

# THE CODE OF CIVIL PROCEDURE, 1908

[5 of 1908, dt. 21-3-1908]

[As amended by the Repealing and Amending Act, 2025 (37 of 2025), dt. 20-12-2025  
and by the Mediation Act, 2023 (32 of 2023), dt. 14-9-2023; Jammu and Kashmir  
Reorganisation Act, 2019 (34 of 2019), dt. 9-8-2019, w.e.f. 31-10-2019  
vide SO 2889(E), dt. 9-8-2019]

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An Act to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature

WHEREAS it is expedient to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature; it is hereby enacted as follows:—

## PRELIMINARY

### 1. Short title, commencement and extent

(1) This Act may be cited as the Code of Civil Procedure, 1908.

(2) It shall come into force on the first day of January, 1909.

<sup>1</sup>(3) It extends to the whole of India except—

<sup>2</sup>[xxx]

(b) the State of Nagaland and the tribal areas:

PROVIDED that the State Government concerned may, by notification in the Official Gazette, extend the provisions of this Code or any of them to the whole or part of the State of Nagaland or such tribal areas, as the case may be, with such supplemental, incidental or consequential modifications as may be specified in the notification.

*Explanation* : In this clause, “tribal areas” means the territories which, immediately before the 21st day of January, 1972, were included in the tribal areas of Assam as referred to in paragraph 20 of the Sixth Schedule to the Constitution.

(4) In relation to the Amindivi Islands, and the East Godavari, West Godavari and Visakhapatnam Agencies in the State of Andhra Pradesh and the Union territory of Lakshadweep, the application of this Code shall be without prejudice to the application of any rule or regulation for the time being in force in such Islands, Agencies or such Union territory, as the case may be, relating to the application of this Code.]

### 2. Definitions

In this Act, unless there is anything repugnant in the subject or context,—

(1) “Code” includes rules;

(2) “decree” means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within <sup>3</sup>[xxx] section 144, but shall not include—

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

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1 Substituted by Act 104 of 1976, w.e.f. 1-2-1977.

2 Omitted by the Jammu and Kashmir Reorganisation Act, 2019 (34 of 2019), dt. 9-8-2019, w.e.f. 31-10-2019 vide SO 2889(E), dt. 9-8-2019. Prior to omission, clause (a) read as under:

“(a) the State of Jammu and Kashmir;”

3 Words and figures “section 47 or” omitted by Act 104 of 1976, w.e.f. 1-2-1977.

*Explanation* : A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;

- (3) “decree-holder” means any person in whose favour a decree has been passed or an order capable of execution has been made;
- (4) “district” means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a “District Court”), and includes the local limits of the ordinary original civil jurisdiction of a High Court;
- <sup>1</sup>(5) “foreign Court” means a Court situate outside India and not established or continued by the authority of the Central Government;]
- (6) “foreign judgment” means the judgment of a foreign Court;
- (7) “Government Pleader” includes any officer appointed by the State Government to perform all or any of the functions expressly imposed by this Code on the Government Pleader and also any pleader acting under the directions of the Government Pleader;
- <sup>2</sup>[(7A) “High Court”, in relation to the Andaman and Nicobar Islands, means the High Court in Calcutta;
- (7B) “India”, except in sections 1, 29, 43, 44, <sup>3</sup>[44A,] 78, 79, 82, 83 and 87A, means the territory of India excluding the State of Jammu and Kashmir;]
- (8) “Judge” means the presiding officer of a Civil Court;
- (9) “Judgment” means the statement given by the Judge on the grounds of a decree or order;
- (10) “judgment-debtor” means any person against whom a decree has been passed or an order capable of execution has been made;
- (11) “legal representative” means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued;
- (12) “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;
- (13) “movable property” includes growing crops;
- (14) “order” means the formal expression of any decision of a Civil Court which is not a decree;
- (15) “pleader” means any person entitled to appear and plead for another in Court, and includes an advocate, a vakil and an attorney of a High Court;
- (16) “prescribed” means prescribed by rules;
- (17) “public officer” means a person falling under any of the following descriptions, namely:—

<sup>1</sup> Substituted by Act 2 of 1951, w.e.f. 1-4-1951.

<sup>2</sup> Inserted, *ibid*.

<sup>3</sup> Inserted by Act 42 of 1953, w.e.f. 23-12-1953.

- (a) every Judge;
  - (b) every member of <sup>1</sup>[an All India Service];
  - (c) every commissioned or gazetted officer in the military, <sup>2</sup>[naval or air] forces of <sup>3</sup>[the Union] <sup>4</sup>[xxx] while serving under the Government;
  - (d) every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order, in the Court, and every person especially authorized by a Court of Justice to perform any of such duties;
  - (e) every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;
  - (f) every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;
  - (g) every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue process, or to investigate, or to report on, any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government; and
  - (h) every officer in the service or pay of the Government, or remunerated by fees or commission for the performance of any public duty;
- (18) “rules” means rules and forms contained in the First Schedule or made under section 122 or section 125;
- (19) “share in a corporation” shall be deemed to include stock, debenture-stock, debentures or bonds; and
- (20) “signed”, save in the case of a judgment or decree, includes stamped.
- <sup>5</sup>[xxx]

#### COMMENTS

Section 2(9) of the Code of Civil Procedure defines a “Judgment” as the statement given by the Judge on the grounds of a decree or order.—*Meenakshisundaram Textiles v. Valliammal Textiles Ltd. 2011 (103) AIC 366 (Madras H.C.)*

For a decree within the provisions of section 2(2), the following essential elements are necessary. There must be an adjudication of the dispute. Adjudication means the judicial determination of the matter in dispute. Adjudication, also would mean that the Court must have applied its mind to the facts of the case to resolve the matter in dispute. Such adjudication must be about any or all the matters in controversy in the suit, there must be a conclusive determination of the rights of the partner. Finally, in order to pass a decree, the Court must formally express its decision

1 Substituted for “the Indian Civil Service” by Act 104 of 1976, w.e.f. 1-2-1977.

2 Substituted for “or naval” by Act 35 of 1934.

3 Substituted for “His Majesty” by AO 1950.

4 Words “including His Majesty’s Indian Marine Service” omitted by Act 35 of 1934.

5 Clause (21) omitted by Act 2 of 1951, w.e.f. 1-4-1951.

in the manner provided by law.—*Ajith Mathews v. Sheelamma Thomas* 2011 (102) AIC 852 (Kerala H.C.)

