

CIVIL PROCEDURE CODE, 1908

Civil Procedure Code, 1908, Section 2(2), Limitation Act, 1963,

Section 5 - Dismissal of appeal as time barred consequent upon dismissal of application for condonation of delay - Is not a decree - Decision of Court becomes decree only if there exists adjudication of all or any of disputed matters in suit. (The Commissioner, Hubli-Dharwad Municipal Corporation, Dharwad Vs Shrishail & Ors.) 2004(2) Civil Court Cases 78 (Karnataka)

Civil Procedure Code, 1908, Section 2(2), Order 37 Rule 1 -

Withdrawal of amount deposited in Court - Order passed by way of interim arrangement pending suit and subject to conditions - Cannot be said to be a decree nor final order in suit. (Leela Capital and Finance Ltd. Vs Modiluft Ltd.) AIR 2003 Bombay 111

Civil Procedure Code, 1908, Section 2(2) - “Decree” - Requirements

to constitute a decree are (i) There must be an adjudication; (ii) Such adjudication must have been given in a suit; (iii) It must have determined the rights of the parties with regard to all or any part of the matters in controversy in the suit; (iv) Such determination must be of a conclusive nature; and (v) There must be a formal expression of such adjudication - If there is no judicial determination of any matter in dispute, it is not a decree - The adjudication must have determined the rights of the parties with regard to all or any of the matters in controversy in the suit. (Anubai Vs Vithoba Shripati Savant (deceased) & Ors.) 2004(2) Civil Court Cases 564 (Bombay)

Civil Procedure Code, 1908, Section 2(11) - Decree in favour of

dead person - Not a nullity - Decree against a dead person may be nullity but same principle is not applicable when the decree is in favour of a dead person. (Prahlad Singh Vs The President District Consumer Disputes Redressal Forum & Ors.) 2005(3) Civil Court Cases 223 (Rajasthan)

Civil Procedure Code, 1908, Section 2(12) - Mesne profits -

Defendant occupying house as one of the terms of employment without paying any rent or compensation - Wrongful occupation of house after termination of service - Plaintiff not leading any evidence to prove as to what would be the compensation the defendant might have received with due diligence for

his wrongful occupation - Held, plaintiff is not entitled to claim any mesne profit from defendant. (Kishen Kumar Narandas Jobanputra Vs Purushottam Mathurdas Raithatha) 2006(2) Civil Court Cases 600 (Bombay)

Civil Procedure Code, 1908, Section 9, Electricity Act, 1910, Section 24 - Disconnection - Civil suit challenging disconnection - Alternative remedy under Electricity Act not exhausted - Suit is not maintainable. (Jayaramachandran Vs The Tamil Nadu State Electricity Board) AIR 2002 Madras 230

SC Civil Procedure Code, 1908, Section 9, Haryana Ceiling on Land Holding Act, 1972, Section 26 - Civil Court jurisdiction - Bar of - Suit for declaration as to ownership and that allotment and declaration of surplus area is ineffective, inoperative and against the principles of natural justice - By virtue of Section 26 of the Act jurisdiction of civil Court is barred so far as matters which are required to be settled, decided or dealt with by the Financial Commissioner, the Commissioner, Collector or prescribed Authority - Held, civil suit is not maintainable. (Devinder Singh Vs State of Haryana & Anr.) 2006(2) Apex Court Judgments 577 (S.C.)

SC Civil Procedure Code, 1908, Section 9, Industrial Disputes Act, 1947 - Civil Court Jurisdiction - Dispute involving recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act - Civil Court has no jurisdiction to entertain such suit and decree passed in such suit is nullity. (State of Haryana Vs Bikar Singh) 2006(2) Apex Court Judgments 561 (S.C.)

Civil Procedure Code, 1908, Section 9, Order 7 Rule 11(d), Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Section 34 - Property mortgaged to Bank as collateral security - Suit for partition - Jurisdiction of civil court - Not barred - Section 34 of the Act is a bar for the Civil Court to entertain the suits in respect of the matters which are empowered to be determined by the Debts Recovery Tribunal or Appellate Tribunal - Adjudication or determination of rights or claims of the parties for partition of the property which are in the nature of civil rights, is not barred. (Krishna Vs Kedarnath & Ors.) 2006(1) Civil Court Cases 153 (Karnataka)

SC Civil Procedure Code, 1908, Section 9, Recovery of Debts Due to Banks and Financial Institutions Act, 1993, Sections 17, 18 & 19 - Recovery of Debts - Application by Bank or financial institution - Jurisdiction of civil Court is barred only in regard to such applications - Jurisdiction of civil Court is not barred as regards any suit filed by a borrower or any other person against a bank for any relief - Provisions of Debt Recovery Act do not mandate or require transfer of an independent suit filed before a civil Court to the Tribunal, to be tried as a counter claim in Bank's application - There is no provision in the Act for transfer of such suit and proceedings. (Indian Bank Vs ABS Marine Products Pvt. Ltd.) 2006(2) Apex Court Judgments 359 (S.C.)

SC Civil Procedure Code, 1908, Section 9 - Bar to civil suit - Can be express or implied - Express bar is where a Statute itself contains a provision that the jurisdiction of Civil Court is barred - Implied bar is when a Statute provides a special remedy to an aggrieved party like a right of appeal. (N.D.M.C. Vs Satish Chand) 2003(3) Civil Court Cases 640 (S.C.) : 2003(2) Apex Court Judgments 384 (S.C.)

Civil Procedure Code, 1908, Section 9 - Civil suit for share in produce from tree and fixation of fair rent on basis of local custom and usage - Is maintainable. (S.Ayyathuri Thevar Vs Arulmighu) AIR 2003 Madras 83

Civil Procedure Code, 1908, Section 9 - Collaboration agreement - Supply of goods - Breach thereof - Plaintiff made payment under award passed against them - Cause of action for recovery of payment made under award from defendant arose only when payment made by plaintiff - Suit for recovery filed within three years thereof is within limitation. (Maharashtra Small Scale Industries Development Corporation Ltd. Vs M/s M.Surda Corporation & Ors.) 2006(3) Civil Court Cases 599 (Bombay)

Civil Procedure Code, 1908, Section 9 - Damage to property - Suit for damages - Person in possession can file a suit for damages/loss inflicted on property which is referable to his loss alone - However, it is the owner of the property alone who has right and authority to file suit for damages - A stranger, be it a tenant or an occupier cannot claim any such rights unless he is appropriated authorised. (Nabeessa Vs Abdul Majeed) 2006(4) Civil Court Cases 463 (Kerala)

Civil Procedure Code, 1908, Section 9 - Dismissal from service - Civil suit - Jurisdiction - In case there is violation of principles of natural justice and Service Regulations then Civil Court has jurisdiction - In the instant case copy of inquiry report not made available to plaintiff nor it was disclosed in show cause notice as to on what premise finding of guilt was recorded by inquiry officer or by disciplinary authority - It is violation of principles of natural justice - Civil Court has jurisdiction - Held, if dispute is not an industrial dispute and it does not relate to enforcement of any right under the Industrial Disputes Act, remedy lies only in civil court. (Life Insurance Corporation of India Vs Rampal Singh) 2006(2) Civil Court Cases 649 (Rajasthan) (DB)

Civil Procedure Code, 1908, Section 9 - Dismissal from service and compulsory retirement - Suit for declaration that order is null and void and inoperative - Industrial dispute existing between parties - Forum under Industrial Disputes Act constituted to properly adjudicate the dispute - Jurisdiction of Civil Court is barred by necessary implication. (Narpat Ram Vs Hindustan Salt Ltd.) 2003(2) Civil Court Cases 265 (H.P.)

Civil Procedure Code, 1908, Section 9 - Jurisdiction - Unless statute provides a forum, mere act of consent of parties does not confer jurisdiction on a Court. (Ramai Ranjan Pati Vs Mst.Sahanaj Fatima) 2005(1) Civil Court Cases 268 (Orissa)

SC **Civil Procedure Code, 1908, Section 9** - Jurisdiction of civil Court - Jurisdiction of Civil Court is not ousted unless it is so, expressly or by necessary implication, stated in the statute - Unlike a private tribunal or a statutory tribunal which would not derive a jurisdiction unless a reference in terms of provisions of the Act is made to it, the Civil Court enjoys a plenary jurisdiction. (Swamy Atmananda & Ors. Vs Sri Ramakrishna Tapovanam & Ors.) 2005(2) Apex Court Judgments 471 (S.C.) : 2005(3) Civil Court Cases 397 (S.C.)

Civil Procedure Code, 1908, Section 9 - Suit for damages - Peaceful enjoyment and occupation of plaintiff unsettled - Plaintiff is entitled to claim damages for unsettling him - This is independent of the claim of the owner of the property, for property destruction. (Nabeessa Vs Abdul Majeed) 2006(4) Civil Court Cases 463 (Kerala)

Civil Procedure Code, 1908, Section 9 - Suit for declaration that a person belongs to Scheduled Caste or Schedule Tribe - Such suit is impliedly barred by Articles 341 and 342 of the Constitution. (Union of India Vs The Registrar, Central Administrative Tribunal) 2003(2) Civil Court Cases 336 (Madras)

Civil Procedure Code, 1908, Section 9 - Suit for recovery of claim amount from LIC on the basis that plaintiffs are legal heirs of the deceased insurer is maintainable. (Pramila Vs Life Insurance Corporation of India & Ors.) 2004(3) Civil Court Cases 33 (Bombay)

Civil Procedure Code, 1908, Section 9A and O.14 Rule 2 - Issue - Issue of jurisdiction as preliminary issue - Obligation cast upon Civil Court to frame issue is only in cases where such an issue is raised while dealing with application for grant of or vacating any interim relief including appointment of Commissioner, matters pertaining to stay and similar such interim applications and not otherwise. (Shraddha Associates, Pune Vs St.Patrick's) 2003(2) Civil Court Cases 627 (Bombay)

SC **Civil Procedure Code, 1908, Sections 10 & 151** - Provision of section 10 not applicable - Jurisdiction under section 151 cannot be exercised by bypassing the provision of section 10 of Civil Procedure Code, 1908- Where Code deals expressly with a particular matter, the provision should normally be regarded as exhaustive. (National Institute of Mental Health & Neuro Sciences Vs C.Parameshwara) 2005(1) Civil Court Cases 749 (S.C.)

Civil Procedure Code, 1908, Section 10, Order 39 Rules 1,2 - Stay of suit under Section 10 of Civil Procedure Code, 1908- Court can still decide application under Order 39 Rules 1 & 2 of Civil Procedure Code, 1908. (Jagdamba Oil Agency Vs State of M.P.) 2006(3) Civil Court Cases 282 (M.P.)

SC **Civil Procedure Code, 1908, Section 10** - A decree passed in contravention of the provision of Section 10 of Civil Procedure Code, 1908 is not a nullity. (Pukhraj D.Jain & Ors. Vs G.Gopalakrishna) 2004(2) Civil Court Cases 630 (S.C.)

Civil Procedure Code, 1908, Section 10 - Application u/s 10 CPC before filing of written statement is premature and is not maintainable.

(M/s.Renuka Sarees Vs Baldev Singh) 2004(2) Civil Court Cases 421 (Rajasthan)

Civil Procedure Code, 1908, Section 10 - Proceedings for obtaining succession certificate cannot be stayed during pendency of suit as object of issuance of a succession certificate is entirely different which does not result into deciding the issue finally between the parties as the same are summary in nature. (Succession Act, 1925, Section 372). (Monica Bibli Sood Vs Mrs. Kamal Seth & Ors.) 2004(3) Civil Court Cases 212 (P&H)

Civil Procedure Code, 1908, Section 10 - Provision applies to suits which are legally maintainable. (Hari Ram Vs Lichmaniya & Ors.) 2004(2) Civil Court Cases 244 (Rajasthan)

Civil Procedure Code, 1908, Section 10 - Second suit during pendency of first suit is not permissible. (Hari Ram Vs Lichmaniya & Ors.) 2004(2) Civil Court Cases 244 (Rajasthan)

Civil Procedure Code, 1908, Section 10 - Stay of subsequent suit - First suit filed by wife of deceased partner claiming her own independent right as legal heir of deceased partner - Second suit by daughter of deceased partner for a declaration that she is entitled to 1/4th share of the deceased's interest in the partnership firm as legal heir and representative she also claimed that she is entitled to accounts of the firm - Parties, cause of action and reliefs claimed in both the suit not identical - Dismissal of application by trial Court - Order upheld. (Sadguru Constructions & Anr. Vs Smt.Jaimeet Kaur Nirmansingh Sial & Ors.) 2006(2) Civil Court Cases 678 (Bombay)

Civil Procedure Code, 1908, Section 10 - Stay of subsequent suit - One or two issues identical - Not a ground to stay the subsequent suit. (Baljinder Kaur & Ors. Vs Dalal Kaur) 2003(1) Civil Court Cases 26 (P&H)

Civil Procedure Code, 1908, Section 10 - Stay of subsequent suit - Plaint returned and filed in proper Court - Date of presentation of plaint in proper Court is the date of institution of suit for deciding application under Section 10 of Civil Procedure Code, 1908. (M/s Shoban Lal & Co. & Anr. Vs L.R.Sharma & Ors.) 2005(3) Civil Court Cases 72 (P&H)

SC **Civil Procedure Code, 1908, Section 10** - Stay of subsequent suit

- Proceedings before Labour Court cannot be equated with proceedings before Civil Court. (National Institute of Mental Health & Neuro Sciences Vs C.Parameshwara) 2005(1) Civil Court Cases 749 (S.C.)

Civil Procedure Code, 1908, Section 10 - Proceedings for obtaining succession certificate cannot be stayed during pendency of suit as object of issuance of a succession certificate is entirely different which does not result into deciding the issue finally between the parties as the same are summary in nature. (Succession Act, 1925, Section 372). (Monica Bibli Sood Vs Mrs. Kamal Seth & Ors.) 2004(3) Civil Court Cases 212 (P&H)

Civil Procedure Code, 1908, Section 10 - Stay of subsequent suit - Substratum of dispute to be seen - Matter in issue in two suits should be directly and substantially the same and there must be an identity of the subject matter and parties should also be the same. (Baljinder Kaur & Ors. Vs Dalal Kaur) 2003(1) Civil Court Cases 26 (P&H)

SC **Civil Procedure Code, 1908, Section 10** - Stay of subsequent suit - Where subsequently instituted suit can be decided on purely legal points without taking evidence, it is always open to the Court to decide the relevant issues and not to keep the suit pending which has been instituted with an oblique motive and to cause harassment to the other side. (Pukhraj D.Jain & Ors. Vs G.Gopalakrishna) 2004(1) Apex Court Judgments 612 (S.C.) : 2004(2) Civil Court Cases 630 (S.C.)

Civil Procedure Code, 1908, Section 10 - Stay of suit during pendency of company petition - Company petition cannot be termed as suit - S.10 cannot be invoked to stay proceedings of suit. (S.D.Dhandapani Vs The Branch Manager, Indian Overseas Bank) AIR 2002 Madras 442

Civil Procedure Code, 1908, Section 10 - Subsequent suit - Stay of - When issue in the former suit as well as later suit are directly and substantially same between same parties, later suit should be stayed. (Suresh Kumar Singhi & Ors. Vs Kirit Kotecha) 2006(1) Civil Court Cases 106 (Orissa)

Civil Procedure Code, 1908, Section 10 - Two suits - Parties and subject matter same - It is the subsequent suit and not the previous one which can be stayed. (M.V.Rajashekhar Vs Smt.M.V.Rajamma (Deceased) By L.Rs & Ors.) 2004(3) Civil Court Cases 440 (Karnataka)

Civil Procedure Code, 1908, Section 10 - Two suits - Parties and subject matter same - It is the subsequent suit and not the previous one which can be stayed. (M.V.Rajashekhar Vs Smt.M.V.Rajamma) 2004(3) Civil Court Cases 440 (Karnataka)

Civil Procedure Code, 1908, Section 11, 92, Order 1 Rule 8, Order 2 Rule 2 - Res judicata - Suit in representative capacity - Binds not only the parties named in the suit but all those who share common interest - Subsequent suit by any other member of the entire body of interested person, reagitating the matter directly and substantially in issue in an earlier suit, is barred by principle of res judicata. (Kaluta & Ors. Vs M/s Greater Ashoka Land and Development Company Pvt. Ltd.) 2006(2) Civil Court Cases 423 (P&H)

SC Civil Procedure Code, 1908, Section 11, Evidence Act, 1872, Section 115 - Res judicata and estoppel - Res judicata debars a court from exercising its jurisdiction to determine the lis if it has attained finality between the parties whereas the doctrine issue estoppel is invoked against the party - If an issue is decided against a party then that party is estopped from raising the same in the later proceeding - The doctrine of res judicata creates a different kind of estoppel viz Estoppel by Accord. (Swamy Atmananda & Ors. Vs Sri Ramakrishna Tapovanam & Ors.) 2005(2) Apex Court Judgments 471 (S.C.) : 2005(3) Civil Court Cases 397 (S.C.)

SC Civil Procedure Code, 1908, Section 11, Evidence Act, 1872, Section 116 - An issue, already settled in a suit between the same parties in respect of certain subject matter, cannot be allowed to be raised again between the very same parties in regard to the same subject matter, but in a different suit. (Amarendra Komalam & Anr. Vs Usha Sinha & Anr.) 2005(2) Apex Court Judgments 232 (S.C.) : 2005(3) Civil Court Cases 228 (S.C.)

SC Civil Procedure Code, 1908, Section 11, Evidence Act, 1872, Section 116 - Issue of interpolation/forgery in agreement - Undertaking and acceptance not to raise issue of interpolation - Respondent is precluded from raising the same issue of interpolation/forgery in agreement, in another suit, between the same parties and when in both suits main issue is substantially and materially one and the same. (Amarendra Komalam & Anr. Vs Usha Sinha & Anr.) 2005(2) Apex Court Judgments 232 (S.C.) : 2005(3) Civil Court Cases 228 (S.C.)

SC **Civil Procedure Code, 1908, Section 11, Evidence Act, 1872, Section 116** - Res judicata, waiver & estoppel - Issue of fact once determined finally by a Court of competent jurisdiction when comes directly in question in subsequent proceedings between the same parties then the persons cannot be allowed to raise the same question which already stands determined earlier by the competent Court. (Amarendra Komalam & Anr. Vs Usha Sinha & Anr.) 2005(2) Apex Court Judgments 232 (S.C.) : 2005(3) Civil Court Cases 228 (S.C.)

Civil Procedure Code, 1908, Section 11, Order 10 Rule 4(1) - Res judicata - Order for personal appearance of party passed under O.10 Rule 4 in earlier stage of proceedings - Order not finally adjudicating right of party - Court not precluded from passing different order under O.10 Rule 4(1) in subsequent stage of proceedings - Bar of res judicata, not applicable. (Smt. Tara Devi Vs The District Judge, Basti) AIR 2003 Allahabad 64

Civil Procedure Code, 1908, Section 11, Order 39 Rules 1,2 - Temporary injunction - Revision - Finding of maintainability of suit in revision does not operate as res judicata in final proceedings. (Thressiamma Vs Sebastian) AIR 2002 Kerala 1

Civil Procedure Code, 1908, Section 11, Order 7 Rule 11 - Baseless suit filed earlier - Suit for damages - Suit is maintainable though in the earlier suit a claim for compensation was made - Claim in the earlier suit is only for limited extent only - Claim made in present suit for damages could never have been asked as a matter of right in earlier suit nor even compensatory costs could have been granted beyond the statutory limit - Such a prayer, even if made in the earlier written statement, the same cannot be treated to be a “relief claimed” for the purpose of Explanation V to Section 11 of Civil Procedure Code, 1908- Held, suit is maintainable. (Amarit Lal Vs Smt. Ram Pyari) 2005(3) Civil Court Cases 110 (Rajasthan)

Civil Procedure Code, 1908, Section 11, Specific Relief Act, 1963, Sections 34, 38 - Suit for injunction - Dismissal of suit - Subsequent suit for declaration of title - Not barred by principle of res judicata as in the earlier suit question of title was not in issue and dismissal of suit on basis of finding regarding possession does not operate as res judicata barring subsequent suit for declaration of title and perpetual injunction. (Chinnappa Vs Corporation of the City of Bangalore) 2005(1) Civil Court Cases 382 (Karnataka)

SC **Civil Procedure Code, 1908, Section 11, Transfer of Property Act, 1882, Section 83** - Deposit under Section 83 Transfer of Property Act, 1882- Function of Court in terms of Section 83 of Transfer of property Act is procedural in nature - Deposit under Section 83 despite objection thereto - Does not amount to res judicata. (Bishwanath Prasad Singh Vs Rajendra Prasad & Anr.) 2006(2) Apex Court Judgments 233 (S.C.) : 2006(2) Civil Court Cases 170 (S.C.)

Civil Procedure Code, 1908, Section 11 - ‘Same subject matter’ - Court for the purpose of expression ‘same subject matter’ has to consider not only the relief, but also the cause of action. (Harischandra Vithoba Narawade & Ors. Vs Smt.Vatsalabai w/o Narayan Shinde) 2005(1) Civil Court Cases 217 (Bombay)

Civil Procedure Code, 1908, Section 11 - Application U.O.1 Rule 10 for impleadment claiming to be real tenant - Dismissed - Subsequent title suit - Not barred by res judicata since the judgment and order of dismissal in application U.O.1 Rule 10 CPC does not decide the issue involved in the suit - Moreover, such proceeding not a “suit” within the meaning of S.11 CPC. (Anadi Mohan Rashit Vs Nalin Sarker Street U.P.School) AIR 2002 Calcutta 22

SC **Civil Procedure Code, 1908, Section 11** - Constructive res judicata - Contention taken in the present suit could have been taken in the earlier suit but not taken - Such contention cannot be taken in the present suit in view of Explanation IV to Section 11 of Civil Procedure Code, 1908. (Ramadhar Shrivastava Vs Bhagwandas) 2006(1) Apex Court Judgments 282 (S.C.) : 2006(1) Civil Court Cases 450 (S.C.)

SC **Civil Procedure Code, 1908, Section 11** - Constructive res judicata - Plea of ownership to the suit house was substantially involved for seeking relief of permanent injunction in the former suit - Plea of ownership could and ought to have been raised in the former suit - Subsequent suit claiming title to the suit property is barred by constructive res judicata. (Aanaimuthu Thevar (Dead) by Lrs. Vs Alagammal & Ors.) 2005(2) Apex Court Judgments 173 (S.C.) : 2005(3) Civil Court Cases 183 (S.C.)

SC **Civil Procedure Code, 1908, Section 11** - Constructive res judicata

- Suit for eviction of tenant - Tenant not claiming ownership in suit premises though he had the opportunity - It operates as constructive res judicata - Tenant cannot claim ownership in a subsequent suit. (Ramadhar Shrivastava Vs Bhagwandas) 2006(1) Apex Court Judgments 282 (S.C.) : 2006(1) Civil Court Cases 450 (S.C.)

Civil Procedure Code, 1908, Section 11 - Eviction order obtained from Rent Controller by playing fraud - Order challenged in suit being null and void - When order is questioned on the ground of fraud, question of applying doctrine of res judicata or dismissal of suit on ground of availability of alternative remedy under Rent Control Act does not arise - Whenever a serious allegation of fraud is made, normally technicalities should not come in the way of doing substantial justice to the parties - Fraud clearly averred and proved - Held, decree obtained by fraud is a nullity. (B.Das Vs D.Gunnamma & Ors.) 2004(3) Civil Court Cases 245 (A.P.)

Civil Procedure Code, 1908, Section 11 - Eviction petition for starting business by plaintiff's son - Plaintiff's son becoming Advocate - Plea for requirement of premises for starting business withdrawn - Second suit for eviction on ground that premises were required for starting office of plaintiff's Advocate son - Not barred. (Dr.S.S.Khurana Vs Mahaveer Prasad) AIR 2004 Rajasthan 107

Civil Procedure Code, 1908, Section 11 - Provision nowhere deals with abandonment of claim. (Hari Ram Vs Lichmaniya & Ors.) 2004(2) Civil Court Cases 244 (Rajasthan)

Civil Procedure Code, 1908, Section 11 - Res judicata - Appellant not a party to earlier suit as such she is not bound by any observation made in the earlier judgment - Finding recorded will not operate as res judicata. (Anguri Devi Vs Moti Ram & Ors.) 2003(1) Civil Court Cases 85 (P&H)

Civil Procedure Code, 1908, Section 11 - Res judicata - Applicability - Previous suit between the same parties - Res judicata applies even if the previous suit was between the parties under whom they or any of them claim. (Mangal Das & Ors. Vs Johri Son of Mohar Singh) 2006(3) Civil Court Cases 273 (P&H)

SC **Civil Procedure Code, 1908, Section 11** - Res judicata - Applies in

different stages of the same proceedings. (Chhabil Das Vs Pappu) 2006(3) Apex Court Judgments 730 (S.C.)

SC Civil Procedure Code, 1908, Section 11 - Res judicata - Co-defendants - Principle of res judicata is applicable as between co-defendants if relief given or refused by earlier decision involves a determination of an issue between co-defendants. (M/s.Makhija Construction & Enggr. Pvt. Ltd. Vs Indore Development Authority & Ors.) 2005(2) Apex Court Judgments 11 (S.C.) : 2005(2) Civil Court Cases 790 (S.C.)

Civil Procedure Code, 1908, Section 11 - Res judicata - Court assuming jurisdiction which it does not possess under the Statute - Question cannot operate as res judicata even between the same parties. (Govindan Nair Vs Abraham) 2003(1) Civil Court Cases 206 (Kerala)

SC Civil Procedure Code, 1908, Section 11 - Res judicata - Decision in money suit - Shall not operate res judicata in title suit. (Md.Mohammad Ali (Dead) by Lrs. Vs Sri Jagadish Kalita & Ors.) 2003(2) Apex Court Judgments 473 (S.C.)

SC Civil Procedure Code, 1908, Section 11 - Res judicata - Doctrine of res judicata does not stricto sensu apply to the proceedings under Article 226 of the Constitution. (Hari Chand & Ors. Vs Faridabad Complex Administration & Ors.) 2005(2) Apex Court Judgments 203 (S.C.)

SC Civil Procedure Code, 1908, Section 11 - Res judicata - Earlier judgment if delivered by a Court without jurisdiction or is contrary to the existing law at the time the issue comes up for consideration then such earlier judgment cannot be held to be res judicata in subsequent case unless protected by any special enactment. (Shakuntala Devi Vs Kamla & Ors.) 2005(2) Apex Court Judgments 105 (S.C.) : 2005(2) Civil Court Cases 645 (S.C.)

SC Civil Procedure Code, 1908, Section 11 - Res judicata - Earlier suit confined to a small portion of the entire property - Decision as to specified part of property does not constitute res judicata for the entire property which is the subject matter of subsequent litigation. (V.Rajeshwari Vs T.C.Saravanabava) 2004(2) Apex Court Judgments 158 (S.C.) : 2004(2) Civil Court Cases 354 (S.C.)

Civil Procedure Code, 1908, Section 11 - Res judicata - Earlier suit for permanent injunction dismissed as plaintiff not found in possession - Decision attained finality - Question of possession over the suit land having been already decided by a Court of competent jurisdiction in the earlier suit, the same cannot be tried again in the present suit which is filed by same plaintiff against son who is successor-in-interest of defendant in the earlier suit. (Kapur Chand Vs Hardam Singh) 2006(4) Civil Court Cases 741 (P&H)

SC **Civil Procedure Code, 1908, Section 11** - Res judicata - It is the decision on an issue that has been directly and substantially in issue in the former suit between the same parties which has been heard and finally decided that operates as res judicata - Merely a finding on every incident or collateral question to arrive at such a decision does not operate as res judicata. (Mahila Bajrangi (dead) through L.Rs. & Ors. Vs Badribai & Anr.) 2003(1) Apex Court Judgments 104 (S.C.)

SC **Civil Procedure Code, 1908, Section 11** - Res judicata - Matter directly and substantially in issue actually or constructively - A matter is actually in issue when it is in issue directly and substantially and a competent Court decides it on merits - A matter is constructively in issue when it 'might and ought' to have been a ground of defence or attack in the former suit - Any matter which 'might and ought' to have been made a ground of defence or attack in the former suit, but which has not been made a ground of defence or attack, shall be deemed to have been a matter directly and substantially in issue in such suit. (Ramadhar Shrivastava Vs Bhagwandas) 2006(1) Apex Court Judgments 282 (S.C.) : 2006(1) Civil Court Cases 450 (S.C.)

SC **Civil Procedure Code, 1908, Section 11** - Res judicata - Only a part of property involved in previous suit - Held, principle of res judicata is attracted where issues are directly and substantially involved between the same parties in the previous and subsequent suit - may be - in the previous suit only a part of the property was involved when in the subsequent suit, the whole property is the subject matter. (K. Ethirajan (Dead) by LRs. Vs Lakshmi & Ors.) 2004(1) Apex Court Judgments 1 (S.C.) : 2004(2) Civil Court Cases 205(S.C.)

Civil Procedure Code, 1908, Section 11 - Res judicata - Principle

of - Not applicable when decision is not on merits. (Food Corporation of India Vs Prashant Pandurang Ramteke & Ors.) 2006(1) Civil Court Cases 205 (Bombay)

SC Civil Procedure Code, 1908, Section 11 - Res judicata - Principle of res judicata is a procedural provision and it has no application where there is inherent lack of jurisdiction. (Sri Ramnik Vallabhdas Madhvani & Ors. Vs Taraben Pravinlal Madhvani) 2004(1) Apex Court Judgments 630 (S.C.) : 2004(3) Civil Court Cases 98 (S.C.)

SC Civil Procedure Code, 1908, Section 11 - Res judicata - Principles of res judicata applies in different stages of the same proceedings. (Bhanu Kumar Jain Vs Archana Kumar & Anr.) 2005(1) Apex Court Judgments 121 (S.C.) : 2005(1) Civil Court Cases 725 (S.C.)

Civil Procedure Code, 1908, Section 11 - Res judicata - Proforma defendant - When no relief against proforma defendant in the earlier suit is claimed then principle of res judicata does not apply. AIR 1956 P&H 129 distinguished. (Joginder Kaur alias Jogindero Vs Mehar Singh) 2003(1) Civil Court Cases 375 (P&H)

SC Civil Procedure Code, 1908, Section 11 - Res judicata - Revenue authorities in mutation proceedings deciding that J was not legally adopted son of G whereas Gopali and Bajrangi were G's wife and daughter - Such a decision of revenue authorities does not operate as res judicata. (Mahila Bajrangi (dead) through L.Rs. & Ors. Vs Badribai & Anr.) 2003(1) Apex Court Judgments 104 (S.C.)

SC Civil Procedure Code, 1908, Section 11 - Res judicata - Scope and object of res judicata is to uphold the rule of conclusiveness of judgment, as to the points decided earlier, of fact, or of law, or of law and fact, in every subsequent suit between the same parties - Once the matter which was the subject-matter of lis stood determined by a competent court, no party thereafter can be permitted to reopen it in a subsequent litigation. (Swamy Atmananda & Ors. Vs Sri Ramakrishna Tapovanam & Ors.) 2005(2) Apex Court Judgments 471 (S.C.) : 2005(3) Civil Court Cases 397 (S.C.)

Civil Procedure Code, 1908, Section 11 - Res judicata - Suit for possession - Earlier suit decreed in favour of defendant - Appeal dismissed

as withdrawn - Judgment in earlier suit became final between parties and the same operates as res judicata. (Sham Lal Vs Smt.Mathi) AIR 2002 H.P. 66

Civil Procedure Code, 1908, Section 11 - Res judicata - Withdrawal of earlier suit - Principle of res judicata does not apply when earlier suit was withdrawn as withdrawal is not a decision, wherein the matter can be said to have been heard and finally decided by Court. (Harischandra Vithoba Narawade & Ors. Vs Smt.Vatsalabai w/o Narayan Shinde) 2005(1) Civil Court Cases 217 (Bombay)

Civil Procedure Code, 1908, Section 11 - Will - Grant of succession certificate - Finding regarding Will cannot operate as res judicata in subsequent suit by same applicant praying for mandatory injunction against defendant praying for mandate to defendant to supply him locker number obtained by defendant on basis of alleged will as set up by defendant giving him right to operate lock - Fact that issues were raised and evidence was recorded in succession certificate not relevant. (District Red Cross Society Vs Joginder Pal) AIR 2002 P&H 5

Civil Procedure Code, 1908, Section 11 Explanation. VI - Suit for possession and injunction - Contention of J.D. that decree was inexecutable as property belonged to CSI Church and Church not made party in the suit - Vicar and Bishop of CSI Church were defendant in suit - No case of J.D. that they were not putting forward rights of Church or there was any mala fide neglect to conduct and defend the suit - No conflict of interest between defendants in suit and Church - Explanation VI to Section 11 of Civil Procedure Code, 1908 attracted - Held, decree is executable. (Thankamma Vs John) 2006(3) Civil Court Cases 719 (Kerala)

Civil Procedure Code, 1908, Section 11 Expln. IV - Res judicata - Any matter which might and ought to have been made ground of defence or attack in former suit shall be deemed to have been a matter directly and substantially in issue in such suit. (Ajay Singh & Ors. Vs Rajasthan Civil Service Appellate Tribunal & Ors.) 2003(3) Civil Court Cases 657 (Rajasthan)

Civil Procedure Code, 1908, Sections 11 - Discussion or observation on an issue which does not arise for consideration in a proceedings cannot give rise to the principle of res judicata in a subsequent proceedings wherein

such issue arises for consideration. (Ramchandra Shankar Randive & Ors. Vs Uttam Marutrao Randive & Ors.) 2003(3) Civil Court Cases 442 (Bombay)

Civil Procedure Code, 1908, Sections 15 & 20 - Jurisdiction - Exclusion - To exclude jurisdiction of a Court, intention should be reflected in clear, unambiguous, explicit and specific terms - Terms 'Only', 'Alone', 'Exclusively' are most relevant in exclusion clause. (Muhammed Ismayil Vs Malabar Engineering Company) 2005(3) Civil Court Cases 175 (Kerala)

Civil Procedure Code, 1908, Section 16, Succession Act, 1925, Section 387 - Succession certification - Cancellation - Jurisdiction - Succession certificate obtained from Court at place 'C' - Deceased died at place 'W' and property also situated at that place - Court at place 'W' has territorial jurisdiction to decide the suit. (Manda w/o Raju Pande Vs Jankibai wd/o Sunderlal Dubey & Ors.) 2006(2) Civil Court Cases 58 (Bombay)

SC Civil Procedure Code, 1908, Section 16 - Suit for specific performance - Jurisdiction - Lies with the Court where property situates - Agreement that Court at place 'D' alone has jurisdiction - Not applicable in case of a suit for specific performance as a suit for specific performance can only be filed in a Court where property situates - Clause in the agreement restricting jurisdiction to one Court applies only when two or more courts have jurisdiction to entertain a suit and the parties agree to submit to the jurisdiction of one Court. (Harshad Chiman Lal Modi Vs D.L.F. Universal Ltd. & Anr.) 2005(2) Apex Court Judgments 610 (S.C.) : 2005(3) Civil Court Cases 711 (S.C.)

Civil Procedure Code, 1908, Section 16 - Suit for specific performance of agreement to sell immovable property - Suit is to be filed in the Court within local limits of whose jurisdiction the property is situated. (Pusaram & Anr. Vs Ratilal & Anr.) 2005(3) Civil Court Cases 523 (Bombay)

SC Civil Procedure Code, 1908, Section 16 Proviso - Proviso is an exception to the main part of the section - Proviso cannot be interpreted or construed to enlarge the scope of the principal provision - It applies only if the suit falls within one of the categories specified in the main part of the section and the relief sought could entirely be obtained by personal obedience of the defendant. (Harshad Chiman Lal Modi Vs D.L.F. Universal Ltd. &

Anr.) 2005(2) Apex Court Judgments 610 (S.C.) : 2005(3) Civil Court Cases 711 (S.C.)

Civil Procedure Code, 1908, Section 16(d), 20 - Jurisdiction - Parties by agreement cannot confer jurisdiction in a Court which does not have jurisdiction - Such an agreement is hit by Ss.23 & 28 of the Contract Act. (Contract Act, 1872, Sections 23 & 28). (Rajana Nagpal alias Ranjana Malik Vs Devi Ram) 2003(2) Civil Court Cases 127 (H.P.)

SC Civil Procedure Code, 1908, Sections 16, 16 Proviso & 20 - Suit for specific performance and for possession - Jurisdiction lies with the Court where property situates - Suit is covered by main part of Section 16 of Civil Procedure Code, 1908- Neither proviso to Section 16 is attracted nor Section 20 (residuary provision) applies. (Harshad Chiman Lal Modi Vs D.L.F. Universal Ltd. & Anr.) 2005(2) Apex Court Judgments 610 (S.C.) : 2005(3) Civil Court Cases 711 (S.C.)

Civil Procedure Code, 1908, Sections 16, 20 - Agreement to sell - Suit for specific performance and alternative relief of compensation claimed - Jurisdiction - Land, subject matter of agreement situated in Haryana - Suit filed at Delhi - Held, Court at Delhi has jurisdiction as agreement was executed at Delhi, consideration amount was received at Delhi, and registered office of defendant at the relevant time of execution of sale deed was at Delhi and agreement categorically stating that Delhi Court shall have jurisdiction to decide any matter arising out of the agreement. (Karan Mahendru & Ors. Vs M/s.Vatika Plantations (P) Ltd.) 2004(3) Civil Court Cases 606 (Delhi)

SC Civil Procedure Code, 1908, Sections 16, 20 - Jurisdiction - When certain jurisdiction is specified in a contract, an intention to exclude all others from its operation may in such cases be inferred. (Mayar (H.K.) Ltd. & Ors. Vs Owners & Parties, Vessel M.V.Fortune Express & Ors.) 2006(1) Apex Court Judgments 610 (S.C.) : 2006(2) Civil Court Cases 15 (S.C.)

SC Civil Procedure Code, 1908, Sections 16 & 21 - Suit for specific performance and possession - Can be filed at place where property situates - Case filed at place other than where property situates and as per agreement clause restricting jurisdiction to a particular place - Objection to jurisdiction not taken in written statement - Held, it cannot take away the right of defendant to challenge the jurisdiction of the Court nor it can confer jurisdiction on Court

which it did not possess. (Harshad Chiman Lal Modi Vs D.L.F. Universal Ltd. & Anr.) 2005(2) Apex Court Judgments 610 (S.C.) : 2005(3) Civil Court Cases 711 (S.C.)

SC **Civil Procedure Code, 1908, Sections 16 to 20, Order 2 Rule 3** - Jurisdiction - Two cause of actions joined - Jurisdiction cannot be conferred upon a Court which had jurisdiction to try only the suit in respect of one cause of action and not the other. (M/s Dhodha House Vs S.K.Maingi) 2006(1) Apex Court Judgments 462 (S.C.) : 2006(1) Civil Court Cases 533 (S.C.)

SC **Civil Procedure Code, 1908, Sections 16 to 20** - 'Carries on business' and 'personally works for gain' connote two different meanings - For the purpose of carrying on business only, presence of a man at a place is not necessary - Such business may be carried at a place through an agent or a manager or through a servant - Owner may not even visit that place - 'Carries on business' at a certain place means having an interest in a business at that place, a voice in what is done, a share in the gain or loss and some control thereover - The expression is much wider than what the expression in normal parlance connotes. (M/s Dhodha House Vs S.K.Maingi) 2006(1) Apex Court Judgments 462 (S.C.) : 2006(1) Civil Court Cases 533 (S.C.)

SC **Civil Procedure Code, 1908, Sections 16 to 20** - Jurisdiction - Goods sold at a particular place - Does not mean that business is carried on that place - However, A firm is deemed to be carrying on business at a place where it has a subordinate office. (M/s Dhodha House Vs S.K.Maingi) 2006(1) Apex Court Judgments 462 (S.C.) : 2006(1) Civil Court Cases 533 (S.C.)

Civil Procedure Code, 1908, Sections 16(c), 20 - Suit for foreclosure of mortgage - Filed at the place where property situated - However, in view of agreement and also memorandum of understanding suit agreed to be filed only before Court at Bombay - Held, suit is governed by S.16(c) overriding effect over S.20 - Court at place where property is situated has jurisdiction to try the suit. (Shree Shanthi Homes Pvt.Ltd. Vs CREF Finance Ltd.) AIR 2002 Karnataka 252

Civil Procedure Code, 1908, Sections 16(d), 20 - Agreement to sell - Suit for specific performance - Can be filed in Court within jurisdiction of which suit property situates - Parties cannot by agreement vest jurisdiction in other Courts - As suit falls u/s 16(d), provision of S.20 is inapplicable.

(Ranjana Nagpal alias Ranjana Malik Vs Devi Ram) 2003(1) Civil Court Cases 93 (H.P.)

Civil Procedure Code, 1908, Sections 16(d), 20 - Jurisdiction - Suit for specific performance - Can be filed in a Court where immovable property situates - Parties by agreement cannot vest jurisdiction in other Courts as suit falls u/s 16(d) - Provisions of S.20 CPC are not applicable. (Ranjana Nagpal Vs Devi Ram) AIR 2002 H.P. 166

Civil Procedure Code, 1908, Section 19, Letters Patent (Madras)
S.12 r/w Original Side Rules, Order 3 Rule 1 - Suit based on tort - Jurisdiction - Part of cause of action arose within jurisdiction of Madras High Court - Plaintiff granted leave to file suit in the Madras High Court - Defendant instead of getting the leave to file suit cancelled as per law raised specific objection in the written statement - Defendants not objected to the jurisdiction of Madras High Court when they were in the box - Thus, the defendants have submitted to the jurisdiction of Madras High Court. (Arun Balakrishnan Iyer & Anr. Vs M/s Soni Hospital & Ors.) 2004(2) Civil Court Cases 183 (Madras)

SC Civil Procedure Code, 1908, Section 20, Contract Act, 1872, Section 28 - Agreement restricting jurisdiction to one Court where two or more Courts have jurisdiction to entertain the suit - Such an agreement is not hit by Section 28 of the Contract Act, nor such a contract can be said to be against public policy - It is legal, valid and enforceable. (Harshad Chiman Lal Modi Vs D.L.F. Universal Ltd. & Anr.) 2005(2) Apex Court Judgments 610 (S.C.) : 2005(3) Civil Court Cases 711 (S.C.)

Civil Procedure Code, 1908, Section 20, Order 7 Rule 11 - 'Cause of action' - Jurisdiction - Once integral or material part of cause of action accrues within the territorial jurisdiction of a Court, it cannot be said that that Court has no territorial jurisdiction to entertain and decide the suit. (Maharaji Educational Trust Vs Punjab & Sind Bank) 2006(3) Civil Court Cases 553 (Delhi)

Civil Procedure Code, 1908, Section 20 - Agency - Contract of - Entered into at Calcutta - Communicated at Delhi - Commission was to be made at Delhi - Court at Delhi has jurisdiction to enforce contract since part of cause of action arose at Delhi. (M/s Continental and Eastern Agencies Vs

M/s Coal India Limited) AIR 2003 Delhi 387

Civil Procedure Code, 1908, Section 20 - Agreement duly signed specifying jurisdiction where suit can be filed - Merely because words like 'exclusive', 'alone', 'only' and the like not mentioned in such ouster clause - Jurisdiction of Court other than specified in agreement cannot be invoked. (M/s Consolidated Agencies Vs M/s Gujarat Carbon and Industries Ltd.) AIR 2002 Madras 396

Civil Procedure Code, 1908, Section 20 - Hire purchase agreement - Place where suit to be filed in case of dispute mentioned therein - Suit filed in place other than specified place - Not maintainable. (Dilip Kumar Ray Vs Tata Finance Ltd.) AIR 2002 Orissa 29

Civil Procedure Code, 1908, Section 20 - If there are more than one court having the concurrent jurisdiction to deal with the controversy, then the parties can agree that only one of the courts would have jurisdiction - However, parties cannot confer jurisdiction on any such Court which does not have the jurisdiction in the matter at all. (Indian Oil Corporation Ltd. Vs Uppal Engineering (P) Ltd. & Anr.) 2006(1) Civil Court Cases 302 (P&H)

SC **Civil Procedure Code, 1908, Section 20** - In case more than one Court has jurisdiction, parties by their consent may limit the jurisdiction to one of the two Courts - Intention to exclude a Court's jurisdiction should be reflected in clear, unambiguous, explicit and specific terms - In such case only the accepted notions of contract would bind the parties - Parties by an agreement cannot confer jurisdiction to a Court which otherwise does not have jurisdiction to deal with a matter. (New Moga Transport Company, through its Proprietor Krishanlal Jhanwar Vs United India Insurance Co. Ltd. & Ors.) 2004(1) Apex Court Judgments 521 (S.C.) : 2004(2) Civil Court Cases 292 (S.C.)

Civil Procedure Code, 1908, Section 20 - Jurisdiction - As per clause (a) and (b) of Section 20 a suit can be filed where defendant resides - As per clause (c) a suit can be filed where cause of action, wholly or in part arises - Where clause (c) applies it overrides clauses (a) and (b) and then it is the option of the plaintiff that a Court gets jurisdiction. (Syed Saleema Bee Vs Smt.Syed Noorjahan & Anr.) 2006(2) Civil Court Cases 613 (A.P.)

Civil Procedure Code, 1908, Section 20 - Jurisdiction - By agreement jurisdiction cannot be vested in a Court which does not have jurisdiction. (Ranjana Nagpal Vs Devi Ram) AIR 2002 H.P. 166

Civil Procedure Code, 1908, Section 20 - Jurisdiction - Employee of purchaser taking delivery of goods at Delhi - Purchaser not producing employee's register to indicate that person in question was not his employee - Inference has to be drawn against purchaser and person taking delivery should be taken to be employee of purchaser - Sale should be held to have taken place in State of seller - Courts at Delhi will have jurisdiction to entertain suit for purchase amount. (Taneja Skins Co.Pvt. Ltd. Vs Bharath Skins Corporation) AIR 2002 Delhi 179

Civil Procedure Code, 1908, Section 20 - Jurisdiction - Suit to be instituted in a Court within the local limits of whose jurisdiction the defendant at the time of commencement of the suit resides or carries on business - A corporation shall be deemed to carry on business at its sole or principal office in India or in respect of any cause of action arising at any place where it has also a subordinate office at such place. (M/s. Hindustan Steel Ltd. Vs Sec.-cum-Commissioner, Water Resources Department & Ors.) 2006(3) Civil Court Cases 517 (Patna)

SC **Civil Procedure Code, 1908, Section 20** - Jurisdiction - Words 'alone', 'only' or 'exclusively' not mentioned in the purchase order wherein jurisdiction was confined to Court at Bombay - Whether jurisdiction of all other Courts except Courts at Bombay is excluded is to be gathered from facts and circumstances of the case - Order was placed at Bombay - Said order was accepted by branch office of plaintiff at Bombay, advance payment was made at Bombay and final payment was to be made at Bombay - Held, there is a clear intention to confine the jurisdiction of Courts in Bombay to the exclusion of all other Courts. (M/s.Hanil Era Textiles Ltd. Vs M/s.Puromatic Filters (P) Ltd.) 2004(2) Apex Court Judgments 04 (S.C.) : 2004(2) Civil Court Cases 548 (S.C.)

Civil Procedure Code, 1908, Section 20 - Non delivery of goods - Suit against transporter for recovery of amount - Defendants branch office situated within jurisdiction of Court where suit was filed - Cause of action arising within jurisdiction of that Court - Jurisdiction of that Court cannot be taken away on ground of condition printed in billty conferring jurisdiction

on other Court. (M/s Hindustan Metals Vs Vishal Goods Transport Co.) AIR 2002 Rajasthan 248

Civil Procedure Code, 1908, Section 20 - Parties cannot by agreement vest jurisdiction in a Court which does not have jurisdiction. (Ranjana Nagpal alias Ranjana Malik Vs Devi Ram) 2003(1) Civil Court Cases 93 (H.P.)

SC **Civil Procedure Code, 1908, Section 20** - Principal place of business - Can be decided only when parties lead evidence to that effect. (Mayar (H.K.) Ltd. & Ors. Vs Owners & Parties, Vessel M.V.Fortune Express) 2006(1) Apex Court Judgments 610 (S.C.) : 2006(2) Civil Court Cases 15 (S.C.)

SC **Civil Procedure Code, 1908, Section 20** - Principal place of business - Plea of - Cannot be decided at the preliminary stage of the hearing of suit. (Mayar (H.K.) Ltd. & Ors. Vs Owners & Parties, Vessel M.V.Fortune Express & Ors.) 2006(1) Apex Court Judgments 610 (S.C.) : 2006(2) Civil Court Cases 15 (S.C.)

