

PART VII-APPEALS
APPEALS FROM ORIGINAL DECREES

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

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

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

[77][(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Cause, when the amount or value of the subject-matter of the original suit does not exceed three thousand rupees.]

New case: (2018) 11 SCC 44 in this case the first appeal delay in disposal of as many as 61 adjournment granted and High Court still unable to dispose of first appeal pending before it since 1981 and 35 years have gone it is held that copy of order placed before chief justice of high court to take necessary step. Since matter is listed before Bench hearing.

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

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

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

Provided that where the Bench hearing the appeal is [78][composed of two or other even number of Judges belonging to a Court consisting of more Judges than those constituting the Bench] and the Judges composing the Bench differ in opinion on a point of law, they may state the point of law upon which they differ and the appeal shall then be heard upon that point only by one or more of the other Judges, and such point shall be decided according to the opinion of the majority (if any) of the Judges who have heard the appeal including those who first heard it.

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

99. No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction—No decree shall be reversed or substantially varied, nor shall any case be remanded in appeal on account of any misjoinder [79][or non-joinder] of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court.

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

99A. No order under section 47 to be refused or modified unless decision of the case is prejudicially affected— Without prejudice to the generality of the provisions of section 99, no order under section 47 shall be reversed or substantially varied, on account of any error, defect or irregularity in any proceeding relating to such order, unless such error, defect or irregularity has prejudicially affected the decision of the case.

APPEALS FROM APPELLATE DECREES

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

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

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

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

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

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.

1.New case: (2018) 11 SCC 554-B- it is held the Second Appeal has been dismissed in the absence of any substantial question of law involved therein.

2.New case: (2018) 11 SCC 77- it is held in this case that in the Second Appeal there is no interference with concurrent finding of facts. And not any substantial question of law is arisen.

3.New case: (2019) 3 SCC 711. It was held in this case-high court not assigning any reason while dismissing appeal and nor discussing case on facts or in law. There was no any issue discussed or dealt. The appeal did not involve any substantial question of law.

4. 3.New case: (2019) 3 SCC 378- in the case of *Rajendra Lalit Kumar Agrawal vs. Ratna Ashok Muranjan* it is held that if the documents constitute substantial question of law, the high court is required to exercise power as per Ss 100(4) and 100(5).

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

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

102. No second appeal in certain suits— No second appeal shall lie in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed three thousand rupees.

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

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

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

APPEALS FROM ORDERS

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

[Clauses (a) to (f) omitted]

(ff) an order under section 35A;

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

(g) an order under section 95;

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

(i) any order made under rules from which an appeal is expressly allowed by rules;

Provided that not appeal shall lie against any orders pecified in clause (ff) save on the ground that no order, or an order for the payment of a less amount, ought to have been made.

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

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

(2) Notwithstanding anything contained in sub-section (1), where any party aggrieved by an order of remand [87]***** from which an appeal lies does not appeal there from, he shall thereafter be precluded from disputing its correctness.

106. What Courts to hear appeals— Where an appeal from any order is allowed it shall lie to the Court to which an appeal would lie from the decree in the suit in which such order was made, or where such order is made by a Court (not being a High Court) in the exercise of appellate jurisdiction, then to the High Court.

GENERAL PROVISIONS RELATING TO APPEALS

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

(a) to determine a case finally;

(b) to remand a case;

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

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

(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may

be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.

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

(a) from appellate decrees, and

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

APPEALS TO THE SUPREME COURT

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

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

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

110. [Value of subject matters] Rep. by the Code of Civil Procedure (Amendment) Act, 1973 (49 of 1973).

111. [Bar of certain appeals] Rep. by the A.O. 1950.

111A. [Appeals to Federal Court] Rep. by the Federal Court Act, 1941 (21 of 1941).

112. Savings— (1) Nothing contained in this Code shall be deemed—

(a) to affect the powers of the Supreme Court under article 136 or any other provision of the Constitution, or

(b) to interfere with any rules made by the Supreme Court, and for the time being in force, for the presentation of appeals to that Court, or their conduct before that Court.