Under section 2(4), “District Court” and “District”, means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a “District Court”; and includes the local limits of the ordinary original civil jurisdiction of a High Court”.—*Manchukonda v. Chettipalli Bullamma* 2011 (104) AIC 332 (Andhra Pradesh H.C.)

**Sec. 2(2)**

Where in a suit, alternative relief is claimed against ten sets of dependants and a finding is given that one set of defendants is liable and not the other, the indivisible finding amounted to a decree—*Bank of India v. Mehta Bros.* AIR 1991 Delhi 194

Order making the suit barred by limitation and hence liable to be dismissed means that the suit is dismissed and it may tantamount the formal expression of the dismissal of the suit—*Boards and Boards Pvt. Ltd. v. Himalaya Paper (Machinery) (P) Ltd.* AIR 1990 Raj 12

Where the tenant is not the party to the decree, appeal filed by him is not maintainable—*Choutermal v. Sundherlal* AIR 1992 MP 192

Within the term “decree” is included compromise or consent decree despite the fact that such decree embodies the agreement between the parties with the command of the court added to it.—*Punjab Woollen Textiles Firm v. Bank of India* 1992 (1) ILR (P&H) 437

A decree would not stand void where the judgment and the decree do not mention the grounds of eviction.—*Satpal Tandon v. Smt. Jyotsna gharh* AIR 1991 Cal 228

Making of award by Claims Tribunal under Motor Vehicles Act, 1988 do not amount to judgment, decree or order within the meaning of Code of Civil Procedure—*The Oriental Insurance Company Ltd. v. Sardar Sadhu Singh* AIR 1994 Raj 44

**Sec. 2(4)**

Family court constituted under Family Courts Act, 1984 amounts to a District Court—*Kamala V M Allaudian v. Raja Shaikh* AIR 1990 Bom. 299

**Sec. 2(9)**

Direction as regards addition of party under Order 1, Rule 10 amounts to a Judgment—*Gurmai Saran Balaji v. Joyce C Galim* AIR 1990 Delhi 13. There must be statement of ground by the court for its conclusion and mechanically passing of a decree, where there is no application of mind, that does not satisfy the requirement of judgment—*D.P. Bakshi v. P.P. Sinha* AIR 1989 Pat 139

Every final decision of reference under s. 18 of Land Acquisition Act, whether rejecting the reference or enhancing the compensation amounts to a judgment and award and executable as a decree—*Pokhar Singh v. State of Haryana* AIR 1980 P&H 329

**Sec. 2(11)**

The expression “legal representation” includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of estate of the deceased—*Custodian, Branches of BANCO National Ultramarino v. Nalini Bai* AIR 1989 SC 1589

The term “legal representative” includes executors, administrators, assignees, or persons acquiring interest under Order 22, Rule 10 or a legatee under a will—*C.S. Goenka through LRs v. Jasjit Singh* 1993 (2) SCC 507

**Sec. 2(12)**

*Mesne profits : Essence*—“Mesne profits” means intermediate profits, i.e., profits which have been accruing between two given periods —*Dumas v. Ropp*, 98 Idaho 61, 558 P 2D 632, 633. Value of use or occupation of land during time it was held by one in wrongful possession and is commonly measured in terms of rents and profits—*Black’s Law Dictionary*.

From the main reading of the definition, it is clear that wrongful possession to the defendant is the very essence of a claim, of a claim for mesne profits and the very foundation of the defendant’s liability therefrom. Therefore, liability to pay mesne profit goes with actual possession of the land. That is to say, generally, the person in wrongful possession and enjoyment of the immovable property is liable for mesne profit.—*Lucy Kochuvareed v. P. Mariappa & Others* AIR 1979 SC 1214

Calculation of *mesne* profit is based upon advantage which a person in unlawful possession gets by using the property and it is never the maximum rent which could be fetched by the landlord if he had let out the property afresh—*Purificacao v. Dr. Hungo AIR 1985 Bom 202*

Where in appeal the operation of the order of ejection is stayed, liability of the tenant as regards payment of *mesne* profits for occupying the premises is for the prevalent rate and not for contractual rate—*Jagat Narain Singh v. Ravindra Mohan AIR 1992 Cal 216*

#### Sec. 2(17)

The word “service” in s. 2(17)(h) must necessarily mean something more than being merely subject to the orders of government or control of the Government of India—*Coal Mine Provident Fund Commissioner v. R.C. Jha AIR 1990 SC 548*

### 3. Subordination of Courts

For the purposes of this Code, the District Court is subordinate to the High Court, and every Civil Court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court and District Court.

#### COMMENTS

Section 3, C.P.C. prescribes subordination of Courts for the purpose of the entire Code and does not make exception for the purpose of section 24, C.P.C. various High Courts in the country considered the position of Additional District Judge with reference to a District Judge and came to hold that the Court of Additional District Judge is not a Court inferior to that of the District Court presided over by the Principal District Judge/District Judge.—*Manchukonda v. Chettipalli Bullamma 2011 (104) AIC 332 (Andhra Pradesh H.C.)*

Family Court established under s. 3 of the Family Courts Act, 1984 is a Civil Court subordinate to the High Court—*K.R. Srimathi v. H Ramakrishnan AIR 1990 Mad 330*

Motor Accident Claims Tribunal being not a Civil Court decision pronounced by it is not amenable to revisional jurisdiction of the High Court under s. 115 CPC—*Barkat Singh v. Hans Raj Pandit AIR 1985 SC 263*

### 4. Savings

(1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.

(2) In particular and without prejudice to the generality of the proposition contained in sub-section (1), nothing in this Code shall be deemed to limit or otherwise affect any remedy which a landholder or landlord may have under any law for the time being in force for the recovery of rent of agricultural land from the produce of such land.

