Part Five
Miscellaneous

PART V

1 Transfer of Cases

SYNOPSIS

1. General	701	13. Calling for remarks	707
2. Object	702	14. Application for transfer after hearing	708
3. Nature and scope	702	15. Recording of reasons	708
4. Who may apply?: Sections 22 & 23	702	16. Transfer on administrative grounds	709
5. Conditions	703	17. Transfer: Effect	709
6. To which court application lies	703	18. Costs	709
7. Application: Form	703	19. Compensation	709
8. Grounds	704	20. Appeal	709
(a) General rule	704	21. Revision	710
(b) Considerations	704	22. Transfer allowed: Illustrative cases	710
(c) Approach of court	705	23. Transfer not allowed: Illustrative cases	711
9. Notice	705	24. Concluding remarks	712
10. Hearing of objections	706		
11. Suo motu transfer	706		
12. Power and duty of court	706		

1. GENERAL

AS A GENERAL rule, a plaintiff as *arbiter litis* or *dominus litis* has a right to choose his own forum where a suit can be filed in more than one court. *Normally*, this right of the plaintiff cannot be curtailed, controlled or interfered with.[1] But the said right is controlled by the power vested in superior courts to transfer a case pending in one inferior court to another or to recall the case to itself for hearing and disposal.

[1] *Indian Overseas Bank* v. *Chemical Construction Co.*, (1979) 4 SCC 358: AIR 1979 SC 1514; *Charan Lal Sahu* v. *Union of India*, (1990) 1 SCC 613 at p. 668: AIR 1990 SC 1480 at p. 1519: *Arvee Industries* v. *Ratan Lal*, (1977) 4 SCC 363 at p. 365: AIR 1977 SC 2429 at p. 2431; *Hazara Singh* v. *State of Punjab*, AIR 1965 SC 720: (1964) 4 SCR 1; *Union of India* v. *Shiromani Gurdwara Prabandhak Committee*, (1986) 3 SCC 600: AIR 1986 SC 186; *Subramaniam Swamy (Dr.)* v. *Ramakrishna Hegde*, (1990) 1 SCC 4: AIR 1990 SC 113; *Maneka Sanjay Gandhi* v. *Rani Jethmalani*, (1979) 4 SCC 167 at p. 169: AIR 1979 SC 468 at p. 469; *Kulwinder Kaur* v. *Kandi Friends Education Trust*, (2008) 3 SCC 659: AIR 2008 SC 1333; *Durgesh Sharma* v. *Jayshree*, (2008) 9 SCC 648.

Sections 22 to 25 enact the law as regards transfer and withdrawal of suits, appeals and other proceedings from one court to another. Sections 22 and 23 enable a defendant to apply for transfer of a suit while Sections 24 and 25 empower certain courts to transfer any suit, appeal or other proceeding either on an application made by any party or by the court *suo motu*.[2] The provision of Sections 22-25 are exhaustive.[3]

2. OBJECT

The primary and paramount object of every procedural law is to facilitate justice. A fair and an impartial trial is a *sine qua non* and an essential requirement of dispensation of justice. Justice can only be achieved if the court deals with both the parties present before it equally, impartially and even-handedly. Hence, though a plaintiff has the right to choose his own forum, with a view to administer justice fairly, impartially, and even-handedly, a court may transfer a case from one court to some other court.[4]

3. NATURE AND SCOPE

Section 22 allows the defendant to make an application for transfer of a suit, whereas Section 23 indicates the court to which such an application can be made. Section 24 embodies general power of transfer of any suit, appeal or other proceeding at any stage either on an application of any party or by a court of its own motion. This power, however, does not authorise a High Court to transfer any suit, appeal or other proceeding from a court subordinate to that High Court to a court not subordinate to that High Court.[5] Section 25 confers very wide, plenary and extensive powers on the Supreme Court to transfer any suit, appeal or other proceeding from one High Court to another High Court or from one civil court in one State to another civil court in another State.[6]

4. WHO MAY APPLY?: SECTIONS 22 & 23

Sections 22 and 23 of the Code deal with the right of a defendant to apply for the transfer of a suit. Where the plaintiff has the choice of two or more courts in which he may institute a suit, a defendant, after notice to the other side, may at the earliest opportunity apply to a court to have the suit transferred from the court in which it is filed to another

[2] For detailed discussion, *see* "Suo motu transfer", *infra*.
[3] *Durgesh Sharma* v. *Jayshree*, (2008) 9 SCC 648.
[4] *Supra*, n. 1; see also *Pushpa Devi* v. *Jai Narain*, (1992) 2 SCC 676: AIR 1992 SC 1133.
[5] *Durgesh Sharma* v. *Jayshree*, (2008) 9 SCC 648.
[6] *Durgesh Sharma* v. *Jayshree*, (2008) 9 SCC 648.

court.[7] In other cases, such application may be filed by any party to the suit, appeal or other proceeding.[8]

5. CONDITIONS

Before transfer is ordered under Section 22, two conditions must be satisfied, namely, (*i*) the application must be made at the earliest possible opportunity and in all cases, where issues are settled, at or before the settlement of issues; and (*ii*) notice must be given to the other side. The provision as to notice is mandatory. Such notice may be given by the party making an application or by the court.[9]

6. TO WHICH COURT APPLICATION LIES

The Code specifies the court to which an application for transfer can be made:

(1) Where several courts having jurisdiction are subordinate to the same appellate court, an application for transfer can be made to that appellate court;[10]

(2) Where such courts are subordinate to the same High Court, an application can be made to that High Court;[11] and

(3) Where such courts are subordinate to different High Courts, an application can be made to the High Court within the local limits of whose jurisdiction, the court in which the suit is instituted is situate;[12]

(4) The Supreme Court may transfer any suit, appeal or other proceeding from one High Court to another High Court, or from one Civil Court in the State to another Civil Court in any other State.[13]

7. APPLICATION: FORM

An application for transfer may be made by a party seeking transfer of a case by filing a petition supported by an affidavit setting forth the grounds of transfer. In an appropriate case, however, an affidavit

[7] Ss. 22 & 23. See also *Manohar Lal* v. *Seth Hiralal*, AIR 1962 SC 527 at p. 536: 1962 Supp (1) SCR 450; *Jagatguru Shri Shankaracharya* v. *Ramji Tripathi*, AIR 1979 MP 50 at p. 56; *Manjari Sen* v. *Nirupam Sen*, AIR 1975 Del 42 at p. 44: (1974) 1 Del 135; *Shri Seetha Mahalakshmi Rice & Groundnut Oil Mills* v. *Rajesh Trading Co.*, AIR 1983 Bom 486 at p. 487.

[8] Ss. 24, 25. See also *Lakshmi Narain* v. *ADJ*, AIR 1964 SC 489: (1964) 1 SCR 362; *Manjari Sen* v. *Nirupam Sen*, AIR 1975 Del 42.

[9] *Manjari Sen* v. *Nirupam Sen*, AIR 1975 Del 42.

[10] S. 23(1).

[11] S. 23(2).

[12] S. 23(3). This provision, however, has to be read keeping in view a recent decision of the Supreme Court in *Durgesh Sharma* v. *Jayshree*, (2008) 9 SCC 648.

[13] S. 25; *see also*, Art. 139-A, Constitution of India; *Durgesh Sharma* v. *Jayshree* (*ibid.*).

in support of the application may be dispensed with.[14] But no specific form is prescribed by the Code.

8. GROUNDS

(a) General rule

The plaintiff is *dominus litis* and as such he has the right to choose his own forum and, *normally*, this right of the plaintiff cannot be interfered with or curtailed either by the opposite party or by the court.[15]

(b) Considerations

A court may transfer any suit, appeal or other proceeding keeping in view relevant and germane considerations. There is unanimity of opinion that balance of convenience is of prime consideration for transfer of a suit. The expression "balance of convenience" has inspired profound legal thought and has acquired the gloss of many judicial interpretations. Restated in simple terms it is a question of fact in each case. Balance of convenience is neither the convenience of the plaintiff alone nor of the defendant alone but of both. In determining the balance of convenience for the trial of a suit, the court has to take into consideration (1) convenience or inconvenience of the plaintiff and the right of the plaintiff to choose his own forum; (2) convenience or inconvenience of the defendant; (3) convenience or inconvenience of the witnesses required for a proper trial of the suit; (4) convenience or inconvenience of a particular place of trial having regard to the nature of the evidence on the main points involved in the suit and also having regard to the doctrine of "*forum conveniens*"; and (5) nature of issues in the suit.[16]

4. Convenience to procure evidence easily

[14] *Bishen Kaur* v. *Amar Nath*, (1912) 14 IC 561 (Lah); *Hardit Singh (Dr.)* v. *Bhagat Jaswant Singh*, AIR 1964 Punj 277.

[15] *Indian Overseas Bank* v. *Chemical Construction Co.*, (1979) 4 SCC 358: AIR 1979 SC 1514; *Charan Lal Sahu* v. *Union of India*, (1990) 1 SCC 613 at p. 668: AIR 1990 SC 1480 at p. 1519; *Arvee Industries* v. *Ratan Lal*, (1977) 4 SCC 363 at p. 365: AIR 1977 SC 2429 at p. 2431; *Hazara Singh* v. *State of Punjab*, AIR 1965 SC 720: (1964) 4 SCR 1; *Union of India* v. *Shiromani Gurdwara Prabandhak Committee*, (1986) 3 SCC 600: AIR 1986 SC 186; *Subramaniam Swamy (Dr.)* v. *Ramakrishna Hegde*, (1990) 1 SCC 4: AIR 1990 SC 113; *Maneka Sanjay Gandhi* v. *Rani Jethmalani*, (1979) 4 SCC 167 at p. 169: AIR 1979 SC 468 at p. 469; *Pushpa Devi* v. *Jai Narain*, (1992) 2 SCC 676: AIR 1992 SC 1133; *Ranbir Yadav* v. *State of Bihar*, (1995) 4 SCC 392: AIR 1995 SC 1219; *Kulwinder Kaur* v. *Kandi Friends Education Trust*, (2008) 3 SCC 659: AIR 2008 SC 1333.

[16] *Baburam Agarwalla* v. *Jamunadas Ramji & Co.*, AIR 1951 Cal 239 at p. 242; *Indian Overseas Bank* v. *Chemical Construction Co.*, (1979) 4 SCC 358: AIR 1979 SC 1514; *Guda Vijayalakshmi* v. *Guda Ramachandra*, (1981) 2 SCC 646 at p. 650: AIR 1981 SC 1143 at pp. 1145-46; *Murray & Co. (P) Ltd.* v. *Madanlal Poddar*, 1994 Supp (3) SCC 696; *Baselius Mar Thoma Mathews* v. *Paulose Mar Athanasius*, (1980) 1 SCC 601 at pp. 603-04: AIR 1979 SC 1909 at p. 1910; *Union of India* v. *Shiromani Gurdwara Prabandhak Committee*, (1986) 3 SCC 600 at p. 603: AIR 1986 SC 186; *Maneka Sanjay Gandhi* v. *Rani Jethmalani*, (1979) 4 SCC 167

(c) Approach of court

The jurisdiction under this section must be exercised with extreme care, caution and circumspection. The search should be for justice and the court must be satisfied that justice could more likely be done between the parties by refusing to allow the plaintiff to continue his suit in the forum of his own choice. A mere balance of convenience in favour of the proceedings in another court, *albeit a material consideration, may not always be a sure criterion justifying transfer.*[17]

In this jurisdiction, the approach of the court must be pragmatic, not theoretical. The amplitude of the expression "expedient in the interest of justice" furnishes a general guideline for the exercise of the power. Whether it is expedient or desirable in the interest of justice to transfer a case to another court is a question which depends upon the facts of each case.[18] The paramount consideration is the interest of justice and when the ends of justice demand transfer of a case, the court should not hesitate to act.[19]

9. NOTICE

When an application for transfer is made under Section 22, notice of such application must be given by the defendant to the other side. The words "after notice to the other parties" indicate that notice must be given prior to the making of application.[20] When an application is made by any party to the proceeding under Section 24, notice must be given by the court to the opposite party before making an order of transfer.

In *Manjari Sen* v. *Nirupam Sen*[21], it was also held by the High Court of Delhi that requirement of prior notice cannot be regarded as mandatory unless it has caused prejudice to the other side.

It is, however, submitted that requirement of giving notice must be held to be mandatory. And an order of transfer without notice to the

at p. 171: AIR 1979 SC 468; *G.X. Francis* v. *Banke Bihari*, AIR 1958 SC 309: 1958 Cri LJ 569; *Kulwinder Kaur* v. *Kandi Friends Education Trust, supra.*

[17] *Indian Overseas Bank* v. *Chemical Construction Co.*, (1979) 4 SCC 358: AIR 1979 SC 1514.

[18] *Maneka Sanjay Gandhi* v. *Rani Jethmalani*, (1979) 4 SCC 167: AIR 1979 SC 468.

[19] *Ibid*, see also *Union of India* v. *Shiromani Gurdwara Prabandhak Committee*, (1986) 3 SCC 600: AIR 1986 SC 186; *Subramaniam Swamy (Dr.)* v. *Ramakrishna Hegde*, (1990) 1 SCC 4: AIR 1990 SC 113.

[20] *Anjula* v. *Milan Kumar*, AIR 1981 All 178 at pp. 183-84; *Baijnath Prasad* v. *Dasrath Prasad*, AIR 1958 Pat 9: ILR 36 Pat 376; *V.S.A. Krishna Mudaliar* v. *V.S.A. Sabapathi Mudaliar*, AIR 1945 Mad 69 at p. 70: (1945) 1 Mad LJ 14: ILR 1945 Mad 389 (FB).

[21] AIR 1975 Del 42: (1974) 1 Del 135; see also *Anjula* v. *Milan Kumar*, AIR 1981 All 178.

opposite party must be held to be without jurisdiction and violative of the principles of natural justice and fair play.[22]

But it may also be stated that where a court transfers a case *suo motu*, non issuance of notice will not make the order *non est*.[23]

10. HEARING OF OBJECTIONS

The primary object of issuing notice to the opposite party is to afford him an opportunity of raising objections and to give hearing against the proposed action of transfer. The court must decide the application of transfer after hearing the objections of the opposite party.[24]

11. SUO MOTU TRANSFER

Over and above an application by a party to the suit, appeal or other proceeding, a High Court or a District Court has power to transfer a suit, appeal or other proceeding even *suo motu*.[25]

12. POWER AND DUTY OF COURT

The power to transfer a case is at the discretion of the court. This discretion, like every other discretion, has to be exercised judicially, keeping in mind that the law confers a right on the person initiating the proceedings to choose one of the several forums available to him and, as *arbiter litis*, he has the right to select his own forum. *Normally*, such a right should not be interfered with or curtailed.

But it cannot reasonably be contended that the plaintiff making an improper choice of forum is immune and his choice cannot be questioned. A court would be justified in inquiring into the circumstances to ascertain whether the right was exercised by the plaintiff *mala fide* or for some ulterior motive or in abuse of his position as *dominus litis*. *Exercise of discretion being dependent on facts and circumstances of each case precedents would not be of much assistance.*[26] (emphasis supplied)

The power of transfer must be exercised with extreme caution and circumspection and in the interests of justice. The court while deciding the question must bear in mind two conflicting interests; (*i*) as a

[22] *M.S. Nally Bharat Engg. Co. Ltd.* v. *State of Bihar*, (1990) 2 SCC 48: (1990) 2 LLJ 211.

[23] *Baijnath Prasad* v. *Dasrath Prasad*, AIR 1958 Pat 9: ILR 36 Pat 376 (para 4); *see also infra*, "Suo motu transfer".

[24] *Furrunjote* v. *Deon Pandey*, (1878) 2 Cal CR 352; *Jagatguru Shri Shankaracharya* v. *Ramji Tripathi*, AIR 1979 MP 50: 1979 MP LJ 305: 1979 Jab LJ 167.

[25] *Kulwinder Kaur* v. *Kandi Friends Education Trust*, (2008) 3 SCC 659: AIR 2008 SC 1333; *Annamalai Chettiar* v. *Ramanathan Chettiar*, AIR 1936 Mad 55 (FB); *B. Sundera Gowda* v. *Martin D'Souza*, AIR 1989 Kant 207; *Nirmal Singh* v. *State of Haryana*, (1996) 6 SCC 126: AIR 1996 SC 2759.

[26] *Sourindra Narayan* v. *Rabindra Narayan*, AIR 1987 Ori 47 (49); *Shri Seetha Mahalakshmi Rice & Groundnut Oil Mills* v. *Rajesh Trading Co.*, AIR 1983 Bom 486; *Indian Overseas Bank* v. *Chemical Construction Co.*, (1979) 4 SCC 358: AIR 1979 SC 1514; *Jagatguru Shri Shankaracharya* v. *Ramji Tripathi*, AIR 1979 MP 50.

dominus litis the right of the plaintiff to choose his own forum; and (*ii*) the *power* and *duty* of the court to assure fair trial and dispensation of justice. The paramount consideration would be the requirement of justice. And if the ends of justice demand transfer of a case, the court should not hesitate to act. The search must be for justice and the court must be satisfied that justice could more likely to be done between the parties by refusing to allow the plaintiff to continue his suit in the forum of his own choice. The burden of establishing sufficient grounds for transfer is on the applicant. The approach of the court should be pragmatic and not theoretical and the totality of facts and circumstances should be considered.[27]

Again, while dealing with an application or for prayer of transfer, the court should not enter into merits of the matter as it *may* affect the final out come of the proceedings or cause prejudice to one or the other side. At the same time, however, an order of transfer must reflect application of mind by the court and the circumstances which weighed in taking the action. Power of transfer cannot be exercised *ipse dixit*.[28]

13. CALLING FOR REMARKS

When an application for transfer is made by a party and allegations of bias, prejudice or partiality have been levelled against the Presiding Officer of a Court, ordinarily remarks of the judge concerned should be called for before making an order of transfer. In such report, the Presiding Officer will give his version in respect of averments and allegations made against him. But no remarks should be called for, nor should the Presiding Officer of the Court try to justify the correctness of the order passed by him.[29]

In *Kaushalya Devi* v. *Mool Raj*[30], in a transfer application of the accused, the Delhi Administration filed an affidavit of the Magistrate against whom the transfer application was made. Over and above, denying the allegations made by the accused, the Magistrate tried to justify his action on merits. The Supreme Court deprecated the action.

Showing concern over the "partisan role" of the Magistrate and deprecating his action, the Supreme Court stated:

[27] *Arvee Industries* v. *Ratan Lal*, (1977) 4 SCC 363 at p. 365: AIR 1977 SC 2429 at p. 2431; *Laxmibai Gulabrao* v. *Martand Daulatrao*, (1972) 74 Bom LR 773; *Hazara Singh* v. *State of Punjab*, AIR 1965 SC 720: (1964) 4 SCR 1; *Union of India* v. *Shiromani Gurdwara Prabandhak Committee*, (1986) 3 SCC 600: AIR 1986 SC 186; *Subramaniam Swamy (Dr.)* v. *Ramakrishna Hegde*, (1990) 1 SCC 4: AIR 1990 SC 113; *Maneka Sanjay Gandhi* v. *Rani Jethmalani*, (1979) 4 SCC 167 at p. 169: AIR 1979 SC 468 at p. 469; *Baselius Mar Thoma Mathews* v. *Paulose Mar Athanasius*, (1980) 1 SCC 601 at p. 604: AIR 1979 SC 1909 at p. 1910.

[28] *Kulwinder Kaur* v. *Kandi Friends Education Trust*, (2008) 3 SCC 659: AIR 2008 SC 1333.

[29] *Pushpa Devi* v. *Jai Narain*, (1992) 2 SCC 676 at p. 678: AIR 1992 SC 1133.

[30] (1964) 1 Cri LJ 233: (1964) 4 SCR 884.

"A little reflection would have satisfied him of the gross impropriety of his action in making an affidavit like the present. *It is an elementary principle of the rule of law that judges who preside over trials, civil or criminal, never enter the arena.*"[31] (emphasis supplied)

14. APPLICATION FOR TRANSFER AFTER HEARING

It is, no doubt, true that an application for a transfer can be made "at any stage".[32] At the same time, however, as the discretionary power of transfer of a suit, appeal or other proceeding requires to be exercised in the interests of justice, the court may refuse such prayer if it is made *mala fide* or with a view to obviate an adverse decision after the hearing is over.

In *Gujarat Electricity Board* v. *Atmaram Sungomal Poshani*[33], *A*, an employee of the Electricity Board was transferred, but he did not resume duty at the transferred place. Disciplinary proceedings were, therefore, taken and his services were terminated. *A* challenged that order by filing a petition which was allowed by the High Court. The Board approached the Supreme Court. The appeal was posted for hearing and the advocates of both the sides were "fully heard". The Court was satisfied that the High Court was in error in granting relief to *A*. That view was expressed by the judges constituting the Bench and a suggestion was made as to whether *A* would settle the matter. The matter was adjourned. When again the appeal was posted for hearing, a new advocate stepped in to argue the matter. The Court refused to hear him. Then an application was made by *A* for transfer of the case to some other Bench expressing his "no confidence" in the Bench which had heard the matter. Describing the prayer as "unusual, uncalled for and unjustified", the Court turned down the request.

15. RECORDING OF REASONS

It is desirable to record reasons in support of an order of transfer.[34] Though omission to record reasons may not make the order *ipso facto* bad, in a given case, the superior court may not approve such order on the ground that there was non-application of mind by the court before making such order.[35]

[31] *Ibid*, at p. 237 (Cri LJ).

[32] S. 24(1).

[33] (1989) 2 SCC 602 at p. 606: AIR 1989 SC 1433 at p. 1436: (1989) 10 ATC 396.

[34] *People's Insurance Co. Ltd.* v. *Sardul Singh*, AIR 1961 Punj 87; *Bishen Kaur* v. *Amar Nath*, (1912) 14 IC 561 (Lah). *Kulwinder Kaur* v. *Kandi Friends Education Trust*, (2008) 3 SCC 659.

[35] *Kulwinder Kaur* v. *Kandi Friends Education Trust*, (2008) 3 SCC 659: AIR 2008 SC 1333.

16. TRANSFER ON ADMINISTRATIVE GROUNDS

Irrespective of the provisions of the Code, a High Court has power to transfer a suit, appeal or other proceeding on administrative grounds also.[36]

17. TRANSFER: EFFECT

Where a suit, appeal or other proceeding is transferred from one court to another, such transfer is not limited to those proceedings. All ancillary and incidental proceedings which may arise out of such suit, appeal, etc. would also be dealt with and decided by transferee court.[37]

18. COSTS

Where an application for transfer is dismissed as frivolous, vexatious or *mala fide* the court has power to award substantial and exemplary costs to the opposite party.[38]

19. COMPENSATION

The Code states that where an application for transfer is dismissed and the Supreme Court is of the opinion that the application was frivolous or vexatious, it may order the applicant to pay compensation to the opponent as it may consider appropriate in the circumstances of the case.[39] Such sum, however, cannot exceed two thousand rupees.[40]

20. APPEAL

An order of transfer neither affects the merits of the controversy between the parties to the suit, nor terminates or disposes of the suit on any ground and, therefore, an order of transfer is not appealable.[41] Similarly, an order of a Single Judge of a High Court transferring a suit is not a "judgment" within the meaning of Letters Patent and, therefore, no letters patent appeal lies against such order.[42]

[36] *Ranbir Yadav* v. *State of Bihar*, (1995) 4 SCC 392: AIR 1995 SC 1219; *Ritz Hotels* v. *State*, AIR 1955 Kant 149; *Kanhu Charan* v. *Banambar Pradhan*, AIR 1986 Ori 213.

[37] *Mineral Development Ltd.* v. *State of Bihar*, AIR 1962 Pat 443; *Kahan Chand* v. *Faqir Chand*, AIR 1968 P&H 374; *Sk. Abu Bakkar* v. *Parimal Prova Sarkar*, AIR 1962 Cal 519.

[38] S. 35-A; see also *Kuar Maheshwari Prasad* v. *Bhaiya Rudra Pratap*, AIR 1945 Oudh 233.

[39] S. 25(4).

[40] S. 35-A; see also *Kuar Maheshwari Prasad* v. *Bhaiya Rudra Pratap*, AIR 1945 Oudh 233.

[41] *Asrumati Debi* v. *Rupendra Deb*, AIR 1953 SC 198 at pp. 200-01: 1953 SCR 1159; *Radhey Shyam* v. *Shyam Behari*, (1970) 2 SCC 405: AIR 1971 SC 2337; *Shanti Kumar* v. *Home Insurance Co. of New York*, (1974) 2 SCC 387 at p. 389: AIR 1974 SC 1719 at p. 1720.