Civil Procedure Code, 1908, Section 20 - Pronote - Suit for recovery - Rule of debtor seeking the creditor applicable - Suit filed at place 'C' within whose jurisdiction plaintiff is residing - Suit is maintainable. (Dr.Jose Paul Vs Jose & Ors.) AIR 2002 Kerala 397

SC **Civil Procedure Code, 1908, Section 20** - Provision of Section 20 of Civil Procedure Code, 1908 is a residuary provision and covers those cases not falling with the limitations of Sections 15 to 19 of Civil Procedure Code, 1908. (Harshad Chiman Lal Modi Vs D.L.F. Universal Ltd. & Anr.) 2005(3) Civil Court Cases 711 (S.C.) : 2005(2) Apex Court Judgments 610 (S.C.)

SC **Civil Procedure Code, 1908, Section 20** - Territorial jurisdiction - Clause in agreement that dispute under the contract shall be decided by Court at Bombay and by no other Court - Decision of trial Court that Court at Calcutta has no jurisdiction to try the suit, upheld. (Shree Subhlaxmi Fabrics Pvt.Ltd. Vs Chand Mal Baradia & Ors.) 2005(2) Civil Court Cases 227 (S.C.)

Civil Procedure Code, 1908, Section 20 - Territorial jurisdiction - Defendant had its office at place 'C' and branch office at place 'D' - Agreement took place at place 'D' - Delivery of goods made to carrier at place 'D' which

were brought at place 'S' - Court at place 'S' had no territorial jurisdiction - Impugned order holding that issue as to jurisdiction will be decided at the time of final adjudication set aside and plaint ordered to be returned for filing it before a Court of appropriate territorial jurisdiction. (M/s. Hindustan Steel Ltd. Vs Sec.-cum-Commissioner, Water Resources Department & Ors.) 2006(3) Civil Court Cases 517 (Patna)

SC **Civil Procedure Code, 1908, Section 20 Principal place of business**

- Would be where governing power of Corporation is exercised or the place of a corporation's Chief Executive Offices, which is viewed as the nerve center or the place designated as the principal place of business of the corporation in its incorporation under the various statutes. (Mayar (H.K.) Ltd. & Ors. Vs Owners & Parties, Vessel M.V.Fortune Express & Ors.) 2006(1) Apex Court Judgments 610 (S.C.) : 2006(2) Civil Court Cases 15 (S.C.)

Civil Procedure Code, 1908, Section 20(b) - Jurisdiction - Some defendants residing within jurisdiction and some defendants residing outside jurisdiction - Court may grant leave to institute suit - When Court grants leave for filing the suit then defendants residing outside the jurisdiction cannot raise objection. (M/s.Chennimalai Yarns Pvt. Ltd., & Anr. Vs S.Chandrasekar & Ors.) 2006(1) Civil Court Cases 411 (Madras)

Civil Procedure Code, 1908, Section 20(c) - Goods booked with Transport Co. at Udaipur destroyed in fire at Barnala - Words "Subject to Udaipur jurisdiction only" printed on consignment receipt do not exclude the jurisdiction of Court at Barnala. (United India Insurance Co.Ltd. Vs New Moga Transport Co.,) 2003(2) Civil Court Cases 665 (P&H)

Civil Procedure Code, 1908, Sections 20, 21 - Non delivery of goods - Suit against carrier - Goods booked at place 'J' for delivery at place 'M' - Printed condition in documents of carrier that Court at Delhi alone will have jurisdiction in respect of all the claims and the matters arising under the consignment of goods - Held, parties by consent cannot create jurisdiction in a Court where no cause of action arose - Court at place 'J' where cause of action arose has jurisdiction to try the suit. (M/s.Hindustan Metals, Jodhpur Vs M/s.Vishal Goods Transport Co.) 2003(1) Civil Court Cases 642 (Rajasthan)

Civil Procedure Code, 1908, Sections 23, 25 - Transfer of case to a

Court subordinate to another High Court - High Court u/s 23(3) can transfer a case to a Court subordinate to another High Court and this power of High Court is not curtailed by S.25 CPC. (Vempati Sarada Vs Vempati Kaladhar) 2004(2) Civil Court Cases 610 (A.P.)

SC **Civil Procedure Code, 1908, Section 21** - Jurisdiction - Categories are : (i) Territorial or local jurisdiction; (ii) Pecuniary jurisdiction and (iii) Jurisdiction over the subject matter - Objections as to territorial and pecuniary jurisdictions have to be taken at the earliest possible opportunity and in any case at or before settlement of issues - If such objection is not taken at the earliest the same cannot be allowed to be taken at a subsequent stage - Jurisdiction as to subject matter is totally different - Where a Court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter - An order passed by a Court having no jurisdiction is nullity. (Harshad Chiman Lal Modi Vs D.L.F. Universal Ltd. & Anr.) 2005(2) Apex Court Judgments 610 (S.C.) : 2005(3) Civil Court Cases 711 (S.C.)

Civil Procedure Code, 1908, Section 21 - Territorial jurisdiction - Objection as to - Has to be taken at the earliest opportunity - Objection raised just before trial cannot be justified. (Muhammed Ismayil Vs Malabar Engineering Company) 2005(3) Civil Court Cases 175 (Kerala)

Civil Procedure Code, 1908, Section 21(2) - Jurisdiction - Pecuniary or territorial - Objection as to - Has to be raised at the earliest possible stage - In no case it can be raised after a decree is passed - Cannot be raised for the first time in execution proceedings. (Krishnalata & Ors. Vs Anil Kumar) 2006(4) Civil Court Cases 744 (Bombay)

Civil Procedure Code, 1908, Section 22 Rule 4 - Death of one of the defendants during pendency of suit - Application filed within time for bringing L.R's on record - Notice also issued to L.R's - Failure to pass order to alter the cause title to bring L.R's on record - Question of abatement of suit does not arise - Inaction on the part of Court not having result of non suiting the plaintiff - Objection not filed by L.Rs' disputing their character as LR of deceased - Objection to validity of decree on this ground rejected. (Harjit Kaur Kuljit Singh Kohli Vs Padmavati J.Sethia) 2003(3) Civil Court Cases 453 (Bombay)

Civil Procedure Code, 1908, Section 23(3) - Application for transfer of case has to be filed in High Court within whose jurisdiction the suit was instituted and not before Court to which suit has to be brought. (M/s Shree Raghavendra Exports Vs Nawakar Enterprises) AIR 2004 A.P. 84

Civil Procedure Code, 1908, Section 23(3) - Matrimonial proceedings - Transfer of case to a Court subordinate to another High Court - Wife at mercy of her father & brother to meet travelling expenses - Proceedings transferred at place of residence of wife. (Vempati Sarada Vs Vempati Kaladhar) 2004(2) Civil Court Cases 610 (A.P.)

Civil Procedure Code, 1908, Sections 23(3) & 22 - Under Section 23(3) an application for transfer of a suit or proceeding is maintainable before a High Court even where the proposed transferee Court is subordinate to any other High Court if ingredients of Section 23(3) read with Section 22 of Civil Procedure Code, 1908 are satisfied. (Jency Vs Biju Thomas) 2006(1) Civil Court Cases 408 (Kerala)

Civil Procedure Code, 1908, Section 24, Guardians and Wards Act, 1890, Section 25 - Custody of minor children - Transfer of petition - Husband gainfully employed - Wife leading a life of destitution with her aged parents - Wife not in a financial position to make trips to the place where the case filed by husband is pending - Held, it is wife's convenience that has to be taken into consideration - It is desirable to transfer the case to the place where wife is residing. (Mazhar Sultana Vs Mohd. Abdul Majeed) 2003(1) Civil Court Cases 397 (A.P.)

Civil Procedure Code, 1908, Section 24, Guardians and Wards Act, 1890, Section 25 - Custody of minor children - Transfer of petition - Petition is in fact a lis between husband and wife - Power of transfer of case to be used very sparingly and only in deserving cases, particularly in matrimonial cases - Economic soundness of both the parties, social strata of spouses and behavioral pattern of their standard of life antecedent to marriage and subsequent thereto and after the snap of the knot which resulted in marriage, the circumstances of either of the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance of life. (Mazhar Sultana Vs Mohd. Abdul Majeed) 2003(1) Civil Court Cases 397 (A.P.)

Civil Procedure Code, 1908, Section 24, Hindu Marriage Act, 1955, Section 13 - Husband filed divorce petition at Bhopal - Wife lecturer at Indore - Only one in family to look after aged mother suffering from cancer - Court has to see convenience of parties on priority basis - Suit transferred from Bhopal to Indore. (Anita Shrivastava Vs Ashish Saxena) 2006(3) Civil Court Cases 663 (M.P.)

Civil Procedure Code, 1908, Section 24, Hindu Marriage Act, 1955, Section 19(1)(iii-a) - Divorce petition by husband - Wife seeking transfer of case to a place where she is living - Wife to look after her old aged mother and she being unable to attend Court due to lack of proper means and assistance - Transfer of petition ordered - As husband is 60 years old and is undergoing treatment for certain ailments as such his presence in Court on each date not to be insisted and if necessary, his statement shall be recorded through a Commissioner. (Sikakolli Venkata Lalitha Vs Sikakolli Haranath Babu) 2006(2) Civil Court Cases 746 (A.P.)

Civil Procedure Code, 1908, Section 24, Hindu Marriage Act, 1955, Section 21-A - Divorce petition filed by husband at place 'G' and subsequent thereto wife filed petition for restitution of conjugal rights at place 'B' - Wife seeking transfer of husband's petition - Wife's convenience be considered while deciding transfer of a case - Both parties making serious allegations of threat to life against each other if proceeded to place of Court - Taking the over all facts and circumstances and convenience of wife into consideration both the petitions transferred to Court at a third place - Question of jurisdiction will not come in the way of transfer of cases u/s 24 CPC. (Rayaprolu Rajya Lakshmi Vs Rayaprolu Ravindranadh Sarma) 2004(2) Civil Court Cases 218 (A.P.)

Civil Procedure Code, 1908, Section 24, Hindu Marriage Act, 1955, Section 21-A - Husband filed petition u/s 12 HM Act at Gwalior (M.P.) - Subsequently wife filed petition u/s 13 HM Act at Meerut (U.P.) - Held, transfer application for transfer of matrimonial case from Meerut (U.P.) to Gwalior (M.P.) is not cognizable by Allahabad High Court. (Brijesh Kumar Gupta Vs Smt.Poonam Gupta) 2003(1) Civil Court Cases 106 (Allahabad)

Civil Procedure Code, 1908, Section 24, Hindu Marriage Act, 1955, Section 21-A - Matrimonial case - Transfer - Husband raising a contention that the Court to which transfer of his divorce petition is sought

has no jurisdiction - Court while deciding transfer application need not go into question of jurisdiction. (Rayaprolu Rajya Lakshmi Vs Rayaprolu Ravindranadh Sarma) 2004(2) Civil Court Cases 218 (A.P.)

Civil Procedure Code, 1908, Section 24, Hindu Marriage Act, 1955, Section 21-A - Matrimonial case - Transfer - Power of Court to order transfer u/s 24 CPC is not curtailed or excluded by S.21-A of Hindu Marriage Act. (Rayaprolu Rajya Lakshmi Vs Rayaprolu Ravindranadh Sarma) 2004(2) Civil Court Cases 218 (A.P.)

Civil Procedure Code, 1908, Section 24, Hindu Marriage Act, 1955, Section 9 - Matrimonial petitions - Transfer of - Each case has to be judged on its own merits - In transfer of matrimonial petitions convenience of wife and also the issue of marriage has to prevail - In the instant case petition for restitution of conjugal rights filed by husband at Chittoor - Wife residing at Hyderabad - Petition transferred to Hyderabad. (Smt.P.Himabindu Vs P.Jayasimharaja) 2006(1) Civil Court Cases 492 (A.P.)

Civil Procedure Code, 1908, Section 24, Hindu Marriage Act, 1955, Section 9 - Transfer of matrimonial petition - Convenience of wife is the paramount consideration - Wife living with small child in her parents house at Panchkula and having no independent source of income to bear the expenses of visiting the Court at Karnal - Petition pending in the Court at Karnal ordered to be transferred to the Court at Panchkula. (Vandana Garg Vs Sanjay Kumar Garg) 2005(3) Civil Court Cases 528 (P&H)

Civil Procedure Code, 1908, Section 24, Hindu Marriage Act, 1955, Section 9 - Transfer of petition - Husband filed petition for restitution of conjugal rights - Wife living at another place with her parents - Wife having an infant child of one year with no source of income - Petition transferred to place where wife is residing. (Vandana Gupta Vs Ravi Gupta) 2006(2) Civil Court Cases 433 (M.P.)

Civil Procedure Code, 1908, Section 24, Hindu Marriage Act, 1955, Sections 9, 21-A - Matrimonial case - Transfer of - Convenience of wife is paramount consideration to transfer a case at or near the place where wife is residing - Wife having a child and had to travel for 3 hours from Amritsar to Ferozepur for attending the proceedings initiated by husband - Petition filed by husband at Ferozepur transferred to Amritsar. (Geeta Vs Rajinder)

2005(3) Civil Court Cases 613 (P&H)

Civil Procedure Code, 1908, Section 24 - Advocate - There is no general proposition of law to transfer a case when it is initiated by an Advocate or against an Advocate to a place other than the one where the Member of the Bar is practising. (Gurnam Singh & Anr. Vs Amandeep Singh & Ors.) 2005(2) Civil Court Cases 458 (P&H)

Civil Procedure Code, 1908, Section 24 - Divorce petition - Transfer - Wife seeking transfer of petition filed by husband at Nagpur to Court at Bombay - Wife residing at Bombay with her three years daughter - Plea of jobless, no income source and dependent on her brother - Husband prepared to meet travelling expenses of wife - Wife had to travel 18 hours to reach Nagpur - Merely because husband is ready to meet travelling expenses of wife cannot be compensated the hardship which wife had to suffer with her minor daughter - Divorce petition transferred to Court at Bombay. (Vidhya Shankar Iyer Vs Shankar Nagraj Iyer) 2006(4) Civil Court Cases 606 (Bombay)

Civil Procedure Code, 1908, Section 24 - Divorce proceedings - Transfer of - Convenience of wife is to be taken into consideration and ordinarily the request of wife is accepted - However in the present case allegation of threats is vague as no date or place is indicated in the petition - Wife comfortably and conveniently attending the hearings since 1999 - Effort on the part of the wife appears to cause delay in the final decision of the divorce petition - Petition dismissed. (Navneet Kaur Vs Captain A.P.S.Sandhu) 2003(3) Civil Court Cases 388 (P&H)

Civil Procedure Code, 1908, Section 24 - Matrimonial proceedings - Transfer - It is convenience of wife that must be looked at - Wife working in Delhi and husband filed suit at a far away place from Delhi - Suit transferred to Delhi. (Sumita Singh Vs Kumar Sanjay) AIR 2002 S.C. 396

Civil Procedure Code, 1908, Section 24 - Matrimonial proceedings - Transfer of - Proceeding pending in Court at place 'B' and wife residing at place 'K' with child aged 15 months - Convenience of wife must be considered - Proceedings transferred to Court at place 'K'. (Seema alias Preeti Vs Pramod Chandrakant Vernekar) 2004(3) Civil Court Cases 460 (Karnataka)

SC

Civil Procedure Code, 1908, Section 24 - Matrimonial suit - Transfer

of - Petitioner kidnapped from Bihar and taken to West Bengal - Signatures of petitioner obtained to show that she is married to respondent - Matrimonial suit filed by husband in a Court in West Bengal - Apprehension of bodily injury or death in case petitioner is to go to West Bengal - Father unable to travel with petitioner being very old - Averments not refuted by respondent - Matrimonial suit transferred from Court in West Bengal to Court in Bihar. (Priyanka Biswas & Ors. Vs Subrato Biswas) 2005(2) Apex Court Judgments 156 (S.C.) : 2005(3) Civil Court Cases 258 (S.C.)

Civil Procedure Code, 1908, Section 24 - Obstructor filed application under Order 21 Rule 97 - Application kept pending for orders - However, order for execution of decree with police help passed - No bias on part of executing Court - No case for transfer. (Balraj Singh & Anr. Vs Ajit Singh) 2004(3) Civil Court Cases 673 (Rajasthan)

Civil Procedure Code, 1908, Section 24 - Suit or proceeding cannot be transferred to a Court outside the State by exercising jurisdiction under Section 24 of Civil Procedure Code, 1908. (Jency Vs Biju Thomas) 2006(1) Civil Court Cases 408 (Kerala)

Civil Procedure Code, 1908, Section 24 - Transfer of a case - Trial Court had already completed the evidence of plaintiff and six witnesses of defendant already examined - Prayer for transfer can be entertained at the initial stage of the proceedings. (Gurnam Singh & Anr. Vs Amandeep Singh & Ors.) 2005(2) Civil Court Cases 458 (P&H)

Civil Procedure Code, 1908, Section 24 - Transfer of case - Party can approach District Court or High Court - When a party is unsuccessful in a transfer petition filed before District Court then that order can be challenged but party cannot approach High Court under Section 24 of Civil Procedure Code, 1908 for same relief - Party can however, approach High Court under Article 227 of the Constitution to redress his grievance. (Ariamma Sachariah Vs Rose Elizabeth Kurian) 2004(3) Civil Court Cases 292 (Kerala)

Civil Procedure Code, 1908, Section 24 - Transfer of case - Provision empowers High Court as well as District Judge to transfer a case - Once an application is dismissed by District Judge then High Court will not entertain an application on same grounds. (Momin Ali @ Mukif Vs Pranab Banerjee & Ors.) 2006(4) Civil Court Cases 71 (Gauhati)

SC **Civil Procedure Code, 1908, Section 24** - Transfer of case by High Court - Held, High Court had the requisite jurisdiction to withdraw any suit pending in any Court subordinate to it and try or dispose of the same inter alia on its own motion, wherefor even no notice is required to be issued. (Abdul Rahman Vs Prasony Bai & Anr.) 2003(1) Apex Court Judgments 302 (S.C.)

Civil Procedure Code, 1908, Section 24 - Transfer of Matrimonial proceedings - Convenience of wife has to be taken into consideration - Petition transferred to Court where wife resides. (V.Sailaja Vs Koteswara Rao) AIR 2003 A.P. 178

Civil Procedure Code, 1908, Section 24 - Transfer of petition - Proceedings before Rent Control Court - Transfer to Civil Court not permissible. (L.K.Phanesh Babu Vs Mohd.Akbar) AIR 2003 A.P. 168

Civil Procedure Code, 1908, Section 24 - Transferee Court - Decree drawn - Date of presentation of plaint to be mentioned in the decree is date on which suit was instituted in the original Court and not date on which it was received by transferee Court. (M.Krishna Rao & Anr. Vs M.L.Narasikha Rao & Ors.) 2004(2) Civil Court Cases 265 (A.P.)

Civil Procedure Code, 1908, Section 24 r/w 151 - Consolidation of cases - Objections to Arbitration award filed by Petitioner at Chandigarh on 28.1.2003 and Respondent filed objections on 29.1.2003 at Sonipat - Held, when proceedings with regard to the same matter have been initiated by parties at two places or more than two places then it is always proper to consolidate the proceedings at one place because it would avoid the possibility of any conflicting view - Case at Chandigarh transferred to Court at Sonipat as contract between the parties was within the jurisdiction of Court at Sonipat and witnesses are likely to be from that area. (Haryana Tourism Corporation Limited Vs M/s Lord Shiva Construction Company) 2004(3) Civil Court Cases 719 (P&H)

SC **Civil Procedure Code, 1908, Section 25** - Matrimonial dispute - Divorce petition filed by husband at Mumbai - Criminal case filed by wife at Etawah, Uttar Pradesh - Both parties seeking transfer of cases - Wife to look after a small child - Transfer petition filed by husband dismissed - Divorce petition filed by husband ordered to be transferred from Court at Mumbai to

Court at Etawah, Uttar Pradesh. (Neelam Pravin Singh Bhadoria Vs Pravin Singh Ramakant Bhadoria) 2006(4) Civil Court Cases 612 (S.C.) : 2006(3) Apex Court Judgments 424 (S.C.)

SC **Civil Procedure Code, 1908, Sections 25, 10** - Two suits arising out of the same transaction filed at Courts within jurisdiction of different High Courts - Court has to regard and respect S.10 CPC - However, considerations such as which is the place where most of the evidence is available, convenience of the parties and witnesses, which one of the two places is more convenient to access and attend and so on are also the factors to be kept in view and may in appropriate case persuade the Court to direct a transfer of case in departure from the rule underlying S.10 of CPC. (M/s Gupte Cardiac Care Centre & Hospital Vs Olympic Pharma Care Pvt. Ltd.) 2004(1) Apex Court Judgments 622 (S.C.) : 2004(3) Civil Court Cases 43 (S.C.)

SC **Civil Procedure Code, 1908, Sections 25, 10** - Two suits arising out of the same transaction filed at Courts within jurisdiction of different High Courts - Court has to regard and respect Section 10 of Civil Procedure Code, 1908- However, considerations such as which is the place where most of the evidence is available, convenience of the parties and witnesses, which one of the two places is more convenient to access and attend and so on are also the factors to be kept in view and may in appropriate case persuade the Court to direct a transfer of case in departure from the rule underlying Section 10 of Civil Procedure Code, 1908. (M/s Gupte Cardiac Care Centre & Hospital Vs Olympic Pharma Care Pvt. Ltd.) 2004(3) Civil Court Cases 43 (S.C.)

SC **Civil Procedure Code, 1908, Section 27 (As amended)** - “On such day not beyond thirty days from the date of the institution of the suit” - Meaning - It fixes outer time frame i.e. steps must be taken within thirty days from the date of the institution of the suit, to issue summons - Correct address and process fee must be filed in the Court within thirty days so that summons be issued by Court not beyond thirty days from the date of the institution of the suit. (Salem Advocate Bar Association Vs Union of India) 2003(1) Civil Court Cases 198 (S.C.)

Civil Procedure Code, 1908, Section 34, Negotiable Instruments Act, 1881, Section 80 - Interest - When suit is filed interest payable at 18% per annum is only upto date of institution of suit - Interest from date of filing

of suit is not covered by Section 80 NI Act but is governed by Section 34 of Civil Procedure Code, 1908. (Thankachan Vs Catholic Syrian Bank Ltd.) 2006(4) Civil Court Cases 657 (Kerala)

Civil Procedure Code, 1908, Section 34, Order 34 Rule 11 - Interest - Redemption of mortgage - No obligation to award interest on contractual rate upto date of redemption of mortgage - It is in discretion of Court to award interest so far as interest pendente lite and subsequent interest is concerned. (Roshan Dinshaw Karai Vs Sangita L.Mankani) 2003(2) Civil Court Cases 537 (Bombay)

SC Civil Procedure Code, 1908, Section 34, Order 37 Rule 3 - Interest - Suit under summary procedure - Liability not arising out of a commercial transaction - Rate of interest reduced from 18 percent to 6 percent per annum. (Rajni Kumar Vs Suresh Kumar Malhotra & Anr.) 2003(1) Apex Court Judgments 511 (S.C.)

Civil Procedure Code, 1908, Section 34, Telegraph Act, 1985, Sections 10, 16, Electricity (Supply) Act, 1948, Section 42 - Interest - Grant of - By District Court under Section 34 of Civil Procedure Code, 1908- Held, District Judge under Telegraph Act, acts as a civil court in dealing with applications under Section 16 of the Telegraph Act and he has power of discretion to grant interest invoking provision of Section 34 of Civil Procedure Code, 1908. (Power Grid Corporation of India Ltd. Vs Patchukoru Appa Rao & Ors.) 2006(2) Civil Court Cases 441 (A.P.)

Civil Procedure Code, 1908, Section 34, Telegraph Act, 1985, Sections 10, 16, Electricity (Supply) Act, 1948, Section 42 - Interest - Grant of - District Court in an appeal under Section 16 Telegraph Act awarding interest by invoking Section 34 of Civil Procedure Code, 1908- Held, Even in absence of any statutory provision for awarding interest the same is neither illegal nor without jurisdiction. (Power Grid Corporation of India Ltd. Vs Patchukoru Appa Rao & Ors.) 2006(2) Civil Court Cases 441 (A.P.)

Civil Procedure Code, 1908, Section 34 - Bank loan - Suit for recovery - 17% interest claimed on basis of Reserve Bank of India directives - Bank setting up specific case not denied by defendants - Court cannot deny interest claimed on principal sum adjudged. (Indian Bank Vs M/s M.R.Prabhu and Sons) AIR 2002 Kerala 44

Civil Procedure Code, 1908, Section 34 - Goods sold - Suit for recovery of money - Evidence that plaintiff supplied goods of value as claimed - Defendant failed to produce any evidence to prove that he made the payment - Thus, both on testimony of plaintiffs witnesses and on ground of damages for wrongfully withholding of amount on false and concocted grounds, plaintiff entitled to amount due with interest at 21% p.a. (M/s Premier Auto Electric Ltd. Vs Shyam Ahuja) AIR 2003 Delhi 156

Civil Procedure Code, 1908, Section 34 - Interest - Advance received for supply of goods - Goods not supplied - Award of interest prior to suit is not open to challenge - As regards future interest even on basis of S.34 interest at 6% per annum is proper. (M/s Mahanadi Multipurpose Industries Vs State of Orissa) AIR 2002 Orissa 150

Civil Procedure Code, 1908, Section 34 - Interest - Agreement to sell - Decree for return of earnest money - Agreement to sell executed as a collateral security for repayment of loan or debt - Loan taken in the year 1990 and defendant denied the execution of agreement itself - Interest pendente lite and future interest allowed at the rate of 12% per annum. (Ram Rakha Vs Sudesh Kumari) 2004(3) Civil Court Cases 521 (P&H)

Civil Procedure Code, 1908, Section 34 - Interest - Arbitration award - Arbitrator awarded interest @ 12% and the same reduced by District Judge to 9% - It is discretion of Arbitrator to award interest and this power can be exercised analogous to Section 34 of Civil Procedure Code, 1908- Held, when arbitrator exercised his discretion in allowing pendente lite interest @ 12% the same cannot be reduced by District Judge - Interest @ 12% restored. (Kamla Devi Lahoti Vs State of Rajasthan & Ors.) 2006(1) Civil Court Cases 696 (Rajasthan)

Civil Procedure Code, 1908, Section 34 - Interest - Bank loan - As public money is involved so Courts are to be very careful and cautious in granting the rate of interest and also quantum of amount on which the said rate of interest has to be granted - Interest at the rate of 15.5% on the total sum which was claimed on the date of institution of suit and also at 12% simple interest from date of institution of suit till date of realisation granted. (Syndicate Bank Vs M.Venkatesu) 2003(3) Civil Court Cases 291 (A.P.)

Civil Procedure Code, 1908, Section 34 - Interest - Cash credit

limit - Bank is entitled to interest at the rate of 12 per cent per annum on the amount due as per agreement. (State Bank of India Vs. M/s.H.Satish Hosiery Factory, Modhopuri & Anr.) 2004(2) Civil Court Cases 553 (P&H)

Civil Procedure Code, 1908, Section 34 - Interest - Commercial transaction - Interest @ 12% would be proper for period subsequent to decree till realisation. (Tamilnad Card Boards and Paper Mill Ltd. Vs Sirpur Paper Mills Ltd.) AIR 2003 A.P. 438

Civil Procedure Code, 1908, Section 34 - Interest - Contract of guarantee - Charging of additional interest for period of default in terms of contract - Does not amount to charging of penal interest. (Mukesh Gupta Vs SICOM Ltd.) AIR 2004 Bombay 104

Civil Procedure Code, 1908, Section 34 - Interest - Loan transaction - Interest at 6% p.a. on decretal amount from date of suit till realisation - Can be granted to creditor. (Smt.C.Madhu Vs B.V.S.Murthy) AIR 2003 Karnataka 113

Civil Procedure Code, 1908, Section 34 - Interest - No agreement - Interest can be granted @ 10% from date of demand till date of realisation on principal amount adjudged. (Brig. R.C.Datta Vs Dr.Rajiv Anand) AIR 2003 Delhi 199

Civil Procedure Code, 1908, Section 34 - Interest - Post decree - Not to exceed 6% - Interest from date of filing suit to date of decree maintained at 12% and from date of decree till date of realization interest allowed at 6% on the principal sum. (The Chairman, Grid Corporation Of Orissa Ltd., & Ors. Vs Hemalata Sethi & Ors.) 2004(2) Civil Court Cases 640 (Orissa)

Civil Procedure Code, 1908, Section 34 - Interest - Suit for recovery of price of goods supplied - In view of non commercial nature of transaction, interest awarded at the rate of 6% p.a. (The City Municipal Corporation, Kolar Vs S.A.Lateef & Company, V.Kota, Andhra Pradesh) 2005(1) Civil Court Cases 98 (Karnataka)

Civil Procedure Code, 1908, Section 34 - Interest - Transaction commercial - Reasonable rate of interest would be 12% per annum. (M/s Ajeet International Vs H.P. Horticulture Produce Marketing and Processing Corporation Ltd.) AIR 2002 H.P. 159

Civil Procedure Code, 1908, Section 34 - Interest pendente lite - Commercial transaction - Lending rate of nationalised Bank during relevant period, is applicable. (Karnataka State Industrial Investment and Development Corporation Limited Vs State Bank of India & Anr.) 2004(3) Civil Court Cases 653 (Karnataka)

Civil Procedure Code, 1908, Section 34 - Interest pendente lite and future interest - Stipulation in agreement that no interest is payable - Held, the same ceases to operate when once suit is filed - Plaintiff is entitled to interest in terms of Section 34 of the Code. (Balwant Kaur Vs Life Insurance Corporation of India) 2005(1) Civil Court Cases 540 (P&H)

Civil Procedure Code, 1908, Section 34 - Plot allotment - Additional price - Interest - Simple interest is payable - No provision in Haryana Development Authority Act, 1977 or Haryana Urban Development (Disposal of Land and Buildings) Regulations, 1978 and conditions of allotment stipulated in allotment letter for charging compound interest. (Gian Inder Sharma Vs Haryana Urban Development Authority) AIR 2003 P&H 128

Civil Procedure Code, 1908, Section 34 - Subsequent interest - Not claimed - Not a bar for the Court to grant subsequent interest. (A.Narayan Rao Vs Shanta Bai & Ors.) 2004(2) Civil Court Cases 409 (A.P.)

Civil Procedure Code, 1908, Section 34 - Two cheques dishonoured - Liability admitted in letters - No rate of interest specified - Defendant liable to pay interest at the rate of 18% per annum from it received notices of dishonour. (UIC Finance Pvt. Ltd. Vs Carews Pharmaceuticals Pvt.Ltd.) AIR 2004 Calcutta 68

SC Civil Procedure Code, 1908, Sections 34, 2(12) - Mesne profits - Interest - To be calculated on yearly basis - Mesne profits are earned year to year from the first year itself - Rate of interest cannot be more than it is claimed. (Sri Ramnik Vallabhdas Madhvani & Ors. Vs Taraben Pravinlal Madhvani) 2004(1) Apex Court Judgments 630 (S.C.) : 2004(3) Civil Court Cases 98 (S.C.)

Civil Procedure Code, 1908, Section 34(1) - Interest - Payable on principal amount - Principal amount means outstanding loan as capitalised on date of suit including balance of loan amount remaining unpaid as well as

interest accrued thereon at contractual rate, till date of suit. (Union Bank of India Vs M/s Chhatarpur Siliment Sales Corporation) AIR 2002 M.P. 145

Civil Procedure Code, 1908, Section 34(1) - Interest - Pendente lite and future - Court is not obliged to grant interest at contractual rate, either from date of suit till date of decree or from date of decree till payment thereof. (Union Bank of India Vs M/s Chhatarpur Silliment Sales Corporation) AIR 2002 M.P. 145

Civil Procedure Code, 1908, Section 35 - Costs - Respondent not appearing and contesting - No order of costs made. (Kulsoma Bibi Vs Abdul Mannan) AIR 2002 Calcutta 1

SC **Civil Procedure Code, 1908, Sections 35, 35A, 95** - False, frivolous or vexatious claims - Costs - The costs have to be actual reasonable costs including the cost of the time spent by the successful party, the transportation and lodging, if any, or any other incidental cost besides the payment of the court fee, lawyer's fee, typing and other cost in relation to the litigation - It is for the High Courts to examine these aspects. (Salem Advocate Bar Association, Tamil Nadu Vs Union of India) 2005(2) Apex Court Judgments 492 (S.C.) : 2005(3) Civil Court Cases 420 (S.C.)

Civil Procedure Code, 1908, Section 35-B, Order 17 Rule 2 - Defence - Striking off - Petitioner failing to appear on particular date and non-payment of costs - He could be proceeded with ex parte - Order striking off his defence - Not proper. (Black Diamond Glassware P.ltd. Vs Kusumlata Gupta) AIR 2004 Delhi 88

Civil Procedure Code, 1908, Section 35-B, Section 151 - Cost imposed while allowing application under Order 13 Rule 2 of Civil Procedure Code, 1908- Costs not paid - It will result into rejection of application and not the dismissal of suit. (Sudhir Chandra Agarwal Vs L.Rs. of Smt.Chhota Devi) 2006(2) Civil Court Cases 721 (Rajasthan)

Civil Procedure Code, 1908, Section 35-B - Cost - Non payment on next date of hearing - Issue not raised by either of the parties or taken notice of by Court - Cannot be said that thereafter on all or any subsequent date the same can be resuscitated or that Section 35-B would continue to apply with all its rigour thereafter as well. (Gurmail Singh Vs Raghbir Singh) 2005(2)

Civil Court Cases 320 (P&H)

Civil Procedure Code, 1908, Section 35-B - Cost for allowing application under Order 13 Rule 2 of Civil Procedure Code, 1908 not paid - It amounts to rejection of application and not dismissal of suit - Token cost imposed for allowing plaintiff to prosecute their suit further. (Sudhir Chandra Agarwal Vs L.Rs. of Smt. Chhota Devi) 2006(2) Civil Court Cases 721 (Rajasthan)

Civil Procedure Code, 1908, Section 35-B - Costs - Non payment - If issue of non payment of costs is not raised on first date the same cannot be raised on subsequent date - It amounts to waiver - Object of the provision is to secure efficacious prosecution of the suit and not to penalise the party against whom the costs have been awarded. (Roor Singh Vs Raghbir Singh) 2003(1) Civil Court Cases 279 (P&H)

Civil Procedure Code, 1908, Sections 38, 39(4) - Execution - Person against whom execution sought residing outside territorial jurisdiction of Court passing decree - Such Court cannot proceed with execution of decree. (Smt. Uma Kanoria Vs Pradip Kumar Daga) AIR 2003 Calcutta 162

Civil Procedure Code, 1908, Section 39 - Execution - Transfer of decree to another Court on ground that J.D.'s properties situate at that place - Order of transmission of decree for execution is a ministerial act and can be made ex parte - J.D. cannot challenge such order on ground that no notice was given to him before passing the order. (Swati Land Developers Pvt. Ltd. Vs Vrajlal Tapubhai Lodhia @ Vajubhai T. Lodhia & Ors.) 2004(2) Civil Court Cases 258 (Gujarat)

Civil Procedure Code, 1908, Section 39 - Execution - Transfer to another Court - Decree can be transferred for execution to another Court if J.D. actually and voluntarily carries on business or personally works for gain within the local limits of jurisdiction of such other Court irrespective of the fact that J.D. had property sufficient to satisfy the decree within the jurisdiction of Court which passed the decree. (Swati Land Developers Pvt. Ltd. Vs Vrajlal Tapubhai Lodhia @ Vajubhai T. Lodhia & Ors.) 2004(2) Civil Court Cases 258 (Gujarat)

SC

Civil Procedure Code, 1908, Section 39(4), Order 21 Rule 3, Order

21 Rule 48 - Section 39 does not authorise Court to execute decree outside its jurisdiction - However, provisions of Order 21 Rule 3 or Order 21 Rule 48 which provide differently, are not affected by Section 39(4) of the Code. (Salem Advocate Bar Association, Tamil Nadu Vs Union of India) 2005(2) Apex Court Judgments 492 (S.C.) : 2005(3) Civil Court Cases 420 (S.C.)

Civil Procedure Code, 1908, Section 47, Order 2 Rule 2 - Lease of land - With permission of lessor building constructed on land - Lessor sub-letting building and getting substantial amount of rent - Suit for recovery of possession filed against lessee and in respect of land only and not building thereon - Decree passed on admission of lessee to surrender land - Executable only against lessee and not sub lessees. (Mehta Suraya Vs United Investment Corporation) AIR 2002 Calcutta 108

Civil Procedure Code, 1908, Section 47, Order 21 Rule 30 - Civil as well as criminal proceedings - Fine amount in criminal proceedings - Executing Court cannot adjust or take into account part of fine amount received by complainant in criminal case. (Smt. Gayathri Vs Clement Mary) AIR 2003 Karnataka 134

Civil Procedure Code, 1908, Section 47, Order 21 Rule 95, Limitation Act, 1963, Art.134 - Auction purchaser - Possession - An application for possession by an auction purchaser has to be filed under Order 21 Rule 95 of Civil Procedure Code, 1908 within one year from the date of confirmation of sale and not from date of issuance of sale certificate - Separate suit for possession by an auction is barred under Explanation II of Section 47 of Civil Procedure Code, 1908. (Vegendla Subba Rao Vs Puvvada Srinivasa Rao & Ors.) 2006(2) Civil Court Cases 32 (A.P.)

SC Civil Procedure Code, 1908, Section 47, Order 21 Rules 54, 58 - Execution - Attachment of property - A person who is occupying the property but has no independent right to property cannot be permitted to raise objection to execution. (M/s TCI Finance Ltd. Vs Calcutta Medical Centre Ltd. & Anr.) 2006(1) Apex Court Judgments 580 (S.C.) : 2006(1) Civil Court Cases 402 (S.C.)

Civil Procedure Code, 1908, Section 47, Order 21 Rules 97, 99 - Execution - Death of D.H. - Inter se dispute between L.R's - Cannot be adjudicated in execution proceedings as the dispute does not pertain to

execution - Inter se dispute between L.R's of decree holder is to be decided in a separate suit - Even one of the L.R's can execute the decree. (Gopal Singh Vs Sher Singh & Ors.) 2006(4) Civil Court Cases 391 (P&H)

Civil Procedure Code, 1908, Section 47, Order 21 Rules 97 to 104

- Execution - Objections - Framing of issues - Merely because frivolous and vexatious objections are filed with a view to delay and defeat the execution of the decree, it is not necessary that Court must frame issues and grant opportunity to the parties to lead evidence. (Bikram Singh Vs Surjit Singh & Ors.) 2005(1) Civil Court Cases 374 (P&H)

Civil Procedure Code, 1908, Section 47, Order 21 Rules 97 to 104

- Suit for specific performance - Objections by son that suit property is a joint Hindu family and coparcenary property and that decree cannot be executed against him - Held, son has no right to intervene in the process of sale at this stage - Coparcener shall have right to challenge the alienation only after the sale is complete and that would be on execution of sale deed. (Bikram Singh Vs Surjit Singh & Ors.) 2005(1) Civil Court Cases 374 (P&H)

SC

Civil Procedure Code, 1908, Section 47, Order 23 Rule 1

- Suit for permanent injunction - Compromise - Decree passed on the basis of terms of settlement - Mutation refused by Revenue Authorities on the ground that by consent decree, right, title and interest of respondent is not declared - Second suit for declaration - Not maintainable in view of Section 47 of Civil Procedure Code, 1908- Though consent decree was passed in a suit for injunction, for all intent and purport it was a preliminary decree passed in a suit for partition - A fresh proceeding could not be initiated for giving effect thereto - Respondent could initiate a proceeding for preparation of final decree - They could also have filed an appropriate application for measurement of the land and delivery of possession pursuant thereto - But, by no stretch of imagination, a second suit could be held maintainable. (Tulsan Vs Pyare Lal & Ors.) 2006(3) Apex Court Judgments 656 (S.C.)

SC

Civil Procedure Code, 1908, Section 47, Order 3 Rules 1, 2

- Co-owner - Claiming his share in residential property, exempt from sale - Ownership of property - By an order burden to prove ownership shifted upon the owner - Ownership cannot be proved by power of attorney holder - Owner not entering in witness box - Held, owner has failed to establish that on the date of the decree he was the co-owner of the property and that he has any

independent source of income and contributed for purchase of the property from his own independent income and has further failed to discharge the burden of proving that owner has a share in the property. (Janki Vashdeo Bhojwani & Anr. Vs Indusind Bank Ltd. & Ors.) 2005(2) Civil Court Cases 324 (S.C.)

Civil Procedure Code, 1908, Section 47, Order 9 Rule 9 - Execution application - Dismissed in default - Second application for execution without getting the first application restored is maintainable. (Yash Pal Sharma Vs Ajit Singh & Ors.) 2004(2) Civil Court Cases 420 (P&H)

Civil Procedure Code, 1908, Section 47 - Bar of separate suit - Not attracted if objecting person is not party to suit or legal representative of party to suit. (Lalitkumar Ramlal Sharma Vs Jadavbai Murlidhar Sharma) 2003(1) Civil Court Cases 301 (Bombay)

SC Civil Procedure Code, 1908, Section 47 - Decree - A decree suffering from illegality or irregularity of procedure, cannot be termed inexecutable by the executing Court. (Rafique Bibi Vs Sayed Waliuddin) 2003(3) Civil Court Cases 710 (S.C.) : 2003(2) Apex Court Judgments 355 (S.C.)

Civil Procedure Code, 1908, Section 47 - Decree contemplated interest upto the date of decree - Executing Court granted interest after the date of decree as well - Held, Executing Court cannot go behind the decree - Since the decree contemplated interest only till the date of decree, it is not open to the Executing Court to grant interest beyond the date of decree on equitable consideration. (Mahender Kumar Vs Sri Ram & Anr.) 2006(2) Civil Court Cases 341 (P&H)

Civil Procedure Code, 1908, Section 47 - Executing Court cannot scan or review the reasoning provided by the Court in decreeing the suit. (International Security and Intelligence Agency Limited Vs Municipal Corporation) AIR 2002 Delhi 347

Civil Procedure Code, 1908, Section 47 - Execution - Decree based on khasra girdawari entries - Khasra girdawari entries ordered to be corrected - Held, J.D. is entitled to raise objection that decree has become unexecutable on the ground that the decree holder has lost the status on which the decree was based - Contention repelled that any subsequent order or change in the

status of decree holder could not be considered by the executing court for refusing to execute the decree. (Birkha Vs Phool Singh) 2003(1) Civil Court Cases 462 (P&H)

Civil Procedure Code, 1908, Section 47 - Execution - Decree for permanent injunction regarding user of flour mill - Mill itself entrusted back to D.H. - There is no further occasion for violating decree - Therefore entire decree stood satisfied on delivery of flour mill to D.H. - Dismissal of execution petition - Proper. (M/s Shiv Charan Din Dayal Jain Vs Mohan Lal) AIR 2004 Delhi 139

SC **Civil Procedure Code, 1908, Section 47** - Execution - Decree passed by Court having no jurisdiction - Such decree is a nullity - J.D. can object to its execution being a nullity and non est - Its invalidity can be set up whenever it is sought to be enforced including the stage of execution of the decree or any other collateral proceedings. (Sarwan Kumar & Anr. Vs Madan Lal Aggarwal) 2003(1) Apex Court Judgments 282 (S.C.)

SC **Civil Procedure Code, 1908, Section 47** - Execution - Decree will be a nullity if passed by Court not having jurisdiction - Lack of jurisdiction in the Court passing the decree must be patent on its face in order to enable the executing Court to take cognizance of such nullity based on want of jurisdiction otherwise normal rule that an Executing Court cannot go behind the decree must prevail. (Rafique Bibi Vs Sayed Waliuddin) 2003(3) Civil Court Cases 710 (S.C.) : 2003(2) Apex Court Judgments 355 (S.C.)

Civil Procedure Code, 1908, Section 47 - Execution - Dismissal on technical ground that all legal representatives of decree holder not made party to execution petition - Not a bar for fresh execution. (Thankamma Vs John) 2006(3) Civil Court Cases 719 (Kerala)

SC **Civil Procedure Code, 1908, Section 47** - Execution - Distinction between a decree which is void and a decree which is wrong, incorrect, irregular or not in accordance with law - Where a Court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such court would be without jurisdiction, non est and void ab initio - Defect of jurisdiction of the Court goes to the root of the matter and strikes at the very authority of the Court to pass a decree or make an order - Validity of such decree or order can be challenged at any stage, even in execution or

collateral proceedings - A decree suffering from illegality or irregularity of procedure, cannot be termed inexecutable by the executing court - Remedy of a person aggrieved by such a decree is to have it set aside in a duly constituted legal proceedings or by a superior court - An erroneous or illegal decision, which is not void, cannot be objected in execution or collateral proceedings. (Balvant N.Viswamitra & Ors. Vs Yadav Sadashiv Mule (D) through Lrs. & Ors.) 2004(2) Apex Court Judgments 255 (S.C.) : 2004(3) Civil Court Cases 485 (S.C.)

Civil Procedure Code, 1908, Section 47 - Execution - If on account of subsequent change of law or any subsequent development, decree becomes in executable, the same should be taken note of by the Executing Court. (Rasamani Dei Vs Naba Kishore Acharya & Anr.) 2006(1) Civil Court Cases 216 (Orissa)

SC **Civil Procedure Code, 1908, Section 47** - Execution - Non joinder of a party who is not necessary party to the suit - Does not render the decree a nullity. (Balvant N.Viswamitra & Ors. Vs Yadav Sadashiv Mule (D) through Lrs. & Ors.) 2004(2) Apex Court Judgments 255 (S.C.) : 2004(3) Civil Court Cases 485 (S.C.)

SC **Civil Procedure Code, 1908, Section 47** - Execution - Non joinder of a party who is not necessary party to the suit - Does not render the decree a nullity. (Balvant Vs Yadav) 2004(2) Apex Court Judgments 255 (S.C.)

Civil Procedure Code, 1908, Section 47 - Execution - Objections - Framing of issues - Issues need to be framed only when serious dispute is raised on facts and circumstances. (Sukhmander Singh Vs Ram Kishan Harbans Lal) 2006(4) Civil Court Cases 638 (P&H)

Civil Procedure Code, 1908, Section 47 - Execution - Objections to executability of decree - Execution of decree cannot be challenged on points which ought to have been taken in suit - What should precede the decree cannot follow it. (L.Rs. of Sheshkaran Vs L.Rs. of Kamlesh Ramsnehi) 2006(1) Civil Court Cases 305 (Rajasthan)

SC **Civil Procedure Code, 1908, Section 47** - Execution - Person claiming under the defendant or J.D. - Can challenge the decree or order by way of an appeal but cannot challenge the decree as being void or unenforceable in

execution. (Government of Orissa Vs M/s.Ashok Transport Agency & Ors.) 2005(1) Apex Court Judgments 366 (S.C.) : 2005(1) Civil Court Cases 744 (S.C.)

SC Civil Procedure Code, 1908, Section 47 - Execution - Plea that opportunity to deposit arrears of rent before passing the decree not granted as provided by the statute - It was for the tenants to have invited the attention of Court by making an application so as to avail an opportunity of wiping out the effect of their default - On the face of it decree suffers from a procedural irregularity which cannot be termed as “illegal decree” but decree cannot be said to be “without jurisdiction” or a “nullity” - Plea raised in execution was available by filing an appeal - Plea not available in execution proceedings. (Rafique Bibi Vs Sayed Waliuddin) 2003(3) Civil Court Cases 710 (S.C.) : 2003(2) Apex Court Judgments 355 (S.C.)

Civil Procedure Code, 1908, Section 47 - Execution - Scope of inquiry under S.47 CPC is limited to the questions of implementation and fulfilment of obligations under the decree. (Tushar Suresh Bhumkar Vs M/s. Suresh and Company) 2003(2) Civil Court Cases 252 (Bombay)

Civil Procedure Code, 1908, Section 47 - Ex parte decree - Execution - Objections - Decree alleged to be nullity as obtained without service of summons on the objector - Held, without moving an application to set aside the ex parte decree or obtaining stay of execution of decree it does not lie in the mouth of the petitioner to say that decree is a nullity in the eye of law - Objections dismissed by trial Court - Order upheld. (Jasbir Singh Vs Syndicate Bank & Ors.) 2004(2) Civil Court Cases 667 (P&H)

SC Civil Procedure Code, 1908, Section 47 - Identity of property - Issue raised and decided in ejectment proceedings - Court cannot go behind the decree by reopening the issue in execution proceedings. (Ravinder Kaur Vs Ashok Kumar & Anr.) 2003(2) Apex Court Judgments 593 (S.C.)