### 5. Application of the Code of Revenue Courts

(1) Where any Revenue Courts are governed by the provisions of this Code in those matters of procedure upon which any special enactment applicable to them is silent, the State Government <sup>1</sup>[xxx] may, by notification in the Official Gazette, declare that any portions of those provisions which are not expressly made applicable by this Code shall not apply to those Courts, or shall only apply to them with such modifications as the State Government <sup>2</sup>[xxx] may prescribe.

(2) “Revenue Court” in sub-section (1) means a Court having jurisdiction under any local law to entertain suits or other proceedings relating to the rent, revenue or profits of land used for agricultural purposes, but does not include a Civil Court having original jurisdiction under this Code to try such suits or proceedings as being suits or proceedings of a civil nature.

<sup>1</sup> Words “with the previous sanction of the G.G. in C” omitted by Act 38 of 1920.

<sup>2</sup> Words “with the sanction aforesaid” omitted, *ibid*.

**6. Pecuniary jurisdiction**

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

**7. Provincial Small Cause Courts**

The following provisions shall not extend to Courts constituted under the Provincial Small Cause Courts Act, 1887 (9 of 1887), <sup>1</sup>[or under the Berar Small Cause Courts Law, 1905], or to Courts exercising the jurisdiction of a Court of Small Causes <sup>2</sup>[under the said Act or Law], <sup>3</sup>[or to Courts in <sup>4</sup>[any part of India to which the said Act does not extend] exercising a corresponding jurisdiction], that is to say,—

- (a) so much of the body of the Code as relates to—
  - (i) suits excepted from the cognizance of a Court of Small Causes;
  - (ii) the execution of decrees in such suits;
  - (iii) the execution of decrees against immovable property; and
- (b) the following sections, that is to say,—
 

Section 9,  
sections 91 and 92,  
sections 94 and 95 so far as they authorize or relate to—

  - (i) orders for the attachment of immovable property;
  - (ii) injunctions;
  - (iii) the appointment of a receiver of immovable property; or
  - (iv) the interlocutory orders referred to in clause (e) of section 94, and sections 96, 112 and 115.

**COMMENTS**

It is not within the competency of small causes courts to entertain a suit or claim for injunction—*D.M. Lohiya v. Mohd. Azizual Haq AIR 1990 Bom 228*

The provisions as regards injunctions contained in Code of Civil Procedure do not apply to the court of small causes—*Central Bank of India v. Kamla Bai AIR 1990 Bom 227*

**8. Presidency Small Cause Courts**

Save as provided in sections 24, 38 to 41, 75, clauses (a), (b) and (c), 76, <sup>5</sup>[77, 157 and 158], and by the Presidency Small Cause Courts Act, 1882 (15 of 1882), the provisions in the body of this Code shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras and Bombay:

<sup>6</sup>[PROVIDED that—

- (1) the High Courts of Judicature at Fort William, Madras and Bombay, as the case may be, may from time to time, by notification in the Official Gazette, direct that any such provisions not inconsistent with the express provisions of the Presidency Small Cause Courts Act, 1882 (15 of 1882), and with such modifications and adaptations as may be specified in the notification, shall extend to suits or proceedings or any class of suits or proceedings in such Court;
- (2) all rules heretofore made by any of the said High Courts under section 9 of the Presidency Small Cause Courts Act, 1882 (15 of 1882), shall be deemed to have been validly made.]

<sup>1</sup> Inserted by Act 4 of 1941.

<sup>2</sup> Substituted for "under that Act", *ibid.*

<sup>3</sup> Inserted by Act 2 of 1951, w.e.f. 1-4-1951.

<sup>4</sup> Substituted for "Part B States" by the Adaptation of Laws (No. 2) Order, 1956.

<sup>5</sup> Substituted for figures "77 and 155 to 158" by Act 104 of 1976, w.e.f. 1-2-1977.

<sup>6</sup> Inserted by Act 1 of 1914.

**PART I**

## SUILS IN GENERAL

*JURISDICTION OF THE COURTS AND RES JUDICATA***9. Courts to try all civil suits unless barred**

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

*Explanation :<sup>1</sup> [I]* : A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

<sup>2</sup>*[Explanation II]* : For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in *Explanation I* or whether or not such office is attached to a particular place.]

COMMENTS

Section 9 of the Code provides that the Court shall (subject to the provisions of Code) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.—*Sri Jeyaram Educational Trust v. A.G. Syed Mohideen 2010 (86) AIC 38 (SC)*

*Jurisdiction : Scope of*

Section 9 of the Code clearly lays down that the civil court shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.—*Saheb Gouda v. Ogeppa & Others (2003) 6 SCC 151*

There can be the interference by the civil court if the statutory authority acts in violation of rule or the statute, in violation of and abuse of its authority or in violation of fundamental principles of judicial procedure.—*Bimla Sahi, Secretary, Basudibpur Girl's High School v. Gouri Rani AIR 1991 Cal 120*

Wherever a right not pre-existing in common law is created by a statute and that statute itself provides a machinery for enforcement of right, both the right and remedy having been created *uno flatu* and finality is intended to the result of the statutory proceedings, then even in the absence of an exclusionary provision, the jurisdiction of the civil court is impliedly barred—*Raja Ram Kumar Bhargava v. UOI AIR 1988 SC 752*

Where valuation clause is amended in the plaint, the court must return the plaint for presentation before proper court having pecuniary jurisdiction.—*Devendra Singh v. Bhole Ram AIR 1991 All 157*

A statute can make provision expressly or by necessary implication barring the jurisdiction of the civil court in respect of a particular matter.—*Secretary KSEB v. M Saineda AIR 1990 Ker 50*

Provision of Industrial Disputes Act, 1947 impliedly bars the suit challenging the dismissal orders and seeking reinstatement.—*Punjab National Bank v. Raj Kumar Duggal 1991 (1) SLR 740*

The mere fact that the question of title has been kept open by the arbitrator would not confer jurisdiction upon the civil right.—*Earappa v. Nanjappa AIR 1992 Kant. 287*

There is no jurisdiction vested in Civil Court to take decision upon the question of ritual in temple except insofar as decision of such question is incidental to civil court—*Koil Pillai v. Territorial Head Quarters, Salvation Army AIR 1994 Mad 27*