[42] *Asrumati Debi* v. *Rupendra Deb*, AIR 1953 SC 198 at pp. 200-01: 1953 SCR 1159; *Jagatguru Shri Shankaracharya* v. *Ramji Tripathi*, AIR 1979 MP 50; *Shah Babulal* v. *Jayaben D. Kania*, (1981) 4 SCC 8: AIR 1981 SC 1786.

21. REVISION

An order of transfer of a suit, appeal or other proceeding can be said to be a "case decided" within the meaning of Section 115 of the Code and, hence, is open to revision if the conditions laid down in that section are satisfied.[43] Where a case is transferred, ordinarily, a High Court will not entertain a revision petition. But if an order of transfer is passed without issuing a notice to the other side, it is tainted with material irregularity and can be set aside in revision.[44] Similarly, if a court refuses to transfer a suit, appeal or other proceeding on an erroneous view of law that it has no such power, there is failure to exercise jurisdiction vested in the court and the High Court will interfere in revision.[45]

22. TRANSFER ALLOWED: ILLUSTRATIVE CASES

The following have been held to be sufficient grounds for transfer: (*i*) reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending;[46] (*ii*) to avoid multiplicity of proceedings or conflicting decisions;[47] (*iii*) where the judge is interested in one party or prejudiced against the other;[48] (*iv*) where common questions of fact and law arise between the parties in two suits;[49] (*v*) where balance of convenience requires, e.g. where the property is situate or parties or their witnesses reside; or the account books are kept, etc.;[50] (*vi*) where two persons have filed suits against

[43] *Kesho Dâs* v. *N.C. Goyal Co.*, AIR 1938 Lah 95; *Fatema Begam* v. *Imdad Ali*, AIR 1920 All 249; *A.S. De Mello* v. *New Victoria Mills Co. Ltd.*, AIR 1926 All 17; *M.S. Nally Bharat Engg. Co. Ltd.* v. *State of Bihar*, (1990) 2 SCC 48: (1990) 2 LLJ 211.

[44] *Dasarath Prasad* v. *Baijnath Prasad*, AIR 1960 Pat 285.

[45] *Dasarath Prasad* v. *Baijnath Prasad*, *supra*; *see also infra*, Chap. 9.

[46] *Jagatguru Shri Shankaracharya* v. *Ramji Tripathi*, AIR 1979 MP 50; *Manak Lal* v. *Dr. Prem Chand*, AIR 1957 SC 425 at p. 429; *Kamla* v. *Harish Kumar*, (1993) 1 Raj LR 527; *Kiran Ramanlal* v. *Gulam Kader*, 1995 Supp (2) SCC 707; *see also*, C.K. Thakker, *Lectures on Administrative Law* (2008) Lecture VI.

[47] *Indian Overseas Bank* v. *Chemical Construction Co.*, (1979) 4 SCC 358: AIR 1979 SC 1514; *Guda Vijayalakshmi* v. *Guda Ramachandra*, (1981) 2 SCC 650 at p. 650: AIR 1981 SC 1143 at pp. 1145-46.

[48] *Cottle* v. *Cottle*, (1939) 2 All ER 535; *Gujarat Electricity Board* v. *Atmaram Sungomal Poshani*, (1989) 2 SCC 602: AIR 1989 SC 1433; *see also*, C.K. Thakker, *Lectures on Administrative Law* (2008) Lecture VI.

[49] *Indian Overseas Bank* v. *Chemical Construction Co.*, (1979) 4 SCC 358: AIR 1979 SC 1514; *Jagatguru Shri Shankaracharya* v. *Ramji Tripathi*, AIR 1979 MP 50; *Bihar State Food & Supplies Corpn. Ltd.* v. *Godrej Soap (P) Ltd.*, (1997) 1 SCC 748; *Vatsa Industries Ltd.* v. *Shankerlal Saraf*, (1997) 10 SCC 333; *Seema Shrinidhi* v. *Praveen Kumar*, (1997) 8 SCC 712; *Shakuntala Modi* v. *Om Prakash*, (1991) 2 SCC 706: AIR 1991 SC 1104; *Rekha Aggarwal* v. *Sunil Aggarwal*, 1992 Supp (1) SCC 438 (1).

[50] *Arvee Industries* v. *Ratan Lal*, (1977) 4 SCC 363: AIR 1977 SC 2429; *Jagatguru Shri Shankaracharya* v. *Ramji Tripathi*, AIR 1979 MP 50 at p. 56; *Beni Shankar* v. *Surya Kant*, (1981) 3 SCC 627: AIR 1982 SC 52; *Subramaniam Swamy (Dr.)* v. *Ramakrishna Hegde*, (1990)

each other in different courts on the same cause of action;[51] (*vii*) where transfer avoids delay and unnecessary expenses;[52] (*viii*) where important questions of law are involved; or a considerable section of the public is interested in the litigation;[53] (*ix*) where transfer prevents abuse of the process of court;[54] (*x*) where transfer is necessary for only one adjudication of a particular controversy,[55] etc.

23. TRANSFER NOT ALLOWED: ILLUSTRATIVE CASES

The following, on the other hand, have been held not to be sufficient grounds for transfer: (*i*) mere fact that the opposite party is a man of influence in the locality;[56] (*ii*) mere fact that the court is situate at a long distance from the residence of the applicant;[57] (*iii*) mere fact that the presiding officer belongs to a community rival to that of the applicant;[58] (*iv*) mere fact that the judge has decided a similar point in a previous case;[59] (*v*) mere balance of convenience to the applicant;[60] (*vi*) refusal to grant adjournment;[61] (*vii*) prejudice of a judge against a party's pleader not likely to affect the party;[62] (*viii*) judge making adverse remarks regarding merits of the case;[63] (*ix*) allegation of ap-

1 SCC 4: AIR 1990 SC 113; *Murray & Co. (P) Ltd.* v. *Madanlal Poddar*, 1994 Supp (3) SCC 696; *Jaishree Banerjee* v. *Abhirup Banerjee*, (1997) 11 SCC 107.

[51] *G.M. Rajulu* v. *M. Govindan Nair*, AIR 1938 Mad 745; *Manjari Sen* v. *Nirupam Sen*, AIR 1975 Del 42.

[52] *Baselius Mar Thoma Mathews* v. *Paulose Mar Athanasius*, (1980) 1 SCC 601 at pp. 603-04: AIR 1979 SC 1909 at p. 1910; *Union of India* v. *Shiromani Gurdwara Prabandhak Committee*, (1986) 3 SCC 600: AIR 1986 SC 186; *Shiv Kumari* v. *Ramajor Shitla Prasad*, (1997) 2 SCC 452: AIR 1997 SC 1036.

[53] *Arvee Industries* v. *Ratan Lal*, (1977) 4 SCC 363: AIR 1977 SC 2429; *SBI* v. *Sakow Industries Faridabad (P) Ltd.*, AIR 1976 P&H 321.

[54] *Union of India* v. *Shiromani Gurdwara Prabandhak Committee*, (1986) 3 SCC 600: AIR 1986 SC 186; *Maneka Sanjay Gandhi* v. *Rani Jethmalani*, (1979) 4 SCC 167: AIR 1979 SC 468; *G.X. Francis* v. *Banke Bihari*, AIR 1958 SC 309: 1958 Cri LJ 569.

[55] *Ibid*, *Kulwinder Kaur* v. *Kandi Friends Education Trust*, (2008) 3 SCC 659.

[56] *Subramaniam Swamy (Dr.)* v. *Ramakrishna Hegde*, (1990) 1 SCC 4: AIR 1990 SC 113; *Maneka Sanjay Gandhi* v. *Rani Jethmalani*, (1979) 4 SCC 167: AIR 1979 SC 468.

[57] *Manohar Lal* v. *Seth Hiralal*, AIR 1962 SC 527 (536): 1962 Supp (1) SCR 450; *Arvee Industries* v. *Ratan Lal*, (1977) 4 SCC 363: AIR 1977 SC 2429; *Kalpana Deviprakash* v. *Dr. Deviprakash*, (1996) 11 SCC 96.

[58] *Gaja Dhar Parsad* v. *Sohan Lal*, AIR 1934 Lah 762.

[59] *Krishan Kanahya* v. *Vijay Kumar*, AIR 1976 Del 184.

[60] *Indian Overseas Bank* v. *Chemical Construction Co.*, (1979) 4 SCC 358: AIR 1979 SC 1514; *Subramaniam Swamy (Dr.)* v. *Ramakrishna Hegde*, (1990) 1 SCC 4: AIR 1990 SC 113; *Mahabir Prasad* v. *Jacks Aviation (P) Ltd.*, (1999) 1 SCC 37 at p. 44.

[61] *B.K. Ghosh* v. *R.K. Joysurendera Singh*, AIR 1956 Mani 21.

[62] *Mula Naramma* v. *Mula Rengamma*, AIR 1926 Mad 359.

[63] *Gujarat Electricity Board* v. *Atmaram Sungomal Poshani*, (1989) 2 SCC 602 at p. 606: AIR 1989 SC 1433 at p. 1436; *M.Y. Shareef* v. *Nagpur High Court*, AIR 1955 SC 19 at pp. 24-25: (1955) 1 SCR 757; *Krishan Kanahya* v. *Vijay Kumar*, AIR 1976 Del 184; *C.V. Xavier*

prehension against fair trial without furnishing particulars;[64] (*x*) on counsel losing temper and using unparliamentary language, the judge ordering adjournment,[65] etc.

24. CONCLUDING REMARKS

As discussed above, the power of transfer must be exercised with due care, caution and circumspection and in the interests of justice.[66] The court while deciding the question must bear in mind two conflicting interests, (*i*) as a *dominus litis* the right of the plaintiff to choose his own forum; and (*ii*) the *power* and *duty* of the court to assure a fair trial and dispensation of justice. The paramount consideration would be the requirement of justice. And if the ends of justice demand transfer of a case, the court should not hesitate to act.

At the same time, mere inconvenience of the party or bare and vague allegations by an interested party about insecurity or even a threat to his life are not sufficient to transfer a case. Want of territorial jurisdiction of the court to which the case is transferred, though a relevant factor, is not conclusive and will not be an impediment to the power of the court ordering the transfer.[67] Although discretionary power of transfer cannot be imprisoned within a straitjacket of any cast-iron formula unanimously applicable to all situations, it cannot be gainsaid that the power to transfer a case must be exercised with due care and caution.[68]

It is submitted that the following observations of Krishna Iyer, J. in the leading case of *Maneka Sanjay Gandhi* v. *Rani Jethmalani*[69] lay down correct law on the point and are, therefore, worth quoting:

> "Assurance of a fair trial is the first imperative of the dispensation of justice and the criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal service or like mini-grievances. Something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitous if the court is to exer-

v. *J&J DeChane*, AIR 1972 Ker 263; *G. Lakshmi Ammal* v. *Elumalai Chettiar*, AIR 1981 Mad 24; *Sini (Dr.)* v. *B. Suresh Jyothi*, AIR 1996 Ker 160.

[64] *Maneka Sanjay Gandhi* v. *Rani Jethmalani*, (1979) 4 SCC 167: AIR 1979 SC 468.

[65] *X* v. *Y*, AIR 1979 HP 29.

[66] *Kulwinder Kaur* v. *Kandi Friends Education Trust*, (2008) 3 SCC 659: AIR 2008 SC 1333.

[67] *Arvee Industries* v. *Ratan Lal*, *supra*; *Union of India* v. *Shiromani Gurdwara Prabandhak Committee*, *supra*; *Subramaniam Swamy (Dr.)* v. *Ramakrishna Hegde*, *supra*; *Maneka Sanjay Gandhi* v. *Rani Jethmalani*, *supra*.

[68] *Kulwinder Kaur* v. *Kandi Friends Education Trust*, *supra*.

[69] (1979) 4 SCC 167: AIR 1979 SC 468.

cise its power of transfer. *This is the cardinal principle although the circumstances may be myriad and vary from case to case.*" [70]

[70] *Ibid*, at p. 169 (SCC): at p. 469 (AIR); see also *Pushpa Devi* v. *Jai Narain*, (1992) 2 SCC 676: AIR 1992 SC 1133.

PART V

2 Restitution

SYNOPSIS

1. Restitution: Meaning	714	10. Form of application	720
2. Doctrine explained	715	11. Extent of restitution	720
3. Object	716	12. Inherent power to grant restitution	720
4. Nature and scope	717	13. Res judicata	720
5. Conditions	717	14. Bar of suit	720
6. Who may apply?	718	15. Limitation	721
7. Against whom restitution may be granted	719	16. Appeal	721
8. Who may grant restitution?	719	17. Revision	721
9. Nature of proceedings	719	18. Order implemented: Effect	721

1. RESTITUTION: MEANING

THE EXPRESSION "restitution" has not been defined in the Code, but it is "an act of restoring a thing to its proper owner".[1] "Restitution" means restoring of anything unjustly taken from another. It provides for putting a party in possession of land, tenement or property, who had been unlawfully dispossessed, deprived or disseised of it.

In other words, restitution means restoring to a party the benefit which the other party has received under a decree subsequently held to be wrong.[2] The word "restitution" in its etymological sense means restoring to a party on the modification, variation or reversal of a decree what has been lost to him in execution of the decree or in direct consequence of the decree.[3]

[1] *Concise Oxford Dictionary* (1990) at p. 1027; *Shorter Oxford English Dictionary* (1990) Vol. II at pp. 1811-12; *Concise Oxford English Dictionary* (2002) at p. 1220.

[2] *Per* Subba Rao, J. in *Mahijibhai Mohanbhai v. Patel Manibhai*, AIR 1965 SC 1477 at p. 1482: (1965) 2 SCR 436.

[3] *Zafar Khan* v. *Board of Revenue*, 1984 Supp SCC 505 at pp. 513-14: AIR 1985 SC 39 at p. 46.

2. DOCTRINE EXPLAINED

The principle of the doctrine of restitution is that, on the reversal of a decree, the law imposes an obligation on the party to the suit who received an unjust benefit of the erroneous decree to make restitution to the other party for what he has lost. The obligation arises automatically on the reversal or modification of the decree and necessarily carries with it the right to restitution of all that has been done under the erroneous decree; and the court in making the restitution is bound to restore the parties, so far as they can be restored, to the same position they were in at the time when the court by its erroneous action had displaced them from.[4]

Section 144 does not confer any new substantive right. It merely regulates the power of the court in that behalf.[5] It is the bounden duty of courts to see that if a person is harmed by a mistake of the court he should be restored to the position he would have occupied but for that mistake.[6] Similarly, on the reversal of a judgment the law places an obligation on the party who received the benefit of the erroneous judgment to make restitution to the other party for what he has lost and it is the duty of the court to enforce the obligation; unless it is shown that restitution would be clearly contrary to the real justice of the case.[7]

In *Halsbury's Laws of England*, it is stated, "Any civilized system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from, another which it is against conscience that he should keep."[8]

The jurisdiction to make restitution is inherent in every court and can be exercised whenever justice of the case demands.[9]

Illustrations

(1) *A* obtains a decree against *B* for possession of immovable property and in execution of the decree obtains possession thereof. The decree is subsequently reversed in appeal. *B* is entitled under this section to restitution of the property, even though there is no direction for restitution in the decree of the appellate court.

(2) *A* obtains a decree against *B* for Rs 5000, and recovers the amount in execution. The decree is subsequently reversed in appeal. *B* is entitled under this sec-

[4] *Binayak Swain* v. *Ramesh Chandra*, AIR 1966 SC 948 at p. 950; *Lal Bhagwant Singh* v. *Kishen Das*, AIR 1953 SC 136 at p. 139: 1953 SCR 559; *Kavita Trehan* v. *Balsara Hygiene Products Ltd.*, (1994) 5 SCC 380: AIR 1995 SC 441.

[5] *Union Carbide Corpn.* v. *Union of India*, (1991) 4 SCC 584: AIR 1992 SC 248.

[6] *Jang Singh* v. *Brij Lal*, AIR 1966 SC 1631 at pp. 1632-33: (1964) 2 SCR 145.

[7] *Lal Bhagwant Singh* v. *Kishen Das, supra*, at p. 139 (AIR); *Binayak* v. *Ramesh Chandra, supra*; *Prithvinath Singh* v. *Suraj Ahir*, (1970) 3 SCC 794 at p. 799.

[8] *Halsbury's Laws of England* (4th Edn.) at p. 434.

[9] *Kavita Trehan* v. *Balsara Hygiene Products Ltd.*, (1994) 5 SCC 380: AIR 1995 SC 441.

tion to a refund of the amount together with interest up to the date of repayment, though the appellate decree may be silent as to interest.

3. OBJECT

The doctrine of restitution is based upon the well-known maxim *"actus curiae neminem gravabit"*, i.e. the act of court shall harm no one.[10] In the words of Lord Cairns[11], "one of the first and highest duties of all courts is to take care that the act of the court does no injury to the suitors". The law also imposes an obligation on the party who received benefit of an erroneous judgment to make restitution to the other party for what he has lost; and it is the duty of the court to enforce this obligation.[12] In other words, a wrong order should not be perpetuated by keeping it alive and respecting it.[13]

Thus, the doctrine of restitution is based on equitable principles. In proceedings for restitution the court should pass an order consistent with justice to both the parties.[14] The jurisdiction to grant restitution is not confined to the cases covered by Section 144. It extends to all cases which do not come strictly within this section. In other words, the court has inherent power to order restitution whenever justice demands it.[15]

In *Jai Berham* v. *Kedar Nath*[16], the Privy Council observed, "It is the duty of the Court under Section 144 of the Civil Procedure Code to place the parties in the position which they would have occupied, but for such decree or such part thereof as has been varied or reversed. Nor indeed does this duty or jurisdiction arise merely under the said section. It is inherent under the general jurisdiction of the court to act

[10] *Jang Singh* v. *Brij Lal, supra; Lal Bhagwant Singh* v. *Kishen Das, supra; Jagannath Singh* v. *Dr. Ram Naresh*, (1970) 1 SCC 573 at p. 575: (1970) 3 SCR 970; *Tulsipur Sugar Co. Ltd.* v. *State of U.P.*, (1969) 2 SCC 100 at pp. 106-07: AIR 1970 SC 70 at pp. 75-76: *Chinnammal* v. *P. Arumugham*, (1990) 1 SCC 513: AIR 1990 SC 1828; *Neelathupara Kummi* v. *Montharapalla Padippua*, 1994 Supp (3) SCC 760: AIR 1994 SC 1591.

[11] *Alexander Rodger* v. *Comptoir D'Escompte de Paris*, LR (1871) 3 PC 465 at p. 475: 7 Moo PC (NS) 314; *Deshmukh* v. *Ganesh*, AIR 1975 All 82 at p. 84; *Martand Ramchandra (Dr.)* v. *Dr. Dattatraya Ramchandra*, AIR 1975 Bom 237 at p. 239.

[12] *Binayak* v. *Ramesh Chandra, supra; Lal Bhagwant Singh* v. *Kishen Das, supra.*

[13] Alagiriswami, J. in *Raso Moopanar* v. *T.K. Ramamurthy Iyer*, (1967) 1 MLJ 287; *Subhash Chander* v. *Bodh Raj*, AIR 1969 J&K 8.

[14] *Pappu Reddiar* v. *P.S.V.Rm. Ramanatha Iyer*, AIR 1963 Mad 45 (FB); *Lucy Kochuvareed* v. *P. Mariappa Gounder*, (1979) 3 SCC 150 at p. 164: AIR 1979 SC 1214 at p. 1224.

[15] *S.N. Banerji* v. *Kuchwar Lime & Stone Co. Ltd.*, AIR 1941 PC 128 at p. 129; *Jai Berham* v. *Kedar Nath*, AIR 1922 PC 269 at p. 271: (1921-22) 49 IA 351; *L. Guran Ditta* v. *T.R. Ditta*, AIR 1935 PC 12 at p. 13; *Gangadhar* v. *Raghubar Dayal*, AIR 1975 All 102 at pp. 108-09 (FB); *Subhash Chander* v. *Bodh Raj, supra; Union Carbide Corpn.* v. *Union of India*, (1991) 4 SCC 584: AIR 1992 SC 248; *Kavita Trehan* v. *Balsara Hygiene Products Ltd., supra.*

[16] AIR 1922 PC 269 at p. 271: (1921-22) 49 IA 351; see also supra, *Kavita Trehan* v. *Balsara Hygiene Products Ltd.*

rightly and fairly according to the circumstances towards all parties involved."

Illustration

(1) *A* obtains a decree against *B* and recovers the amount due under the decree by execution. Subsequently it is found that *B* was dead at the time of institution of the suit. The decree is a nullity, and the court, having levied execution while there was legally no decree at all, has inherent power to rectify the mistake and order restitution.

4. NATURE AND SCOPE

Section 144 of the Code embodying the doctrine of restitution does not confer any new substantive right to the party not available under the general law. The section merely regulates the power of the court in that behalf. It is the paramount duty of all courts to ensure that they do no injury to any litigant.

The expression "the act of the court" does not mean merely that act of the primary or trial court or intermediate court of appeal but the act of the court as a whole from the lowest court which entertains the matter to the highest court which finally disposes the case.[17]

Moreover, the section is not exhaustive and, therefore, even if the case does not fall within the strict terms of Section 144 of the Code, it is always at the discretion of the court to grant relief of restitution.[18]

Further, since the object of the doctrine is to shorten litigation and to afford speedy relief to the party adversely affected, and merely lays down a procedure, the provision should be construed liberally.[19]

Finally, being equitable in nature, the court may not allow restitution if circumstances do not warrant invocation of such doctrine or the applicant wants to take undue advantage of his own wrong.[20]

5. CONDITIONS

Before restitution can be ordered under this section, the following three conditions must be satisfied:[21]

[17] *Alexander Rodger* v. *Comptoir D'Escompte de Paris*, LR (1871) 3 PC 465; *Prabodh Verma* v. *State of U.P.*, (1984) 4 SCC 251: AIR 1985 SC 167.

[18] *Kavita Trehan* v. *Balsara Hygiene Products Ltd.*, (1994) 5 SCC 380: AIR 1995 SC 441; *Union Carbide Corpn.* v. *Union of India*, (1991) 4 SCC 584: AIR 1992 SC 248; *Binayak Swain* v. *Ramesh Chandra*, AIR 1966 SC 948; *Maqbool Alam* v. *Khodaija*, AIR 1966 SC 1194: (1966) 3 SCR 479; *Jai Berham* v. *Kedar Nath*, AIR 1922 PC 269: (1921-22) 49 IA 351.

[19] *Chinnammal* v. *P. Arumugham*, (1990) 1 SCC 513: AIR 1990 SC 1828.

[20] *Ibid*, see also *Supdt. of Taxes* v. *Onkarmal Nathmal Trust*, (1976) 1 SCC 766: AIR 1975 SC 2065 at p. 2071; *Union Carbide Corpn.* v. *Union of India*, (1991) 4 SCC 584: AIR 1992 SC 248; *Ila Vipin* v. *Smita Ambalal*, (2007) 6 SCC 750: AIR 2007 SC 2404.

[21] *Ganesh Parshad* v. *Adi Hindu Social Service League*, AIR 1975 AP 310 at p. 313; *Gurunath Khandappagouda* v. *Venkatesh Lingo*, AIR 1937 Bom 101 at p. 103; *Puni Devi* v. *Jagannath*, AIR 1994 Ori 240.

(1) The restitution sought must be in respect of the decree or order which had been reversed or varied;

(2) The party applying for restitution must be entitled to benefit under the reversing decree or order; and

(3) The relief claimed must be properly consequential on the reversal or variation of the decree or order.

In other words, (*i*) there must be an erroneous judgment; (*ii*) the benefit of that erroneous judgment has been received by one party; and (*iii*) the erroneous judgment has been reversed, set aside or modified.[22] If these conditions are satisfied, the court must grant restitution. It is not discretionary but obligatory.[23]

6. WHO MAY APPLY?

In order to entitle a person to apply under this section, two conditions must be satisfied:

(1) He must be a party to the decree or order varied or reversed.

The expression "*party*" is not confined to mean only a technical party to the suit or appeal but includes any beneficiary under the final judgment;[24] and

(2) he must have become entitled to any benefit by way of restitution or otherwise under the reversing decree or order.[25] Thus, a trespasser cannot get restitution.[26]

It is, however, not necessary that the decree or order by which the original decree or order is reversed or varied should declare the party's rights to restitution. Where the effect of the decree of the appellate court is to reverse the decree of the lower court, the party against whom the lower court's erroneous decree has been enforced is entitled to apply for restitution under this section.[27]

[22] *Banchhanidhi Das* v. *Bhanu Sahuani*, AIR 1974 Ori 148 at p. 149: ILR 1973 Cut 498.

[23] *Jang Singh* v. *Brij Lal*, AIR 1966 SC 1631: (1964) 2 SCR 145; *Lal Bhagwant Singh* v. *Kishen Das*, AIR 1953 SC 136 at p. 139: 1953 SCR 559; *Binayak Swain* v. *Ramesh Chandra*, AIR 1966 SC 948; *Maqbool Alam* v. *Khodaija*, AIR 1966 SC 1194: (1966) 3 SCR 479.