Civil Procedure Code, 1908, Section 47 - Identity of property - Question as to identity of property considered at the trial stage and Court held that identity is established - Held, it is not necessary to establish the identity of immovable property at the execution stage again. (Thankamma Vs John) 2006(3) Civil Court Cases 719 (Kerala)

Civil Procedure Code, 1908, Section 47 - Interest - Awarded in the decree at 18% per annum - Decree attained finality - If J.D. felt aggrieved he should have filed an appeal before the higher Courts - Executing Court cannot go behind the decree and the objection of J.D. regarding rate of interest is not maintainable. (M/s.Harbans Lal Raj Rishi Vs M/s.Lachhman Dass Rajesh Kumar) 2003(3) Civil Court Cases 128 (P&H)

Civil Procedure Code, 1908, Section 47 - Objection petition - Issues - Not necessary to frame issues in every objection petition - However if objector raises some disputed question and wants to lead evidence, then executing Court should allow an opportunity to the parties to lead evidence in support of their respective case. (Santosh Singh Vs Amar Kaur & Ors.) 2006(4) Civil Court Cases 212 (P&H)

Civil Procedure Code, 1908, Section 47 - Order passed u/s 47 CPC - Order is not appealable. (Ramai Ranjan Pati Vs Mst.Sahanaj Fatima) 2005(1) Civil Court Cases 268 (Orissa)

Civil Procedure Code, 1908, Section 47 - Order passed under Section 47 of Civil Procedure Code, 1908- Order is not appealable. (Ramai Ranjan Pati Vs Mst.Sahanaj Fatima) 2005(1) Civil Court Cases 268 (Orissa)

Civil Procedure Code, 1908, Section 47 - Review of order - Order passed absolutely clean and unambiguous - Court has no inherent power to review its order duly pronounced - No material about discovery of new and important matter or evidence brought on record - No mistake or error apparent on face of record or any other sufficient reason brought before Court - Application not maintainable. (Kishore Motiani Vs M/s Om Prakash & Sons) AIR 2003 Delhi 166

Civil Procedure Code, 1908, Section 47 - Suit for damages - Decree passed for an amount which was much more than pecuniary jurisdiction - Refusal of executing Court to execute decree on ground that decree was passed without jurisdiction - Not proper. (Arup Kumar Mukherjee Vs Regional Institution of Printing Technology) AIR 2003 Calcutta 40

Civil Procedure Code, 1908, Sections 47, 11 - Decree - Execution - Plea raised and rejected in ejectment petition - The same very plea cannot be reagitated in execution petition. (Naresh Kumar Gupta Vs Kartar Kaur

(died) through Lrs.) 2005(3) Civil Court Cases 122 (P&H)

Civil Procedure Code, 1908, Sections 47, 11 - Execution - Objections - Objections raised already adjudicated upon by first appellate Court and the same cannot be raised again in execution - Executing Court is bound in law to execute the decree. (Medical Supdt. E.S.I. Hospital, Amritsar Vs Prem Lata & Anr.) 2004(2) Civil Court Cases 619 (P&H) : 2004(2) Civil Court Cases 619 (P&H)

Civil Procedure Code, 1908, Sections 47, 152 - If decree is silent about some relief, power either under S.47 or S.152 CPC cannot be exercised by the Court. (Tushar Suresh Bhumkar Vs M/s.Suresh and Company) 2003(2) Civil Court Cases 252 (Bombay)

Civil Procedure Code, 1908, Sections 47, 2(2), Order 21 Rule 32 - Execution - Objections - Determination of - Does not amount to decree - No appeal lies from such an order - Order of District Judge entertaining such appeal and holding that decree is not executable reversed - Executing Court to proceed with execution. (Hira Lal Vs Lrs. of Kale Khan & Ors.) 2005(2) Civil Court Cases 288 (Rajasthan)

Civil Procedure Code, 1908, Sections 47, 52 & 60 - Execution - Compensation awarded to legal representatives on the death of a person does not form part of the estate of the deceased and cannot be attached in execution of decree against the deceased. (K.Ayyasammy Vs Mohanasundari & Ors.) 2004(2) Civil Court Cases 348 (Madras)

Civil Procedure Code, 1908, Sections 47, 60 - Family settlement after passing of the decree - J.D. having more than one house and shops earlier - Contention that J.D. has only one house which cannot be attached - Held, by family settlement it is an attempt to defeat the decree which is a result of collusion between J.D. and his brothers - Objection not maintainable. (M/s. Harbans Lal Raj Rishi Vs M/s.Lachhman Dass Rajesh Kumar) 2003(3) Civil Court Cases 128 (P&H)

Civil Procedure Code, 1908, Sections 47 & 115 - Order u/s 47 - Appeal against - Appeal does not lie against order passed u/s 47 CPC - However, order passed in appeal taken to be an order passed u/s 115 CPC as revision is maintainable against an order passed u/s 47 CPC - Procedural hurdles not

an impediment to refuse just remedy to the litigants. (Ramai Ranjan Pati Vs Mst.Sahanaj Fatima) 2005(1) Civil Court Cases 268 (Orissa)

Civil Procedure Code, 1908, Sections 47 & 115 - Order under Section 47 - Appeal against - Appeal does not lie against order passed under Section 47 of Civil Procedure Code, 1908- However, order passed in appeal taken to be an order passed under Section 115 of Civil Procedure Code, 1908as revision is maintainable against an order passed under Section 47 of Civil Procedure Code, 1908- Procedural hurdles not an impediment to refuse just remedy to the litigants. (Ramai Ranjan Pati Vs Mst.Sahanaj Fatima) 2005(1) Civil Court Cases 268 (Orissa)

Civil Procedure Code, 1908, Section 51 - Arrest and detention - J.D. carrying on old business in new name with dishonest intention to deprive D.H. of his legitimate dues - New business carried out at same place and in same goods as of old business - J.D. has means to pay but he is refusing to pay shows element of bad faith in his conduct - Case not of mere inability to pay due to circumstances beyond control - Order directing detention of J.D. in civil prison, proper. (Prakash Bhagwani Vs Sammati Food Products Pvt.Ltd.) AIR 2002 M.P. 127

Civil Procedure Code, 1908, Section 54 - Consent decree for partition - Sent to Collector for execution - Thereafter Civil Court does not become functus officio - Civil Court can see if Collector had acted in accordance or contrary to decretal mandate. (Mahadu Vs Appaji) 2003(2) Civil Court Cases 376 (Bombay)

Civil Procedure Code, 1908, Section 55(3) - Execution - Arrest of J.D. - Proceedings under Insolvency Act initiated by J.D. - Arrest of J.D. cannot be ordered during the pendency of proceedings under Insolvency Act irrespective of the fact whether any stay has been granted or not. (S.K.Saida (Employer), Supreme Tailors Vs P.Venkata Narasaiah & Anr.) 2006(1) Civil Court Cases 304 (A.P.)

Civil Procedure Code, 1908, Section 56, Consumer Protection Act, 1986, Sections 25 & 27 - Woman - Arrest in execution of money decree passed under Consumer Protection Act - A woman cannot be arrested in execution of a money decree passed under Consumer Protection Act, when decree is executed either by Civil Court or Forum itself - Analogy that a woman can

be arrested when amount is sought to be recovered under Recovery of Debts Due to Banks & Financial Institutions Act is not applicable to execution of money decree passed under the Consumer Protection Act. (Recovery of debts Due to Banks & Financial Institutions Act, 1993, Section 25). (Mary Chacko Vs Jancy Joseph) 2005(3) Civil Court Cases 626 (Kerala)

Civil Procedure Code, 1908, Section 60 - Attachment before judgment - Amount deposited before Criminal Court to stand as surety - Security amount of third party cannot be attached unless and until Court orders return of amount and J.D. has a disposing power. (Surender Singh Bajaj Vs M/s Kitty Steels Ltd.) AIR 2003 A.P. 13

Civil Procedure Code, 1908, Section 60 - Pension amount - Attachment - Once pension amount is deposited by Govt. in Savings Account of employee it loses all the characteristics of pension and the same is attachable in execution of a decree. (S.Nagappa Vs K.P.Hanumappa) 2004(2) Civil Court Cases 634 (A.P.)

Civil Procedure Code, 1908, Section 60(1), Proviso - Amount payable under policy of life insurance scheme to father of J.D. - Cannot be attached. (Regional Manager, LIC of India Vs John Bosco) AIR 2002 Madras 348

Civil Procedure Code, 1908, Section 60(1) Proviso (kb) - Money payable under policy of insurance - Is exempt from attachment and sale irrespective of the fact whether the insurance policy matures during the lifetime of the assured or the money becomes payable after the death of J.D. (Regional Manager, L.I.C. of India, Thanjavur Vs John Bosco) 2003(1) Civil Court Cases 574 (Madras)

Civil Procedure Code, 1908, Section 60(1)(ccc) (As applicable to Punjab and Haryana) - Execution - Decree of specific performance - Exemption of attachment and sale of one residential house - Exemption is not available in case of execution of decree of specific performance as residential house is not attached or sold in execution of decree but decree for specific performance is being executed. (Bikram Singh Vs Surjit Singh & Ors.) 2005(1) Civil Court Cases 374 (P&H)

Civil Procedure Code, 1908, Section 60(1)(ccc) (As in P&H) -

Residential house - Exemption from attachment - Burden to prove is on J.D. that the house or the building attached constitutes residential house and the same is in his occupation. (Sher Singh Vs State Bank of Patiala) 2003(1) Civil Court Cases 677 (P&H)

Civil Procedure Code, 1908, Section 60(1)(ccc) (As in P&H) - Residential house - Exemption from attachment - Not available when J.D. has created a lien or charge over a residential house. (Sher Singh Vs State Bank of Patiala) 2003(1) Civil Court Cases 677 (P&H)

Civil Procedure Code, 1908, Section 60(1)(ccc) (As in P&H) - Residential house - Exemption from attachment - The only residential house belonging to partners of the firm is exempt from attachment. (Kartar Singh & Ors. Vs The Union of India & Ors.) 2004(2) Civil Court Cases 490 (P&H)

Civil Procedure Code, 1908, Section 60(ccc) - Money decree on the basis of compromise passed in a suit for specific performance - In case of default to make payment house could be sold - Held, house not exempt from attachment. (Sikandar Singh Vs Harjit Pal Singh) 2005(1) Civil Court Cases 691 (P&H)

SC **Civil Procedure Code, 1908, Section 64(2)** - Concept of registration introduced by Section 64(2) by way of amendment of the Code is introduced to prevent false and frivolous cases of contracts being set up with a view to defeat the attachment - If the contract is registered and there is subsequent attachment, any sale deed executed after attachment will be valid - If it is unregistered, the subsequent sale after attachment will not be valid and such sale would not be protected - There is no ambiguity in sub-section (2) of Section 64 of Civil Procedure Code, 1908. (Salem Advocate Bar Association, Tamil Nadu Vs Union of India) 2005(2) Apex Court Judgments 492 (S.C.) : 2005(3) Civil Court Cases 420 (S.C.)

Civil Procedure Code, 1908, Section 64(2) (As amended) - Registration of document before attachment order is a must to claim right over the property under attachment. (Sumikin Bussan International, Hong Kong Vs Manharlal T.Mody & Ors.) 2005(1) Civil Court Cases 245 (Bombay)

Civil Procedure Code, 1908, Section 73 - Rateable distribution - Allowed on ground that both D.H's got asset of J.D. attached during pendency

of suit - Not proper. (Kanakam Srinivas Rao Vs Ganga Venkateswara Rao)
AIR 2003 A.P. 38

Civil Procedure Code, 1908, Section 73 Proviso (a) - Rateable distribution - Court sale of property which was under mortgage - Mortgagee of property is not entitled for rateable distribution in any surplus arising from the sale of such property in pursuance of a decree obtained by another decree holder - Mortgagee has to work out its remedy in the manner known to law in an independent proceedings for the realisation of whatever sums due to it pursuant to the said mortgage. (Venus Chit Fund and Finance Corporation Vs Pondichery Co-operative Housing Society Ltd.) 2004(3) Civil Court Cases 234 (Madras)

Civil Procedure Code, 1908, Section 80, Order 7 Rule 11(d) - Public Officer - Suit instituted against public officer for acts not relating to his official capacity - Acts whether done in official capacity or individual capacity can only be decided after completion of trial - Complaint cannot be rejected before completion of trial U.O.7 Rule 11(d). (C.Arjun Rao (D-1) Vs Dr.T.Rama Mohan Rao & Anr.) 2004(2) Civil Court Cases 464 (A.P.)

Civil Procedure Code, 1908, Section 80 - Leave to institute suit without service of notice - Only if urgent and immediate relief is involved in suit - Return of complaint for complying with provisions of S.80 without examining whether grant of urgent and immediate relief is involved in suit or not - Improper. (Inder Singh Vs State of H.P.) AIR 2002 H.P. 23

Civil Procedure Code, 1908, Section 80 - Notice - Application filed to dispense with issuance of notice on ground of urgency - Application allowed - Objection to maintainability of suit on ground of non issuance of notice - Cannot be sustained. (State of A.P. Vs Singam Setty) AIR 2003 A.P. 182

Civil Procedure Code, 1908, Section 80 - Notice - Mere despatch is not sufficient - It must be actually either delivered or tendered to the person to whom it is required to be given u/s 80 CPC. (State of Karnataka Vs M.Muniraju) AIR 2002 Karnataka 287

SC **Civil Procedure Code, 1908, Section 80** - Notice - Reply - Requirement of proper reply to the notice - If Court finds that either the notice is not replied

or reply is evasive and vague and has been sent without proper application of mind, Court shall ordinarily award heavy cost against the Government and direct it to take appropriate action against the concerned Officer including recovery of costs from him. (Salem Advocate Bar Association, Tamil Nadu Vs Union of India) 2005(2) Apex Court Judgments 492 (S.C.) : 2005(3) Civil Court Cases 420 (S.C.)

Civil Procedure Code, 1908, Section 80 - Notice - Sent as per registered post - Unrebutted statement of plaintiff to same effect - Service of notice held, proved. (Bharat Kumar & Anr. Vs Union of India & Anr.) 2004(3) Civil Court Cases 237 (Rajasthan)

SC **Civil Procedure Code, 1908, Section 80** - Notice - Two months notice period has to be excluded from computing the period of limitation u/s 15(2) of Limitation Act. (Union of India & Ors. Vs West Coast Paper Mills Ltd. & Anr.) 2004(2) Apex Court Judgments 237 (S.C.) : 2004(3) Civil Court Cases 250 (S.C.)

SC **Civil Procedure Code, 1908, Section 80** - Notice - Two months notice period has to be excluded from computing the period of limitation under Section 15(2) of Limitation Act. (Union of India & Ors. Vs West Coast Paper Mills Ltd. & Anr.) 2004(2) Apex Court Judgments 237 (S.C.) : 2004(3) Civil Court Cases 250 (S.C.)

SC **Civil Procedure Code, 1908, Section 80(1), Section 80(2)** - Government or public officer - Suit against - Notice under Section 80 of Civil Procedure Code, 1908 is imperative - In case urgent and immediate relief is to be granted suit can be instituted without service of notice under Section 80 with leave of the Court - Such leave must precede the institution of suit - Order granting leave must indicate the ground(s) pleaded and application of mind thereon - If Court is of the opinion that no urgent or immediate relief deserves to be granted it should return the plaint for presentation after complying with the requirement contemplated in sub-section (1) - Court cannot grant relief, interim or otherwise, except after giving Government or a public officer a reasonable opportunity of showing cause in respect of relief prayed for in the suit. (State of A.P. & Ors. Vs M/s Pioneer Builders, A.P.) 2006(4) Civil Court Cases 668 (S.C.)

Civil Procedure Code, 1908, Section 80(2), Order 7 Rule 11(d) -

Public Officer - Notice - When an urgent or immediate relief is sought for against a public officer in his official capacity, suit may be instituted, with the leave of the Court - If such public officer waives of his right of protection, he cannot be granted protection of bar of suit of law as contemplated U.O.7 Rule 11(d) - Whether such public officer has waived his right can only be decided after completion of the trial and plaint cannot be rejected before completion of trial U.O.7 Rule 11(d) CPC. (C.Arjun Rao (D-1) Vs Dr.T.Rama Mohan Rao & Anr.) 2004(2) Civil Court Cases 464 (A.P.)

Civil Procedure Code, 1908, Section 80(2) - Notice - Leave to sue without issuance of a notice - There must be a specific order to this effect - Such an order cannot be deemed to have been passed merely because trial Court has entertained the suit. (Jit Singh & Ors. Vs State of Punjab & Ors.) 2004(3) Civil Court Cases 261 (P&H)

Civil Procedure Code, 1908, Section 89 - Civil suit without exhausting expeditious remedy provided under Contract stipulation having certain incidences of arbitration agreement - Not proper - Filing of suit by aggrieved contractor - Is premature. (The Managing Director Vs Mareppa M.Naik) AIR 2003 Karnataka 115

Civil Procedure Code, 1908, Section 89 - Court as an arbitrator - By mutual agreement of parties power conferred in Civil Court - Held, Govt. or any party cannot compel Civil Court to arbitrate dispute on strength of agreement entered into between parties. (K.Venkulu Vs State of A.P.) AIR 2004 A.P. 85

Civil Procedure Code, 1908, Section 89 - Reference of dispute to arbitration, conciliation, judicial settlement including settlement through Lok Adalat - Dispute to be referred only if there exists element of settlement - An application to invoke the power conferred on Court is not required - Other party cannot be compelled to agree with such a proposal - If the parties do not agree to the forum, Court shall apply its mind, take a decision as to which of the four modes is suitable and refer the dispute to that forum - It is for the Court to decide as to which of the four methods should be adopted and no party can claim, as a matter of right, that his case shall be dealt with in any particular mode provided under Section 89 of the Code. (Basheer Vs Kerala State Housing Board) 2005(1) Civil Court Cases 558 (Kerala)

SC **Civil Procedure Code, 1908, Section 89 (As amended)** - Resort should be had to Alternative Dispute Resolution Mechanism with a view to bring an end litigation between the parties at an early date - S.89(2)(d) contemplates appropriate rules being framed with regard to mediation. (Salem Advocate Bar Association Vs Union of India) 2003(1) Civil Court Cases 198 (S.C.)

SC **Civil Procedure Code, 1908, Sections 89, 121 to 131** - Disputes - Settlement outside Court - Model Alternative Dispute Resolution and Mediation Rules - Draft rules finalised by Justice Jagannadha Rao Committee - High Courts to examine those rules expeditiously and to finalise within a period of four months. (Salem Advocate Bar Association, Tamil Nadu Vs Union of India) 2005(2) Apex Court Judgments 492 (S.C.) : 2005(3) Civil Court Cases 420 (S.C.)

SC **Civil Procedure Code, 1908, Sections 92, 11** - Representative suit - Binds not only the parties named in the suit title but all those who share common interest and are interested in the trust - Explanation VI to S.11 constructively bars by res judicata the entire body of interested persons from re-agitating the matters directly and substantially in issue in an earlier suit u/s 92 CPC. (Shiromani Gurdwara Parbandhak Committee Vs Mahant Harnam Singh C. (Dead), M.N.Singh & Ors.) 2004(1) Apex Court Judgments 446 (S.C.)

SC **Civil Procedure Code, 1908, Sections 92, 115** - Maintainability of suit under Section 92 of Civil Procedure Code, 1908- Preliminary issue framed - Order that suit is maintainable - Revision thereagainst is maintainable. (Vidyodaya Trust & Ors. Vs M/s Mohan Prasad R. & Ors.) 2006(3) Apex Court Judgments 01 (S.C.) : 2006(4) Civil Court Cases 209 (S.C.)

SC **Civil Procedure Code, 1908, Section 92** - 'Dharamsala' - User for 125 years as such - Whether leads to an inference that the same belongs to a public trust? - Held long user of a property as Dharamsala by itself would not lead to an inference that dedication of the property in favour of the public was complete and absolute - If there had been such a dedication then the same was expected to be recorded in the revenue records. (Kuldip Chand & Anr. Vs Advocate General to Government of Himachal Pradesh & Ors.) 2003(1) Apex Court Judgments 478 (S.C.)

SC **Civil Procedure Code, 1908, Section 92** - A Hindu is entitled to dedicate his property for religious and charitable purposes and no instrument in writing is necessary - When a dedication to a charity is sought to be established in absence of an instrument or grant, then such dedication must be established by cogent and satisfactory evidence of conduct of parties and user of property which show the extinction of the private secular character of the property and its complete dedication to charity - It must be proved that the donor intended to divest himself of his ownership in the dedicated property - Meaning of charitable purpose may depend upon the statute defining the same. (Kuldip Chand & Anr. Vs Advocate General to Government of Himachal Pradesh & Ors.) 2003(1) Apex Court Judgments 478 (S.C.)

Civil Procedure Code, 1908, Section 92 - Leave to file suit under Section 92 of Civil Procedure Code, 1908- Suit for removal of trustee of public religious and charitable trust - Suit whether filed for personal interest - Affidavit showed that suit is filed in representative capacity in interest of more than 700 villagers who have right of worship in temple - Interest which plaintiff shares with other villagers cannot be said to be a personal interest - No interference is called for in order granting leave to file suit under Section 92 of Civil Procedure Code, 1908. (Data Ram Vs Shiv Prasad Bhatt & Ors.) 2006(1) Civil Court Cases 615 (Uttaranchal)

Civil Procedure Code, 1908, Section 92 - Trust property - Pujari - Removal - Pujari claimed temple and property of temple as his private property - Temple built by right holders of village - As Pujari claimed his title in temple which is adverse to the temple as such he was rightly removed from the post of Pujari. (Hari Singh Vs Lord Shiva (Idol) 2003(2) Civil Court Cases 259 (P&H)

Civil Procedure Code, 1908, Section 94(e) - Interlocutory order - Power cannot be exercised in relation to property totally foreign to dispute and unconnected with claim of parties to suit. (Dinkar Tippanna Mirajkar Vs Bank of India) 2003(1) Civil Court Cases 182 (Bombay)

Civil Procedure Code, 1908, Section 96 - Appeal - Remedy of appeal is available against a decree and not against adverse finding. (Chandrakant & Ors. Vs Shrinivasrao died, LRs. Mainabai & Ors.) 2005(2) Civil Court Cases 716 (Bombay)

Civil Procedure Code, 1908, Section 96 - Appeal by person who is not party to suit - Can be filed with leave of Court if he is aggrieved by it or prejudicially affected by it - In order to get special leave, the person who files such a petition need only show prima facie that he is aggrieved by it and he is having an appealable interest. (Ramachandran Potti Vs Thankam) 2004(3) Civil Court Cases 534 (Kerala)

Civil Procedure Code, 1908, Section 96 - First appellate Court - Specific mention of all reasons given by trial Court - Not necessary. (Dr.S.S.Khurana Vs Mahaveer Prasad) AIR 2004 Rajasthan 107

SC Civil Procedure Code, 1908, Section 96(3), Legal Services Authorities Act, 1987, Sections 21 & 22 - Lok Adalat - Appeal against award - Does not lie - Even under Section 96(3) of Civil Procedure Code, 1908 no appeal lies from a decree passed by Court with consent of the parties - Similarly an award passed by Lok Adalat is with consent of parties as such no appeal against award lies. (P.T.Thomas Vs Thomas Job) 2005(2) Apex Court Judgments 452 (S.C.) : 2005(3) Civil Court Cases 01 (S.C.)

SC Civil Procedure Code, 1908, Section 96(3), Order 23 Rule 3 Proviso - Compromise decree - One party disputing it - Court adjudicating on the question whether there was a compromise or not - Decree thus passed by Court is not a compromise decree as such Section 96(3) of Civil Procedure Code, 1908 is not applicable and the party aggrieved by such decree passed on a disputed compromise or on rejection of such compromise would have the remedy of appeal. (Kishun @ Ram Kishun (Dead) through Lrs Vs Bihari (Dead) by Lrs.) 2005(2) Apex Court Judgments 556 (S.C.) : 2005(3) Civil Court Cases 462 (S.C.)

Civil Procedure Code, 1908, Sections 96, 100 - Second appeal - Not maintainable when first appeal is not preferred. (Hindustan Petroleum Corporation Ltd. Vs Dilip Prabhakar Dingorkar & Anr.) 2006(3) Civil Court Cases 261 (Bombay)

Civil Procedure Code, 1908, Sections 96, 11 - Cross suits between same parties relating to same property involving same issues - Disposal of common judgment - Two decrees passed - Appeal against only one decree preferred - Not maintainable - 'Judgment' and 'decree' not concepts which can be used in alternative - Res judicata, acquiescence and estoppel - Applicability

in determining maintainability of appeal against only one of two decrees arising from common judgment. (Darayas Bamanshah Medhora Vs Nariman Bamansha Medhora) AIR 2002 Gujarat 166

Civil Procedure Code, 1908, Sections 96, 115, Order 43 - Review - Does not take away the right of appeal - Review application instead of appeal filed - Review application dismissed - Appeal against decree and revision against dismissal of review application filed - Filing of review application is not abandonment of right to appeal - Appeal against decree and revision against dismissal of review application are maintainable. (Rita Wangdi Vs Loden Tshering Bhutia) 2006(3) Civil Court Cases 734 (Sikkim)

Civil Procedure Code, 1908, Sections 96, 115 & O.7 Rule 11 - Rejection of plaint - Appeal and not revision lies. (K.S.Geetha Vs Stanleybuck) AIR 2003 Madras 146

Civil Procedure Code, 1908, Sections 100, 103, Order 41 Rule 27 - Second appeal - Additional evidence - Additional evidence in second appeal is permissible if adducing additional evidence is in the interest of justice and evidence relating to subsequent happenings or events, which are relevant for disposal of second appeal. (Chapala Chinnabbayi & Ors. Vs Naralasetti Anusuyama & Ors.) 2006(2) Civil Court Cases 476 (A.P.) (DB)

SC **Civil Procedure Code, 1908, Sections 100, 107** - Suit for declaration - Dismissed by trial Court - First appellate Court decreed suit by holding that plaintiff has perfected title by adverse possession - High Court summarily rejected second appeal on ground that First Appellate Court's observation regarding adverse possession were not questioned - Held, High Court erred in holding that there was no challenge to conclusions regarding adverse possession - First Appellate Court was not justified in deciding issues which were not framed - Impugned judgment set aside and matter remanded to High Court for fresh consideration. (Viswanatha Achari Vs Kanakasabapathy) 2005(2) Apex Court Judgments 132 (S.C.) : 2005(3) Civil Court Cases 89 (S.C.)

Civil Procedure Code, 1908, Sections 100, 2(2), 115 & O.41 Rule 3, 3-A and 35, Limitation Act, 1963, Section 5 - Dismissal of appeal as time barred consequent upon dismissal of application for condonation of delay - Not a decree - When it is not decree, question of second appeal does not

arise - Such order is not appealable, but only revisable. (The Commissioner, Hubli-Dharwad Municipal Corporation, Dharwad Vs Shrishail & Ors.) 2004(2) Civil Court Cases 78 (Karnataka)

Civil Procedure Code, 1908, Section 100, Order 41 Rule 11 - Appeal
- Second appeal dismissed in limine - Amounts to merger of the judgment of the lower Appellate Court with that of the High Court. (Gulzara Singh & Ors. Vs Devinder Singh & Ors.) 2004(3) Civil Court Cases 455 (P&H)

Civil Procedure Code, 1908, Section 100, Order 41 Rule 11 - Appeal
- Second appeal dismissed in limine - Amounts to merger of the judgment of the lower Appellate Court with that of the High Court. (Gulzara Singh Vs Devinder Singh) 2004(3) Civil Court Cases 455 (P&H)

SC Civil Procedure Code, 1908, Section 100, Specific Relief Act, 1963, Section 16(c) - Second - Suit for specific performance - Ready and willing - Lack of pleading and proof - Trial Court and Ist Appellate Court dismissed suit - High Court in second appeal decreed suit - High Court did not discuss as to in what way requirement of Section 16(c) SRA is fulfilled - No basic finding of fact recorded by Courts below reversed and no reason assigned for taking a view contrary to that taken by Courts below - Impugned judgment set aside. (H.P.Pyarejan Vs Dasappa (Dead) by LRs. & Ors.) 2006(1) Apex Court Judgments 586 (S.C.) : 2006(1) Civil Court Cases 802 (S.C.)

Civil Procedure Code, 1908, Section 100, Transfer of Property Act, 1882, Section 53-A - Second appeal - Pleas to part performance of contract - Cannot be taken for first time in second appeal. (Sham Lal Vs Mathi) AIR 2002 H.P. 66

Civil Procedure Code, 1908, Section 100 - Appeal - Maintainability of suit - Specific issue framed - Suit held to be maintainable - Finding not challenged by defendant and the same became final - Defendant is not entitled to challenge said finding in second appeal. (Hameed & Ors. Vs Kanhaiya) 2005(1) Civil Court Cases 146 (Allahabad)

Civil Procedure Code, 1908, Section 100 - Second appeal - A Court of Second appeal cannot re-assess the evidence on record and record its own finding on factual aspects - All that it can do is to examine whether the Courts below acted with material irregularity or in excess of jurisdiction vested in

them and if their conclusions are perverse, unfair or capricious. (Smt. Basanti Bai Vs Sri Prafulla Kumar Routrai & Anr.) 2006(3) Civil Court Cases 247 (Orissa)

SC Civil Procedure Code, 1908, Section 100 - Second appeal - An inference of fact from a document is a question of fact - The legal effect of the terms or a term of a document is a question of law - Construction of a document involving the application of a principle of law, is a question of law - When there is a misconstruction of a document or wrong application of a principle of law while interpreting a document, it is open to interference under Section 100 of Civil Procedure Code, 1908. (Hero Vinoth (Minor) Vs Seshammal) 2006(2) Apex Court Judgments 484 (S.C.) : 2006(3) Civil Court Cases 120 (S.C.)

Civil Procedure Code, 1908, Section 100 - Second appeal - Appeal u/s 100 CPC can only be admitted if it raises a substantial question of law - A substantial question of law is one which involves question of general public importance that has not been settled by the Supreme court, Privy Council or by the Federal Court. (Saudarshan Kumar Vs Raj Rani) 2003(3) Civil Court Cases 564 (P&H)

Civil Procedure Code, 1908, Section 100 - Second appeal - Appellant not feeling aggrieved from the judgment and decree did not file first appeal - However, first appellate Court gave a finding by which his rights were infringed - Held, appellant is justified in filing the second appeal. (Punjab Wakf Board, Ambala Vs Gram Panchayat, Mangali Aklan & Anr.) 2005(2) Civil Court Cases 805 (P&H)

SC Civil Procedure Code, 1908, Section 100 - Second appeal - Concurrent finding on the exercise of discretionary jurisdiction - High Court should not interfere therewith without arriving at a finding that the discretion has been exercised by Courts below on wrong legal principle. (Manjunath Anandappa Urf. Shivappa Hanasi Vs Tammanasa & Ors.) 2003(1) Apex Court Judgments 520 (S.C.) : 2003(2) Civil Court Cases 552 (S.C.)

Civil Procedure Code, 1908, Section 100 - Second appeal - Concurrent finding recorded by Courts below by misreading evidence and suffering from legal infirmity - Can be interfered with in second appeal. (Rambhau Bhaduji Bhende Vs Kisan Bhaduji Bhende) 2004(2) Civil Court

Cases 222 (Bombay)

SC **Civil Procedure Code, 1908, Section 100** - Second appeal - Decided by High Court without formulating substantial question of law - Matter remitted to High Court for decision afresh in accordance with law - Memorandum of appeal has to precisely state substantial question of law involved in the appeal and High Court being satisfied that substantial question of law is involved it shall formulate that question and second appeal has to be heard on the question so formulated. (Ram Sakhi Devi Vs Chhatra Devi & Ors.) 2006(2) Civil Court Cases 166 (S.C.) : 2006(1) Apex Court Judgments 583 (S.C.)

Civil Procedure Code, 1908, Section 100 - Second appeal - Factual findings, unless perverse or are made without considering crucial evidence cannot be disturbed in second appeal. (Shaik Fathima Bi Vs Shaik Nanne Saheb (Died) per L.Rs.) 2005(2) Civil Court Cases 754 (A.P.)

Civil Procedure Code, 1908, Section 100 - Second appeal - Finding of fact - Concurrent findings of fact recorded by Courts below are not to be interfered with unless it is shown that the findings are without any evidence or perverse. (Meena Rani Vs Ajaib Singh) 2003(3) Civil Court Cases 20 (P&H)

Civil Procedure Code, 1908, Section 100 - Second appeal - Finding of fact - High Court in second appeal would not interfere in findings of fact by reappreciation of evidence unless there is error apparent on the face of record or the findings are based on no evidence. (Mehnga Singh & Ors. Vs Gurdial Singh & Ors.) 2004(2) Civil Court Cases 525 (P&H)

Civil Procedure Code, 1908, Section 100 - Second appeal - Finding of fact - High Court not to interfere unless finding is infested with illegality, improper exercise of jurisdiction or perversity. (Kunjabihari Pradhan Vs Jayanti Pradhan) 2003(3) Civil Court Cases 129 (Orissa)

SC **Civil Procedure Code, 1908, Section 100** - Second appeal - Finding of fact - If it is contrary to evidence on record and perverse then High Court can set it aside in second appeal. (Bondar Singh & Ors. Vs Nihal Singh & Ors.) 2003(1) Apex Court Judgments 557 (S.C.)

Civil Procedure Code, 1908, Section 100 - Second appeal - Finding of fact if contrary to evidence on record and are perverse, such finding deserve to be set aside in second appeal. (Sangappa Veerappa Katarki Vs Bhimappa Yamanappa Chabbi) 2004(2) Civil Court Cases 347 (Karnataka)

Civil Procedure Code, 1908, Section 100 - Second appeal - Finding of fact recorded by the first appellate Court on the basis of oral as well as documentary evidence - Cannot be gone into in second appeal. (Kulwant Singh Vs Phula Singh) 2004(2) Civil Court Cases 156 (P&H)

SC **Civil Procedure Code, 1908, Section 100** - Second appeal - Finding of lower Courts vitiated by non consideration of relevant evidence or by an essentially erroneous approach to the matter - Held, High Court in second appeal is not precluded from recording proper finding. (Phool Pata & Anr. Vs Vishwanath Singh & Ors.) 2005(2) Apex Court Judgments 297 (S.C.) : 2005(3) Civil Court Cases 210 (S.C.)

Civil Procedure Code, 1908, Section 100 - Second appeal - Findings of fact with regard to fraud and misrepresentation cannot be reopened in an appeal u/s 100 CPC unless findings are based on no evidence. (Channo Devi & Ors. Vs Ami Lal) 2004(2) Civil Court Cases 101 (P&H)

SC **Civil Procedure Code, 1908, Section 100** - Second appeal - First Appellate Court when assumes jurisdiction which did not vest in it, the same can be adjudicated in second appeal, treating it as a substantial question of law - However, where first appellate court is shown to have exercised its discretion in a judicial manner, it cannot be termed to be an error either of law or procedure requiring interference in second appeal. (Mst.Sugani Vs Rameshwar Das & Anr.) 2006(2) Apex Court Judgments 657 (S.C.) : 2006(3) Civil Court Cases 506 (S.C.)

SC **Civil Procedure Code, 1908, Section 100** - Second appeal - First Appellate Court when assuming jurisdiction not vesting in it the same can be adjudicated in second appeal, treating it as a substantial question of law - However, where first appellate court is shown to have exercised its discretion in a judicial manner, it cannot be termed to be an error either of law or of procedure requiring interference in second appeal. (Hero Vinoth (Minor) Vs Seshammal) 2006(2) Apex Court Judgments 484 (S.C.) : 2006(3) Civil Court Cases 120 (S.C.)

SC **Civil Procedure Code, 1908, Section 100** - Second appeal - High Court can interfere with the concurrent findings recorded by Courts below only on the substantial question of law either framed at the time of admission of appeal or reframed or substituted later on at the time of arguments. (K.G.Shivalingappa (dead) by Lrs. & Ors. Vs G.S.Eswarappa & Ors.) 2004(2) Apex Court Judgments 469 (S.C.) : 2004(3) Civil Court Cases 508 (S.C.)

SC **Civil Procedure Code, 1908, Section 100** - Second appeal - High Court did not formulate substantial question of law - Judgment cannot be maintained. (Chadat Singh Vs Bahadur Rama & Ors.) 2004(2) Apex Court Judgments 242 (S.C.) : 2004(3) Civil Court Cases 467 (S.C.)

Civil Procedure Code, 1908, Section 100 - Second appeal - High Court in second appeal cannot reappreciate evidence and reach a conclusion different than the one recorded by the Courts below. (Ram Chand Premi Vs Nawab Kaur) 2004(2) Civil Court Cases 188 (P&H)

SC **Civil Procedure Code, 1908, Section 100** - Second appeal - High Court in second appeal is not entitled to interfere with the concurrent findings of fact arrived at by the Courts below until and unless it is found that the concurrent findings of fact were perverse and not based on sound reasonings. (G.Mahalingappa Vs G.M.Savitha) 2005(3) Civil Court Cases 499 (S.C.)

SC **Civil Procedure Code, 1908, Section 100** - Second appeal - High Court remanded matter without formulating substantial question of law involved - Judgment of High Court set aside and matter remanded to High Court to dispose of second appeal in accordance with law after complying with requirement of S.100(4) CPC. (Sabitri Chatterjee Vs Debi Das Roy) 2005(1) Apex Court Judgments 525 (S.C.) : 2005(2) Civil Court Cases 351 (S.C.)

Civil Procedure Code, 1908, Section 100 - Second appeal - High Court should be slow to interfere with the concurrent findings of facts of Courts below. (Secretary, Communist Party of India (Marxist), Ganjam, Berhampur represented by Alikishore Patnaik Vs Judhistira Patnaik (since dead) and after him Hemalata Patnaik & Ors.) 2004(2) Civil Court Cases 683 (Orissa)

SC **Civil Procedure Code, 1908, Section 100** - Second appeal - If a document creating an easement by grant is construed as an 'easement of necessity' thereby materially affecting the decision of the case, it gives rise to a substantial question of law. (Hero Vinoth (Minor) Vs Seshammal) 2006(2) Apex Court Judgments 484 (S.C.) : 2006(3) Civil Court Cases 120 (S.C.)

Civil Procedure Code, 1908, Section 100 - Second appeal - If a document has been left out of consideration or misread and the findings are vitiated then it is a substantive question of law. (Malkhan Singh & Anr. Vs Deep Chand & Anr.) 2005(3) Civil Court Cases 15 (P&H)

SC **Civil Procedure Code, 1908, Section 100** - Second appeal - If two inferences are possible from a given set of circumstances then view drawn by lower Appellate Court is binding on the High Court in second appeal - Adopting any other approach is not permissible - High Court cannot substitute its opinion for the opinion of the first appellate court unless it is found that conclusion drawn by the first appellate Court is erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence. (Mst.Sugani Vs Rameshwar Das & Anr.) 2006(2) Apex Court Judgments 657 (S.C.) : 2006(3) Civil Court Cases 506 (S.C.)

Civil Procedure Code, 1908, Section 100 - Second appeal - Interpretation of document - Raises a substantial question of law. (Malkhan Singh & Anr. Vs Deep Chand & Anr.) 2005(3) Civil Court Cases 15 (P&H)

SC **Civil Procedure Code, 1908, Section 100** - Second appeal - Jurisdiction of High Court is confined to hearing on substantial questions of law - Interference with finding of fact by the High Court is not warranted if it involves reappreciation of evidence. (H.P.Pyarejan Vs Dasappa (Dead) by LRs. & Ors.) 2006(1) Apex Court Judgments 586 (S.C.) : 2006(1) Civil Court Cases 802 (S.C.)

SC **Civil Procedure Code, 1908, Section 100** - Second appeal - Landlord filed suit for permanent and mandatory injunction against tenant that he had carried out certain structural changes in premises causing substantial damage

to the building - Trial Court decreed suit and first appellate Court affirmed the decree - High Court dismissed second appeal by holding that no substantial question of law is involved - Held, findings recorded by Courts below were either pure findings of fact or mixed question of law and fact and no substantial question of law is involved - High Court was justified in dismissing second appeal. (Sarjas Rai & Ors. Vs Bakshi Inderjit Singh) 2005(1) Apex Court Judgments 558 (S.C.) : 2005(3) Civil Court Cases 243 (S.C.)

SC **Civil Procedure Code, 1908, Section 100** - Second appeal - Maintainable only if it involves a substantial question of law - Memorandum of appeal must precisely state the substantial question of law involved - High Court is obliged to satisfy itself regarding the existence of such a question and then has to formulate the substantial question of law - Appeal is to be heard on the question so formulated - Respondent at the time of hearing of appeal has a right to argue that no substantial question of law is involved. (Hero Vinoth (Minor) Vs Seshammal) 2006(2) Apex Court Judgments 484 (S.C.) : 2006(3) Civil Court Cases 120 (S.C.)

SC **Civil Procedure Code, 1908, Section 100** - Second appeal - Maintainable only if substantial question of law is involved - Memorandum of appeal must precisely state the substantial question of law involved - High Court is obliged to satisfy itself regarding existence of such a question - Appeal to be heard on substantial question of law framed - Respondent can contend that no substantial question of law is involved - High Court can hear appeal on a substantial question of law involved in the case but not so formulated at the time of admission either by mistake or by inadvertence. (Mst.Sugani Vs Rameshwar Das & Anr.) 2006(2) Apex Court Judgments 657 (S.C.) : 2006(3) Civil Court Cases 506 (S.C.)

SC **Civil Procedure Code, 1908, Section 100** - Second appeal - Memorandum of appeal precisely to state substantial question of law involved in the appeal and High Court on being satisfied that a substantial question of law is involved it shall formulate that question and second appeal has to be heard on the question so formulated. (Mathakala Krishnaiah Vs V.Rajagopal) 2005(1) Apex Court Judgments 387 (S.C.) : 2005(2) Civil Court Cases 313 (S.C.)

SC **Civil Procedure Code, 1908, Section 100** - Second appeal -

Memorandum of appeal shall precisely state substantial question or questions of law involved in the appeal - Where the High Court is satisfied that in any case any substantial question of law is involved it shall formulate that question and second appeal has to be heard on the question so formulated. (Chadat Singh Vs Bahadur Rama & Ors.) 2004(2) Apex Court Judgments 242 (S.C.) : 2004(3) Civil Court Cases 467 (S.C.)

Civil Procedure Code, 1908, Section 100 - Second appeal - Other view possible on reappréciation of evidence - Not amenable to interference in second appeal. (Sheela Devi & Ors. Vs Lal Chand & Anr.) 2006(4) Civil Court Cases 111 (P&H)

SC **Civil Procedure Code, 1908, Section 100** - Second appeal - Question of law - High Court has to consider whether a substantial question of law is involved or not and to give its reasons for coming to its conclusion either way - In case High Court finds that a substantial question of law is involved then it has to frame that question and has to answer it in accordance with law. (Rajeshwari Vs Puran Indoria) 2005(2) Apex Court Judgments 621 (S.C.) : 2006(1) Civil Court Cases 184 (S.C.)

Civil Procedure Code, 1908, Section 100 - Second appeal - Question of possession - It is a question of fact and not a question of law - High Court will not interfere in second appeal. (Mahabir Vs Sadhu Ram & Anr.) 2005(2) Civil Court Cases 157 (P&H)

Civil Procedure Code, 1908, Section 100 - Second appeal - Questions of law purporting to be substantial raised are only questions predominantly relating to appreciation of facts - Concurrent finding with reasons recorded granting discretionary relief of specific performance - Nothing established that the approach itself is erroneous or there is perversity in appreciation of evidence or recording of reasons for interference in second appeal - Second appeal dismissed. (Sughra Bee Vs Kareez Fatima Qureshi) 2004(2) Civil Court Cases 685 (A.P.)

SC **Civil Procedure Code, 1908, Section 100** - Second appeal - Scope - High Court can interfere in a case only when substantial questions of law are involved and those questions have been clearly formulated in the memorandum of appeal - At the time of admission of second appeal, it is the bounden duty and obligation of High Court to formulate substantial question

of law and then only High Court is permitted to proceed with the case to decide those questions of law. (Gurdev Kaur & Ors. Vs Kaki & Ors.) 2006(3) Apex Court Judgments 214 (S.C.) : 2006(4) Civil Court Cases 625 (S.C.)

Civil Procedure Code, 1908, Section 100 - Second appeal - Scope
- The existence of a “substantial question of law”, is the sine qua non for the exercise of jurisdiction by the High Court under the amended provision of S.100 CPC - High Court can exercise its jurisdiction u/s 100 CPC only on the basis of substantial questions of law which are to be framed at the time of admission of the second appeal and the second appeal has to be heard and decided only on the basis of such duly framed substantial questions of law. (Vishwasrao Madhavrao Chiplunkar & Ors. Vs Kamlabai Vishwasrao Chiplunkar & Ors.) 2005(1) Civil Court Cases 183 (Bombay)

Civil Procedure Code, 1908, Section 100 - Second appeal - Scope
- The existence of a “substantial question of law”, is the sine qua non for the exercise of jurisdiction by the High Court under the amended provision of Section 100 of Civil Procedure Code, 1908- High Court can exercise its jurisdiction under Section 100 of Civil Procedure Code, 1908 only on the basis of substantial questions of law which are to be framed at the time of admission of the second appeal and the second appeal has to be heard and decided only on the basis of such duly framed substantial questions of law. (Vishwasrao Madhavrao Chiplunkar & Ors. Vs Kamlabai Vishwasrao Chiplunkar & Ors.) 2005(1) Civil Court Cases 183 (Bombay)

SC **Civil Procedure Code, 1908, Section 100** - Second appeal - Second appeal cannot be decided on merely equitable grounds - Concurrent findings of fact howsoever erroneous cannot be disturbed in second appeal - Substantial question of law has to be distinguished from a substantial question of fact. (Mst.Sugani Vs Rameshwar Das & Anr.) 2006(2) Apex Court Judgments 657 (S.C.) : 2006(3) Civil Court Cases 506 (S.C.)

SC **Civil Procedure Code, 1908, Section 100** - Second appeal - Substantial question of law - Suit for specific performance - Discretion - An order in exercise of discretion may not involve a substantial question of law - However, question whether a Court could, in law, exercise a discretion at all for decreeing specific performance, could be a question of law that substantially affects the rights of parties in that suit. (Rajeshwari Vs Puran Indoria) 2005(2) Apex Court Judgments 621 (S.C.) : 2006(1) Civil Court

Cases 184 (S.C.)

SC **Civil Procedure Code, 1908, Section 100** - Second appeal - Substantial question of law not framed while deciding second appeal - Judgment cannot be sustained - Matter remanded for decision afresh by formulating substantial question of law. (Madan Lal & Anr. Vs Bal Krishan & Ors.) 2006(2) Civil Court Cases 39 (S.C.)

SC **Civil Procedure Code, 1908, Section 100** - Second appeal - Substantial questions of law formulated for consideration in course of writing judgment - Parties not made known about the substantial questions of law - Judgment of High Court not sustainable. (Sayed Muhammed Mashur Kunhi Koya Thangal Vs Badagara Jumayath Palli Dharas Committee & Ors.) 2005(1) Apex Court Judgments 73 (S.C.) : 2005(1) Civil Court Cases 670 (S.C.) : 2005(1) Civil Court Cases 670 (S.C.)

Civil Procedure Code, 1908, Section 100 - Second appeal - Where finding is bald and is without any evidence then second appellate court has ample power to interfere in the findings of fact. (Ram Kumar Vs Rattan Parkash & Ors.) 2006(4) Civil Court Cases 189 (P&H)

SC **Civil Procedure Code, 1908, Section 100** - Second appeal - Where trial Court and/or the first Appellate Court misdirected themselves in appreciating the question of law and placed the onus on wrong party there is scope for interference u/s 100 CPC after formulating a substantial question of law. (Krishna Mohan Kul @ Nani Charan Kul & Anr. Vs Pratima Maity & Ors.) 2003(2) Apex Court Judgments 368 (S.C.)

SC **Civil Procedure Code, 1908, Section 100 (5)** - Second appeal - High Court can hear second appeal on any substantial question, not formulated earlier if for reasons to be recorded it is satisfied that case involves such question. (Phool Pata & Anr. Vs Vishwanath Singh & Ors.) 2005(2) Apex Court Judgments 297 (S.C.)

SC **Civil Procedure Code, 1908, Section 100-A (As amended)** - No further appeal in certain cases - Suggestion that where the original decree is reversed by a Single Judge of the High Court there should be a provision of LPA - Rules can solve this problem. (Salem Advocate Bar Association Vs Union of India) 2003(1) Civil Court Cases 198 (S.C.)

