

LL.B. (Integrated) 6th Semester
Paper- IV – Code of Civil Procedure II
Unit: I

Syllabus- Judgment and Decree: Judgment: Definition, Essentials, Pronouncement, Contents and Alteration.
Decree: Definition, Essentials, Types, Drawing up of a Decree, Contents and Decree in particular cases, Interest, Costs

Ques.1- Define decree and its essential contents. Mention the contents of decree in particular cases.

Ans.1- Definition of Decree- A ‘Decree’ has been defined in *Section 2(2)* of the C.P.C. According to it, a Decree means the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question witness section 44, but shall not include–

- a. Any adjudication from which an appeal lies as an appeal from an order. Or
- b. Any order of dismissal for default.

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

Essential Elements of a Decree– In order that a decision of a court may be a “decree”, the following elements must be present:

1. There must be an adjudication.
2. Such adjudication must have been done in a suit.
3. It must have determined the rights of the parties with regard to all or any of the matters in controversy in the suit.
4. Such determination must be of a conclusive nature; and
5. There must be a formal expression of such adjudication.

Drawing up of decree: Rule 6-A

A decree should be drawn up within **fifteen days** from the date of pronouncement of the judgment. If the decree is not drawn up, an appeal can be preferred without filing a copy of the decree.

Contents of decree: Rule 6

The decree shall follow the judgment, agree with it and bear (i) the number of the suit; (ii) the names and description of the parties and their registered addresses;(iii) the particulars of the claim; (iv) any relief granted;(v) the amount of costs incurred in the suit, and by whom or out of what property and in what proportions they are to be paid;(vi) the date on which the judgment was pronounced; and (vii) the signature of the Judge. *Rule 8* authorizes a successor judge to sign a decree drawn up by his predecessor.

Decrees in Special cases- Rules 9 to 19 deal with decrees in particular cases.

- In a lawsuit for the recovery or process of regaining or repossession of an immovable property (real estate), the decree shall include a description of such property so that it is sufficient to recognize or identify it.
- In a decree for movable property (personality), it must mention with the exact amount of money to be paid as an alternative in case the delivery is not made due to any reason either it be reasonable or appropriate.
- In a decree for payment of money, the Court may order that the payment of decretal amount i.e., the amount mentioned in the decree shall be:
 1. postponed which is delayed to a future date; or
 2. made by installments with or without interests.

- In a suit for the recovery or process of regaining or repossession of immovable property, the Court may pass a decree-
 1. for possession or gaining of property.
 2. for past rents or mesne profits. (mesne profits are the profits of an estate received by a tenant in wrongful possession and recoverable by the landlord)
 3. that is a final decree in respect of rent or mesne profits in accordance with results of such enquiry as mentioned.
- **Rule 12A** of the Code of Civil Procedure, 1908 states that a decree for specific performance of a contract for sale or lease of an immovable property which can also be termed as real estate shall specify the exact period within which the amount of money or other sum is to be paid by the purchaser or lessee.
- **Rule 13** of the Code of Civil Procedure, 1908 states that the final decree shall be passed or delivered in accordance with the result of preliminary enquiry i.e., in a lawsuit for an account of any property either movable or immovable and for its due administration under the decree of Court, before passing a final decree, the court should pass a preliminary decree ordering accounts to be taken and enquiries to be made.
- **Rule 14** of the Code of Civil Procedure, 1908 states a decree in a pre-emption suit, it is a suit where the displacement of a lower jurisdiction's laws when they conflict with those of a higher jurisdiction, where the purchase money has not been paid into Court, shall specify a particular day on or before which the purchase money has to be paid and direct that on payment to Court, the defendant shall deliver property to the plaintiff, but if the payment is not made on a specific day, the lawsuit shall be dismissed with costs. In cases the Court has settled upon rival claims to pre-emption, the decree shall direct:
 1. The claim or defence of each pre-emptor shall take effect proportionately if the claims decreed are equal in degree.
 2. The claim or defence of the inferior pre-emptor will not take place till the superior pre-emptor fails to make the payment if the claims decreed are different in degree.
- In a lawsuit for dissolving of partnership or taking of partnership accounts, the Court can pass a preliminary decree before passing a final decree declaring the exact shares of all the parties, fixing of a particular day on which the partnership shall become dissolved and directing the accounts to be taken and other necessary actions to be done.
- In a lawsuit for accounts between a principal person and agent, the Court can pass a preliminary decree before passing a final decree directing the accounts that has to be taken and it can also provide special directions in regards to the mode of taking accounts as well.
- In a decree passed in a lawsuit for partition of property either movable or immovable or for separate possession of share in the property,
 1. the decree shall declare the rights of several parties interested in that property but shall direct partition or separation to be made by collector and in other cases of immovable property in case the estate is assessed to the payment of revenue to the government.
 2. the Court shall pass a preliminary decree declaring all the rights of the parties in estate and giving necessary directions and then the final decree is passed, if separation or partition cannot conveniently be made without further inquiry.
- A decree where the defendant has been allowed leave or start with a counter claim against the initial claim of the plaintiff shall state with what amount is due to the plaintiff and what amount is due to the defendant thereafter.

Ques.2- Mention the types of Decree? In which cases Preliminary Decree is passed by the civil court?
Discuss.

Ans.2- The Civil procedure code recognizes three kinds of decrees:

- a) Preliminary decree
- b) Final decree
- c) Partially preliminary and partially final decree

Preliminary Decree- A decree is identified as a preliminary decree when an adjudication decides the rights of parties regarding any of the matter in dispute but it does not dispose of the suit completely. In simple terms, the preliminary decree is passed when the court is compelled to adjudicate upon a certain matter before proceeding to adjudicate upon the complete dispute. As held in the case of *Mool Chand v. Director*, Consolidation, a preliminary decree is only a stage to work out the rights of parties until the matter is finally decided by the Court and adjudicated by a final decree.

A preliminary decree can be passed by the court in the following suits as provided by the Code of Civil Procedure, 1908-

Order 20 Rule 12: Suit for possession and Mesne profit

Order 20 Rule 13: Administration Suits

Order 20 Rule 14: Suits of pre-emption

Order 20 Rule 15: Suit filed for dissolution of a partnership

Order 20 Rule 16: Suits related to accounts between the principal and agent

Order 20 Rule 18: Suit for partition and separate possession

Order 34 Rule 2: Suits related to the foreclosure of a mortgage

Order 34 Rule 4: Suits related to the sale of the mortgaged property

Order 34 Rule 7: Suits for the redemption of a mortgage

However, in *Narayanan v. Laxmi Narayan AIR 1953*, it was held that the list given in code is not exhaustive and a court has the right to pass a preliminary decree in cases not expressly provided for, within the code.

Illustration: A files a partition suit against B. During the proceedings, the Court passes a preliminary decree on the share of A and B. Subsequently, after hearing both the parties and the arguments contended by both, the court passes a final decree adjudicating upon the said partition.

Final Decree- A decree is recognised as 'final' when it disposes of the suit completely, so far as the court passing it is concerned. A final decree settles all the issues and controversies between the parties to the suit by the court of law. Consideration of final decree depends on the following facts-

- No appeal was filed against the said decree within the prescribed time period.
- The disputed matter in the decree has been decided by the highest court.
- When it completely disposes off the suit.

Primarily, a civil suit contains only one preliminary and one final decrees. However, the Supreme Court in *Shankar v. Chandrakant*, stated that more than one final decree can be passed in a single suit.

Partly preliminary and partly final decree- A decree shall be held as partly preliminary and partly final, when it determines certain disputes but leaves the rest open for further decision. What is executable is a final decree and the one which is not executable is a preliminary decree, unless it merges with the final one.

Illustration: 'A' filed a suit for the recovery of possession of a property from B. The court passed a partly preliminary and partly final decree. So far as final decree is concerned if the court granted possession of the suit property to A; and it was preliminary as even though mesne profits were awarded. In this case, only the granting of possession of property to A will be executable; however, preliminary decree will be executable only after the amount due is determined.

Ques.3- What do you mean by judgment? When judgment can be pronounced by the Court? Discuss.