[24] *Gunga Prosad* v. *Brojo Nath*, (1907) 12 CWN 642 at p. 643 (PC); *Payre Chand* v. *Ashrafunnisa Begum*, AIR 1975 AP 228 at pp. 229-31; *B. Yamuna Bai* v. *L. Venkoba Rao*, AIR 1976 AP 46; *Jagdish Lal* v. *M.E. Periera*, AIR 1977 Del 12 at pp. 15-16; *Jotindra Nath* v. *Jugal Chandra*, AIR 1966 Cal 637.

[25] *Binayak* v. *Ramesh Chandra*, *supra*; *Lal Bhagwant Singh* v. *Kishen Das*, *supra*.

[26] *S.N. Banerji* v. *Kuchwar Lime & Stone Co. Ltd.*, AIR 1941 PC 128; *Ramji Seth* v. *Smt Zohra*, 1983 All LJ 322.

[27] *Sevatha Goundan* v. *Pappammal*, AIR 1935 Mad 476; *Gurunath Khandappagouda* v. *Venkatesh Lingo*, AIR 1937 Bom 101.

7. AGAINST WHOM RESTITUTION MAY BE GRANTED

Restitution can be ordered under this section not only against the party to the litigation, but also against his legal representatives, e.g. transferee *pendente lite*, attaching decree-holder, etc.[28] Section 144 applies only to the parties or their representatives and does not apply to sureties. Hence, restitution cannot be claimed against a surety.[29] It also cannot be granted against a *bona fide* auction-purchaser.[30]

8. WHO MAY GRANT RESTITUTION?

An application for restitution lies to the court which has passed the decree or made the order.[31]

The Explanation as inserted by the Amendment Act, 1976 defines the expression "Court which passed the decree or order". It includes (*a*) where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdiction, the court of first instance; (*b*) where the decree or order has been set aside by a separate suit, the court of first instance which passed such decree or order; and (*c*) where the court of first instance has ceased to exist or has ceased to have jurisdiction to execute it, the court which, if the suit wherein the decree or order was passed were instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit.[32]

9. NATURE OF PROCEEDINGS

At one time, there was a conflict of judicial opinion as to whether proceedings under Section 144 of the Code were proceedings in execution. According to one view, they were, but according to other view, they were not.

But after the decision of the Supreme Court in *Mahijibhai Mohanbhai v. Patel Manibhai*,[33] the proceedings for restitution are proceedings in execution.

[28] *Parmeshari Din* v. *Ram Charan*, AIR 1937 PC 260; *Pyare Chand case, supra*; *Samarjut Singh* v. *Director of Consolidation*, AIR 1974 All 82 at pp. 84-85; *Manikchand* v. *Gangadhar*, AIR 1961 Bom 288; *Shanker Lal* v. *Ram Kishan*, AIR 1976 All 250.

[29] *Raj Raghubar Singh* v. *Jai Indra Bahadur*, AIR 1919 PC 55; *State Bank of Saurashtra* v. *Chitranjan Rangnath*, (1980) 4 SCC 516 at p. 525: AIR 1980 SC 1528 at p. 1534.

[30] *Janak Raj* v. *Gurdial Singh*, AIR 1967 SC 608: (1967) 2 SCR 77; *Chinnammal* v. *P. Arumugham, supra*; *Padanathil Ruqmini* v. *P.K. Abdulla*, (1996) 7 SCC 668: AIR 1996 SC 1204.

[31] Expln. to S. 144(1).

[32] Clauses (*a*), (*b*), (*c*) to Explanation to S. 144.

[33] AIR 1965 SC 1477: (1965) 2 SCR 436; see also *Maqbool Alam* v. *Khodaija*, AIR 1966 SC 1194: (1966) 3 SCR 479.

10. FORM OF APPLICATION

No specific form has been prescribed by the Code for making an application for restitution.

11. EXTENT OF RESTITUTION

The court in making restitution is bound to restore the parties so far as they can be restored to the same position they were in at the time when the court by its erroneous action had displaced them.[34] The words "place the parties in the position which they would have occupied but for such a decree" should be construed to mean that the parties should be put in the position which they would have occupied but for a wrong judgment, decree or order.[35]

12. INHERENT POWER TO GRANT RESTITUTION

Section 144 of the Code embodying the doctrine of restitution does not confer any new substantive right to the party not available under the general law. It merely regulates the power of courts. The doctrine is based on equity and against unjust enrichment. Section 144 is not exhaustive. Hence, there is always an inherent jurisdiction to order restitution.[36]

13. RES JUDICATA

The doctrine of *res judicata* applies to execution proceedings also.[37] An application for restitution dismissed on merits, hence, would operate as *res judicata*. But if such an application is dismissed on some technical grounds, a fresh application will be maintainable.[38]

14. BAR OF SUIT

Sub-section (2) of Section 144 provides in express terms that where restitution could be claimed by an application under this section, no separate suit shall be brought for such relief.[39]

[34] *Lal Bhagwant Singh* v. *Kishen Das*, AIR 1953 SC 136 at p. 139: 1953 SCR 559; *Mahijibhai Mohanbhai Barot v. Patel Manibhai Gokalbhai, supra.*

[35] *Ibid*, see also *Binayak* v. *Rameshchandra, supra*; *L. Guran Ditta* v. *T.R. Ditta*, AIR 1935 PC 12: 153 IC 654 (PC).

[36] *Union Carbide Corpn.* v. *Union of India*, (1991) 4 SCC 584: AIR 1992 SC 248; *Kavita Trehan* v. *Balsara Hygiene Products Ltd.*, (1994) 5 SCC 380: AIR 1995 SC 441.

[37] Expln. VII to S. 11. For detailed discussion, *see supra*, Pt. II, Chap. 2.

[38] *Maqbool Alam* v. *Khodaija*, AIR 1966 SC 1194: (1966) 3 SCR 479; *Sheoratan Kurmi* v. *Kalicharan Ram*, AIR 1968 Pat 270; *Choudhary Hariram* v. *Pooransingh*, AIR 1962 MP 295.

[39] *Kunwar Rohani Ramandhwaj* v. *Thakur Har Prasad*, AIR 1943 PC 189; *Ansuya Bai* v. *Ramaiah Raju*, AIR 1961 Mys 238; *Math Sauna* v. *Kedar Nath*, AIR 1977 All 115; *Mahijibhai Mohanbhai v. Patel Manibhai*, AIR 1965 SC 1477: (1965) 2 SCR 436.

15. LIMITATION

An application under Section 144 is an application for execution of a decree and is governed by Article 136 of the Limitation Act, 1963.[40] The period of limitation for such an application is twelve years and it will start from the date of the appellate decree or order.[41]

16. APPEAL

The determination of a question under Section 144 has been expressly declared to be a "decree" under Section 2(2) of the Code and is, therefore, appealable.[42] Second appeal also lies on a "substantial question of law".[43]

17. REVISION

Since an order under Section 144 is a "decree", it is appealable and no revision lies against such order. But where the order does not fall under four corners of the section, a revision is maintainable as it can be said to be a "case decided" under Section 115 of the Code.[44]

18. ORDER IMPLEMENTED: EFFECT

Even if a decree is executed or order is implemented, restitution proceedings under Section 144 of the Code will not become infructuous. Normally, it is only after the decree is executed or order is implemented and enforced that the question of restitution or restoration of earlier position arises. It is, therefore, not open to a court to dispose of an application for restitution that the order has already been given effect and nothing requires to be made.[45]

[40] *Mahijibhai Mohanbhai v. Patel Manibhai*, AIR 1965 SC 1477 at p. 1486: (1965) 2 SCR 436.

[41] Art. 136, Limitation Act, 1963.

[42] *Rahimbhoy* v. C.A. *Turner*, ILR (1890) 15 Bom 155 (PC); *Bhim Rao* v. *Laxmibai*, AIR 1966 Mys 112 at p. 115; *Abdul Majid* v. *Abdul Sattar*, AIR 1941 Nag 313; *Sarat Chandra* v. *Subasini Devi*, AIR 1930 Cal 89.

[43] For detailed discussion, *see*, Pt. III, Chap. 3.

[44] *Maqbool Alam* v. *Khodaija Begum*, AIR 1949 Pat 133 (FB); *Kaku Singh* v. *Gobind Singh*, AIR 1959 Punj 468. For detailed discussion of revisional jurisdiction of High Courts, *see supra*, Pt. III, Chap. 9.

[45] *State of Gujarat* v. *Dilipbhai*, (2006) 8 SCC 72: AIR 2006 SC 3091; *Damodar Mishra* v. *State of Orissa*, 1994 Supp (2) SCC 51.

PART V

3 Caveat

SYNOPSIS

1. Meaning	722	9. Notice	726
2. Section 148-A	723	10. Rights and duties	726
3. Object	723	(a) Of caveator	726
4. Nature and scope	724	(b) Of applicant	726
5. Who may lodge caveat?	724	(c) Of court	726
6. When caveat may be lodged?	725	11. Failure to hear caveator: Effect	727
7. When caveat does not lie?	725	12. Time-limit	728
8. Form	725		

1. MEANING

THE TERM "caveat" has not been defined in the Code. The word (caveat) has been derived from Latin which means "beware". According to the dictionary meaning,[1] "a caveat is an entry made in the books of the offices of a registry or court to prevent a certain step being taken without previous notice to the person entering the caveat".

In other words, a caveat is a caution or warning given by a party to the court not to take any action or grant any relief to the applicant without notice or intimation being given to the party lodging the caveat and interested in appearing and objecting to such relief. It is very common in testamentary proceedings. It is a precautionary measure taken against the grant of probate or letters of administration, as the case may be, by the person lodging the caveat.[2] The person filing or lodging a caveat is called "caveator". Section 148-A of the Code of Civil Procedure provides for lodging of a caveat.

[1] Earl Jowitt, *The Dictionary of English Law* (1977) Vol. 1 at p. 298; *The Concise Oxford English Dictionary* (2002) at p. 225.

[2] S. 284, Indian Succession Act, 1925. See also *Nirmal Chandra* v. *Girindra Narayan*, AIR 1978 Cal 492 at p. 494: 82 CWN 1026; *C. Seethaiah* v. *Govt. of A.P.*, AIR 1983 AP 443; *H.G. Shankar Narayan* v. *State of Rajasthan*, AIR 1985 Raj 156: 1984 Raj LW 266.

2. SECTION 148-A

Section 148-A, as inserted by the Amendment Act, 1976 is a salutary provision. It allows a person to lodge a caveat in a suit or proceeding instituted or about to be instituted against him. It reads as under:

(1) Where an application is expected to be made, or has been made, in a suit or proceeding instituted, or about to be instituted, in a court, any person claiming a right to appear before the court on the hearing of such application may lodge a caveat in respect thereof.

(2) Where a caveat has been lodged under sub-section (1), the person by whom the caveat has been lodged (hereinafter referred to as the caveator) shall serve a notice of the caveat by registered post, acknowledgment due, on the person by whom the application has been, or is expected to be made, under sub-section (1).

(3) Where, after a caveat has been lodged under sub-section (1), any application is filed in any suit or proceeding, the court shall serve a notice of the application on the caveator.

(4) Where a notice of any caveat has been served on the applicant, he shall forthwith furnish the caveator, at the caveator's expense, with a copy of the application made by him and also with copies of any paper or document which has been, or may be, filed by him in support of the application.

(5) Where a caveat has been lodged under sub-section (1), such caveat shall not remain in force after the expiry of ninety days from the date on which it was lodged unless the application referred to in sub-section (1) has been made before the expiry of the said period.

3. OBJECT

The underlying object of a caveat is twofold: *firstly*, to safeguard the interest of a person against an order that may be passed on an application filed by a party in a suit or proceeding instituted or about to be instituted. Such a person lodging a caveat may not be a necessary party to such an application, but he may be affected by an order that may be passed on such application.

This section affords an opportunity to such party of being heard before an *ex parte* order is made; and *secondly*, it seeks to avoid multiplicity of proceedings. In the absence of such a provision, a person who is not a party to such an application and is adversely affected by the order has to take appropriate legal proceedings to get rid of such or-

der.[3] Such a provision is found in the Supreme Court Rules.[4] The Law Commission, therefore, recommended insertion of such a provision in the Code of Civil Procedure also. Accordingly, Section 148-A has been inserted by the Amendment Act of 1976.[5]

4. NATURE AND SCOPE

Section 148-A enacts that a caveat can be lodged in a *suit* or *proceeding*. Construing the connotation in a narrow manner, some High Courts have taken the view that no caveat can be filed in a first or second appeal or in execution proceedings. But, as observed in *Ram Chandra Aggarwal* v. *State of U.P.*[6], the expression "Civil Proceedings" in Section 141 of the Code includes all proceedings which are not original proceedings. Thus, the provision relating to caveat would be applicable to suits, appeals as well as other proceedings under the Code or under other enactments.[7]

Again, it is no doubt true that no order should be passed against the caveator unless he is heard, but if the caveator is not present at the time of hearing of the application and the court finds that there is a *prima facie* case in favour of the applicant, *ad interim* relief can be granted by the court in his favour. Interim order passed without giving notice to the caveator is not without jurisdiction and is operative till it is set aside in appropriate proceedings.[8]

5. WHO MAY LODGE CAVEAT?

Sub-section (1) of Section 148-A prescribes qualifications for the person who intends to lodge a caveat. He must be a person claiming a right to appear before the court on the hearing of the application, which the applicant might move for the grant of interim relief. The language of sub-section (1) of Section 148-A is wide enough to include not only a necessary party, but even a proper party.[9] Hence, a caveat may be filed by any person who is going to be affected by an interim order likely to be passed on an application which is expected to be made in a suit or proceeding instituted or about to be instituted in a court.[10]

[3] *Nirmal Chandra* v. *Girindra Narayan*, AIR 1978 Cal 492 at p. 494: 82 CWN 1026.

[4] Supreme Court Rules, 1966, Or. 19 R. 2.

[5] Law Commission's Fifty-fourth Report at p. 118; see also *Chandrajit* v. *Ganeshiya*, AIR 1987 All 360.

[6] AIR 1966 SC 1888: 1966 Supp SCR 393.

[7] *Chandrajit* v. *Ganeshiya*, AIR 1987 All 360.

[8] *Employees Assn.* v. *RBI*, AIR 1981 AP 246: (1981) 1 AP LJ 338; *Babubhai Nagindas Shah* v. *State*, (1983) 24 (1) Guj LR 784.

[9] *Employees Assn.* v. *RBI*, AIR 1981 AP 246: (1981) 1 AP LJ 338.

[10] *Nirmal Chandra* v. *Girindra Narayan*, AIR 1978 Cal 492 at p. 494: 82 CWN 1026; *G.C. Siddalingappa* v. *G.C. Veeranna*, AIR 1981 Kant 242 at p. 243.

Thus, a person who is a stranger to the proceeding cannot lodge a caveat.[11] Likewise, a person supporting the application for interim relief made by the applicant also cannot file a caveat.[12]

Generally, a caveat can be filed after the judgment is pronounced. In exceptional cases, however, a caveat may be filed even before the pronouncement of the judgment.[13]

6. WHEN CAVEAT MAY BE LODGED?

Normally, a caveat may be lodged after the judgment is pronounced or order is passed. In exceptional cases, however, a caveat may be filed even before pronouncement of judgment or passing of order.[14]

7. WHEN CAVEAT DOES NOT LIE?

The provisions of Section 148-A of the Code can be attracted only in cases where the caveator is entitled to be heard before any order is made on the application already filed or proposed to be filed. The section cannot be construed to mean and provide that even in cases where the Code does not contemplate notice, it can be claimed by lodging a caveat. Such a construction would be inconsistent with the object underlying Section 148-A.[15]

8. FORM

Unlike the Indian Succession Act[16], no form of caveat has been prescribed under the Code. A caveat may, therefore, be filed in the form of a petition wherein the caveator has to specify the nature of the application which is expected to be made or has been made and also his right to appear before the court at the hearing of such application.[17] The Stamp Reporter or Registry of the court will keep a register wherein entries will be made of the filing of caveats.[18]

[11] *Kattil Vayalil Parkkum* v. *Mannil Paadikayil*, AIR 1991 Ker 411; *Nav Digvijay Coop. Housing Society Ltd.* v. *Sadhana Builders*, AIR 1984 Bom 114; *Chloride India Ltd.* v. *Ganesh Das*, AIR 1986 Cal 74.

[12] *Nirmal Chandra* v. *Girindra Narayan*, AIR 1978 Cal 492 at p. 494: 82 CWN 1026; *Mahatma Gandhi Housing Colony Development Society* v. *Devangapuri Gram Panchayat*, 1995 AIHC 3243 (AP).

[13] *Pashupati Nath* v. *Registrar, Coop. Societies*, AIR 1983 Raj 191 at p. 192; *H.G. Shankar Narayan* v. *State of Rajasthan*, AIR 1985 Raj 156 at p. 160: 1984 Raj LW 266

[14] *Pashupati Nath* v. *Registrar, Coop. Societies*, AIR 1983 Raj 191: 1982 RLR 694: 1982 RLW 572; *H.G. Shankar Narayan* v. *State of Rajasthan*, AIR 1985 Raj 156: 1984 Raj LW 266.

[15] *Chloride India Ltd.* v. *Ganesh Das*, AIR 1986 Cal 74; *Nav Digvijay Coop. Housing Society Ltd.* v. *Sadhana Builders*, AIR 1984 Bom 114; *Kattil Vayalil Parkkum* v. *Mannil Paadikayil*, AIR 1991 Ker 411; *Madhukantaben* v. *Arvindlal Kantilal & Co.*, 1985 Guj LH 391.

[16] S. 284(4), Sch. V.

[17] *Nirmal Chandra* v. *Girindra Narayan*, AIR 1978 Cal 492 at p. 494: 82 CWN 1026.

[18] *Chandrajit* v. *Ganeshiya*, AIR 1987 All 360. For Model "Caveat", *see*, Appendix 'I'.

9. NOTICE

When a caveat is lodged, the court will serve a notice of an application on the caveator. The section obliges the applicant who has been served with a caveat to furnish the caveator, at the caveator's expense, a copy of the application along with copies of papers and documents submitted by him in support of his application.[19]

10. RIGHTS AND DUTIES

Sub-sections (2), (3) and (4) of Section 148-A prescribe the rights and duties of the caveator who lodges a caveat, of the applicant who intends to obtain an interim order and of the court.

(a) Of caveator

Under sub-section (2) of Section 148-A, once a party is admitted to the status of a caveator, he is clothed with certain rights and duties. It is his duty to serve a notice of the caveat lodged by him by registered post on the person or persons by whom an application against the caveator for an interim order has been or is expected to be made.[20]

The provision is directory and not mandatory. Where no notice could be served on account of uncertainty of the person likely to institute a suit, appeal or other proceeding, the court may, at its discretion, dispense with the service of notice of a caveat and permit a party to lodge a caveat without naming the party respondent.[21]

(b) Of applicant

Sub-section (4) of Section 148-A provides that it is the duty of the applicant to furnish to the caveator forthwith at the caveator's expense a copy of the application made by him along with the copies of papers and documents on which he relies. This provision thus makes it obligatory for the applicant to serve his application along with all copies and documents filed or intended to be filed in support of his application.[22]

(c) Of court

Once a caveat had been lodged, under sub-section (3), it is the duty of the court to issue a notice of that application on the caveator. This duty has been cast on the court obviously for the purpose of enabling

[19] *Nova Granites (India) Ltd.* v. *Craft (Banglore) (P) Ltd.*, (1994) 1 Civ LJ 711 (Kant); *Akbar Ali* v. *Alla Pitchai*, 2000 AIHC 115 (Mad).

[20] *Nirmal Chandra* v. *Girindra Narayan, supra; Employees Assn.* v. *RBI, supra; Pashupati Nath* v. *Registrar, Coop. Societies, supra; G.C. Siddalingappa* v. *G.C. Veeranna, supra; C. Seethaiah* v. *Govt. of A.P., supra.*

[21] *State of Karnataka* v. *NIL*, (1999) 5 Kant LJ 637.

[22] *Employees Assn.* v. *RBI, supra; G.C. Siddalingappa* v. *G.C. Veeranna, supra; C. Seethaiah* v. *Govt. of A.P., supra.*

the caveator to appear and oppose the granting of an interim relief in favour of the applicant.[23] Although the expression "notice of application" has not been defined in the Code, it would include the date of hearing.[24] It must, therefore, be taken that it is the duty of the court to give a sufficiently reasonable and definite time to the caveator to appear and to oppose the application filed by the applicant.[25] This duty of the court is in addition to the duty of the applicant under sub-section (4) and non-compliance with it defeats the very object of introducing Section 148-A and the breach thereof vitiates the order. Therefore, merely because the caveator refuses to accept the copy of the application from the applicant, the court is not absolved from serving the notice of the application to the caveator.[26]

11. FAILURE TO HEAR CAVEATOR: EFFECT

The intention of the legislature in enacting the provision of caveat is to enable the caveator to be heard before any orders are passed and no orders are passed by the court *ex parte*.[27] It is, therefore, clear that once a caveat is filed, it is a condition precedent for passing an interim order to serve a notice of the application on the caveator who is going to be affected by the interim order.[28] *Unless that condition precedent is satisfied, it is not permissible for the court to pass an interim order affecting the caveator, as otherwise it will defeat the very object of Section 148-A.*[29]

(emphasis supplied)

It also cannot be contended that the caveator is required to be heard not at the time of passing an *ex parte* order at the initial stage, but at the time of passing the final order.[30] This reasoning would make the provisions of Section 148-A nugatory and meaningless because, even in the absence of Section 148-A, before passing a final order the other side is always required to be heard. That is the requirement of natural justice.[31] Therefore, once a caveat is filed, it is the duty of the court to

[23] *Nirmal Chandra* v. *Girindra Narayan, supra; Employees Assn.* v. *RBI, supra; G.C. Siddalingappa* v. *G.C. Veeranna, supra; Kandla Port Trust* v. *Mulraj,* (1986) 27 (1) GLR 442 at p. 449.

[24] *Employees Assn.* v. *RBI,* AIR 1981 AP 246: (1981) 1 AP LJ 338.

[25] *Ibid,* see also supra, *G.C. Siddalingappa* v. *G.C. Veeranna.*

[26] *Ibid,* see also supra, *C. Seethaiah* v. *Govt. of A.P.*

[27] *Nirmal Chandra* v. *Girindra Narayan, supra; C. Seethaiah* v. *Govt. of A.P., supra; Employees Assn.* v. *RBI, supra.*

[28] *G.C. Siddalingappa* v. *G.C. Veeranna, supra; C. Seethaiah* v. *Govt. of A.P., supra; Kandla Port Trust* v. *Mulraj, supra.*

[29] *G.C. Siddalingappa* v. *G.C. Veeranna, supra,* at p. 244 (AIR).

[30] *Kandla Port Trust* v. *Mulraj, supra.*

[31] For detailed discussion about "Natural Justice" *see,* Author's *Lectures on Administrative Law* (2008) Lecture VI.

hear the caveator before passing any interim order against him.[32] But an interim order passed without hearing the caveator is not without jurisdiction and operates unless set aside.[33]

12. TIME-LIMIT

A caveat lodged under sub-section (1) will remain in force for ninety days from the date of its filing.[34]

After the prescribed period of ninety days is over, caveat may be renewed.[35]

[32] *G.C. Siddalingappa* v. *G.C. Veeranna, supra; C. Seethaiah* v. *Govt. of A.P., supra; Kandla Port Trust* v. *Mulraj, supra.*

[33] *Employees Assn.* v. *RBI, supra.*

[34] Sub-s. (5). *See also,* Statement of Objects and Reasons; *Pashupati Nath* v. *Registrar, Coop. Societies,* AIR 1983 Raj 191 at p. 192; *H.G. Shankar Narayan* v. *State of Rajasthan,* AIR 1985 Raj 156 at p. 159: 1984 Raj LW 266; *Enamul Horo* v. *Harbans Kaur,* (1995) 2 BLJR 1136.