Where the statute creates a right or liability, the statute may also create specific forum in which case jurisdiction of the civil court will be impliedly barred, but where the Act provides no machinery, the suit can be entertained by the civil court.—*State of Gujarat v. Mir Parbat Ramaji AIR 1991 Guj 185*

1 Renumbered as Explanation I, by Act 104 of 1976, w.e.f. 1-2-1977.

2 Inserted, *ibid.*

Where the suit is one for the declaration of the correct date of birth the same can be entertained by a civil court and there can be the passing of a decree so as to rectify the date of birth.—*State of Karnataka v. T Srinivasa AIR 1988 Kant 67*

Where the portion of compensation is claimed by a person awarded by the Collector, he can file a civil suit so as to establish his claim.—*Asher Ali v. Sukhna Seikh, deceased through LR's AIR 1992 Gau 1*

Where the apprehension is that the election of a trade union by show hand nothing would result in Pandemonium and unhurt and unfair election and not democratic one, it is within the competency of the civil court to order wrote secret ballot.—*State Bank of India Staff Association v. Monindra Bhattacharaya AIR 1991 Cal 378*

As regards the matters falling under s. 7 of the Family Courts Act, 1984, jurisdiction is vested in both the Family Courts as well as the High Court—*Dr. Mary Sheila v. Dr. Vincent Thamsuraj AIR 1991 Mad 180*

The question of right of trustee to decide the place where devotees would recite and also the place where the idols and portraits would be installed, would be an interference with the management of the temple hence the suit would be barred before the civil court.—*Kansi Manji Abji v. Kansi Vaghji Masji AIR 1993 SC 1163*

There is no jurisdiction vested in civil courts to issue injunction order not only in respect of the action already taken in the matter of grant of permit but they are also prohibited from issuing preventing orders in connection therewith and the only situation in which the civil court can interfere in the matter of grant of permit is when the transport authorities which had granted permit or likely to grant permit, are not duly constituted—*Omkar Singh v Regional Transport Authority AIR 1991 All 230*

Evict in order passed against a person not in unauthorised occupation will be an illegal order which can be questioned before a civil court.—*Paresh Engineering Works (P) Ltd v. State of MP AIR 1992 MP 61*

Where the direction of the court is against a proceeding criminal in nature then the same must be considered to be a criminal proceeding. Sec. 9 in such a case would operate as a bar to entertain a suit for a declaration that the summons issued by a criminal court is illegal and void.—*Kashi Nath Dutta v. Calcutta Municipal Corporation AIR 1992 Cal 83*

#### 10. Stay of suit

No court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in <sup>1</sup>[India] having jurisdiction to grant the relief claimed, or in any court beyond the limits of <sup>1</sup>[India] established or continued by the Central Government <sup>2</sup>[xxx] and having like jurisdiction, or before <sup>3</sup>[the Supreme Court].

*Explanation:* The pendency of a suit in a foreign Court does not preclude the courts in <sup>1</sup>[India] from trying a suit founded on the same cause of action.

#### COMMENTS

Appeal being continuation of the suit, pendency of the second appeal would mean that the previous suits were pending, no order of stay can be passed in the second appeal staying further proceedings in the subsequent suit—*Smt. Ambika Sahu v. Smt. Sumita Sahu AIR 1990 Orissa 127*

The power conferred upon the court is only to stay the trial of the suit and not any other application. So in the case of filing of application for appointment of receiver, such an application

1 Substituted for "the States" by Act 2 of 1951, w.e.f. 1-4-1951.

2 The words "or the Crown Representative" omitted by the AO 1948.

3 Substituted for "His Majesty in Council" by the AO 1950.

cannot be rejected under s. 10 of the Code of Civil Procedure—*Smt. Lakshmi Devi v. Rajendra Prasad Rao AIR 1990 Pat 210*

Where a subsequently filed suit is sought to be stayed, what has to be seen is whether substantially the matter in issue in both the suits are identical or not to show that the decision on such a point may operate as *res judicata* in the said suit.—*Meneka Gandhi and Associates v. Shree Pipes Ltd. AIR 1990 Delhi 139*

Where certain claims are left out in previous suit inclusion of the same in the later suit would be barred under Order 2, R. 2 of the Code of Civil Procedure—*Sd. Anand Deep Singh v. Smt. Ranjeet Kaur AIR 1992 Del 87*

Essential requirement is that there must be substantial identity between the matters in dispute and parties in the earlier and later suits.—*R. Srinivasan v. Southern Petrochemical Industries Corporation Ltd. AIR 1992 Mad 363*

### 11. Res judicata

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

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

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

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

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

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

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

<sup>1</sup>*Explanation VII* : The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

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

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1 Inserted by Act 104 of 1976, w.e.f. 1-2-1977.

COMMENTS

Section 11 provides that “No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court”.—*Indrabaye v. Doressamy Naiker* 2010 (87) AIC 531 (Madras H.C.)

Proportion that *res judicata* applies at two stages of the same litigations cannot be invoked on the basis that the appeal is continuation of the suit—*S.K. Mohammad Ismail v. S.K. Anwer Ali* AIR 1991 Cal 391

There is no bar for the subsequent suit for redemption since the basic principle is that unless the equity of redemption is extinguished a second suit for redemption by the mortgager if filed within a period of limitation will not be barred under s. 11, CPC—*Om Prakash v. Pramod Singh* 1992 (1) Cur CC 283

Decision taken by Rent Controller as regards the question of title while deciding application for fixation of fair rent is not final hence cannot operate as *res judicata*—*LIC of India v. Indian Automobile & Co.* AIR 1991 SC 884

For the fact that issue relating to *res judicata* is not an issue of law only, such an issue cannot be treated as preliminary issue —*Smt. Sai rin de Sahu v. Pita Bas Mahara* 1992 (1) Cur cc 345

If the suits are tried together and common judgment is rendered and separate decrees are also drawn up and one of the adjudication is allowed to become final, that assumes finality and in the course of an appeal against the other Judgement, the adjudication which has become final can be pleaded as *res judicata*.—*Arumugha Nainar v. Lakeshmana Perumal* AIR 1992 Mad 280

The decision of the trial court or a preliminary issue is final and binding on the parties in all subsequent proceedings before that court in the same suit and cannot be re-agitated before the same court.—*Sri Ramo Barman v. Smt. Dagri Priya* AIR 1992 Gau 72