Ans.3- The word 'judgement' is derived after combining two words namely, judge and statement. It can also be termed as an act of judging. The term Judgement is defined in *Section 2(9)* of the Code of Civil Procedure, 1908. It includes details about the case, such as the facts, issues, evidence presented by both parties and the court's findings on the issues based on the evidence and arguments.

Courts announce judgements regularly, resolving various cases. These judgements are crucial in our legal system because they set examples for future cases. When a judge delivers a judgement, they always provide the reasons behind their decision.

Pronouncement of a Judgement

The word pronouncement means to make an official public announcement. Pronouncement of a judgement means that after the hearing is completed i.e. after the Court has heard the pleadings of the parties, the judgement shall be announced by the Judges in an open Court, either at once or at some future day, after providing due notice to the parties or their learned counsels.

If a judgement is not pronounced immediately then it must be pronounced within 30 days from the date of the conclusion of hearing. However, sometimes it so happens that due to exceptional and some extraordinary reasons like a bank holiday, strike or some other situation it may be delivered within 60 days from the conclusion of the hearing. It is not mandatory for a judge to read out the whole judgement and it would be enough if only the final order is pronounced. The judge shall put the date on which the judgement was pronounced along with his signature. *Rule 2 Order XX* of Code of Civil Procedure, 1908 provides a judge with the right to pronounce the judgement which is already written but is not pronounced by his predecessor.

After the Amendment Act of 1976, the time limit was provided between the hearing of the arguments and the pronouncement of the judgement. Prior to this amendment no time limit was provided as such. Such a time limit was provided because there was indefinitely continuous imposition from all over India.

Contents of the Judgement

As per *Rule 4 of Order XX* in the Code of Civil Procedure, 1908, judgements from Small Causes Courts are considered sufficient if they include the points to be determined and the corresponding decisions. For judgements from other courts, the following elements should be included:

1. **Summary of the pleadings:** A brief statement outlining the case.
2. **Points for determination:** Clearly defined points that are subject to determination.
3. **Findings on each issue:** The court's conclusions regarding each point in question.
4. **Ratio decidendi:** The reasons behind the court's decision.

In *Atar Singh v. District Judge Jhansi (AIR 1994 All 295)*: Even an ex parte decree must meet the requirements of a judgement as outlined in Order XX, Rule 4. An ex parte decree without reasons is not considered a judgement under in CPC.

These components of judgement in CPC ensure a comprehensive and clear presentation of the court's decision-making process and the outcome of the case.

Judgement to be Signed

According to the law, a judgement in CPC must be dated and signed by the Judge in open court at the time of pronouncing it. Once signed, it cannot be altered or added to, except as allowed by *Section 152* or on review (*Section 114*).

In the case of *Balgees Begum v. Govt. of A. P.* (AIR 1994 A.P. 316), the Andhra Pradesh High Court clarified that Rules 1, 2 and 3 of Order XX suggest that a judgement is considered valid, effective and operative once it is dictated and pronounced by the judge in open court, even if the judge passes away before signing it. This underscores the significance of the pronouncement itself in establishing the validity of a judgement in CPC.

Alteration of a Judgement in CPC

If a judgement has been dated and signed by the judge, changes or corrections can only be made under certain circumstances:

Arithmetical or Clerical Errors: Changes can be made if there are mistakes in calculations (arithmetical errors) or errors made by clerks (clerical errors). These are errors in numbers, like adding up figures or other basic mathematical errors.

Errors Due to Accidental Slips or Omissions: Amendments are allowed for errors resulting from accidental slips or omissions. These occur when something crucial is unintentionally overlooked. This provision is outlined in *Section 152*. Additionally, the judgement in CPC can be reviewed under *Section 114* if necessary.

In essence, alterations to a judgement are permitted for minor mistakes in numbers or clerical work and for accidental oversights in essential details. This is in accordance with **Sections 152** and **114** of the CPC.

Judgement and Decree in CPC

Section 33: Judgement and Decree

After hearing a case, the court will declare its decision and a decree will follow.

Case - *R.C. Sharma v. Union of India*, AIR 1976 SC 2037

To avoid delays in delivering judgements in CPC after a case is heard, there's a set time limit. If the judgement isn't immediately pronounced, the court aims to do so within 30 days from the conclusion of the case. If exceptional circumstances prevent this, the court sets a future date for judgement, typically not beyond 60 days from the case's conclusion.

Ques.4- What do you understand by ‘Cost’ under code of civil procedure? Discuss the different types of cost imposed by the court under code of civil procedure.

Ans.4- Costs

In the general sense, the term cost means to incur a charge or to require payment of a specified price. It simply means to calculate or estimate a price. The term cost is defined in **Section 35** of the Code of Civil Procedure, 1908. The primary objective of ordering costs is to provide the litigant with the expenses incurred by him during the litigation. The provision of providing costs is on the discretion of the court that it may grant order for payment of costs to the winning party by the losing party subjected to pay for the expenses incurred during the litigation period or while drafting legal notices and contracts. This is a kind of remedy and it shall not be treated as a reward for the winning party and punishment for the losing party.

Granting of costs is at the discretion of the Court and if the court refuses to grant cost then it should give reasons for doing so in writing. The discretion is based upon facts and circumstances of the case and not by chance.

Kinds of Costs -

The Code of Civil Procedure provides for the following kinds of costs:

General costs

The term general costs are defined in **Section 35** of Code of Civil Procedure, 1908. General costs are the cost which is incurred by the litigants and depends upon the Court’s discretion. The general rule is that the losing party pays the winning party costs granted by the court. It is the amount which is not treated as a reward for the winning party and a punishment for the losing party but as a remedy. The judge can even refuse to grant costs but for that, a reason has to be stated in writing.

Miscellaneous costs

The term miscellaneous in the literal sense is used as something which is diverse in its characteristics and cannot be placed in any specific category. Miscellaneous costs are defined in **Order XX A** of the Code of Civil Procedure, 1908. These costs are also known as Specific Costs. They are granted under special circumstances as mentioned in **Rule1** of the Code of Civil Procedure, 1908:

- Expenditure on notices required to be issued under the law by parties.
- Expenditure on notices not required to be issued under the law by parties.
- Expenditure incurred on typing, writing, printing, etc. on the pleadings.
- Charges paid by parties for inspection of documents.
- Expenditures on witnesses even though not summoned to the court.
- In case of appeals, expenses incurred by parties for obtaining any copies of the pleadings, judgement, decree, etc.

Compensatory costs

The term compensatory can be generally defined as to make up for something, or to do something to correct a previous act. It means providing compensation to the aggrieved party by the way of damages or rewards or as the Court deems fit. Compensatory costs are defined in **Section 35A** of the Code of Civil Procedure, 1908. Compensatory costs are granted in the cases where the claims of the other party are false or vexatious. Such costs are granted under two conditions, namely, firstly, the claim must be false or vexatious. Secondly, objections must be made by the other party that the party making the claim or defence had knowledge of the fact that such claim was false or vexatious.

Costs for causing delay

These are the costs which the parties are liable to pay in case of default made on their part such as appearing late in the Court, not submitting the required documents on the specified time, not paying the costs on time for which further fine has been imposed. These are the costs which are paid due to carelessness on the part of the parties. Costs for causing delay are defined in **Section 35B** of the Code of Civil Procedure, 1908. This section was introduced by the Amendment Act, 1976. These are costs which are imposed for causing the delay. It states that where a party did not take a step which it should have under the code or obtained an adjournment as regards the same, he will have to pay such costs to the other party so as to reimburse him for attending Court on the designated date. Unless such costs are paid, the plaintiff shall not be allowed to proceed further in his suit, if she should have paid the costs and defendant shall not be allowed to proceed with the defence if he was liable to pay such costs. If however, the party is unable to pay the costs due to circumstances beyond his control, the court may extend the time.

Ques.5- What do you mean by 'Interest' under code of civil procedure? How court determines rate of interest under code of civil procedure.

Ans.5- Interest

In the general aspect, interest refers to the price paid for obtaining or any price received for providing, money or goods in a credit transaction which is calculated as a fraction of the amount or value of what was borrowed initially. Interest is the fraction of amount of money which the Court asks the losing party to pay to the aggrieved party as the initial principal sum was not paid on time or the expenses incurred by the winning party in filing the documents and making necessary contracts and legal notices. In a legal sense, the term interest is defined in *Section 34* of the Code of Civil Procedure, 1908.