[35] *Ibid.*

PART V

4 Inherent powers of Courts

SYNOPSIS

1. General	729	8. Abuse of process of court: Section 151	734
2. Inherent power: Meaning	730	9. Amendment of judgments, decrees, orders and other records: Sections 152, 153 and 153-A	735
3. Inherent powers: Scheme	730	10. Limitations	736
4. Enlargement of time: Section 148	731	11. Concluding remarks	737
5. Payment of court fees: Section 149	732		
6. Transfer of business: Section 150	733		
7. Ends of justice: Section 151	733		

1. GENERAL

EVERY COURT is constituted for the purpose of administering justice between the parties and, therefore, must be deemed to possess, as a necessary corollary, all such powers as may be necessary to do the right and to undo the wrong in the course of administration of justice.[1] As stated above,[2] the Code of Civil Procedure is a procedural or adjective law and the provisions thereof must be liberally construed to advance the cause of justice and further its ends.[2]

The inherent powers of the court are in addition to the powers specifically conferred on the court by the Code. They are *complementary* to those powers and the court is free to exercise them for the ends of justice or to prevent the abuse of the process of the court.[3]

[1] *Manohar Lal* v. *Seth Hiralal*, AIR 1962 SC 527 at p. 534: 1962 Supp (1) SCR 450; *State of Punjab* v. *Shamlal Murari*, (1976) 1 SCC 719: AIR 1976 SC 1177; *Raj Narain* v. *Indira Nehru Gandhi*, (1972) 3 SCC 850 at p. 858: AIR 1972 SC 1302 at p. 1307; *Jaipur Mineral Development Syndicate* v. *CIT*, (1977) 1 SCC 508 at pp. 510-11: AIR 1977 SC 1348 at p. 1350; *Mulraj* v. *Murti Raghunathji Mahaaraj*, AIR 1967 SC 1386 at p. 1390: (1967) 3 SCR 84; *State of U.P.* v. *Roshan Singh*, (2008) 2 SCC 488: AIR 2008 SC 1190. *See also supra*, Pt. I, Chap. 1.

[2] *See supra*, Pt. I, Chap. 1.

[3] S. 151 of the Code reads as follows:

Saving of inherent powers of Court: "Nothing in this Code shall be deemed to limit or otherwise affect the inherent powers of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court."

The reason is obvious. The provisions of the Code are not exhaustive for the simple reason that the legislature is incapable of contemplating all the possible circumstances which may arise in future litigation.[4] Inherent powers come to the rescue in such unforeseen circumstances. They can be exercised *ex debito justitiae* in absence of express provisions in the Code.[5]

As Justice Raghubar Dayal[6] rightly states, "The inherent power has not been conferred upon the court; it is a power inherent in the court by virtue of its duty to do justice between the parties before it." Thus, this power is necessary in the interests of justice. The inherent power has its roots in necessity and its breadth is coextensive with the necessity.[7] Sections 148 to 153-A of the Code enact the law relating to inherent powers of a court in different circumstances.

2. INHERENT POWER: MEANING

According to dictionary meaning, "inherent" means "natural", "existing and inseparable from something", "a permanent attribute or quality", "an essential element, something intrinsic, or essential, vested in or attached to a person or office as a right of privilege."[8]

Inherent powers are thus powers which may be exercised by a court to do full and complete justice between the parties before it.

3. INHERENT POWERS: SCHEME

Sections 148 to 153-B of the Code deal with inherent powers of courts. The scheme, however, is not based on intelligible pattern. Sections 148 and 149 provide for grant and enlargement of time while Section 151 preserves inherent powers of courts. Sections 152, 153 and 153-A deal with amendments in judgments, decrees orders and in other proceedings. Section 153-B declares a place of trial to be an open court. Section 150, however, provides for transfer of business. This section could have been placed along with Sections 22-25 dealing with transfer of cases. Likewise, Section 148-A (lodging of caveat) could have been taken

See also *Padam Sen* v. *State of U.P.*, AIR 1961 SC 218 at p. 219: (1961) 1 SCR 884 at p. 887; *Manohar Lal* v. *Seth Hiralal, supra*, at pp. 533, 537 (AIR); *Ram Chand & Sons Sugar Mills (P) Ltd.* v. *Kanhayalal Bhargava*, AIR 1966 SC 1899: (1966) 3 SCR 856; *Mulraj* v. *Murti Raghunathji Mahaaraj, supra*.

[4] *Manohar Lal* v. *Seth Hiralal, supra*, at pp. 532, 537 (AIR).

[5] *Mahendra Manilal* v. *Sushila Mahendra*, AIR 1965 SC 364 at p. 399: (1964) 7 SCR 267; *Manohar Lal* v. *Seth Hiralal (ibid.)* at p. 537 (AIR).

[6] *Manohar Lal* v. *Seth Hiralal, supra*, at p. 534 (AIR); see also *State of W.B.* v. *Indira Debi*, (1977) 3 SCC 559.

[7] *Newabganj Sugar Mills* v. *Union of India*, (1976) 1 SCC 120 at p. 123: AIR 1976 SC 1152 at p. 1155.

[8] *Concise Oxford English Dictionary* (2002); *Chamber's 20th Century Dictionary* (1992) at p. 647; *Webster's Encyclopedic Unabridged Dictionary* (1994) at p. 732.

either with Sections 26-32 dealing with institution of suits or before Section 148 or after Section 153-B.

4. ENLARGEMENT OF TIME: SECTION 148

Section 148 provides that where any period is fixed or granted by the court for the doing of any act, the court has power to enlarge the said period even if the original period fixed has expired.[9]

Where a court in the exercise of its jurisdiction can grant time to do a thing, in the absence of a specific provision to the contrary curtailing, denying or withholding such jurisdiction, the jurisdiction to grant time would include in its ambit the jurisdiction to extend time initially fixed by it.[10]

The use of the word "may" indicates that the power is discretionary, and the court is therefore, entitled to take into account the conduct of the party praying for such extension.[11] The principle of equity is that when some circumstances are to be taken into account for fixing a length of time within which a certain action is to be taken, the court retains to itself the jurisdiction to re-examine the alteration or modification of circumstances which may necessitate extension of time. If the court by its own act denies itself the jurisdiction to do so, it would be denying to itself the jurisdiction which, in the absence of a negative provision, it undoubtedly enjoys.[12]

In the words of Hidayatullah, J. (as he then was), "conditional orders are not like the law of the Medes and the Persians."[13] As Justice Desai states, "The danger inherent in passing conditional orders becomes self-evident because that by itself may result in taking away jurisdiction conferred on the court for just decision of the case. The true purport of conditional orders is that such orders merely create something like a guarantee or sanction for obedience of the court's order but would not take away the court's jurisdiction to act according to the mandate of the statute or on relevant equitable considerations if the statute does not deny such consideration."[14]

[9] *Mahanth Ram Das* v. *Ganga Das*, AIR 1961 SC 882 at p. 883: (1961) 3 SCR 763; *Ganesh Prasad* v. *Lakshmi Narayan*, (1985) 3 SCC 53 at p. 60: AIR 1985 SC 964 at p. 968; *Johri Singh* v. *Sukh Pal Singh*, (1989) 4 SCC 403: AIR 1989 SC 2073.

[10] *Chinnamarkathian* v. *Ayyavoo*, (1982) 1 SCC 159 at p. 168: AIR 1982 SC 137 at p. 142; *Ramesh Bejoy* v. *Pashupati Rai*, (1979) 4 SCC 27 at p. 40: AIR 1979 SC 1769 at p. 1779; *Jogdhayan* v. *Babu Ram*, (1983) 1 SCC 26 at p. 29: AIR 1983 SC 57 at p. 59.

[11] *Johri Singh* v. *Sukh Pal Singh*, (1989) 4 SCC 403 at p. 415: AIR 1989 SC 2073.

[12] *Chinnamarkathian* v. *Ayyavoo*, (1982) 1 SCC 159 at p. 168: AIR 1982 SC 137 at p. 142; *Periyakkal* v. *Dakshyani*, (1983) 2 SCC 127 at p. 131: AIR 1983 SC 428 at p. 431; *Jogdhayan* v. *Babu Ram*, *supra*.

[13] *Mahanth Ram Das* v. *Ganga Das*, *supra*, at p. 883 (AIR).

[14] *Chinnamarkathian* v. *Ayyavoo*, *supra*, at p. 169 (SCC): at p. 142 (AIR); *Jogdhayan* v. *Babu Ram*, *supra*; *Prem Narain* v. *Vishnu Exchange Charitable Trust*, (1984) 4 SCC 375: AIR

Before extension of time is granted by a court, two conditions must be fulfilled:

(*i*) A period must have been fixed or granted by the court; and

(*ii*) Such period must be for doing an act prescribed or allowed by the Code.

The section has no application when the time has not been fixed or granted by the court or a particular act has not been prescribed or allowed by the Code.

The power conferred by the Code on the court is discretionary. The court "may" use it for securing the ends of justice. It cannot be claimed by the party as of right. Before exercising the power, therefore, the court may take into account all the facts and circumstances including the conduct of the applicant.[15]

5. PAYMENT OF COURT FEES: SECTION 149

Section 149 empowers the court to allow a party to make up the deficiency of court fees payable on a plaint, memorandum of appeal, etc. even after the expiry of the period of limitation prescribed for the filing of such suit, appeal, etc. Section 4 of the Court Fees Act, 1870 provides that no document chargeable with court fee under the Act shall be filed or recorded in any court of justice, unless the requisite court fee is paid.

Section 149 of the Code of Civil Procedure is a sort of proviso to that rule by allowing the deficiency to be made good within a period fixed by it. If the proper court fee is not paid at the time of filing of a memorandum of appeal, but the deficit court fee is paid within the time fixed by the court, it cannot be treated as time barred.[16] Thus, the defective document is *retrospectively* validated for the purposes of limitation as well as court fees.[17] The power, however, is discretionary and should be exercised, judiciously and in the interests of justice.[18]

1984 SC 1896; *Advocate Bar Assn. (II)* v. *Union of India*, (2005) 6 SCC 344: AIR 2005 SC 3353.

[15] *Chinnamarkathian* v. *Ayyavoo*, (1982) 1 SCC 159: AIR 1982 SC 137; *Ramesh Bejoy* v. *Pashupati Rai*, (1979) 4 SCC 27: AIR 1979 SC 1769; *Jogdhayan* v. *Babu Ram*, (1983) 1 SCC 26: AIR 1983 SC 57; *Johri Singh* v. *Sukh Pal Singh*, (1989) 4 SCC 403: AIR 1989 SC 2073.

[16] *Mannan Lal* v. *Chhotaka Bibi*, (1970) 1 SCC 769 at pp. 775-77: AIR 1971 SC 1374 at pp. 1378-80; *Mahanth Ram Das* v. *Ganga Das, supra*; *Mahasay Ganesh Prasad* v. *Narendra Nath*, AIR 1953 SC 431 at pp. 432-33: 17 Cut LT 73: 1951 KLT (SC) 28; *Jugal Kishore* v. *Dhanno Devi*, (1973) 2 SCC 567: AIR 1973 SC 2508; *Indian Statistical Institute* v. *Associated Builders*, (1978) 1 SCC 483: AIR 1978 SC 335 at p. 340; *Mohd. Mahibulla* v. *Seth Chaman Lal*, (1991) 4 SCC 529: AIR 1993 SC 1241.

[17] *Mahasay Ganesh Prasad* v. *Narendra Nath* (*ibid.*); *Mahanth Ram Das* v. *Ganga Das* (*ibid.*); *Jugal Kishore* v. *Dhanno Devi* (*ibid.*).

[18] *Scheduled Caste Coop. Land Owning Society Ltd.* v. *Union of India*, (1991) 1 SCC 174: AIR 1991 SC 730; *Indian Statistical Institute* v. *Associated Builders, supra*; *Mahasay Ganesh*

6. TRANSFER OF BUSINESS: SECTION 150

Section 150 of the Code declares that where the business of any court is transferred to any other court, the transferee court will exercise same powers and discharge same duties conferred or imposed by the Code upon the transfer court.

7. ENDS OF JUSTICE: SECTION 151

The inherent powers saved by Section 151 can be used to secure the ends of justice.[19] Thus, the court can recall its own orders and correct mistakes;[20] can set aside an *ex parte* order passed against the party;[21] can issue temporary injunctions in cases not covered by the provisions of Order 39;[22] can add, delete or transpose any party to a suit;[23] can set aside illegal orders or orders passed without jurisdiction;[24] can revive execution applications;[25] can take notice of subsequent events;[26] can hold trial *in camera* or prohibit excessive publication of its proceedings;[27] can allow amendments of pleadings;[28] can correct errors and mistakes;[29] can expunge remarks made against a judge;[30] can extend time for payment of court fees;[31] can extend time to pay ar-

Prasad v. *Narendra Nath* (*ibid.*). *K.C. Skaria* v. *Govt. of State of Kerala*, (2006) 2 SCC 285: AIR 2006 SC 811.

[19] *Manohar Lal* v. *Seth Hiralal*, AIR 1962 SC 527 at pp. 533, 537: 1962 Supp (1) SCR 450; *Raja Soap Factory* v. *S.P. Shantharaj*, AIR 1965 SC 1449: (1965) 2 SCR 800; *Naresh Shridhar* v. *State of Maharashtra*, AIR 1967 SC 1 at p. 8: (1966) 3 SCR 744; *Jaipur Mineral Development Syndicate* v. *CIT*, (1977) 1 SCC 508 at pp. 510-11: AIR 1977 SC 1348 at p. 1350; *Mulraj* v. *Murti Raghunathji Mahaaraj*, AIR 1967 SC 1386 at p. 1390: (1967) 3 SCR 84; *Nair Service Society Ltd.* v. *K.C. Alexander*, AIR 1968 SC 1165 at p. 1178: (1968) 3 SCR 163; *All Bengal Excise Licensees' Assn.* v. *Raghabendra Singh*, (2007) 11 SCC 374: AIR 2007 SC 1386.

[20] *Keshardeo* v. *Radha Kissen*, AIR 1953 SC 23 at pp. 26-27: 1953 SCR 136.

[21] *Martin Burn Ltd.* v. *R.N. Banerjee*, AIR 1958 SC 79 at p. 83: 1958 SCR 514.

[22] *Manohar Lal* v. *Seth Hiralal*, *supra*.

[23] *Saila Bala Dassi* v. *Nirmala Sundari Dassi*, AIR 1958 SC 394 at p. 398: 1958 SCR 1287.

[24] *Keshardeo* v. *Radha Kissen*, *supra*; *B.V. Patankar* v. *C.G. Sastry*, AIR 1961 SC 272 at p. 275: (1961) 1 SCR 591; *Mulraj* v. *Murti Raghunathji Mahaaraj*, *supra*.

[25] *Kumar Daulat Singh* v. *Prahlad Rai*, (1979) 4 SCC 326: AIR 1979 SC 1818.

[26] *Nair Service Society Ltd.* v. *K.C. Alexander*, *supra*, at pp. 1177-78 (AIR); *Shikharchand Jain* v. *Digamber Jain Praband Karini Sabha*, (1974) 1 SCC 675: AIR 1974 SC 1178.

[27] *Naresh Shridhar* v. *State of Maharashtra*, *supra*, at p. 11 (AIR).

[28] For detailed discussion, *see supra*, Pt. II, Chap. 6.

[29] *L. Janakirama Iyer* v. *P.M. Nilakanta Iyer*, AIR 1962 SC 633 at p. 643: 1962 Supp (1) SCR 206; *Samarendra Nath* v. *Krishna Kumar*, AIR 1967 SC 1440 at p. 1443: (1967) 2 SCR 18.

[30] *State of Assam* v. *Ranga Muhammad*, AIR 1967 SC 903 at pp. 907-08: (1967) 1 SCR 454.

[31] *Mahanth Ram Das* v. *Ganga Das*, AIR 1961 SC 882: (1961) 3 SCR 763.

rears of rent;[32] can restore the suit and rehear it on merits;[33] can review its orders,[34] etc. What would meet the ends of justice would always depend upon the facts and circumstances of each case and the requirements of justice.[35]

8. ABUSE OF PROCESS OF COURT: SECTION 151

The inherent powers under Section 151 can also be exercised to prevent the abuse of the process of a court.[36] Such abuse may be committed by a court or by a party. Where a court employs a procedure in doing something which it never intended to do and there is miscarriage of justice, there is an abuse of process by the court itself. The injustice so done to the party must be remedied on the basis of the doctrine *actus curiae neminem gravabit* (an act of the court shall prejudice no one).[37] Similarly, a party to a litigation may also be guilty of an abuse of the process of the court, e.g. by obtaining benefits by practising fraud on the court;[38] or upon a party to the proceedings;[39] or by circumventing the statutory provisions;[40] or by resorting to or encouraging multiplicity of proceedings;[41] or by instituting vexatious, obstructive or dilatory tactics;[42] or by introducing scandalous or objectionable matter in

[32] *Chinnamarkathian* v. *Ayyavoo*, (1982) 1 SCC 159: AIR 1982 SC 137.

[33] *Jaipur Mineral Development Syndicate* v. *CIT*, (1977) 1 SCC 508: AIR 1977 SC 1348; *Lachi Tewari* v. *Director of Land Records*, 1984 Supp SCC 431: AIR 1984 SC 41.

[34] *Shivdeo Singh* v. *State of Punjab*, AIR 1963 SC 1909 at p. 1911. *See also*, Author's *Lectures on Administrative Law* (2008) Lecture VII.

[35] *Per* Gajendragadkar, C.J. in *Naresh Shridhar* v. *State of Maharashtra*, AIR 1967 SC 1 at p. 8: (1966) 3 SCR 744.

[36] *Manohar Lal case, supra*, at p. 537 (AIR); *Raja Soap Factory* v. *S.P. Shantharaj, supra*, at p. 1450 (AIR); *Ram Chand case, supra*, at p. 1902 (AIR); *Naresh Shridhar* v. *State of Maharashtra, supra*, at p. 11 (AIR); *Jaipur Syndicate case, supra*, at p. 1350 (AIR).

[37] *Kanai Law Shaw* v. *Bhathu Shaw*, C.A. 151 of 1963, decided on 3-5-1965 (SC) (unrep); *Forasol* v. *ONGC*, 1984 Supp SCC 263 at pp. 295-96: AIR 1984 SC 241 at pp. 259-60. For detailed discussion, *see supra*, "Restitution", Chap. 2.

[38] *Dadu Dayal Mahasabha* v. *Sukhdev Arya*, (1990) 1 SCC 189; *U.P. Junior Doctors' Action Committee* v. *Dr. B. Sheetal Nandwani*, (1990) 4 SCC 633: AIR 1991 SC 909; *Baidyanath Dubey* v. *Deonandan Singh*, 1968 SCD 275.

[39] *Dadu Dayal* v. *Sukhdev Arya (ibid.)*; *Sadho Saran* v. *Anant Rai*, AIR 1923 Pat 483: ILR (1923) 2 Pat 731.

[40] *Manilal Mohanlal* v. *Sardar Sayed Ahmed*, AIR 1954 SC 349: (1955) 1 SCR 108; *Jibon Krishna* v. *New Beerbhum Coal Co. Ltd.*, AIR 1960 SC 297 at pp. 299-300: (1960) 2 SCR 198; *Manohar Lal* v. *Seth Hiralal, supra*. See also supra, *Forasol* v. *ONGC*; *Cotton Corpn. of India Ltd.* v. *United Industrial Bank Ltd.*, (1983) 4 SCC 625: AIR 1983 SC 1272.

[41] *Nair Service Society Ltd.* v. *K.C. Alexander*, AIR 1968 SC 1165 at pp. 1177-78: (1968) 3 SCR 163.

[42] *Jethabhai Versy and Co.* v. *Amarchand Madhavji and Co.*, AIR 1924 Bom 90; *Mula* v. *Babu Ram*, AIR 1960 All 573 at pp. 575-76.

proceedings;[43] or by trying to secure an undue advantage over the opposite party,[44] etc.

9. AMENDMENT OF JUDGMENTS, DECREES, ORDERS AND OTHER RECORDS: SECTIONS 152, 153 AND 153-A

Section 152 enacts that clerical or arithmetical mistakes in judgments, decrees or orders arising from any accidental slip or omission may at any time be corrected by the court either of its own motion (*suo motu*) or on the application of any of the parties.[45] The section is based on two important principles:[46] (*i*) an act of court should not prejudice any party;[47] and (*ii*) it is the duty of courts to see that their records are true and they represent the correct state of affairs.[48]

In the words of Bowen, L.J., "Every court has inherent power over its own records so long as those records are within its power and that it can set right any mistake in them. An order even when passed and entered may be amended by the court so as to carry out its intention and express the meaning of the court when the order was made."[49] It can be done at any time.[50]

Illustrations

(1) *A* files a suit against *B* for Rs 10,000 in court X. The court passes a decree for Rs 1000 "as prayed". The decree can be amended under this section.

(2) *A* files a suit against *B* for Rs 10,000 and interest in court X. The court passes a decree for Rs 5000 only and nothing more. *A* applies to amend the decree by adding a prayer for payment of interest. The decree cannot be amended under this section. If aggrieved by the decree, *A* may file an appeal or application for review.

Section 153-A as inserted by the Amendment Act of 1976 provides that where the appellate court dismisses an appeal summarily under

[43] *Shankerlal* v. *Ramniklal*, AIR 1951 Kant 23.

[44] *Yasin Ali* v. *Ali Bahadur*, AIR 1924 Oudh 230; *Director of Inspection (Intelligence)* v. *Vinod Kumar*, AIR 1987 SC 1260; *V. Ramakrishna* v. *N. Sarojini*, AIR 1993 AP 147; *Rajappa Hanamantha Ranoji* v. *Mahadev Channabasappa*, (2000) 6 SCC 120: AIR 2000 SC 2108.

[45] *Master Construction Co. (P) Ltd.* v. *State of Orissa*, AIR 1966 SC 1047 at p. 1049: (1966) 3 SCR 99; *Samarendra Nath* v. *Krishna Kumar*, AIR 1967 SC 1440 at p. 1443: (1967) 2 SCR 18; *Ram Kumar* v. *Union of India*, (1991) 2 SCC 247; *Special Land Acquisition Officer* v. *Dharmaraddi Venkatearaddi*, (2005) 13 SCC 262: AIR 2005 SC 4099; *Director (L.A.)* v. *Malla*, (2006) 12 SCC 87: AIR 2007 SC 740.

[46] *Bishnu Charan Das* v. *Dhani Biswal*, AIR 1977 Ori 68 at p. 69.

[47] *Tulsipur Sugar Co. Ltd.* v. *State of U.P.*, (1969) 2 SCC 100 at p. 106-07: AIR 1970 SC 70 at pp. 75-76. *See also supra*, Chap. 2.

[48] *Samarendra Nath* v. *Krishna Kumar*, AIR 1967 SC 1440 at p. 1443: (1967) 2 SCR 18.

[49] *Mellor* v. *Swire*, (1885) 30 Ch D 239 (CA); *Samarendra Nath* v. *Krishna Kumar* (*ibid.*); *L. Janakirama Iyer* v. *P.M. Nilakanta Iyer*, AIR 1962 SC 633: 1962 Supp (1) SCR 206.

[50] Ss. 152, 153.

Order 41 Rule 11, the power of amendment under Section 152 can be exercised by the court of first instance.[51]

Section 152 is confined to amendments of judgments, orders or decrees. Order 6 Rule 17 deals with amendments of pleadings.[52] Section 153, however, confers a general power on the court to amend defects or errors in "any proceeding in a suit" and to make all necessary amendments for the purpose of determining the real question at issue between the parties to the suit or other proceeding.[53]

10. LIMITATIONS

It is true that the inherent powers of the court are very wide and residuary in nature and they are in addition to the powers specifically conferred on the court by the Code. It is, however, equally true that these inherent powers can be exercised *ex debito justitiae* only in the absence of express provisions in the Code.[54] They cannot be exercised in conflict with what had been expressly provided in the Code or against the intentions of the legislature.[55] If there are express provisions exhaustively covering a particular topic, they give rise to a necessary implication that no power shall be exercised in respect of the said topic otherwise than in the manner prescribed by the said provisions.[56] Again, the inherent powers are to be exercised by the court in very exceptional circumstances.[57] The restrictions on the inherent powers are not because they are controlled by the provisions of the Code, but because it should be presumed that the procedure provided by the legislature is dictated by the interests of justice.[58]

Thus, in the exercise of inherent powers a court cannot invest itself with jurisdiction not vested in it by law;[59] or grant an order of stay cir-

[51] See also supra, *L. Janakirama Iyer* v. *P.M. Nilakanta Iyer.*

[52] For detailed discussion, *see supra*, Pt. II, Chap. 6.

[53] *Jai Jai Ram Manohar* v. *National Building Material Supply*, (1969) 1 SCC 869: AIR 1969 SC 1267; *Purushottam Umedbhai & Co.* v. *Manilal & Sons*, AIR 1961 SC 325 at pp. 329-30: (1961) 1 SCR 982; *Ramkarandas* v. *Bhagwandas*, AIR 1965 SC 1144: (1965) 2 SCR 186.

[54] *Mahendra Manilal* v. *Sushila Mahendra*, AIR 1965 SC 364 at p. 399: (1964) 7 SCR 267; *Manohar Lal* v. *Seth Hiralal*, AIR 1962 SC 527 at p. 537: 1962 Supp (1) SCR 450; *Nain Singh* v. *Koontwarjee*, (1970) 1 SCC 732 at pp. 734-35: AIR 1970 SC 997 at p. 998; *Arjun Singh* v. *Mohindra Kumar*, AIR 1964 SC 993 at p. 1003: (1964) 5 SCR 946.