The writ petition questioning the liability of the LIC to pay the interest would be maintainable and earlier writ petition cannot bar adjudication of this point regarding interest—*LIC of India v. Gangadhar Vishwanath Ranede (dead) by LRs* AIR 1990 SC 185

Section 11 does not affect the jurisdiction of the court but operates as a bar to the trial of the suit or issue, if the matter in the suit was directly or substantially in issue (and finally decided) in the previous suit between the same parties litigating under the same title in a court, competent to try the subsequent suit in which such issue has been raised.—*Kunjan Nair Sivaraman Nair v. Narayan Nair* 2004 AIR SCW 894

Where the decision is pronounced by the Revenue Court on title in mutation proceedings, such proceedings will not operate as *res judicata* in proceedings under Indian Succession Act, 1925—*Balwant v. Maina Bai* AIR 1991 MP 11

The Rent Controller and the authority to whom the appeal or revision could be preferred from his orders would not be final authority to adjudicate upon the question of title and the same will not operate as *res judicata* in subsequent civil suit.—*LIC of India v. India Automobiles* AIR 1991 SC 884. Where standard rent dispute is resolved by compromise in a proceeding before a competent court, principle of promissory estoppel can be pressed into service if either side raises such dispute in a subsequent proceedings between the same parties or their successors.—*Vafali Lal Mohammed v. Sarfumisa Abdulmajid* AIR 1993 Guj 163. Merely because the suit is dismissed it cannot be said that failure on the part of defendant to carry the matter in appeal would not result in application of principle of *res judicata* under s. 11—*Modgi Krishna v. Modgi Krishna Bai* AIR 1994 AP 16. In case the Supreme Court in its adjudicatory jurisdiction pronounces its opinion, it cannot be said that there is any doubt about the question of law or the same is *res integra* so as to require the president to know what the true portion of law on the question is. The decision of the Supreme Court on the question of law is binding on all the courts and authorities—In the matter of *Cauvery Water Dispute Tribunal* 1993 Supp (1) SCC 96. Even if the petition is dismissed in limine that would operate as *res judicata* if the order was passed on merits by speaking order—*Meghraj Calla v. Kajodi Mal* AIR 1994 Raj 11

The beneficiary of the trust which may consist of public at large may choose two or more persons for the purpose of filing a suit under s. 92 of the Code of Civil Procedure but it cannot be said that the persons whose names are on the suit titles are only parties to the suit and therefore it will bind not only the parties named in the suit but also those who are interested in the Trust—*R. Venugopal Naidu v. Venkatarayulu Naidu Chettiar AIR 1990 SC 444*

It is well settled that even orders in interlocutory matters during pending of certain proceedings can be *res judicata* between the parties—*V Bhagat v. Mrs. D Bhagat AIR 1992 Del 267*. When a particular decision has become final and binding between the parties, it cannot be set at naught on the ground that such a decision is violative of Art. 14 of the Constitution—*Supreme Court Employees' Welfare Association v. Union of India AIR 1990 SC 334*. The bar of *res judicata* is an issue of law and could be disposed of as a preliminary issue under Order 14, R. 2(2)(b)—*Laxmi Dasi v. Manik Chandra Das AIR 1991 Cal. 231*

In the case of a simple money decree against a person who is the manager of the joint family at the relevant point of time and there is no evidence to show that the money was borrowed for the benefit of the family so as to bind the other members of the family, the decree will not be binding on the other members of the family—*C. Lakshminarayana v. Konnepatic C Subba Rao AIR 1990 AP 164*. In the case of an earlier decision, the point becomes a non-issue on account of the fraudulent submissions made by the officials of the State Government, that decision will not operate as *res judicata* for consideration of that issue in a subsequent writ petition—*Kative Jaggery Traders v. State of Karnataka AIR 1991 Kant 63*. There is no bar created by s. 11 in the case of a suit for maintenance on an enhanced rate for a different period under altered circumstances—*Ram Shankar Rastogi v. Vinay Rastogi AIR 1991 All 255*

The decision of the Revenue Court as regards will not operate as *res judicata* in the probate proceedings—*Bulwant v. Maina Bai AIR 1991 MP 11*

## 12. Bar to further suit

Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any Court to which this Code applies.

## 13. When foreign judgment not conclusive

A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except,—

- (a) where it has not been pronounced by a Court of competent jurisdiction;
- (b) where it has not been given on the merits of the case;
- (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of <sup>1</sup>[India] in cases in which such law is applicable;
- (d) where the proceedings in which the judgment was obtained are opposed to natural justice;
- (e) where it has been obtained by fraud;
- (f) where it sustains a claim founded on a breach of any law in force in <sup>1</sup>[India].

### COMMENTS

The parties have freedom to choose the law governing in an International Commercial Arbitration Agreement and they may choose the substantive law governing the arbitration agreement as well as the procedural law governing the conduct of arbitration—*National Thermal Power Corporation v. Singer Company 1992 (3) SCC 551*

<sup>1</sup> Substituted for "the States" by Act 2 of 1951, w.e.f. 1-4-1951.

Where a party to a proceeding before a court at New York did not take any plea absent want of jurisdiction of the court at New York and allowed the matter to proceed *ex parte*, the presumption under s. 14 has to be made.—*Dr. Parmini Mishra v. Dr. Ramesh Chandra Mishra AIR 1991 Orissa 263*

#### 14. Presumption as to foreign judgments

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; but such presumption may be displaced by proving want of jurisdiction.

#### *PLACE OF SUING*

#### 15. Court in which suits to be instituted

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

#### COMMENTS

Section 15 requires every suit to be instituted in the Court of the lowest grade competent to try it.—*Sri Jeyaram Educational Trust v. A.G. Syed Mohideen 2010 (86) AIC 38 (SC)*

Where the valuation clause of the plaint is amended and the court ceases to have the jurisdiction, the plaint must be returned for its presentation to the proper court having pecuniary jurisdiction.—*Devendra Singh v. Bhole Ram AIR 1991 All 157*

#### 16. Suits to be instituted where subject matter situate

Subject to the pecuniary or other limitations prescribed by any law, suits—

- (a) for the recovery of immovable property with or without rent or profits,
- (b) for the partition of immovable property,
- (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,
- (d) for the determination of any other right to or interest in immovable property,
- (e) for compensation for wrong to immovable property,
- (f) for the recovery of movable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

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

*Explanation* : In this section “property” means property situate in <sup>1</sup>[India].