SC **Civil Procedure Code, 1908, Section 100(5)** - Second appeal - High Court can hear second appeal on any substantial question, not formulated earlier if for reasons to be recorded it is satisfied that case involves such question. (Phool Pata & Anr. Vs Vishwanath Singh & Ors.) 2005(3) Civil Court Cases 210 (S.C.)

Civil Procedure Code, 1908, Section 102 - Second appeal - Monetary limit - Applicable only if suit is for recovery of money - In other cases appellate remedy cannot be barred - Amendment is only prospective. (Nabeessa Vs Abdul Majeed) 2006(4) Civil Court Cases 463 (Kerala)

Civil Procedure Code, 1908, Section 102 (As amended) - Right of second appeal - Right accrued prior to enforcement of amendment - Not saved. (Jagdish Chandra Vs Arvind Singh) AIR 2003 Allahabad 119

Civil Procedure Code, 1908, Section 105(2) - Remand - Appeal thereagainst not filed - Remand order cannot be challenged in an appeal against judgment and decree after remand before the forum which had passed the remand order. (Bhajan Singh & Ors. Vs Jaswant Singh) 2006(3) Civil Court Cases 487 (P&H)

Civil Procedure Code, 1908, Section 113 - Opinion of High Court - Pleadings in plaint and relief claimed not involving issue regarding validity of any Act, Ordinance or Regulation or provisions of Act - Held, matter cannot be referred for opinion of High Court under S.113. (Mohammed Azharuddin Vs Dr.A.C.Muthaiah) AIR 2002 A.P. 409

Civil Procedure Code, 1908, Section 115, Hindu Marriage Act, 1955, Section 24 - Maintenance pendente lite - Revision against order granting maintenance pendente lite is maintainable. (Pushpa alias Pooja Vs State of U.P. & Ors.) 2005(3) Civil Court Cases 113 (Allahabad)

Civil Procedure Code, 1908, Section 115, Motor Vehicles Act, 1988, Section 173 - Claim petition under Motor Vehicles Act - Revision is not maintainable against order of MACT as MACT is not a Court for the purpose of S.115 CPC. (Oriental Insurance Co. Ltd. & etc. Vs Basanagouda & Anr.) 2004(3) Civil Court Cases 297 (Karnataka)

Civil Procedure Code, 1908, Section 115, Motor Vehicles Act,

1988, Section 173 - Claim petition under Motor Vehicles Act - Revision is not maintainable against order of MACT as MACT is not a Court for the purpose of Section 115 of Civil Procedure Code, 1908. (Oriental Insurance Co. Ltd. & etc. Vs Basanagouda) 2004(3) Civil Court Cases 297 (Karnataka)

SC **Civil Procedure Code, 1908, Section 115, Motor Vehicles Act, 1988, Sections 173, 149(2), Constitution of India, Arts.226/227** - Insurer - Writ petition challenging award of interest for a specific period - Not maintainable as Insurer has a remedy to file appeal against the award of Tribunal on available defences envisaged under the statute. (Bijoy Kumar Dugar Vs Bidyadhar Dutta & Ors.) 2006(1) Apex Court Judgments 602 (S.C.) : 2006(2) Civil Court Cases 287 (S.C.)

Civil Procedure Code, 1908, Section 115, Order 18 Rule 4 - Order for taking affidavit of witness in lieu of recording his evidence by Court in examination-in-chief - Since order does not finally dispose of suit proceedings, revision does not lie against such an order. (Ibrahim Farukmiya Karajgi Vs Kasimkhan) 2003(2) Civil Court Cases 171 (Karnataka)

Civil Procedure Code, 1908, Section 115, Order 26 Rule 9 - Refusal to appoint second local commissioner - Revision is maintainable against such order. (Ghurhu Vs X Additional District Judge, Varanasi & Ors.) 2004(2) Civil Court Cases 309 (Allahabad)

Civil Procedure Code, 1908, Section 115, Order 6 Rule 17 - Revision against order allowing amendment of plaint - Petition is maintainable - Contention that such order is not an order having effect of deciding any case and therefore revision is not maintainable, not tenable. (Dattaram V.Dharwadkar Vs Ghanashyam G.Bhende) 2003(2) Civil Court Cases 311 (Bombay) 311

Civil Procedure Code, 1908, Section 115, Order 6 Rule 17 - Revision against order allowing amendment of pleadings - Order allowing amendments ordinarily should not be interfered in revision. (Harbans Lal Vs Dev Raj) 2003(1) Civil Court Cases 526 (P&H)

Civil Procedure Code, 1908, Section 115, Order 7 Rule 11 - Rejection of application U.O.7 Rule 11 holding valuation of suit as proper - Revision against - Not maintainable as jurisdiction of Court is not involved

in the matter. (Golden Tringle Fort & Palace Pvt.Ltd. Vs Rajkumari Sidhi Kumari) 2003(2) Civil Court Cases 222 (Rajasthan)

Civil Procedure Code, 1908, Section 115 - Document - Admitting or refusing to admit in evidence - No general rule that such order is not revisable as it does not amount to 'Case decided' - Question depends upon nature of document and facts of a particular case. (Sri K.Anajneya Setty Vs Sri K.H.Rangiah Setty) AIR 2002 Karnataka 387

SC **Civil Procedure Code, 1908, Section 115** - Eviction order - Upheld upto Supreme Court - Objections in execution petition dismissed by trial court and appeal thereagainst also dismissed - Civil suit filed alongwith an application for ad interim injunction which was declined - Tenant then filed second objection petition reiterating objections earlier raised with additional ground of fraud - This application also dismissed - High Court in revision held that if execution is allowed then it would render the suit filed by tenant infructuous - Held, an order interim in nature or which does not finally decide the list, cannot be challenged by way of a revision u/s 115 of CPC - Fraud has to be pleaded and proved - In the entire history of litigation nothing was pleaded, much less proved, as fraud - High Court erred in entertaining revision and granting relief - Impugned order set aside. (Gayatri Devi & Ors. Vs Shashi Pal Singh) 2005(1) Apex Court Judgments 637 (S.C.) : 2005(2) Civil Court Cases 215 (S.C.)

SC **Civil Procedure Code, 1908, Section 115** - Interim order or an order which does not finally decide the lis, cannot be challenged by way of a revision petition. (Gayatri Devi & Ors. Vs Shashi Pal Singh) 2005(1) Apex Court Judgments 637 (S.C.) : 2005(2) Civil Court Cases 215 (S.C.)

Civil Procedure Code, 1908, Section 115 - Only final orders stricto sensu are revisable. (Madhavan Vs Narayana Das) AIR 2003 Kerala 103

Civil Procedure Code, 1908, Section 115 - Other proceedings - Means orders passed in civil proceedings registered other than suits. (Mrityunjay Sen Vs Shrimati Sikha Sen) AIR 2003 Calcutta 165

SC **Civil Procedure Code, 1908, Section 115** - Revision - Decided without notice to the other party - Adjudication adverse to the other party without notice to him is clear violation of natural justice - Order under appeal

set aside - Matter remitted for fresh consideration. (Suresh Chandra Nanhorya Vs Rajendra Rajak & Ors.) 2006(4) Civil Court Cases 462 (S.C.)

SC **Civil Procedure Code, 1908, Section 115** - Revision - High Court in revision jurisdiction cannot interfere with the findings of fact recorded by Courts below and reappreciate evidence and interfere with the findings unless it is found that the findings recorded by lower court are perverse or there has been non application of mind. (Management of Kalpataru Vidya Samasthe (R) & Anr. Vs S.B.Gupta & Anr.) 2006(1) Apex Court Judgments 62 (S.C.)

Civil Procedure Code, 1908, Section 115 - Revision - Where order, if allowed to stand, would occasion failure of justice or cause irreparable injury to party against whom it is made, such order needs interference - Request to record evidence either by way of Commission or audio-video link rejected - It amounts to depriving party of its right to lead evidence - Order is liable to be set aside in revision. (Twentieth Century Fox Film Corporation, Los Angeles, U.S.A. & Anr. Vs NRI Film Production Associates (Private) Limited, Mysore) 2004(2) Civil Court Cases 388 (Karnataka)

Civil Procedure Code, 1908, Section 115 - Revision against interlocutory order is maintainable only if order impugned finally disposes of the suit or other proceedings - Even an order suffering from jurisdictional error cannot be interfered with under S.115 CPC. (M/s. Vedant Exports & Ors. Vs Bank of Baroda) 2003(2) Civil Court Cases 580 (Rajasthan)

SC **Civil Procedure Code, 1908, Section 115 -- Revision** - Decided without notice to the other party - Adjudication adverse to the other party without notice to him is clear violation of natural justice - Order under appeal set aside - Matter remitted for fresh consideration. (Suresh Chandra Nanhorya Vs Rajendra Rajak & Ors.) 2006(3) Apex Court Judgments 517 (S.C.)

SC **Civil Procedure Code, 1908, Section 115 (As amended)** - Amendment of S.115 - Impact on power of High Court under Articles 226 and 227 Constitution of India - Interlocutory orders passed by Courts subordinate to the High Court - Remedy of revision against such orders excluded by amendment in CPC - However, such orders are open to challenge in certiorari and supervisory jurisdiction of High Court - Curtailment of revisional jurisdiction of High Court does not take away constitutional jurisdiction of

High Court to issue writ of certiorari nor its power of superintendence. (Surya Dev Rai Vs Ram Chander Rai & Ors.) 2004(2) Apex Court Judgments 221 (S.C.)

SC **Civil Procedure Code, 1908, Section 115 (As amended)** - Revision - No revision lies against interim order - Revision is maintainable only if order has given finality to suit or other proceeding. (Shiv Shakti Coop. Housing Society, Nagpur Vs M/s Swaraj Developers & Ors.) 2003(2) Apex Court Judgments 182 (S.C.)

SC **Civil Procedure Code, 1908, Section 115 (As amended)** - Revision - S.115 is a source of power for High Court to supervise subordinate Courts - Scope for making revision under S.115 is not linked with right of appeal. (Shiv Shakti Coop. Housing Society, Nagpur Vs M/s Swaraj Developers & Ors.) 2003(2) Apex Court Judgments 182 (S.C.)

SC **Civil Procedure Code, 1908, Section 115 (As amended)** - Revision - Shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court. (Shiv Shakti Coop. Housing Society, Nagpur Vs M/s Swaraj Developers & Ors.) 2003(2) Apex Court Judgments 182 (S.C.)

Civil Procedure Code, 1908, Section 115 & O.6 Rule 17 - Plaint - Amendment - Revision against order allowing amendment - Interference not permissible as amendment even if was refused would not have finally disposed of the suit. (K.R.Subbaraju Vs M/s Vasavi Trading Co.) AIR 2002 Karnataka 407

SC **Civil Procedure Code, 1908, Section 115(1)** - Constitutional powers of High Courts under Article 227 exist untrammelled by the amendment in Section 115 of the Code. (Salem Advocate Bar Association, Tamil Nadu Vs Union of India) 2005(2) Apex Court Judgments 492 (S.C.) : 2005(3) Civil Court Cases 420 (S.C.)

SC **Civil Procedure Code, 1908, Section 144, Order 39 Rules 1,2** - Restitution - Dispossession despite order of status quo - Interim mandatory injunction granted - Possession delivered to plaintiff - Order set aside by Supreme Court - Possession ordered to be restored to defendant - Defendant not to create third party interests pending disposal of suit. (Kishore Kumar

Khaitan & Anr. Vs Praveen Kumar Singh) 2006(2) Apex Court Judgments 257 (S.C.) : 2006(2) Civil Court Cases 484 (S.C.)

Civil Procedure Code, 1908, Section 144 - Appeal - During pendency of appeal decree executed - Appeal cannot be dismissed on this ground - Appellate Court has power to allow appeal and dismiss the suit - In such an event, appellants are entitled to invoke the provision of Section 144 of Civil Procedure Code, 1908 and request the Court for restitution. (Smt. Sanjeevamma & Ors. Vs G.Krishna & Ors.) 2004(3) Civil Court Cases 316 (Karnataka)

Civil Procedure Code, 1908, Section 144 - Restitution - Application filed within 12 years from date of judgment is maintainable. (Gorle Sanyasamma & Ors. Vs District Judge, Visakhapatnam) 2003(1) Civil Court Cases 21 (A.P.)

SC **Civil Procedure Code, 1908, Section 144** - Restitution - It is statutory recognition of a pre-existing rule of justice, equity and fair play - Even away from S.144 CPC Court has inherent jurisdiction to order restitution so as to do complete justice between the parties. (South Eastern Coalfields Ltd. Vs State of M.P. & Ors.) 2003(2) Apex Court Judgments 708 (S.C.)

SC **Civil Procedure Code, 1908, Section 144** - Restitution - Order passed by Court when found at the end not sustainable then a party gaining advantage which it would not have otherwise earned or the other party has suffered impoverishment which it would not have suffered but for the order of the Court then successful party is entitled to be compensated in the same manner in which the parties would have been if order of Court would have not been passed - Successful party can demand (a) the delivery of benefit earned by the opposite party under the Court order, or (b) to make restitution for what it has lost. (Karnataka Rare Earth & Anr. Vs The Senior Geologist, Department of Mines and Geology & Anr.) 2004(1) Apex Court Judgments 321 (S.C.)

SC **Civil Procedure Code, 1908, Section 144** - Restitution - Release of money withheld by interim order of Court - Successful party finally held entitled to relief assessable in terms of money is entitled to suitable reasonable interest for the period for which the interim order of the Court withholding the release of money had remained in operation - Interest is often a normal

relief given in restitution - Such interest is not controlled by the provision of Interest Act 1839 or 1978. (South Eastern Coalfields Ltd. Vs State of M.P. & Ors.) 2003(2) Apex Court Judgments 708 (S.C.)

SC **Civil Procedure Code, 1908, Section 144** - Restitution - Scope of provision is wide enough so as to include therein almost all kinds of variation, reversal, setting aside or modification of a decree or order - It is duty of Court to place parties in the position which they would have occupied but for such decree or such part thereof as has been varied or reversed. (South Eastern Coalfields Ltd. Vs State of M.P. & Ors.) 2003(2) Apex Court Judgments 708 (S.C.)

Civil Procedure Code, 1908, Sections 144, 151 - Restitution - Construction raised in the garb of ad interim injunction - Thereafter suit dismissed for default - Removal of construction raised in the garb of ad interim injunction - Petition under section 144 is not maintainable unless there is any decree or order passed by a competent court of law which is either varied or reversed by appellate court - Appeal does not lie against an order passed by lower Court in a petition filed under Section 144 of Civil Procedure Code, 1908 which is not maintainable under the said provision. (Hiranand & Anr. Vs T.N.Khambati) 2006(3) Civil Court Cases 434 (A.P.)

Civil Procedure Code, 1908, Sections 144, 151 and O.9 Rule 13 - Restitution - Relief at interlocutory stage can be granted - Tenant evicted in execution of ex parte decree - Sale of property in the meantime - Ex parte decree set aside as it was passed even without notice to the tenant - Order of restitution can be passed against purchaser - Relief of restitution can be granted at an earlier stage which relief can be granted to the party at the disposal of the case which is the main relief itself. (S.Vasanthakumar Vs Mohammed Ariff) 2003(3) Civil Court Cases 61 (Karnataka)

Civil Procedure Code, 1908, Section 146, Order 21 Rule 1 - Decree - Execution - By person claiming to be transferee by assignment - Decree not transferred by assignment in writing or by operation of law to applicant - Property in question was sold to him by heirs of deceased - Applicant was thus purchaser in interest and not assignee of decree - Application was required to file application u/s 146 - As application u/s 146 was barred by time as such applicant has no right to move application U.O.21 Rule 1 CPC. (Kedar Ram Vs Additional District Judge) AIR 2004 All. 197

Civil Procedure Code, 1908, Section 146, Order 21 Rule 16 - Execution - Transferee by assignment - No transfer of decree by assignment in writing or by operation of law - Property in question sold to applicant by heirs of deceased - Applicant is thus purchaser in interest and not assignee of decree - Applicant is required to file application under Section 146 - However, application being barred by time he has no right to move application under Order 21 Rule 16 of Civil Procedure Code, 1908. (Kedar Ram Vs Additional District Judge II, Ballia & Ors.) 2004(2) Civil Court Cases 702 (Allahabad)

Civil Procedure Code, 1908, Section 148, Order 8 Rules 1, 9 & 10 - Written statement - Enlargement of time beyond 90 days - Court has discretion to enlarge time beyond 90 days - Maximum limit of 90 days prescribed under Order 8 Rule 1 is only a guiding factor and not a basis to deny power conferred on Court under Section 148 - Extension of time can be granted in the interest of justice for reasons to be recorded by Court - Extension can be made only on an application made by defendant stating reasons for delay to the satisfaction of Court. (G.Parimala Vs Mrs.Bimala Bhatia & Ors.) 2005(2) Civil Court Cases 461 (A.P.)

Civil Procedure Code, 1908, Section 148 - Enlargement of time - Application can be filed even after expiry of time initially granted - Any default clause incorporated in earlier order does not preclude the Court from enlarging the time under Section 148 of Civil Procedure Code, 1908. (G.Parimala Vs Mrs.Bimala Bhatia & Ors.) 2005(2) Civil Court Cases 461 (A.P.)

Civil Procedure Code, 1908, Section 148 - Extension of time - Application can be filed even after expiry of time stipulated by Court and even in cases where a default clause, or a stipulation that no further extension would be granted, are incorporated. (M.A.Mukheed Vs C.Pandurangam) 2005(2) Civil Court Cases 614 (A.P.)

Civil Procedure Code, 1908, Section 148 - Extension of time - Particular amount to be deposited within certain period - Amount not deposited being only son and he was out of station for his mother's treatment - No wilful negligence or laches on his part in depositing amount in time - Enlargement of time - proper. (Vijayan Vs Vivek) AIR 2003 Kerala 82

SC **Civil Procedure Code, 1908, Section 148** - Extension of time beyond 30 days - Where sufficient cause exists or events are beyond the control of a party, Court has inherent power to extend time beyond 30 days. (Salem Advocate Bar Association, Tamil Nadu Vs Union of India) 2005(2) Apex Court Judgments 492 (S.C.) : 2005(3) Civil Court Cases 420 (S.C.)

Civil Procedure Code, 1908, Sections 148, 151 - Default to pay balance court fee - Suit dismissed for default - Restoration - Notice to defendant must be given - Held, when plaint is rejected, a right is vested in the defendant which cannot be set at naught without giving notice. (Ramachandran Nair Vs Kerala Permanent Fund Ltd.) 2004(2) Civil Court Cases 281 (Kerala)

Civil Procedure Code, 1908, Sections 148, 151 - Enlargement of time - Conditional order - Application for enlargement of time filed after expiry of conditional order is maintainable and Court can extend time when convinced with reasons stated for not complying with the said order within time. (Dr.H.C.Upadhya Vs Mrs.A.R.Rustom Fram & Ors.) 2006(2) Civil Court Cases 51 (A.P.)

Civil Procedure Code, 1908, Sections 149 & 151 - Deficient Court fee - Court has jurisdiction to permit the party to make up the deficiency in Court fee even after expiry of limitation. (Meher Singh Vs Sadhu Ram) 2003(3) Civil Court Cases 175 (P&H)

Civil Procedure Code, 1908, Section 149 - Court fee - Deficiency - An opportunity should be given to make good the deficiency in court fee within a time to be indicated - In case there is failure to comply with such direction only then Court can dismiss the plaint. (Haryana State & Anr. Vs Geeta Devi & Anr.) 2006(2) Civil Court Cases 570 (P&H)

Civil Procedure Code, 1908, Section 149 - Court fee - Deficiency - On sufficient cause being shown Court can extend time to make the deficiency - Mere poverty or ignorance or inability to pay Court fee at the initial stage is not always a good ground for indulgence under Section 149 of Civil Procedure Code, 1908- Bona fide mistake may be a ground to exercise discretion. (Patcha Mahendra Vs Koduru Panchalaiah) 2005(3) Civil Court Cases 491 (A.P.)

Civil Procedure Code, 1908, Section 149 - Court fee - Deficiency
- Trial Court not recording reasons for allowing plaintiff to make up the deficiency - Order set aside and matter remitted back for decision afresh in accordance with judicial decisions. (Patcha Mahendra Vs Koduru Penchalaiah) 2005(3) Civil Court Cases 491 (A.P.)

SC Civil Procedure Code, 1908, Section 149 - Deficit Court fee - Extension of time - Provision is applicable in respect of court fee payable at the time of institution of suit - Provision is not applicable when it is subsequently found that a larger amount is due to the plaintiff than claimed - In that event plaintiff can increase the claim, only by seeking amendment of plaint, which depends on law of limitation, and paying additional court fee on the amended claim - When there is no amendment of plaint increasing the suit claim, there is no occasion for pressing Section 149 into service in regard to court fee payable on plaint. (K.C.Skaria Vs The Govt. of State of Kerala) 2006(1) Apex Court Judgments 496 (S.C.) : 2006(1) Civil Court Cases 602 (S.C.)

Civil Procedure Code, 1908, Section 149 - Deficit Court fee - Extension of time for payment - (i) Section 149 CPC has to be interpreted and given effect to in a liberal manner; (ii) the payment of deficit court fee is a matter between the State i.e. Revenue and the plaintiff; (iii) the effect of allowing an application under Section 149 CPC is as if the deficit court fee stood paid on the date of initial presentation; (iv) while judging whether the application under Section 149 CPC should be allowed or not the same has to be tested on the touch stone of whether the plaintiff acted bona fide as per the definition of expression in General Clauses Act and not as per the Limitation Act; (v) Relief is to be denied to the plaintiff if he did not act bona fide or his conduct was contumacious and relief is not to be denied even though he may not have been diligent or had even been negligent. (Sushil Kumar Raut Vs M/s.Virender Bhatnagar Sansathan & Anr.) 2004(2) Civil Court Cases 674 (Delhi)

Civil Procedure Code, 1908, Section 149 - Deficit Court fee - Extension of time for payment - Application not filed on time - Extension of time sought on ground of inability to arrange for the requisite funds - Plaintiff nothing to gain by delaying the making up the deficiency in Court fee - There is no element of mala fides or contumacy - Time extended for making up the deficiency of Court fee. (Sushil Kumar Raut Vs M/s.Virender Bhatnagar

Sansathan & Anr.) 2004(2) Civil Court Cases 674 (Delhi)

SC Civil Procedure Code, 1908, Section 151, Limitation Act, 1963, Section 5 - Delay - Condonation - Court by exercise of its inherent power cannot condone delay. (Damodaran Pillai & Ors. Vs South Indian Bank Ltd.) 2005(2) Apex Court Judgments 594 (S.C.) : 2005(3) Civil Court Cases 530 (S.C.)

Civil Procedure Code, 1908, Section 151, Order 18 Rules 17, 3 - Witness - Recall for cross examination - Witness not cross examined inadvertently - Recall of witness for cross examination - It neither amounts to leading additional evidence nor it is an attempt to fill up lacuna - It also does not amount to reopening of evidence in affirmative - In case any evidence comes during cross examination then other party can by filing an application seek opportunity to rebut the same.

Civil Procedure Code, 1908, Section 151, Order 21 Rule 32 - Decree of prohibitory injunction - Dispossession in violation thereof - Executing Court by invoking Section 151 of Civil Procedure Code, 1908 can order delivery of possession to the decree holder. (Krishnan Namboodiri Vs Unnikrishnan Namboodiri) 2005(3) Civil Court Cases 201 (Kerala)

SC Civil Procedure Code, 1908, Section 151, Order 23 Rule 1 - Withdrawal of suit - Recall of order allowing withdrawal of suit - Liberty to file a fresh suit on the same cause of action, not granted as it was not prayed - Court is not divested of its power to recall its order - In absence of a specific provision in the Code in this respect Court can recall order allowing withdrawal of suit by exercise of its inherent jurisdiction under Section 151 of Civil Procedure Code, 1908. (Jet Ply Wood Private Ltd. & Anr. Vs Madhukar Nowlakha & Ors.) 2006(1) Apex Court Judgments 650 (S.C.) : 2006(2) Civil Court Cases 54 (S.C.)

Civil Procedure Code, 1908, Section 151, Order 47 Rule 1, Recovery of Debts Due to Banks and Financial Institutions Act, 1993, Sections 18 & 31 - Suit for recovery by bank - Civil Court passed decree when it had no jurisdiction to pass such decree in view of coming into force of Act of 1993 - Bank sought recalling entire suit proceedings including decree in view of fact that decree is inexecutable for want of jurisdiction to pass same - Held, civil Court is competent to entertain such application

to correct apparent mistake, in exercise of its inherent powers, as exercise of inherent power in such situation will not be in conflict with its power to review. (Mrs.Mangalabai Vs The Sangli Bank Limited) 2003(2) Civil Court Cases 20 (Karnataka) 20

Civil Procedure Code, 1908, Section 151, Order 47 Rule 1 - Fraud - Order obtained by practising fraud - Court has always power to recall its order vitiated by fraud - When order of injunction to restrain authority from proceeding with formation of layout on acquired land and allotment of sites to applicants, was obtained by misrepresenting facts, Court has inherent power to recall order. (Bangalore Development Authority Vs P.Anjanappa) 2003(3) Civil Court Cases 23 (Karnataka)

SC Civil Procedure Code, 1908, Section 151, Recovery of Debts Due to Banks and Financial Institutions Act, 1993, Section 19 - Transfer of civil suit for damages to Debt Recovery Tribunal for joint trial - Civil suit for damages against Bank for failing to fulfil its obligations in cash credit facility - Bank approaching Debt Recovery Tribunal for recovery of loan - Joint trial - Two actions have sprung out of the same cause of action - Civil suit transferred to Debt Recovery Tribunal - If a decree is granted to the bank, and the damages, if any, is decreed in favour of the company, a set off could be directed and an ultimate order or decree passed in favour of the bank or the company. (State Bank of India Vs M/s Ranjan Chemicals Ltd. & Anr.) 2006(4) Civil Court Cases 776 (S.C.)

Civil Procedure Code, 1908, Section 151 - Addition of a party in appeal not impleaded in suit - Appellate Court has inherent power to add a party in appeal not impleaded in suit, if party sought to be added is a necessary or proper party and whose presence is necessary for effectively and completely adjudicate upon and settle all questions involved in appeal. (Muralilal Chabriya Vs S.Murali & Anr.) 2005(3) Civil Court Cases 91 (Karnataka)

Civil Procedure Code, 1908, Section 151 - Clubbing of suits - Subject matter of two proceedings same and pending in same Court - Clubbing of proceedings - Not illegal. (Lakshmi Trading Company, Samalkot Vs Dokkoda Satyavani & Anr.) 2006(4) Civil Court Cases 237 (A.P.)

SC Civil Procedure Code, 1908, Section 151 - Consolidation of suits

- Complete or even substantial and sufficient similarity of the issues arising for decision in two suits enables the two suits being consolidated for trial and decision. (M/s Chitavalasa Jute Mills Vs M/s Jaypee Rewa Cement) 2004(2) Apex Court Judgments 88 (S.C.) : 2004(2) Civil Court Cases 459 (S.C.)

Civil Procedure Code, 1908, Section 151 - Consolidation of suits - Four suits by four different plaintiffs for recovery of money - Cause of action not same - Burden of proof independent on each plaintiff - Question of leading common evidence did not arise - No other relevant circumstance except that defendant in four suits was one - No error in order declining consolidation of suits. (M/s Anurag & Co. & Anr. Vs Additional District Judge & Ors.) 2006(3) Civil Court Cases 06 (Rajasthan)

Civil Procedure Code, 1908, Section 151 - Consolidation of suits - Parties separate - Documents on basis of which suits are to be decided not same and they have been executed on different dates - No possibility of conflicting judgments in two identical cases - Evidence of plaintiff already concluded - Application filed at a belated stage - No interference with order of non-consolidation of suits - Order of consolidation of suits where parties were identical, upheld. (Ganeshdas & Anr. Vs Ramesh Chandra) 2003(1) Civil Court Cases 703 (Rajasthan)

Civil Procedure Code, 1908, Section 151 - Consolidation of suits - Some of the relevant circumstances are : (i) The parties are substantially same; (ii) Complete or even substantial and sufficient similarity of the issues arising for decision in two suits; (iii) Common evidence is to be led, if parties are substantially the same, if only one party is common then burden of proof of facts in issue will be on different person and no common evidence can be led; (iv) The consolidation in the aforesaid circumstances will fulfil the object of consolidation - Any other circumstances may be relevant then also the object of consolidation will be decisive for passing appropriate order. (M/s Anurag & Co. & Anr. Vs Additional District Judge & Ors.) 2006(3) Civil Court Cases 06 (Rajasthan)

Civil Procedure Code, 1908, Section 151 - Consolidation of suits - Two suits based on different promissory notes of even date for different amounts between the same parties - Both the suits ordered to be commonly tried and adjudged by common judgment to save precious time of Court as well as time of the parties and their counsel etc. (Gandodi Reddeppa Vs

Ayyala Krishnaveni) 2005(2) Civil Court Cases 495 (A.P.)

Civil Procedure Code, 1908, Section 151 - Consolidation of suits - Two suits for specific performance of agreement to sell filed by two different persons on the basis of different agreement to sell in their favour - Both the suits ordered to be consolidated in order to avoid two contradictory decrees. (Mustaq Ahmed Vs Mohd.Ramzan & Ors.) 2005(2) Civil Court Cases 507 (P&H)

Civil Procedure Code, 1908, Section 151 - Consolidation of suits pending in different Courts - When issue in all suits is common and identical, to avoid multiplicity of proceedings and conflicting judgments and also to secure ends of justice, suit pending in one Court can be transferred to other Court to be tried alongwith the suit pending on its file, which will also save the time of the Courts. (S.Purnachandra Rao Vs Paleti Linga Rao) 2006(2) Civil Court Cases 415 (A.P.)

Civil Procedure Code, 1908, Section 151 - Court fee - Excess payment - Refund of excess amount can be ordered under inherent powers. (Punjab and Sind Bank Vs Ramji Dass Khanna) AIR 2002 Delhi 305

Civil Procedure Code, 1908, Section 151 - Dispossession in violation of order of temporary injunction - Court can order restoration of possession by exercise of power under Section 151 of Civil Procedure Code, 1908 even when amendment of plaint is not sought for restitution or restoration or recovery of possession. (Mir Bazlay Ali Vs Jagirdar Nirkhy Mir Mahammad Ali (Deceased by L.R.) & Ors.) 2006(2) Civil Court Cases 428 (A.P.)

Civil Procedure Code, 1908, Section 151 - Error in name of Company - Correction in plaint - In strict sense it is not amendment of any pleading or of any fact - Court can allow correction by invoking provision of Section 151 of Civil Procedure Code, 1908. (Udhey Verma Vs Kamaljeet Singh) 2005(2) Civil Court Cases 440 (P&H)

Civil Procedure Code, 1908, Section 151 - Inherent power - Cannot be exercised in contravention of express provision of law. (Savitha Gupta Vs Nagarathna) 2003(3) Civil Court Cases 172 (Karnataka)

SC **Civil Procedure Code, 1908, Section 151** - Inherent power - Exercise of - Court exercising power u/s 151 CPC has first to consider whether exercise

of such power is expressly prohibited by any other provisions of the Code and if there is no such prohibition then Court will consider whether such power should be exercised or not on the basis of facts mentioned in the application. (Shipping Corporation of India Ltd. Vs Machado Brothers & Ors.) 2004(1) Apex Court Judgments 574 (S.C.) : 2004(2) Civil Court Cases 533 (S.C.)

Civil Procedure Code, 1908, Section 151 - Inherent power - If there is no specific power conferred by any provision of the Code, Court can in a proper case, exercise its inherent power. (Ramesh Chandra Mohapatra Vs Bishnupriya Mangaraj) 2003(1) Civil Court Cases 307 (Orissa)

Civil Procedure Code, 1908, Section 151 - Inherent powers of Court - Cannot be exercised to enable party to fill lacuna in evidence. (Balkrishna Shivappa Shetty Vs Mahesh Nenshi Bhakta) 2003(3) Civil Court Cases 156 (Bombay)

Civil Procedure Code, 1908, Section 151 - Inherent powers of Court - Nothing in the Code shall be deemed to limit or otherwise affect the inherent power 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. (Anokh Singh (Died) & Ors. Vs Nachhattar Singh & Ors.) 2006(4) Civil Court Cases 361 (P&H)

Civil Procedure Code, 1908, Section 151 - Interim relief - Court empowered to grant a substantive relief is competent to award it on interim basis as well even though there is no express provision in the statute or procedural law to grant such relief. (Mohini Bharat alias Seema & Anr. Vs V.K.Bharat) 2004(2) Civil Court Cases 476 (P&H)

SC **Civil Procedure Code, 1908, Section 151** - Joint trial - Court can order joint trial if common question of law or fact arise in both proceedings or that the right to relief claimed in them are in respect of or arise out of the same transaction or series of transactions or that for some other reason it is desirable to make an order for joint trial - If plaintiff in one action is the same person as the defendant in another action, if one action can be ordered to stand as a counter claim in the consolidated action, a joint trial can be ordered. (State Bank of India Vs M/s Ranjan Chemicals Ltd. & Anr.) 2006(4) Civil Court Cases 776 (S.C.)

SC **Civil Procedure Code, 1908, Section 151** - Joint trial - Power inherent in Court does not depend upon consent of parties - It depends upon convenience of trial, saving of time and expenses and the avoidance of duplicating at least a part of the evidence. (State Bank of India Vs M/s Ranjan Chemicals Ltd. & Anr.) 2006(4) Civil Court Cases 776 (S.C.)

Civil Procedure Code, 1908, Section 151 - Mistake by Court - Judge has jurisdiction to correct his own mistake in exercise of inherent powers, if it is factually found that there was a mistake in his order. (Mrs. Rosane Jerome D'Souza Vs Bhagvandas Gangaram Kamble (Deceased) By L.Rs) 2005(3) Civil Court Cases 362 (Karnataka)

SC **Civil Procedure Code, 1908, Section 151** - Preliminary decree - Setting aside if obtained by fraud - If once it is held that decree and judgment is obtained by practising fraud then Court has inherent jurisdiction to set it aside and in that event principles of res judicata do not apply. (Ram Chandra Singh Vs Savitri Devi & Ors.) 2003(2) Apex Court Judgments 376 (S.C.) : 2003(3) Civil Court Cases 678 (S.C.)

Civil Procedure Code, 1908, Section 151 - Provision of Section 151 of Civil Procedure Code, 1908 is not applicable to situations governed by specific provisions. (G. Parimala Vs Mrs. Bimala Bhatia & Ors.) 2005(2) Civil Court Cases 461 (A.P.)

SC **Civil Procedure Code, 1908, Section 151** - Stay of suit on ground of abuse of process - Defendant is required to show very strong case in his favour - Court can exercise power to stay suit if defendant shows that action impugned is frivolous, vexatious or is taken simply to harass the defendant or where there is no cause of action in law or in equity - Power of Court restraining the proceedings are to be exercised sparingly or only in exceptional cases - Court staying the suit has to keep in mind that the positive case has been made out by the defendant whereby Court can reach to the conclusion that proceedings, however, indicate an abuse of the process of Court. (Mayar (H.K.) Ltd. & Ors. Vs Owners & Parties, Vessel M.V. Fortune Express & Ors.) 2006(1) Apex Court Judgments 610 (S.C.) : 2006(2) Civil Court Cases 15 (S.C.)

SC **Civil Procedure Code, 1908, Section 151** - Subsequent event - Suit

becoming infructuous - Continuance of infructuous suit will cause prejudice to the defendant. (Shipping Corporation of India Ltd. Vs Machado Brothers & Ors.) 2004(1) Apex Court Judgments 574 (S.C.) : 2004(2) Civil Court Cases 533 (S.C.)

SC **Civil Procedure Code, 1908, Section 151** - Subsequent event - Suit becoming infructuous - If a party has a legal right to ask for dismissal of an infructuous suit, and pursuant to the said right it makes an application for dismissal of said suit, the same cannot be termed as an act in malice. (Shipping Corporation of India Ltd. Vs Machado Brothers & Ors.) 2004(1) Apex Court Judgments 574 (S.C.)

SC **Civil Procedure Code, 1908, Section 151** - Subsequent event making the pending suit infructuous - If by subsequent event original proceedings has become infructuous Court can dispose of infructuous litigation - When such an application is made, Court to inquire into the alleged facts and circumstances to find out whether the pending litigation has in fact become infructuous or not. (Shipping Corporation of India Ltd. Vs Machado Brothers & Ors.) 2004(1) Apex Court Judgments 574 (S.C.) : 2004(2) Civil Court Cases 533 (S.C.)

SC **Civil Procedure Code, 1908, Section 151** - Suit becoming infructuous due to subsequent event - Suit cannot be continued merely for the reason that interlocutory injunction enjoyed by plaintiff will get vacated and consequently the plaintiff will be prejudiced - Held, interlocutory orders are made in aid of final orders and not vice versa - No interlocutory order will survive after the original proceeding comes to an end. (Shipping Corporation of India Ltd. Vs Machado Brothers & Ors.) 2004(1) Apex Court Judgments 574 (S.C.) : 2004(2) Civil Court Cases 533 (S.C.)

Civil Procedure Code, 1908, Sections 151, 115, 2(2), 96(1) - Suit dismissed as infructuous on an application under Section 151 of Civil Procedure Code, 1908- Order amounts to decree - Appeal lies against such an order - Revision is not maintainable. (Anantha Agencies Vs Bharat Petroleum Corporation Ltd. & Anr.) 2006(4) Civil Court Cases 767 (Madras)

SC **Civil Procedure Code, 1908, Sections 151, 115** - Order passed u/s 151 CPC - Revision and not appeal is maintainable. (Shipping Corporation of India Ltd. Vs Machado Brothers & Ors.) 2004(1) Apex Court Judgments

574 (S.C.) : 2004(2) Civil Court Cases 533 (S.C.)

Civil Procedure Code, 1908, Sections 151, 152 & 153 - Power of Court to make correction is not confined only to power exercisable under Section 152 of Civil Procedure Code, 1908- Power can also be exercised under Sections 151 & 153 of Civil Procedure Code, 1908. (Narhari Balku Kawade Vs Hanmanta Timma Pujari) 2004(3) Civil Court Cases 307 (Bombay)

Civil Procedure Code, 1908, Sections 152, 11 - Principle of res judicata is not applicable in respect of an application filed under Section 152 of Civil Procedure Code, 1908- Successive applications for correction of mistakes under Section 152 of Civil Procedure Code, 1908 are permissible till the mistakes are rectified and decree does not accord with the judgment. (A.P.State Agro Industries Development Corporation Limited Vs Andhra Bank) 2005(3) Civil Court Cases 727 (A.P.)

Civil Procedure Code, 1908, Sections 152, 153 & 151 - Clerical mistakes and errors in judgment and decree - Can be corrected by Court at any time either of its own motion or on the application of any of the parties. (Gulzara Singh & Ors. Vs Devinder Singh & Ors.) 2004(3) Civil Court Cases 455 (P&H)

Civil Procedure Code, 1908, Sections 152, 153 & 153-A & 151 - Typographical mistakes - Correction - Second appeal dismissed in limine - Judgment of First Appellate Court merges with that of the first Appellate Court - Application for correction of typographical mistakes is maintainable before High Court even though appeal was dismissed in limine by High Court. (Gulzara Singh & Ors. Vs Devinder Singh & Ors.) 2004(3) Civil Court Cases 455 (P&H)

Civil Procedure Code, 1908, Sections 152 and 153 & 151 - Errors in plaint due to incorrect jamabandi provided by revenue authorities - Errors travelling to decree - Errors in decree can be corrected by Court and it is not necessary for the correction of the decree to first amend the pleadings. (Gulzara Singh & Ors. Vs Devinder Singh & Ors.) 2004(3) Civil Court Cases 455 (P&H)

Civil Procedure Code, 1908, Section 152, Order 6 Rule 17 - Application for correction of clerical or arithmetical mistakes in decree and

for amendment of plaint - When an appeal is filed against decree then such applications are to be filed before appellate Court or second appellate Court which decided the case finally though appellate Court or Second Appellate Court had only confirmed the judgment of the trial Court. (Thomas Vs Kunjamma) 2005(3) Civil Court Cases 680 (Kerala)

SC Civil Procedure Code, 1908, Section 152 - Clerical or arithmetical mistakes in judgment, decree or order - Correction - Arithmetical mistake is a mistake of calculation, a clerical mistake is a mistake in writing or typing whereas an error arising out of or occurring from accidental slip or omission is an error due to careless mistake on the part of the Court, liable to be corrected. (State of Punjab Vs Darshan Singh) 2003(2) Apex Court Judgments 606 (S.C.)

SC Civil Procedure Code, 1908, Section 152 - Clerical or arithmetical mistakes in judgment, decree or order - Correction - No new arguments or re-arguments or merits can be entertained to facilitate such rectification of mistakes - The provision cannot be invoked to modify, alter or add to the terms of the original order or decree so as to, in effect, pass an effective judicial order after the judgment in the case. (State of Punjab Vs Darshan Singh) 2003(2) Apex Court Judgments 606 (S.C.)

Civil Procedure Code, 1908, Section 152 - Correction of decree - It is competent for a court to correct not only arithmetical and clerical errors but also accidental slips and omissions. (A.P.State Agro Industries Development Corporation Limited Vs Andhra Bank) 2005(3) Civil Court Cases 727 (A.P.)

Civil Procedure Code, 1908, Section 152 - Correction of decree - It is impermissible to review a judgment, under the guise of exercise of power under Section 152 C.P.C. (A.P.State Agro Industries Development Corporation Limited Vs Andhra Bank) 2005(3) Civil Court Cases 727 (A.P.)

Civil Procedure Code, 1908, Section 152 - Correction of mistakes in decree - Mistakes in decree can be corrected at any time without any time limit. (A.P.State Agro Industries Development Corporation Limited Vs Andhra Bank) 2005(3) Civil Court Cases 727 (A.P.)

Civil Procedure Code, 1908, Section 152 - Decree - Correction - Interest allowed as per operative part of judgment and not in accordance with decision of issue - Decree cannot be corrected under Section 152 of Civil Procedure Code, 1908. (P.Prasad & Anr. Vs Shirdi Enterprises) 2005(1) Civil Court Cases 668 (A.P.)

Civil Procedure Code, 1908, Section 152 - Inaccuracy in calculation and accounting - Mistake noticed in appeal - Mistake should be corrected by appellate Court irrespective of the fact that cross objections by other party are not filed. (Kulamani Mohanty Vs Industrial Development Corporation of Orissa Ltd.) AIR 2002 Orissa 38

Civil Procedure Code, 1908, Section 152 - Judgment and decree - Modification - Locus standi - Suit for partition filed by son of deceased - Decree passed - Application for correction regarding shares by other son of deceased who had spent huge amount of money on marriages of his sisters - Held, application is maintainable. (Jagdish Chand Gupta Vs Dr.Rajinder Parshad) AIR 2002 P&H 251

SC **Civil Procedure Code, 1908, Section 152** - Omission sought to be corrected which goes to the merits of the case is beyond the scope of S.152 CPC. (State of Punjab Vs Darshan Singh) 2003(2) Apex Court Judgments 606 (S.C.)

SC **Civil Procedure Code, 1908, Section 152** - Scope - Provision can be invoked for limited purpose of correcting clerical errors or arithmetical mistakes in the judgment and cannot be invoked for claiming a substantive relief which was not granted under the decree, or as a pretext to get the order which has attained finality reviewed. (Bijay Kumar Saraogi Vs State of Jharkhand) 2005(1) Apex Court Judgments 650 (S.C.) : 2005(2) Civil Court Cases 291 (S.C.)

Civil Procedure Code, 1908, Section 152 - Suit decreed but what relief is granted not stated in decree - Decree incapable of execution - Said omission on part of Court can be said to be an accidental slip or omission and can be corrected by Court itself to avoid miscarriage of justice. (Ashutosh Das Vs Sushma Rani Das) AIR 2004 Gauhati 136

Civil Procedure Code, 1908, Section 152 - Suit for recovery of

money - However due to mistake decree drafted as preliminary decree in mortgage suit - Can be corrected by High Court in application made even after 11 years as there is no prescribed period of limitation to file said application. (State Bank of Hyderabad Vs B.Rangaswamy) AIR 2004 A.P. 91

Civil Procedure Code, 1908, Section 153 - Errors - Correction - Typographical error in the name of village - Can be corrected by Court at any stage by invoking Section 153 of Civil Procedure Code, 1908- 'Proceeding' referred to in Section 153 of Civil Procedure Code, 1908 includes plaint also. (Guda Sanjeeva Reddy Vs Kodathala Sujatamma) 2006(4) Civil Court Cases 452 (A.P.)

Civil Procedure Code, 1908, Order 1 Rules 1,3, A.P. Court Fees and Suits Valuation Act, 1956, Sections 11(3) and 6(3) - Suit for different causes of action - Single suit for different causes of action can be filed - However plaintiff is to pay Court Fees separately for relief claimed under different causes of action. (A.Narayan Rao Vs Shanta Bai & Ors.) 2004(2) Civil Court Cases 409 (A.P.)

Civil Procedure Code, 1908, Order 1 Rules 8,9, Order 22 Rules 1,2 & 11, Order 41 Rule 4 - Representative suit - Appeal against decree - Death of one of joint decree holders during pendency of appeal - Non impleading of his L.R's - Appeal does not abate. (Members of Yevakapadi Branch of Areyada Family & Anr. Vs Members of Napoklu Branch of Areyada Family & Ors.) 2006(3) Civil Court Cases 670 (Karnataka)

Civil Procedure Code, 1908, Order 1 Rule 8 - Suit in representative capacity - Permission to institute suit in representative capacity can be granted at any stage of the proceedings. (Sukhvir Singh Vs Sukhvir Singh) 2006(2) Civil Court Cases 567 (Allahabad)

Civil Procedure Code, 1908, Order 1 Rule 9, Order 20 Rule 18 - Necessary parties - Suit for partition - Absence of impleadment of first class heirs i.e. daughters of Hindu ancestor who were sisters of plaintiff - Suit is not maintainable. (Raja ram Singh VS Arjun Singh) AIR 2002 Delhi 338

Civil Procedure Code, 1908, Order 1 Rule 9, Section 9-A & O.7 Rule 11, Contract Act, 1872, Section 28 - Purchase order - Ouster clause - Plaintiff joining several causes of action, some arising out of purchase

order and others not so arising and filing suit at Nagpur - Ouster clause in purchase order that Court at Pune alone had jurisdiction - In view of ouster clause, Court at Pune alone had jurisdiction to entertain disputes arising out of purchase orders as well as in respect of those not arising out of purchase order in view of joinder of causes of action. (Bajaj Auto Limited & Ors. Vs Sundeep Polymers Pvt.Ltd., Mumbai) 2005(1) Civil Court Cases 56 (Bombay)

Civil Procedure Code, 1908, Order 1 Rule 9, Section 9-A & Order 7 Rule 11, Contract Act, 1872, Section 28 - Purchase order - Ouster clause - Plaintiff joining several causes of action, some arising out of purchase order and others not so arising and filing suit at Nagpur - Ouster clause in purchase order that Court at Pune alone had jurisdiction - In view of ouster clause, Court at Pune alone had jurisdiction to entertain disputes arising out of purchase orders as well as in respect of those not arising out of purchase order in view of joinder of causes of action. (Bajaj Auto Limited & Ors. Vs Sundeep Polymers Pvt.Ltd., Mumbai) 2005(1) Civil Court Cases 56 (Bombay)

Civil Procedure Code, 1908, Order 1 Rule 9, Section 91 - Application U.O.1 Rule 8 and another application u/s 91 dismissed - As there was no suit before Court as such written statement not filed - Question of defendants claiming damages, does not arise - Thus, award of damages by trial Court in absence of written statement and full trial, improper. (Bhupendra Singh Babara Vs Municipal Council, Ambikapur) AIR 2002 Chhattisgarh 7

Civil Procedure Code, 1908, Order 1 Rule 9, Specific Relief Act, 1963, Section 10 - Agreement to sell - Suit for specific performance - Impleading of subsequent purchaser - Plaintiff sought a decree against defendant and subsequent purchaser for declaration that subsequent Memorandum of understanding between them was illegal - No question of subsequent purchaser not a necessary or proper party - Fact that plaintiff may choose to adopt independent proceedings against subsequent purchaser simultaneously or later would not disentitle him from joining subsequent purchaser in suit for specific performance. (Haroon Rashid Nizamuddin Umatiya Vs Jivatlal) 2003(3) Civil Court Cases 120 (Bombay)

Civil Procedure Code, 1908, Order 1 Rule 9 - Co-sharer - Suit for

possession by one co-sharer against a trespasser without impleading other co-sharers - Suit is maintainable. (Dharam Singh Vs Jagdish) 2005(1) Civil Court Cases 823 (H.P.)