[55] *Arjun Singh* v. *Mohindra Kumar* (*ibid.*) at p. 1003 (AIR); *Manohar Lal* v. *Seth Hiralal* (*ibid.*) at p. 537 (AIR); *Durgesh Sharma* v. *Jayshree*, (2008) 9 SCC 648.

[56] *Ram Chand & Sons Sugar Mills (P) Ltd.* v. *Kanhaiyalal Bhargava*, AIR 1966 SC 1899: (1966) 3 SCR 856.

[57] *Manohar Lal* v. *Seth Hiralal*, *supra*, at p. 534 (AIR); *Ramkarandas* v. *Bhagwandas*, AIR 1965 SC 1144 at p. 1145: (1965) 2 SCR 186.

[58] *Manohar Lal* v. *Seth Hiralal*, AIR 1962 SC 527 at p. 533: 1962 Supp (1) SCR 450.

[59] *Raja Soap Factory* v. *S.P. Shantharaj*, AIR 1965 SC 1449: (1965) 2 SCR 800; *State of W.B.* v. *Indira Debi*, (1977) 3 SCC 559.

cumventing the provisions of Section 10 of the Code;[60] or allow set-off in execution proceedings at the instance of an auction-purchaser, ignoring the provisions of Order 21 Rule 84;[61] or remand a case, ignoring the provisions of Order 41 Rules 23 and 25;[62] or reopen the questions which had already been heard and finally decided by it and which are consequently barred by the general principles of *res judicata*;[63] or appoint a Commissioner keeping aside the provisions of Section 75;[64] or review its orders or judgments in the absence of statutory provisions;[65] or direct an arbitrator to make a fresh award;[66] or set aside an *ex parte* decree, ignoring the provisions of Order 9 Rule 9 or 13;[67] or override substantive rights of any party;[68] or restrain any party from taking proceeding in a court of law;[69] or implead legal representatives on record after the suit is abated;[70] or make an order restraining execution of the decree against the surety;[71] or set aside an order which was right when it was made,[72] etc.

11. CONCLUDING REMARKS

Sections 148 to 153-B of the Code invest courts with very wide and extensive powers to minimize litigation, avoid multiplicity of proceedings and to render full and complete justice between the parties before them. Section 151 of the Code is a salutory provision and saves inherent powers of a court, which are to be exercised *ex debito justitiae* (in the interest of justice). They have not been conferred upon the court. They are inherent in every court by virtue of its duty to do justice to the cause.

It is submitted that the following observations of Subba Rao, J. (as he then was) in the case of *Ram Chand & Sons Sugar Mills (P) Ltd.* v.

[60] *Manohar Lal* v. *Seth Hiralal, supra*, at p. 536 (AIR).

[61] *Manilal Mohanlal* v. *Sardar Sayed Ahmed*, AIR 1954 SC 349: (1955) 1 SCR 108.

[62] *Mahendra Manilal* v. *Sushila Mahendra, supra*, at p. 399 (AIR); *Nain Singh* v. *Koonwarjee*, (1970) 1 SCC 732 at pp. 734-35: AIR 1970 SC 997 at p. 998; *see also supra*, Pt. III, Chap. 2.

[63] *Rikhabdass* v. *Ballabhdas*, AIR 1962 SC 551 at p. 554: 1962 Supp (1) SCR 475; *Union of India* v. *Ram Charan*, AIR 1964 SC 215 at p. 218: (1964) 3 SCR 467.

[64] *Padam Sen* v. *State of U.P.*, AIR 1961 SC 218 at p. 220: (1961) 1 SCR 884.

[65] For detailed discussion, *see supra*, Pt. III, Chap. 8.

[66] *Rikhabdass* v. *Ballabhdas*, AIR 1962 SC 551 at p. 554: 1962 Supp (1) SCR 475.

[67] *Arjun Singh* v. *Mohindra Kumar*, AIR 1964 SC 993 at pp. 1003-05: (1964) 5 SCR 946.

[68] *Padam Sen* v. *State of U.P.*, AIR 1961 SC 218: (1961) 1 SCR 884; *Manohar Lal* v. *Seth Hiralal*, AIR 1962 SC 527: 1962 Supp (1) SCR 450.

[69] *Manohar Lal* v. *Seth Hiralal* (*ibid.*) at p. 536 (AIR).

[70] *Union of India* v. *Ram Charan*, AIR 1964 SC 215: (1964) 3 SCR 467.

[71] *Bank of Bihar Ltd.* v. *Dr. Damodar Prasad*, AIR 1969 SC 297 at p. 299: (1969) 1 SCR 620.

[72] *A.C. Estates* v. *Serajuddin & Co.*, AIR 1966 SC 935 at p. 939: (1966) 1 SCR 235.

Kanhayalal Bhargava[73] lay down the correct principle regarding the ambit and scope of the inherent powers of a court under Section 151 of the Code; wherein His Lordship after considering all the leading cases on the subject pronounced:

> "The inherent power of a court is in addition to and complimentary to the powers expressly conferred under the Code. But that power will not be exercised if its exercise is inconsistent with, or comes into conflict with, any of the powers expressly or by necessary implication conferred by the other provisions of the Code. If there are express provisions exhaustively covering a particular topic, they give rise to a necessary implication that no power shall be exercised in respect of the said topic otherwise than in the manner prescribed by the said provisions. *Whatever limitations are imposed by construction on the provisions of Section 151 of the Code, they do not control the undoubted power of the court conferred under Section 151 of the Code to make a suitable order to prevent the abuse of the process of the court."*[74] (emphasis supplied)

[73] AIR 1966 SC 1899: (1966) 3 SCR 856.

[74] *Supra*, n. 72 at p. 1902 (AIR).

PART V

5 Delay in Civil Litigation

"JARNDYCE and Jarndyce drones on. This scarecrow of a suit has, in course of time, become so complicated, that no man alive knows what it means. The parties to it understand it least; but it has been observed that no two Chancery lawyers can talk about it for five minutes, without coming to a total disagreement as to all the premises. Innumerable children have been born into the cause; innumerable young people have been married into it; innumerable old people have died out of it. Scores of persons have deliriously found themselves made parties in Jarndyce and Jarndyce, without knowing how or why.... Fair wards of court have faded into mothers and grandmothers; a long procession of Chancellors has come in and gone out...but Jarndyce and Jarndyce still drags its dreary length before the Court, perennially hopeless."

—*Charles Dickens* (BLEAK HOUSE)

SYNOPSIS

1. General	739	5. Amendments of 1976	746
2. Dangers of delay	740	6. Amendments of 1999 and 2002	747
3. Causes of delay	740	7. Suggestions	747
4. Position prior to Amendment Acts	745		

1. GENERAL

One of the most vexed and worrying problems in the administration of civil justice is of delay. Jonathan Swift in his famous work *Gulliver's Travels* sarcastically describes the delay in courts in the following words:

"In pleading, they (lawyers) studiously avoid entering into the *merits* of the cause; but are loud, violent and tedious in dwelling upon all *circumstances* which are not to the purpose...they never desire to know what claim or title my adversary hath to my cow, but whether the said cow were red or black; her horns long or short; whether the field I graze her in be round or square;

whether she were milked at home or abroad; what diseases she is subject to; and the like; after which they consult the *precedents*, adjourn the cause from time to time, and in ten, twenty or thirty years come to an *issue*.

It is likewise to be observed that this society hath a peculiar cant and jargon of their own, that no other mortal can understand, and wherein all their laws are written; which they take special care to multiply; whereby they have wholly confounded the very essence of truth and falsehood; of right and wrong; so that it will take thirty years to decide whether the field, left by my ancestors for six generations, belong to me or to a stranger three hundred miles off."

2. DANGERS OF DELAY

Delay in disposal of case threatens justice. The lapse of time blurs truth, weakens memory of witnesses and makes presentation of evidence difficult. This leads to loss of public confidence in the judicial process which in itself is a threat to Rule of Law and consequently to the Democracy. The rising costs of litigation can also be said to be attributable to delay which in turn causes the litigants to either abandon meritorious claims or compromise for a lesser or unjust settlement out of court. Besides, expression of society's moral outrage is essential in an ordered society that asks its members to rely on legal process rather than self-help to vindicate wrongs. To avoid anarchy, fairness has to be actually felt by the aggrieved persons and it is the court which provides the systematic outlet. Obedience to law has been described as the strongest of all the forces making for a nation's peaceful existence and progress.[1]

3. CAUSES OF DELAY

As remarked earlier, procedure is the handmaid of justice. It is to be used so as to advance the cause of justice and not to thwart it. An essential requirement of justice is that it should be dispensed as quickly as possible. It is a well-known adage that "justice delayed is justice denied". However, delay in litigation is equally proverbial and, though it may sound paradoxical, the fact remains that the very provisions of the Code which are designed to facilitate smooth and speedy trial of cases are misused and abused in order to delay cases indefinitely and ultimate success in the cause often proves illusory. The result is that cases pile up and a huge backlog accumulates in all courts. The problem of backlog and delay in litigation has been engaging the attention of the Law Commission for a long time and as a result of its

[1] Law Commission's 127th Report at para 2.15.

recommendations, made from time to time, fairly extensive changes have been made in the provisions of the Code in 1976 with a view to removing the causes of delay. However, those changes seemed to have had little impact, more changes, therefore, made by the Amendment Acts of 1999 and 2002.

A number of causes seem to be responsible for this sorry state of affairs. An attempt has been made here to identify some of the causes and suggest measures to remove them. It appears that the main causes of delay are as follows:

(1) *Increase in litigation.*—A glance through the figures of cases filed in courts over a number of years would clearly show that litigation has been increasing phenomenally in the country. Whatever may be the causes of this increase, and it would be beyond the scope of this book to go into them, the fact remains that courts are over flooded with cases and though more and more courts are being set up, the increase in their number is not sufficient to keep pace with the increased number of cases.

(2) There is a general feeling that the Government is not appointing a sufficient number of judges to deal with the increasing work. It is a common experience that even existing vacancies in various High Courts remain unfilled for an unduly long time. Prompt appointment of judges to fill the existing vacancies and creation of additional posts in sufficient number would go a long way to solve the problem of delay and arrears.

(3) Much of the delay occurs because the provisions of the Code are not properly observed and followed. After filing a plaint, the process fee is not paid for a long time so that summons to the defendant is not served in time. After a defendant makes his appearance, his advocate often seeks long adjournments to file the written statement. After the pleadings are closed, there comes the stage of producing documentary evidence before issues are settled but nobody bothers to produce documentary evidence at this stage. Little use is made of the provisions for discovery and inspection of documents and for serving interrogatories. If these provisions are properly used, the controversy between the parties can often be narrowed before the parties go to trial. However, what usually happens is that when the suit comes for trial, the advocates sit down in the court, open their briefs, probably for the first time, and begin laboriously to prepare lists of documents, etc. All the while the poor judge sits idly on the Bench, helplessly looking on. Countless hours are wasted in this way.

(4) It is a matter of common knowledge that in a large number of cases coming before the High Courts and the Supreme Court, the dispute is about the interpretation of the legislative enactment in question. The

increase in the number of such cases is due to several reasons. There has been a vast expansion of the functions and activities of the State in all spheres with a corresponding increase in the number of laws enacted every year. But there is no reason why mere increase in the number of laws should by itself give rise to increase in litigation. Unfortunately, however, the laws are often hastily drafted with the result that the drafting is often loose and leaves great scope for lawyers to raise arguments about their interpretation. The difficulty of interpreting laws is often compounded by frequent and thoughtless amendments which, though intended to clarify the intention of the legislature, often fails to achieve the designed object and on the contrary results in greater confusion. The words of a statute are not inaugural words but words of valediction. "The problem has been tackled, long live the problem" is the message of most progressive legislations in India.[2]

In the case of *Zinabhai* v. *State of Gujarat*[3] considering the provisions of the Gujarat Panchayats Act, 1961, the High Court of Gujarat observed as under:

> "It is an extraordinary and unique piece of legislation framed without much scientific accuracy of language and many of its provisions are so unhappily worded that it is difficult to penetrate their confusion and obscurity. This is not the first time that we are called upon to face the complexities of this legislation and, with our growing acquaintance with its provisions, *we must confess to a feeling of reluctant respect which one feels for an old tough sparring partner whom one has never been able to knock out.*"[4]
>
> (emphasis supplied)

(5) After the High Courts are empowered under Article 226 of the Constitution of India to issue prerogative writs and after the definition of "State" being liberally interpreted by the Supreme Court[5] so as to include the Union Government, State Governments, statutory corporations, nationalised banks, universities and any authority which is an instrumentality or agency of the Government, there is a soaring rise in litigation against the Government, with the result that today the Government is probably the biggest litigant in the country. The inefficiency of the Governmental machinery has naturally been responsible

[2] Prof. Upendra Baxi, "Judicial Discourse: Dialectics of the face and the mask", 1993 JILI 1 at p. 3.

[3] (1972) 13 Guj LR 1.

[4] *Ibid*, at p. 2 (*per* Bhagwati, C.J.).

[5] *Rajasthan SEB* v. *Mohan Lal*, AIR 1967 SC 1857: (1967) 3 SCR 377; *Sukhdev Singh* v. *Bhagatram Sardar Singh*, (1975) 1 SCC 421: AIR 1975 SC 1331; *Som Prakash Rekhi* v. *Union of India*, (1981) 1 SCC 449: AIR 1981 SC 212; *Ajay Hasia* v. *Khalid Mujib*, (1981) 1 SCC 722: AIR 1981 SC 487; *Central Inland Water Transport Corpn.* v. *Brojo Nath Ganguly*, (1986) 3 SCC 156: AIR 1986 SC 1571.

for considerable delay in disposal of cases where the Government is a party.

The judiciary is often criticised, in and out of Parliament, for mounting arrears of cases. What is forgotten, however, is the fact that the Government itself is responsible for the major portion of delay. The judiciary is not in a position to give a public reply to the criticism levelled against it. However, in the case of *State of Maharashtra* v. *G.A. Pitre*[6], Chief Justice Chandrachud, while dealing with a case involving gross delay on the part of the Government, took occasion to draw public attention to this aspect of the problem in the following words:

> "We consider this as a deplorable state of affairs. It is a matter of deep concern and regret that despite specific directions given by this court from time to time and despite numerous adjournments granted at the instance of the Government of Maharashtra over a period of 21 months, the Government has not bothered to give any attention to this matter whatsoever. We do not know whether the parties have been heard by the State Government as directed by us and, if so, why the decision is not being divulged. We are unable to understand that the State Government is unable to take any decision in the matter 'in view of the Assembly Session'. The fact that the Legislative Assembly is in session is no reason or justification for the Executive to neglect to discharge its imperative functions. We do not believe that the entire administration of the State of Maharashtra has come to a grinding halt on account of the fact that the Legislative Assembly is in session. And we do not believe, and would like to take this opportunity to give clear and strong expression to our view, that the State Government has hit upon a totally untenable excuse in order to explain away its indefensible indifference to a matter which has been hanging fire for 21 months. This court received inquiries from time to time from the Secretariat of Parliament in connection with questions put by members of Parliament regarding pendency of arrears in various courts and the reasons for delay caused in disposing of court cases. The Special Leave Petition before us is a speaking example of how delays occur in administering justice. *We hope that, if and when any Hon'ble Member of the State Legislature puts a question as to law's delays, the State Government, in fairness to this court, will cite the career of this unfortunate Special Leave Petition as a telling example.*"[7]
>
> (emphasis supplied)

The learned Chief Justice, however, did not choose to follow the easy path of dismissing the case (Special Leave Petition) of the Government

[6] (1982) 2 SCC 447: AIR 1982 SC 1196.

[7] *Ibid*, at pp. 448-49 (SCC): at p. 1197 (AIR).

and thereby reduce the arrears, but in a gesture of magnanimity went on to observe:

> "We should have dismissed the Special Leave Petition filed by the State of Maharashtra for reasons stemming from its total unconcern with a matter which it has itself brought to this court. But, temper has no place in the scheme of justice and we cannot refuse to do justice to the parties by applying mechanically the frustrating adage that 'justice delayed is justice denied'. *Experience has it that it is at least marginally more satisfactory to do justice even after a prolonged delay than to perpetrate injustice in quest of speed.*"[8]
>
> (emphasis supplied)

(6) The attitude of some lawyers is also to some extent responsible for delay. In many cases, where the plaintiff has obtained *interim* or *ad interim* relief, he is naturally interested in delaying the proceedings so that stay or injunction is continued as far as possible. Similarly, where the defendant has no defence, he is naturally interested in prolonging the trial with a view to put off the evil day as long as possible. It is the ingenuity of advocates in taking advantage of technicalities which helps defendants in such cases. Lawyers are also known to apply for frequent adjournments on flimsy grounds. When a particular ground, such as his sickness or personal problem, is advanced by the advocate, it is usually not possible for a judge to examine whether the ground is genuine or not and it is in the fitness of things that he should normally accept as true what an advocate says. However, when this is the position, it is equally the duty of lawyers not to seek adjournments on flimsy or non-existent grounds. It is not suggested that such practices are widespread and that a majority of lawyers indulge in such tactics. But it cannot be denied that, as in every profession, there are unscrupulous elements in the legal profession too and that they are responsible for much of the delay in litigation.

(7) If lawyers are able to prolong litigation by resorting to one ruse or another, the question naturally arises, why do judges allow lawyers to take advantage of procedural technicalities and prolong litigation? The answer is that judges often show themselves unable to exercise sufficient control over proceedings being conducted before them. The judges in our country have a reputation for honesty and integrity. But that is not enough. It is an unfortunate fact that, owing to a variety of circumstances, this is not the place to go into them: judges are not drawn from the most talented members of the Bar. The result is that those who are much junior in practice find themselves appointed as judges and quite often they are not able to control senior members of

[8] *Ibid*, at pp. 448-49 (SCC): at p. 1197 (AIR). *See also*, M.C. Chagla, *Roses in December* (1973) at pp. 70-71, 126-27.

the Bar. They lack the experience and maturity required of a judge. Their grasp of law and fact leaves much to be desired. They are unable to impress senior members of the Bar who often possess much stronger personalities than the judges. They tend to avoid "heavy matters". Senior advocates know very well that when they apply for adjournment in a "heavy matter", the judge is sure to grant it, though after making a great show of being inconvenienced and lecturing the advocate about the matter being old. Often the judge has not read the papers at home and when an advocate cites ruling after ruling, the judge gets lost and the hearing becomes very lengthy. If the judge is well-versed in law and is quick to grasp facts, he can immediately pull up the advocate and cut short irrelevant arguments. Mere increase in the number of judges will not solve the problem. What is necessary is that experienced lawyers with a strong personality and character should be induced to accept appointment as judges so that the Bar looks up to the Bench and not down upon it.

4. POSITION PRIOR TO AMENDMENT ACTS

As stated above,[9] before 1859 there was no uniform Code of Civil Procedure in India. After 1859, uniform Codes of Civil Procedure were enacted but they were also defective and unsatisfactory. Therefore, in the year 1908, the present Code was enacted. Though it had worked satisfactorily, all the problems were not solved. The Law Commission in its Report[10] observed:

> "Although the provisions of the Code of Civil Procedure, 1908 are basically sound, it cannot be gainsaid that in view of the appalling backlog of cases which has unfortunately become a normal feature of nearly all the courts of the country, the problem of delay in law courts has assumed great importance."

There used to be delay at all the three important stages: delay up to passing of the decree, e.g. delay in the matter of issuing summons to the parties and witnesses; filing of written statements; framing of issues and even in pronouncement of judgment. Similarly, there was delay in First Appeals, Second Appeals, Revisions, etc. because of the language employed in the relevant provisions of the Code. With regard to execution proceedings, as early as the year 1872, the Privy Council[11] had to observe thus, "The difficulties of a litigant in India begin when he has obtained a decree." Later, in the case of *Babu Lal* v. *Hazari Lal*[12],

[9] *See supra*, Pt. I, Chap. 1.

[10] Law Commission's Fourteenth Report, Vol. I at p. 263.

[11] *Court of Wards* v. *Coomar Ramaput*, (1872) 14 MIA 605 at p. 612: 17 WR 195 (PC).

[12] (1982) 1 SCC 525: AIR 1982 SC 818; see also *Shyam Singh* v. *Collector, Distt. Hamirpur*, 1993 Supp (1) SCC 693 at p. 700.

the Supreme Court has also observed, "The difficulty of the decree-holder starts in getting possession in pursuance of the decree obtained by him. The judgment-debtor tries to thwart the execution by all possible objections."[13] In the case of *Kuer Jang Bahadur* v. *Bank of Upper India Ltd.*[14], the High Court of Oudh had to utter a word of caution, "Courts in India have to be careful to see that process of the court and law of procedure are not abused by judgment-debtors in such a way as to make courts of law instrumental in defrauding creditors, who have obtained decrees in accordance with their rights."

In *Marshall Sons & Co. (I) Ltd.* v. *Sahi Oretrans (P) Ltd.*[15], the Supreme Court commented, "Because of the delay unscrupulous parties to the proceedings take undue advantage and the person who is in wrongful possession draws delight in delay in disposal of the case by taking undue advantage of procedural complications. It is also a known fact that after obtaining a decree for possession of immovable property, its execution takes a long time."

Again, in *N.S.S. Narayana Sarma* v. *Goldstone Exports (P) Ltd.*,[16] the Supreme Court highlighted the plight of decree-holder thus:

> "It is a general impression prevailing amongst the litigant public that the difficulties of a litigant are by no means over on his getting a decree for immovable property in his favour. *Indeed, his difficulties in real and practical sense, arise after getting the decree.*"
>
> (emphasis supplied)

5. AMENDMENTS OF 1976

It must be conceded that by the Amendment Act of 1976, extensive changes were made in the Code of Civil Procedure, 1908, all designed to avoid delay at every level. The necessary amendments were made in the provisions relating to appearance of parties, filing of written statements, production of documents, issue of summons, framing of issues, examination of parties, summoning and enforcing attendance of witnesses, adjournments and pronouncement of judgment. The right of appeal and revision has been considerably curtailed. Execution proceedings have also been made more effective. Over and above these changes, certain important changes have also been effected, e.g. widening of the doctrine of *res judicata*, summary procedure, specific provisions relating to set-off and counterclaim, garnishee order, appeal by indigent persons, costs for vexatious litigation, exemption from attachment of certain properties, legal aid to indigent suitors, etc.

[13] *Ibid*, at p. 539 (SCC): at p. 826 (AIR).
[14] AIR 1925 Oudh 448 at p. 449.
[15] (1999) 2 SCC 325 at p. 326: AIR 1999 SC 882 at p. 883.
[16] (2002) 1 SCC 662 at p. 668: AIR 2002 SC 251 at p. 254 (*per* Mohapatra, J.).

6. AMENDMENTS OF 1999 AND 2002

The amendments made in 1976 were not found sufficient. In pursuance of the recommendations made by Justice Malimath Committee, extensive changes have been made in 1999 and 2002 in the provisions relating to issuance of summons, filing of written statement, amendment of pleadings, production of documents, examination of witnesses and recording of evidence, grant of adjournments, fixing time for oral arguments, pronouncement of judgment, preparation of decree, etc. A new provision for settlement of disputes outside the court has been introduced.

7. SUGGESTIONS

It is clear, from what has been stated above, that the present Code of Civil Procedure after the Amendments of 1976, 1999 and 2002 is an attempt to provide justice keeping in view, *inter alia*, the basic consideration that justice should not be delayed. The changes made by the Amendment Acts are, however, not sufficient.

The following suggestions are made with a view to reducing delay in civil litigation:

(1) There is one provision, which, if used effectively by courts, can help to cut short the litigation. Order 10 Rule 2 provides that at the first hearing of the suit, the court (*a*) shall, with a view to elucidating matters in controversy in the suit, examine orally such of the parties to the suit appearing in person or present in court, as it deems fit; and (*b*) may orally examine any person, able to answer any material question relating to the suit, by whom any party appearing in person or present in court or his pleader is accompanied. Thus, this provision casts a duty on the court to examine the parties orally before settling the issues. In practice, however, this provision is simply ignored and issues are invariably raised from the pleadings of the parties. If the judge examines the parties orally, it is quite likely that many a time the truth will come out immediately in spite of what is stated in the pleadings. This will obviate the need for examining numerous witnesses on either side on a point of disputed fact. In the humble opinion of the author, the use of this provision alone, more than anything else, can cut short litigation substantially.

