

SIXTH EDITION

Civil Procedure

C.K. Takwani



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Civil Procedure

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This Edition is Dedicated
to
The Sacred Memory
of
My Parents

जगतः पितरौ वंदे
पार्वती परमेश्वरौ*

* महाकवि कालिदास : रघुवंश

“The more you study the Civil Procedure Code, the more you realise what an admirable piece of legislation it is.”

-Chief Justice M.C. Chagla

“The code of procedure must be regarded as such. It is *procedure*, something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up.”

-Justice Vivian Bose¹

¹ *Sangram Singh v. Election Tribunal, Kotah*, (1955) 2 SCR 1 at p. 8: AIR 1955 SC 425 at p. 429.

Preface

WE ARE EXTREMELY happy in placing before law students and junior advocates the Sixth Edition of "Civil Procedure". Though essentially the book has been written for students and junior members of the Bar, it has been warmly welcomed and highly appreciated even by lawyers and Judges. In several Universities, the book has been prescribed as a textbook or a leading work on the subject. It is also used as a "guide" in civil cases by Civil Judges.

Several amendments were made in the Code of Civil Procedure, 1908 by the Amendment Acts of 1976, 1999 and 2002. The Fifth Edition was published immediately after the Amendment Acts of 1999 and 2002. Though there was no case law on the point, radical and far-reaching changes affected in the Code were critically examined and analytically dealt with in that edition.

Now that about seven years have passed, several provisions have come up for consideration before various courts. Even constitutional validity of certain provisions came under challenge in *Salem Advocate Bar Association (I) and (II) v. Union of India*¹. Those cases have been elaborately examined. Important decisions of 2009 have also been noted.

In this edition, we have included many new topics. The doctrine of res judicata, jurisdiction of courts, "forum shopping", amendment of pleadings, discovery, inspection and production of documents, interim orders, adjournments, first appeals, second appeals, cross-objections, revisions etc. have been dealt with in detail. The scheme has been improved and made much more informative, scientific and methodical. Extensive changes have been made in Part IV relating to "execution". Care has, however, been taken to ensure that the

¹ (2003) 1 SCC 49: AIR 2003 SC 189 and (2005) 6 SCC 344: AIR 2005 SC 3353.

work does not lose its character as a "Students' Edition". Students, teachers, lawyers and Judges interested in a commentary and analytical discussion may refer to Authors' *Code of Civil Procedure, 1908* (Lawyers' Edition).

We have been ably assisted in this work by our friends, colleagues and well-wishers. We are particularly thankful to our son Nirav, daughter-in-law Sangita, daughter Krina, and son-in-law Paritosh, who have highlighted problems of junior lawyers in understanding certain principles and applying them to concrete cases. Special care has, therefore, been taken to ensure that complicated concepts of law are explained in a lucid manner and simple language. We are grateful to the Malikis for taking keen interest in our work and also in making valuable suggestions. Staff of Eastern Book Company has expedited the publication of the work so that it is available at the earliest.

We may state with all humility that we have made every effort to make the book much more systematic, scientific and methodical. We hope and trust that like earlier editions, this edition also will be welcomed by students, Professors, Bench and the Bar. We will indeed be very happy in receiving suggestions from our readers so that they can be implemented in future editions.

D/64, Akash Tower
Judges' Bungalow Road,
Vastrapur, Ahmedabad

—Justice CK Thakker
—Mrs MC Thakker

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Abbreviations

AC	APPEAL CASES
AIR	ALL INDIA REPORTER
ALJ/All LJ	ALLAHABAD LAW JOURNAL
AER/All ER	ALL ENGLAND REPORTS
BLR/Bom LR	BOMBAY LAW REPORTER
Ben LR	BENGAL LAW REPORTER
CP	CARRINGTON & PAYNE
CWN/Cal WN	CALCUTTA WEEKLY NOTES
CLJ/Cal LJ	CALCUTTA LAW JOURNAL
Ch D	LAW REPORTS (ENGLISH) CHANCERY DIVISION
Cri LJ	CRIMINAL LAW JOURNAL
CLT/Cut LT	CUTTACK LAW TIMES
Guj CD	GUJARAT CURRENT DECISIONS
GLH/Guj LH	GUJARAT LAW HERALD
GLR/Guj LR	GUJARAT LAW REPORTER
IA	LAW REPORTS INDIAN APPEALS (PRIVY COUNCIL)
IC	INDIAN CASES
ILR	INDIAN LAW REPORTS
KLT/Ker LT	KERALA LAW TIMES
KB/KBD	LAW REPORTS (ENGLISH) KINGS BENCH
MIA	MOORE'S INDIAN APPEALS
MLJ/Mad LJ	MADRAS LAW JOURNAL
QB/QBD	LAW REPORTS (ENGLISH) QUEENS BENCH DIVISION
RCJ	ALL INDIA RENT CONTROL JOURNAL
RLW/Raj LW	RAJASTHAN LAW WEEKLY
SCC	SUPREME COURT CASES
SCC (L&S)	SUPREME COURT CASES (LABOUR & SERVICES)
SCR	SUPREME COURT REPORTS
WLR	WEEKLY LAW REPORTS
WR	WEEKLY REPORTER

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