(2) Nothing herein contained applies to any matter of criminal or admiralty or vice-admiralty jurisdiction or to appeals from orders and decrees of Prize Courts.

ORDER XLI-APPEALS FROM ORIGINAL DECREES

1 . Form of appeal. What to accompany memorandum— (1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded:

Provided that where two or more suits have been tried together and a common judgment has been delivered there for and two or more appeals are filed against any decree covered by that judgment, whether by the same appellant or by different appellants, the Appellate Court dispense with the filing of more than one copy of the judgment.

(2) Contents of memorandum—The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and such grounds shall be numbered consecutively.

(3) Where the appeal is against a decree for payment of money, the appellant shall, within such time as the Appellate Court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may think fit.]

2 . Grounds which may be taken in appeal— The appellant shall not except by leave of the Court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal, but the Appellate Court in deciding the appeal, shall not be confined to the grounds of objections set forth in the memorandum of appeal or taken by leave of the Court under this rule:

Provided that the Court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground.

3 . Rejection or amendment of memorandum— (1) Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there.

(2) Where the Court rejects any memorandum, it shall record the reasons for such rejection.

(3) Where a memorandum of appeal is amended, the Judge, or such officer as he appoints in this behalf, shall sign or initial the amendment.

3A . Application for condonation of delay— (1) When a appeal is presented after the expiry of the period of limitation specified therefore, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period.

(2) If the Court sees no reason to reject the application without the issue of a notice to the respondent, notice hereof shall be issued to the respondent and the matter shall be finally decided by the Court before it proceeds to deal with the appeal under rule 11 or rule 13, as the case may be.

(3) Where an application has been made under sub-rule (1) the Court shall not made an order fact the stay of execution of the decree against which the appeal is proposed to be filed so long as the Court does not, after hearing under rule 11, decide to hear the appeal.

4 . One of several plaintiff or defendants may obtain reversal of whole decree where it proceeds on ground common to all— Where there are more plaintiff or more defendants then one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the Appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be.

Stay of proceedings and of execution

5 . Stay by Appellate Court— (1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

Explanation—An order by the Appellate Court for the stay of execution of the decree shall be effective from the date of the communication of such order to the Court of first instance but an affidavit sworn by the appellant, based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the Appellate Court shall, pending the receipt from the Appellate Court of the order for the stay of execution or any order to the contrary, be acted upon by the Court of first instance.

(2) Stay by Court which passed the decree—Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied—

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) Subject to the provisions of sub-rule (3)], the Court may make an ex parte order for stay of execution pending the hearing of the application.

(5) Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in sub-rule (3) of rule 1, the Court shall not make an order staying the execution of the decree.

6 . Security in case of order for execution of decree appealed from— (1) Where an order is made for the execution of a decree from which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be taken for the restitution of any property which may be or has been taken in execution of the decree or for the payment of the value of such property and for the due performance of the decree or order of the Appellate Court, or the Appellate Court may for like cause direct the Court which passed the decree to take such security.

(2) Where an order has been made for the sale of immovable property in execution of a decree, and an appeal is pending from such decree, the sale shall, on the application of the judgment-debtor to the Court which made the order, be stayed on such terms as to giving security or otherwise as the Court thinks fit until the appeal is disposed of.

7 . No security to be required from the Government or a public officer in certain cases. Rep. by the A.O. 1937.]

8 . Exercise of powers in appeal from order made in execution of decree— The powers conferred by rules 5 and 6 shall be exercisable where an appeal may be or has been preferred not from the decree but from an order made in execution of such decree.

Procedure on admission of appeal

9 . Registry of memorandum of appeal— (1) Where a memorandum of appeal is admitted, the Appellate Court or the proper officer of that Court shall endorse thereon the date of presentation, and shall register the appeal in a book to be kept for the purpose.

(2) Register of Appeals—Such book shall be called the Register of Appeals.

10 . Appellate Court may require appellant to furnish security for costs— (1) The Appellate Court may in its discretion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both:

Where appellant resides out of India—Provided that the Court shall demand such security in all cases in which the appellant is residing out of India, and is not possessed of any sufficient immovable property within India other than the property (if any) to which the appeal relates.