(2) Even though the Law Commission[17] recommended deletion of a statutory notice under Section 80, it has been retained. It is submitted that because of two reasons such notice is not necessary: *firstly*, the State or Public Officer should not have a privilege in the matter of litigation as against a citizen and should not have a higher status than an ordinary litigant in this aspect. As a matter of fact, such notice

[17] Law Commission's Fifty-fourth Report at pp. 10-14.

is not necessary for taking proceedings under Articles 32 and 226 of the Constitution of India; and *secondly*, as observed by Justice Krishna Iyer[18], it is intended to alert the Government to negotiate a just settlement or at least have the courtesy to tell the aggrieved person why the claim is being resisted. But it has become an empty formality because the administration is always unresponsive.[19] The provision relating to notice is, therefore, required to be deleted.

(3) Certain provisions, on the other hand, are not properly applied, e.g. Sections 99 and 99-A (no decree or order under Section 47 to be reversed or modified for error or irregularity not affecting the merits of the case, etc.) have not been usually pressed into service by courts or even by parties. Similarly, Sections 35-A and 35-B (compensatory costs in respect of false or vexatious claims or defences and for causing delay) are rarely used by courts or even by litigants. Again, though Order 41 Rule 11 expressly authorises an appellate court to dismiss First Appeals summarily by recording reasons, this provision is not known to be used by appellate courts other than High Courts, and all First Appeals are admitted by appellate courts as a matter of course. Further, though Order 41 Rule 3-A prohibits an appellate court to grant stay when the appeal is time-barred, in many cases, appellate courts grant stay/injunction subject to the limitation being condoned. This is clearly contrary to the legislative intent reflected in Rule 3-A. Similarly, in spite of the specific provision in Order 41 Rule 23-A for ordering remand when the case does not fall within the sweep of Rule 23 or Rule 25, generally, it is not resorted to by appellate courts.

(4) Sometimes, the government files an appeal even though there is no substance in it or the point is covered by the judgment of the Supreme Court. Courts are, in these circumstances, constrained to observe against a litigious approach adopted by the Government.

In *State of Maharashtra* v. *Vinayak Deshpande*[20], the Supreme Court had to observe:

> "It is indeed difficult to understand as to why the State of Maharashtra should have preferred the present appeal at all... . We do not think it is right that the State Government should lightly prefer an appeal in this court against the decision given by the High Court unless they are satisfied, on careful consideration and proper scrutiny, that the decision is erroneous and public interest requires that it should be brought before a superior court for being corrected. *The State Governments should not adopt a litigious ap-*

[18] *State of Punjab* v. *Geeta Iron & Brass Works Ltd.*, (1978) 1 SCC 68: AIR 1978 SC 1608.
[19] *Ibid*, at p. 69 (SCC): at p. 1609 (AIR); *see also supra*, Pt. II, Chap. 16.
[20] (1976) 3 SCC 405: AIR 1976 SC 1204.

proach and waste public revenues on fruitless and futile litigation where there are no chances of success."[21] (emphasis supplied)

It is undoubtedly true that if the Government were more careful in deciding whether to carry the matter in appeal or not, a number of appeals filed by the Government may substantially diminish.

(5) In many cases the court issues a notice to the Government or public bodies at the admission stage so as to settle the case immediately where the point at issue is such that regular hearing is hardly necessary and the matter could be decided promptly. Unfortunately, however, the Government machinery is very slow to act and, more often than not, there is no response to the notice and the court is constrained to admit the matter which remains pending for a number of years when it could have been disposed of at the initial stage..

(6) It is possible to reduce the burden of cases on regular courts by exploring the possibilities of setting up other forums where the disputes between the parties can be settled more informally and speedily, though under some kind of judicial supervision, e.g. separate Family Courts have been set up to deal with matrimonial cases and other disputes relating to family affairs. Members of such courts may be appointed from amongst serving or retired judges. Similarly, if more tribunals are created to deal with disputes arising under various laws, the burden on regular courts will be reduced to that extent. Since these Family Courts and tribunals will be subject to the supervisory jurisdiction of the High Court under Article 227 of the Constitution, it will ensure that they decide the cases coming before them judiciously and in accordance with law and not arbitrarily or capriciously. In this connection, it will be appropriate to mention of the experiment of holding Conciliation Courts and *Lok Adalats* which is being carried on in many States. Such *Adalats* are held at various places from time to time and apart from judges and lawyers, social workers are also invited to attend the proceedings and help the parties in settling their disputes informally. This experiment, it is submitted, is worth making in all States.

It may be stated at this stage by the Code of Civil Procedure (Amendment) Act, 1999, which has come into force from 1 July 2002, a provision has been made (Section 89) for settlement of disputes outside the court through arbitration, conciliation, mediation and *Lok Adalats*.

(7) Last but not the least, all agree that justice must be cheap and expeditious. However, in order to provide cheap and expeditious justice, it is necessary to appoint competent judges. But the present emoluments of judges are so meagre that they do not attract competent people to the Bench. If society wants cheap and expeditious justice,

[21] *Ibid*, at p. 407 (SCC): at p. 1206 (AIR).

it must also bear the expense of competent judges. The principle that "justice must be cheap but judges expensive" is, though universally recognised, never acted upon.

Before we conclude the discussion, it is worthwhile to quote the following observations of an eminent jurist[22]:

> "To my mind, the solution is very simple. See that the men you appoint are the proper ones. Find judges with an alert and active mind. What is more important, pay the judges better, give them a better pension, and enforce better conditions of service. The usual solution put forward is to increase the number of judges. But if the men selected are not really competent, Parkinson's Law will come into play. *The more the judges, the greater will be the load of work.*"[23] (emphasis supplied)

[22] Justice M.C. Chagla.

[23] M.C. Chagla, *Roses in December* (1973) at p. 127; see also *Kumar Padma Prasad* v. *Union of India*, (1992) 2 SCC 428: (1992) 20 ATC 217 (2)(a): AIR 1992 SC 1213.

Appendices

APPENDIX

A Plaint

In the City Civil Court, at Ahmedabad
Civil Suit No. 100 of 2002

Rajnikant Ramprasad Pandya, Hindu, Adult aged about 50 years, residing at 15, Paradise Park, Usmanpura, Ahmedabad .. Plaintiff;

Versus

Ramanbhai Mohanbhai Patel, Hindu, Adult, aged about 55 years, residing at 35, Patidar Society, Paldi, Ahmedabad .. Defendant.

The plaintiff abovenamed humbly states as under:

1. That by an agreement in writing, dated 1 January 2001, signed by the defendant, the defendant contracted to sell to the plaintiff his bungalow referred to in the said agreement (hereinafter referred to as "the suit property") for Rs 10,00,000. An amount of Rs 1,00,000 was paid by the plaintiff to the defendant as earnest money at the time of agreement.

2. The plaintiff was ready and willing to perform his part of the contract and on 1 June 2001, he tendered Rs 9,00,000 the balance of consideration to the defendant and called upon him to execute a sale deed, but the defendant refused to do so.

3. The plaintiff has always been and is still ready and willing to perform his part of the contract by paying the balance of purchase price to the defendant.

4. The cause of action for the suit arose on 1 January 2001 when the defendant executed the agreement to sell the suit property to the plaintiff; and on 1 June 2001, when the plaintiff tendered the balance amount to the defendant and showed his readiness and willingness to perform his part of the contract but the defendant refused to execute the sale deed and thereby failed to perform his part of the contract.

5. The cause of action arose in Ahmedabad because the agreement was made in Ahmedabad, the suit property is situate in Ahmedabad and the defendant also resides in Ahmedabad within the jurisdiction of this Court and this Court has, therefore, jurisdiction to try this suit.

6. The value of the subject-matter of the suit for the purpose of jurisdiction as well as court fees is Rs 10,00,000.

7. The plaintiff, therefore, prays:

(*a*) that the defendant may be ordered to transfer the suit property by executing a sale deed in favour of the plaintiff;

(*b*) that in the alternative, the defendant may be ordered to refund to the plaintiff the amount of Rs 1,00,000 paid as earnest money and also to pay Rs 9,00,000 as damages for committing breach of the contract;

(*c*) that the defendant may be ordered to pay the plaintiff's costs of this suit;

(*d*) that such further or other relief as the nature of the case may require may also be granted.[1]

8. The description of the suit property is given in the schedule annexed to this plaint.

ABC
Plaintiff's Advocate

.....
Plaintiff

Verification

I, *Rajnikant Ramprasad Pandya*, the plaintiff abovenamed do solemnly declare that what is stated in paras 1 to 4 is true to my knowledge and that what is stated in the remaining paras is stated on the information received by me and I believe it to be true.

.....
Plaintiff

SCHEDULE

Description of the Suit Property

Bungalow No. 37, known as "Patel Villa", situate in Patidar Society, Paldi, Ahmedabad. The boundaries of the suit property are as under:

To the east—Bungalow No. 38;
To the west—Bungalow No. 36;
To the north—Open plot; and
To the south—Public road.

[1] Strictly speaking, this prayer is not necessary (*see supra*, Pt. II, Chap. 7).

APPENDIX

B Written Statement

In the City Civil Court, at Ahmedabad
Civil Suit No. 100 of 2002

Rajnikant Ramprasad Pandya, Hindu, Adult aged about 50 years, residing at 15, Paradise Park, Usmanpura, Ahmedabad .. Plaintiff;

Versus

Ramanbhai Mohanbhai Patel, Hindu, Adult, aged about 55 years, residing at 35, Patidar Society, Paldi, Ahmedabad .. Defendant.

The written statement on behalf of the defendant abovenamed:

1. The defendant denies that he entered into an agreement to sell the suit property to the plaintiff on 1 January 2001 or on any other date and that the plaintiff paid Rs 1,00,000 or any other amount to him as earnest money as alleged in para 1 of the plaint.

2. The defendant denies that on 1 June 2001 or on any other date, the plaintiff tendered Rs 9,00,000 or any other amount to him and called upon him to execute the sale deed as alleged in para 2 of the plaint. The defendant says that since it is not true that he executed any agreement to sell the suit property to the plaintiff, the question of the plaintiff tendering the balance of consideration and the plaintiff being ready and willing to perform his part of the alleged contract did not arise at all and the whole story is got up and false.

3. The defendant says that in view of what is stated above, the plaintiff has no cause of action to file the suit against him.

4. The defendant, therefore, submits that the plaintiff is not entitled to any of the reliefs claimed by him in the plaint and the suit filed by him be dismissed with costs.

DEF
Defendant's Advocate

.....
Defendant

Verification

I, *Ramanbhai Mohanbhai Patel,* the defendant abovenamed do solemnly declare that what is stated in paras 1 and 2 is true to my knowledge and that what is stated in the remaining paras is stated on information received by me and I believe it to be true.

.....

Defendant

APPENDIX

C Issues

In the City Civil Court, at Ahmedabad
Civil Suit No. 100 of 2002

Rajnikant Ramprasad Pandya, 15, Paradise Park, .. Plaintiff;
Usmanpura, Ahmedabad

Versus

Ramanbhai Mohanbhai Patel, 35, Patidar Society, .. Defendant.
Paldi, Ahmedabad

Issues

The following issues were framed at Ex. 15:

1. Whether the plaintiff proves that the defendant entered into an agreement to sell suit property to him for Rs 10,00,000?
2. Whether the plaintiff proves that he paid a sum of Rs 1,00,000 as earnest money to the defendant?
3. Whether the plaintiff proves that he was and is ready and willing to perform his part of the contract?
4. Whether the defendant proves that the case of the plaintiff is totally false and got up?
5. To what relief, if any, the plaintiff is entitled to?
6. What order and decree?

My findings are as under:

1. In the affirmative.
2. In the affirmative.
3. In the affirmative.
4. In the negative.
5. As per final order.
6. As per final order.

APPENDIX

D First Appeal

In the City Civil Court, at Ahmedabad
Civil Suit No. 57 of 2003

Ramanbhai Mohanbhai Patel, 35, Patidar Society, Paldi, Ahmedabad .. Appellant (Ori. Defendant);

Versus

Rajnikant Ramprasad Pandya, 15, Paradise Park, Usmanpura, Ahmedabad .. Respondent (Ori. Plaintiff).

Appeal under Section 96 of the Code of Civil Procedure, 1908

Claim: Rs 10,00,000

The appellant abovenamed most respectfully states as under:

1. That the plaintiff-respondent filed a suit in the City Civil Court at Ahmedabad being Civil Suit No. 100 of 1992 against the defendant-appellant for specific performance of the contract alleged to have entered into by him with the defendant. In the alternative, the plaintiff prayed for damages of Rs 10,00,000 from the defendant alleging that the defendant had committed breach of contract.

2. That the learned Judge, by his judgment dated 13 January 2003, decreed the suit filed by the plaintiff for specific performance of the contract and ordered the defendant to execute a sale deed in favour of the plaintiff.

3. That being aggrieved by the decree passed by the learned Judge, the appellant herein begs to prefer this appeal on the following among other grounds:

Grounds

(1) That the learned Judge has erred in decreeing the suit for specific performance filed by the plaintiff.

(2) That the learned Judge ought to have dismissed the suit for specific performance filed by the plaintiff.

(3) That the learned Judge has erred in holding that the defendant had entered into an agreement to sell his bungalow to the plaintiff.

(4) That the learned Judge ought to have held that it was not proved by the plaintiff that the defendant had entered into an agreement of sale with him.

(5) That the learned Judge ought to have held that since no agreement was entered into between the parties, there was no question of showing readiness or willingness to perform the alleged contract at all.

(6) That the learned Judge has erred in holding that the plaintiff had paid Rs 1,00,000 to the defendant on 1 January 2001 as alleged by him.

(7) That the learned Judge ought to have held that the plaintiff did not pay Rs 1,00,000 or any part thereof to the defendant on 1 January 2001 or on any day.

(8) That the learned Judge has erred in holding that the plaintiff tendered Rs 9,00,000 to the defendant on 1 June 2001 as alleged by him.

(9) That the learned Judge ought to have held that the plaintiff did not tender Rs 9,00,000 or any part thereof on 1 June 2001 or on any day to the defendant as alleged.

(10) That the learned Judge has erred in holding that the defendant had committed breach of contract as alleged by the plaintiff.

(11) That the learned Judge ought to have held that when the plaintiff did not enter into an agreement with the defendant, there was no question of breach of contract by him.

(12) That the learned Judge has erred in ordering the defendant to execute a sale deed in favour of the plaintiff.

(13) That the learned Judge ought not to have granted specific performance of the contract by ordering the defendant to execute a sale deed in favour of the plaintiff.

(14) That the judgment and decree passed by the learned Judge is otherwise also contrary to law, against the weight of evidence and against the principles of justice, equity and good conscience.

4. The appellant, therefore, prays that the decree passed by the learned Judge in Civil Suit No. 100 of 2002 may kindly be set aside and the suit filed by the plaintiff may be dismissed with costs.

AND FOR THIS ACT OF KINDNESS, THE APPELLANT SHALL AS IN DUTY-BOUND FOREVER PRAY.

Ahmedabad,
7 February 2003.

ABC
Advocate for the Appellant

APPENDIX

E Second Appeal

In the High Court of Gujarat, at Ahmedabad,
District Jamnagar
Second Appeal No. 34 of 2003

Kantilal Chandulal Thaker, 17, Panchsheel Society, Bedibunder Road, Jamnagar .. Appellant (Ori. Defendant);

Versus

A.P. Sinha and/or his successor in office, Collector, Jamnagar, District, Jamnagar .. Respondent (Ori. Plaintiff).

Appeal under Section 100 of the Code of Civil Procedure, 1908

Claim: Rs 300

The appellant abovenamed most respectfully states as under:

1. That the plaintiff-appellant filed a suit in the Court of the Civil Judge (S.D.), Jamnagar, being Regular Civil Suit No. 165 of 2000 against the defendant-respondent for a declaration that the order terminating the services of the plaintiff passed by the defendant on 25 June 2000 was illegal, *ultra vires*, discriminatory, contrary to law, penal in nature and therefore inoperative and for permanent injunction restraining the defendant and/or his servants, agents or nominees from implementing or executing the said order and also for an order directing the defendant to reinstate the plaintiff in service with full back wages and other consequential benefits.

2. That the learned Judge, by his judgment and decree, dated 15 July 2001 dismissed the said suit filed by the plaintiff holding that since the plaintiff was a temporary servant, he had no right to hold the post, and the defendant had power to terminate his services, and the order was, therefore, legal and valid.

3. That being aggrieved by the decree passed by the trial court, the appellant-plaintiff preferred an appeal in the Court of the District Judge, Jamnagar, being Civil Regular Appeal No. 198 of 2001.

4. That the learned District Judge, by his judgment and decree, dated 27 December 2002 dismissed the said appeal filed by the appellant and confirmed the decree of the trial court.

5. That being aggrieved by the decree passed by the trial court and confirmed by the lower appellate court, the appellant abovenamed begs to prefer this appeal to this Hon'ble Court. In this second appeal, among others, the following substantial questions of law arise for the determination of this Hon'ble Court:[1]

(*i*) Whether in the facts and circumstances of the case, the courts below have committed an error of law in dismissing the suit filed by the plaintiff?[2]

(*ii*) Whether in the facts and circumstances of the case, the courts below have committed an error of law in holding that the order terminating the services of the plaintiff was legal and valid?

(*iii*) Whether in the facts and circumstances of the case, the courts below have committed an error of law in holding that the plaintiff was merely a temporary employee and had no right to hold the post?

(*iv*) Whether in the facts and circumstances of the case, the courts below have committed an error of law in holding that the order terminating the services of the plaintiff was not punitive in nature?

(*v*) Whether in the facts and circumstances of the case, the courts below have committed an error of law in holding that the plaintiff was not entitled to invoke protection of Article 311(2) of the Constitution of India?

6. On the grounds stated above, and on the grounds which may be urged at the time of hearing, it is prayed that this appeal may be allowed, the decree passed by the Civil Judge, (S.D.), Jamnagar in Regular Civil Suit No. 165 of 2000 and confirmed by the District Judge, Jamnagar in Civil Regular Appeal No. 198 of 2001 may be set aside and the suit of the plaintiff be decreed with costs all throughout.

AND FOR THIS ACT OF KINDNESS, THE APPELLANT SHALL AS IN DUTY-BOUND FOREVER PRAY.

Ahmedabad,
31 February 2003.

ABC
Advocate for the Appellant

[1] After the Amendment Act of 1976 in the Code of Civil Procedure, now second appeal can be filed only on the ground of "substantial question of law". (*See supra*, Pt. III, Chap. 3).

[2] Strictly speaking, this cannot be said to be a "substantial question of law", but *normally*, in the Mernorandum of Second Appeal, such question is raised by Advocates, (*see supra*, Pt. III, Chap. 3).

APPENDIX

F Revision

In the High Court of Gujarat, at Ahmedabad,
District Junagadh
Civil Revision Application No. 76 of 2003

Ratilal Mohanlal Thakker, Near Plaza Talkies, Mahatma Gandhi Road, Porbandar .. Petitioner (Ori. Defendant);

Versus

Ramaben Ramshanker Dave, Mahendra Mansion Near Kamla Nehru Park, Porbandar .. Opponent (Ori. Defendant).

Civil Revision Application under Section 115 of the Code of Civil Procedure, 1908
Claim: Rs 360

The petitioner abovenamed most respectfully submits as under:

1. That the petitioner-plaintiff filed a suit in the Court of the Civil Judge, (J.D.), Porbandar, being Regular Civil Suit No. 34 of 2001 against the opponent-defendant for possession of the suit-premises on the grounds of non-payment of rent and reasonable and *bona fide* requirement of the landlord.

2. That during the pendency of the said suit, the plaintiff made an application, Ext. 67, under the provisions of Order 6 Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code"), on 5 November 2002 praying therein for the amendment of the plaint and claimed relief of possession of the suit premises on two additional grounds; viz. (*i*) the defendant had made permanent structure on the suit premises without the prior permission of the landlord; and (*ii*) the defendant was causing nuisance and annoyance to the landlord and to other tenants and neighbours.

3. That the learned Judge, after hearing both the parties rejected the said application by an order, below Ext. 67, on 27 January 2003, holding that the amendment sought was not necessary for the purpose of determining the real question in controversy between the parties; that

there was delay in making the application; that the proposed amendment would change the nature of the suit; and that if such amendment were granted, it would cause great prejudice to the other side.

4. That being aggrieved by the said order, below Ext. 67, the petitioner herein approaches this Hon'ble Court by filing the present revision application on the following, among other grounds:

Grounds

(1) That the learned Judge has erred in rejecting the application, Ext. 67, filed by the plaintiff.

(2) That the learned Judge ought to have granted the application, Ext. 67, filed by the plaintiff.

(3) That the learned Judge has erred in holding that the proposed amendment was not necessary for the purpose of determining the real question in controversy between the parties.

(4) That the learned Judge ought to have held that the proposed amendment was necessary for the purpose of determining the real question in controversy between the parties.

(5) That the learned Judge has erred in holding that there was delay on the part of the plaintiff in making the application, Ext. 67.

(6) That the learned Judge ought to have held that there was no delay on the part of the plaintiff in making the application for amendment.

(7) That the learned Judge ought to have appreciated the fact that both the grounds mentioned in the application for amendment, Ext. 67, had arisen after the filing of the suit and, therefore, they could not have been included in the plaint.

(8) That the learned Judge has erred in holding that the proposed amendment would change the nature of the suit.

(9) That the learned Judge ought to have held that the proposed amendment would not change the nature of the suit inasmuch as the suit was for possession of the suit premises and even after the proposed amendment the nature of the suit and the relief claimed would remain the same.

(10) That the learned Judge ought to have appreciated the material fact that by addition of some grounds for possession of the suit premises, the nature of the suit can never be changed.

(11) That the learned Judge has erred in not considering the fact that the proposed amendment was necessary to avoid multiplicity of suits.

(12) That the learned Judge ought to have appreciated the fact that the proposed amendment would not cause injustice to the defendant and, therefore, ought to have exercised the discretion by granting it.

(13) That the learned Judge ought to have construed the provisions relating to amendment of pleading liberally and ought to have granted the application for amendment.

(14) That the learned Judge in rejecting the application for amendment has acted in breach of the provisions embodied in Order 6 Rule 17 of the Code and thereby acted illegally and with material irregularity.[1]

(15) That had the order been made in favour of the petitioner, it would have finally disposed of the suit (or other proceedings).[2]

(16) That even otherwise also, the order, passed by the learned Judge, is illegal, erroneous, against the principles of justice, equity and good conscience and at the same requires to be quashed and set aside.

5. On the grounds stated above, and on the grounds which may be urged at the time of hearing, it is prayed—

(*a*) that this revision application may kindly be allowed and the order, below Ext. 67, dated 27 January 2003 passed by the Civil Judge (J.D.), Porbandar in Regular Civil Suit No. 34 of 2001 may be set aside and the application for amendment may be allowed;

(*b*) that pending hearing and final disposal of this revision application, further proceedings in Regular Civil Suit No. 34 of 2001 pending in the court of the Civil Judge (J.D.), Porbandar may kindly be stayed;

(*c*) that any other relief which this Hon'ble Court thinks fit, may also be granted.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER SHALL AS IN DUTY-BOUND FOREVER PRAY.

Ahmedabad.
7 February 2003.

ABC
Advocate for the Petitioner

Affidavit

I, *Ratilal Mohanlal Thakker,* petitioner herein, do state on solemn affirmation that what is stated above is true to my information and belief and I believe the same to be true.

.....
(*Deponent*)

[1] To invoke jurisdiction of a High Court, the case must fall in any of the cls. (*a*), (*b*) or (*c*) of S. 115 of the Code. (*See supra,* Pt. III, Chap. 9)

[2] After the Amendment Act of 1999 in the Code of Civil Procedure, revision is maintainable only if the condition laid down in the proviso is satisfied. (*See supra,* Pt. III, Chap. 9)

APPENDIX

G Injunction Application

In the City Civil Court at Ahmedabad
Civil Suit No. 100 of 2002

Rajnikant Ramprasad Pandya, Hindu, Adult, aged about 50 years, residing at 15, Paradise Park, Usmanpura, Ahmedabad . . . Plaintiff;

Versus

Ramanbhai Mohanbhai Patel, Hindu Adult, aged about 55 years, residing at 35, Patidar Society, Paldi, Ahmedabad . . . Defendant.

The Plaintiff abovenamed humbly states as under:

1. That by an agreement in writing, dated 1 January 2001, signed by the defendant, the defendant contracted to sell to the plaintiff his bungalow referred to in the said agreement (hereinafter referred to as "the suit property") for Rs 10,00,000. An amount of Rs 1,00,000 was paid by the plaintiff to the defendant as earnest money at the time of agreement.

2. The plaintiff was and is ready and willing to perform his part of the contract but the defendant has refused to execute a sale deed and thus has failed to perform his part of the contract.

3. The plaintiff has filed the above suit against the defendant for specific performance of the contract, which is pending in this Hon'ble Court. The plaintiff has a *prima facie* case and balance of convenience is also in his favour.

