs the people living in the vicinity.

2. *Removal of nuisance or stopping the nuisance-causing activity by the orders of the magistrate under section 143 and 133, Cr.P.C.*

Section 133 of CrPC allows the magistrate to order removal of the nuisance causing agent or activity from the locality provided that he is satisfied that the nuisance affects or injures number of people enough to attribute ‘public nature’ to the right being violated, the dispute is not of private nature, between two members or groups of public or the dispute is a case of emergency or imminent danger to public interest as in cases of pollution by industries.

3. *Action under this section by the Advocate General, or two or more persons with the leave of the Court where a declaration or injunction or some other appropriate relief is desired to put an end to a public nuisance.*

This is when the remedy is sought under section 91 of the CPC where a suit is filed either by the advocate general himself or by two or more people in representative capacity with the prior consent of the advocate general or the leave of the court. The reliefs available to the parties in such cases are temporary or intermittent injunction if the injury complained of is either irreparable or continuous .Even if no substantial damage is caused by the act, injunction can be granted if the nature of nuisance-causing act is such that it can obstruct public rights in future. Declaration of can also be sought as a remedy.

4. *Action by a private individual, where he has sustained some extraordinary damage by it.*

As mentioned in part I(A), the distinction between private and public nuisance collapses in cases where an individual is caused damage by the act of nuisance which prima facie violates a public right. In such a case, invoking clause 2 of section 91, an individual can file a claim for damages or injunctions for violation for some right without prior consent of the Advocate General or the leave of the Court if there is sufficient proof of violation of his some of his or her existing rights. As per the amended provision, no such sanction is required and independent locus is conferred on every person aggrieved by public nuisance or wrongful act to file a suit for declaration or injunction. For instance, if the petitioner's land that is used by everyone in the village(public right) as a passage is dug for making a channel by the authorities, a sufficient cause of action for initiating a suit under clause 2 of article 91 is created. Apart from this section no individual can maintain an action against another for a relief against public nuisance except on proof of special damage.

Besides civil suits and criminal cases, another way of realizing these remedies is through the instrument of public interest litigations or PILs. In the last two and a half decades, PILs have emerged as a striking balance of citizen-consciousness and judicial activism to work for the welfare of all. The next section of this paper aims to trace the history of PILs in India and their use to check public nuisance detrimental to the environment.

Public Interest Litigation And Public Nuisance

With the break-neck speed of development and mechanisation of human life, the instances of public nuisance have increased considerably. Often, such nuisances, besides causing inconvenience to public, also act to the detriment of the environment. Public Interest Litigations recently, have assumed the importance of being the primary tool for bringing to the notice of judiciary, causes of action against public nuisance damaging the environment.

Public interest litigations have largely been benefitting to the weaker sections of the society who were deterred by practical impediments in approaching the courts. They have also significantly aided the protection and preservation of environment to encourage sustainability. However, the concept of PILs has lately been subjected to it being a tool for harassing private parties in the name of environment, for the mere want of monetary compensation. As this paper

focuses on the use of PILs as a tool for challenging public nuisance and other wrongs against public, the discussions over pros and cons of PILs are defined out of the scope of this paper. Also, the focus being only on public nuisance and environment degradation, other common spheres of action of PILs have been excluded.

Public interest litigation or social interest litigation is principally a litigation in which a person, even though not aggrieved personally, brings an action on behalf of the downtrodden masses for the redressal of their grievances. It may be defined as a litigation undertaken for the purpose of redressing public injury, enforcing public duty and claiming public rights. In India, the trajectory of PILs has been traced in the sphere of constitutional and not civil litigation. This however, does not exclude the possibility of it being filed as a civil suit either in the capacity of a class action under order 1, rule 8 or a public nuisance suit under section 91 of the CPC.