(2) Where such security is not furnished within such time as the Court orders, the Court shall reject the appeal.

11 . Power to dismiss appeal without sending notice to Lower Court— (1) The Appellate Court, after sending for the record if it thinks fit so to do, and after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day, may dismiss the appeal without sending notice to the Court from whose decree the appeal is preferred and without serving notice on the respondent or his pleader.

(2) If on the day fixed or any other day to which the hearing may be adjourned the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

(3) The dismissal of an appeal under this rule shall be notified to the Court from whose decree the appeal is preferred.

(4) Where an Appellate Court, not being the High Court, dismisses an appeal under sub-rule (1), it shall deliver a judgment, recording in brief its grounds for doing so, and a decree shall be drawn up in accordance with the judgment.

11A . Time within which hearing under rule 11 should be concluded— Every appeal shall be heard under rule 11 as expeditiously as possible and Endeavour shall be made to conclude such hearing within sixty days from the date on which the memorandum of appeal is filed.]

12 . Day for hearing appeal— (1) Unless the Appellate Court dismisses the appeal under rule 11, it should fix a day for hearing the appeal.

(2) Such day shall be fixed with reference to the current business of the Court, the place of residence of the respondent, and the time necessary for the service of the notice of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day.

13 . Appellate Court to give notice to Court whose decree appealed from— (1) Where the appeal is not dismissed under rule 11, the Appellate Court shall send notice of the appeal to the Court from whose decree the appeal is preferred.

(2) Transmission of papers to Appellate Court—Where the appeal is from the decree of a Court, the records of which are not deposited in the Appellate Court, the Court receiving such notice shall send with all practicable dispatch all material papers in the suit, or such papers as may be specially called for by the Appellate Court.

(3) Copies of exhibits in Court whose decree appealed from—Either party may apply in writing to the Court from whose decree the appeal is preferred, specifying any of the papers in such Court of which he requires copies to be made; and copies of such papers shall be made at the expense of, and given to, the applicant.

14 . Publication and service of notice of day for hearing appeal— (1) Notice of the day fixed under rule 12 shall be affixed in the Appellate Court-house, and a like notice shall be sent by the Appellate Court to the Court from whose decree the appeal is preferred, and shall be served on the respondent or on his pleader in the Appellate Court in the manner provided for the service on a defendant of a summons to appear and answer; and all the provisions applicable to such summons, and to proceedings with reference to the service thereof, shall apply to the service of such notice.

(2) Appellate Court may itself cause notice to be served—Instead of sending the notice to the Court from whose decree the appeal is preferred, the Appellate Court may itself cause the notice to be served on the respondent or his pleader under the provisions above referred to.

(3) The notice to be served on the respondent shall be accompanied by a copy of the memorandum of appeal.

(4) Notwithstanding anything to the contrary contained in sub- rule (1), it shall not be necessary to serve notice of any proceeding incidental to an appeal on any respondent other than a person impleaded for the first time in the Appellate Court, unless he has appeared and filed an address for the service in the Court of first instance or has appeared in the appeal.

(5) Nothing in sub-rule (4) shall bar the respondent referred to in the appeal from defending it.

15 . Contents of notice— The notice to the respondent shall declare that, if he does not appear in the Appellate Court on the day so fixed, the appeal will be heard ex parte.

Procedure on hearing

16 . Right to begin— (1) On the day fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal.

(2) The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal and in such case the appellant shall be entitled to reply.

17 . Dismissal of appeal for appellants default— (1)Where on the day fixed, or on any other day which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

Case law: (2017) 8 SCC 603-B. in this case both parties did not appeared, hence, the appeal dismissed on merit.

Explanation—Nothing in this sub-rule shall be construed as empowering the Court to dismiss the appeal on the merits.