Award of Interest

The Court in the decree orders interest at a rate as the Court finds reasonable and appropriate to be paid on the principal sum declared from the date of filing of the lawsuit to the date of passing of the decree. The Court even allows further interest at a rate not exceeding six percent per annum on the principal sum for any period prior to the institution of the suit from the date of passing of the decree to the date of the payment or any such earlier date as the Court finds appropriate and reasonable.

Division of Interest- According to the Code of Civil Procedure, 1908, the division of interest is divided into three types:

1. Pre-lite

It is the amount of interest which is accrued or received prior to the institution of the suit on the principal sum. The rate of interest is on the discretion of the Court but if the parties have decided a rate of interest the Court shall consider it.

2. Pendente-lite

This interest is in addition to the pre-lite interest. This means it is the additional interest on the principal sum declared by the court from the date of filing of the suit to the date of passing the decree. The word means the pendency of a lawsuit in the Court of law.

3. Post-lite

This is the interest in addition to the pre-lite interest on principal sum and pendente-lite interest on the principal sum. It should be added on the discretion of the Court and should not exceed more than six percent per annum.

Rate of Interest

The rate of interest awarded by the Court from the date of the lawsuit to date of the decree is 12% and is just, appropriate and reasonable and there is nothing to interfere. However, in post-lite interest that is from the date of decree till realisation of the amount, rate of interest can be charged upto 6% p.a. In pendente-lite, the rate of interest is fixed between 9%-12%.

Recording of Reasons

It is on the discretion of the judge to provide the rate of interest. If the judge does not provide for the rate of interest or reduces or increases the rate then he has to state the reason behind doing so in writing. The stating of the reasons by the judge for not providing interest is essential so that no judge can make any arbitrary decisions. The providing of reasons also depicts that the judge is fair with his decisions and is not biased towards any party.

LL.B. 6TH (Integrated) SEM

Exercise 1 (UNIT I)

SUBJECT- Code of Civil Procedure II

Q.1(a)- Define Decree.

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Q.b- write four essentials of decree?

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Q.c- when decree is drawn-up?

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Q.d- write four contents of decree.

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Q.e- write four cases where preliminary decree is passed.

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LL.B. 6TH (Integrated) SEM

Exercise 2 (UNIT I)

SUBJECT- Code of Civil Procedure II

Q.2(a)- write three types of decree?

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Q.b- what is preliminary decree?

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Q.c- what is Final decree?

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Q.d- what is Partly Preliminary decree and partly final decree ?

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Q.e- Difference between Preliminary Decree and Final Decree.

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LL.B. 6TH (Integrated) SEM

Exercise 3 (UNIT I)

SUBJECT- Code of Civil Procedure II

Q.3(a)- What do you mean by Judgment?

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Q.b- when Judgment is pronounced?

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Q.c- What are the contents of Judgement?

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Q.c- discuss about alteration in Judgement.

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Q.e- Difference between Decree and judgement.

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LL.B. 6TH (Integrated) SEM

Exercise 4 (UNIT I)

SUBJECT- Code of Civil Procedure II

Q4(a)- what do you mean by 'Cost' in CPC?

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Q(b)- what kinds of Costs are provided in CPC?

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Q.c- What do you mean by Compensatory Costs.

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Q.d- What do you mean by Miscellaneous Costs.

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Q.e- what do you mean by Costs for causing delay.

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LL.B. 6TH (Integrated) SEM

Exercise 5 (UNIT I)

SUBJECT- Code of civil Procedure II

Q.5(a)- what do you mean by 'Interest' in CPC?

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Q.b- when Interest is awarded in CPC?

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Q.c- Discuss the division of interest.

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Q.d- how rate of interest is determined?

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Q.e- when reason is to be recorded in determining interest.

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LL.B. (Integrated) 6th Semester
Paper- IV – Code of Civil Procedure II
Unit: II

Syllabus: Unit 2- Execution Court, Payment under Decree, Application for Execution, Modes of Execution, Questions to be determined by Executing Court.

Ques.1- What do you mean by execution of decree? Which courts can execute decree in code of civil procedure 1908?

Ques.1(a)- what do you mean by execution of decree?

Ans.1- Execution of decree refers to the process by which a court enforces its judgment or decree to ensure that the parties involved in a legal dispute receive the relief granted by the court. When a court passes a judgment or decree in favor of one party (the decree holder) against another party (the judgment debtor), it becomes necessary to enforce that judgment if the judgment debtor fails to voluntarily comply with it. The Code of Civil Procedure, 1908 (CPC), provides detailed provisions regarding the execution of decrees, outlining the procedures and mechanisms through which decrees are enforced.

Under the Code of Civil Procedure, 1908, the execution of decrees can be carried out by the following courts:

1. **Court which Passed the Decree (Original Court):** The court that passed the decree has the primary authority to execute it. This is typically the court where the original lawsuit was filed and heard, and the decree was pronounced.
2. **Court to which Decree is sent for Execution (Executing Court):** In cases where the judgment debtor resides or the property to be attached is situated outside the jurisdiction of the court that passed the decree, the decree may be sent to another court for execution. This court is known as the executing court.

Ques.1(b)- Which court passed a decree under CPC?

Section 37: Definition of Court which passed a decree- The section enlarges the scope of the expression “court which passed a decree” with the object of giving greater facilities to a decree-holder to realise the fruits of the decree passed in his favour. The following courts fall within the said expression:

- The court of first instance which actually passed the decree;
- The court of first instance in case of appellate decrees;
- Where the court of first instance has ceased to exist, the court which would have jurisdiction to try the suit at the time of execution; and
- Where the court of first instance has ceased to have jurisdiction to execute the decree, the court which at the time of execution would have had jurisdiction to try the suit. (*Ramankutty Gupta v. Avara, (1994) 2 SCC 642*)

Ques.1(c)- Which court can execute a decree under CPC?

Section 38: Court by which decree may be executed

- A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.
- Where the court of first instance has ceased to exist or ceased to have jurisdiction to execute the decree, the decree can be executed by the court which at the time of making the execution application would have jurisdiction in the matter. (*Merla Ramanna v. Nallaparaju, AIR 1956 SC 87*)

Ques.1(d)- Discuss the provisions related with transfer of decree for execution.

Sections 39-42, Order XXI Rules 3-9: Transfer of Decree for Execution

Section 39 provides for the transfer of a decree by the Court which has passed it and lays down the conditions therefore.

As a general rule, the Court which passed the decree is primarily the court to execute it, but such court may send the decree for execution to another court either suo moto or on the application of the decree-holder if any of the following grounds exist:

- The judgment-debtor actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such court; or

- The judgment-debtor does not have any property sufficient to satisfy the decree within the local limits of the jurisdiction of the court which passed the decree but has property within the local limits of the jurisdiction of such other court; or
- The decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of such other court; or
- The Court which passed the decree considers for any other reason to be recorded in writing, that the decree should be executed by such other court.
- The provisions of section 39 are, however, not mandatory and the court has discretion in the matter which will be judicially exercised by it. (*Tarachand v. Misrimal, AIR 1970 Raj 53*)

Sections 43-44A: Execution of Foreign Decrees in India - A combined readings of sections 43-44A shows that Indian courts have power to execute the decrees passed by:

- Indian courts to which the provisions of the code do not apply;
- The courts situate outside India which are established by the authority of the Central Government;
- Revenue courts in India to which the provisions of the code do not apply; and
- Superior courts of any reciprocating territory.

Ques.1(e)- What are the powers of executing court?

Section 42: Powers of Executing Court

• It expressly confers upon the court executing a decree sent to it the same powers the same powers as if it has been passed by itself. It is thus the power and duty of the executing court to see that the defendant gives the plaintiff the very thing the decree directs and nothing more or nothing less. (*Jai Narain v. Kedar Nath, AIR 1956 SC 359 at p. 363*)

Other powers were:

- Power to send the decree for execution to another Court U/s 39;
- Power to execute the decree against the legal representative of the deceased judgment-debtor U/s 50;
- Power to order attachment of a decree.