#### COMMENTS

Proviso to s. 16 would apply only if the relief sought is entirely obtainable through personal objective of the defendants without the defendant having to go out of the jurisdiction of the court—*Union Bank of India v. Logic Systems (P) Ltd AIR 1992 Del 153*

<sup>1</sup> Substituted for “the States” by Act 2 of 1951, w.e.f. 1-4-1951.

**17. Suits for immovable property situate within jurisdiction of different courts**

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

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

**18. Place of institution of suit where local limits of jurisdiction of courts are uncertain**

(1) Where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more courts any immovable property is situate, any one of those courts, may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the local limits of its jurisdiction:

PROVIDED that the suit is one with respect to which the Court is competent as regards the nature and value of the suit to exercise jurisdiction.

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

**19. Suits for compensation for wrongs to person or movables**

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

*Illustrations*

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

COMMENTS

The expression "wrong done" should be construed to mean not only the act which causes the wrong. It should also include and cover the fact of the act. If the wrong is done at different places, the court in which jurisdiction the wrong is done will have jurisdiction to entertain the case—*State of Meghalaya v. Jyotsna Das AIR 1991 Gau 96*

**20. Other suits to be instituted where defendants reside or cause of action arises**

Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—

- (a) The defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or
- (b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on

business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

<sup>1</sup>[xxx]

<sup>2</sup>[*Explanation*] : A corporation shall be deemed to carry on business at its sole or principal office in <sup>3</sup>[India] or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

#### *Illustrations*

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

#### COMMENTS

A suit for price of the goods sold and delivered which in effect is also the suit for breach of contract on the part of the defendant by not paying the price of the goods in terms of the agreement between the parties, the cause of action, within the meaning of section 20(c) of the Code.—*J.C. Enterprises (Regd.) v. Ranganatha Enterprises 2011 (102) AIC 605 (Delhi H.C.)*

Where the contract is entered at a place where electricity power corporation has its headquarter or the work of carriage of goods under the contract by the plaintiff transporter in another state where the corporation has its subordinate office, cause of action for recovery of the amount would be said to have arisen in the part at the place where the work was performed.—*North Eastern State Electricity Power Corporation v. Lakhi Enterprises AIR 1992 Gau 42*

It is open for the parties to choose any one of the courts having simultaneous jurisdiction over a matter.—*Kitex Ltd. v. Miss D Surekha AIR 1992 Ker. 333*

The agreement cannot oust the jurisdiction of the other court by implication which has vested with the jurisdiction to entertain the suit.—*The National Starch & Chemical v. Weikfield Product Co. India AIR 1990 Ker 291*

The condition on the consignment note restricting the jurisdiction to certain court will not create bar to the filing of the suit for loss or damage of goods when the consignor or any person authorised by him has not signed the consignment note—*The South Eastern Roadways v. The United India Insurance Co. Ltd AIR 1991 Ker 91*

Where there is an agreement between the parties and thereby the jurisdiction of the court is ousted in spite of the fact that the court is possessed with such jurisdiction, such an agreement will be opposed to public policy and therefore void—*Rajendra Sethia v. Punjab National Bank AIR 1991 Del 285*

The High Court can assume the jurisdiction whether or not the defendant resides or carries on business and once the foreign ship is arrested in the local limits of the jurisdiction of the High

<sup>1</sup> Existing Explanation I omitted by Act 104 of 1976, w.e.f. 1-2-1977.

<sup>2</sup> Substituted for "Explanation II", *ibid.*

<sup>3</sup> Substituted for "the States" by Act 2 of 1951, w.e.f. 1-4-1951.

Court and the owner of the ship had entered the appearance and furnished security to the satisfaction of the High Court.—*M.V. Elizabeth v. Harwan Investment and Trading (P) Ltd.* AIR 1993 SC 1014

The words "at such place" occurring at the end of the Explanation and the word "or" referred to above which is disjunctive clearly suggested that if the case falls within the latter part of the Explanation, it is not the court within whose jurisdiction the principal office of the defendant is situated but the court within whose jurisdiction it has a subordinate office which alone shall have jurisdiction "in respect of any cause of action arising at any place where it has also a subordinate office".—*Patel Roadways Ltd. v. Prasad Trading Co.* AIR 1992 SC 1514

### 21. Objections to jurisdiction

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

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

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

#### <sup>2</sup>[21A. Bar on suit to set aside decree on objection as to place of suing

No suit shall lie challenging the validity of a decree passed in a former suit between the same parties, or between the parties under whom they or any of them claim, litigating under the same title, on any ground based on an objection as to the place of suing.

*Explanation* : The expression "former suit" means a suit which has been decided prior to the decision in the suit in which the validity of the decree is questioned, whether or not the previously decided suit was instituted prior to the suit in which the validity of such decree is questioned.]

### COMMENTS

There cannot be a challenge to a decree that is passed in a suit on the ground that the initial suit was instituted in a court having no territorial jurisdiction—*Jagdish v. Smt. Premlata Rai* AIR 1990 Raj 87. Where the issues as to the court fee and valuation are not raised at the trial stage, the same cannot be allowed to be raised at appeal stage—*Laxmi Sahu v Ganeshi Sahu* AIR 1990 Pat. 201

### 22. Power to transfer suits which may be instituted in more than one court

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

<sup>1</sup> Existing section renumbered as sub-section (1) thereof by Act 104 of 1976, w.e.f. 1-2-1977.

<sup>2</sup> Inserted, *ibid.*

COMMENTS

In the case of filing of petition for transfer making allegation against the presiding officer, the report if and when called for, should normally be confined to the allegations made against the impartiality or fairness of the judge and not with respect to correctness or otherwise of the order passed by him.—*Pushpa Devi Saraf v. Jai Narain AIR 1992 SC 1133*

**23. To what court application lies**

(1) Where the several courts having jurisdiction are subordinate to the same Appellate Court, an application under section 22 shall be made to the Appellate Court.