The Indian jurisprudence saw a faint glimpse of the concept of pro bono litigation in a judgment delivered by Justice Krishna Aiyer in **Mumbai Kamgar Sabha v Abdulbhai** which was a case regarding some dispute in payment of bonus. Quoting Justice Aiyer,

> *"Public interest is promoted by a spacious construction of locus standi in our socio-economic circumstances and conceptual latitudinarianism permits taking liberties with individualization of the right to invoke the higher courts where the remedy is shared by a considerable number, particularly when they are weaker. Less litigation, consistent with fair process, is the aim of adjective law.*
>
> *The concept of PILs was spelt out with conviction and clarity in the S.P.Gupta v Union Of India where the Court clarified that it was the court's responsibility to ensure that the instrument of public interest litigation was not being used to garb private profit or political motivation or other oblique considerations other than those in furtherance of justice and public welfare. However, it was the Ratlam Municipality case that broke new ground for using litigation in public interest for removal of nuisance (caused by dismal state of the drains in the locality in the case).*
>
> *PILs with backing of judicial activism became an important means of realizing what was envisaged in Article 48A of the Constitution. There has been an array of public interest litigations raising environmental issues including on water and air pollution, river pollution and management, noise pollution, management and regulation of hazardous waste, regulation of mining and conservation of forest and wildlife resources. The Court(High Court in case of an Article 226 writ and Supreme Court in case of an Article 32 writ), acting as a sentinel to people's fundamental right to a clean environment, has to maintain the delicate balance between encouraging development of the nation and ensuring sustainability of the environment. The Supreme Court through various pronouncements in environment PILs has acknowledged the fact that no development is possible without some adverse effect on the ecology and the environment. Despite that, the theme underlying the judgments is that of sustainable development which as defined in the 1987 report of the World Commission on Environment and Development(Brundtland Report) is , " development that meets the needs of the present without compromising the ability of the future generations to meet their own needs."*

Thus the Supreme Court has not been hesitant in prohibiting nuisance causing acts like blowing loud air horns, bursting firecrackers after 10 P.M. at night which obstructed right to sleep at night and to leisure or even noise cause by religious activities , and other acts of public nuisance obstructing public welfare and greater good.

End Note: Despite availability of remedies in civil, criminal as well as constitutional jurisdiction, public nuisance, garbed behind the need for development, has become a vice which our society has failed to combat successfully. Despite the spate of laws on the subject of environment, we find ourselves in a situation where we are standing at the brink of precipice of sustainability in our environment. More than new laws, what is required is the effective implementation of the existing ones. The State should take up the responsibility to ensure that industries and other development activities with potential to cause irreparable damage to environment or obstruct an important public right by being a cause of nuisance, are kept in statutory check.

6. Suits by or against Minors and Lunatics: Order 32

Minor as defined under Rule 1

A minor is a person who has not attained the age of 18 years. But in the case of a minor of whose person or property a guardian or next friend has been appointed by a court or whose property is under superintendence of a Court of Wards, the age of majority is 21 years.

Nature and Scope

Order 32 prescribes the procedure of suits to which the minors or person of unsound mind are parties.

Object

Order 32 has been specially enacted to protect the interest of minors and persons of unsound mind and to ensure that they are represented in suits or proceedings by persons who are qualified to act as such.

An infant is, in law, regarded as of immature intelligence and discretion and owing to his want of capacity and judgment is disable from binding himself except where it is for his benefit. The law will, as a general principle, treat all acts of an infant which are for his benefit on the same footing as those of an adult, but will not permit him to do anything prejudicial to his own interests.“ Thus, a decree passed against a minor or a lunatic without appointment of a guardian is a nullity and void and not merely voidable.

The provisions of Order 32 reflect principles of natural justice, equality and good conscience, inasmuch as they allow litigation to be prosecuted or defended on behalf of minors, persons of

unsound mind and persons with mental infirmity. In absence of such provisions interest of persons with legal disability are bound to suffer.

Suits by Minors: Rule 1-2A

Every suit by a minor should be instituted in his name through his guardian or next friend. If it is not done the plant will be taken off the file. Where such minor is a plaintiff the court may at any stage of the suit, order his guardian or next friend, either on the application of the defendant or suo motu for reason to be recorded to furnish security for costs of the defendant. The provision seeks to discourage vexatious litigation by guardians or next friends of minors.

Suit against Minors: Rule 3

Where a suit is instituted against a minor, the court should appoint a guardian ad litem to

Defend the suit. Such appointment should continue throughout all the proceedings including an appeal or revision and in execution of a decree unless it is terminated by retirement, removal or Death of such guardian.

Who may be appointed as guardian or next friend? Rule 4

Any person who has attained majority and is of sound mind, may act as a guardian or next friend, provided his interest is not adverse to that of the minor, who is not the opposite party in the suit and who gives consent in writing to act as a guardian or next friend. In the interest of a minor, however, the court may permit another person to act as the next friend or guardian of the minor. In the absence of a fit and willing person to act as a guardian, the court may appoint any of its officers to be such guardian.