4. The plaintiff has come to know that the defendant is trying to dispose of the suit property and has contacted some parties for the said purpose. The plaintiff submits that if the defendant is not restrained from disposing of and/or in any manner transferring the suit property during the pendency of the suit, irreparable injury and loss would be caused to the plaintiff, which would not be compensated in

terms of money and the suit filed by him would become infructuous. It would also lead to multiplicity of proceedings.

5. The plaintiff, therefore, prays:

(*a*) that during the pendency of and till the final disposal of Civil Suit No. 100 of 2002, the defendant and/or his servants, agents or nominees be restrained from selling, disposing of, assigning or in any way transferring the suit property to any person;

(*b*) that any other relief which the Hon'ble Court deems fit in the facts and circumstances of the case may also be granted.

AND FOR THIS ACT OF KINDNESS, THE PLAINTIFF SHALL AS IN DUTY-BOUND FOREVER PRAY.

ABC

..... *Plaintiff*

Plaintiff's Advocate

Affidavit

I, *Rajnikant Ramprasad Pandya*, the plaintiff abovenamed do solemnly declare that what is stated in paras 1 to 3 is true to my knowledge and that what is stated in para 4 is stated on the information received by me and I believe it to be true.

.....

Plaintiff

APPENDIX

H Affidavit

In the City Civil Curt at Ahmedabad
Civil Suit No. 100 of 2002

Rajnikant Ramprasad Pandya, Hindu, Adult, aged about 50 years, residing at 15, Paradise Park, Usmanpura, Ahmedabad . . Plaintiff;

Versus

Ramanbhai Mohanbhai Patel, Hindu, Adult, aged about 55 years, residing at 35, Patidar Society, Paldi, Ahmedabad . . Defendant.

Application for adjournment

I, Rajnikant Ramprasad Pandya, the deponent herein, do solemnly affirm and state on oath as under :—

1. That I am the plaintiff in the above suit. I am fully aware of and acquainted with the facts stated hereinbelow.
2. That the above suit is filed for hearing today. However, my advocate has suddenly taken ill. He is confined to bed and is unable to attend the Court.
3. That I came to know about the illness of my advocate when today in the morning I went to his Office in connection with the hearing of the suit.
4. That due to sudden illness and paucity of time it is not possible for me to engage another advocate and to apprise him with all the facts and circumstances of the case. He may not be able to do justice to my case.
5. That I was and am ready and willing to go on with the matter, but because of sudden illness of my advocate, I am unable to proceed with the case.
6. That in the facts and circumstances, it is in the interest of justice that the hearing may be adjourned to any other date.

I, Rajnikant Ramprasad Pandya, plaintiff herein, do state on oath the solemn affirmation that the facts stated in paras 1 to 6 are true to my personal knowledge. I have concealed nothing and no part of it is false. So I pray to Almighty God to help me.

.....

Deponent

APPENDIX

I Caveat

In the High Court of Gujarat, at Ahmedabad

Caveat

in

C.A. No. ..... *of 2003*

in

F.A. No. ..... *of 2003*

Rajnikant Ramprasad Pandya,
15, Paradise Park,
Usmanpura,
Ahmedabad .. Caveator
(Ori. Plaintiff);

Versus

Ramanbhai Mohanbhai Patel,
35, Patidar Society,
Paldi, Ahmedabad .. Opponent.
(Ori. Plaintiff);

Caveat under Section 148-A of the Code of Civil Procedure, 1908

The Caveator abovenamed most respectfully states as under:—

1. That the Caveator-original plaintiff filed a suit in the City Civil Court at Ahmedabad being Civil Suit No. 100 of 2002 against the opponent-original defendant for specific performance of the contract entered into by him with the opponent. In the alternative, the caveator prayed for damages of Rs 10,00,000 from the opponent alleging that the opponent had committed breach of contract.

2. That the learned Judge, by his judgment dated 13 January 2003, decreed the suit filed by the caveator-original plaintiff for specific performance of the contract and ordered the opponent to execute a sale deed in favour of the caveator.

3. That being aggrieved by the decree passed by the trial court, the opponent-defendant is likely to institute first appeal in this Hon'ble Court and also expected to apply for stay of decree passed against him.

4. That as the Caveator has obtained a decree in his favour, he has a right to appear before this Hon'ble Court and to oppose stay of decree passed by the trial court.

5. The Caveator, therefore, prays that let nothing be done in the matter and no stay and/or interim relief be granted in favour of the opponent by this Hon'ble Court without serving a notice of such appeal/application for stay upon the caveator and without hearing him.

The caveator has sent a notice of this caveat by registered post, acknowledgement due to the opponent. A copy of postal slip is annexed to this caveat.

AND FOR THIS ACT OF KINDNESS, THE CAVEATOR SHALL AS IN DUTY-BOUND FOREVER PRAY.

Ahmedabad,
15 January 2003.

ABC
Advocate for the Caveator

Subject Index

Abatement, 359–74
appeal against order giving or refusing leave to continue suit, 525
appeal against order refusing to set aside—, 524
consequences of, 366
effect of, 365
of appeal, 369
of representative suit, 169
of revision, 582
of suit, 122, 367
on death of party, 360
defendant, death of, 360
plaintiff, death of, 360
on insolvency of party, 373
on marriage of party, 373
partial, 364
principles relating to, 368
setting aside, 367

Actio personalis moritur cum persona, 362

Act of court, 716–17

Act purporting to be done, 409

Actus curiae neminem gravabit, 716–17

Additional evidence, 488–93
circumstances, 489
general rule, 488
meaning of, 488
mode of taking, 493
nature of, 489
object, 488
recording of reasons, 492
scope of, 489

Adjournments, 380–83
costs of, 382
discretion of court, 380
duty of court, 381
failure to appear, 382
general rule, 380
maximum, 381
power of court, 381
powers to grant, 381
when to be granted, 380
when to be refused, 380

Adjudication of claims, 691–98 (*see* **"Execution"**)

Adjustments, 354–57
of decrees, 622
of suit, 354–57

Admission, 300–04
conclusiveness, 301
importance, 300
in pleadings, 247
judgment on, 303
kinds, 300
object, 300
of appeal, 474, 534
of case, 301
of documents, 301
of facts, 302
should be taken as a whole, 301

Affidavit, 34, 306–08
by Government officials, 308
contents, 307
definition, 34, 306
essentials, 307
evidence, 307
examination on, 307

Affidavit (*contd.*)
false, 308
form, 307
in application for transfer, 703
meaning, 34, 306
model—, 767
verification, 308

Aliens, 414 (*see also* Foreign)

Amendment, 200–15
general power, 200
in CPC, 746
of decrees, 735
of judgments, 735
of orders, 735
of pleadings, 200, *see also* pleadings
power of, 201
principles, 202, 211
revision against grant of, 214
who may apply, 210

Appeal, 450–507
abatement of, 474
admission of, 474, 535
against consent decree, 463
against dead person, 466
against distribution of assets, 697
against *ex parte* decree, 463
against final decree, 464
against finding, 465
against judgment, 465
against preliminary decree, 464
against transfer of cases, 709
agreement not to appeal, 462
and memorandum of appeal, 468
and reference : distinction, 567
and review : distinction, 568
and revision : distinction, 456, 566
and suit: distinction, 454
by indigent persons, 529, *see also* indigent persons
by one defendant against another defendant, 461
by one plaintiff against another plaintiff, 461
condonation of delay in filing, 471
continuation of suit, 455
conversion of—into revision, 459
court fees, 468
cross-objections in, 477
decree in, 506

Appeal (*contd.*)
definition of, 34, 451
dismissal for default of, 475
dismissal in limine of, 473, 501
essentials, 452
ex parte hearing of, 472
first—, 450
first—and second—, 458
form of, 466, 518
forum of, 468, 527
from appellate decree, 509, *see also* Second appeals
from orders, 523
from original decree, 460–507, *see also* First appeals
in petty cases, 464
judgment in, 505
Letters Patent, 518, *see* "Letters Patent"
limitation, 470, 518, 527, 531
material date, 459
meaning, 34, 451
memorandum of—, 468
no—in certain cases, 464
nomenclature not material, 462
—one right, 454
powers of court in, 482
presentation of, 468
procedure at hearing, 475
reference and, 567
revision and, 456, 566
right of, 103, 106, 459
second, 508
second—and first—, 458
stay of proceedings in, 472
suit and, 454
summary dismissal of, 473
to the Supreme Court, 532, *see also* Supreme Court
valuation in, 468
vested right, 459
who may file, 460, 529
who may not file, 462
withdrawal of—, 352
without decree, 461

Appealable orders, 25, 524–26

Appeals by Indigent Persons, 529–31

Appeals from appellate decree, 508–22, *see* Second appeals

Appeals from orders, 523–28

Appeals to Supreme Court, 507, 532–36

Appearance, 231, 237, 262–77
by party in person or through pleaders, 231
consequences of non—, 263
exemption from—in person, 237
in person, 237
non—of, effect, 263
of defendant, 238
of parties, 231, 237
of plaintiff, 263

Appellate court
appreciation of evidence by, 498
decree of, 506
duties of, 498
judgment of, 505
powers of, 482, 497
procedure before, 475
stay by, 472

Application
against resistance of decree, 689
for execution, 599
for leave and certificate for fitness, 534
for rateable distribution, 691
for restitution, 719
for review, 547
for revision, 569
for setting aside *ex parte* decree, 268
for stay, 472
for transfer case, 703
for transfer of decree, 592
to permit to sue as indigent person, 429
to prosecute appeal as an indigent person, 529
to set aside sale, 676

Application for execution, 599–606

Arrest, 318–20, 632–38
and detention, distinction, 618
before judgment, 318
compensation for wrongful—, 321
conditions for, 320

Arrest (*contd.*)
grounds for, 319
in execution of decrees, 618, *see also* Execution
notice, 634
object of, 319
on insufficient grounds, 321
opportunity of hearing before ordering—, 634
opportunity to satisfy decree, 635
power and duty of court, 635
procedure in, 633
re—, 637
reasons, recording of, 637
security, 320
when—may be ordered, 320
where—will be allowed, 319
who may not be arrested, 633
wrongful—, compensation, 321

Attachment, 321–27, 639–50
alienation after, 649
appeal against, 321
before judgment, 321
compensation for wrongful, 328
conditional, 326
determination of, 648
effect of, 327
exemption from, 326
grounds for, 322
in execution of decrees, 617, *see also* Execution
in execution proceedings, 639, *see also* Execution
mode of, 326
nature of, 639
object of, 321
of property in execution of decrees, 617, *see also* Execution
on insufficient grounds, 328
private alienation after, 649
properties exempt from, 640
re—in execution, 327
revision against, 321
rights of third party and—, 327
which property cannot be attached, 641
which property may be attached, 640
withdrawal of, 327
wrongful—, compensation, 328

Bar
of appeal, 464
of jurisdiction of civil court, 57
of suit, 122

Bar of trial, 63

Case decided, 570 (*see* Revision)

Cause of action, 34
definition, 34
importance of, 219
joinder of—, 176
joinder of defendants and, 177
joinder of plaintiffs and, 177
joinder of plaintiffs, defendants and, 177
meaning of, 34
misjoinder of, effect, 178
non-disclosure of effect, 228
non-joinder of, effect, 178
objections as to misjoinder of, 178
same—, 172
where plaint does not disclose—, 228

Caveat, 34, 722–28
against whom may be filed, 719
contents of application, 726
failure to hear caveator : effect, 727
form, 725
hearing of caveator, 728
lodging of, 722
meaning, 34
model, 769
nature of, 724
notice of, 726
object, 723
rights and duties of caveator, 726
rights and duties of court, 726
rights and duty of the applicant, 726
scope, 724
time-limit, 728
when may be filed, 725
where—does not lie, 725
who may file, 724

Civil, 34

Claim
counter, 257
cross-, 622

Claim (*contd.*)
inclusion of all—, 170
joinder of, 176
omission or relinquishment of part of, effect, 170
splitting of, 170

Code of Civil Procedure, 4–13
amendments in, 4–5
applicability of, 7
at a glance, 11
bird's eye view of, 11
changes in—in 1976, 1999, 2002, 6
codification of, 6
commencement, 6
consolidation of, 6
definitions in, 14–36
extent of, 7
history, 4
interpretation of, 8
not exhaustive, 8
not to affect inherent powers of a court, 8
object of, 7
procedural law, 3
retrospective nature of, 10
scheme, 10
scope, 8
whether exhaustive, 8

Commission, 313–17
at the instance of foreign tribunals, 317
by High Courts, 318
by Supreme Court, 318
discretion of court, 313
expenses of, 317
for foreign tribunals, 317
inherent powers to issue, 317
limitations, 318
object, 315
power of court to issue, 313
powers of commissioners, 317
provisions for issuing—whether exhaustive, 317
purposes, 313
report of—evidentiary value, 318
return of—, 317
suo motu, 315
under the Constitution, 317

Compromise, 354–58
appeal against recording of or refusing to record, 357
bar to suit, 357
by advocate, 355
by minor's guardian, 355
by pleader, 355
—decree and estoppel, 356
—decree and *res judicata*, 356
decree, nature of, 356
duty of the court in recording—, 355
execution of—decree, 356
no appeal against decree, 357
no suit against—decree, 357
of representative suit, 356
of suit, 357
on behalf of minor, 355
recording of, 355
satisfaction of court regarding term of—, 355
unlawful, 356

Corporations
execution of decree against, 629
meaning of, 416
personal appearance of officers of, 417
service of summons, 243
suits by or against, 416

Costs, 397–400
compensatory—for false or vexatious claims or defences, 398
conditions, 399
'costs shall follow the event', 398
discretion of court in awarding, 398
—for causing delay, 399
—for false or vexatious claims or defences, 399
general, 397
kinds of, 397
maximum amount, 399
miscellaneous—, 398
object of awarding, 397
power of court in, 398
principles regarding awarding of, 398
rule as to, 397
security for, 312

Counterclaim, 257–61
—and set-off, 260
doctrine explained, 257

Counterclaim (*contd.*)
effect of, 260
limits of, 259
meaning, 257
modes of setting up, 259
nature, 259
object, 258
scope, 259
set-off and—distinction, 260
when may be filed, 260
who may file, 259

Court
abuse of process of—, 734
agreement as to choice of, 141
and *persona designata*, 571
by which decrees may be executed, 591
competent, 97
competent—and *res judicata*, 97
discretion to award cost, 398
discretion to grant adjoinment, 380
duties of appellate—, 498
foreign, 29
in which suits can be instituted, 591
jurisdiction of civil, 39–61
meaning of, 35
—of concurrent jurisdiction, 99
—of exclusive jurisdiction, 98
of first instance, 590
—of limited jurisdiction, 98
passing a decree, 590
pecuniary jurisdiction of, 48
powers of appellate—, 482
powers of executing—, 595 (*see* Execution)
powers of transferee, 595 (*see* Execution)
powers of transferor, 595 (*see* Execution)
questions to be determined by executing, 538
subordinate, 571
territorial jurisdiction of, 596
transferee—, 595 (*see* Execution)
transferor—, 595 (*see* Execution)
trial in—, 383
tribunals and—, 47
types of, 98
which passed decree, 590

Court fee
insufficient—effect, 229
payment of—by unsuccessful indigent person, 431
power to make up deficiency of, 732
realisation of, 431
rejection of plaint for non-payment of, 228

Cross-claims, 622

Cross-decrees, 620

Cross-objections, 477–82
against finding, 465
against whom—may be filed, 478
ambit of, 479
—and appeal, 477
—and cross-appeal, 478
as an indigent person, 480
cross-appeal whether may be treated as—, 480
cy-pres, doctrine of, 444
disposal of appeal, effect on—, 481
form of, 480
generally, 477
hearing of, 481
limitation for, 480
maintainability of, 480
meaning of, 477
nature of, 478
omission to file—, effect, 481
principles governing, 481
procedure for hearing of, 481
right to file, 478
scope of, 479
when may be filed, 479
whether substantive right, 478
who may file, 478
withdrawal, dismissal or abatement of appeal, effect on, 482

Death
consequences of, 366
duty of pleader to communicate, 365
effect of—a party, 365
of defendant, 360
of plaintiff, 360
principles relating to—of a party, 368

Death (*contd.*)
representative suit, 364
right to sue, 361

Death, marriage and insolvency of parties, 359–74
death of party, 360
insolvency of party, 373
marriage of party, 373

Decree-holder
application for execution by, 599
definition, 28
joint—, application for execution by, 600
meaning of, 28
restrictions to bid on, 670

Decree, 15–26, *see also* Execution
amendment of, 735
and appealable order, 28
and deemed—, 24
and judgment, 27
and order, 27
appealable order and, 25, 28
appeal from appellate—, *see* Second appeals
appeal from original—, *see* First appeals
arrest and detention in execution of—, 618
classes of—, 19
compromise—, 356
consent, 356
contents, 392
courts by which decrees may be executed, 591
cross-decrees, 620
decisions which are decrees: illustrations, 19
decisions which are not decrees: illustrations, 19
deemed, 23
definition, 15
drawing up of, 392
elements of, 16
essential elements, 16
execution of, 356, *see* Execution
ex parte—, remedies, 267, *see also* ex parte decree
final, 21
foreign, 593

Decree (*contd.*)
-holder, 28
in counterclaim, 394
Indian, 593
in various suits, 392
judgment and—, distinction, 27
meaning, 15
modification of, 493
money—stay, 472
necessity of—, 392
objection as to validity of, 658
order and—, distinction, 28
order and—, similarities, 27
partly preliminary and partly final, 23
payment under, 623
powers of court executing—, 595
powers of transferee court, 595
powers of transferor court, 595
preliminary, 20
rejection of plaint, whether, 24
restitution, whether 24
return of plaint, whether, 227
satisfaction of, 653
test of, 18
transfer of, 592
types of, 19

Deemed decree, 23
decree and, 24
meaning of, 23
nature of, 23
scope of, 23
—under CPC, 24

Deemed party, 654

Defendants
death of—, 360
definition, 35
in representative suit, 169
insolvency of—, 373
joinder of—, 153
marriage of—, 373
meaning, 35
misjoinder of, 155, *see also* Misjoinder
procedure where—is added, 160
pro forma, 93
striking out, adding or substituting of—, 158
summons to—, 237

Defendants (*contd.*)
when one—may defend on behalf of all, 163
who may be joined as—, 153

Definitions, 14–36

De hors the Act, 56

Delay in civil litigation, 739–50
amendments of 1976, 1999, 2002, 747
causes of delay, 740
costs for causing, 399
dangers of, 740
position prior to Acts, 745
suggestions for avoiding, 747

Delivery of property, 615, *see* Execution

Demeanour of witnesses, 385

Detention, 618, 632–38
arrest and—distinction, 618
before judgment, 321
in execution, 618
notice of, 617
period of, 637
procedure for, 633
subsistence allowance, payment of, 634
when—may be ordered, 633

Devolution of interest, 373

Discovery, 292–96
by interrogatories, 292
meaning, 292
non-compliance with the order of— effect, 298
of documents, 292
of facts, 292
premature, 298

Distribution
of assets, 691–98, *see also* Execution

Doctrine of
abatement, 361
constructive *res judicata*, 81
counterclaim, 257
crown's debts, 695
cy-pres, 444
jurisdiction of civil courts, 39–61
merger, 474

Doctrine of (*contd.*)
res judicata, 67, 67–122
res sub judice, 64–66
restitution, 715
set-off, 253
splitting of claim, 170

Documents
admission of, 305
discovery of, 292
impounding of, 306
inspection of, 297
notice to admit—, 301
privileged, 297
production of, 304
rejection of, 306
return of, 306

Enlargement of time, 731, *see also* **Inherent powers**

Evidence
additional—in appeal, 488, *see under* that head
discovery of new—, 548 (*see* Review)
documentary, 286
on affidavits, 307
oral, 385
recorded by another judge, evidentiary value of, 386
recording of, 385

Examination
of accounts, 316
of parties, 279
of witnesses, 314
on affidavit, 307
on commission, 314, *see also* Commission

Execution
against whom—may be taken out, 601
application for, 599
arrest and detention in—proceedings, 618
at more than one place, 594
attachment of property in—proceedings, 617
bar of limitation, 605
choice of mode of, 612

Execution (*contd.*)
courts which—execute decrees, 594
—decided in—whether decree, 25
delivery of property, 615
detention in, 633
discharge or satisfaction of decree, 655
distribution of assets, 691
duties of court in, 657
general principles, 596
heads of, 588
law commission's view, 588
limitation for, 605
manner of, 612
meaning of, 35
mode of, 612
notice of, 603
notice to show cause against—, 603
objection as to validity of decree in, 658
objections in, 658
of compromise decree, 356
of decree at more than one place, 594
of decrees and orders, 593
of document, 627
of foreign decrees in India, 593
of foreign judgment, 135
of Indian decrees in foreign territory, 594
partition in—, 620
powers of executing court in, 595
powers of transferee court in, 595
powers of transferor court in, 595
procedure in, 594
proceedings and *res judicata*, 107
proceedings on a foreign judgment, 135
questions to be determined in—proceedings, 651
receiver in—proceedings, 618
resistance in, 688
res judicata in—proceedings, 107
revival of—proceedings, 608
sale of property in—, 666
scheme of, 663
simultaneous, 613
stay of, 608
time-limit for, 605
under CPC, 588

Execution (*contd.*)
who may apply for—, 599
withdrawal of—proceedings, 354

Ex parte decree, 267–77
and *res judicata*, 105
appeal against—, 267
application to set aside, 268
burden of proof, 271
conditions, imposition of, 273
dismissal of appeal against, 276
effect of setting aside—, 276
extent of setting aside, 274
grounds for setting aside—, 268
imposition of conditions while setting aside, 273
inherent power to set aside, 274
limitation for filing application to set aside, 272
material date, 270
meaning, 267
notice, 272
power and duty of court, 270
procedure for, 272
remedies in case of, 267
res judicata, 274
review against, 277
setting aside, 268
successive applications for setting aside, 274
suit against, 268
test, 271
'upon such terms as the court thinks fit' 273
who may apply to set aside—, 268

Fact
admission of, 302
error of, 572
High Court's power to decide issues of, 520
issues of, 88
jurisdictional, 46
notice to admit, 302
questions of, 89

Family
suits concerning, 423

Firms
execution of decrees against, 630
suits by or against, 416
summons to, 243

First appeals, 450–507
abatement of, 474
additional evidence in, 488
addition of respondent in, 476
admission of, 474
against consent decree, 463
against dead person, 466
against *ex parte* decree, 463
against final decree, 464
against finding, 465
against judgment, 465
against petty cases, 464
against preliminary decree, 464
—and second appeal: distinction, 458
appeal to Supreme Court, 507
appreciation of evidence in, 498
cognate appeals, 504
condonation of delay in filing, 471
cross-objections, *see under* that head 477
decree in, 506
delay in filing, 471
dismissal for default, 475
duties of court while deciding—, 498
ex parte hearing, 476
findings of fact, setting aside in—, 499
form of, 466
forum of, 468
hearing of, 481
judgment in, 505
Letters Patent Appeal in—, 506
limitation, 470
memorandum of, 468
merger, doctrine of, 474
model, 758
modification of decree in, 493
money decree, stay, 504
no—in certain cases, 464
part admission of, 504
petty cases,—in, 464
powers of appellate court in deciding—, 482
presentation of, 468

First appeals (*contd.*)
procedure at hearing, 475
recording of reasons in—, 501
remand, 483
restoration of, 475
stay of execution, 472
stay of proceedings in, 472
summary dismissal of, 473
who cannot file, 462
who may file, 460

First hearing, 278–84
disposal at—, 283
examination of parties at—, 278
meaning of, 278
object of, 279

Foreign
award, 135
court, 29
decree, execution of, 592
judgment, 29
suit, 134
suit pending in—court, 66
suits by or against—Rulers, etc, 414
summons, 243

Foreign court, 123

Foreign judgment, 29, 123–35
binding nature of—, 125
conclusiveness of, 126
definition, 29
doctrine of res judicata, 126
effect of—, 134
enforcement of—, 134
execution of—, 135
execution proceedings on, 135
illustrations of, 125
irregularities in—, 134
meaning, 29, 123
nature, 124
object of, 124
presumption as to, 132
res judicata in, 126
scope, 124
suit on, 134
when binding, 125
when not binding, 126
when not conclusive, 126

Foreign Rulers
suits against, 414

Forum shopping, 144

Frame of suit, 178

Friendly suits, 423

Garnishee
—order, 646–48
—proceedings, 646–48

Government
duty of court for settlement, 413
execution of decree against, 414
notice, 413 (*see also* Notice)
privileges, 414
suit against, 403
suits by, 403

Government pleader, 413

Hearing
first—, 278–84
—of suit, 383

Indigent persons, 428–31, 529–31
appeals by, 529
costs, 431
recovery of court fees, 431
suits by, 428
who is, 428

Inherent power, 729–38
abuse of process of court, 734
amendment of judgments, decrees or orders, 735
amendment of record, 735
ends of justice, 733
enlargement of time, 731
limitations on, 736
meaning of, 729
nature of, 729
payment of court fees, 732
scheme, 730
to stay, 66
when—not to be exercised, 736
when—to be exercised, 736