Civil Procedure Code, 1908, Order 1 Rule 9 - Licensee - Suit for declaration and possession - Children residing with licensee - Not necessary party and decree passed against licensee binds children - Dismissal of suit for non-joinder of children of licensee, not proper. (M.K.Venugopal Vs Aswathamma) 2005(1) Civil Court Cases 394 (Karnataka)

SC **Civil Procedure Code, 1908, Order 1 Rule 9** - Necessary and proper party - Necessary party is one without whom no order can be made effectively - A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. (Balvant N.Viswamitra & Ors. Vs Yadav Sadashiv Mule (D) through Lrs. & Ors.) 2004(2) Apex Court Judgments 255 (S.C.) : 2004(3) Civil Court Cases 485 (S.C.)

Civil Procedure Code, 1908, Order 1 Rule 9 - Necessary parties - Non joinder - Effect - No proof that tenant died leaving an heir - Suit not liable to be dismissed on ground of non joinder of necessary parties. (Bhami Bewa Vs Krushna Chandra Swain @ Gochhayat & Ors.) 2004(2) Civil Court Cases 543 (Orissa)

Civil Procedure Code, 1908, Order 1 Rule 9 - Non joinder of proper parties - Suit not to be dismissed - However, this rule does not apply in case of non joinder of necessary parties - Opportunity cannot be given to plaintiff to implead necessary parties when despite preliminary objection he declined to implead necessary parties. (Shyampati Vs Munshi Ram) 2003(1) Civil Court Cases 28 (H.P.)

Civil Procedure Code, 1908, Order 1 Rule 9 - Suit for partition - Necessary parties - Person in permissive possession without any independent interest - Not a necessary party in a suit for partition. (Moin Khan Vs Amin Zema Khan) 2005(2) Civil Court Cases 126 (Jharkhand)

SC **Civil Procedure Code, 1908, Order 1 Rule 10, Order 22 Rule 10, Transfer of Property Act, 1882, Section 52** - Transferee pendente lite - Impleading as a party - Application of transferee pendente lite for impleading

him a party to the suit should ordinarily be allowed. (Amit Kumar Shaw & Anr. Vs Farida Khatoon & Anr.) 2005(2) Civil Court Cases 423 (S.C.)

SC **Civil Procedure Code, 1908, Order 1 Rule 10, Order 22 Rule 10, Transfer of Property Act, 1882, Section 52** - Transferee pendente lite - Impleadment as a party - Purchase of property during pendency of suit without leave of Court - Transferee should ordinarily be joined as party to enable him to protect his interest - However, in the instant case trial Court assigned cogent reasons for rejecting such joinder stating that suit is long pending since 1983 and prima facie the action of alienation does not appear to be bona fide and that it was an attempt on part of petitioner to complicate and delay the pending suits - Held, trial court has rightly exercised its discretion in rejecting application for impleadment of the transferee pendente lite as party to the suit. (Bibi Zubaida Khatoon Vs Nabi Hassan Saheb & Anr.) 2005(1) Civil Court Cases 323 (S.C.)

SC **Civil Procedure Code, 1908, Order 1 Rule 10, Order 22 Rule 10, Transfer of Property Act, 1882, Section 52** - Transferee pendente lite - Impleadment as a party - There is no absolute rule that the transferee pendente lite without leave of the court should in all cases be allowed to join and contest the pending suits. (Bibi Zubaida Khatoon Vs Nabi Hassan Saheb & Anr.) 2005(1) Civil Court Cases 323 (S.C.)

Civil Procedure Code, 1908, Order 1 Rule 10, Order 22 Rule 10 - Impleading of a party - Applicant purchased a part of suit property during pendency of suit - Not a necessary party - Cannot be impleaded as a party to the suit - However applicant allowed to defend the suit on behalf of its vendors as he had purchased a part of suit of property - Applicant will not be entitled to file fresh written statement and/or to take a new stand, other than the stand already taken by the defendants who sold the property during pendency of suit. (M/s.Wimco Limited Vs Horam & Ors.) 2004(2) Civil Court Cases 575 (P&H)

Civil Procedure Code, 1908, Order 1 Rule 10, Order 22 Rule 10 - Purchaser pendente lite - Scope of Order 1 Rule 10 and Order 22 Rule 10 of Civil Procedure Code, 1908 is similar - Principles applicable to Order 22 Rule 10 in order to bring a purchaser pendente lite on record, are applicable to Order 1 Rule 10 of Civil Procedure Code, 1908. (Chappidi Subbareddy (died) & Ors. Vs Chappidi Narapureddy & Ors.) 2006(2) Civil Court Cases

659 (A.P.) (DB)

SC Civil Procedure Code, 1908, Order 1 Rule 10, Order 22 Rule 10

- Transferee pendente lite - Impleading as a party in second appeal - Delay in approaching Court sufficiently, properly and satisfactorily explained - Transferee pendente lite should be made as party to the pending second appeal as prayed for by him - He is at liberty to contest the matter on merits. (Amit Kumar Shaw & Anr. Vs Farida Khatoon & Anr.) 2005(2) Civil Court Cases 423 (S.C.)

Civil Procedure Code, 1908, Order 1 Rule 10, Order 22 Rule

10 - Transferee pendente lite - Impleadment - Principles governing : Firstly, for the purpose of impleading a transferee pendente lite, the facts and circumstances should be gone into and basing on the necessary facts, the court can permit such a party to come on record, either under Order 1 Rule 10 C.P.C. or under Order 22 Rule 10 C.P.C., as a general principle; Secondly, a transferee pendente lite is not entitled to come on record as a matter of right; Thirdly, there is no absolute rule that such a transferee pendente lite, with the leave of the Court should, in all cases, be allowed to come on record as a party; Fourthly, the impleadment of a transferee pendente lite would depend upon the nature of the suit and appreciation of the material available on record; Fifthly, - Where a transferee pendente lite does not ask for leave and come on record that would obviously be at his peril, and the suit may be improperly conducted by the plaintiff on record; Sixthly, merely because such transferee pendente lite does not come on record, the concept of his (transferee pendente lite) not being bound by the judgment does not arise and consequently he would be bound by the result of the litigation, though he remains unrepresented; Seventhly, the sale transaction pendente lite is hit by the provisions of Section 52 of the Transfer of Property Act; and, Eighthly, a transferee pendente lite, being an assignee of interest in the property, as envisaged under Order 22, Rule 10 C.P.C., can seek leave of the Court to come on record on his own or at the instance of either party to the suit. (Chappidi Subbareddy (died) & Ors. Vs Chappidi Narapureddy & Ors.) 2006(2) Civil Court Cases 659 (A.P.) (DB)

Civil Procedure Code, 1908, Order 1 Rule 10, Order 22 Rule

2 - Necessary party - Partition suit - One fifth property allotted in favour of deceased sister - L.R's of the deceased sister will be necessary party for final decree proceedings. (Eralingappa Vs Nagamma) AIR 2003 Karnataka 201

Civil Procedure Code, 1908, Order 1 Rule 10, Order 6 Rule 17 -

Suit filed against a dead person - Wife allowed to be substituted as a party to the suit - To avoid multiplicity of litigation, Court can allow impleading of a party at any stage if it is satisfied that there occurred a bona fide mistake. (Raghvir Singh & Ors. Vs Gram Panchayat Jawahara through its Sarpanch & Ors.) 2004(2) Civil Court Cases 113 (P&H)

Civil Procedure Code, 1908, Order 1 Rule 10, Section 115 -

Revision against order allowing application for impleadment of a party - It is an interlocutory order - No revision lies against such an order. (Smt. Pushpa Devi Vs Urban Improvement Trust & Anr.) 2004(3) Civil Court Cases 618 (Rajasthan)

SC Civil Procedure Code, 1908, Order 1 Rule 10, Transfer of Property Act, 1882, Section 52 -

Impleading of a party - Transferee pendente lite - Can be impleaded as a party if his interest in the subject matter of suit is substantial and not just peripheral - Court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests. (Amit Kumar Shaw & Anr. Vs Farida Khatoon & Anr.) 2005(2) Civil Court Cases 423 (S.C.)

Civil Procedure Code, 1908, Order 1 Rule 10 - Addition of a party

- A party can be added as defendant even at the instance of the defendant. (Ravipati Harischandra Prasad Vs Manda Surya Kantham & Ors.) 2005(2) Civil Court Cases 820 (A.P.)

Civil Procedure Code, 1908, Order 1 Rule 10 - Addition of a party

- Petitioner who is stranger to the controversy cannot be permitted to become party in a suit as no relief against his is claimed by the plaintiff. (Ranbir Singh Vs Ran Singh & Ors.) 2006(3) Civil Court Cases 45 (P&H)

SC Civil Procedure Code, 1908, Order 1 Rule 10 - Addition of a party

- Suit for specific performance - A stranger or a third party to the contract, claiming to have an independent title and possession over the contracted property is not entitled to be added as a party in the suit. (Kasturi Vs Iyyamperumal & Ors.) 2005(1) Apex Court Judgments 640 (S.C.) : 2005(2) Civil Court Cases 379 (S.C.)

SC Civil Procedure Code, 1908, Order 1 Rule 10 - Addition of a party

- Suit for specific performance - By addition of a party if suit for specific performance is converted into a suit for title then party to be added is neither a necessary nor a proper party. (Kasturi Vs Iyyamperumal & Ors.) 2005(1) Apex Court Judgments 640 (S.C.) : 2005(2) Civil Court Cases 379 (S.C.)

SC **Civil Procedure Code, 1908, Order 1 Rule 10** - Additional of a party - When with addition of party scope of suit is enlarged then party to be added cannot be said to be a proper party. (Kasturi Vs Iyyamperumal & Ors.) 2005(1) Apex Court Judgments 640 (S.C.) : 2005(2) Civil Court Cases 379 (S.C.)

Civil Procedure Code, 1908, Order 1 Rule 10 - Alienation during pendency of suit - Such alienation is hit by principle of lis pendens and the same does not affect the rights of plaintiff - Person in whose favour alienation is executed is not a necessary party - Application to implead rightly dismissed. (Meher Singh Vs Hardeep Kaur & Ors.) 2005(2) Civil Court Cases 234 (P&H)

Civil Procedure Code, 1908, Order 1 Rule 10 - Eviction petition - Applicant claiming to be landlord - Impleaded in earlier suit for eviction regarding same premises - Earlier suit returned for presentation to proper Court on ground that it involves question of title - Order impleading revisionist as per in earlier suit is binding on plaintiff - Subsequent suit filed by plaintiff without impleading applicant as party - Not maintainable. (Smt. Prem Kumar Sharma Vs Raj Mani Dubey) AIR 2002 All. 90

Civil Procedure Code, 1908, Order 1 Rule 10 - Impleading of a party - Exercise of power U.O.1 Rule 10 CPC does not depend upon the volition of plaintiff as it is exclusively the Court's power. (L.Puttaiah & Ors. Vs Annaiappa (deceased) by LRs. & Ors.) 2004(2) Civil Court Cases 61 (Karnataka)

Civil Procedure Code, 1908, Order 1 Rule 10 - Impleading of a party - Party to be implead if presence of applicant is necessary in order to completely and effectually adjudicate upon and settle all the questions involved in the suit - Merits of claim made by impleading applicant is not relevant at stage of impleadment - Rejection of application on ground that claim made by applicant has no merits is not proper exercise of discretion. (L.Puttaiah & Ors. Vs Annaiappa (deceased) by LRs. & Ors.) 2004(2) Civil

Court Cases 61 (Karnataka)

Civil Procedure Code, 1908, Order 1 Rule 10 - Impleading of a party
- Property transferred inspite of order of status quo - Impleading of transferee as a party to the suit - Transferee is subjected to the same obligation as that of transferor - Transferee allowed to be impleaded as a party. (B.Basheer Khan Vs Syed Shareef & Anr.) 2006(3) Civil Court Cases 108 (A.P.)

Civil Procedure Code, 1908, Order 1 Rule 10 - Impleading of a party - Suit for declaration that plaintiffs are exclusive owners of temple and have exclusive Archakship rights - Applicant also claiming right over temple and Archakship - Held, presence of applicant is necessary to completely adjudicate the nature of the right of the parties over temple and Archakship - Application allowed. (L.Puttaiah & Ors. Vs Annaiappa (deceased) by LRs. & Ors.) 2004(2) Civil Court Cases 61 (Karnataka)

Civil Procedure Code, 1908, Order 1 Rule 10 - Impleading of a party
- Suit for dissolution of partnership firm - Applicant alleging to be a partner in business - Documents produced showing that applicant was also partner in business - Different partnership deeds found regarding same business - Possibility of fraud or collusion regarding partnership business, could not be rule doubt - Held, applicant is necessary party to suit for complete and effective adjudication of matter. (Chandra Prakash Arora Vs Parveen Kumar) AIR 2002 Allahabad 111

Civil Procedure Code, 1908, Order 1 Rule 10 - Impleading of a party - Suit for specific performance - Applicant seeking to be impleaded as a party on assertion that he is owner in possession of the suit property - Held, in a suit for specific performance for settling the questions involved in the suit presence of strangers is not necessary - It is not even proper - A person who claims title adverse to the parties to the contract is not a necessary or a proper party - Addition of such a person will enlarge the scope of the suit and change its nature and turn it into a title suit - Applicant not a necessary or proper party. (Nafe Singh Vs Krishana & Ors.) 2004(2) Civil Court Cases 481 (P&H)

Civil Procedure Code, 1908, Order 1 Rule 10 - Impleading of a party
- Suit for specific performance - Defendant proceeded exparte - Application by daughters that they are necessary parties as whereabouts of their father is

not known - Lower Court observed that since a period of seven years had not elapsed therefore there is no presumption that he had died - Order set aside - Applicants are definitely such persons who are interested in the preservice of the estate - Application allowed. (Laxmi & Ors. Vs Sat Narain & Anr.) 2004(2) Civil Court Cases 242 (P&H)

Civil Procedure Code, 1908, Order 1 Rule 10 - Impleadment of a party - Person sought to be impleaded a subsequent transferee - Fact within knowledge even prior to filing of suit - No satisfactory explanation for filing application at a belated stage - Order dismissing application, upheld. (Karnail Singh Vs Gurbax Singh & Ors.) 2006(1) Civil Court Cases 747 (P&H)

Civil Procedure Code, 1908, Order 1 Rule 10 - Impleadment of a party - Suit for specific performance - Impleadment of a co-parcener as a party to the suit - Held, a coparcener cannot seek impleadment in the suit on the ground that he is a co-parcener - A coparcener has no right to challenge the action of Karta before the completion of sale - Application dismissed. (Tarsem Devi Vs Naresh Kumar & Ors.) 2006(2) Civil Court Cases 438 (P&H)

Civil Procedure Code, 1908, Order 1 Rule 10 - Necessary or proper parties - Suit for permanent injunction restraining neighbours from raising any construction over adjoining land - Applicants seeking impleadment as a party claiming themselves to be owners of house in which plaintiff was residing - Any finding relating to adjoining land may affect their right in case they are found to be real owners - Held, impleadment of applicants as parties is proper. (Shail Kumari & Ors. Vs Asha Srivastava & Ors.) 2005(1) Civil Court Cases 804 (Allahabad)

Civil Procedure Code, 1908, Order 1 Rule 10 - Plaintiff can be transposed as a defendant. (Janadas Vs Vedanayagam) 2004(3) Civil Court Cases 613 (Kerala)

Civil Procedure Code, 1908, Order 1 Rule 10 - Proforma defendant - Can be transposed as plaintiff - Courts can always transpose a defendant as a plaintiff and can grant decree in its favour to avoid multiplicity of litigation and to do complete justice between the parties. (Om Parkash & Anr. Vs Parshotam Lal & Ors.) 2005(3) Civil Court Cases 244 (P&H)

Civil Procedure Code, 1908, Order 1 Rule 10 - Recording of a finding as to whether applicant is a necessary or proper party is a sine qua non to dispose of the application U.O.1 Rule 10 CPC. (Balbir Singh Vs Anokh Singh) 2003(2) Civil Court Cases 642 (P&H)

Civil Procedure Code, 1908, Order 1 Rule 10 - Subsequent vendee - Suit for specific performance - Applicant purchased suit property prior to filing of suit - Presence of subsequent vendor in whose favour property in dispute is alienated is necessary for effective and complete adjudication of the suit - Order allowing impleading of subsequent vendee as defendant, upheld. (Gurcharan Singh Vs S.Amarjit Singh & Anr.) 2005(2) Civil Court Cases 422 (P&H)

Civil Procedure Code, 1908, Order 1 Rule 10 - Suit for permanent injunction restraining defendant from closing the same by raising a wall - State of Punjab is not a necessary party as ownership of street is not to be determined. (Piara Singh & Anr. Vs Sri Guru Arjan Dev College, Tarn Taran) 2004(2) Civil Court Cases 397 (P&H)

SC **Civil Procedure Code, 1908, Order 1 Rule 10** - Suit for specific performance - Addition of a party - Proper party - Guiding principle for deciding the question as to who is a proper party is that the presence of such a party is necessary to adjudicate the controversies involved in the suit for specific performance of the contract for sale. (Kasturi Vs Iyyamperumal & Ors.) 2005(1) Apex Court Judgments 640 (S.C.) : 2005(2) Civil Court Cases 379 (S.C.)

Civil Procedure Code, 1908, Order 1 Rule 10 - Suit for specific performance - Impleading of minor children of defendant/vendor as party to the suit - A decree, prior to execution of agreement to sell, in favour of minor restraining their father/defendant/vendor from alienating the suit land or creating any charge over the same - Defendant/vendor proceeded exparte in the suit - Held, applicants are necessary and proper party so as to settle the dispute without indulging in multiple litigation. (Gordhan Vs Pawan & Ors.) 2006(1) Civil Court Cases 639 (P&H)

Civil Procedure Code, 1908, Order 1 Rule 10 - Suit for specific performance - Person who holds a title or acquires title subsequent to the agreement - He is proper and sometimes necessary party - Suit for partition

filed by sons of defendant in Revenue Court and that suit decreed - Order allowing impleadment of sons of defendant as party to the suit - No reason to interfere in the order. (Sultan Ram & Anr. Vs ADJ (FT)) 2005(2) Civil Court Cases 600 (Rajasthan)

Civil Procedure Code, 1908, Order 1 Rule 10 - Suit for specific performance - Subsequent transferee - There is no absolute rule of law that subsequent transferee cannot become party on the ground that rule of lis pendence is applicable - Application allowed. (Balbir Singh Vs Anokh Singh) 2003(2) Civil Court Cases 642 (P&H)

Civil Procedure Code, 1908, Order 1 Rule 10 - Suit for specific performance - Suit land transferred by collusive decree during pendency of suit - Transferee of suit land is necessary party - Order allowing impleadment of party - Order upheld. (Ram Sarup Vs Raminder Singh) 2003(3) Civil Court Cases 459 (P&H)

SC **Civil Procedure Code, 1908, Order 1 Rule 10** - Suit for specific performance of agreement to sell - Addition of a necessary party - Person who claims adversely to the claim of a vendor is not a necessary party - Two tests to determine as to who is a necessary party in such a suit are: (a) there must be a right to some relief against such party in respect of the controversies involved in the proceedings (2) no effective decree can be passed in the absence of such party. (Kasturi Vs Iyyamperumal & Ors.) 2005(1) Apex Court Judgments 640 (S.C.) : 2005(2) Civil Court Cases 379 (S.C.)

Civil Procedure Code, 1908, Order 1 Rule 10 & S.115 - Impleading of a party - Application rejected - Revision lies against order rejecting application. (L.Puttaiah & Ors. Vs Annaibaba (deceased) by LRs. & Ors.) 2004(2) Civil Court Cases 61 (Karnataka)

Civil Procedure Code, 1908, Order 1 Rule 10(2) - Addition of a party - Court can add any person who ought to have been joined as party at any stage of the proceedings, either upon or without the application of either party - However, Court should be satisfied that presence of such party before the Court is necessary in order to enable the Court to effectually & completely adjudicate and settle all the questions involved in the suit to avoid multiplicity of litigation. (Gopinath Dixit Vs Rama Chandra Dixit & Anr.) 2005(2) Civil Court Cases 117 (Orissa)

Civil Procedure Code, 1908, Order 1 Rule 10(2) - Addition of a party - Necessary party - When questions raised by parties in their respective pleadings reveal that the direct interest of another person is involved in the subject matter of litigation and it would affect the rights of that person, he is a necessary party to the suit and to be impleaded as such - The principle “dominus litis” will not be applicable to such a case. (Gopinath Dixit Vs Rama Chandra Dixit & Anr.) 2005(2) Civil Court Cases 117 (Orissa)

Civil Procedure Code, 1908, Order 1 Rule 10(2) - Addition of party - ‘Direct interest’ - Means direct in the issue between the plaintiff and defendant- That a person is legally interested in the question involved in the suit can be determined if party to be impleaded can show that any decision in the suit shall affect his legal rights. (Gopinath Dixit Vs Rama Chandra Dixit & Anr.) 2005(2) Civil Court Cases 117 (Orissa)

Civil Procedure Code, 1908, Order 1 Rule 10(2) - Addition or substitution of a party - ‘At any stage’ - Meaning - Cannot be limited or curtailed for a period of three years from the date of filing of the suit - It means at any stage prior to culmination of proceedings. (Shri Gopal @ Shri Ram Gopal Vs Shri Ram Kunwar) 2003(3) Civil Court Cases 670 (Rajasthan)

Civil Procedure Code, 1908, Order 1 Rule 10(2) - Impleading of a party - Eviction petition - Purchaser of property - Not a necessary party - Petition for eviction cannot be allowed to be converted to a suit for title - Order allowing application set aside. (Kamla Devi & Ors. Vs Surinder Kumar & Ors.) 2006(4) Civil Court Cases 322 (P&H)

Civil Procedure Code, 1908, Order 1 Rule 10(2) - Impleading of a party - Suit for permanent injunction restraining Municipal Council from demolition of the construction - Held, neighbour is a necessary party. (Shayama Jain Vs Savitri Devi) 2003(1) Civil Court Cases 117 (P&H)

Civil Procedure Code, 1908, Order 1 Rule 10(2) - Impleading of necessary parties - Power should be exercised at the stage of trial and avoided to be exercised at the appeal stage, more so, if despite objections at the earliest plaintiff fails to impleaded the necessary parties. (Shyampati Vs Munshi Ram) 2003(1) Civil Court Cases 28 (H.P.)

Civil Procedure Code, 1908, Order 1 Rule 10(2) - Impleadment of a

party - A person can be added as party to the suit when he ought to have been joined and is not joined and when without his presence, questions involved in the suit cannot be decided - Court can add any person as a party at any stage of the proceedings if the person whose presence before the Court is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit - Avoidance of a multiplicity of proceedings is also one of the objects of the said provision in the Code. (Devchand Constructions Vs Board of Trustees of the Port of Mormugao & Anr.) 2006(4) Civil Court Cases 300 (Bombay)

Civil Procedure Code, 1908, Order 1 Rule 10(2) - Impleadment of a party - Core question involved in the suit could be decided even in the absence of proposed party to be impleaded - Held, impleadment of applicant not necessary. (Devchand Constructions Vs Board of Trustees of the Port of Mormugao & Anr.) 2006(4) Civil Court Cases 300 (Bombay)

Civil Procedure Code, 1908, Order 1 Rule 10(2) - Instead of filing written statement application filed for deletion of names of defendant Nos.1 & 2 without showing any prejudice or that they are improper parties - Revision Petition dismissed with costs of Rs.10,000/- - Costs shall be a condition precedent for filing the written statement. (Punjab National Bank Vs Balbir Kaur) 2003(3) Civil Court Cases 272 (P&H)

Civil Procedure Code, 1908, Order 1 Rule 10(2) - Necessary and proper party - A necessary party is one who ought to have been joined i.e. a person in whose absence no effective decree at all can be passed - A proper party is one whose presence is necessary to enable the Court to effectually and completely adjudicate upon and decide all questions involved in the suit. (M/s.Ponni Sugars & Chemicals Ltd. Vs Bargarh Coop. Sugar Mills Ltd.) 2003(2) Civil Court Cases 505 (Orissa)

Civil Procedure Code, 1908, Order 1 Rule 13 - Necessary parties - Objection as to - Should be raised before settlement of issues. (M/s Oasis Bar and Restaurant Vs Smt.P.Umabala) AIR 2002 A.P. 465

Civil Procedure Code, 1908, Order 2 Rule 2, Order 6 Rule 17 - Suit for possession on ground of expiry of lease - Lease not expired on date of filing of suit - Amendment of plaint in view of subsequent expiry of lease - Allowed - Held, suit cannot be decreed as the same was not maintainable

initially. (Union Bank of India Vs Vithalbhai Pvt.Ltd.) AIR 2002 Calcutta 144

Civil Procedure Code, 1908, Order 2 Rule 2, Section 11 - Agreement to mortgage - Possession delivered - Suit for injunction filed before accrual of cause of action for filing suit for specific performance - Suit for specific performance is not barred under Order 2 Rule 2 of Civil Procedure Code, 1908 nor suit is barred under Section 11 of Civil Procedure Code, 1908 as issues in earlier suit and suit for specific performance are entirely different. (Birbal Vs Net Ram (Dead) through LRs.) 2006(3) Civil Court Cases 440 (P&H)

SC **Civil Procedure Code, 1908, Order 2 Rule 2, Section 11** - Res judicata & Principle underlying O.2 Rule 2 CPC - Distinction - The former places emphasis on the plaintiff's duty to exhaust all available grounds in support of his claim, while the latter requires the plaintiff to claim all reliefs emanating from the same cause of action. (Kunjan Nair Sivaraman Nair Vs Narayanan Nair & Ors.) 2004(1) Apex Court Judgments 242 (S.C.) : 2004(2) Civil Court Cases 63 (S.C.)

SC **Civil Procedure Code, 1908, Order 2 Rule 2** - 'Cause of action' - Meaning - The expression means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court - Every fact which is necessary to be proved, as distinguished from every piece of evidence which is necessary to prove each fact, comprises in "cause of action". (Kunjan Nair Sivaraman Nair Vs Narayanan Nair & Ors.) 2004(1) Apex Court Judgments 242 (S.C.) : 2004(2) Civil Court Cases 63 (S.C.)

Civil Procedure Code, 1908, Order 2 Rule 2 - Agreement to sell - Suit for permanent injunction filed against defendant before the date fixed for execution of sale deed - Suit for specific performance filed after the date fixed for execution of sale deed - Held, suit for specific performance is not barred U.O.2 Rule 2 CPC as cause of action for both the suits is different - The day suit for permanent injunction was filed plaintiff has no cause of action to file the suit for specific performance which arose only on the last day fixed for execution of sale deed. (Meena Rani Vs Ajaib Singh) 2003(3) Civil Court Cases 20 (P&H)

Civil Procedure Code, 1908, Order 2 Rule 2 - Agreement to sell

- Suit for permanent injunction filed before the date fixed for execution of sale deed - Subsequent suit for specific performance is not barred U.O.2 Rule 2 CPC - If plaintiff continues to prosecute the previous suit for permanent injunction after the expiry of date fixed for execution of sale deed even then suit for specific performance is not hit by O.2 Rule 2 CPC. (Daulat Ram Vs Hari Ram) 2003(3) Civil Court Cases 136 (P&H)

Civil Procedure Code, 1908, Order 2 Rule 2 - Agreement to sell

- Suit for permanent injunction restraining defendant from alienating suit property - Subsequent suit for specific performance - Earlier suit not based on cause of action of specific performance - Relief of specific performance not available at the time of earlier suit as agreed date was later in point of time to date of earlier suit - Subsequent suit for specific performance is not barred U.O.2 Rule 2 CPC. (Harbans Singh Vs Mohinder Singh) AIR 2003 P&H 294



Civil Procedure Code, 1908, Order 2 Rule 2 - All reliefs arising

out of the same cause of action must be availed in the same suit - Second suit based on the same cause of action on which earlier suit was based is barred. (Kunjan Nair Sivaraman Nair Vs Narayanan Nair & Ors.) 2004(1) Apex Court Judgments 242 (S.C.) : 2004(2) Civil Court Cases 63 (S.C.)

Civil Procedure Code, 1908, Order 2 Rule 2 - Bar of O.2 Rule

2 CPC - It is the foundation of the previous suit as well as the present suit which is to be seen as to whether it is one and the same - Mere comparison of the reliefs or variance in few allegations here or there has no relevance - Earlier suit for injunction dismissed for default - Subsequent suit for specific performance and possession - Bar of O.2 Rule 2 CPC is applicable on the facts of the instant case. (Gajanan R.Salvi Vs Satish Shankar Gupte & Ors.) 2005(2) Civil Court Cases 204 (Bombay)

Civil Procedure Code, 1908, Order 2 Rule 2 - Bar of Order 2 Rule

2 of Civil Procedure Code, 1908- It is the foundation of the previous suit as well as the present suit which is to be seen as to whether it is one and the same - Mere comparison of the reliefs or variance in few allegations here or there has no relevance - Earlier suit for injunction dismissed for default - Subsequent suit for specific performance and possession - Bar of Order 2 Rule 2 of Civil Procedure Code, 1908 is applicable on the facts of the instant

case. (Gajanan R.Salvi Vs Satish Shankar Gupte & Ors.) 2005(2) Civil Court Cases 204 (Bombay)

Civil Procedure Code, 1908, Order 2 Rule 2 - Bar of subsequent suit - Earlier suit filed for arrears of rent and subsequent suit filed for damages for unauthorised occupation - Both the suits are based on different cause of action - O.2 Rule 2 is not applicable and second suit is maintainable. (Palani Municipal Council Vs C.Sadasivam) 2003(3) Civil Court Cases 326 (Madras)

Civil Procedure Code, 1908, Order 2 Rule 2 - Bar of suit U.O.2 Rule 2 - In absence of specific pleading and non production of proceedings of the first suit, such a plea cannot be raised before the Appellate Court. (Harbans Singh & Ors. Vs Mohinder Singh) 2003(3) Civil Court Cases 365 (P&H)

Civil Procedure Code, 1908, Order 2 Rule 2 - Bar of suit U.O.2 Rule 2 - Plea maintainable only if pleading of previous suit to prove identity of cause of action in the two suits is filed - No inference of bar can be drawn from assertions made in plaint in the subsequent suit. (Andhra Pradesh Wakf Board Vs Syed Jalaluddin Sha) 2004(3) Civil Court Cases 469 (A.P.)

Civil Procedure Code, 1908, Order 2 Rule 2 - Bar of suit under Order 2 Rule 2 - Plea maintainable only if pleading of previous suit to prove identity of cause of action in the two suits is filed - No inference of bar can be drawn from assertions made in plaint in the subsequent suit. (Andhra Pradesh Wakf Board Vs Syed Jalaluddin Sha) 2004(3) Civil Court Cases 469 (A.P.)

SC **Civil Procedure Code, 1908, Order 2 Rule 2** - Cause of action - It is a bundle of facts which taken with the law applicable gives plaintiff a right to relief against defendant - It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue - It is not limited to the actual infringement of the right sued on but includes all the material facts on which it founded. (Swamy Atmananda & Ors. Vs Sri Ramakrishna Tapovanam & Ors.) 2005(2) Apex Court Judgments 471 (S.C.) : 2005(3) Civil Court Cases 397 (S.C.)

SC **Civil Procedure Code, 1908, Order 2 Rule 2** - In earlier suit title upheld but prayer for injunction rejected as possession was not found - Subsequent suit for recovery of possession with mesne profits - Held, cause

of action in both the suit is different - Second suit is not barred U.O.2 Rule 2 CPC. (Kunjan Nair Sivaraman Nair Vs Narayanan Nair & Ors.) 2004(1) Apex Court Judgments 242 (S.C.) : 2004(2) Civil Court Cases 63 (S.C.)

Civil Procedure Code, 1908, Order 2 Rule 2 - Previous suit based upon threatened invasion of right to remain in possession - Second suit filed when there was another attempt to interfere in possession - Second suit is based on fresh cause of action, distinct from the cause of action that was the basis of previous suit - Held, suit is not barred under Order 2 Rule 2 of Civil Procedure Code, 1908. (Punjab Wakf Board, Ambala Vs Gram Panchayat, Mangali Aklan & Anr.) 2005(2) Civil Court Cases 805 (P&H)

Civil Procedure Code, 1908, Order 2 Rule 2 - Provision of Order 2 Rule 2 do not apply where there are different cause of action under the same contract. (Maharashtra Small Scale Industries Development Corporation Ltd. Vs M/s M.Surda Corporation) 2006(3) Civil Court Cases 599 (Bombay)

Civil Procedure Code, 1908, Order 2 Rule 2 - Suit for damages for unauthorised occupation - It is a recurring cause of action - If claim for future period is not relinquished and claim pertains to different period than the earlier one, then provision of Order 2 Rule 2 of Civil Procedure Code, 1908 is not applicable. (N.Ajit Kumar Vs Hanuman Prasad) 2006(2) Civil Court Cases 557 (M.P.)

Civil Procedure Code, 1908, Order 2 Rule 2 - Suit for injunction - Dismissal of suit - Subsequent suit for declaration of title and injunction - Not barred U.O.2 Rule 2 CPC. (Chinnappa Vs Corporation of the City of Bangalore) 2005(1) Civil Court Cases 382 (Karnataka)

Civil Procedure Code, 1908, Order 2 Rule 2 - Suit for injunction - Dismissal of suit - Subsequent suit for declaration of title and injunction - Not barred under Order 2 Rule 2 of Civil Procedure Code, 1908. (Chinnappa Vs Corporation of the City of Bangalore) 2005(1) Civil Court Cases 382 (Karnataka)

Civil Procedure Code, 1908, Order 2 Rule 2 - Suit for injunction dismissed for default - In such suit relief of specific performance could have been claimed but plaintiff omitted to do so - Subsequent suit for specific performance is barred. (Smt.Parkash Kumari Vs Balwant Singh & Ors.)

2005(2) Civil Court Cases 299 (P&H)

Civil Procedure Code, 1908, Order 2 Rule 2 - Suit for permanent injunction filed when cause of action for filing suit for specific performance had not arisen - Subsequently suit for specific performance filed - Held, suit for specific performance is not barred U.O.2 Rule 2 CPC - 2001(3) Civil Court Cases 132 is not applicable to the facts of the case as in that case suit for permanent injunction had been filed after accrual of cause of action to file suit for specific performance. (Harbans Singh & Ors. Vs Mohinder Singh) 2003(3) Civil Court Cases 365 (P&H)

Civil Procedure Code, 1908, Order 2 Rule 2 - Suit for possession - Failure to claim mesne profits - D.H. can put up claim after date of decree as cause of action for claim of mesne profits arises subsequent to decree. (Venugopala Vs Vasantha) AIR 2003 Karnataka 279

Civil Procedure Code, 1908, Order 2 Rule 2 - Suit for possession on ground of expiry of lease - Lease not expired on date of filing suit - Held, suit is not maintainable as cause of action was not available on date of filing suit. (Union Bank of India Vs Vithalbhair Pvt.Ltd.) AIR 2002 Calcutta 144

Civil Procedure Code, 1908, Order 2 Rule 2 - To substantiate plea of O.2 Rule 2 CPC it is necessary to bring on record the plaint of the previous suit so as to sustain the plea - A mere plea put forth in an indirect manner the concept of O.2 Rule 2 would not be attracted. (Dwarika Prasad Vs Ram Kishan) 2003(3) Civil Court Cases 380 (M.P.)

Civil Procedure Code, 1908, Order 2 Rule 2 - Two suits based on different causes of action - Not barred U.O.2 Rule 2 CPC. (Sham Lal Vs Mathi) AIR 2002 H.P. 66

Civil Procedure Code, 1908, Order 2 Rule 2 - Where a plaintiff omits to sue in respect of or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. (Ajay Singh & Ors. Vs Rajasthan Civil Service Appellate Tribunal & Ors.) 2003(3) Civil Court Cases 657 (Rajasthan)

Civil Procedure Code, 1908, Order 2 Rule 3 - Different causes of action - Joinder of in one suit - Not permissible - 17 pronotes executed at different point of time and in favour of different persons - It is impermissible

for different persons, claiming under different pronotes, to join together and file a single suit - Single suit not maintainable. (Kota Sreevalli & Ors. Vs Chinni Seetharamaiah & Ors.) 2006(3) Civil Court Cases 631 (A.P.)

SC **Civil Procedure Code, 1908, Order 3 Rule 1, Arbitration and Conciliation Act, 1996, Section 11** - Arbitrator - Appointment - Counsel consented to appointment of an arbitrator - High Court in a petition under Section 11 of the Act appointed an arbitrator on consent given by counsel for appellant - Arbitrator so appointed entered into reference and proceeded in the matter - Held, such party cannot be allowed to agitated that as per terms of arbitration clause in agreement only a particular arbitrator could be appointed - Concession made by Advocate is binding on party whom he represents in terms of Order 3 Rule 1 of Civil Procedure Code, 1908. (B.S.N.L. & Ors. Vs M/s.Subash Chandra Kanchan & Anr.) 2006(3) Apex Court Judgments 193 (S.C.)

Civil Procedure Code, 1908, Order 3 Rule 1 - Advocate as a witness - Where an Advocate accepts the brief on behalf of a party and conducts the case in a manner in which he knows that he is likely to be cited as a material witness, he cannot subsequently withdraw from the case and appear as a witness. (Kamla Bakshi Vs Union of India & Ors.) 2004(3) Civil Court Cases 145 (J&K)

SC **Civil Procedure Code, 1908, Order 3 Rule 1** - Concession by counsel - It is binding on party - However, matter is different if concession is made on a question of law - A wrong concession on legal question is not binding upon client. (B.S.N.L. & Ors. Vs M/s.Subash Chandra Kanchan & Anr.) 2006(3) Apex Court Judgments 193 (S.C.)

Civil Procedure Code, 1908, Order 3 Rule 1 - Power of attorney holder - Can appear as a witness only in his personal capacity and can state on oath whatever he has knowledge about the case but cannot appear as a witness on behalf of the party in the capacity of that party. (Kamla Bakshi Vs Union of India & Ors.) 2004(3) Civil Court Cases 145 (J&K)

Civil Procedure Code, 1908, Order 3 Rule 1 & 2 - Advocate cannot appear as a witness as a substitute for plaintiff - If he appears as a witness he cannot act as an advocate in the same case - If at any point of time he comes to know that he is a material witness in the case he should not continue to appear

- The words 'act' and 'appearance' appearing in rule 2 mean to appear for the client in course of litigation and it includes to examine or cross-examine a witness but not to appear as witness on behalf of the party. (Kamla Bakshi Vs Union of India & Ors.) 2004(3) Civil Court Cases 145 (J&K)

Civil Procedure Code, 1908, Order 3 Rules 1, 2 - Agreement to sell - Suit for specific performance - Execution of contract denied by opposite party - Power of attorney holder cannot depose in place of his principal. (N.K.Giriraja Setty Vs N.K.Parthasarathy Setty & Ors.) 2006(3) Civil Court Cases 139 (Karnataka) (DB)

Civil Procedure Code, 1908, Order 3 R.1 & 2 - Advocate cannot appear as a witness as a substitute for plaintiff - If he appears as a witness he cannot act as an advocate in the same case - If at any point of time he comes to know that he is a material witness in the case he should not continue to appear - The words 'act' and 'appearance' appearing in rule 2 mean to appear for the client in course of litigation and it includes to examine or cross-examine a witness but not to appear as witness on behalf of the party. (Kamla Bakshi Vs Union of India & Ors.) 2004(3) Civil Court Cases 145 (J&K)

SC Civil Procedure Code, 1908, Order 3 Rules 1, 2 - Power of attorney holder - Deposing on behalf of the principal - If power of attorney holder has rendered some 'acts' in pursuance to power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him and in respect of matter which only the principal has a personal knowledge and in respect of which the principal is liable to be cross-examined. (Janki Vashdeo Bhojwani & Anr. Vs Indusind Bank Ltd. & Ors.) 2005(2) Civil Court Cases 324 (S.C.)

Civil Procedure Code, 1908, Order 3 Rules 1,4, Order 9 Rule 13 - Application to set aside ex parte decree not presented alongwith Vakalathnama - Application dismissed for this reason - Held, if there is some formal defect in the presentation of an application, Court can either return the application for rectification of defect or can issue notice to party to be present on a particular day for the purpose of further prosecuting the matter - Rejection of application not justified. (M.Venkata Subba Reddy Vs State Bank of India) 2003(3) Civil Court Cases 389 (A.P.)

Civil Procedure Code, 1908, Order 3 Rules 2 & 4 - General power

of attorney holder - Has no right of audience - Not entitled to plead and argue
- Power to plead on behalf of a party in judicial proceedings vests only with the pleader. (Moulasab Vs Mohammad Hasim) 2003(1) Civil Court Cases 627 (Karnataka)

Civil Procedure Code, 1908, Order 3 Rule 2, Evidence Act, 1872, Section 118 - Power of attorney holder - Pronote - Execution - Proof
- Plaintiff not appearing as a witness - Power of attorney was present at the time of execution of pronote and receipt - Held, power of attorney holder is competent in the circumstances of the case to depose regarding execution of pronote and receipt as well as receipt of the money. (Balbir Singh Vs Anil Kumar) 2003(3) Civil Court Cases 155 (P&H)

Civil Procedure Code, 1908, Order 3 Rule 2 - General power of attorney - Grant of permission to appear and prosecute particular case - Cannot be withdrawn unless it is shown that he has created unhealthy atmosphere or indisciplined situation or exchanged words. (Surender Raj Jaiswal Vs Smt. Vijaya Jaiswal) AIR 2003 A.P. 317

Civil Procedure Code, 1908, Order 3 Rule 2 - General power of attorney holder - Not a substitute to the party - Not competent to appear as witness in the capacity of party and depose about facts within exclusive personal knowledge of the party - However, he can depose about facts which are within his personal knowledge. (S.Padmavathamma Vs S.Sudha Rani & Ors.) 2004(2) Civil Court Cases 364 (A.P.)

Civil Procedure Code, 1908, Order 3 Rule 4 - Advocate cannot withdraw his vakalatnama without leave of Court - Practice of Court discharging Advocate on mere filing “no instruction” deprecated. (Govinda Bhagoji Kamable & Ors. Vs Sadu Bapu Kamable & Ors.) 2005(1) Civil Court Cases 511 (Bombay)

Civil Procedure Code, 1908, Order 3 Rule 4 - Disposal of suit by making reference to referee - Statement by Advocate - Advocate engaged to file civil suit and authority given - Consequences of the statement made by Advocate agreeing to the disposal of the suit by making reference cannot be avoided. (Rama & Ors. Vs Hari Singh & Ors.) 2004(3) Civil Court Cases 708 (P&H)

Civil Procedure Code, 1908, Order 3 Rule 4(2) - “No instructions” - Before dismissal of suit Court to issue notice to the party - Counsel continues to represent party until he is permitted to withdraw in writing. (Gulabo Vs Nagar Palika, Phalodi) 2003(1) Civil Court Cases 315 (Rajasthan)

Civil Procedure Code, 1908, Order 3 Rule 4(2) - “No instructions” - Prayer to be made in writing and before granting leave to withdraw from the case Court to ensure that the party on whose behalf the counsel was appearing has knowledge of such withdrawal from the case. (Gulabo Vs Nagar Palika, Phalodi) 2003(1) Civil Court Cases 315 (Rajasthan)

Civil Procedure Code, 1908, Order 3 Rule 4(2) - Advocate - Fee - Bank paid 50% fee at the time of filing plaint - Vakalath terminated during pendency of suit - Court directed that Advocate is entitled to 25% of fee and directed to return the balance of excess received from Bank - Circular instructions issued by Bank are binding on Bank and Counsel as well - Order of trial Court directing Counsel to return to Bank half amount of fee is not sustainable. (G.N.Vishwanathappa Vs Canara Bank) 2004(2) Civil Court Cases 115 (Karnataka)

Civil Procedure Code, 1908, Order 4 Rule 1, Order 6 Rule 15 - Plaint - Proper verification and signing of pleading - Is merely a mistake - Can be rectified subsequently. (Bal Mukund Persad Gupta Vs Mathura Prasad) AIR 2002 Allahabad 363

Civil Procedure Code, 1908, Order 4 Rule 1 - Suit instituted after office hours or on a holiday at the residence of Presiding Officer - No Judicial Officer would refuse to exercise his discretion in a case of urgency justifying the grant of appropriate relief in the form of injunction or stay order in appropriate case. (Jaspal Singh & Anr. Vs Balbir Singh) 2004(2) Civil Court Cases 588 (P&H)

Civil Procedure Code, 1908, Order 4 Rule 1(2) - Plaint - To comply with rules contained in Order 6 and Order 7 - Unless such compliance is satisfied, plaint shall not be deemed to be duly instituted. (Syed Saleema Bee Vs Smt.Syed Noorjahan & Anr.) 2006(2) Civil Court Cases 613 (A.P.)

Civil Procedure Code, 1908, Order 5 Rule 1 & O.8 Rule 1 (As amended) - Suit instituted before commencement of Amendment Act

2002 - Provisions of O.5 Rule 1 and O.8 Rule 1 not applicable - Court in its discretion may permit filing of written statement even beyond period of 90 days. (Jerry Alex Braganza alias Jeronimo Oriculo Alex Braganza & Anr. Vs Rajeshree alias Rayeshri Ramdas Borkar alias Shobhavati Ramdas Borkar & Ors.) 2004(2) Civil Court Cases 151 (Bombay)

Civil Procedure Code, 1908, Order 5 Rule 6 - Fixing date for appearance of defendant - Summons issued on 18.8.1987 and service effected on 19.8.1987 for date fixed in the case as 20.8.1987 and exparte decree passed on 1.8.1988 - Date fixed in the case was keeping in view the residence of the defendant - Defendant had adequate notice of pendency of suit - Even if defendant did not have sufficient time to appear on August 20, 1987 he could have put in appearance on any subsequent date or could have moved an appropriate application on any date thereafter - There is no procedural irregularity committed in issuing summons for two days later. (Ami Chand Vs Partapa) 2003(3) Civil Court Cases 52 (P&H)

Civil Procedure Code, 1908, Order 5 Rule 9 - Summons - Service - Through process server and registered post - Always returned with vague endorsements such as “not found”, “addressee has left” and “not met” - There is presumption of service of summons. (Ms. Vijay Laxmi & Anr. Vs Munnu Lal) 2005(2) Civil Court Cases 47 (Allahabad)

SC Civil Procedure Code, 1908, Order 5 Rule 9 - Summons - Service by courier - Danger of false reports of service - It is required to be adequately guarded - High Courts can make appropriate rules and regulations or issue practice directions to ensure that such provision of service are not abused so as to obtain false endorsement. (Salem Advocate Bar Association, Tamil Nadu Vs Union of India) 2005(2) Apex Court Judgments 492 (S.C.) : 2005(3) Civil Court Cases 420 (S.C.)

Civil Procedure Code, 1908, Order 5 Rule 9(1) & R.9(3) - Service of summons - Court cannot order service of summons under R.9(3) also in addition to and simultaneously to the service of summons under R.9(1) of Order 5 CPC. (Razack Trading Company Vs J.K. Industries Ltd.) 2003(2) Civil Court Cases 47 (Kerala)

Civil Procedure Code, 1908, Order 5 Rule 17, 19 and 19-A - Substituted service - Munadi and publication in newspaper - Two modes

- Once resort is made by publication then there is no necessity of ordering service by Munadi. (Tarlochan Singh Vs State Bank of India & Ors.) 2006(4) Civil Court Cases 690 (P&H)

Civil Procedure Code, 1908, Order 5 Rule 17, Order 29 Rule 2(b)

- Summons - Corporation - Service of summons on employee of defendant who was not authorised to receive it - It does not amount to valid service of summons. (Pravinchandra Vs Murli Agro Products Ltd.) 2005(3) Civil Court Cases 614 (Bombay)

Civil Procedure Code, 1908, Order 5 Rule 19-A - Service by registered post - Requirement to issue summons by registered post is not mandatory - It is in addition to and simultaneous with the issue of summons for service - It is not obligatory to send summons by registered post when Court considers it unnecessary to issue summons by registered post. (Ami Chand Vs Partapa) 2003(3) Civil Court Cases 52 (P&H)

Civil Procedure Code, 1908, Order 5 Rule 20, Limitation Act, 1963, Art.123 Expln. - Substituted service - Notice in newspaper 'Andhra Prabha' - Defendant stating that he is a subscriber for 'Eenadu' and had no access to 'Andhra Prabha' - No inference can be drawn that defendant had knowledge of ex parte decree - No warranting circumstances to ask parties to adduce evidence in that regard as a disputed question cannot be proved by evidence - In such a case, substituted service cannot be held to be due service to refuse setting aside ex parte decree. (M.Narasimha Reddy & Ors Vs Begari Samuel) 2003(1) Civil Court Cases 169 (A.P.)