Decree for Payment of money

Order XXI Rule 1 provides the various methods of paying the money under the decree. According to this rule:

- The money can be paid by deposit into the Court who is competent to execute the decree;
- The money can be sent to the Court by money order or by bank deposit;
- The money can also be paid outside the Court to the decree-holder by the method decided before in writing;
- The Court can also direct other methods in the decree.

If the money has been paid by postal money order or through a bank, there are various details that have to be mentioned like the number of the original suits, the details of the parties; like, their name, how the money remitted is to be adjusted and name and address of the payer.

Order XXI Rule 2 provides various rules relating to decree-holder payment out of Court. The Judgment-debtor has to inform the Court about any payments that are made outside the Court.

Rule 30 provides that the decree for payment of money can be executed by the detention of judgment-debtor in prison or by attachment and sale of his property.

Rule 32 of the **Order XXI** provides ways to enforce the decree for specific performance of a contract. The decree for specific performance of a contract if wilfully disobeyed by any parties can be enforced by the detention of judgment-debtor in the civil prison, or by the attachment of property of the judgment debtor, or by both methods. The same procedure has to be followed for the cross-decrees and cross-claims in the mortgage suits.

Ques.2- Discuss the procedure related to application for execution of decree under code of civil procedure, 1908.

Ques.2(a)- Which order and rules deals with application of execution?

Ans.2- PROCEDURE ON APPLICATION FOR EXECUTION- Provisions of *Order 21, Rules 10, 11 (1), 11 (2), 11-A, 12, 13, 14, 15 & 16* in CPC deals with an application for execution of decree.

Ques.2(b)- In which form application may be given for execution?

Ques.2(c)- What are the contents of application for execution?

1. Form and content:-

- An application for execution must be in writing except when an oral application is made under **Order XXI, Rule 11 (i)**.
- Upon an application for execution being filed, the Court shall scrutinize it to see that all the requirements of **Order XXI, Rules- 11(2), 12, 13** and **14** of the Code of Civil Procedure, 1908, have been duly complied with.
- The application should state distinctly the mode in which the assistance of the Court is sought and the proceedings should be confined to that mode, unless any amendment has been allowed.
- When an application is for the attachment of immovable property, special care shall be taken that the specification and verification required by **Order XXI, Rule 13**, of the Code have been furnished.
- The Court may also require the applicant to produce the authenticated extract mentioned in **Order XXI, Rule 14**, when the property is land registered in the Collector's office.
- In the case of money suit, the Court must for reasons to be recorded, invariably resort to **Order XXI Rule 11** of C.P.C. ensuring immediate execution of decree for payment of money on oral application.

Ques.2(d)- What limitation is provided for filing application for execution?

2. Limitation:- The law of limitation as regards applications for execution will be found in the First Schedule of the Indian Limitation Act, 1908. An application for execution must be filed **within three years** of the date of the final decree, and in the case of subsequent applications, within three years of the date of the final order passed on a previous application made in accordance with law to the proper Court for execution.

3. Admission and further proceeding:- When the application for execution is in order, or has been amended under **Order XXI, Rule 17**, of the Code of Civil Procedure, 1908, and is within time, the Court shall proceed as directed in **Order XXI, Rule 17(4)** and shall cause the application to be entered in the proper register.

4. Amendment:- It should be noted that according to **Order XXI, Rule 17(1)** Civil Procedure Code, the Court can either reject the application if it is not in order or allow the defect to be remedied. The Court shall fix a time within which the defect shall be remedied.

Ques.2(e)- What is the procedure of execution in case of application filed by several decree-holder?

5. Several decree-holders:-

- When an application is made under **Order XXI, Rule 15**, of the Code of Civil Procedure, for the execution of the whole decree by one or more persons, not being all the persons in whose favour the decree appears to be, he should cause notice thereof to be given to the remaining decree-holders or their representatives, and he ought not to grant the application unless, after all these parties have had an opportunity of being heard, he is satisfied that there is good reason for the application.
- Where the decree is severally in favour of more persons than one, specifying what each is entitled to, there may be applications for partial execution.
- But where the decree is jointly in favour of more persons than one, the application must be for the execution of the entire decree, so far as it remains unexecuted or unsatisfied; and if the application is for execution of a fraction or a proportionate part of the decree only, it should be refused.

6. Transferee:-

- When an application for the execution of a decree is made, under the provisions of **Order XXI, Rule 16**, of the Code of Civil Procedure, by a person claiming to be entitled to the benefit of the decree in consequence of a transfer of the same to him from the original decree-holder by an assignment in writing, the Court must cause notice of the application to be given to the transferor, and it cannot grant the application unless it is satisfied after the transferor has had an opportunity of being heard that the transfer has in fact been effected.
- In cases in which the Court grants the application, it should record its reasons for so doing and make an order that thenceforward the name of the applicant shall stand on the record as decree-holder instead of that of the original decree-holder.

7. Notice to Judgment-debtor:- When an application is made more than two years after the date of decree or against the legal representatives of a party to the decree, the Court must first issue a notice to the person against whom execution is applied for requiring him to show cause why the decree should not be executed against him, unless the case falls within the proviso to sub-rule 1 of Rule 22 of Order XXI.

Ques.3- Discuss the provisions of code of civil procedure regarding ‘Modes of execution of Decree’.

Ques.3(a)- What provisions deals with mode of execution under CPC?

Ans.3- Modes of Execution of Decree under the Code of Civil Procedure (CPC):

The Code of Civil Procedure, 1908 (CPC) provides various provisions regarding the execution of decrees. Execution of a decree refers to the process of enforcing the judgment or order passed by a civil court. The CPC lays down detailed provisions regarding the modes through which a decree can be executed, ensuring that the rights of the decree-holder are protected and enforced effectively.

Ques.3(b)- Mention various modes of execution given under CPC.

Modes of execution-Different modes of execution discuss in **Section 51** read with **Order 21, rules 30 to 37**, CPC, 1908 are as follows-

- 1- Decree for payment of money, (**Rule 30**)
- 2- Decree for specific movable property, (**Rule 31**)
- 3- Decree for specific performance for restitution of conjugal rights, or for an injunction, (**Rule 32**)
- 4- Decree for execution of document, or endorsement of negotiable instrument, (**Rule 34**)
- 5- Decree for immovable property, (**Rule 35**)
- 6- Decree for delivery of immovable property when in occupancy of tenant. (**Rule 36**)

Here, we will discuss the different modes of execution of a decree as provided under the CPC:

1. Execution by the Court:

- Section 51 of the CPC empowers the court to execute the decree by various modes, such as attachment and sale of the judgment debtor's property, arrest of the judgment debtor, attachment of debts, and sale of movable or immovable property.

Ques.3(c)- Discuss attachment as mode of execution.

2. Attachment of Property:

- Under Section 60 of the CPC, the property of the judgment debtor can be attached for execution. It includes attachment of immovable property, movable property, and other assets such as bank accounts, shares, securities, and debts due to the judgment debtor.

3. Sale of Property:

- After the attachment of the judgment debtor's property, the court can proceed with the sale of the attached property to realize the decree amount. Section 64 of the CPC provides for the procedure of sale of movable and immovable property through public auction.

Ques.3(d)- Discuss arrest and detention as mode of execution.

4. Arrest and Detention:

- Section 55 of the CPC allows the court to order the arrest and detention of the judgment debtor in certain cases, especially when the decree amount remains unpaid despite attachment and sale of property. However, the court needs to satisfy certain conditions before ordering arrest, such as the judgment debtor's ability to pay and willful disobedience of court orders.

5. Attachment of Salary or Wages:

- The CPC allows for the attachment of the judgment debtor's salary or wages under Section 60(1)(i) and Order XXI Rule 48. The court can issue an order directing the employer to deduct a certain portion of the judgment debtor's salary or wages towards the satisfaction of the decree.

6. Attachment of Debt and Receivable:

- Section 60(1) (iv) of the CPC provides for the attachment of debts due to the judgment debtor. It allows the court to attach any debt, including debts owed to the judgment debtor by a third party, such as bank deposits, dividends, or any other monetary dues.