(2) Hearing appeal ex parte—Where the appellant appears and the respondent does not appear the appeal shall be heard ex parte,

18 . Dismissal of appeal where notice not served in consequence of appellant's failure to deposit costs— Where on the day fixed, or on any other day to which the hearing may be adjourned, it is found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit, within the period fixed, the sum required to defray the costs of serving the notice or, if the notice is returned unnerved, and it is found that the notice to the respondent has not been issued in consequence of the failure of the appellant to deposit, within any subsequent period fixed, the sum required to defray the cost of any further attempt to serve the notice,] the Court may make an order that the appeal be dismissed:

Provided that no such order shall be made although the notice has not been served upon the respondent, if on any such day the respondent appears when the appeal is called on for hearing.

19 . Re-admission of appeal dismissed for default— Where an appeal is dismissed under rule 11, sub-rule (2) or rule 17 or rule 18, the appellant may apply to the Appellate Court for the re-admission of the appeal; and,

where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit.

20 . Power to adjourn hearing and direct persons appearing interested to be made respondents— (1) Where it appears to the Court at the hearing that any person who was a party to the suit in the Court from whose decree the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court and direct that such person be made a respondent.

(2) No respondent shall be added under this rule, after the expiry of the period of limitation for appeal, unless the Court, for reasons to be recorded, allows that to be done, on such terms as to costs as it thinks fit.

21 . Re-hearing on application of respondent against whom ex parte decree made— Where an appeal is heard ex parte and judgment is pronounced against the respondent, he may apply to the Appellate Court to re-hear the appeal; and, if he satisfies the Court that the notice was not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.

22 . Upon hearing respondent may object to decree as if he had preferred a separate appeal— (1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross-objection] to the decree which he could have taken by way of appeal provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

Explanation—A respondent aggrieved by a finding of the Court in the judgment on which the decree appealed against is based may, under this rule, file cross-objection in respect of the decree in so far as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the decree, is, wholly or in part, in favour of that respondent.]

(2) Form of objection and provisions applicable thereto—Such cross-objection shall be in the form of a memorandum, and the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

(3) Unless the respondent files with the objection a written acknowledgement from the party who may be affected by such objection or his pleader of having received a copy thereof, the Appellate Court shall cause a copy to be served, as soon as may be after the filing of the objection, on such party or his pleader at the expense of the respondent.

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

(5) The provisions relating to appeal by indigent persons shall, so far as they can be made applicable apply to an objection under this rule.

23 . Remand of case by Appellate Court— Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, which directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

23A . Remand in other cases— Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a retrial is considered necessary, the Appellate Court shall have the same powers as it has under rule 23.

24 . Where evidence on record sufficient, Appellate Court may determine case finally— Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which Appellate Court proceeds.

New case: (2015) 13 SCC 673-C SC held that the ordinarily matter not to be remanded if trial court has followed all the steps required for a proper trial.

25 . Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from— Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional

evidence required; and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons there for within such time as may be fixed by the Appellate Court or extended by it from time to time.

26 . Finding and evidence to be put on record, Objections to finding— (1) Such evidence and findings shall form part of the record in the suit; and either party may within a time to be fixed by the Appellate Court, present a memorandum of objections to any finding.

(2) Determination of appeal—After the expiration of the period so fixed for presenting such memorandum the Appellate Court shall proceed to determine the appeal.

26A . Order of remand to mention date of next hearing— Where the Appellate Court remands a case under rule 23 or rule 23A, or frames issues and refers them for trial under rule 25, it shall fix a date for the appearance of the parties before the Court from whose decree the appeal was preferred for the purpose of receiving the directions of that Court as to further proceedings in the suit.

27 . Production of additional evidence in Appellate Court— (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court, But if—

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

Case Law: (2018) 6 SCC 574-B Additional evidence; exercise of the discretionary power to grant of permission to lead additional evidence.

28 . Mode of taking additional evidence— Wherever additional evidence is allowed to be produced, the Appellate Court may either take such evidence or direct the Court from whose decree the appeal is preferred, or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court.

29 . Points to be defined and recorded— Where additional evidence is directed or allowed to be taken, the Appellate Court shall specify the points to which the evidence is to be confined and record on its proceedings the points so specified.