Injunction, 328–42
against public projects, 340
against whom may be granted, 330
against whom—may be issued, 330
appeal, 342
breach of, 342
conditions, imposition of, 339
continuation of, 341
definition, 328
discretion to grant, 335
disobedience of, 342
doctrine of precedent, 340
ex parte, 338
for limited period, 341
grounds, 330
—on insufficient grounds, 342
—which may be granted, 337
—which may not be granted, 337
imposition of conditions, 339
inherent power to grant, 337
interim, 328
judicial comity in granting, mandatory, 328
model—application, 765
notice before granting, 337
object, 329
permanent, 329
power of court, 328
precedential value, prepetual, 340
principles governing, 331
prohibitors, 328
public projects, 340
recording of reasons, 339
res judicata, 340
restoration of benefits, 341
revision, 342
security for, 339
temporary, 329
types, 329
vacating of, 337
who may apply, 330

Insolvency, 373–74
—of defendant, 373
—of parties, 373
—of plaintiff, 373

Inspection, 297
non-compliance with order of—, 298
notice for, 297

Inspection (*contd.*)
of documents, 297
of privileged documents, 297
order of, 297
premature—, 298
purpose, 298

Institution of suit, 178–80

Interest, 394–97
after the decree, 394
agreement to pay, 395
award of, 394
by arbitrator, 397
by court, 397
commercial transactions, 396
compound, 396
decree silent as to—, effect, 396
devolution of, 373
discretion of court to award—, 395
divisions of, 394
from date of decree, 395
from the date of suit, 395
general principles for awarding, 394
in commercial transactions, 396
inflation, 396
in mortgage suits, 397
in writ petitions, 397
meaning, 394
pendente lite, 395
prior to suit, 395
rate of, 395
writ petitions—in, 397

Interim Injunction, 328–42 (*see* Injunction)
and *res judicata*, 121 (*see* Res judicata)

Interim orders, 309–48

Interlocutory orders, 343

Interpleader suit, 424–28
appeal in, 412
charges, 425
conditions, 425
costs of plaintiff in, 427
meaning, 424
nature of, 425
object, 425
plaint in, 427
procedure, 427
scope, 425

Interpleader suit (*contd.*)
test, 427
who cannot file, 427
who may file, 426

Interrogatories, 287–92
against whom—may be allowed, 288
costs of, 290
evidentiary value of, 287
form of, 288
meaning, 287
object, 287
objections against—, 288
of "fishing" nature, 291
particulars of, 288
rules as to, 288
setting aside of, 292
which—may be allowed, 290
which—may not be allowed, 291
who may administer—, 287

Issue, 35, 88, 280–84
duty of court in framing, 282
examination of parties before framing of, 279
finding on more than one—, 106
framing of, 280
framing of—and referring them for trial, 282
importance, 281
judgment on all, 280
kinds, 280
materials for framing of, 282
meaning, 35
model—, 757
of fact, 88
of fact and law, 88
of law, 88
omission to frame—effect, 283
power of court in framing, 282
preliminary, 280

Joinder
mis-, 155
non-, 155
of causes of action, 176
of claims, 176
of defendants, 153
of parties, 152
of plaintiffs, 152

Judge, 26

Judgment, 26
alteration, 391
and decree, 27
certified copy of—to be filed in appeal, 466
contents, 26
-debtor, 29
decree and—distinguished, 27
definition, 26
essentials, 26
foreign, 29, *see also* foreign
in appeal, 505
meaning, 26
of Small Causes Court, 27
on admissions, 303
pronouncement of, 388
time-limit, 388
to be signed and dated, 391
under Letters Patent, 506, *see* Letters Patent Appeal
within the meaning of Letters Patent, 506, *see* Letters Patent Appeal

Judgment-debtor, 29

Jurisdiction, 35, 39–61, 572–77
appellate, 48
assumption of, 574
as to subject-matter, 48
basis to determine, 44
burden of proof, 55
consent of parties and, 41
court can decide its—, 46
decision as to, 47
definition, 35
determination of, 47
duty of court in deciding, 47
error of, 572
exclusion of—, 55
exclusion of—principles, 57
exercise of—illegally, 575
exercise of—not vested in court, 574
exercise of—with material irregularity, 575
failure to exercise—vested in court, 575
general principles relating to, 61
illegal assumption of, 574
illegal exercise of, 575

Jurisdiction (*contd.*)
illegality or material irregularity in exercise of, 575
inherent lack of, 43
irregular exercise of, 43
issue relating to, 281
kinds of, 48
lack of, 42
local, 48
material irregularity in exercise of, 575
meaning, 35
appellate, 48
as to subject-matter, 48
original, 48
pecuniary, 48
territorial, 48
objection as to, 145
objection as to—in execution proceedings, 148
of civil courts, 39
of court, 40
of foreign courts, 48
ouster of, 61
pecuniary, 48
power of court in deciding, 47
presumption as to, 54
principles as to—, 61
subject-matter,—as to, 48
territorial, 48
types of, 48
unauthorised assumption of, 574
waiver of, 41
want of, 42
who may decide, 46

Jurisdictional error, 572 (*see* Revision)

Jurisdictional fact, 46

Law
change in—effect, 225
error of, 572
issues of, 88
mixed issues of—and fact, 88
substantial question of—, 512, *see* "Second appeals"

Legal practitioner, 232, *see* pleader

Legal representatives
decree against, 601
definition, 30
determination of question as to—, 364
execution of decree against, 601
procedure where there is no—, 365
who are—, 30
who are not—, 30

Letters Patent Appeal
against appeal from order, 527
against first appeal, 507
against grant or refusal to grant permission to sue as indigent person, 531
against grant or refusing transfer of case, 709
against order of transfer, 709
against review, 557
against revision, 583
against second appeal, 518

Liability of surety, 628

Limitation
for appeal from order, 527
for cross-objections, 480
for execution application, 605
for filing suit after withdrawal of previous suit, 352
for first appeal, 470
for leave to file appeal as indigent person, 531
for letters patent appeal, 506
for restitution, 721
for review, 557
for revision, 580
for second appeal, 518
for setting aside *ex parte* decree, 272
for setting aside sale, 678

Lunatics, 418–23 (*see* Minor)

Mediation, 12

Merger, doctrine of, 474

Mesne profits, 30–32, 628
against whom awarded, 31
against whom can be claimed, 31
assessment, 31

Mesne profits (*contd.*)
attachment of, 628
decree for, 30
deductions from, 32
definition, 30
determination of, 32
future—, 223
illustration, 32
interest on, 32
meaning, 30
object of awarding—, 30
principles, 32
test, 31

Minor
agreement or compromise on behalf of, 355
appointment of guardian, 420
attainment of majority of, effect, 422
decree against, 422
definition, 418
guardian of, 420
interest of, 421
procedure in suits by or against, 418
suits by or against—, 419
who is—, 418

Misjoinder
effect of, 155
objections as to—, 156
of causes of action, 176
of claims, 176
of defendants and causes of action, 178
of parties, 155
of plaintiffs, 177
plaintiffs, defendants and, 177

Mode of execution, 611–31 (*see* Execution)

Modification of decree, 493–97

Mortgage
suits relating to—of immovable property, 432

Negotiable Instruments, 628
attachment of, 642
execution of decree for, 628, 644
sale of, 672

Next friend, 418–23, *see also* Minor
appointment of, 420
death of, 421
liability of, 420
removal of, 421
retirement of, 421
rights of, 420

Non-appearance, 262–77, *see* Appearance

Non-joinder, 155, *see also* Joinder
objections as to, 156
of parties, 156

Notice, 167, 403–14
before arrest in execution of decree, 604
computation of limitation, 412
construction, 408
essentials, 406
execution of period, 411
for interim injunction, 337
form, 410
for payment into court, 623
for representative suit, 167
for setting aside *ex parte* decree, 274
for setting aside sale, 678
interpretation, 408
Law Commission's view, 405
mode of service, 410
object, 404
of execution, 603
of payment, 624
premature suit, 412
requirement, 403
setting aside *ex parte* decree, 272
statement in plaint, 413
statutory—under Section 80, 408
technical defect, 410
to admit case, 301
to admit documents, 301
to admit facts, 302
to appear before commissioner, 317
to garnishee, 647
to show cause against execution, 603
urgent relief, 411
waiver, 410
whether empty formality, 407
whether mandatory, 408
writ petition, 412

Objections
as to inherent lack of jurisdiction, 43 (*see* Jurisdiction)
as to jurisdiction of court, 145
as to misjoinder of parties, 156
as to non-joinder of parties, 156
as to pecuniary jurisdiction, 48 (*see* Jurisdiction)
as to subject-matter of jurisdiction, 48 (*see* Jurisdiction)
as to territorial jurisdiction, 48 (*see* Jurisdiction)
cross-, 477 (*see under* that head)
in execution proceedings, 658

Oral arguments, 386

Oral evidence, 385

Order
Amendment of, 735
appealable, 25
appeals from, 523
decree and—distinction, 28
decree and—similarities, 27
definition, 27
execution of—Supreme Court, 536
final—, 533
interim, 310 (*see* Interim orders)
interlocutory—, 343 (*see* Interim orders)
meaning, 27
non-appealable, 526
other—, 526

Parties, 151–62
addition of, 156
appearance of, 263
death, marriage and insolvency of, 359
—effect of addition of, 168
in representative suit, 168
joinder of, 152
misjoinder of, 155
necessary, 154
non-appearance of, 262
non-joinder of, 155
objections as to misjoinder or non-joinder of—, 156
power and duty of court in deciding, 158

Parties (*contd.*)
proper, 154
striking out of, 156
substitution of, 156
test to determine necessary and proper, 154
to suit, 151
transposition of, 162
under whom they claim, 94

Partition
by collector, 620
commissioner to make, 316
decree in suit for, 394
execution of decree for, 620
of estate, 620
powers of civil court, 620
powers of collector, 620

Partnership
decree in—suit, 394
execution of decree against—, firm, 630
suits by or against—,firm, 417

Payment
certified, 624
effect of, 625
into court, 311
notice of, 624
of coins, 631
of money in execution, 622
out of court to decree-holder, 623
uncertified—, effect, 625
under decree, 623

Pecuniary jurisdiction, 137–39
general rule, 137
nature of mode of valuation for, 138
objection as to, 147
object of, 137
persona designata and court, 571 (*see* Revision)
persona designata, 571 (*see* Revision)
power and duty of court, 138
principles relating to, 142
scope of, 137
valuation for, 138

Place of suing, 136–49, *see also* Jurisdiction
objection as to, 145
object of, 137

Place of suing (*contd.*)
principles relating to, 142
rule as to, 137

Plaint, 35, 217–31
admission of, 227
documents relied upon in—, 230
effect of rejection of, 230
events happening after institution of suit, 224
meaning, 35
model—, 753
particulars of, 218
presentation of, 178
procedure on admitting—, 227
procedure on rejection of, 230
rejection of, 228
relief in, 222
return of, 227
subsequent events after presentation of, 225
to be in duplicate, 229
valuation, 221

Plaintiffs
addition of, 156
appearance of, 262
arbiter litis, 701
death of—, 360
definition, 36
dominus litis, 701
in representative suit, 163
insolvency of—, 373
joinder of, 152
marriage of—, 373
meaning, 36
misjoinder of, 155
objections as to non-joinder or misjoinder of, 156
striking out, adding of—, 156
substitution of, 156
when one may sue on behalf of all, 163–170
who may be joined as—, 152

Pleaders, 231–36
appearance by proxy, 236
appearance of parties through—, 231
appointment of, 232
authority of, 233

Pleaders (*contd.*)
communication of death of party, 365
compromise by, 355
definition of, 232
duties of, 233
meaning, 232
responsibilities of, 235
service of process on—, 236
status of, 232
strike by, 235

Pleadings, 181–15
alternative, 192
amendment of, 200
basic rules of, 184
construction of, 195
definition, 182
fundamental rules of, 184
—generally, 181
general rules of, 184
inconsistent, 192
interpretation of, 195
object of, 182
other rules of, 190
particulars in—, 185
rules of, 184
signing of, 198
striking out, 197
subsidiary rules of, 190
to be supported by affidavit, 198
variance between—and proof, 199
verification of, 198

Precept, 645
limitations, 645
meaning, 645
nature, 645
object, 645
scope, 645
time-limit, 646

Procedural Law, 3–4
importance of, 3
interpretation of, 8
operation of, 10
substantive law and, 3

Property
attachment of, 589 (*see* Execution)
modes of attachment of, 617 (*see* Execution)

Property (*contd.*)
which—can be attached, 640 (*see* Execution)
which—cannot be attached, 641 (*see* Execution)

Public charities
suits relating to, 441

Public interest litigation
res judicata in, 110

Public nuisance
suits relating to, 439

Public officer, 33
definition, 33
suits by or against—, 403
who are, 33
who are not, 34

Public trust, 441–46
suits relating to—, 441

Purported order, 56

Quashing of order and stay of order: Distinction, 608

Question
mixed—of fact and law, 88
of fact, 88
of law, 88

Questions arising in execution proceedings, 651
—decided in execution proceedings, 651

Rateable distribution, 691–98

Receiver, 343–48
appointment, 344
definition, 343
discretion of court, 344
duties, 347
in execution proceedings, 619
liabilities, 348
meaning, 343
object of appointment of—, 344
powers, 346
principles for appointment, 344
remuneration, 347

Receiver (*contd.*)
who may appoint, 345
who may be appointed, 346

Recognised agents, 231–36
appearance by—, 231
of foreign rules, 414
of Government, 415
service of process to—, 236
who are—, 231

Reference, 537–42
appeal and—, distinction, 567
Article 228, Constitution of India and—, 542
conditions, 538
contingent decree, 540
costs of, 541
duty of High Court, 539, 540
duty of referring court, 539
essentials, 538
hypothetical question, 539
nature, 537
object, 537
power of High Court in, 540
power of referring court, 539
procedure at hearing, 540
reasonable doubt on a question of law, 539
review and—, distinction, 568
revision against, 541
revision and—, distinction, 568
scope, 537
Section 395 CrPC and—, 541
under CPC and Constitution, 542
under CPC and CrPC, 541
who may apply, 539

Remand, 483–87
appeal against order of, 485
conditions, 484
duty of trial court, 486
effect, 485
grounds of, 484
inherent powers of, 485
meaning, 483
nature of, 483
scope, 483

Representative suit, 163–70
abatement, 169
addition or substitution of parties in—, 168

Representative suit (*contd.*)
compromise in—, 168
conditions, 164
conduct of, 169
definition, 163
meaning, 163
no abatement, 169
notice, 167
object, 163
parties in, 168
powers of court in, 169
res judicata in—, 169
title in—, 167
when—can be brought, 165
who can file—, 164
withdrawal of, 168

Res judicata, 67–122
and estoppel, 73
and estoppel, distinction, 73
and Or. 2 R. 2, distinction, 75
and *res sub judice*, distinction, 73
and rule of law, 72
and splitting of claims, 75
and *stare decisis*, 74
and withdrawal of suit, 120
between co-defendants, 91
between co-plaintiffs, 92
change in circumstances and—, 120
change in law and—, 120
change in law and, consent decree and, 119
competent court, 97
compromise decree and—, 119
conditions, 77
constructive—, 81
criminal proceedings and, 110
dismissal for default and, 117
dismissal in limine and, 118
execution application and—, 605
execution proceedings and—, 107
ex parte decree and, 104
extent and applicability, 72
finding on more than one issue, 106
findings on matter not in issue, 87
findings on several issues, 87
foreign judgment and—, 126
habeas corpus and—, 115
heard and decided, 104
history, 72
industrial adjudication and—, 107

Res judicata (*contd.*)
interlocutory orders and, 121
interpretation, 76
interveners and—, 93
'issue', 88
matter in issue, 78
meaning, 67
'might and ought' 84
minors and—, 94
nature of, 69
object, 69
pro forma defendant and—, 93
public interest litigation and, 110
representative suit and—, 94
—between co-defendants, 91
—between co-plaintiffs, 92
—in other proceedings, 107
right of appeal and, 103
same parties in, 91
same title in, 96
scope of, 69
Section 11 CPC, whether exhaustive, 76
splitting of claims and, 75
"suit": meaning, 87
summary dismissal and, 112
taxation matters and, 109
test, 92
waiver of, 77
when suit is decreed, 106
when suit is dismissed, 106
whether exhaustive, 76
whether mandatory, 76
whether technical, 75
withdrawal of suit and, 120
writ petitions and—, 110

Res sub judice, 64–66, 73
and *res judicata*, distinction, 73
bar of trial, 63
conditions, 65
contravention: effect, 66
court to which application lies, 65
doctrine of, 63
effect of contravention, 66
inherent power to order stay, 66
nature of, 64
object, 64
res judicata and—, 73
scope of, 64

Res judicata (*contd.*)
suit pending in foreign court and doctrine of, 66
test, 66

Restitution, 714–21
act of court, 716
appeal against order of, 721
application for, 719
bar of suit, 720
conditions, 717
decree for—of conjugal rights, 626
doctrine of, 715
extent of, 720
form of application for, 720
illustrations of, 715
inherent power to grant, 720
limitation, 721
meaning, 714
nature, 717
nature and scope, 717
nature of proceedings, 719
no suit in respect of, 720
object, 716
order implemented: effect, 721
order of—, whether decree, 24
res judicata, 720
scope, 717
whether decree, 721
whether exhaustive, 720
who may apply, 718
who may grant, 719

Review, 543–59
appeal, 557
appeal against order granting—, 557
appeal against order rejecting, 557
appeal and—, 568
by another judge, 554
by Supreme Court, 558
by whom—may be made, 554
circumstances, 547
conditions, 547
crucial date, 555
effect of, 557
ex parte decree,—against, 267
form of, 555
grounds, 548
inherent power of, 555
in writ petitions, 557

Review (*contd.*)
letters patent appeal, 557
limitation, 557
meaning, 543
nature, 544
no inherent power of, 555
object, 545
of orders passed by Supreme Court, 558
principles, 558
procedure, 556
reference and—, distinction, 568
revision, 557
revision and—, distinction, 568
scope, 544
stages of, 556
suo motu, 556
to whom application of—can be made, 554
when lies, 547
who may apply, 546
writ petitions and—, 554

Revision, 560–84
abatement of, 582
alternative remedy, 578
appeal and—, distinction, 456, 568
conditions, 569
conversion of—into appeal, 566
dismissal in limine, 583
form of, 580
grounds on which—lies, 569
interlocutory orders and, 581
jurisdictional error, 572
Law commission's view, 569
letters patent appeal, 583
limitation, 580
limits of jurisdiction of High Court in, 578
meaning, 561
merger, doctrine of, 582
model—, 762
nature of, 561
object, 563
power of superintendence and—, distinction, 565
procedure, 582
recording of reasons in, 583
reference and—, distinction, 568
review and—, distinction, 568
revision under other laws, 581

Revision (*contd.*)
scope of, 561
second appeal and—, distinction, 567
suo motu exercise of power by High Court, 580
who may file, 569
writ and—, distinction, 564

Rulers
suits against, 416

Sale, 666–85, *see also* Execution
adjournment of, 669
application to set aside—, 678
by public auction, 667
certificate, 685
confirmation of, 684
courts empowered to order—, 674
default by purchaser, 669
delivery of property, 686
deposit of price in, 674
effect of, 685
fraud in, 681
generally, 667
irregularity in, 673
of agricultural produce, 672
of immovable property, 673
of movable property, 671
of negotiable instruments, 672
payment of price in, 672
place of, 672
postponement of, 674
power of court in, 667
proclamation of, 667
re-sale, 669
resistance, 688
restrictions to bid in—, 670
setting aside of, 676
shares, 672
stay of, 664
stoppage of, 669
time of, 669

Second appeal, 508–22
form of, 518
general principles, 521
jurisdiction of High Court to decide questions of fact in—, 520
jurisdiction of the High Court in, 511

Second appeal (*contd.*)
letters patent appeal in—, 518
limitation, 518
model, 760
nature of, 509
no—in certain cases, 518
object, 510
pending, 520
procedure at hearing of, 520
scope of, 509
—and first appeal : distinction, 458
—and revision, 511
substantial question of law, 512

Security
for costs of appeal in Supreme Court, 535
for costs of suit, 312

Set-off, 253–57, 260
and counterclaim, distinction, 260
conditions, 255
counterclaim and, 260
doctrine explained, 253
effect of, 255
equitable, 256
illustrations of—, 254
legal and equitable—distinction, 256
meaning, 253
types of, 255

Settlement of disputes outside court, 12

Special case, 423

Splitting of claims, 170

Statutory notice, 407 (*see* Notice)

Stay
ex parte order of, 472
no—where there is delay in filing appeal, 472
of execution of decree by appellate court, 472
of money decree, 472
of proceedings, 472
of sale, 664
of suit, 64 (*see* Res sub judice)

Subsequent pleadings, 247

Substantial question of law, 512–18
—and question of law of general importance, 513
formulation, 515
hearing of appeal on, 515
illustrative cases, 517
—involved—illustrative cases, —and question, 516
meaning, 512
nature, 512
—not involved—illustrative cases, —and question, 517
of general importance, 513
scope, 512
suits involving, 512
test, 512
within the meaning of Section 100, 513

Suit
abatement of, 365
against dead person, 366
against Government, 403
against minor, 94, 179
appearance and non-appearance to parties of effect, 262
bar of—, 149 (*see* Bar)
by indigent persons, 428 (*see* Indigent person)
by minors, 418
compromise of, 354
—concerning family, 423
death, marriage and insolvency of parties to, 359
definition of, 16
essentials of, 151
events happening after institution of, 224
ex parte decree,—against, 276 (*see* ex parte decree)
first hearing of, 278
former, 88
frame of, 170
friendly, 423
hearing of, 383
institution of, 178
interpleader, 424
meaning of, 16
mortgage, 432
not of civil nature, 52
—of civil nature, 50

Suit (*contd.*)
—on a foreign judgment, 134
parties to—, 151
premature, 298
—relating to family, 423
—relating to mortgages, 432
—relating to public charities, 441
—relating to public nuisance, 439
—relating to public trusts, 441
representative—, 162 (*see also* Representative suit)
special, 403
stay of—, 64
subsequent events in—, 225
summary, 435
transfer of—, 703 (*see* Transfer)
withdrawal of—, 349 (*see under* that head)

Summary suit, 435–39
applicability, 436
discretionary power, 436
nature, 435
object, 436
ordinary suit and—, difference 438
principles relating to, 439
procedure, 437
recording of reasons, 438
revision, 438
when lies, 441

Summons, 36, 236–44
additional service of, 377
contents, 238
definition, 36
essentials, 237
failure to appear after service of, effect, 377
foreign, 243
form of, 237
for production of documents, 376
meaning, 36
modes of service of, 238
objection as to service of—, 243
object of issuing, 236
refusal of, 242
service of, 238
service of—in special cases, 243
summons to, 376
to defendant, 237
to plaintiff, 240

Summ
to produce doc
to witnesses, 376
where—is not served, 268
witnesses, 376

Supreme Court, 532–36
appeals to, 532
appeals to—under Constitution, 536
application for leave to appeal to, 534
conditions, 532
execution of orders of, 536
power of—to transfer cases, 703
powers of, 536
procedure at hearing, 534
review of orders passed by, 558
security deposit in, 535
substantial question of law of general importance, 513

Surety
enforcement of liability of, 629
liability of, 628
notice to, 629

Temporary injunctions, 328, *see also* Injunction

Territorial jurisdiction, 139–41
cause of action and, 219
choice of forum, 141
objection as to, 145
scope of, 139
selection of forum, 141

Transfer
of business, 733
of cases, 701–13
of decrees, 592

Trial, 375–86
in camera, 384
open, 383
tribunal and court, 383
"Under the Act", 56

Verification
of pleadings, 198, *see* Pleadings

Withdrawal
—civil nature, 50
of appeals, 352
of execution proceedings, 354
of representative suit, 168
of revisions, 353
of suit and *res judicata*, 120
of suits, 349
of writ petitions, 117

Witnesses
attendance of—, 379
attendance of—in prisons, 379
commission to examine, 314
de bene esse, 386
demeanour of, 385
examination of, 379
re-calling of, 385
summons to, 376

Writ petitions
—and revision : distinction, 564
applicability of CPC, 558
res judicata in, 110
review in, 554
withdrawal of, 120

Written arguments, 386

Written statement, 36, 244–53
defences in, 247
documents relied on in—, 253
facts in, 247
filing of, 245
meaning, 36
model—, 755
outer limit for filing, 245
particulars, 247
rules governing, 247
special rules, 247
subsequent pleadings, 247
when may be filed, 260
who may file, 259

Wrongful acts affecting public, 439 (*see* Public nuisance)