7. Appointment of Receiver:

- In certain cases, the court may appoint a receiver to manage and preserve the property until the decree is fully satisfied. This provision is provided under Section 51(2) of the CPC, which gives the court discretionary power to appoint a receiver for the better realization of the decree.

8. Decree against Legal Representatives:

- Section 50 of the CPC provides for the execution of a decree against the legal representatives of a deceased judgment debtor. The legal representatives inherit the rights and liabilities of the deceased, and the decree can be executed against them to the extent of the assets inherited from the deceased.

9. Execution of Decree for Restitution of Conjugal Rights or for Judicial Separation:

- Section 39 of the CPC provides for the execution of a decree for restitution of conjugal rights or for judicial separation. If the judgment debtor fails to comply with the decree, the court may enforce it through various modes, including attachment of property or arrest.

10. Execution of Decree for Specific Performance:

- A decree for specific performance of a contract can be executed under Section 22 of the Specific Relief Act, 1963. If the judgment debtor fails to perform the specific act as directed by the court, the decree holder can seek enforcement through attachment and sale of property or other appropriate modes of execution.

Ques.3(e)- Discuss procedure of execution in case of payment under decree.

11. Execution of Decree for Payment of Money:

- In cases where the decree is for the payment of money, the court may direct the judgment debtor to pay the decree amount along with interest and costs. Failure to comply with the decree may result in attachment of property, arrest, or other coercive measures.

12. Foreign Decrees:

- The CPC also provides for the execution of foreign decrees in India under Sections 44A to 44G. A foreign decree may be executed in India if it has been passed by a competent court, is conclusive, and falls within the scope of Section 44A.

Conclusion:

The Code of Civil Procedure, 1908, lays down comprehensive provisions regarding the execution of decrees to ensure the effective enforcement of judgments and orders passed by civil courts. The various modes of execution provided under the CPC empower the court to enforce decrees through attachment and sale of property, arrest of the judgment debtor, appointment of receivers, and other coercive measures. These provisions play a crucial role in safeguarding the rights of decree holders and ensuring that the decrees are executed promptly and efficiently.

Ques.4- What are the questions which can be determined by the executing court?

Ques.4(a)- what section deals with determination of question by executing court?

Ans.4- Questions to be determined by the Court executing decree- (section 47)

Ques.4(b)- What kind of questions can be determined under section 47 of CPC?

According to section 47 –

- 1- All questions arising between the parties the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.
- 2- Omitted by Act 104 of 1976. effective from 1-2-1977.
- 3- Where a question arises as to whether any person is or is not the representative of a party, such question shall for, for the purposes of this section, be determined by the court.

Ques.4(c)- Discuss the explanations given under section 47 of CPC.

Explanation- I –

- For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation- II-

- (a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall of be deemed to be a party to the suit in which the decree is passed; and
- (b) all questions related to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.

The exercise of powers under **Section 47** of the Code is microscopic and lies in a very narrow inspection hole. Thus it is plain that executing Court can allow objection under Section 47 of the Code to the executability of the decree if it is found that the same is void ab initio and nullity, apart from the ground that decree is not capable of execution under law either because the same was passed in ignorance of such a provisions of law or the law was promulgated making a decree in executable after its passing.

Ques.4(d)- What is the object of section 47 of CPC?

Object- The object of section 47 is to provide cheap and expeditious remedy for determination of certain questions in execution proceedings without recourse to separate suit and to prevent needless and unnecessary litigation. (*Gangabai Gopaldas mohata v. Fulchand, AIR 1997*)

Ques.4(e)- what is the scope of Section 47 of CPC?

Scope- the scope of section 47 is very wide. Exclusive jurisdiction has been conferred on the execution court in respect of all matters relating to execution, discharge or satisfaction of a decree arising between the parties or their representatives. Once the suit is decreed, this section requires that the executing court alone should determine all questions in execution proceedings and filing of a separate suit is barred. (*Desh Bandhu Gupta v. N.L. Anand, 1994*)

Section 47 being a special provision cannot be extended to persons who are not parties to the suit. Only option to third parties is to file a separate suit.

The principle is also well established that ordinarily the executing Court cannot go behind the decree. But it is within the competence of the executing Court to interpret decree ought to be executed and for doing so the Court can refer to reliefs sought in the plaint and discussion in the judgment to ascertain the true import of the decree.

Objection raised before executing court under section 47 as to validity of decree sought to be executed on ground of lack of territorial jurisdiction of court which passed decree. Executing court has no jurisdiction to entertain such objection. Opined in the case (2019) 3 SCC 594-A.

SC held that the validity of decree can be challenged before executing court only on the ground of inherent lack of jurisdiction which renders decree nullity. (2018) 11 SCC 113-B.

LL.B. (Integrated) 6th Semester
Paper- IV – Code of Civil Procedure II
Unit: III

Syllabus: Unit 3- Appeals: Appeals from original decree, Appeals from appellate decree, General provisions relating to appeals, Appeals to Supreme Court, Appeals by indigent person, Reference to High Court, Review and Revision.

Ques.1- What do you understand by First Appeal? What are the general provisions relating to appeals? Discuss.

Q.1(a)- What is First Appeal?

Ans.1- First Appeal-The expression 'appeal' has not been defined in the code but it may be defined as "The Judicial examination of the decision by higher court of the decision of an inferior court; It is well settled that an appeal is creature of statute and there is no right of appeal unless it is given clearly and in express form by a statute. A first appeal lies against a decree passed by a court exercising original jurisdiction. First Appeal can be filed in superior court which may or may not be a High Court and it maintainable and Question of fact; or on a question of law or on a question of fact and law.

Q.1(b)- Which Section and order deals with first appeal?

Section 96 and Order 41 of the code recognizes the right of appeal from every decree passed by any court exercise of original jurisdiction but before an appeal can be filed two conditions must be satisfied.

1. The subject matter of appeal must be a 'decree' that a conclusive determination of the rights of the parties with regard to all or any of the matters in controversy in the suit.

2. The party appealing must have been adversely affected by such determination.

If a party agrees not to appeal or waives his right to appeal, he cannot file an appeal and will be bound by an agreement, if otherwise such agreement is valid.

One of the remedies available to the defendant against whom an ex-parte decree is passed, is to file an appeal against such a decree under **section 96(2)** of the code. **Section 96(3)** declares that no appeal shall lie against consent decree. Section 96(4) bars appeal on facts from decree passed in petty suit where the amount or value of the subject matter of original suit does not exceed ten thousand rupees.

Q.1(c)- Discuss limitation period for first appeal.

The code of civil procedure confer; a right of appeal but does not prescribe a period of limitation. The limitation Act 1963, provide period for filing appeals. It states that an appeal against a decree or order can be filed in high court within ninety days and in any other court within 30 days from the date of the decree or order appealed against.

Rule 5 provides for stay of an execution of a decree or an order. After an appeal has been filed, the appellate court may stay of proceeding under the decree or execution of such decree.

The following condition must be satisfied before stay is granted.

- a. The application has been made without unreasonable delay.
- b. Substantial loss will result to the applicant unless such order is made.
- c. Security for due performance of the decree or order has been given by the applicant.

Rule 11 deals with the power of appellate court to dismiss an appeal summarily. If the appeal is not summarily dismissed, the appellate court shall fix a day for hearing, of the appeal and the notice of such date of hearing shall be served upon the respondent with a copy of the memorandum of appeal. (Rule 12, 14).

Q.1(d)- What are the powers of appellate court?

Power of Appellate Court - Section 96-108 and Rules 23 to 33, of order 41, enumerates powers of an appellate court while hearing first appeal. They may be summarized thus.

a. **Final Determination** - Section 107 (1) a and Rule 24 of order 41 enable the appellate court to dispose of case finally where the evidence on record is sufficient to enable the appellate court to pronounce judgment it may finally determine the case notwithstanding that the judgment of the trial court has proceeded wholly upon some other ground.

b. **Remand** - Section 107 (1) (b) Rule 256 23-a, remands means to send back, the appellate court should not exercise of the power of remand lightly.

c. **Framing issues and referring them for trial** - Where the lower court has omitted -

- i. to frame any issue of
- ii. try any issue

- iii. to determine any question of facts. The appellate court may frame issues and refer them for trial to lower court and shall direct to take the additional evidence.