Judgment in appeal

30 . Judgment when and where pronounced— (1) The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the Court from whose decree the appeal is preferred, to which reference maybe considered necessary, shall pronounce judgment open Court, either at once or on some future day of which notice shall be given to the parties or their pleaders.

(2) Where a written judgment is to be pronounced, it shall be sufficient if the points for determination, the decision thereon and the final order passed in the appeal are read out and it shall not be necessary for the Court to read out the whole judgment, but a copy of the whole judgment shall be made available for the perusal of the parties or their pleaders immediately after the judgment in pronounced.

31 . Contents, date and signature of judgment— The judgment of the Appellate Court shall be in writing and shall state—

(a) the points for determination;

(b) the decision thereon;

(c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled, and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

32 . What judgment may direct— The judgment may be for confirming, varying or reversing the decree from which the appeal is preferred, or, if the parties to the appeal agree as to the form which the decree in appeal shall take, or as to the order to be made in appeal, the Appellate Court may pass a decree or make an order accordingly.

33 . Power of Court of Appeal— The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection and may, where there have been decrees in cross-suits or

where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees:

Provided that the Appellate Court shall not make any order under section 35A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.

Illustration

A claims a sum of money as due to him from X or Y, and in a suit against both obtains a decree against X. X, appeals, and A and Y are respondents. The Appellate Court decides in favour of X. It has power to pass a decree against Y.

34 . Dissent to be recorded— Where the appeal is heard by more judges than one, any judge dissenting from the judgment of the court shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reasons for the same.

Decree in appeal

35 . Date and contents of decree— (1) The decree of the Appellate Court shall bear date the day of which the judgment was pronounced.

(2) The decree shall contain the number of the appeal, the names and descriptions of the appellant and respondent, and a clear specification of the relief granted or other adjudication made.

(3) The decree shall also state the amount of costs incurred in the appeal, and by whom, or out of what property, and in what proportions such costs and the costs in the suit are to be paid.

(4) The decree shall be signed and dated by the Judge or Judges who passed it:

Judge dissenting from judgment need not sign decree—Provided that where there are more Judges than one and there is a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree.

36 . Copies of judgment and decree to be furnished to parties— Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the Appellate Court and at their expense.

37 . Certified copy of decree to be sent to Court whose decree appealed from— A copy of the judgment and of the decree, certified by the Appellate Court or such officer as it appoints in this behalf, shall be sent to the Court which passed the decree appealed from and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the register of civil suits.

REFERENCE

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

Provided that where the court is satisfied that a case pending before it involve a question as to the validity of any Act, Ordinance or Regulations or of any provision contained in an Act, Ordinance or Regulations, the determination of which is necessary for the disposal of the case, and is of opinion of that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which court is the subordinate or by the Supreme Court, the court shall state the case setting out its opinion and the reasons therefore, and refer the same for the opinion of the High Court.

Explanation.- In this Section, “regulation” means any regulation of the Bengal, Bombay or Madras Code or regulation as defined in the General Clauses Act, 1897, or the General Clauses Act of State.

Essential conditions for making any reference-

1. a suit or appeal in which the decree is not subject to appeal or an execution proceeding is pending before the court. In other words, there must be a 'lis' before the Court.
2. A question of law or usage having the force of law arises during the course of suit, appeal or execution proceedings.
3. The Court trying the suit or appeal or execution must entertain a reasonable doubt on such question of law.

Who may apply for reference.-

- I. A party to a suit, appeal or executing proceeding may apply for reference.
- II. The Court before to which the cases pending can also *suo motu* refer to the H. C.

After the reference what the subordinate court should do.-

Or.46 R. 2- may either stay the proceedings.

H. C.'s powers.-

1. Or. 46 R. 5 i) h c can return the case for amendment. ii) May alter iii) cancel or set aside any decree or order.
2. Cost of the reference to H. C. shall be the cost of the case. 46/4

ORDER XLVI-REFERENCE

1 . Reference of question to High Court— Where, before or on the hearing of a suit or an appeal in which the decree is not subject to appeal, or where, in the execution of any such decree, any question of law or usage

having the force of law arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court.