Power &duties of guardian or next friend: Rule 5-7

No guardian or a next friend can, without the leave of the court receive any amount or movable property on behalf of a minor by way of compromise, nor enter into any agreement or compromise on his in the suit. An application for leave of the court should be accompanied by an affidavit of the next friend or guardian, and if the minor is represented by a pleader, with the certificate of the pleader that such compromise is, in his opinion, for the benefit of the minor. Such certificate or opinion expressed in the affidavit, however, cannot preclude the court from examining whether the agreement or compromise proposed is for the benefit of the minor. An agreement or compromise entered into without the leave of the court is voidable at the instance of the minor.

Once such an agreement or compromise is avoided by a minor, it has no effect at all.

Rules 6 and 7 provide that no next friend or guardian of a minor for the suit shall, without the leave of the court, (a) receive any money or, other movable property on behalf of a minor either by way of compromise before or under a decree or order in favour of the minor, (b) enter into

any agreement or compromise on behalf of a minor with reference to the suit, unless such leave is expressly recorded in the proceedings.

The application for such leave must be accompanied by an affidavit of the next friend or guardian of the minor, as the case may be, and if the minor is represented by a pleader, by the certificates of the pleader to effect that such compromise is in his opinion for the benefit of the minor. The opinion so expressed in the affidavit or certificate cannot preclude the court from examining whether in fact the compromise is for the benefit of the minor.

Any compromise entered into without the leave of the court shall be voidable against all parties other than the minor. Therefore, the compromise is good unless the minor chooses to avoid it." But once it is avoided by a minor, it ceases to be effective as regards the other parties also.

Rule 6 and 7 are designed to safeguard the interest of minor during the pendency of a suit against hostile, negligent or collusive act of a next friend or guardian. They are based upon the general principle that infant litigants become wards of the court and the court has got the right and also the duty to see that the next friends or guardian act properly and bona fide in the interest of minors and that no suit are instituted or carried on by them for their own benefits only irrespective of the benefits of minors.

Decree against minors: Rule 3-A

A decree passed against a minor without appointment of next friend or guardian is null and void. But a decree passed against a minor cannot be said to be illegal nor can be set aside only on the ground that the next friend or a guardian Of the minor had an interest in the Subject-matter of the suit adverse to that of the minor. If the minor is prejudiced because of adverse interest of the next friend or guardian, it can be made a ground for setting aside a decree. The minor may also obtain appropriate relief for misconduct or gross negligence on the part of his next friend or guardian.

Minor attaining majority: Rules 12-14

On attaining the age of majority, a minor plaintiff may adopt any of the following courses:

(i) He may proceed with the suit. In that case he shall apply for an order discharging the next friend or guardian and for leave to proceed in his own name.

(ii) He may abandon the suit and apply for its dismissal on repayment of costs to the defendant Or to his guardian or next friend.

(iii) He may apply for dismissal of the suit on the ground that it was unreasonable or improper.

(iv) Where he is a co-plaintiff, he may repudiate the suit and may apply to have his name struck off as co-plaintiff, If the Court finds that he is not a necessary party, it may dismiss him from the suit. But if he is a necessary party, the Court may make him a defendant.

Persons of unsound mind:

The provisions of Order 32 also apply to lunatics and persons of unsound mind.

Suits concerning family matters: Order 32-A

Order 32-A, as inserted by the Code of Civil Procedure (Amendment) Act, 1976 lays down the procedure where suits or proceedings relate to matters concerning a family. Ordinary judicial procedure is not ideally suited to the sensitive area of personal relationships. Litigation concerning affairs of the family require special approach keeping in mind serious emotional aspects involved. Family counseling as one of the methods of achieving the ultimate object of preservation of the family, hence, should be kept in the forefront. Proceedings in such suits, therefore, may not always be held in open court but may be conducted in camera.

The Supreme Court, while dealing with the Family Courts Act, 1984, observed that the said Act was enacted with a view to promotes conciliation in, and secure speedy settlement of, disputes relating to family matters. The said Act was enacted despite the fact that Order 32-A of the Code of Civil Procedure was inserted by reason of the Code of Civil Procedure (Amendment) Act, 1976, which could not bring out desired result.

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