Q.1(e)- What are the duties of appellate court?

Duties of Appellate Court - The code imposes certain duties on appellate courts and the court has to decide appeals keeping in mind these duties. These duties are as follows:-

- a. **To decide appeal finally** - It is duty of appellate court to decide an appeal in accordance with law after considering the evidence as whole.
- b. **Not to interfere with decree for technical errors** - Section 99 of the code enacts that a decree which is otherwise correct on merits and is within the jurisdiction of court, and should not be upset merely for technical and immaterial defects.
- c. **Appreciation of evidence** - An appeal is a continuation of suit. Inasmuch an appeal is a rehearing of the matter, the appellate court can re appreciate the entire evidence and as well as documentary and can arrive at its own conclusion.
- d. **Recording of reasons** - An appellate court has power to dismiss the appeal summarily. Such power should be exercised sparingly and in exceptional cases and that too after recording reasons. Rule 31, however, enjoins an appellate court to record reasons in support of its judgment.
- e. **Other duties** - An appeal can be admitted or dismissed as whole. It cannot be admitted partly once the appeal is admitted, it can not be dismissed on technical grounds.

EXERCISE-1

Q.1(a)- What is First Appeal?

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Q.b- Which Section and order deals with first appeal?

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Q.c- Discuss limitation period for first appeal.

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Q.d- What are the powers of appellate court?

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Q.e- What are the duties of appellate court?

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Ques.2- Discuss Second Appeal and Substantial question of law.

Ans.2- Second Appeal

Q.2(a)- Which Section and order deals with second appeal?

Section 100 to 103, 107-108 and order 42 deals with second appeals.

Q.2(b)- What is Second Appeal?

The term 'second appeal' in the C.P.C. means an appeal to the court from the decision in a civil suit or proceeding of a first appellate court subordinate to High Court. Section 100 of the code allows filing of second appeal in the High Court, if the High Court is satisfied that 'the case involves a substantial question of law' but not any other ground.

Q.2(c)- Conditions for second appeal.

After the amendment in Sec. 100 the following consequences in sued:-

1. The High Court must be satisfied that case involves a **substantial question of law**.
2. The memorandum of appeal must precisely state such question.
3. The High Court at the time of admitting the appeal should formulate such question.
4. The appeal shall be heard only on the question.
5. At the hearing of appeal, the respondent can arrange that the case does not involve such question.
6. The High Court is a however empowered to hear the second appeal any other substantial question of law, not formulated by it, if it is satisfied that the appeal involves such question.

The High Court, however has to record reason for doing so.

Section 100-A of the C.P.C. lays down that where any appeal from decree or order of the first appellate court is heard and decided by single judge of a High Court, there will be no further appeal from such decision of a single judge.

Q.2(d)- Discuss section 102 of CPC.

Section 102 further lays down that no second appeal shall lie in any suit of the nature cognizable by courts of small causes, when the amount or value of subject matter of original suit does not exceed twenty five thousand rupees.

In short the second appeal made under Section 100 C.P.C. can now be filed only on points of law. The plea which had not been raised or adjudicated upon and raised for the first time in second appeal ordinarily or appellant is not alleged to set up in appeal a plea not taken by him in the lower court but an objection maybe taken up for the first time even in second appeal, if it

- a) relates to jurisdiction,
- b) relates to limitation
- c) goes to very root of the case.

EXERCISE-2

Q.2(a)- Which Section and order deals with second appeal?

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Q.b- What is Second Appeal?

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Q.c- Conditions for second appeal.

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Q.d- Discuss section 102 of CPC.

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Ques.3- Write an essay on reference, review and revision.

Q.3(a)- What is reference under CPC.

Ans.

Reference S.113 and Order 46

Section 113 of C.P.C. empowers a subordinate court to state a case and refer the same for the opinion of the High Court. Such an opinion can be sought when the court itself feels some doubt about a question of law. The H.C. May make such order thereon as it thinks fit. Such opinion can be sought by a court when the court trying a suit, appeal or execution proceedings entertains reasonable doubt about a question of law.

Object of Reference :- Object for the provision for reference is to enable subordinate courts to obtain in non-appealable cases the opinion of the H.C. in the absence of a question of law and thereby avoid the commission of an error which could not be remedied later on [**Chhotubhai v. Bai Kashi, AIR, 1941**].

Conditions – Unless the conditions prescribed by order – XLV1 (46), Rule 1, are not fulfilled, the H.C. can't entertain a reference from subordinate court.

Following Conditions are required to be fulfilled

1. There must be a pending suit or appeal in which the decree is not subject to appeal or pending proceeding in execution of such decree.
2. A question of Law or usage having the force of Law must arise in the course of such suit appeal or proceeding.
3. The question must relate to the validity of any Act, ordinance or Regulations.
4. The subordinate court is off the view that the impugned Act, ordinance or Regulation is ultravires or any provision, thereof is inoperative –

Who May apply - Only a court can refer either on an application of party or suo-moto.

Power and Duty of H.C. –

1. The jurisdiction of the H.C. is consultative.
2. The H.C. may answer the question referred to it and send back the case to the referring court for disposal in accordance with law.
3. H.C. may also refuse to answer the reference or even to quash it.
4. the H.C., However, cannot make any order on merits nor can it make suggestions.

Limitation Period – No limitation period for reference is provided as soon as the question arises, the court can refer it to the H.C.

Q.3(b)- What is review under CPC.

Review : S – 114. Order –XLVII (47)

The provision relating to the review constitutes an exception to the General rule that once the judgment is signed and pronounced by the court it becomes **Functus officio (Ceases to have control over the matter)** and has no jurisdiction to alter it (Order 20-Rule 1)

Meaning of Review - Review means to reconsider to look again or re-examine. In legal parlance it is a judicial re-examination of the case by the same court and by the same judge. In review, a judge, who has disposed of the matter reviewed on earlier order passed by him in certain circumstance.

Object – The remedy has been borrowed from the courts of equity. The basic philosophy inherent in the recognition of the Doctrine of review is acceptance of human fallibility. If there is an error due to human failing, it can't be permitted to perpetuate and to defeat justice. Such mistakes or errors must be corrected to prevent miscarriage of justice. The justice is above all, law has to bend before justice.

Who may apply:- A person aggrieved by a decree or order may apply for review of a judgment.

When Review lies:-

- a. a decree or order from no appeal lies is open to review.
- b. A review is also maintainable in cases where appeal is provided that, but no such appeals is preferred.

Parties - may not be able to approach HC or SC due to lack to money or physical distance, etc.

Grounds :- A review application may be filed on any of the following grounds :

1. Discovery of New and important matter or evidence.
2. Mistake or error apparent on the face of record.
3. Any other sufficient reason.
1. **Discovery of new evidence** :- A review is permissible on the ground of discovery by the applicant of some new & important matter or evidence which, after exercise of due diligence, was not within his knowledge or couldn't be produced by him at the time when the decree was passed.

2. **Error apparent on face of record** :- What is error apparent on the face of record can't be defined precisely and exhaustively, However, no error can be said to be apparent on the face of record, if it is not self-evident and requires an examination or arguments to establish it :
 1. Pronouncement of judgment without taking into consideration the fact that the law was amended retrospectively.
 2. Omission to try a material issue in the case.
 3. Decision on matter not in issue.
 4. Want of jurisdictions
 5. Taking a view contrary laid down by the superior courts.
3. **Other sufficient reasons**:- The expression "any other sufficient reason is nowhere defined in the code. The SC has held that it means "a reason sufficient on grounds, at least analogous to those specified in the Rule.

Following have been judicially held to be sufficient grounds :-

 1. Where a statement in the judgment is not correct.
 2. Where a decree or order has been passed under a misrepresentation of the true state of circumstances.
 3. Where the court has failed to consider a material issue, fact of evidence.
 4. A ground which goes to the root of the matter & affects jurisdiction of the courts.

However, the practical aspect of review is that courts are reluctant to admit a review petition, and more than 98% petitions are dismissed.

Limitation:- Limitation period for filing a review petition is 30 days.

Q.3(c)- What is revision under CPC.