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

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

COMMENTS

Family Court under Family Courts Act being a civil court, High Court is vested with the jurisdiction to transfer the case from one Family Court to another Family Court—*Munna Lal v. State of UP AIR 1991 All 185*

**24. General power of transfer and withdrawal**

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

- (a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
- (b) withdraw any suit, appeal or other proceeding pending in any court subordinate to it; and
  - (i) try or dispose of the same; or
  - (ii) transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
  - (iii) re-transfer the same for trial or disposal to the court from which it was withdrawn.

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

<sup>2</sup>[(3) For the purposes of this section,—

- (a) courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;
- (b) “proceeding” includes a proceeding for the execution of a decree or order.]

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

<sup>3</sup>[(5) A suit or proceeding may be transferred under this section from a court which has no jurisdiction to try it.]

<sup>1</sup> Substituted for “thereafter tries such suit” by Act 104 of 1976, w.e.f. 1-2-1977.

<sup>2</sup> Substituted, *ibid.*

<sup>3</sup> Inserted by Act 104 of 1976, w.e.f. 1-2-1977.

COMMENTS

Section 24 provides general power of transfer and withdrawal to the 'District Court' as distinguished from 'District Judge'. An application can be assigned by the District Judge to an Additional District Judge also as the Additional District Judge is a functionary in the District Court itself.—*Manchukonda v. Chettipalli Bullamma 2011 (104) AIC 332 (Andhra Pradesh H.C.)*

Where there is no plaint pending in a suit subordinate to the High Court, there cannot be the transfer of such case within the meaning of s. 24—*R C Bhardawaja v. R P Sharma AIR 1991 Del 280*

It cannot be laid down as a general rule that in every case of transfer the transferor court is duty bound to send a separate notice to each party—*Sri Vishnu Kant Jha v. Sri Dinesh Jha AIR 1993 Pat 135*

When a transfer petition is filed making allegations against the presiding officer, the report if and when called for should normally be confined to the allegations made against the impartiality or fairness of the Judge and not with respect to the correctness or otherwise of the orders passed by him—*Pushpa Devi Saraf v. Jai Narain—(No 25) AIR 1992 SC 1133*

Claims Tribunal constituted under s. 110 of the Motor Vehicles Act is a court subordinate to High Court within the meaning of s. 24 of Code of Civil Procedure and therefore it is within the power of the High Court to transfer the case from one Tribunal to another—*Smt. Sudha Sharma v. Ram Naresh Jaiswal AIR 1990 MP 320*

<sup>1</sup>[25. **Power of Supreme Court to transfer suits, etc.**

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

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

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

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

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

COMMENTS

If any application made for transfer, after notice to the parties, if the Court is satisfied that an order of transfer is expedient for the ends of justice necessary direction may be issued for transfer of any suit, appeal or other proceedings from a High Court or other Civil Court in one State to another High Court or other Civil Court or other Civil Court in one State to another High Court or other Civil Court in any other State.—*D.A.V. Boys Sr. Sec. School v. D.A.V. College Managing Committee 2010 (93) AIC 65 (SC)*

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<sup>1</sup> Substituted by Act 104 of 1976, w.e.f. 1-2-1977.

*INSTITUTION OF SUITS***26. Institution of suits**

<sup>1</sup>[(1)] Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.

<sup>2</sup>[(2)] In every plaint, facts shall be proved by affidavit:]

COMMERCIAL COURT AMENDMENT

**Note :** *This amendment is applicable only to any suit in respect of a commercial dispute of a specified value—insert the following proviso:*

“PROVIDED that such an affidavit shall be in the form and manner as prescribed under Order VI Rule 15A.”

*[Inserted by the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (Act 4 of 2016), dt. 31-12-2015, w.r.e.f. 23-10-2015]*

COMMENTS

Section 26 of C.P.C. provides how a suit is to be instituted. Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.—*Lakshmi v. Vijaya Bank 2011 (103) AIC 599 (Kerala H.C.)*

*SUMMONS AND DISCOVERY***27. Summons to defendants**

Where a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and may be served in manner prescribed <sup>1</sup>[on such day not beyond thirty days from the date of the institution of the suit].

**28. Service of summons where defendant resides in another State**

(1) A summons may be sent for service in another State to such court and in such manner as may be prescribed by rules in force in that State.

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

<sup>3</sup>[(3)] Where the language of the summons sent for service in another State is different from the language of the record referred to in sub-section (2), a translation of the record,—

- (a) in Hindi, where the language of the court issuing the summons is Hindi, or
- (b) in Hindi or English where the language of such record is other than Hindi or English,

shall also be sent together with the record sent under that sub-section.]

**<sup>4</sup>[29. Service of foreign summonses**

Summonses and other processes issued by—

- (a) any Civil or Revenue Court established in any part of India to which the provisions of this Code do not extend, or
- (b) any Civil or Revenue Court established or continued by the authority of the Central Government outside India, or
- (c) any other Civil or Revenue Court outside India to which the Central Government has, by notification in the Official Gazette, declared the provisions of this section to apply,

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

<sup>1</sup> Existing para re-numb. as (1) and after (1) as so renumb., (2) ins. by Act 46 of 1999 w.e.f 1-7-2002 vide SO 603(E), dt.6-6-2002.

<sup>2</sup> Inserted by Act 46 of 1999 w.e.f 1-7-2002 vide SO 603(E), dt.6-6-2002.

<sup>3</sup> Inserted by Act 104 of 1976, w.e.f. 1-5-1977.

<sup>4</sup> Substituted by Act 2 of 1951, w.e.f. 1-4-1951.

**30. Power to order discovery and the like**

Subject to such conditions and limitations as may be prescribed, the court may, at any time, either of its own motion or on the application of any party,—

- (a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;
- (b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;
- (c) order any fact to be proved by affidavit.

**31. Summonses to witness**

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

**32. Penalty for default**

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

- (a) issue a warrant for his arrest;
- (b) attach and sell his property;
- (c) impose a fine upon him <sup>1</sup>[not exceeding five thousand rupees];
- (d) order him to furnish security for his appearance and in default commit him to the civil prison.

*JUDGMENT AND DECREE***33. Judgment and decree**

The court, after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow.