Civil Procedure Code, 1908, Order 5 Rule 20, Order 9 Rule 13 - Substituted service - Before resorting to substituted service no satisfaction of Court that it is not possible to serve the defendant in the ordinary course - Endorsement on registered A.D. cover that address is incomplete - Exparte decree set aside - Order upheld. (Subedar Amar Singh Vs Avtar Singh & Anr.) 2003(3) Civil Court Cases 419 (P&H)

Civil Procedure Code, 1908, Order 5 Rule 20 - Substituted service - Party cannot ask Court that it wants to serve the defendant by substituted service - Practice of filing such an application deprecated - Substituted service is permissible if Court records reasons after being fully satisfied that defendant cannot be served in an ordinary manner. (Om Prakash Vs Prakash

Chand & Ors.) 2005(1) Civil Court Cases 451 (Allahabad)

Civil Procedure Code, 1908, Order 5 Rule 20 - Substituted service
- Service of summons by publication in a newspaper - Report on summons that tenant working as Munim elsewhere and that adult members of family of tenant refused to divulge his address - Held, the only way left to serve the tenant was to serve him by publication of a notice in the newspaper in circulation in the area of his last known address. (Bal Kishan & Ors. Vs Tara Chand & Ors.) 2005(3) Civil Court Cases 278 (P&H)

Civil Procedure Code, 1908, Order 5 Rule 20 - Summons - Service by beat of drums - Report of Process Server neither mentioned time nor the report attested by an independent person - Report not acceptable. (Kailash Chand Jain & Ors. Vs Chhaju Ram Jain) 2003(3) Civil Court Cases 414 (P&H)

Civil Procedure Code, 1908, Order 6 Rule 1 - Pleadings - Plaintiff is bound by its own pleadings and he must fail or succeed on his own pleadings. (Niwas Builders Vs Chanchalaben Gandhi) 2003(3) Civil Court Cases 99 (Bombay)

Civil Procedure Code, 1908, Order 6 Rules 1, 2 - Pleading - Admission in pleading - Unless withdrawn on cogent grounds by way of amendment of pleadings, cannot be retracted and shown to be erroneous. (Surendra Bhatia Vs Poonam Bhatia & Ors.) 2006(2) Civil Court Cases 307 (Rajasthan) (DB)

Civil Procedure Code, 1908, Order 6 Rules 1, 2 - Pleading and proof
- Plaintiff can prove his case even on the basis of admission by defendant in his pleading, oral evidence or by documents produced by him which in fact may support plaintiff. (Tulsabai & Ors. Vs Sakharam Bhanu Chavan & Ors.) 2006(2) Civil Court Cases 271 (Bombay) (DB)

Civil Procedure Code, 1908, Order 6 Rules 1,2, Hindu Marriage Act, 1955, Section 13(1)(ia) and (ib) - Divorce - Cruelty - Evidence without pleading - Where allegation of cruelty pleaded in divorce petition is vague without citation of particular instances of cruelty, evidence to prove particular instances of cruelty cannot be led. (B.S.Mohan Kumar Vs Smt.B.K.Nirmala) 2004(3) Civil Court Cases 412 (Karnataka)

Civil Procedure Code, 1908, Order 6 Rules 1,2 - Fraud - Pleading
- Full particulars must be pleaded in case of fraud, undue influence and coercion - General allegations are not sufficient. (K.Chinna Thimma Reddi Vs K.A.Venkatarami Reddi (Died) & Ors.) 2004(2) Civil Court Cases 698 (A.P.)

SC **Civil Procedure Code, 1908, Order 6 Rules 1,2** - In a civil suit all facts have to be pleaded and proved. (Sanjay Gera Vs Haryana Urban Development Authority and Anr.) 2005(1) Apex Court Judgments 480 (S.C.) : 2005(2) Civil Court Cases 97 (S.C.)

SC **Civil Procedure Code, 1908, Order 6 Rules 1,2** - Mala fide - Allegations as to - Pleading - Sufficient particulars and cogent materials making out prima facie case must be set out in the pleadings - Vague allegation or bald assertion is not sufficient - In absence of material particulars, Court is not expected to make 'fishing' inquiry into the matter. (Purushottam Kumar Jha Vs State of Jharkhand & Ors.) 2006(3) Apex Court Judgments 303 (S.C.)

SC **Civil Procedure Code, 1908, Order 6 Rules 1,2** - Pleadings - A fact which is within the special knowledge of the defendant need not be pleaded in the plaint. (Liverpool & London S.P. & I. Asson Ltd. Vs M.V.Sea Success I and Anr.) 2004(1) Apex Court Judgments 200 (S.C.)

Civil Procedure Code, 1908, Order 6 Rules 1,2 - Pleadings - All necessary and material facts should be pleaded by the party in support of its case set up by it - Evidence in absence of pleadings not to be considered - No party is allowed to travel beyond its pleadings. (Kailash Devi Vs Jai Kishan (Lance Naik) & Anr.) 2005(1) Civil Court Cases 87 (P&H)

Civil Procedure Code, 1908, Order 6 Rules 2, 4 - Proof beyond pleading - No amount of evidence is substitute to the pleadings which are the foundation to build up a case - In pleadings, necessary and material facts constituting substantive rights claimed and liabilities assumed by the parties must be incorporated - No amount of evidence would be a substitute for pleadings concerning substantive rights and liabilities. (Maghar Singh Vs Gurmel Singh) 2003(3) Civil Court Cases 96 (P&H)

Civil Procedure Code, 1908, Order 6 Rules 2, 4 - Pleading -

Ancestral and coparcenary property - In absence of pleading that suit property has fallen from predecessor-in-interest and so on and so forth, framing of an issue or adducing evidence is of no use. (Maghar Singh Vs Gurmel Singh) 2003(3) Civil Court Cases 96 (P&H)

Civil Procedure Code, 1908, Order 6 Rule 2, Order 7 Rule 7 - Pleading - Relief - For grant of relief form of plaintiff's prayer does not matter and it is the substance thereof which should be looked into - Plea not specifically made but covered by an issue by implication and parties knew that said plea is involved in trial, then mere fact that plea not expressly taken in the pleadings does not necessarily disentitle a party from relying upon if it is satisfactorily proved by evidence. (Shaik Munni Vs M/s Jagan Mohan Salt Industries) 2003(1) Civil Court Cases 189 (A.P.)

Civil Procedure Code, 1908, Order 6 Rule 2 - Inconsistent pleas - A party can take alternate pleas, whether consistent, complimentary or inconsistent and conflicting - When a party takes inconsistent pleas, ordinarily, it may abandon/destroy one, for success in another - In a given case, two conflicting and inconsistent pleas may even destroy both the pleas, cases, grounds of attack or grounds of defence. (Dadabhau Shankar Ghodke Vs Mohanlal Kanhyalal Agrawal) 2003(1) Civil Court Cases 543 (Bombay)

Civil Procedure Code, 1908, Order 6 Rule 2 - Plea of tenancy - Alternative plea of trespasser - Contrary to earlier plea - Defendant cannot approbate and reprobate. (Sukumbabai Vs Chandgonda) AIR 2003 Bombay 131

SC **Civil Procedure Code, 1908, Order 6 Rule 2** - Pleading - Every pleading should contain, and contain only, a statement in a concise form of the material facts on which the party relies for his claim or defence, as the case may be - 'Material facts' are facts upon which the plaintiff's cause of action or defendant's defence depends and the facts which must be proved in order to establish the plaintiff's right to the relief claimed in the plaint or the defendant's defence in the written statement - Which particular fact is a material fact and is required to be pleaded by a party, depends upon facts and circumstances of each case. (Mayar (H.K.) Ltd. Vs Owners & Parties, Vessel M.V.Fortune Express) 2006(1) Apex Court Judgments 610 (S.C.) : 2006(2) Civil Court Cases 15 (S.C.)

Civil Procedure Code, 1908, Order 6 Rule 2 - Pleadings - If parties know that a point arises in the case and produce evidence on it though it does not find place in the pleadings and no specific issue has been framed on it, Court can still adjudicate thereon - None of the parties can be allowed to say that Court cannot decide the matter because it was not raised in the pleadings. (Kirpal Singh Vs Sardha Ram) 2004(2) Civil Court Cases 219 (P&H)

Civil Procedure Code, 1908, Order 6 Rule 2 - Pleadings - Suit for cancellation of sale deed alleged to be got executed by defendants without consideration and by playing fraud on his father - In said suit it is enough to plead that 'K' is his mother and he is son of 'S' - In such a suit it is not required to plead that 'K' is second wife of 'S' or that marriage between them was performed as per Hindu customs or otherwise. (Hameed & Ors. Vs Kanhaiya) 2005(1) Civil Court Cases 146 (Allahabad) : 2005(1) Civil Court Cases 146 (Allahabad)

Civil Procedure Code, 1908, Order 6 Rule 4 - Fraud, misrepresentation and undue influence - Pleading - General allegations without particulars thereof not sufficient. (Ranganayakamma & Anr. Vs K.S.Prakash (Deceased) By LRs & Ors.) 2006(3) Civil Court Cases 80 (Karnataka) (DB)

SC **Civil Procedure Code, 1908, Order 6 Rule 4** - Fraud - Pleading - Complete particulars of fraud be stated in the pleadings. (Ramesh B.Desai & Ors. Vs Bipin Vadilal Mehta & Ors.) 2006(3) Apex Court Judgments 180 (S.C.) : 2006(3) Civil Court Cases 577 (S.C.)

Civil Procedure Code, 1908, Order 6 Rule 4 - Pleading and proof - Variance - Non giving of details in plaint does not amount to variance between pleading and proof. (Ram Kalyan Vs Smt.Ladbai & Anr.) 2004(3) Civil Court Cases 177 (Rajasthan)

SC **Civil Procedure Code, 1908, Order 6 Rule 4** - Pleading and proof - Variance - When evidence is not in line with the pleadings and is at variance with it an adverse inference has to be drawn and the evidence cannot be looked into or relied upon. (Kashi Nath (Dead) through L.Rs. Vs Jaganath) 2004(1) Apex Court Judgments 474 (S.C.)

Civil Procedure Code, 1908, Order 6 Rule 4 - Pleadings - Not to be strictly interpreted. (Rampur Engineering Co. Ltd. Vs United Construction

Co.) AIR 2002 Delhi 170

Civil Procedure Code, 1908, Order 6 Rule 4 - Proof beyond pleading
- Not permissible. (Pradeep Kumar Vs Mahaveer Pershad) 2003(2) Civil Court Cases 586 (A.P.)

Civil Procedure Code, 1908, Order 6 Rule 4 - Undue influence
- Pleading - Averments that defendant took undue advantage of a helpless, illiterate and old lady and made her to thumb mark some papers with ulterior motive of usurping her property and that he was guilty of abuse of faith and that she never leased out the agricultural property to the defendant for a period of 99 years as recorded in the lease deed by a ridiculously and woefully amount of Rs.2,500/- p.a. and not a single penny was paid - Held, it is sufficient pleading with regard to undue influence. (Hamelov Vs Jang Sher Singh) AIR 2002 P&H 147

Civil Procedure Code, 1908, Order 6 Rule 7 - Pleadings - Absence of - No finding of fact can be recorded with regard to which there is complete absence of pleadings. (Smt.Khushal Kanwar Vs Smt.Kamla Devi & Anr.) 2006(1) Civil Court Cases 295 (Rajasthan) (DB)

Civil Procedure Code, 1908, Order 6 Rule 14, Order 29 Rule 1
- Company - Complaint filed by an officer of Company without authority - Suit is maintainable if his action is ratified during trial - Such ratification can be express or implied. (B.Anil Kumar Reddy Vs Margadarsi Chit Fund Limited, Kadapa & Ors.) 2006(1) Civil Court Cases 739 (A.P.)

SC **Civil Procedure Code, 1908, Order 6 Rule 14** - Complaint - Not signed by plaintiff or his duly authorized agent due to any bona fide error - Defect can be permitted to be rectified either by the trial court at any time before judgment, or even by the appellate court by permitting appropriate amendment, when such defect comes to its notice during hearing. (Uday Shankar Triyar Vs Ram Kalewar Prasad Singh & Anr.) 2006(1) Apex Court Judgments 166 (S.C.) : 2006(1) Civil Court Cases 416 (S.C.)

Civil Procedure Code, 1908, Order 6 Rule 14 - Complaint not signed - Merely an irregularity which can be rectified - Court should not decide the case on technicalities but decide the case on merits and do substantial justice. (Bal Mukund Prasad Gupta & Anr. Vs Mathura Prasad) 2003(1) Civil Court

Cases 719 (Allahabad)

Civil Procedure Code, 1908, Order 6 Rule 14-A - Correct address in cause title - Provision is mandatory. (Yellappa Vs Yashodabai) AIR 2004 Karnataka 388

Civil Procedure Code, 1908, Order 6 Rule 15, Order 8 Rule 6-A - Written statement - Amendment - Title of plaintiff denied in written statement - Defendant setting up plea of his title - Amendment sought to take plea of possession - In fact this plea is by way of counter claim - Question of limitation for entertaining counter claim does not arise if cause of action for filing said claim arose before expiry of time fixed for filing written statement - Moreover, any question of limitation, if raised by plaintiff, can be gone into by framing an issue - Dismissal of application as barred by limitation - Order set aside - Amendment allowed. (Shaik Yusuf Basha Vs Delhi Massa Bi) 2005(3) Civil Court Cases 47 (A.P.)

Civil Procedure Code, 1908, Order 6 Rule 15 - Written statement not signed by defendant - Identity of person verifying not disclosed - Which part of written statement is true to his knowledge and which part is true to his belief not disclosed - Held, verification is not in accordance with procedure under CPC. (Palm Print Textiles (India) Ltd. Vs British Millerrain Co.Ltd.) AIR 2002 Delhi 497

SC Civil Procedure Code, 1908, Order 6 Rule 15(4), Section 26(2), Order 6 Rule 17 - Affidavit to accompany pleadings - On amendment of pleadings, a fresh affidavit has to be filed. (Salem Advocate Bar Association, Tamil Nadu Vs Union of India) 2005(2) Apex Court Judgments 492 (S.C.) : 2005(3) Civil Court Cases 420 (S.C.)

SC Civil Procedure Code, 1908, Order 6 Rule 15(4), Section 26(2) - Plaintiff - Affidavit in support of the pleadings - It fixes additional responsibility on the deponent as to the truth of the facts stated in the pleadings - An affidavit accompanying pleading shall not be evidence for the purpose of the trial. (Salem Advocate Bar Association, Tamil Nadu Vs Union of India) 2005(2) Apex Court Judgments 492 (S.C.) : 2005(3) Civil Court Cases 420 (S.C.)

SC Civil Procedure Code, 1908, Order 6 Rule 16 - Pleadings - Striking out - Allegations in written statement if permitted to remain as part of written

statement the same will permit evidence to be recorded which will be wholly irrelevant - Order striking out such pleading, upheld. (Iqbal & Ors. Vs His Holiness Dr.Syedna Mohamed Burhanuddin Saheb) 2006(1) Apex Court Judgments 733 (S.C.) : 2006(1) Civil Court Cases 785 (S.C.)

Civil Procedure Code, 1908, Order 6 Rule 16 & O.8 Rule 9 - Admissions in earlier written statement - Defendant seeking to strike out the same as his Advocate mischievously made admission and seeking permission to file a fresh detailed written statement - Averments made in written statement and in the affidavit filed alongwith earlier caveat petition, both drafted by the same counsel matching with each other - Allegations against counsel not believable - Defendant not approaching Court with clean hands - Act of defendant making baseless allegations against his counsel by filing complaints before police and Bar Council of India deprecated - Application dismissed. (S.Malla Reddy & Ors. Vs Future Builders Co-operative Housing Society) 2003(1) Civil Court Cases 706 (A.P)

Civil Procedure Code, 1908, Order 6 Rule 17, Constitution of India, Art. 227 - Pleadings - Amendment - Writ jurisdiction - High Court can interfere with an order erroneously allowing or refusing to allow amendment of pleadings. (Amina Vs Kunjubawa) 2006(1) Civil Court Cases 102 (Kerala)

Civil Procedure Code, 1908, Order 6 Rule 17, East Punjab Urban Rent Restriction Act, 1949, Section 13(3)(a)(i) - Eviction petition - Amendment - During pendency of eviction petition necessity of landlord increased - Such subsequent event can be allowed to be pleaded by way of amendment. (Prem Nath Vs Gurdial Singh) 2005(3) Civil Court Cases 791 (P&H)

Civil Procedure Code, 1908, Order 6 Rule 17, Hindu Marriage Act, 1955, Sections 10, 13 - Complaint - Amendment - Petition for judicial separation sought to be converted to be one for divorce by amendment of complaint - Object and scope of both the petitions and parameters to be followed are different and distinct - Merely because amendment sought is not prejudicial to the rights of other party and in the absence of specific pleading as to changed circumstances and other relevant ingredients, amendment cannot be allowed - No infirmity in the order of trial Court dismissing application for amendment of complaint. (Dr.N.Shiva Mohana Reddy Vs Smt.Aparna Reddy) 2005(1) Civil

Court Cases 417 (A.P.)

Civil Procedure Code, 1908, Order 6 Rule 17, Hindu Marriage Act, 1955, Sections 13, 12 - Divorce petition - Plaintiff seeking amendment of plaint to seek relief under Section 12 of the Act for annulment of marriage as his consent was obtained by fraud - Amendment sought within one year of knowledge of fraud - Held, amendment sought is not barred under Section 12 of the Act. (Deepali Vs Pankaj Gupta) 2006(4) Civil Court Cases 694 (P&H)

Civil Procedure Code, 1908, Order 6 Rule 17, Order 1 Rule 10(2)
- Plaint - Amendment - Impleading of parties - Suit for declaration - During pendency of suit defendant agreed to sell the suit land to the proposed parties - Proposed parties are necessary parties or in any case proper parties for effectually adjudicating all questions involved in suit and to avoid multiplicity of proceedings - Application allowed. (Rajaram Rau Patil Vs Marcel De Pieade Braganza & Ors.) 2006(1) Civil Court Cases 317 (Bombay)

Civil Procedure Code, 1908, Order 6 Rule 17, Order 1 Rule 17
- Plaint - Amendment seeking addition of a party - Plea of non joinder of necessary party in written statement - Amendment of plaint sought six years thereafter - Order allowing amendment set aside. (M/s.Homey Bee Natural Products Private Limited Vs Admarjodh Singh) 2006(3) Civil Court Cases 128 (P&H)

Civil Procedure Code, 1908, Order 6 Rule 17, Order 41 Rule 27 - Plaint - Amendment at appellate stage - Suit for declaration of title and injunction - As plaintiff dispossessed during pendency of appeal as such relief of possession sought - Courts should try to avoid multiplicity of litigation - Amendment allowed - Appellate Court to invoke jurisdiction U.O.41 Rule 27(1)(b) r/w R.28 CPC and to give a comprehensive finding on the main issues of declaration of title and recovery of possession. (E.Anand Kumar Vs Dr.A.Narahari Reddy) 2003(1) Civil Court Cases 698 (A.P.)

Civil Procedure Code, 1908, Order 6 Rule 17, Order 7 Rule 11
- Plaint - Amendment - Power of Court to allow amendment of pleadings cannot be restricted or controlled by the provisions of Order 7 Rule 11 of Civil Procedure Code, 1908. (Lok Housing & Constructions Ltd. Vs Everest Industries Ltd. & Nirmal Lifestyles Ltd.) 2005(2) Civil Court Cases 558

(Bombay)

Civil Procedure Code, 1908, Order 6 Rule 17, Order 8 Rule 1(3), Order 19 Rule 1 - Eviction petition on ground of personal necessity - Subsequent event - During pendency of petition landlord obtained vacant possession of another shop - Fact has material bearing on ground of personal necessity - Purpose can be served by permitting defendant to file affidavit with liberty to plaintiff to file counter affidavit - Such affidavit and counter affidavit to be treated as evidence in the suit and taken into consideration while deciding the rights of the parties. (Radhey Shyam Soni Vs Sumer Mal Phophalia & Anr.) 2006(3) Civil Court Cases 781 (Rajasthan) (DB)

Civil Procedure Code, 1908, Order 6 Rule 17, Order 8 Rule 6-A - Counter claim - Amendment - Cannot be permitted when cause of action for amended counter claim arose after date of filing of written statement or after date of raising of first counter claim. (Ganu Vs Manik) 2003(3) Civil Court Cases 133 (Bombay)

Civil Procedure Code, 1908, Order 6 Rule 17, Order 8 Rule 6-A - Counter claim - Amendment - Plea sought to be introduced by way of amendment if available prior to filing of written statement can be allowed. (Vinod Kumar Vs Jagmohan) 2003(1) Civil Court Cases 163 (P&H)

Civil Procedure Code, 1908, Order 6 Rule 17, Order 8 Rule 6A - Written statement - Amendment sought in written statement to set up counter claim - Held, counter claim by amendment of written statement cannot be set up when claim is barred by time. (Gurdial Vs Kulwant Rai) 2003(2) Civil Court Cases 314 (P&H)

Civil Procedure Code, 1908, Order 6 Rule 17, Order 9 Rule 13 - Amendment of application filed under Order 9 Rule 13 - Fact sought to be incorporated by way of amendment was in the knowledge of the applicant at the time of filing of application under Order 9 Rule 13 of Civil Procedure Code, 1908- No opportunity can be granted to amend the pleadings - Petition dismissed. (M/s Mahajan General Store & Anr. Vs Piara Singh & Ors.) 2005(3) Civil Court Cases 199 (P&H)

Civil Procedure Code, 1908, Order 6 Rule 17, Order 9 Rule 7 - Plaintiff - Amendment allowed - Defendant has right to file amended written

statement limited to the amendment made in the plaint - Defendant who was proceeded ex parte can join the proceedings when the amended plaint is filed - Their right to participate in the proceedings at that stage cannot be taken away. (Ram Kumar & Ors. Vs Madan Lal Tyagi) 2006(4) Civil Court Cases 512 (P&H)

Civil Procedure Code, 1908, Order 6 Rule 17, Section 100 Specific Relief Act, 1963, Section 16(c) - Plaint - Amendment - Agreement to sell - Suit for specific performance - Necessary averments u/s 16(c) to incorporate by way of amendment of plaint - Allowed - Held, in second appeal it is not a substantial question of law as amendment sought does not change the cause of action and is legally permissible. (Chandra Pal Singh Vs Parhlad Singh) 2003(1) Civil Court Cases 321 (Allahabad)

SC **Civil Procedure Code, 1908, Order 6 Rule 17, Section 115** - During pendency of revision amendment in Rent Act came into force - Landlady allowed to amend the pleadings to add additional grounds. (P.Suryanarayana (D) by Lrs. Vs K.S.Muddugowramma) 2004(1) Apex Court Judgments 616 (S.C.)

Civil Procedure Code, 1908, Order 6 Rule 17, Section 151 - Plaint - Amendment - Defendant cannot seek amendment of plaint to include left out properties in a suit for partition - Parties are entitled to amend their own pleadings - Such a course cannot be adopted even while exercising inherent powers u/s 151 CPC. (Patchipulusu Mahalakshmi & Anr. Vs Nagolu Ramanamma & Ors.) 2004(3) Civil Court Cases 56 (A.P.)

Civil Procedure Code, 1908, Order 6 Rule 17, Section 151 - Plaint - Amendment - Defendant cannot seek amendment of plaint to include left out properties in a suit for partition - Parties are entitled to amend their own pleadings - Such a course cannot be adopted even while exercising inherent powers under Section 151 of Civil Procedure Code, 1908. (Patchipulusu Mahalakshmi & Anr. Vs Nagolu Ramanamma & Ors.) 2004(3) Civil Court Cases 56 (A.P.)

SC **Civil Procedure Code, 1908, Order 6 Rule 17, Specific Relief Act, 1963, Section 12(3)** - Agreement to sell - Suit for specific performance - Amendment of plaint sought by which a share sought to be relinquished - There is no limitation for filing such an application - Such an application can

be filed at any stage of the proceedings and can even be filed in Appellate Court - In the instant case such an application filed in the Supreme Court - Held, application is maintainable. (Surinder Singh Vs Kapoor Singh (D) through Lrs.) 2005(2) Civil Court Cases 685 (S.C.)

SC **Civil Procedure Code, 1908, Order 6 Rule 17** - “Ready and willing” - Sought to be introduced by way of amendment in a suit for specific performance - Question of limitation is not involved in allowing such an amendment in the plaint. (Raj Kumar Vs Dipender Kaur Sethi) 2005(1) Civil Court Cases 354 (S.C.) : 2005(1) Apex Court Judgments 446 (S.C.)

SC **Civil Procedure Code, 1908, Order 6 Rule 17** - Amendment of plaint to claim higher rate of interest - No amendment can be granted without affording opportunity to other party to rebut the same - Any such amendment to which the other party had no opportunity to rebut shall be ignored - Claim on amended rate of interest declined. (Sri Ramnik Vallabhadas Madhvani & Ors. Vs Taraben Pravinlal Madhvani) 2004(1) Apex Court Judgments 630 (S.C.) : 2004(3) Civil Court Cases 98 (S.C.) : 2004(3) Civil Court Cases 98 (S.C.)

Civil Procedure Code, 1908, Order 6 Rule 17 - Amendment of pleadings - Deleted pleadings - In case of misstatement of facts, if pleadings are amended then only amended version is to be taken into consideration and not version deleted - However, in certain circumstances even deleted version can be looked into prove existence or non existence of certain facts. (H.Muthunanjaiah Vs C.G.Indiramma (Deceased) by L.Rs & Ors.) 2005(1) Civil Court Cases 448 (Karnataka)

Civil Procedure Code, 1908, Order 6 Rule 17 - Amendment of reply filed to application under Order 9 Rule 13 of Civil Procedure Code, 1908- Plea sought to be incorporated by way of amendment that husband has remarried and a male child is born - Application dismissed by holding that factum of remarriage was within knowledge at the time of filing reply to the application and that incorporation of amendment is not necessary for disposal of application - Held, there is no legal infirmity in the order passed as the factum of second marriage is not material nor it will assist the Court in disposing of the application for setting aside the exparte judgment and decree. (Baldev Raj Vs Neelam Kanta) 2005(2) Civil Court Cases 794 (P&H)

Civil Procedure Code, 1908, Order 6 Rule 17 - Appeal - Amendment of grounds of appeal - There were certain omissions in the grounds of appeal which were there in the trial Court Judgment - Amendment allowed. (Sri Bajranglal Ladha Vs Sri Maniklal Bhattar & Ors.) 2006(3) Civil Court Cases 119 (Orissa)

Civil Procedure Code, 1908, Order 6 Rule 17 - Eviction petition - Amendment - Bonafide necessity - Amendment sought to incorporate additional reasoning in support of ground of eviction - Case at initial stage - Amendment allowed. (Ramgopal Vs Mohit Bhadadada) 2003(1) Civil Court Cases 299 (Rajasthan)

Civil Procedure Code, 1908, Order 6 Rule 17 - Execution - Amendment - Trial Court decree affirmed by Appellate Court - Court can allow amendment notwithstanding merger of trial Court decree with Appellate Court decree. (Muhammed Kunju Meera Sahib Vs Lancilad) AIR 2002 Kerala 74

SC **Civil Procedure Code, 1908, Order 6 Rule 17** - Complaint - Amendment - Accrual of cause of action during pendency of suit - By proposed amendment basic structure was not to be changed and there was merely change in the nature of relief claimed - Amendment allowed. (Rajesh Kumar Aggarwal & Ors. Vs K.K.Modi & Ors.) 2006(2) Apex Court Judgments 583 (S.C.) : 2006(3) Civil Court Cases 57 (S.C.)

Civil Procedure Code, 1908, Order 6 Rule 17 - Complaint - Amendment - Admission - Withdrawal of - Admission made by a party cannot be allowed to be withdrawn until party satisfies that the admission made by it was erroneous and negates factual position. (Raj Pati alias Roshni Vs Dharam Singh) 2003(3) Civil Court Cases 604 (P&H)

SC **Civil Procedure Code, 1908, Order 6 Rule 17** - Complaint - Amendment - Agreement to sell - Suit for permanent injunction - By amendment of complaint suit allowed to be converted to be one for specific performance - However, due to negligence/inadvertence, necessary pleading that plaintiff was ready and willing to perform his part of contract omitted - Second amendment sought for addition of missing averment - No injustice will be caused to defendant and it will not change original controversy between parties - Amendment allowed. (Raj Kumar Vs Dipender Kaur Sethi) 2005(1) Civil Court Cases

354 (S.C.) : 2005(1) Apex Court Judgments 446 (S.C.)

Civil Procedure Code, 1908, Order 6 Rule 17 - Plaint - Amendment

- At appellate stage - Amendment of plaint seeking relief of future mesne profits at appellate stage - Such an application is maintainable even though said relief not included in plaint originally - Claim for future mesne profits stand on a different footing from claim for past mesne profits which have to be pleaded specifically and established by paying court fee - Future mesne profits is a part of general relief of possession - Power of appellate Court is co-extensive with power of original Court - When appeal is pending, suit is deemed to be pending. (Moparathi Sarojini Devi Vs Kavuru) 2003(1) Civil Court Cases 559 (A.P.)

Civil Procedure Code, 1908, Order 6 Rule 17 - Plaint - Amendment

- At appellate stage - Plaintiff seeking to amend his plaint to incorporate defence taken by defendant which do not materially affect the case set by plaintiff - Application rightly rejected. (Jagdish Chand Sharma Vs Kanshi Ram & Ors.) 2006(4) Civil Court Cases 593 (P&H)

Civil Procedure Code, 1908, Order 6 Rule 17 - Plaint - Amendment

- By amendment plaintiff seeking to clarify by addition of a new prayer - Nature of suit would not change - Defendant would get an ample opportunity to contest the suit and assail the fact - Amendment allowed. (Nabeena Chandra Sahu Vs Debasis Sahu) 2003(1) Civil Court Cases 414 (Orissa)

Civil Procedure Code, 1908, Order 6 Rule 17 - Plaint - Amendment

- By inadvertence khasra number of property not mentioned in plaint - Amendment sought to mention khasra number after 20 years - No evidence required to be led after amendment and only revenue documents to be tendered in evidence - Held, as plaintiff is relying upon some revenue documents, which are per se admissible in evidence as such mere fact that there is a delay in seeking amendment cannot be a ground to decline the amendment - Amendment allowed. (Satguru Sri Jagjit Singh Ji Vs Gurjeet Singh alias Harcharan Singh & Ors.) 2006(2) Civil Court Cases 715 (P&H)

Civil Procedure Code, 1908, Order 6 Rule 17 - Plaint - Amendment

- Challenge to adoption - Fact of adoption came to knowledge on filing of written statement - Written statement was filed on 5.9.2001 and amendment of plaint sought on 6.4.2002 - Question of limitation to challenge the adoption

can only be decided at the trial as in case plaintiff is able to prove the date of knowledge from the date of filing of the written statement then it would be entirely a different matter - Order allowing amendment, upheld. (Vijay Kumar @ Vijay Singh Vs Dariya Singh) 2004(2) Civil Court Cases 447 (P&H)

Civil Procedure Code, 1908, Order 6 Rule 17 - Complaint - Amendment

- Change of plot number on account of finalisation of Town Planning Scheme
- Delay - Structure of suit will not change - Delay does not go to the root of the matter - Order allowing amendment - Petition against - Dismissed. (Manjulaben Jivabhai Saparia Vs Kumudkumari Joravarsing Zala & Anr.) 2006(3) Civil Court Cases 431 (Gujarat)

Civil Procedure Code, 1908, Order 6 Rule 17 - Complaint - Amendment

- Court while deciding a petition for amendment of complaint need not go into the truth or otherwise of the proposed amendment - It also need not decide whether on the basis of the proposed amendment the party seeking amendment is likely to succeed in the case. (S.Vipramamba & Anr. Vs Musuluzu Anasuya & Anr.) 2006(3) Civil Court Cases 32 (A.P.)

Civil Procedure Code, 1908, Order 6 Rule 17 - Complaint - Amendment

- Defendant is at liberty to file his additional written statement to the amended complaint - Defendant is always at liberty to state all his grievance to the complaint in his written statement. (Tetengu Rautia Vs Hagru Rautia) 2006(3) Civil Court Cases 292 (Orissa)



Civil Procedure Code, 1908, Order 6 Rule 17 - Complaint - Amendment

- Delay - In spite of delay and laches an amendment can be allowed if facts of the case so permits, as dominant purpose of allowing amendment is to minimize the litigation. (Pankaja & Anr. Vs Yellappa (D) by Lrs. & Ors.) 2004(2) Apex Court Judgments 398 (S.C.) : 2004(3) Civil Court Cases 401 (S.C.)



Civil Procedure Code, 1908, Order 6 Rule 17 - Complaint - Amendment

- Delay - Relief barred by limitation - Amendment can be allowed depending upon the facts of the case - If grant of an amendment really subserves the ultimate cause of justice and avoid further litigation the same can be allowed - There is no straight jacket formula for allowing or disallowing an amendment of pleadings - Each case depends upon the factual background of that case. (Pankaja & Anr. Vs Yellappa (D) by Lrs. & Ors.) 2004(2) Apex

Court Judgments 398 (S.C.) : 2004(3) Civil Court Cases 401 (S.C.)

Civil Procedure Code, 1908, Order 6 Rule 17 - Plaintiff - Amendment

- Dispossession during pendency of suit - Suit for cancellation of sale deed and injunction - Suit filed in 1982 and dispossession alleged to be in 1983 and amendment claiming relief of possession sought in 1996 - Amendment sought highly belated - Application dismissed. (Imitiaz Ahmad Vs Addl. Distt. Judge & Ors.) 2006(2) Civil Court Cases 395 (Allahabad)

Civil Procedure Code, 1908, Order 6 Rule 17 - Plaintiff - Amendment

- If amendment does not change the nature of suit and does not affect the rights of the parties, it can be allowed at any point of time. (Imitiaz Ahmad Vs Addl. Distt. Judge & Ors.) 2006(2) Civil Court Cases 395 (Allahabad)

Civil Procedure Code, 1908, Order 6 Rule 17 - Plaintiff - Amendment

- If evidence is required to prove that proposed amendment is barred by limitation then it can be made subject matter of issue after allowing amendment. (Hari Shankar Singhania & Ors. Vs Dr. Gaur Hari Singhania) 2003(2) Civil Court Cases 604 (Bombay)



Civil Procedure Code, 1908, Order 6 Rule 17 - Plaintiff - Amendment

- Merits of proposed amendment - Not to be adjudged at the stage of allowing the prayer for amendment. (Rajesh Kumar Aggarwal & Ors. Vs K.K. Modi & Ors.) 2006(2) Apex Court Judgments 583 (S.C.) : 2006(3) Civil Court Cases 57 (S.C.)

Civil Procedure Code, 1908, Order 6 Rule 17 - Plaintiff - Amendment

- Merits of proposed amendment - Not to be gone into at the time of allowing amendment. (Deepali Vs Pankaj Gupta) 2006(4) Civil Court Cases 694 (P&H)

Civil Procedure Code, 1908, Order 6 Rule 17 - Plaintiff - Amendment

- Plaintiff a rustic and illiterate villager - Mistake in understanding fact stated by plaintiff not ruled out - Averment in plaint sufficiently explained to be erroneous - Held, order denying amendment is wholly illegal and causes manifest injustice to plaintiff. (Raj Pati alias Roshni Vs Dharam Singh) 2003(3) Civil Court Cases 604 (P&H)

Civil Procedure Code, 1908, Order 6 Rule 17 - Plaintiff - Amendment -

Plea sought to be raised as to exclusive ownership instead of plea of co-owner

- In fact it is claim of area of whole house exclusively instead of claiming the area of first floor and cannot be considered as an admission - Proceedings at initial stage - Delay, if any, can be compensated by costs - Order allowing amendment, upheld. (Gurmit Ram Vs Paramjit Singh & Ors.) 2006(2) Civil Court Cases 644 (P&H)

Civil Procedure Code, 1908, Order 6 Rule 17 - **Plaint - Amendment**
- Proposed amendment not going to the root of the case - Amendment not necessary to decide the controversy - Facts sought to be introduced by amendment already in knowledge of plaintiff and amendment sought after leading of evidence and at a belated stage after several years - Refusal of amendment needs no interference. (Ratan Singh & Anr. Vs Ram Prasad) 2003(1) Civil Court Cases 618 (Rajasthan)

Civil Procedure Code, 1908, Order 6 Rule 17 - **Plaint - Amendment** -
Rejection of earlier application - Trial Court while rejecting earlier application had given liberty to plaintiff to file fresh application - Held, second application cannot be dismissed on ground of dismissal of earlier application. (Rajaram Rau Patil Vs Marcel De Pieade Braganza & Ors.) 2006(1) Civil Court Cases 317 (Bombay)

Civil Procedure Code, 1908, Order 6 Rule 17 - **Plaint - Amendment**
- Relief claimed time barred - Amendment rightly disallowed. (Krishna Rani Vs Ram Kishan) 2003(1) Civil Court Cases 519 (P&H)

SC **Civil Procedure Code, 1908, Order 6 Rule 17** - **Plaint - Amendment**
- Relief of declaration whether falls under Article 58 or Articles 64, 65 of Limitation Act - Question to be decided at the trial - Amendment of plaint seeking relief of declaration allowed. (Pankaja & Anr. Vs Yellappa (D) by Lrs. & Ors.) 2004(2) Apex Court Judgments 398 (S.C.) : 2004(3) Civil Court Cases 401 (S.C.)

SC **Civil Procedure Code, 1908, Order 6 Rule 17** - **Plaint - Amendment** -
Rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the court. (Rajesh Kumar Aggarwal & Ors. Vs K.K.Modi & Ors.) 2006(2) Apex Court Judgments 583 (S.C.) : 2006(3) Civil Court Cases 57 (S.C.)

Civil Procedure Code, 1908, Order 6 Rule 17 - Complaint - Amendment

- Subsequent developments and altered circumstances - If these are relevant in adjudging the nature and character of the claim made, Court should permit amendment bringing such subsequent developments and altered circumstances on record. (Time Warner Entertainment Company, L.P. Vs A.K.Das) 2003(2) Civil Court Cases 602 (Delhi)

Civil Procedure Code, 1908, Order 6 Rule 17 - Complaint - Amendment

- Subsequent events - Arising out of the facts which are the basis of suit - On the basis of said subsequent events, plaintiff seeking certain further reliefs - Proposed amendment not to change the nature of suit - Amendment allowed. (Atul Medical, Pune Vs M/s Cadila Health Care Pvt.Ltd.) 2006(2) Civil Court Cases 06 (Bombay)

Civil Procedure Code, 1908, Order 6 Rule 17 - Complaint - Amendment

- Subsequent events - If such events are in relation to the subject matter of the dispute between the parties and necessary to decide real controversy, merely delay in filing application for amendment or because a party to the proceedings will have to lead evidence consequent to the amendment cannot be a justification for refusal to allow amendment application. (Krishnaji Shankar Moghe Vs Sitaram) 2003(1) Civil Court Cases 418 (Bombay)

SC

Civil Procedure Code, 1908, Order 6 Rule 17 - Complaint - Amendment

- Suit for damages - By amendment claim for damages sought to be enhanced
- Suit filed in the year 1993 and amendment sought in the year 1998 - Single Judge allowed amendment - Order set aside in appeal - Held, discretion exercised by High Court in rejecting application was in conformity with law. (T.N.Alloy Foundry Co. Ltd. Vs T.N.Electricity Board & Ors.) 2004(1) Apex Court Judgments 514 (S.C.)

Civil Procedure Code, 1908, Order 6 Rule 17 - Complaint - Amendment

- Suit for declaration - Amendment to incorporate the alternative prayer regarding possession - By allowing such an amendment neither the cause of action nor the nature of suit will change - Amendment allowed. (Taranjit Kaur & Ors. Vs Navneet Kaur & Ors.) 2006(3) Civil Court Cases 277 (P&H)

Civil Procedure Code, 1908, Order 6 Rule 17 - Complaint - Amendment

- Suit for declaration and injunction - Amendment sought to claim damages
- Held, plaintiff cannot be permitted to change nature and character of suit

- Order declining amendment, upheld. (Ram Parkash Vs Food Corporation of India, Chandigarh & Ors.) 2004(2) Civil Court Cases 643 (P&H)

Civil Procedure Code, 1908, Order 6 Rule 17 - Plaintiff - Amendment

- Suit for declaration and injunction - At time of final hearing, amendment of plaintiff sought seeking additional relief of restoration of possession - Claim barred by limitation - Amendment allowed - Held, order of trial Court being discretionary cannot be disturbed - However, question of limitation is open for being decided by trial Court after framing a proper issue. (Dattaram V.Dharwadkar Vs Ghanashyam G.Bhende) 2003(2) Civil Court Cases 311 (Bombay) 311

Civil Procedure Code, 1908, Order 6 Rule 17 - Plaintiff - Amendment

- Suit for injunction - Dispossession during pendency of suit - Amendment of plaintiff sought seeking relief of possession - Amendment allowed. (Tarlochan Singh Vs Bhagwant Singh) 2003(2) Civil Court Cases 386 (P&H)

Civil Procedure Code, 1908, Order 6 Rule 17 - Plaintiff - Amendment

- Suit for injunction - Plea justifying claim for restoration of possession by way of amendment - Not inconsistent or disruptive of the original plea. (Menino Fernandes Vs Gabriel Fernandes) 2006(4) Civil Court Cases 561 (Bombay)

Civil Procedure Code, 1908, Order 6 Rule 17 - Plaintiff - Amendment

- Suit for injunction - Subsequent events - Subject matter of property identical both in suit and proposed amendment - Amendment would not bring totally distinct and different cause of action - Amendment allowed. (Lok Housing & Constructions Ltd. Vs Everest Industries Ltd. & Nirmal Lifestyles Ltd.) 2005(2) Civil Court Cases 558 (Bombay)

Civil Procedure Code, 1908, Order 6 Rule 17 - Plaintiff - Amendment

- Suit for mandatory injunction - By amendment sought to be converted to a suit for possession - Plaintiff was well aware of the facts which are sought to be incorporated in the plaintiff by way of amendment - Amendment will completely change the nature of suit from mandatory injunction to that of possession - Amendment will cause prejudice to the rights of the defendant - Application for amendment of plaintiff dismissed. (Prem Chand Vs Chetan Dass) 2006(2) Civil Court Cases 41 (P&H)

Civil Procedure Code, 1908, Order 6 Rule 17 - Complaint - Amendment

- Suit for permanent injunction - Encroachment inspite of injunction order
- Amendment of complaint to bring subsequent event on record and to seek possession of suit property - Proposed amendment not to change nature of suit - By allowing proposed amendment multiplicity of proceedings can be avoided - Amendment allowed. (Balkrishna Ganpat Elwande Vs Shankar Tukaram Sable & Ors.) 2006(4) Civil Court Cases 687 (Bombay)

Civil Procedure Code, 1908, Order 6 Rule 17 - Complaint - Amendment

- Suit for perpetual injunction - Amendment of complaint sought to seek relief of declaration of title and recovery of possession - Amendment sought does not alter the nature of suit - Amendment allowed. (C.Laxmi Devi Vs S.Abdul Rahiman & Anr.) 2006(1) Civil Court Cases 637 (A.P.)

Civil Procedure Code, 1908, Order 6 Rule 17 - Complaint - Amendment -

Suit for perpetual injunction - Amendment sought to seek relief of declaration and recovery of possession - Held, when a suit is filed initially for perpetual injunction, subsequent application for amendment seeking to convert suit into one for declaration of title is not maintainable. (Sayanna & Anr. Vs Thimmanna) 2003(1) Civil Court Cases 595 (A.P.)

Civil Procedure Code, 1908, Order 6 Rule 17 - Complaint - Amendment

- Suit for specific performance - Amendment sought to change of door number of property - In agreement besides door number boundaries of property also given - Where boundaries and plot numbers are mentioned in a document, mistake in the plot number has to be treated as a misdescription and does not affect the identity of property - Amendment allowed. (S.Vipramamba & Anr. Vs Musuluzu Anasuya & Anr.) 2006(3) Civil Court Cases 32 (A.P.)

Civil Procedure Code, 1908, Order 6 Rule 17 - Complaint - Amendment

- Suit for specific performance - Amendment sought to claim relief of damages instead of specific performance - Cause of action same - Order allowing amendment is proper. (Fertilizer Corporation of India Ltd. Vs M/s Prabha Kirana Stores) AIR 2004 Allahabad 82

Civil Procedure Code, 1908, Order 6 Rule 17 - Complaint - Amendment

- Suit for specific performance - Necessary details not pleaded by earlier advocate sought to be introduced by way of amendment - No new facts sought to be introduced - Plaintiff discovered the mistake of earlier counsel

after recording evidence of its first witness - Merely because evidence of said witness was recorded, it does not mean that plaintiff cannot be permitted to take corrective measures particularly when he has not incorporated any new cause of action - Amendment allowed. (Vijaykumar Narayanrao Dixit Vs Uday Griha Nirman Samasya Niwarak Sanstha, Nagpur) 2006(3) Civil Court Cases 235 (Bombay)

Civil Procedure Code, 1908, Order 6 Rule 17 - Plaintiff - Amendment at appellate stage - Amendment sought nothing but a ruse to adduce additional evidence - Plea as to nature of property already set up in plaintiff - Amendment sought mala fide - Amendment which is mala fide not to be allowed. (Hakam Singh & Ors. Vs Baljit Singh & Ors.) 2006(4) Civil Court Cases 24 (P&H)

Civil Procedure Code, 1908, Order 6 Rule 17 - Plaintiff returned for complying with certain objections before plaintiff is accepted and registered - Contents of plaintiff if altered either in the body or relief portion - Held, it does not require an application. (Moparthi Sarojini Devi Vs Kavuru) 2003(1) Civil Court Cases 559 (A.P.)

Civil Procedure Code, 1908, Order 6 Rule 17 - Pleading - Amendment - Rejection - Order is interlocutory order - Can be challenged along with final order in suit. (Fertilizer Corporation of India Ltd. Vs M/s Prabha Kirana Stores) AIR 2004 Allahabad 82

SC **Civil Procedure Code, 1908, Order 6 Rule 17** - Pleadings - Amendment - Amendment of pleadings should be liberally allowed since procedural obstacles ought not to impede the dispensation of justice. (Rajesh Kumar Aggarwal & Ors. Vs K.K.Modi & Ors.) 2006(3) Civil Court Cases 57 (S.C.) : 2006(2) Apex Court Judgments 583 (S.C.)

SC **Civil Procedure Code, 1908, Order 6 Rule 17** - Pleadings - Amendment - An amendment of a plaintiff and amendment of a written statement are not governed by exactly the same principles - General principles are common to both - The rule that plaintiff cannot be allowed to amend his pleadings so as to alter materially or substitute his cause of action or the nature of his claim has no counterpart in the law relating to amendment of the written statement - Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering or substituting a new cause of action. (Baldev Singh & Ors. etc. Vs Manohar

Singh & Anr. etc.) 2006(3) Apex Court Judgments 17 (S.C.) : 2006(3) Civil Court Cases 573 (S.C.)

Civil Procedure Code, 1908, Order 6 Rule 17 - Pleadings - Amendment - At the instance of a defendant who is transposed as plaintiff - Not permissible - Plaintiff does not become the pleading of a defendant, who has been transposed as a plaintiff - Pleading of one party cannot be permitted to be amended by the other. (Dr. Dilip Kumar Renapurkar Vs Vivek Pandav & Ors.) 2006(1) Civil Court Cases 177 (A.P.)

Civil Procedure Code, 1908, Order 6 Rule 17 - Pleadings - Amendment - Can be allowed at any stage including the stage of arguments and even when the case is at appellate stage - Amendment however can only be allowed if it is necessary for proper adjudication of the issue involved. (Vinod Kumar Vs Jagmohan) 2003(1) Civil Court Cases 163 (P&H)

Civil Procedure Code, 1908, Order 6 Rule 17 - Pleadings - Amendment - Can be allowed at any stage of the proceedings including when the case is reserved for judgment. (Baburao Vs Maharashtra Insecticides Limited & Ors.) 2004(2) Civil Court Cases 473 (Bombay)

SC **Civil Procedure Code, 1908, Order 6 Rule 17** - Pleadings - Amendment - Court at any stage of the proceedings can allow either party to alter or amend pleadings in such a manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. (State of A.P. & Ors. Vs M/s Pioneer Builders, A.P.) 2006(4) Civil Court Cases 668 (S.C.)