Revision : Sec. 115

A revision petition can be filed against an order being not appealable. The HC may call for record of any case which has been decided by any court subordinate thereto.

Limitation – A revision petition can be filed within 90 days from the date of order or decree passed by the districts and court or H.C.

Grounds - Always filed on jurisdictional ground.

1. If the subordinate court or lawyer court has exercised jurisdiction not vested in it by law (lack of jurisdiction).
2. If the subordinate court or trial court have failed to exercise a jurisdiction so vested (failure of exercising jurisdiction).
3. Exercise of jurisdiction with illegality or material irregularity.

Difference between Ist Appeal & Revision-

1. An appeal lies to a superior court, which may or may not be a H.C. But the revision can lie only before H.C.
2. An appeal lies against decrees and appealable order, but a revision lies against any decision of a subordinate court from which non appeal lies.
3. An appeal is filed as a matter of right where as revisional jurisdiction of the HC is purely discretionary.
4. Grounds for filing appeal and revision are different.
5. If a suit is dismissed of Sec.5 S.R.A. an appeal may be filed against the order of the court. But if a suit is dismissed u/s. 6, S.R.A. no appeal but only revision can be filed against order of dismissal.

Q.3(d)- Write difference between Revision and Review.

Difference between Revision and Review – There are the following distinction between revision and review:-

1. The power of revision is exercised by the High Court and in some cases, by the District Court, i.e., the Superior Court, while the power of review is exercised by the Court who passed the decree or order;
2. The power of revision is conferred on the High Court only and in some cases in some States, on the District Court also, but review can be made by any Court which passed the judgment or order;
3. Revisional powers can be exercised only in cases in which no appeal lies, but review can be made even when appeal lies to the Supreme Court;
4. The grounds on which the powers of revision and review can be exercised are different. The ground for revision relates to jurisdiction i.e., want of jurisdiction; failure to exercise jurisdiction vested in the Court, or illegal or irregular exercise of the jurisdiction, while the grounds for review are the discovery

of new and important matter of evidence, some apparent mistake or error on the face of the record or any other sufficient reason;

5. The High Court, while exercising the power of revision can, of its own accord, send for the case, but for review, an application has to be made by the aggrieved party and no review can be made by the Court suo-moto.
6. No appeal lies from an order passed in the exercise of revisional jurisdiction while the order allowing the review application is appealable.

Difference between Reference and Revision– There are the following distinctions between reference and revision:-

1. In reference, the case is referred to the High Court by a Court subordinate to it as provided in section 113 of the Code of Civil Procedure, while the revision application is moved by the party concerned or the revisional Court can suo-moto send for the case and examine the record.
2. The ground of reference the entertainment of some reasonable doubt by the Court trying the suit, appeal or executing the decree in respect of a question of law or usage having the force of law while the ground for revision relates to jurisdiction, i.e., want of jurisdiction, failure to exercise jurisdiction vested in the Court or its irregular exercise.

Q.3(e)- Write difference between Reference and Review.

Difference between Reference and Review – There are the following distinctions in reference and review:-

1. In reference the subordinate Court refers the case to the High Court under section 113 of the Code of Civil Procedure, while in review an application is made by the aggrieved party in the Court which passed the order of judgment (Under Sec. 114).
2. The High Court only can decide matters on reference while the power of review is to be exercised by the court which passed the decree or order, as the case may be.
3. Reference is made during the pendency of the suit, appeal or execution proceedings, while application for review is made to the Court after a decree or order is passed.
4. The grounds for reference and review are different. Reference is made by the Court trying the suit, appeal or executing the decree when it has reasonable doubt in respect of any question of law or usage having the force of law. The grounds of review are discovery of new and important matter or evidence, some apparent mistake or error on the face of the record or any other sufficient reason.

Difference between Reference and Appeal –

1. A right of appeal is a substantive right conferred by law while the power of reference is vested in the Court.
2. Reference is always made to the High Court while the appeal is preferred to a Superior Court which need not necessarily be a High Court.
3. The grounds of appeal are wider than the grounds of reference.
4. Reference is made in a pending suit appeal or execution proceedings in order to enable a Court to arrive at a correct conclusion, while an appeal is preferred after a decree or appealable order is passed by the court.

EXERCISE-3

Q.3(a)- What is reference under CPC.

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Q.b- What is review under CPC.

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Q.c- What is revision under CPC.

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Q.d- Write difference between Revision and Review.

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Q.e- Write difference between Reference and Review.

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LL.B. (Integrated) 6th Semester
Paper- IV – Code of Civil Procedure II

Unit: IV

Syllabus: Unit 4- Law of Limitation and Registration: Meaning, nature and scope of law of limitation, Bar of Limitation and its efficacy, Sufficient Cause: its meaning and applicability, Legal Disability: Meaning, Scope and Effect.

Ques.1- What are the provisions of computing of period provided under Indian Limitation Act? State the circumstances in which the period of limitation can be extended.

Q.1(a)- What do you mean by 'period of limitation' under Indian limitation Act?

Ans.1- General Principles of Limitations- In India, the Limitation Act, 1963 is the legislation that governs the period within which suits are to be filed, with relevant provisions for delay, condonation thereof etc. The principle that pervades statutes of limitation at common law is that 'limitation extinguishes the remedy, but not the right' this means that the legal right itself is not defeated, but only the right to claim it in a court of law is extinguished. An exception to this general rule is the law of prescriptive rights, whereby the right itself is destroyed.

According to Section-2(j) "period of limitation" means the period of limitation prescribed for any suit, appeal or application by the Schedule, and "prescribed period" means the period of limitation computed in accordance with the provisions of this Act;

Q.1(b)- What do you understand by bar of limitation?

According to Section- 3. Bar of limitation

(1) Subject to the provisions contained in sections 4 to 24 (inclusive) every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as defense;

1. For the purposes of this Act,

1. a suit is instituted, in an ordinary case, when the plaint is presented to the proper officer;
2. the case of a pauper, when his application for leave to sue is a pauper is made; and
3. the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;
 1. any claim by way of a set-off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted-
 2. in the case of a set-off, on the same date as the suit in which the set off is pleaded;
 3. in the case a counter claim, on the date on which the counter claim is made in court; an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court.

Q.1(c)- What is the prescribed period of limitation when court is closed?

According to Section-4.

Expiry of prescribed period when court is closed – When the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens.

Explanation - A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day.

Q.1(d)- What do you understand by 'sufficient cause' under law of limitation?

According to Section-5.

The Limitation Act, 1963, prescribed limitation with a view to see that a litigant does not drag on the litigation. Section 5 gives an opportunity to a litigant to file applications beyond the prescribed period of limitation provided; he is able to establish that he was prevented by sufficient cause from approaching the Court within the said period. Even though explanation for day-to-day delay is not being insisted by the Courts, the litigant has to nevertheless furnish the satisfactory explanation for filing the application beyond the prescribed period of limitation. This responsibility on the part of the litigant is much more in cases of abnormal delays, for by such delays right came to be vested in his adversary and such a right cannot be easily taken away by making unduly liberal approach by the Court.

Extension of prescribed period in certain cases –

Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908) may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation - The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

In the case of *Warlu v. Gangotribai AIR 1994 SUPREME COURT 466*

Held that "We do not find any cogent ground given in the application for condonation of delay which in law can constitute sufficient cause to explain the inordinate delay in filing of the special leave petitions."

Q.1(e)- State other grounds under which limitation can be extended?

In Following circumstances also the period of limitation can be extended-

- 1- Exclusion of time in legal proceedings (S.12),
- 2- Exclusion of time in cases where leave to sue of appeal as a pauper is applied for (S.13),
- 3- Exclusion of time of proceeding bona fide in court without jurisdiction(S.14),
- 4- Exclusion of time in certain other cases(S.15).

EXERCISE-1

Q.1(a)- What do you mean by ‘period of limitation’ under Indian limitation Act?

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Q.b- What do you understand by bar of limitation?

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Q.c- What is the prescribed period of limitation when court is closed?

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Q.d- What do you understand by ‘sufficient cause’ under law of limitation?

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Q.e- State other grounds under which limitation can be extended?