2 . Court may pass decree contingent upon decision of High Court— The Court may either stay the proceedings or proceed in the case notwithstanding such reference, and may pass a decree or make an order contingent upon the decision of the High Court on the point referred; But no decree or order shall be executed in any case in which such reference is made until the receipt of a copy of the judgment of the High Court upon the reference.

3 . Judgment of High Court to be transmitted and case disposed of accordingly— The High Court, after hearing the parties if they appear and desire to be heard, shall decide the point so referred, and shall transmit a copy of its judgment, under the signature of the Registrar, to the Court by which the reference was made; and such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court.

4 . Costs of reference to High Court— The costs (if any) consequent on a reference for the decision of the High Court shall be costs in the case.

4A . Reference to high Court under proviso to section 113— The provisions of rules 2, 3 and 4 shall apply to any reference by the Court under the proviso to section 113 as they apply to a reference under rule 1.

5 . Power to alter, etc., decree of Court making reference— Where a case is referred to the High Court under rule 1 or under the proviso to section 113, the High Court may return the case for amendment, and may alter, cancel or set aside any decree or order which the Court making the reference has passed or made in the case out of which the reference arose, and make such order as it thinks fit.

6 . Power to refer to High Court questions as to jurisdiction in small causes— (1) Where at any time before judgment a Court in which a suit has been instituted doubts whether the suit is cognizable by a Court of Small Causes or is not so cognizable, it may submit the record to the High Court with a statement of its reasons for the doubt as to the nature of the suit.

(2) On receiving the record and statement, the High Court may order the Court either to proceed with the suit or to return the plaint for presentation to such other Court as it may in its order declare to be competent to take cognizance of the suit.

7 . Power to District Court to submit for revision proceeding had under mistake as to jurisdiction in small causes— (1) Where it appears to a District Court that a Court subordinate thereto has, by reason of erroneously holding a suit to be cognizable by a Court of small Causes or not to be so cognizable, failed to exercise a jurisdiction vested in it by law, or exercised a jurisdiction not so vested, the District Court may, and if required by a party shall, submit the record to the High Court with a statement of its reasons for considering the opinion of the subordinate Court with respect to the nature of the suit to be erroneous.

(2) On receiving the record and statement the High Court may make such order in the case as it thinks fit.

(3) With respect to any proceeding subsequent to decree in any case submitted to the High Court under this

rule, the High Court may make such order as in the circumstance appears to it to be just and proper.

(4) A Court subordinate to a District Court shall comply with any requisition which the District Court may make for any record or information for the purposes of this rule.

REVIEW

Section 114. Review.- subject as aforesaid, any person considering himself aggrieved-

By a decree or order from which an appeal is allowed by this code, but from no appeal has been preferred.

By a decree or order from which no appeal is allowed by this court, or

By a decision of a reference a court of small causes, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it think fit.

(Order 47)

Comments-

i) in case of *State of Orissa v. Commissioner of Land Record and Settlement, Cuttack AIR 1998 SC 3067* it is a judicial re-examination of the case by the same court and same judge.

ii) Review means the process under which a court in certain circumstances can reconsider its own judgment.

i) Object of the review- the review is not a routine wise procedure. Some material error manifest on the face of earlier order resulting in miscarriage of justice must be proved. *Avtar Singh v Union of India AIR 1980 SC2041.*

ii) if there is an error due to human failing, it cannot be permitted to perpetuate to defeat justice.

Who can apply for review-47/1(1)- any person who is aggrieved: a) by a decree or order from which an appeal is allowed, but no appeal has been preferred;

b) by a decree or order from which no appeal is allowed, or by a decision on a reference from a Court of small causes, may apply for review of a judgment.