SC **Civil Procedure Code, 1908, Order 6 Rule 17** - Pleadings - Amendment - Court should adopt liberal approach - Dominant object to allow amendment in pleadings liberally is to avoid multiplicity of proceedings. (State of A.P. & Ors. Vs M/s Pioneer Builders, A.P.) 2006(4) Civil Court Cases 668 (S.C.)

SC **Civil Procedure Code, 1908, Order 6 Rule 17** - Pleadings - Amendment - Courts should be extremely liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side. (Baldev Singh & Ors. etc. Vs Manohar Singh & Anr. etc.)

2006(3) Apex Court Judgments 17 (S.C.) : 2006(3) Civil Court Cases 573 (S.C.)

SC **Civil Procedure Code, 1908, Order 6 Rule 17** - Pleadings - Amendment - If sought after commencement of trial, it has to be shown that inspite of due diligence, such amendment could not have been sought earlier - Object is to prevent frivolous applications which are filed to delay the trial - There is no illegality in the provision. (Salem Advocate Bar Association, Tamil Nadu Vs Union of India) 2005(2) Apex Court Judgments 492 (S.C.) : 2005(3) Civil Court Cases 420 (S.C.)

Civil Procedure Code, 1908, Order 6 Rule 17 - Pleadings - Amendment - Merits and demerits and truth or otherwise of the stand taken in the proposed amendment need not be gone into at the stage of amendment of pleadings and the same has to be decided at the appropriate stage. (C.Laxmi Devi Vs S.Abdul Rahiman & Anr.) 2006(1) Civil Court Cases 637 (A.P.)

Civil Procedure Code, 1908, Order 6 Rule 17 - Pleadings - Amendment - No amendment of pleadings is to be permitted after the commencement of the trial unless cogent reasons are shown by such a party that the matter sought to be incorporated by amendment was not within his knowledge or could not be ascertained with due diligence. (Inder Pal Singh Vs Bankey Bihari) 2003(3) Civil Court Cases 707 (P&H)

SC **Civil Procedure Code, 1908, Order 6 Rule 17** - Pleadings - Amendment - One distinct cause of action cannot be substituted for another nor the subject matter of suit can be changed by means of an amendment. (State of A.P. & Ors. Vs M/s Pioneer Builders, A.P.) 2006(4) Civil Court Cases 668 (S.C.)

Civil Procedure Code, 1908, Order 6 Rule 17 - Pleadings - Amendment - Principles governing : (a) The parties should not be allowed to substitute one cause of action or the nature of the claim for another as claimed originally or should also not be allowed to change the subject-matter or the controversy in the suit; (b) The parties should not be allowed to introduce by amendment an inconsistent or contrary plea to negate the facts originally admitted through a party may be allowed inconsistent plea on admitted facts by way of amendment; (c) The amendment should not cause prejudice to the other side which cannot be compensated by way of costs; (d) The parties

should not be allowed amendment of a claim or relief which is barred by law of limitation when amendment is sought to be made as it defeats a legal right which has accrued in favour of a party - However, this may be allowed only in very exceptional circumstances when the facts of the case so warrant. (Prem Chand Vs Chetan Dass) 2006(2) Civil Court Cases 41 (P&H)

Civil Procedure Code, 1908, Order 6 Rule 17 - Pleadings - Amendment - Purpose and object - Power to allow amendment is wide and can be exercised at any stage of the proceedings in the interest of justice - Liberal approach is the general rule particularly in cases where the other side can be compensated with costs - Technicalities of law should not be permitted to hamper the Courts in the administration of justice between the parties - Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation - Mere delay usually cannot be a ground for refusing a prayer for amendment because merits of amendment sought to be incorporated by way of amendments are not to be judged at the stage of allowing prayer for amendment. (Davinder Singh Vs Surjit Malhotra) 2006(3) Civil Court Cases 39 (Delhi)

Civil Procedure Code, 1908, Order 6 Rule 17 - Pleadings - Amendment - Relief barred by limitation - There is no absolute rule that in every case where a relief is barred because of limitation, an amendment should not be allowed - Amendment can be allowed when no prejudice is to be caused to the other side. (Padma Vs Anila Mathew) 2006(1) Civil Court Cases 64 (Kerala)

SC **Civil Procedure Code, 1908, Order 6 Rule 17** - Pleadings - Amendment - Unless serious injustice or irreparable loss is likely to be caused to the other side, Court should adopt liberal approach and not a hyper-technical approach particularly in a case where the other side can be compensated with costs. (State of A.P. & Ors. Vs M/s Pioneer Builders, A.P.) 2006(4) Civil Court Cases 668 (S.C.)

Civil Procedure Code, 1908, Order 6 Rule 17 - Pleadings - Amendment at appellate stage - Under amended provisions, amendment of pleadings at appellate stage is not permissible. (Shakuntala Vs M/s.Davendra Kumar Mool Chand) 2003(3) Civil Court Cases 167 (Rajasthan)

Civil Procedure Code, 1908, Order 6 Rule 17 - Pleadings -

Amendments - Amendments which are necessary to decide the controversy raised before the Court are ordinarily to be allowed as it would avoid multiplicity of litigation. (Harbans Lal Vs Dev Raj) 2003(1) Civil Court Cases 526 (P&H)

Civil Procedure Code, 1908, Order 6 Rule 17 - Relief sought by way of temporary injunction rejected earlier - Same relief again sought by way of amendment at later stage of suit - Cannot be allowed. (V.N.Shivaram Vs B.M.Nagappa) AIR 2003 Karnataka 18

Civil Procedure Code, 1908, Order 6 Rule 17 - Reply to amended plaint - New facts cannot be introduced - Reply to be confined to plaint allowed to be amended. (Raees Ahmed Vs Shrigopal Prakash) 2003(1) Civil Court Cases 666 (Rajasthan)

Civil Procedure Code, 1908, Order 6 Rule 17 - Written statement - Amendment - Admission - Can only be allowed to be withdrawn if it is proved that same was made under some misconception or was erroneous. (Vinod Kumar Vs M/s Baldev Krishan Rakesh Kumar) 2006(2) Civil Court Cases 556 (P&H)

Civil Procedure Code, 1908, Order 6 Rule 17 - Written statement - Amendment - Admission - Once made cannot be permitted to be withdrawn or diluted by subsequent amendment. (Inder Pal Singh Vs Bankey Bihari) 2003(3) Civil Court Cases 707 (P&H)

Civil Procedure Code, 1908, Order 6 Rule 17 - Written statement - Amendment - Admission already made which gave certain rights to the plaintiff cannot be allowed to be withdrawn - Amendment of written statement can only be allowed to the extent when it further elaborates an admission or stand taken by defendant. (Sadiq Ali & Ors. Vs Smt.Murti Devi & Ors.) 2006(1) Civil Court Cases 657 (Allahabad)

SC **Civil Procedure Code, 1908, Order 6 Rule 17** - Written statement - Amendment - Alternative plea of ownership - Amendment allowed. (Baldev Singh & Ors. etc. Vs Manohar Singh & Anr. etc.) 2006(3) Apex Court Judgments 17 (S.C.)

SC **Civil Procedure Code, 1908, Order 6 Rule 17** - Written statement -

Amendment - Alternative plea of ownership - Amendment allowed. (Baldev Singh & Ors. etc. Vs Manohar Singh & Anr. etc.) 2006(3) Civil Court Cases 573 (S.C.)

Civil Procedure Code, 1908, Order 6 Rule 17 - Written statement - Amendment - Amendment sought to substituted '1997' in place of '1987' in cause of action paragraph - It is only a typographical mistake - Amendment allowed. (Todendula Venkata Krishnaiah Vs Uppu Gangaiah) 2003(3) Civil Court Cases 274 (A.P.)

Civil Procedure Code, 1908, Order 6 Rule 17 - Written statement - Amendment - Application pending - No order passed by lower Court - Matter covered by application fully argued in second appeal and considered by Court - Held, there is no necessity to remand matter for disposal of amendment application. (Gorachand Mukherjee Vs Malabika Dutta) AIR 2002 Calcutta 26

Civil Procedure Code, 1908, Order 6 Rule 17 - Written statement - Amendment - At appellate stage - Amendment necessary for effective adjudication - Courts are more liberal in allowing amendment of written statement as question of prejudice is unlikely to arise in that event - Ordinarily amendment in the pleadings are not likely to cause failure of justice or irreparable injury to any party - Amendment allowed. (Harbheg Singh & Anr. Vs Darshan Ram & Ors.) 2006(1) Civil Court Cases 798 (P&H)

Civil Procedure Code, 1908, Order 6 Rule 17 - Written statement - Amendment - By legal representatives - L.R's have the same right as possessed by deceased - Had the deceased been alive he would have the right to seek amendment of written statement as such right of amendment of written statement cannot be denied to the legal representatives. (Joginder Singh & Ors. Vs Narinder Kaur & Ors.) 2006(3) Civil Court Cases 355 (P&H)

SC **Civil Procedure Code, 1908, Order 6 Rule 17** - Written statement - Amendment - Courts are more liberal in allowing amendment of written statement than of plaint. (Baldev Singh & Ors. etc. Vs Manohar Singh & Anr. etc.) 2006(3) Apex Court Judgments 17 (S.C.) : 2006(3) Civil Court Cases 573 (S.C.)

Civil Procedure Code, 1908, Order 6 Rule 17 - Written statement

- Amendment - Defendant claiming to be co-owner - Amendment sought to incorporate the plea that he has acquired title by adverse possession - Amendment sought is inconsistent with original plea and the same cannot be allowed, *moreso*, when it is belated. (Patel Ganeshbhai Khushaldas Vs Patel Becharbhai Madhavlal (deceased by L.R's) and Ors.) 2004(2) Civil Court Cases 240 (Gujarat)

Civil Procedure Code, 1908, Order 6 Rule 17 - Written statement

- Amendment - Defendant pleading that he was co-owner of property - Amendment sought to claim acquisition of property by adverse possession a better claim that a co-owner - Amendment being inconsistent with main plea - Cannot be allowed - *Moreso*, when it was belated. (Patel Ganeshbhai Khushaldas Vs Patel Becharbhai Madhavlal) AIR 2004 Gujarat 136

Civil Procedure Code, 1908, Order 6 Rule 17 - Written statement

- Amendment - Erroneous admission - Satisfactorily explained - Defendant not to adduce any evidence on account of amendment - Court should be liberal in granting amendment of written statement - Amendment allowed. (Santokh Singh Vs Harcharan Singh & Ors.) 2006(2) Civil Court Cases 742 (P&H)

Civil Procedure Code, 1908, Order 6 Rule 17 - Written statement

- Amendment - Eviction petition - Amendment sought as to change portion let out to respondent - No explanation that admission, regarding building in possession, made earlier was under any misconception or erroneous - Impugned order allowing amendment set aside. (Vinod Kumar Vs M/s Baldev Krishan Rakesh Kumar) 2006(2) Civil Court Cases 556 (P&H)

Civil Procedure Code, 1908, Order 6 Rule 17 - Written statement

- Amendment - Eviction petition - Issues framed and suit fixed for evidence - Application seeking amendment a device to delay the trial - Held, application rightly rejected. (Brij Ballabh Sharma Vs Smt.Pushpa Parihar) 2006(4) Civil Court Cases 455 (Rajasthan) (DB)

Civil Procedure Code, 1908, Order 6 Rule 17 - Written statement

- Amendment - Fact of registered will sought to be introduced by way of amendment - Authenticity of a registered document cannot be doubted at the stage of allowing amendment - Amendment allowed. (Charan Kaur & Anr. Vs Pritam Singh & Ors.) 2006(1) Civil Court Cases 582 (P&H)

SC **Civil Procedure Code, 1908, Order 6 Rule 17** - Written statement - Amendment - Inconsistent pleas - Can be raised by defendant in written statement although the same may not be permissible in the case of plaint. (Baldev Singh & Ors. etc. Vs Manohar Singh & Anr. etc.) 2006(3) Apex Court Judgments 17 (S.C.) : 2006(3) Civil Court Cases 573 (S.C.)

Civil Procedure Code, 1908, Order 6 Rule 17 - Written statement - Amendment - Plea as to rent note tampered with - Amendment cannot be denied merely for the reason that some evidence is already recorded - Amendment allowed. (Tarsem Chand Vs Des Raj) 2006(2) Civil Court Cases 500 (P&H)

Civil Procedure Code, 1908, Order 6 Rule 17 - Written statement - Amendment - Plea available at the time of filing written statement cannot be allowed by way of amendment. (Charan Kaur & Anr. Vs Pritam Singh & Ors.) 2006(1) Civil Court Cases 582 (P&H)

Civil Procedure Code, 1908, Order 6 Rule 17 - Written statement - Amendment - Plea of adverse possession - Plea based on agreement of sale and adverse possession are mutually inconsistent and the latter does not begin to operate unless former is renounced - Written statement cannot be permitted to be amended to make pleas inconsistent with pleas made in the original written statement - Application dismissed. (Thonduri Changa Reddy Vs Chillakuru Chandra Sekhara Reddy) 2006(3) Civil Court Cases 156 (A.P.)

SC **Civil Procedure Code, 1908, Order 6 Rule 17** - Written statement - Amendment - Plea of limitation - Can be allowed to be raised as an additional defence. (Baldev Singh & Ors. etc. Vs Manohar Singh & Anr. etc.) 2006(3) Apex Court Judgments 17 (S.C.) : 2006(3) Civil Court Cases 573 (S.C.)

Civil Procedure Code, 1908, Order 6 Rule 17 - Written statement - Amendment - Plea of ownership on basis of sale deed - Amendment sought to raise plea of ownership by adverse possession from date of sale deed - A new plea sought to be set up on facts already pleaded - Amendment allowed. (Bhajan Singh Vs Sati Brahamana) 2006(1) Civil Court Cases 714 (P&H)

Civil Procedure Code, 1908, Order 6 Rule 17 - Written statement - Amendment - Suit for specific performance - Plea of fraud sought to be

introduced by way of amendment - Delay - By itself not a ground to refuse amendment - If the alleged fraud committed by plaintiff comes to the notice of defendant at a belated stage then defendant cannot be deprived of his right against the alleged fraud perpetrated by the plaintiff - Amendment allowed. (Davinder Singh Vs Surjit Malhotra) 2006(3) Civil Court Cases 39 (Delhi)

Civil Procedure Code, 1908, Order 6 Rule 17 - Written statement - Amendment - Suit on basis of family settlement - Plaintiff's averments admitted - Amendment of written statement sought - An issue framed and evidence recorded and a finding given that parties never acted upon the family partition and that whole of the amount payable under family settlement is not paid as such allowed amendment - Held, it is well settled that erroneous admissions can be validly explained and on such basis amendment can always be allowed. (Harbans Lal Vs Dev Raj) 2003(1) Civil Court Cases 526 (P&H)

Civil Procedure Code, 1908, Order 6 Rule 17 - Written statement - Amendment - Title claimed on basis of sale deed - Amendment sought to raise plea of ownership by adverse possession as well - Only additional plea sought to be taken - Amendment allowed - Plaintiff given right to file replication to the amended written statement - Court to frame an additional issue on the amended plea and allow the parties to lead their evidence on the said issue. (Joginder Singh & Anr. Vs Harbans & Ors.) 2006(3) Civil Court Cases 327 (P&H)

Civil Procedure Code, 1908, Order 6 Rule 17 - Written statement - Amendment sought at appellate stage - Amendment sought was within knowledge of defendant when he filed his written statement, but he did not choose to incorporate the same - Application for amendment filed at belated stage when appeal fixed for hearing - Amendment rightly declined. (Sri Bajranglal Ladha Vs Sri Maniklal Bhattar & Ors.) 2006(3) Civil Court Cases 119 (Orissa)

Civil Procedure Code, 1908, Order 6 Rule 17 & O.1 Rule 10(2) - Plaintiff - Amendment - Suit for specific performance - Amendment of plaintiff to implead subsequent purchaser and also decree for declaration that subsequent agreement was illegal - Amendment was a necessary consequence of the defendant and subsequent purchaser's conduct - There was no change in the fundamental character of the suit - Amendment allowed. (Haroon Rashid Nizamuddin Umatiya Vs Jivatlal) 2003(3) Civil Court Cases 120

(Bombay)

Civil Procedure Code, 1908, Order 6 Rule 17 & S.115 - Plaintiff - Amendment - Subsequent events - Suit for permanent injunction - During pendency of suit defendant raised certain construction over the suit property - To avoid the multiplicity of suits amendment sought which cannot be said to be either improper or incorrect - Held, as interlocutory order neither disposes of suit finally nor does it cause failure of justice or irreparable injury to party against whom it is made, same cannot be interfered with in revision. (Kumar & Anr Vs Kothandapani) 2003(2) Civil Court Cases 93 (Karnataka)

SC **Civil Procedure Code, 1908, Order 6 Rule 17 Proviso** - 'After trial has commenced' - Meaning - Commencement of trial as used in proviso to Order 6 Rule 17 of Civil Procedure Code, 1908 to be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. (Baldev Singh & Ors. etc. Vs Manohar Singh & Anr. etc.) 2006(3) Apex Court Judgments 17 (S.C.) : 2006(3) Civil Court Cases 573 (S.C.)

Civil Procedure Code, 1908, Order 6 Rule 17 Proviso - "Trial" - Meaning - Trial means examination of witnesses, production of documents in evidence and all stages subsequent to the same. (Neelakandan Nair Vs Parameswara Kurup) 2003(3) Civil Court Cases 169 (Kerala)

Civil Procedure Code, 1908, Order 6 Rule 18 - Time limit for filing amended pleadings not mentioned - Amended pleading filed beyond period of 14 days of order - Held, period of 14 days prescribed by O.6 Rule 18 is not mandatory and the same can be extended - It can be said that there was condonation of delay when amended pleading is taken on record beyond period of 14 days - Even if there is no such order as to extension of time the same can be taken to be a mere irregularity which does not arm the opposite party that he has suffered a manifest injustice. (Vinod Kumar Arora Vs Smt. Santosh Kumari & Anr.) 2005(1) Civil Court Cases 752 (P&H)

Civil Procedure Code, 1908, Order 6 Rule 18 - Time limit for filing amended pleadings not mentioned - Amended pleading filed beyond period of 14 days of order - Held, period of 14 days prescribed by Order 6 Rule 18 is not mandatory and the same can be extended - It can be said that there was condonation of delay when amended pleading is taken on record

beyond period of 14 days - Even if there is no such order as to extension of time the same can be taken to be a mere irregularity which does not arm the opposite party that he has suffered a manifest injustice. (Vinod Kumar Arora Vs Smt.Santosh Kumari)2005(1) Civil Court Cases 752 (P&H)

Civil Procedure Code, 1908, Order 7 Rule 1, Court Fees Act, 1870, Section 17(iv)(c) - Court fee - Depends upon the relief claimed - If in the garb of relief of injunction simplicitor an attempt is made to seek relief of injunction against recovery as well as enforcement of a concluded contract between the parties then Court fee is payable ad valorem on such an amount. (Maharaji Educational Trust & Anr. Vs Punjab & Sind Bank & Anr.) 2006(3) Civil Court Cases 553 (Delhi)

Civil Procedure Code, 1908, Order 7 Rule 1(j), Order 6 Rule 15, Order 20 Rule 5 - Defect in verification and non compliance of the provision of O.7 Rule 1(j) and O.20 Rule 5 - These are only technical objections which do not go into the root of the case. (Puran Singh Vs Nathu) 2003(2) Civil Court Cases 74 (P&H)

SC Civil Procedure Code, 1908, Order 7 Rule 3, Order 20 Rule 3 & Ss.152 & 47 - Immovable property not definitely identified - Decree passed overlooking the provisions of O.7 Rule 3 & O.20 Rule 3 CPC - It is an inadvertent error and does not affect the merits of the case - Error can be rectified by having resort to S.152 or S.47 CPC. (Pratibha Singh & Anr. Vs Shanti Devi Prasad) 2003(1) Civil Court Cases 259 (S.C.) : 2003(1) Apex Court Judgments 01 (S.C.)

Civil Procedure Code, 1908, Order 7 Rule 3 - Immovable property - Identification of suit property - Suit for declaration - Held, unless property with reference to which declaration sought is clearly identified, plaintiff is not entitled to a decree. (John Sylem Vs Chanthanamuthui Pillai (Dead) & Ors.) 2004(2) Civil Court Cases 144 (Madras)

SC Civil Procedure Code, 1908, Order 7 Rule 3 - Property - Identification - A property can be identified either by boundary or by any other specific description. (Subhaga & Ors. Vs Shobha & Ors.) 2006(2) Apex Court Judgments 496 (S.C.) : 2006(3) Civil Court Cases 289 (S.C.)

Civil Procedure Code, 1908, Order 7 Rule 7 - General or other

relief - Not necessary for plaintiff to ask those reliefs - Court can grant general or other relief as it thinks just. (Shaik Munni Vs M/s Jagan Mohan Salt Industries) 2003(1) Civil Court Cases 189 (A.P.)

Civil Procedure Code, 1908, Order 7 Rule 7 - Relief - Court can grant a relief not asked for if the relief granted is smaller than the one claimed in the suit. (Kusam Satyanarayana Reddy & Ors. Vs Kusam Sambrajamma (died) per L.Rs. & Ors.) 2004(2) Civil Court Cases 450 (A.P.)

Civil Procedure Code, 1908, Order 7 Rule 7 - Relief - Court can grant either general relief or other relief which appears to be just, legitimate and proper in any case even though such reliefs have not been specifically asked for. (Kusam Satyanarayana Reddy Vs Kusam Sambrajamma) 2004(2) Civil Court Cases 450 (A.P.)

Civil Procedure Code, 1908, Order 7 Rule 7 - Subsequent events - Court can take notice of events taking place after institution of suit and can suitably mould and grant relief according to changed circumstances. (Shaik Munni Vs M/s Jagan Mohan Salt Industries) 2003(1) Civil Court Cases 189 (A.P.)

Civil Procedure Code, 1908, Order 7 Rule 7 - Three alternative reliefs claimed - Granted one - Appeal claiming that other relief should be granted - Appeal not maintainable. (U.G.Srinivasa Rao Vs Vinaykumar & Ors.) 2004(3) Civil Court Cases 240 (Karnataka)

Civil Procedure Code, 1908, Order 7 Rules 10, 11 - Lack of jurisdiction - Issues already framed - Held, framing of issues cannot come in way of considering application. (H.P.Lakshmidhar Urs Vs G.P.Asharani alias Nandini) 2003(1) Civil Court Cases 70 (Karnataka)

Civil Procedure Code, 1908, Order 7 Rules 10, 11 - Plaintiff averments are only to be considered for deciding an application under Order 7 Rules 10, 11 of Civil Procedure Code, 1908- Defendant cannot take advantage of averments in the written statement. (Maharaji Educational Trust & Anr. Vs Punjab & Sind Bank & Anr.) 2006(3) Civil Court Cases 553 (Delhi)

SC Civil Procedure Code, 1908, Order 7 Rules 11, 13 - Rejection of plaint under Order 7 Rule 11 of Civil Procedure Code, 1908- Does not preclude plaintiff from presenting a fresh plaint in respect of the same cause of

action. (Popat and Kotecha Property Vs State Bank of India Staff Association) 2005(2) Apex Court Judgments 292 (S.C.) : 2005(3) Civil Court Cases 350 (S.C.)

Civil Procedure Code, 1908, Order 7 Rule 10, 10-A - Court having no jurisdiction - Plaint to be returned for presentation before a proper Court instead of dismissing the suit. (Kedar Nath (Dead) through LRs. Vs Chawali) 2004(2) Civil Court Cases 115 (P&H)

Civil Procedure Code, 1908, Order 7 Rule 10 - Exparte decree passed by Court at Madras - Suit filed in a Court at Hyderabad to set aside the exparte decree being obtained by playing fraud on the Madras Court - At the threshold itself it is not desirable to hold that Court at Hyderabad has no jurisdiction to try and dispose of the suit - Had it been a petition U.O.9 Rule 13 CPC then Court which passed decree could only entertain and pass appropriate orders - After the defendant appears in suit only then trial Court has to consider the issue from all angles and give a finding regarding its jurisdiction to entertain the suit - Plaint cannot be returned at the threshold stage. (Kalyani Straw Boards Ltd., Vs M/s.Lala Gopi Krishna) 2003(2) Civil Court Cases 624 (A.P.)

Civil Procedure Code, 1908, Order 7 Rule 10 - Lack of jurisdiction - Return of plaint - Finding on merit is without jurisdiction when once Court comes to conclusion that it has no jurisdiction to entertain the suit. (Shreyans Industries Vs State of U.P. & Ors.) 2004(2) Civil Court Cases 416 (Bombay)

Civil Procedure Code, 1908, Order 7 Rule 10 - Return of plaint for presentation to proper Court - Jurisdiction can be exercised at any stage of suit. (Kuchi Charumathi Devi Vs Gampa Chenchu Ratnamma) 2003(1) Civil Court Cases 353 (A.P.)

Civil Procedure Code, 1908, Order 7 Rule 10-A, Order 43 Rule 1(a) - Territorial jurisdiction - Lack of - Procedure prescribed U.O.7 Rule 10-A not followed - Appeal U.O.43 Rule 1(a) is maintainable. (Sunit W/o Ravi Sangavai Vs Ravi) 2004(2) Civil Court Cases 664 (Bombay)

Civil Procedure Code, 1908, Order 7 Rule 11, 10 - Court having no jurisdiction - Suit not to be dismissed - Plaint be returned for presentation

in competent court having jurisdiction. (Phelu Vs Ramcharan) 2006(3) Civil Court Cases 733 (Rajasthan)

SC Civil Procedure Code, 1908, Order 7 Rule 11, Order 12 Rule 6, Order 15 Rules 1 & 3, Order 23 Rule 1 - Maintainability of suit - Question not raised before Courts below - Cannot be allowed to be raised for the first time in SLP. (Shipping Corporation of India Ltd. Vs Machado Brothers & Ors.) 2004(1) Apex Court Judgments 574 (S.C.) : 2004(2) Civil Court Cases 533 (S.C.)

Civil Procedure Code, 1908, Order 7 Rule 11, Section 149 - Court fee - Deficiency - Court may at any stage allow a person to pay the deficit Court fee - Payment of Court fee falling short of prescribed amount is a curable defect at the discretion of the Court. (Patcha Mahendra Vs Koduru Penchalaiah) 2005(3) Civil Court Cases 491 (A.P.)

Civil Procedure Code, 1908, Order 7 Rule 11, Section 149 - Court fee - Deficiency in payment - An opportunity to make good the deficiency should be provided - In case there is failure to comply with such direction only then Court can reject memorandum of appeal. (State of Haryana & Anr. Vs Geeta Devi & Anr.) 2006(2) Civil Court Cases 604 (P&H)

Civil Procedure Code, 1908, Order 7 Rule 11, Section 20, Order 6 Rules 1,2 - Cause of action - Jurisdiction - Cause of action must be revealed in the pleadings and the pleadings alone to be looked into to know whether cause of action or part of cause of action arose within the jurisdiction of a Court. (Syed Saleema Bee Vs Smt.Syed Noorjahan & Anr.) 2006(2) Civil Court Cases 613 (A.P.)

SC Civil Procedure Code, 1908, Order 7 Rule 11 - 'Cause of action' - Is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. (Mayar (H.K.) Ltd. & Ors. Vs Owners & Parties, Vessel M.V.Fortune Express & Ors.) 2006(1) Apex Court Judgments 610 (S.C.) : 2006(2) Civil Court Cases 15 (S.C.)

SC Civil Procedure Code, 1908, Order 7 Rule 11 - Application U.O.7

Rule 11 CPC to be decided on the allegations in the plaint and filing of the written statement by the contesting defendant is irrelevant and unnecessary. (Saleem Bhai & Ors. Vs State of Maharashtra & Ors.) 2003(1) Apex Court Judgments 238 (S.C.) : 2003(1) Civil Court Cases 569 (S.C.)

Civil Procedure Code, 1908, Order 7 Rule 11 - Averments in plaint only have to be considered while deciding application U.O.7 Rule 11 CPC - Defence is to be tried out on merits during trial. (Teja Ram Vs Birbal Ram) 2004(2) Civil Court Cases 562 (Rajasthan)

Civil Procedure Code, 1908, Order 7 Rule 11 - Averments in plaint only have to be considered while deciding application under Order 7 Rule 11 of Civil Procedure Code, 1908- Defence is to be tried out on merits during trial. (Teja Ram Vs Birbal Ram) 2004(2) Civil Court Cases 562 (Rajasthan)

SC **Civil Procedure Code, 1908, Order 7 Rule 11** - Cause of action - A cause of action is a bundle of facts which are required to be pleaded and proved for the purpose of obtaining relief claimed in the suit - For this material facts are required to be stated but not the evidence except in certain cases where the pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence. (Liverpool & London S.P. & I. Asson Ltd. Vs M.V.Sea Success I and Anr.) 2004(1) Apex Court Judgments 200 (S.C.)

SC **Civil Procedure Code, 1908, Order 7 Rule 11** - Cause of action - Failure to disclose cause of action is distinct from the absence of full particulars. (Liverpool & London S.P. & I. Asson Ltd. Vs M.V.Sea Success I and Anr.) 2004(1) Apex Court Judgments 200 (S.C.)

Civil Procedure Code, 1908, Order 7 Rule 11 - Cause of action - Plaint not disclosing - Rejection of plaint - Does not preclude plaintiff from presenting fresh plaint in respect of same cause of action. (Syed Saleema Bee Vs Smt.Syed Noorjahan & Anr.) 2006(2) Civil Court Cases 613 (A.P.)

Civil Procedure Code, 1908, Order 7 Rule 11 - Court fee - Deficiency - Failure to make up the deficiency - Suit is liable to be dismissed. (Bhagwana Vs Mohinder Dass) 2005(1) Civil Court Cases 71 (P&H)

Civil Procedure Code, 1908, Order 7 Rule 11 - Court fee - Non

payment of deficit Court fee within time - Plaint to be rejected and not to be returned. (Vattikoti Kantamma Vs T.Suryanarayana & Ors.) 2004(3) Civil Court Cases 29 (Karnataka)

Civil Procedure Code, 1908, Order 7 Rule 11 - Dismissal of application U.O.7 Rule 11 - Revision lies against such an order - However revisional Court should not pass an order rejecting a plaint while exercising jurisdiction u/s 115 CPC - Revisional Court to pass order directing Court below to correctly assess the fact by following the provisions of law. (State Bank of India Vs Somnath Sahoo) 2004(2) Civil Court Cases 634 (Orissa)

Civil Procedure Code, 1908, Order 7 Rule 11 - Plaint - Rejection - Absence of prayer for relief against applicant - Averment in plaint showing that plaintiff had cause of action against applicant and that the cause of action was also disclosed in plaint - Held, lapse of not claiming relief specifically against applicant/defendant appears to be inadvertent - Prayer for rejection of plaint - Rejected. (Eagle Copters Ltd. Vs Azal Azerbaijan Aviation Ltd.) AIR 2002 Bombay 284

Civil Procedure Code, 1908, Order 7 Rule 11 - Plaint - Rejection - Can be at any stage - Written statement whether filed or issues have been framed is immaterial. (Sisir Kana Guha Vs Ayakar Grihanirman Sambaya Samity Ltd.) AIR 2002 Calcutta 247

Civil Procedure Code, 1908, Order 7 Rule 11 - Plaint - Rejection - For deciding an application U.O.7 Rule 11 CPC averments in plaint alone are germane and plea taken in written statement is wholly irrelevant at that stage. (Bajaj Auto Limited & Ors. Vs Sundeepp Polymers Pvt.Ltd., Mumbai) 2005(1) Civil Court Cases 56 (Bombay)

Civil Procedure Code, 1908, Order 7 Rule 11 - Plaint - Rejection - For deciding an application under Order 7 Rule 11 of Civil Procedure Code, 1908 averments in plaint alone are germane and plea taken in written statement is wholly irrelevant at that stage. (Bajaj Auto Limited & Ors. Vs Sundeepp Polymers Pvt.Ltd., Mumbai) 2005(1) Civil Court Cases 56 (Bombay)

Civil Procedure Code, 1908, Order 7 Rule 11 - Plaint - Rejection of - Limitation - Question can be decided on the averments contained in the plaint itself - If suit is not filed within limitation it can be rejected even at the threshold without calling upon the defendant to deliver his defence. (Thota

Rambabu @ Ramu Vs Cherukuri Venkateswara Rao @ Pedababu & Ors.)
2006(1) Civil Court Cases 576 (A.P.)

SC **Civil Procedure Code, 1908, Order 7 Rule 11** - Plaintiff or document relied upon when disclose cause of action then plaintiff cannot be rejected merely for the reason that such averments are not sufficient to prove the facts stated in the plaintiff for the purpose of obtaining relief claimed in the suit. (Liverpool & London S.P. & I. Asson Ltd. Vs M.V.Sea Success I and Anr.) 2004(1) Apex Court Judgments 200 (S.C.)

SC **Civil Procedure Code, 1908, Order 7 Rule 11** - Power under the provision can be exercised at any stage of the suit before registering the plaintiff or after issuing summons to the defendant at anytime before the conclusion of the trial. (Saleem Bhai & Ors. Vs State of Maharashtra & Ors.) 2003(1) Apex Court Judgments 238 (S.C.) : 2003(1) Civil Court Cases 569 (S.C.)

SC **Civil Procedure Code, 1908, Order 7 Rule 11** - Pre mature suit - Defendant should promptly raise objection and Court to promptly dispose of such a plea. (Vithalbhai Pvt.Ltd. Vs Union Bank of India) 2005(1) Apex Court Judgments 593 (S.C.) : 2005(2) Civil Court Cases 01 (S.C.)

SC **Civil Procedure Code, 1908, Order 7 Rule 11** - Pre mature suit - Not maintainable when - (i) there is a mandatory bar created by a statute which disables the plaintiff from filing the suit on or before a particular date or the occurrence of a particular event; (ii) When the institution of the suit before the lapse of a particular time or occurrence of a particular event would have the effect of defeating a public policy or public purpose; (iii) if such premature institution renders the presentation itself patently void and the invalidity is incurable such as when it goes to the root of the Court's jurisdiction, and (iv) where the lis is not confined to parties alone and affects and involves persons other than those arrayed as parties, such as in an election petition which affects and involves the entire constituency. (Vithalbhai Pvt.Ltd. Vs Union Bank of India) 2005(1) Apex Court Judgments 593 (S.C.) : 2005(2) Civil Court Cases 01 (S.C.)

SC **Civil Procedure Code, 1908, Order 7 Rule 11** - Pre-mature suit - Not to be dismissed if it discloses a cause of action and by the time written statement came to be filed or by the time Court is called upon to pass a decree,

plaintiff is found entitled to the relief prayed for in the plaint. (Vithalbhai Pvt.Ltd. Vs Union Bank of India) 2005(1) Apex Court Judgments 593 (S.C.) : 2005(2) Civil Court Cases 01 (S.C.)

SC **Civil Procedure Code, 1908, Order 7 Rule 11** - Pre-mature suit - Plaintiff if disclosing cause of action suit not to be dismissed necessarily for such reason - Court to examine whether any irreparable prejudice was caused to the defendant on account of suit being pre mature and whether by granting relief in such suit a manifest injustice could be caused to the defendant - After taking into consideration the explanation offered by plaintiff Court may deny plaintiff his costs or may make such other order adjusting equities and satisfying the ends of justice - Conduct of parties and unmerited advantage to plaintiff or disadvantages amounting to prejudice to the defendant, if any, would be relevant factors - Plea as to non maintainability of suit being pre mature should be promptly raised by defendant and pressed for decision and Court to promptly dispose of such a plea. (Vithalbhai Pvt.Ltd. Vs Union Bank of India) 2005(1) Apex Court Judgments 593 (S.C.) : 2005(2) Civil Court Cases 01 (S.C.)

Civil Procedure Code, 1908, Order 7 Rule 11 - Question of jurisdiction as to whether suit is exclusively triable by civil court or revenue court - Has to be decided on averments made in the plaint - If in substance, relief claimed is one which the civil court is entitled to give being within its exclusive jurisdiction, then jurisdiction of revenue courts will be ousted even though it may require revenue Court to incidentally determine some ancillary facts. (Vimal Kumar Jain Vs Mahaveer Parsad Jain) 2006(2) Civil Court Cases 403 (Rajasthan)

Civil Procedure Code, 1908, Order 7 Rule 11 - Rejection of plaint - Against some defendants - Not barred. (M.V.Sea Success I Vs Liverpool) AIR 2002 Bombay 151

Civil Procedure Code, 1908, Order 7 Rule 11 - Rejection of plaint - Amounts to a decree - Such an order is appealable. (State Bank of India Vs Somnath Sahoo) 2004(2) Civil Court Cases 634 (Orissa)

SC **Civil Procedure Code, 1908, Order 7 Rule 11** - Rejection of plaint - Application for rejection of plaint can be filed at any stage of the proceedings and even before filing the written statement. (Popat & Kotecha Property Vs

S.B.I. Staff Association) 2005(2) Apex Court Judgments 292 (S.C.) : 2005(3) Civil Court Cases 350 (S.C.)

SC **Civil Procedure Code, 1908, Order 7 Rule 11** - Rejection of plaint
- Cannot be rejected on the basis of allegations made by defendant in his written statement or in an application for rejection of plaint - Court has to read the entire plaint as a whole to find out whether it discloses a cause of action - Whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of averments made in the plaint in its entirety taking those averments to be correct. (Mayar (H.K.) Ltd. & Ors. Vs Owners & Parties, Vessel M.V.Fortune Express & Ors.) 2006(1) Apex Court Judgments 610 (S.C.) : 2006(2) Civil Court Cases 15 (S.C.)

SC **Civil Procedure Code, 1908, Order 7 Rule 11** - Rejection of plaint
- Cause of action - In ascertaining whether the plaint shows a cause of action, Court is not required to make an elaborate enquiry into doubtful or complicated questions of law or fact - Jurisdiction of Court is restricted to ascertaining whether on the allegations a cause of action is shown. (Liverpool & London S.P. & I. Asson Ltd. Vs M.V.Sea Success I and Anr.) 2004(1) Apex Court Judgments 200 (S.C.)

SC **Civil Procedure Code, 1908, Order 7 Rule 11** - Rejection of plaint
- Main relief in plaint relating to continuance of tenancy under trust - Other reliefs claimed regarding enquiry into affairs of trust - Rejection of plaint on ground that Civil Court has no jurisdiction - Order set aside - Adjudication in suit to be restricted to question of tenancy only - Plaintiff allowed to make application for relinquishing other reliefs. (Sopan Sukhdeo Sable & Ors. Vs Assistant Charity Commissioner & Ors.) 2004(2) Apex Court Judgments 177 (S.C.) : 2004(2) Apex Court Judgments 177 (S.C.) : 2004(2) Civil Court Cases 663 (S.C.)

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SC **Civil Procedure Code, 1908, Order 7 Rule 11** - Rejection of plaint
- Mere fact that case is weak and not likely to succeed is not a ground for rejection of plaint when claim discloses some cause of action or raises some questions fit to be decided by a Judge. (Liverpool & London S.P. & I. Asson Ltd. Vs M.V.Sea Success I and Anr.) 2004(1) Apex Court Judgments 200 (S.C.)

Civil Procedure Code, 1908, Order 7 Rule 11 - Rejection of plaint
- Only when Court comes to a clear conclusion that any of the conditions enumerated in clauses (a) to (f) of rule 11 of order 7 are satisfied and it should be done in exceptional circumstances only - Facts in plaint or written statement are not to be judged at the stage of rejection of plaint which is only a matter of evidence - Weakness or the strength of the case of parties is not to be judged at this stage - A distinction lies between rejection of plaint and dismissal of suit. (Rajesh Grover Vs Smt.Rita Khurana & Ors.) 2006(3) Civil Court Cases 15 (P&H)

SC **Civil Procedure Code, 1908, Order 7 Rule 11** - Rejection of plaint
- Plaint can be rejected even without intervention of defendant when plaint is hit by any of the infirmities provided in the provision. (Popat & Kotecha Property Vs S.B.I. Staff Association) 2005(2) Apex Court Judgments 292 (S.C.)

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SC **Civil Procedure Code, 1908, Order 7 Rule 11** - Rejection of plaint
- Plaint disclosing some cause of action - Cannot be rejected on the ground that in the opinion of Judge plaintiff may not succeed. (Mayar (H.K.) Ltd. & Ors. Vs Owners & Parties, Vessel M.V.Fortune Express & Ors.) 2006(1) Apex Court Judgments 610 (S.C.) : 2006(2) Civil Court Cases 15 (S.C.)

SC **Civil Procedure Code, 1908, Order 7 Rule 11** - Rejection of plaint
- Plaint is to be rejected where (1) it does not disclose a cause of action, (2) where the relief claimed is undervalued and the valuation is not corrected

within a time as fixed by the court, (3) where insufficient court fee is paid and the additional court fee is not supplied within the period given by the Court and (4) where the suit appears from the statement in the plaint to be barred by any law. (Mayar (H.K.) Ltd. & Ors. Vs Owners & Parties, Vessel M.V.Fortune Express & Ors.) 2006(1) Apex Court Judgments 610 (S.C.) : 2006(2) Civil Court Cases 15 (S.C.)

SC **Civil Procedure Code, 1908, Order 7 Rule 11** - Rejection of plaint
- Since rights conferred upon the parties are determined one way or the other, stricto sensu it would not be an interlocutory order but having regard to its traits and trappings would be a preliminary judgment. (Liverpool & London S.P. & I. Asson Ltd. Vs M.V.Sea Success I and Anr.) 2004(1) Apex Court Judgments 200 (S.C.)

SC **Civil Procedure Code, 1908, Order 7 Rule 11** - Rejection of plaint
- When none of the reliefs sought in plaint can be granted to plaintiff under law, plaint can be rejected. (M/s.Pearlite Liners Pvt. Ltd. Vs Manorama Sirsi) 2004(1) Apex Court Judgments 32 (S.C.) : 2004(2) Civil Court Cases 44 (S.C.)

Civil Procedure Code, 1908, Order 7 Rule 11 - Rejection of plaint
- While deciding application Court is not supposed to look to the defence plea. (State Bank of India Vs Somnath Sahoo) 2004(2) Civil Court Cases 634 (Orissa)

Civil Procedure Code, 1908, Order 7 Rule 11 - Service - Termination by Principal Office New Delhi - Clause in agreement that legal proceedings shall be subject to jurisdiction of Courts at Delhi - Clause not qualified by words like 'only', 'exclusively' or 'alone' - Appointment letter issued at Jaipur, appointment made at Jaipur and interview was held at Jaipur - Held, suit is maintainable in a Court at Jaipur. (Save The Children Fund U.K. & Anr. Vs Dr.Suresh Chandra Sharma & Anr.) 2006(4) Civil Court Cases 56 (Rajasthan)

Civil Procedure Code, 1908, Order 7 Rule 11 - Validity of will challenged being non est and void and ancillary relief claimed as to declaration of half share in property referred to in Will - Primary relief claimed in suit can only be granted by civil court and not by revenue court - Unless main relief is granted no other ancillary relief as claimed in the suit can be granted

- Held, suit is triable by civil court. (Vimal Kumar Jain Vs Mahaveer Parsad Jain) 2006(2) Civil Court Cases 403 (Rajasthan)

Civil Procedure Code, 1908, Order 7 Rule 11 - Withdrawal of suit with permission to file fresh suit allowed subject to payment of costs - Subsequently suit filed but costs not paid - Plaint rejected as costs not paid - As no opportunity to pay costs was granted while rejecting plaint as such order rejecting plaint is improper. (Arulmigu Vs The Executive Officer) AIR 2004 Madras 402

SC Civil Procedure Code, 1908, Order 7 Rule 11(d), Order 2 Rule 2 - As security of loan, sale deed executed on 5.5.1953 - Oral agreement that on return of loan amount re-conveyance deed shall be executed - Entire loan amount paid on 25.3.1987 - Suit for declaration of title and injunction filed on 26.8.1996 - Suit for mere declaration is not maintainable in absence of seeking relief of declaring sale deed to be loan transaction and not a real sale and second relief of specific performance of oral agreement of re-conveyance of property by registered instrument - Cause of action accrued on 25.3.1987 and suit filed on 26.8.1996 is barred by limitation - Mutation proceedings before revenue authorities do not furnish any fresh cause of action and as pleaded in plaint was a camouflage to get over the bar of limitation - Present suit is also barred under Order 2 Rule 2 of Civil Procedure Code, 1908 as plaintiff had earlier filed a suit for permanent injunction in 1990 - Plaint, rightly held to be liable to be rejected being barred by law. (N.V.Srinivasa Murthy & Ors. Vs Mariyamma (Dead) by Proposed Lrs. & Ors.) 2005(2) Apex Court Judgments 01 (S.C.) : 2005(3) Civil Court Cases 302 (S.C.)

SC Civil Procedure Code, 1908, Order 7 Rule 11(d), Sections 9, 92 - Suit against Charitable Trust - Leave to institute suit granted after hearing parties - Thereafter application under Order 7 Rule 11 of Civil Procedure Code, 1908 for rejection of plaint is not maintainable - Application for rejection of plaint should be filed either prior to leave having been granted or at the time when applicant opposed grant of leave. (Sudhir G. Angur & Ors. Vs M. Sanjeev & Ors.) 2006(1) Apex Court Judgments 457 (S.C.) : 2006(1) Civil Court Cases 577 (S.C.)

SC Civil Procedure Code, 1908, Order 7 Rule 11(d) - “Barred by law” - Whether includes barred by law of limitation - Suit cannot be dismissed

under Order 7 Rule 11(d) on the ground that it is barred by law of limitation without proper pleading, framing of an issue of limitation and taking of evidence. (Ramesh B.Desai & Ors. Vs Bipin Vadilal Mehta) 2006(3) Civil Court Cases 577 (S.C.) : 2006(3) Apex Court Judgments 180 (S.C.)

SC **Civil Procedure Code, 1908, Order 7 Rule 11(d)** - Barred by law - Statement in the plaint without addition or subtraction must show that it is barred by any law to attract application of Order 7 Rule 11 of Civil Procedure Code, 1908- Averments made in the plaint alone have to be seen and they have to be assumed to be correct - It is not permissible to look into the pleas raised in the written statement or to any piece of evidence. (Ramesh B.Desai & Ors. Vs Bipin Vadilal Mehta & Ors.) 2006(3) Apex Court Judgments 180 (S.C.) : 2006(3) Civil Court Cases 577 (S.C.)

Civil Procedure Code, 1908, Order 7 Rule 11(d) - Jurisdiction under the provision can be exercised at any stage of the suit. (Shivrudra Shivling Pailwan & Ors. Vs Prakash Maharudhra Pailwan) 2003(1) Civil Court Cases 277 (Bombay)

Civil Procedure Code, 1908, Order 7 Rule 11(d) - Provision comes into play only when pleadings in the plaint are sufficient to disclose the bar to the suit and not otherwise - The conclusion regarding bar to suit cannot be arrived at on the basis of materials extraneous to the pleadings in the plaint. (Shivrudra Shivling Pailwan & Ors. Vs Prakash Maharudhra Pailwan) 2003(1) Civil Court Cases 277 (Bombay)

Civil Procedure Code, 1908, Order 7 Rule 11(d) - Rejection of plaint - Is a deemed decree - Civil Miscellaneous Appeal is maintainable. (Ragam Vs Chinta) 2004(2) Civil Court Cases 549 (A.P.)

Civil Procedure Code, 1908, Order 7 Rule 11(d) - Rejection of plaint - Question of applicability of Article 58 or Article 65 of Limitation Act - Question of limitation necessarily always is not a pure question of law, but it is a mixed question of fact and law - When several other factual aspects are also to be gone into while deciding a question of law involved incidentally, rejecting of plaint at the threshold cannot be sustained - Those are all aspects which are to be gone into at the time of regular trial - Order rejecting plaint set aside. (Ragam Yellaiah & Ors. Vs Chinta Shankaraiah) 2004(2) Civil Court Cases 549 (A.P.)

SC **Civil Procedure Code, 1908, Order 7 Rule 11(d)** - Rejection of plaint when suit is barred by any law - Disputed questions cannot be decided at the time of considering an application under Order 7 Rule 11 of Civil Procedure Code, 1908 - Order 7 Rule 11(d) applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force. (Popat and Kotecha Property Vs State Bank of India Staff Association) 2005(2) Apex Court Judgments 292 (S.C.) : 2005(3) Civil Court Cases 350 (S.C.)