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Ques.2- Discuss the doctrine of legal disability under the Indian limitation Act, 1963 with the help of suitable examples. State the circumstances when the double legal disability can be availed by the same party. Give the reasons

Q.2(a)- What do you mean by legal disability?

Ans.2- Legal disability: According to Section 6 -

Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the prescribed period is to be reckoned, a minor or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time specified therefore in the third column of the Schedule.

(2) Where such person is, at the time from which the prescribed period is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period after both disabilities have ceased, as would otherwise have been allowed from the time so specified.

(3) Where the disability continues upto the death of that person, his legal representative may institute the suit or make the application within the same period after the death, as would otherwise have been allowed from the time so specified.

(4) Where the legal representative referred to in sub-section (3) is, at the date of the death of the person whom he represents. affected by any such disability, the rules contained in sub-sections (1) and (2) shall apply.

(5) Where a person under disability dies after the disability ceases but within the period allowed to him under this section, his legal representative may institute the suit or make the application within the same period after the death, as would otherwise have been available to that person had he not died.

Explanation - For the purposes of this section 'minor' includes a child in the womb.

Q.2(b)- What do you mean by disability of one of several persons?

Disability of one of several persons –

According to Section-7

Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all; but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

Explanation I - This section applies to a discharge from every kind of liability, including a liability in respect of any immovable property.

Explanation II - For the purposes of this section, the manager of a Hindu undivided family governed by the Mitakshara law shall be deemed to be capable of giving a discharge without the concurrence of the other members of the family only if he is in management of the joint-family property.

Special exceptions –

According to Section-8 : Nothing in section 6 or in section 7 applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby the period of limitation for any suit or application.

Under the Indian Limitation Act, 1963, the doctrine of legal disability provides exceptions to the standard limitation period for filing legal actions in certain circumstances. Legal disability refers to situations where a person is incapable, by law, of taking legal action due to their status or condition. This doctrine aims to ensure fairness by allowing individuals who are unable to pursue legal remedies within the usual time frame an extended period to do so.

Q.2(c)- Mention two kinds of legal disability under law of limitation?

Examples of legal disabilities under the Indian Limitation Act include:

1. Minority: When a person is under the age of majority, which is 18 years in India, they are considered legally incapable of filing a lawsuit. Once they attain the age of majority, the limitation period begins to run. For instance, if a person was injured in an accident at the age of 15, they would have three years from the date they turn 18 to file a lawsuit.

2. Mental Incapacity: If an individual is of unsound mind or mentally incapacitated, they are unable to initiate legal proceedings during that period of incapacity. Once they regain their mental faculties, the limitation period starts running. For example, if someone suffers from a mental illness and is incapable of managing their legal affairs, the limitation period would be tolled until they regain competency.

Q.2(d)- What do you understand by double legal disability?

- Mention **Section 6(2)** of limitation act.

Double legal disability can occur when one person experiences two separate periods of legal incapacity consecutively. For instance:

Let's consider a scenario where a person, due to being a minor, incurs an injury at the age of 10. At the time of the injury, the statute of limitations doesn't begin to run because of the legal disability of minority. However, before reaching the age of majority and being able to pursue legal action, they suffer a mental illness that renders them incapable of understanding their legal rights until they turn 25. In this case, the limitation period would only start running when they reach the age of 25, despite the fact that they reached the age of majority at 18.

The reason for allowing double legal disability is to ensure that individuals who are already disadvantaged by one form of legal incapacity are not unfairly prejudiced by another. It acknowledges that certain circumstances, such as minority and mental incapacity, may overlap or succeed one another, prolonging the period during which a person is unable to take legal action. By granting an extended limitation period, the law aims to provide equitable access to justice for individuals facing such challenges.

Q.2(e)- What is Section 9 of limitation Act?

Section 9 of the Indian Limitation Act, 1963: "Where once time has begun to run, no subsequent disability or inability to sue stops it. Where there is nothing to cause an extension of time, such as fraudulent concealment, the time limited by the statute begins to run from the accrual of the cause of action."

In simpler terms, Section 9 states that once the period of limitation starts running, it continues to run without any interruption, even if the plaintiff later becomes incapacitated or disabled in some way. The only exceptions to this rule are situations where there is a deliberate attempt to conceal the cause of action (fraudulent concealment), in which case the limitation period may be extended.

For example, if a person incurs an injury due to medical negligence but is unaware of the negligence until several years later, the period of limitation would still start running from the date the injury occurred, even though the person only became aware of the negligence later. However, if it can be proven that the medical provider intentionally concealed their negligence, thereby preventing the injured person from discovering it within the normal limitation period, then the limitation period may be extended.

EXERCISE-2

Q.2(a)- What do you mean by legal disability?

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Q.b- What do you mean by disability of one of several persons?

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Q.c- Mention two kinds of legal disability under law of limitation?

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Q.d- What do you understand by double legal disability?

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Q.e- What is Section 9 of limitation Act?

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Ques.3- What is the effect of acknowledgment in writing under limitation act? State the condition for valid acknowledgement.

Q.3(a)- Mention Conditions for valid acknowledgement.

Ans.3- Condition for valid acknowledgement-

1. Acknowledgement must be in writing. Oral acknowledgements are not valid under law.
2. Acknowledgement need not promise to pay.
3. Acknowledgement must be made before the expiration of prescribed period for a suit or application
4. Acknowledgement must be signed by the person or his agent duly authorized on his behalf for the specific purpose.
5. Acknowledgement does not require a stamp as per the Stamp Act. However, the original document should be as per the provisions of the law and might require a stamp and registration as per the Stamp Act and the Registration Act.
6. Telegram is not a valid acknowledgement because it does not have the signature.
7. The Day of acknowledgement is excluded in computing the period of limitation.
8. Balance sheet of a company acknowledging indebtedness is a sufficient acknowledgement.
9. Acknowledgement need not be addressed to the creditor
10. An Acknowledgement made by a legally disabled person is invalid.
11. An Acknowledgement can be coupled with a set off.
12. A bare signature at the back of a promissory note is not an acknowledgement

Q.3(b)- What is the effect of acknowledgement in writing?

Effect of acknowledgment in writing – According to Section 18:

(1) Where before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derived his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation - For the purposes of this section, -

a. an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;

b. the word "signed" means signed either personally or by an agent duly Authorized in this behalf ; and

c. an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

It is not necessary that an acknowledgment within Section 18 must contain a promise pay or should amount to a promise to pay (*Subbarsadya v.Narashimha, AIR 1936 Mad.939*).

Q.3(c)- What is the effect of payment on account of debt of interest on legacy?

Effect of payment on account of debt or of interest on legacy – According to Section-19:

Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly Authorized in this behalf, a fresh period of limitation shall be computed from the time when payment was made:

Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the hand-writing of, or in a writing signed by the person making the payment.

Explanation - For the purposes of this section, -

a. where mortgaged land is in the possession of the mortgagee, the receipt of the rent of produce of such land be deemed to be a payment;

b. "debt" does not include money payable under a decree or order of a court.

Q.3(d)- What is the effect of acknowledgement or payment by another person?

Effect of acknowledgment or payment by another person – According to **Section-20:**

(1) The expression "agent duly Authorized in this behalf" in sections 18 and 19 shall in the case of a person under disability, include his lawful guardian, committee or manager or an agent duly Authorized by such guardian, committee or manager to sign the acknowledgment or make the payment.

(2) Nothing in the said sections renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgment signed by, or of a payment made by, or by the agent of, any other or others of them.

(3) For the purposes of the said sections, -

a. an acknowledgment signed or a payment made in respect of any liability by, or by the duly Authorized agent of, any limited owner of property who is governed by Hindu Law, shall be a valid acknowledgment or payment, as the case may be, against a reversionary succeeding to such liability; and where a liability has been incurred by, or on behalf of a Hindu undivided family as such, an acknowledgment or payment made by, or by the duly Authorized agent or, the manager of the family for the time being shall be deemed to have been made on behalf of the whole family.

EXERCISE-3

Q.3(a)- Mention Conditions for valid acknowledgement.

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Q.b- What is the effect of acknowledgement in writing?

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Q.c- What is the effect of payment on account of debt of interest on legacy?

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Q.d- What is the effect of acknowledgement or payment by another person?

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