4. in the case of *Haidas Das v. Usha Ranin Banik, AIR 2006 SC 1834.* SC told the definite limits to the exercise of the power of review:

a) discovery of new and important matter or evidence;

b) mistake or error apparent on the face of record;

c) any other sufficient reason. 47/1

5. in following circumstances, the review was granted:

i) failure to apply the law of Limitation to the fact found by the court;

ii) Pronouncement of the judgment without taking into consideration the facts that the law has been retrospectively amended;

iii) failure to consider a particular section of an Act or part thereof;

iv) on the ground of omission to try a material issue in the case;

v) on the ground of overlooking a proposition of law well settled by the SC;

vi) when the judgment is pronounced without notice to the parties;

vii) where want of jurisdiction is apparent on the face of the record;

viii) miss conception of law or facts by court or an advocates; and

ix) omission to decide many important issues and ignoring material on record.

6. 47/9-No application to review and order made or an application for review or decree or order passed or made on a review shall be entertained.

7. Court fees will be given but review petition filed by the indigent person fees will be not paid.

8. Appeal and review simultaneously sought.- i) if an appeal already has been filed before making an application for review an appeal is pending, no application for review can be entertained by the court; and

ii)

ORDER XLVII- REVIEW

- 1 . Application for review of judgment**— (1) Any person considering himself aggrieved—
(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
(b) by a decree or order from which no appeal is allowed, or
(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.
(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.
[441] [Explanation—The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]
- 2 .** [To whom applications for review may be made.] Rep. by the Code of Civil Procedure (Amendment) Act, 1956 (66 of 1956), s. 14.
- 3 . Form of applications for review**— The provisions as to the form of preferring appeals shall apply mutatis mutandis, to applications for review.
- 4 . Application where rejected**— (1) Where it appears to the Court that there is not sufficient ground for a review, it shall reject the application.
(2) **Application where granted**—Where the Court is of opinion that the application for review should be granted, it shall grant the same:
Provided that—
(a) no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree or order, a review of which is applied for; and
(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation.
- 5 . Application for review in Court consisting of two or more judges**— Where the Judge or Judges, or any one of the judges, who passed the decree or made the order a review of which is applied for, continues or continued attached to the Court at the time when the application for a review is presented, and is not or not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same.
- 6 . Application where rejected**— (1) Where the application for a review is heard by more than one judge and the Court is equally divided, the application shall be rejected.
(2) Where there is a majority, the decision shall be according to the opinion of the majority.
- 7 . Order of rejection not appealable.** Objections to order granting application— (1) An order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to at once by an appeal from the order granting the application or in an appeal from the decree or order finally passed or made in the suit.]
(2) Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and,

where it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

(3) No order shall be made under sub-rule (2) unless notice of the application has been served on the opposite party.

8 . Registry of application granted, and order for re-hearing— When an application for review is granted, a note thereof shall be made in the register and the Court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.

9 . Bar of certain application— No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained.

REVISION

SECTION 115.- REVISION.-(1) the High Court may call for the record of any case which has been decided by any court subordinate to such High Court and which no appeal lies thereto, and such subordinate Court appears-

- (a) To have exercised a jurisdiction not vested in it by law, or
- (b) To have failed to exercise a jurisdiction so vested, or
- (c) To have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it think fit:

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceedings, except where the order, if it had been made in the favour in the party applying for revision, would have finally disposed of the suit or other proceedings.

(2) the High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any court subordinate thereto.

(3) a revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.

Explanation.- in this section, expression 'any case has been decided' includes any order made, or any order deciding any issue in the course of a suit or other proceedings.

Comments:

1. Revision means an act of examination again in order to remove any defect or grant relief against the irregular or improper exercise or non exercise of jurisdiction by a lower Court.
2. The primary objects of this section is to correct jurisdictional errors committed by the subordinate court, to prevent the subordinate Courts from acting arbitrarily, capriciously and illegality or irregularity in the exercise of their jurisdiction.
3. In the case of *M/s ITI Ltd. v. Ms Siemens Public Communication Network Ltd. AIR 2002 SC2308*. Said that the power of revision under section 115 of the Code is in the nature of power of superintendence to keep subordinate Court within the bounds of their jurisdiction.
4. **Case law: (2017) 13 SCC 409-B** Section 115 Or.39 Rr 1 and 2- Revision against refusal of injunction-it is held, conclusion of High Court that is does not deserve to be dwelt upon by High Court is justified.