COMMENT

Section 33 provides that after the case has been heard, the Court shall pronounce judgment and on such judgment a decree shall follow.—*Gopal Singh Vishard v. Jahoor Ahmed 2011 (104) AIC 273 (Allahabad H.C.)*

*INTEREST***34. Interest**

(1) Where and insofar as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, <sup>2</sup>[with further interest at such rate not exceeding six per cent per annum, as the court deems reasonable on such principal sum], from the date of the decree to the date of payment, or to such earlier date as the court thinks fit:

<sup>3</sup>[PROVIDED that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent. per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

<sup>1</sup> Substituted for "not exceeding five hundred rupees" by Act 46 of 1999, w.e.f. 1-7-2002 vide SO 603(E), dt. 6-6-2002.

<sup>2</sup> Substituted by Act 66 of 1956, w.e.f. 1-1-1957.

<sup>3</sup> Inserted by Act 104 of 1976, w.e.f. 1-7-1977.

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

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

(2) Where such a decree is silent with respect to the payment of further interest <sup>1</sup>[on such principal sum] from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have refused such interest, and a separate suit therefor shall not lie.

#### COMMENTS

Section 34 empowers the Court to award interest for the period from the date of the suit to the date of the decree and from the date of the decree to the date of payment where the decree is for payment of money.

Section 34 of C.P.C. does not empower the Court to award pre-suit interest. The pre-suit interest would ordinarily depend on the contract (express or implied) between the parties or some statutory provisions or the mercantile usage.—*Secretary/General Manager, Chennai Central Co-operative Bank Ltd. v. S. Kamalaveni Sundaram 2011 (99) AIC 140 (SC)*

Though interest cannot be claimed as a matter of course, it is securable provided there is an express or implied agreement to pay interest or the interest can be recovered under any statutory provision—*The Divisional Manager, LIC of India v. Bhajwathy Amma AIR 1992 Ker 329*

A perusal of the general provision of s. 34 or to R. 11 Order 34, CPC, makes it clear that the relevant provisions are patently governed by the expression “may” and therefore it can be concluded that awarding of such interest is not obligatory but discretionary upon the court—*United Bank of India v. Rasayan Udyog AIR 1990 Cal 146*

Sec. 34, CPC provides both for interest pendente lite as well as post device period and principle of s. 34 are applicable to the proceedings before the arbitrator, even though s. 34 is not applicable—*Hindustan Construction Co. Ltd. v. State of J&K AIR 1992 SC 2192*

Interest can be awarded at the rate at which the money are lent and advanced by the nationalised banks, however the court is not bound by contractual rate of interest in the case of a decree arising out of a commercial transaction—*Union Bank of India v. K Kumara Swami AIR 1991 Ker 118*

Within the meaning of s. 34 of CPC, future interest exceeding 6% per annum can be granted if liability has arisen out of commercial transaction—*Jagdish Chander v. Punjab National Bank AIR 1994 P&H 98*

Where there is the rejection for the claim for interim interest at the agreed rate, and there is the granting of a lower rate of interest, the trial court must give its reasons—*Vijaya Bank v. Art Trend Experts AIR 1992 Cal 12*

Where there is nothing in the agreement providing for the payment of interest, the plaintiff is not entitled to it as of right—*Premjit Theatre v. Rashi Mehata AIR 1990 AP 272*

#### COSTS

##### 35. Costs

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

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

<sup>1</sup> Substituted for “on such aggregate sum as aforesaid” by Act 66 of 1956, w.e.f. 1-1-1957.

COMMERCIAL COURT AMENDMENT

**Note :** *This amendment is applicable only to any suit in respect of a commercial dispute of a specified value, substitute the following section:—*

**“35. Costs**

(1) In relation to any commercial dispute, the Court, notwithstanding anything contained in any other law for the time being in force or Rule, has the discretion to determine:

- (a) whether costs are payable by one party to another;
- (b) the quantum of those costs; and
- (c) when they are to be paid.

*Explanation :* For the purpose of clause (a), the expression “costs” shall mean reasonable costs relating to—

- (i) the fees and expenses of the witnesses incurred;
- (ii) legal fees and expenses incurred;
- (iii) any other expenses incurred in connection with the proceedings.

(2) If the Court decides to make an order for payment of costs, the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party:

PROVIDED that the Court may make an order deviating from the general rule for reasons to be recorded in writing.

*Illustration:* The Plaintiff, in his suit, seeks a money decree for breach of contract, and damages. The Court holds that the Plaintiff is entitled to the money decree. However, it returns a finding that the claim for damages is frivolous and vexatious.

In such circumstances the Court may impose costs on the Plaintiff, despite the Plaintiff being the successful party, for having raised frivolous claims for damages.

(3) In making an order for the payment of costs, the Court shall have regard to the following circumstances, including—

- (a) the conduct of the parties;
- (b) whether a party has succeeded on part of its case, even if that party has not been wholly successful;
- (c) whether the party had made a frivolous counter-claim leading to delay in the disposal of the case;
- (d) whether any reasonable offer to settle is made by a party and unreasonably refused by the other party; and
- (e) whether the party had made a frivolous claim and instituted a vexatious proceeding wasting the time of the Court.

(4) The orders which the Court may make under this provision include an order that a party must pay—

- (a) a proportion of another party’s costs;
- (b) a stated amount in respect of another party’s costs;
- (c) costs from or until a certain date ;
- (d) costs incurred before proceedings have begun;
- (e) costs relating to particular steps taken in the proceedings;
- (f) costs relating to a distinct part of the proceedings; and
- (g) interest on costs from or until a certain date.”

*[By the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (Act 4 of 2016), dt. 31-12-2015, w.r.e.f. 23-10-2015.]*

STATE AMENDMENTS

***Union territory of Jammu and Kashmir***

In section 35, in sub-section (1) [as amended by Act 4 of 2016], omit “commercial”.

*[Vide SO 1123(E), dt. 18-3-2020, w.e.f. 18-3-2020]*

***Union territory of Ladakh***

Same as in Union territory of Jammu and Kashmir.

*[Vide SO 3774(E), dt. 23-10-2020, w.e.f. 23-10-2020]*