Civil Procedure Code, 1908, Order 7 Rule 11(d) - Suit for declaration and permanent injunction - Limitation - Cause of action arose on 13.11.1986 and suit filed in the year 1991 - Nowhere in body of plaint, plaintiff has chosen to explain subsequent events providing for a cause of action subsequent to 13.11.1986 - Suit is barred by time - Trial Court dismissed suit - Held, dismissal to be treated as rejected in terms of Order 7 Rule 11(d) of Civil Procedure Code, 1908. (B.V.Ananthappa (Dead) By L.Rs Vs G.Hanumanthappa & Ors.) 2005(1) Civil Court Cases 210 (Karnataka)

SC **Civil Procedure Code, 1908, Order 7 Rule 11(e) & (f) (As amended)** - Clauses (e) & (f) are procedural and would not require automatic rejection where plaint is not filed in duplicate or where the plaintiff fails to comply with provisions of O.7 Rule 9 CPC - Court should ordinarily give an opportunity before rejecting plaint on these grounds. (Salem Advocate Bar Association Vs Union of India) 2003(1) Civil Court Cases 198 (S.C.)

SC **Civil Procedure Code, 1908, Order 7 Rule 14** - 'Plaintiff's witnesses' in Rule 14(4) to be read as 'defendant's witnesses' - It is a mistake of legislature - Till the legislature corrects the mistake, the words 'plaintiff's witnesses' be read as 'defendant's witnesses'. (Salem Advocate Bar Association, Tamil Nadu Vs Union of India) 2005(2) Apex Court Judgments 492 (S.C.) : 2005(3) Civil Court Cases 420 (S.C.)

Civil Procedure Code, 1908, Order 7 Rules 14, 18(1) - Documents under challenge - It is mandatory to place on record such documents - If such documents not produced, suit is not maintainable. (Som Parkash Bansal Vs Managing Committee, Hindu Higher Secondary School, Kaithal) 2003(1) Civil Court Cases 304 (P&H)

Civil Procedure Code, 1908, Order 7 Rules 14, 18(2) - Adverse possession - Stand of defendant - Plaintiff seeking production of copy of mutation to rebut stand of adverse possession taken by defendant - Cannot be denied on the ground that document was neither relied upon nor good cause shown for its production. (Balwant Vs Kailash) AIR 2003 H.P. 48

Civil Procedure Code, 1908, Order 7 Rule 18 - Suit for title on basis of certain documents filed - Documents not filed with plaint - Documents filed subsequently with leave of Court and marked as exhibits and received in evidence by trial Court - Could not have been rejected by First Appellate Court. (P.S.M.Ahamed Abdul Khader Vs T.K.Mohammed Abubucker) AIR 2002 Madras 213

Civil Procedure Code, 1908, Order 8 Rule 1, Section 148 - Provision of S.148 cannot be invoked to grant time beyond the stipulated period of 90 days available under the provision of O.8 Rule 1 CPC. (A.Sathyapal & Ors. Vs Smt.Yasmin Banu Ansari) 2004(2) Civil Court Cases 651 (Karnataka)

Civil Procedure Code, 1908, Order 8 Rule 1, Section 148 - Provision of Section 148 cannot be invoked to grant time beyond the stipulated period of 90 days available under the provision of Order 8 Rule 1 of Civil Procedure Code, 1908. (A.Sathyapal & Ors. Vs Smt.Yasmin Banu Ansari) 2004(2) Civil Court Cases 651 (Karnataka)

Civil Procedure Code, 1908, Order 8 Rule 1, Section 148 - Written statement - Allowed subject to payment of costs - Non payment of costs in time - Extension of time - Sufficient reasons not given - However, considering the nature of dispute and the fact that Court had already granted permission to file written statement, party should not suffer of his right to contest the proceeding by filing written statement for want of not depositing cost - Application for extension of time allowed. (Smita Arvinda Apte & Anr. Vs Ajay Pandurang Potdar) 2006(2) Civil Court Cases 628 (Bombay)

Civil Procedure Code, 1908, Order 8 Rule 1, Section 148 - Written statement - Extension of time - Wife of defendant met with an accident and she remained in hospital for 16 days - Good reason for extension of time - Written statement allowed to be filed subject to payment of Rs.1,000/- as costs. (Rustam Khan Vs Addl. District Judge & Ors.)2006(2) Civil Court Cases 610 (Rajasthan)

SC **Civil Procedure Code, 1908, Order 8 Rule 1** - 'Shall' - Use of the word 'shall' in the provision by itself is not conclusive to determine whether the provision is mandatory or directory - Ordinarily use of word 'shall' indicates the mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory - Rule in question has to advance the cause of justice and not to defeat it - In this context, strict interpretation would defeat justice. (Rani Kusum Vs Kanchan Devi & Ors.) 2005(3) Civil Court Cases 368 (S.C.) : 2005(2) Apex Court Judgments 275 (S.C.)

Civil Procedure Code, 1908, Order 8 Rule 1 - Defendant who has not filed written statement but is appearing Court cannot be proceeded ex parte - He can cross examine plaintiff's witnesses but such defendant cannot be allowed to lead evidence of his own - Cross examination should be limited to point out the falsity or weakness of plaintiff's case but in cross examination a case of his own cannot be set up - He can address arguments on the basis of plaintiff's case and not beyond. (Krushna Chandra Sahoo Vs Shyamsundar Sahoo & Ors.) 2005(3) Civil Court Cases 138 (Orissa)

SC **Civil Procedure Code, 1908, Order 8 Rule 1** - Provision is directory and not mandatory - Power of Court to extend time for filing written statement beyond time schedule provided under Order 8 Rule 1 of Civil Procedure Code, 1908 is not completely taken away - Time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception - Extension of time may be allowed in exceptional circumstances, occasioned by reasons beyond the control of defendant and when grave injustice would be occasioned if time is not extended. (Kailash Vs Nanhku) 2005(2) Apex Court Judgments 72 (S.C.) : 2005(2) Civil Court Cases 532 (S.C.)

SC **Civil Procedure Code, 1908, Order 8 Rule 1** - Written statement - Court granted time to file written statement beyond 90 days - Held, a party cannot be made to suffer if Court commits a mistake. (Shaikh Salim Haji Abdul Khayumsab Vs Kumar & Ors.) 2006(1) Apex Court Judgments 310 (S.C.) : 2006(1) Civil Court Cases 290 (S.C.)

Civil Procedure Code, 1908, Order 8 Rule 1 - Written statement - Delay - Condonation - Amendment of CPC during pendency of application-

Time for filing written statement would be governed by provision as it stood before amendment - Order condoning delay and taking written statement on record - Not interfered with. (Waqf Mausooma Syed Hussain Vs Dillep Kumar Jain) AIR 2003 Allahabad 371

Civil Procedure Code, 1908, Order 8 Rule 1 - Written statement - Delay - Condonation - Applicant not supported by an affidavit is of no consequence as it is only an irregularity which can be cured - Even an oral prayer for condonation of delay in filing the written statement can be made in the peculiar facts and circumstances of the case - Court had granted only 10 days time to file the written statement and the applicant had to collect materials from different places in relation to the proceedings pending in other Forums between the same parties - Delay condoned - Written statement permitted to be taken on record. (Maharaji Educational Trust & Anr. Vs Punjab & Sind Bank & Anr.) 2006(3) Civil Court Cases 553 (Delhi)

Civil Procedure Code, 1908, Order 8 Rule 1 - Written statement - Delay in filing - Written statement not filed within 30 days from the date of service of summons - Application filed on the 90th day from the date of service of summons seeking permission to file written statement - Defendant remained ill for more than one month - Sufficient reason for delay in filing written statement - Defendant allowed to file written statement subject to payment of costs of Rs.1,000/-. (Mehal Singh Vs Gobinder Singh & Anr.) 2006(4) Civil Court Cases 460 (P&H)

Civil Procedure Code, 1908, Order 8 Rule 1 - Written statement - Extension of time - Wrong date for filing written statement noted down by counsel - A party should not suffer for any mistake of his counsel - Justice requires that an opportunity should be given to defendant to file written statement so as to enable him to contest the proceedings on merits. (Shaik Kareem Vs Mohd.Khursheed Ali) 2006(1) Civil Court Cases 660 (A.P.) (DB)

Civil Procedure Code, 1908, Order 8 Rule 1 - Written statement - Failure to file written statement within time - Provision is mandatory but only admit of rare exceptions exhibiting either failure of justice or extraordinary factual circumstances which may be out of control of the party concerned and which may justify the extension of time in filing of written statement. (Mohinder Singh Vs Sardool Singh & Ors.) 2005(1) Civil Court Cases 819

(P&H) : 2005(1) Civil Court Cases 819 (P&H)

Civil Procedure Code, 1908, Order 8 Rule 1 - Written statement - Filing beyond 90 days - Provision of Order 8 Rule 1 is not mandatory - If sufficient cause is shown then defendant can be permitted to file written statement beyond a period of 90 days. (Varun Electronics Vs M/s.Daewoo Anchor Electronic Ltd.) 2006(3) Civil Court Cases 672 (P&H)

SC **Civil Procedure Code, 1908, Order 8 Rule 1** - Written statement - Filing of, within 30 days of service of summons and within the extended time falling within 90 days - Nature of provision is procedural - A procedural law should not ordinarily be construed as mandatory. (Shaikh Salim Haji Abdul Khayumsab Vs Kumar & Ors.) 2006(1) Apex Court Judgments 310 (S.C.) : 2006(1) Civil Court Cases 290 (S.C.)

Civil Procedure Code, 1908, Order 8 Rule 1 - Written statement - Filing of beyond period of 90 days - Provision of Order 8 Rule 1 is directory and not mandatory - Written statement already filed, beyond 90 days, directed to be treated as filed in time. (Gulshan Kumar Vs Asha Taneja) 2006(3) Civil Court Cases 217 (P&H)

Civil Procedure Code, 1908, Order 8 Rule 1 - Written statement - Filing of within 90 days - Rule is directory in nature - Denial of filing of written statement on mere mathematical calculation of 90 days is not envisaged by legislature - Rules of procedure are not meant to be used as tools by any litigant to take advantage of technicalities simpliciter and the other party to the litigation cannot be penalised for the mistake of the Counsel; that too when the mistake seems to have occurred for bona fide reasons - Written statement ordered to be taken on record. (Rupa Ram Vs Rajmal & Anr.) 2006(3) Civil Court Cases 50 (Rajasthan)

Civil Procedure Code, 1908, Order 8 Rule 1 - Written statement - Not filed within stipulated period - Case still fixed for service on other defendants and under that impression written statement was not filed - One opportunity given to file written statement. (Labha Singh Vs Tejo Devi & Ors.) 2006(2) Civil Court Cases 783 (P&H)

Civil Procedure Code, 1908, Order 8 Rule 1 - Written statement - On appearance time sought to file written statement - On next date application

for dismissal of suit filed - Application rejected - Permission to file written statement refused being beyond 90 days - Held, as the defendants were pursuing application for rejection of suit, failure to file written statement could not be said to be intentional or deliberate - This being “exceptional circumstance” defendant allowed to file written statement. (Nandlal Vitthaldas & Co., Shegaon & Anr. Vs Agricultural Produce Market Committee, Shegaon) 2006(1) Civil Court Cases 496 (Bombay)

Civil Procedure Code, 1908, Order 8 Rule 1 - Written statement - Period prescribed under Order 8 Rule 1 of Civil Procedure Code, 1908 for filing written statement can be extended for sufficient cause. (Shaik Kareem Vs Mohd. Khursheed Ali) 2006(1) Civil Court Cases 660 (A.P.) (DB)

SC **Civil Procedure Code, 1908, Order 8 Rule 1** - Written statement - Provision providing for maximum period of 90 days is not mandatory - However, time can be extended only in exceptionally hard cases - Discretion of the Court to extend time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order 8 Rule 1 of Civil Procedure Code, 1908. (Salem Advocate Bar Assoc., Tamil Nadu Vs Union of India) 2005(2) Apex Court Judgments 492 (S.C.) : 2005(3) Civil Court Cases 420 (S.C.)

Civil Procedure Code, 1908, Order 8 Rule 1 (As amended) - Provision is directory in nature - While extending time to file written statement Court should not exercise discretion arbitrarily - Time can be extended only in exceptional cases after recording reasons in writing. (Shailaja A. Sawant Vs Sayajirao Ganpatrao Patil) 2004(2) Civil Court Cases 517 (Bombay)

Civil Procedure Code, 1908, Order 8 Rule 1 & Sections 148, 151 - Written statement - To be filed within 30 days of service of summons - Court can enlarge time upto 90 days of service of summons for valid reasons to be recorded in writing - Provision is mandatory - Court has no discretionary power to enlarge time further, nor Court can accept time-barred written statement by exercising its inherent power. (A. Sathyapal & Ors. Vs Smt. Yasmin Banu Ansari) 2004(2) Civil Court Cases 651 (Karnataka)

Civil Procedure Code, 1908, Order 8 Rule 1 & Ss. 148, 151 - Written statement - To be filed within 30 days of service of summons - Court can enlarge time upto 90 days of service of summons for valid reasons to be recorded in writing - Provision is mandatory - Court has no discretionary

power to enlarge time further, nor Court can accept time-barred written statement by exercising its inherent power. (A.Sathyapal & Ors. Vs Smt. Yasmin Banu Ansari) 2004(2) Civil Court Cases 651 (Karnataka)

Civil Procedure Code, 1908, Order 8 Rule 1 and 10 & S.148 - Written statement - Extension of time to file beyond 90 days from date of service of summons - Can be granted by Court at its discretion on reasonable grounds and in exceptional circumstances to render substantial justice to parties - Word 'Shall' used in the provision not mandatory - Ground for delay stated that parties proposed to go in for compromise - Court allowed extension of time - No interference in discretion exercised by Court below - Petition dismissed. (Centenary Baptist Church Vs Shyamsunder & Anr.) 2004(3) Civil Court Cases 370 (A.P.)

Civil Procedure Code, 1908, Order 8 Rule 1 and 10 & Section 148 - Written statement - Extension of time to file beyond 90 days from date of service of summons - Can be granted by Court at its discretion on reasonable grounds and in exceptional circumstances to render substantial justice to parties - Word 'Shall' used in the provision not mandatory - Ground for delay stated that parties proposed to go in for compromise - Court allowed extension of time - No interference in discretion exercised by Court below - Petition dismissed. (Centenary Baptist Church Vs Shyamsunder & Anr.) 2004(3) Civil Court Cases 370 (A.P.)

Civil Procedure Code, 1908, Order 8 Rule 1 and O.5 Rule 1 (As amended) - O.5 Rule 1 & O.8 Rule 1 as amended by Act 22 of 2002 do not apply to proceedings filed before the Amendment Act came into force. (Jerry Alex Braganza alias Jeronimo Oriculo Alex Braganza & Anr. Vs Rajeshree alias Rayeshri Ramdas Borkar alias Shobhavati Ramdas Borkar & Ors.) 2004(2) Civil Court Cases 151 (Bombay)

Civil Procedure Code, 1908, Order 8 Rule 1 and S.151 - Written statement - To be filed within 30 days of service of summons - Court can, for valid reasons enlarge time, but time so enlarged cannot go beyond 90 days from date of service of notice on party - Leave to file written statement sought after 90 days of service of summons - Such leave cannot be granted even in exercise of inherent powers of Court or in exercise of writ jurisdiction. (A.M.Khaithan Vs M.Sheshappa & Ors.) 2005(1) Civil Court Cases 227 (Karnataka)

Civil Procedure Code, 1908, Order 8 Rule 1 and Section 151 -

Written statement - To be filed within 30 days of service of summons - Court can, for valid reasons enlarge time, but time so enlarged cannot go beyond 90 days from date of service of notice on party - Leave to file written statement sought after 90 days of service of summons - Such leave cannot be granted even in exercise of inherent powers of Court or in exercise of writ jurisdiction. (A.M.Khaithan Vs M.Sheshappa & Ors.) 2005(1) Civil Court Cases 227 (Karnataka)

SC **Civil Procedure Code, 1908, Order 8 Rule 1 Proviso, Representation of the People Act, 1951, Sections 87 & 86** - Election petition - High Court has power to fix a date for filing written statement which power includes to fix a date not merely once but again and again depending on the discretion of the High Court - This power of High Court is not controlled by Order 8 Rule 1 of Civil Procedure Code, 1908. (Kailash Vs Nanhku) 2005(2) Apex Court Judgments 72 (S.C.) : 2005(2) Civil Court Cases 532 (S.C.)

Civil Procedure Code, 1908, Order 8 Rule 1 Proviso, Section 148 - Written statement - Outer limit of 90 days for filing written statement - Cannot be extended - S.148 CPC has no application. (Iridium India Telecom Ltd., Bombay Vs Motorola Inc. & Anr.) 2004(2) Civil Court Cases 443 (Bombay)

Civil Procedure Code, 1908, Order 8 Rule 1-A(3) & O.13 Rule 3 - Documents - Not produced alongwith written statement - Can be received in evidence at the time of hearing of the suit with the leave of the Court - At that stage Court has to consider only the good cause for non production of those documents earlier - Admissibility and relevancy of the documents can only be gone into at the stage of hearing on objections, if any. (Sirugudi Adinarayana Vs Bodla Mariamma) 2005(1) Civil Court Cases 96 (A.P.)

Civil Procedure Code, 1908, Order 8 Rule 1(5), Order 13 Rule 2 - Document - Not filed in Court with pleadings - Such document cannot be produced without leave of Court - Object of Order 8 Rule 1(5) is to exclude suspicious documents and documents, genuineness of which is doubtful, being received in evidence. (Kavitha Goud, rep. by her G.P.A., K.Prakash Vs Nookala Sudarshan Reddy & Ors.) 2005(3) Civil Court Cases 575 (A.P.)

SC **Civil Procedure Code, 1908, Order 8 Rules 1, 10** - Provision is

directory and not mandatory - Power of Court to extend time for filing written statement beyond time schedule provided under Order 8 Rule 1 of Civil Procedure Code, 1908 is not completely taken away - Time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception - Extension of time may be allowed in exceptional circumstances, occasioned by reasons beyond the control of defendant and when grave injustice would be occasioned if time is not extended. (Rani Kusum Vs Kanchan Devi & Ors.) 2005(2) Apex Court Judgments 275 (S.C.) : 2005(3) Civil Court Cases 368 (S.C.)

Civil Procedure Code, 1908, Order 8 Rules 1, 10 - Written statement - Failure to file within stipulated time - Court is empowered to pronounce judgment - Power to pronounce judgment is nothing but consequence flowing from violation of provision. (A.Sathyapal & Ors. Vs Smt.Yasmin Banu Ansari) 2004(2) Civil Court Cases 651 (Karnataka)

Civil Procedure Code, 1908, Order 8 Rules 1, 10 - Written statement - Non filing of - Defence struck off - Written statement not filed due to some official lapse and the same not prepared in time - Provision of Order 8 Rule 1 is directory and not mandatory in nature - Rules of procedure are handmaid of justice to enhance the same and not to subvert it - One more opportunity granted to file written statement subject to payment of costs of Rs.5000/-. (State of Haryana & Ors. Vs Karamjit Singh & Ors.) 2006(2) Civil Court Cases 373 (P&H)

Civil Procedure Code, 1908, Order 8 Rules 1, 10 - Written statement - Time frame of 90 days - Not mandatory - In view of power conferred on Court in Rule 10 'to make such order in relation to suit as it thinks fit', Court is not prohibited from granting time beyond 90 days to file written statement invoking Section 148 of Civil Procedure Code, 1908 in the interest of justice for reasons to be recorded on an application made by defendant stating reasons. (G.Parimala Vs Mrs.Bimala Bhatia & Ors.) 2005(2) Civil Court Cases 461 (A.P.)

Civil Procedure Code, 1908, Order 8 Rules 1, 10 & Ss.148, 151 - Written statement - To be filed within 30 days of service of summons - Court can extend time for valid reasons - Extended time cannot go beyond 90 days from date of service of summons - Right of party to file written statement is lost if same is not filed within time allowed - Court has no discretionary power

to enlarge time further, nor can Court accept time barred written statement by purported exercise of its inherent power. (Savitha Gupta Vs Nagarathna) 2003(3) Civil Court Cases 172 (Karnataka)

Civil Procedure Code, 1908, Order 8 Rules 1, 9 - Replication - Filed without accompanying an application seeking leave of Court to file rejoinder - Court cannot rely on allegations made in rejoinder and from drawing inferences from such allegations in the rejoinder. (B.Rajamani Vs Mrs.Azhar Sultana & Ors.) 2005(2) Civil Court Cases 696 (A.P.)

Civil Procedure Code, 1908, Order 8 Rules 1, 9 - Rule 9 does not hold the key to a correct interpretation of O.8 Rule 1 CPC. (A.Sathyapal & Ors. Vs Smt.Yasmin Banu Ansari) 2004(2) Civil Court Cases 651 (Karnataka)

Civil Procedure Code, 1908, Order 8 Rules 1, 9 - Rule 9 does not hold the key to a correct interpretation of Order 8 Rule 1 of Civil Procedure Code, 1908. (A.Sathyapal & Ors. Vs Smt.Yasmin Banu Ansari) 2004(2) Civil Court Cases 651 (Karnataka)

Civil Procedure Code, 1908, Order 8 Rules 1, 9 - Written statement - To be filed within 90 days - However, Court on perusal of materials, if requires a written statement for an efficacious adjudication then it may exercise its discretion under Order 8 Rule 9 of Civil Procedure Code, 1908 and direct defendant to file written statement within thirty days. (Krushna Chandra Sahoo Vs Shyamsundar Sahoo & Ors.) 2005(3) Civil Court Cases 138 (Orissa)

Civil Procedure Code, 1908, Order 8 Rules 1, 9 & 10 (As amended with effect from 1.7.2002) - Written statement - Omission to file within ninety days from date of service of summons - Court has power to give one more chance to file written statement within 30 days - Power is discretionary and can be exercised for reasons to be recorded in writing - Written statement so permitted to be filed may cover not only defence of set-off or counter-claim but also other matters of defence - If party still defaults in filing written statement then Court has to pronounce judgment or make such order as it thinks fit, on basis of case made out in plaint. (Sri Prasanna Parvathamba Vaidyanatheshwara Trust, Maddur Taluk, Mandya District Vs M.S.Radhakrishna Dixit) 2003(3) Civil Court Cases 415 (Karnataka)

Civil Procedure Code, 1908, Order 8 Rules 3 & 4 - Written statement - Denial for want of knowledge - It is an evasive denial - Unless specific pleadings which touch the merits of the case are not specifically denied, the same shall amount to admission of the relevant facts pleaded in the corresponding paras of the plaint. (State of Punjab Vs Gurmel Singh) 2003(2) Civil Court Cases 115 (P&H)

Civil Procedure Code, 1908, Order 8 Rule 5 - Written statement - Absence of specific denial - No duty is cast on the plaintiff to adduce evidence with respect to matters which were not specifically denied in the written statement. (Louiz Vs Augustin) 2004(3) Civil Court Cases 464 (Kerala)

Civil Procedure Code, 1908, Order 8 Rule 5 - Written statement - Allegation of fact when not specifically denied or it has not been denied by necessary implications then such a fact to be taken as an admission - It is discretion of Court to require a party to prove a fact despite such an admission. (Mehnga Singh Vs Gurdial Singh) 2004(2) Civil Court Cases 525 (P&H)

SC **Civil Procedure Code, 1908, Order 8 Rule 5** - Written statement - Allegations of fact must be specifically denied - If denial is not specific but evasive the same shall be taken to be admitted and thus admission itself being proof no other proof is necessary. (Sushil Kumar Vs Rakesh Kumar) 2004(2) Civil Court Cases 63 (S.C.)

Civil Procedure Code, 1908, Order 8 Rule 5 - Written statement not filed - Still party has right to cross examine witnesses of plaintiff and to participate in the process of hearing - However, the scope of cross-examination cannot be permitted to travel beyond limited object of pointing out falsity or weakness of plaintiff's case and in any case, it cannot be converted into presentation of defence theory. (Suryabhan Vs Shobha Bhimrao Pawar) 2003(2) Civil Court Cases 155 (Bombay)

Civil Procedure Code, 1908, Order 8 Rule 6 - Equitable set off - Right is available only if the claim arises out of the same transaction which is the foundation of the plaintiff's claim and the claim has not become time barred. (Maharashtra State Farming Corporation Ltd. Vs Belapur Sugar & Allied Industries Ltd.) 2004(3) Civil Court Cases 255 (Bombay)

Civil Procedure Code, 1908, Order 8 Rule 6-A, Order 7 Rule 11(c)

- Counter claim - From the facts pleaded in written statement when it emerges that it is a counter claim then in that event proper course for Court to adopt is to proceed under Order 7 Rule 11(c) of Civil Procedure Code, 1908 and require the defendant to pay the requisite Court fee and in the event of not paying Court fee within prescribed period then to reject the claim. (Bentals Corporation Ltd. Vs Kamlesh Rani) 2006(3) Civil Court Cases 31 (Delhi)

SC **Civil Procedure Code, 1908, Order 8 Rule 6-A** - Counter claim - Belated counter claim - Refusal by Court to entertain - Defendant in spite of counter claim having been refused to be entertained is at liberty to file his own suit based on the cause of action for counter-claim. (Ramesh Chand Ardawatiya Vs Anil Panjwani) 2003(1) Apex Court Judgments 595 (S.C.)

SC **Civil Procedure Code, 1908, Order 8 Rule 6-A** - Counter claim - By way of amendment of written statement or by way of subsequent pleading - If it is to prolong the trial or complicate otherwise smooth flow of proceedings or causing a delay by forcing a retreat on the steps already taken, Court would not allow belated counter-claim. (Ramesh Chand Ardawatiya Vs Anil Panjwani) 2003(1) Apex Court Judgments 595 (S.C.)

Civil Procedure Code, 1908, Order 8 Rule 6-A - Counter claim - Can be filed even after filing of written statement provided such counter claim is within period of limitation. (Rakesh Ahuja & Anr. Vs Jagan Nath) 2004(3) Civil Court Cases 567 (P&H)

Civil Procedure Code, 1908, Order 8 Rule 6-A - Counter claim - Can be filed even after filing of written statement provided the cause of action had accrued before defendant had delivered his defence and period of limitation fixed for raising such a claim has not expired - Counter claim can be permitted to be introduced by way of amendment or by way of subsequent pleadings under Order 8 Rule 9 of Civil Procedure Code, 1908. (Vasudevan Radhakrishnan Vs Vasudevan Achari) 2006(4) Civil Court Cases 356 (Kerala)

Civil Procedure Code, 1908, Order 8 Rule 6-A - Counter claim - Can be made even after filing written statement if cause of action arose prior to filing of written statement or prior to the date fixed for filing written statement and that it is filed within limitation prescribed. (Madanapalle Municipality Vs Syed Ahamad) 2003(2) Civil Court Cases 303 (A.P.)

Civil Procedure Code, 1908, Order 8 Rule 6-A - Counter claim - Is permissible in suits others than money suits. (Smt.Gowramma Vs Nanjappa) AIR 2002 Karnataka 76

Civil Procedure Code, 1908, Order 8 Rule 6-A - Counter claim - Sought to be filed after closure of plaintiff's evidence - Counter-claim cannot be permitted at that belated stage though the claim is within period of limitation - Stage at which counter-claim can be filed - Analysed. (N.Eshwara Prasad & Ors. Vs Margadarshi Chit Fund Limited, Warangal & Anr.) 2004(2) Civil Court Cases 483 (A.P.)

Civil Procedure Code, 1908, Order 8 Rule 6-A - Counter claim - Sought to be filed after filing of written statement - Application dismissed - Revision filed - In the meantime evidence of parties recorded - Defendant cannot therefore be permitted to make counter claim at that stage - Dismissal of application by Court below, upheld. (Madanapalle Municipality Vs Syed Ahamad) 2003(2) Civil Court Cases 303 (A.P.)

Civil Procedure Code, 1908, Order 8 Rule 6-A - Counter claim - Survives even when defence is struck off - Counter claim is nothing but a counter suit. (D.Ram Mohan Rao Vs M/s Sridevi Hotels Pvt. Ltd. & Ors.) 2006(2) Civil Court Cases 501 (A.P.)

SC **Civil Procedure Code, 1908, Order 8 Rule 6-A** - Counter claim - Three modes - Written statement may itself contain a counter claim, secondly a counter claim may be preferred by way of amendment incorporated subject to the leave of the Court and thirdly counter claim may be filed by way of a subsequent pleading under rule 9 order 8 CPC. (Ramesh Chand Ardawatiya Vs Anil Panjwani) 2003(1) Apex Court Judgments 595 (S.C.)

SC **Civil Procedure Code, 1908, Order 8 Rule 6-A** - Written statement not filed - Counter claim is not entertainable when there is no written statement on record. (Ramesh Chand Ardawatiya Vs Anil Panjwani) 2003(1) Apex Court Judgments 595 (S.C.)

Civil Procedure Code, 1908, Order 8 Rule 9, Section 148 - Written statement - Failure to file within prescribed time - Though party loses his right, Court is not precluded from calling upon party to file written statement at any time before pronouncement of judgment. (A.V.Purushotam Vs N.K.Nagaraj)

2004(2) Civil Court Cases 708 (Karnataka)

Civil Procedure Code, 1908, Order 8 Rule 9 - Additional written statement - Can be filed to explain the stand in original written statement. (GTL Ltd. Vs Maharashtra Rajya Rashtriya Kamgar Sangh & Ors.) 2006(3) Civil Court Cases 200 (Bombay)

Civil Procedure Code, 1908, Order 8 Rule 9 - Facts pleaded in written statement not denied in replication - Such facts shall be taken to be admitted to be correct. (Sujan Kaur Vs Chand Singh) 2003(3) Civil Court Cases 254 (P&H)

Civil Procedure Code, 1908, Order 8 Rule 9 - Replication - Can be filed with permission of Court - Replication is only meant for denying or clarifying facts stated in written statement - Fresh cause of action or fresh case cannot be brought about in replication - It is mainly clarificatory in nature. (Amalgamated Bean Coffee Trading Company Limited, Bangalore Vs Zarir Minoo Bharucha & Anr.) 2006(3) Civil Court Cases 462 (Karnataka)

Civil Procedure Code, 1908, Order 8 Rule 9 - Replication - Filing of replication is not mandatory - Presumption against plaintiff cannot be raised for non filing of replication. (Charanjit Kaur & Anr. Vs Darshan Singh) 2005(2) Civil Court Cases 347 (P&H)

Civil Procedure Code, 1908, Order 8 Rule 9 - Written statement - Giving wrong facts - Costs of Rs.10,000/- imposed. (Narotam Dass Mehta Vs State of Punjab) 2005(1) Civil Court Cases 796 (P&H)

Civil Procedure Code, 1908, Order 8 Rule 9 - Written statement - Not filed within prescribed time - No penal consequences are prescribed for not filing the written statement within stipulated period - Provision is directory in nature. (A.V.Purushotam Vs N.K.Nagaraj) 2004(2) Civil Court Cases 708 (Karnataka)

Civil Procedure Code, 1908, Order 8 Rules 9, 10, 1, Order 5 Rule 1 - Use of word "Shall" in O.5 Rule 1, Order 8 Rule 1, Order 8 Rule 9 and O.8 Rule 10 - It cannot be said that the said provisions are mandatory. (A.V.Purushotam Vs N.K.Nagaraj) 2004(2) Civil Court Cases 708 (Karnataka)

Civil Procedure Code, 1908, Order 8 Rules 9, 10 - Written statement

- Time limit for filing written statement - Cannot be construed as mandatory
- Court in extraordinary circumstances has discretion to permit to file written statement beyond the period of 90 days - Order extending time should not be passed except in exceptional and special circumstances. (Chintaman Sukhdeo Kaklij & Ors. Vs Shivaji Bhausaheb Gadhe & Ors.) 2005(1) Civil Court Cases 34 (Bombay)

Civil Procedure Code, 1908, Order 8 Rules 9 & 10 - Court can allow

defendant to file written statement at any stage prior to the pronouncement of judgment - Power under Rules 9 & 10 of Order 8 should be used only in exceptional cases and that too for reasons to be recorded in writing and cannot be exercised by a defendant as a matter of right. (Shailaja A.Sawant Vs Sayajirao Ganpatrao Patil) 2004(2) Civil Court Cases 517 (Bombay)

Civil Procedure Code, 1908, Order 8 Rules 9,10 - Written statement

- Time limit for filing written statement - Cannot be construed as mandatory
- Court in extraordinary circumstances has discretion to permit to file written statement beyond the period of 90 days - Order extending time should not be passed except in exceptional and special circumstances. (Chintaman Sukhdeo Kaklij & Ors. Vs Shivaji Bhausaheb Gadhe) 2005(1) Civil Court Cases 34 (Bombay)

Civil Procedure Code, 1908, Order 8 Rule 10 - Plaintiff averments

admitted in written statement - Not necessary that suit must be decreed - Court can direct plaintiff to prove his case by leading evidence. (Harbans Lal Vs Dev Raj) 2003(1) Civil Court Cases 526 (P&H)

Civil Procedure Code, 1908, Order 8 Rule 10 - Rule 10 as amended

by Act 104 of 1976, applies to pleadings covered by Rule 1 (written statement) as well as, Rule 9 (Subsequent pleadings.) (G.Parimala Vs Mrs.Bimala Bhatia & Ors.) 2005(2) Civil Court Cases 461 (A.P.)

Civil Procedure Code, 1908, Order 8 Rule 10 - Suit for specific

performance - Written statement not filed - Decree for specific performance being discretionary, the fact that defendant has not filed written statement as such is not a ground for passing an ex parte decree. (Thomas P.Abraham Vs Aleyamma Abraham) 2004(2) Civil Court Cases 86 (Kerala)

SC **Civil Procedure Code, 1908, Order 8 Rule 10** - Written statement
- Failure to file - In absence of denial of plaint averments burden of proof on the plaintiff is very heavy - Prima facie proof of relevant facts constituting cause of action would suffice and Court would grant plaintiff such relief as to which he may in law be found entitled. (Ramesh Chand Ardawatiya Vs Anil Panjwani) 2003(1) Apex Court Judgments 595 (S.C.)

Civil Procedure Code, 1908, Order 8 Rule 10 - Written statement
- Failure to file written statement within ninety days of service of summons
- Entails penalty on defendant and defendant cannot file written statement
- Suit has to be decided even in absence of written statement. (Dr.Nanda Agrawal Vs Matri Mandir, Varanasi & Anr.) 2005(1) Civil Court Cases 466 (Allahabad)

Civil Procedure Code, 1908, Order 9 Rule 2 - Failure to deposit
Munadi fee and process fee on one date of hearing - Should not entail dismissal of suit. (Punjab Wakf Board, Ambala Cantt. Vs Mehar Singh & Ors.) 2005(3) Civil Court Cases 388 (P&H)

Civil Procedure Code, 1908, Order 9 Rule 3 - Provision applies when neither party appears when suit is called for hearing - Thus dismissal of suit for non prosecution - Cannot be taken to be one under O.(Rule 3 CPC. (State Bank of India Vs M/s Kumar Apparel Industries) AIR 2003 Bombay 128

Civil Procedure Code, 1908, Order 9 Rule 3 - Restoration of suit
- Request for adjournment made on behalf of counsel for plaintiff - Held, when suit is at initial stage then there is absolutely no justification for Court to decline the request and refuse to adjourn the case. (Balbir Singh & Ors. Vs Smt.Jagir Kaur & Ors.) 2004(2) Civil Court Cases 47 (P&H)

Civil Procedure Code, 1908, Order 9 Rule 3 - Restoration of suit dismissed for non prosecution - Application filed on the next day - Notice is not required to be served on the defendant nor the defendant has any legal right to contest the application. (Balbir Singh & Ors. Vs Smt.Jagir Kaur & Ors.) 2004(2) Civil Court Cases 47 (P&H)

Civil Procedure Code, 1908, Order 9 Rule 3 Prviso, Order 6 Rule 2 - Exparte decree - Setting aside - More than one defendant - Exparte decree

set aside against them - Benefit will not enure to benefit of those who had not shown good cause for remaining absent. (M.Nanu Vs K.C.Joseph) AIR 2002 Kerala 349

Civil Procedure Code, 1908, Order 9 Rule 4, Section 115 - Dismissal for default - Restoration - Delay - Condonation - Dismissal of application for condonation of delay - Revision against such order is not maintainable. (Chandu & Anr. Vs Digambar & Ors.) 2004(3) Civil Court Cases 601 (Bombay)

Civil Procedure Code, 1908, Order 9 Rule 4 - Court fee - Non payment - Complaint rejected U.O.7 Rule 11 - Application U.O.9 Rule 4 is not maintainable - Decree passed U.O.7 Rule 11(c) is a decree u/s 2(2) of the Code, hence appealable. (Mohanani Vs Nalinakshan) 2003(3) Civil Court Cases 636 (Kerala)

Civil Procedure Code, 1908, Order 9 Rule 4 - Dismissal in default - Restoration of suit - Illness - No doctor examined to prove illness - Medical certificate mark 'A' produced - Held, non examination of a doctor or Vaid to support assertion of illness alone is not a ground for rejecting the explanation - Counsel in whom petitioner has reposed trust had failed to appear on the date of hearing - Party cannot be made to suffer for the fault of his counsel - Suit ordered to be restored. (Kanshi Ram Vs Haryana State & Ors.) 2004(2) Civil Court Cases 362 (P&H)

Civil Procedure Code, 1908, Order 9 Rule 4 - Restoration of suit - Case fixed for filing written statement - Nothing was to be done by plaintiff - Court should not have dismissed the suit for non prosecution as it cannot be said that there was default in strict sense for non prosecution on the part of plaintiff - Suit restored. (Prakash Chandra Vs Hari Prasad & Anr.) 2005(1) Civil Court Cases 516 (Rajasthan)

Civil Procedure Code, 1908, Order 9 Rule 4 - Restoration of suit - No necessity to frame issues and to take evidence when suit is dismissed in default in absence of both the parties - Matter should be decided on the basis of affidavits in the shortest possible time. (Sewa Singh Vs Harbans Singh) 2003(2) Civil Court Cases 561 (P&H)

Civil Procedure Code, 1908, Order 9 Rule 4 - Restoration of suit -

When both the parties are not present on the date fixed in the suit it may be due to some misunderstanding about the date of hearing - In such a situation, it is always in the interest of justice and fair procedure of law to restore the suit dismissed in default. (Sewa Singh Vs Harbans Singh) 2003(2) Civil Court Cases 561 (P&H)

Civil Procedure Code, 1908, Order 9 Rules 4, 5; S.141 - Restoration application - Dismissal - Plaintiff has two remedies - He can either file fresh suit U.O.9 Rule 5 or may apply for setting aside dismissal U.O.9 Rule 4 and S.141 CPC - Both these remedies are simultaneous and not exclude either of them. (Karni Dan Singh Vs Ram Chandra) AIR 2003 Rajasthan 98

SC Civil Procedure Code, 1908, Order 9 Rule 5 - Period of seven days - It is clearly directory. (Salem Advocate Bar Association, Tamil Nadu Vs Union of India) 2005(2) Apex Court Judgments 492 (S.C.) : 2005(3) Civil Court Cases 420 (S.C.)

SC Civil Procedure Code, 1908, Order 9 Rule 6, Order 8 Rule 10 - Ex parte suit proceedings - Neither issues nor judgment on every issue is required - However trial Court to frame 'points for determination' and to decide points one by one - Merely because defendant is absent Court shall not admit evidence the admissibility whereof is excluded by law nor permit its decision being influenced by irrelevant or inadmissible evidence. (Ramesh Chand Ardawatiya Vs Anil Panjwani) 2003(1) Apex Court Judgments 595 (S.C.)

Civil Procedure Code, 1908, Order 9 Rule 6 - Defendant proceeded ex parte - Delay of 2-1/2 years in getting the order set aside - Mere delay is inconsequential when suit is pending. (Smt.Sahib Kaur Vs Sukhbir Singh & Ors.) 2006(4) Civil Court Cases 51 (P&H)

Civil Procedure Code, 1908, Order 9 Rule 6 - Ex parte order - Party can join the proceedings at the stage at which the case is pending. (Smt.Sahib Kaur Vs Sukhbir Singh & Ors.) 2006(4) Civil Court Cases 51 (P&H)

Civil Procedure Code, 1908, Order 9 Rules 6, 13, Order 8 Rule 10, Section 2(9), Order 20 Rules 1, 4(2) - Defendant proceeded ex parte - Merely for this reason, allegations in complaint cannot be accepted to be correct - Court has to record a finding or call for evidence in support of

the plaint allegations. (Indra Sharma & etc. Vs Lt.Col.S.K.Sharma & Ors.) 2006(1) Civil Court Cases 480 (Allahabad)

Civil Procedure Code, 1908, Order 9 Rules 6, 7 - Dismissal in default - Restoration - Both the counsels noted wrong date - It is always in the interest of justice to decide quasi-judicial matters on merits - Technicalities ought not to be taken into account by the quasi judicial authorities like respondent No.1 who is to be guided by rules of natural justice - Petition ordered to be restored. (Chicha Coop. Agri. Service Soc. Ltd. Vs Additional Secretary) 2003(2) Civil Court Cases 390 (P&H)

Civil Procedure Code, 1908, Order 9 Rule 7, Order 22 Rule 4 - Exparte order - Setting aside - Death of defendant during pendency of application - Plaintiff informing Court about death of defendant but did not apply to bring on record L.R's - Order of trial Court that suit had abated - Appellate Court remanding case to trial Court - Trial Court allowing plaintiff's application for bringing on record L.R's of defendant - Appellate Court passing order that it was not obligatory on plaintiff to bring on record L.R's of defendant for reason that defendant had not filed any written statement - Held, order of appellate Court that there is no necessity for plaintiff to bring on record L.R's of deceased erroneous when plaintiff has himself moved application for impleading L.R's - As application to implead L.R's not filed within time as such suit held to have abated. (Dharam Singh & Ors. Vs Mukhtiar Singh & Anr.) 2004(3) Civil Court Cases 343 (Rajasthan)

Civil Procedure Code, 1908, Order 9 Rule 7, Order 5 Rule 16 - Exparte proceedings - Setting aside - No express order as to petitioner being proceeded ex parte except that service is complete - Petitioner made an endorsement on the summons that name of his father is wrongly mentioned and that he has no connection with the case and that it is not his duty to receive notice - Held, in the facts and circumstances of the case mere non mentioning of the words 'exparte' in the order is not necessary as the petitioner expressly made it clear that he does not wish to contest the case - Error in the name of father of petitioner is also not significant as it is no body's case that petitioner is a person other than party to the proceeding - Petition dismissed. (Sardar Singh Vs Krishan Lal Bharti) 2005(1) Civil Court Cases 421 (P&H)

Civil Procedure Code, 1908, Order 9 Rule 7, Order 8 Rule 1 - Exparte order - Set aside - Filing of written statement beyond 90 days - Held,

amendment of provision of Order 8 Rule 1 cannot be construed as a fetter on the Court to allow parties to file written statement beyond time prescribed. (Abdul Nazar Vs Mariam Beevi) 2005(3) Civil Court Cases 334 (Kerala)

SC **Civil Procedure Code, 1908, Order 9 Rule 7** - Application U.O.9 Rule 7 is not maintainable at the stage when suit is pending for pronouncing the judgment. (Bhanu Kumar Jain Vs Archana Kumar & Anr.) 2005(1) Apex Court Judgments 121 (S.C.) : 2005(1) Civil Court Cases 725 (S.C.)

Civil Procedure Code, 1908, Order 9 Rule 7 - Exparte order - Setting aside - Evidence of plaintiff not closed at the time of filing of application - Application is maintainable and liable to be liberally allowed. (Ramhet & Ors. Vs Ajaypal Singh) 2003(2) Civil Court Cases 72 (M.P.)

Civil Procedure Code, 1908, Order 9 Rule 7 - Exparte order - Setting aside - Sought at stage when arguments were yet to be heard and entire hearing was not completed - Application allowed - Not improper. (Lal Bahadur Vs IInd Addl.Munsif, Fatehpur) AIR 2002 Allahabad 360

Civil Procedure Code, 1908, Order 9 Rule 7 - Exparte proceedings - Setting aside - Wrong mentioning of name of father of petitioner in summons - Not significant as it is no body's case that petitioner is a person other than party to the proceeding. (Sardar Singh Vs Krishan Lal Bharti) 2005(1) Civil Court Cases 421 (P&H)

Civil Procedure Code, 1908, Order 9 Rule 7 - Party proceeded exparte can join and participate in proceedings at the stage at which it is pending without getting the exparte order set aside and without obtaining the permission of the Court to take part in the proceedings - However, if he desires to be relegated to the stage at which he was proceeded exparte then he has to move an application and has to show good cause for his non appearance. (Moulasab Vs Mohammad Hasim) 2003(1) Civil Court Cases 627 (Karnataka)

Civil Procedure Code, 1908, Order 9 Rule 7 - Restoration of suit - Defendant sick on date fixed for hearing - Medical certificate produced - It is illegal on part of trial Court to hold application as not bona fide - Application allowed on payment of Rs.1,000/- as costs. (Thakur Kan Singh Vs Thakur Devi Singh) 2004(2) Civil Court Cases 629 (Rajasthan)

Civil Procedure Code, 1908, Order 9 Rule 8 - Additional written statement - Can be allowed to a party who had already filed a written statement. (Savitha Gupta Vs Nagarathna) 2003(3) Civil Court Cases 172 (Karnataka)

Civil Procedure Code, 1908, Order 9 Rule 8 & S.151, Limitation Act, 1963, Art.137 - Restoration of suit - Case fixed for framing of issues - Counsel pleading no instructions - Date fixed for framing of issues is not a date fixed for hearing of suit - O.9 Rule 8 CPC not applicable - Restoration application is one u/s 151 CPC - Period of limitation for filing application is three years under Article 137 Limitation Act. (Gulabo Vs Nagar Palika, Phalodi) 2003(1) Civil Court Cases 315 (Rajasthan)

Civil Procedure Code, 1908, Order 9 Rules 8, 3 - Dismissal of suit in default - None appeared on behalf of plaintiff when case called whereas counsel for defendant was present - Dismissal of suit is under Order 9 Rule 8 and not under Order 9 Rule 3 of Civil Procedure Code, 1908. (Pawan Kumar & Ors. Vs Mangli Devi & Ors.) 2006(2) Civil Court Cases 204 (P&H)

Civil Procedure Code, 1908, Order 9 Rules 8, 9, Order 17 Rules 2,3 - Non appearance of plaintiff on date fixed for hearing - Defendants not admitting case of plaintiff either wholly or in part - In such a situation, trial court has no option except to dismiss suit under Order 9 Rule 8 of Civil Procedure Code, 1908- In case Court finds that party was not present because of some bona fide reason or on account of compelling circumstances or for reasonable cause, then order to proceed ex parte can be recalled by trial court. (Gopal Krishna Pandey & Ors. Vs Distt. Judge, Faizabad & Ors.) 2006(2) Civil Court Cases 342 (Allahabad)

Civil Procedure Code, 1908, Order 9 Rules 8, 9 - Mistake in noting date of case - After engaging an Advocate it is not the job of client to attend Court to take dates of the proceedings and convey them to his Advocate - In the trial Courts the party is expected to attend the Court as and when his presence is required in the proceedings and/or whenever the party is informed by his lawyer to remain present - It is the duty of Advocate engaged for conducting the cause on behalf of suitor to keep himself fully informed of the proceedings in the Court and be present when his case is called out. (Ashok Ravji Vadodriya Vs Municipal Corporation of Greater Bombay) 2003(3) Civil Court Cases 383 (Bombay)

Civil Procedure Code, 1908, Order 9 Rules 8, 9 - Restoration of suit dismissed for default - Mistake in noting date of case - It is not the duty of client to attend Court and convey the adjourned date to his advocate - Plaintiff cannot be made to suffer for fault of Advocate - Dismissal set aside. (Ashok Ravji Vadodriya Vs Municipal Corporation of Greater Bombay) 2003(3) Civil Court Cases 383 (Bombay)

Civil Procedure Code, 1908, Order 9 Rules 9, 4 - Suit fixed for framing of issues - Counsel for plaintiff appeared and stated that he was not ready to go on with the matter - Suit dismissed for non prosecution - Plaintiff not entitled to make application for restoration of suit U.O.9 Rule 9 or Rule 4 CPC. (State Bank of India Vs Kumar Apparel Industries) 2003(2) Civil Court Cases 660 (Bombay)

Civil Procedure Code, 1908, Order 9 Rules 9, 8, Order 2 Rule 2 - Dismissal of suit in default - Subsequent suit on same cause of action is barred - Same cause of action includes a cause of action which could have been included but plaintiff omitted to do so - In other words, a suit which is barred in terms of Order 2 Rule 2 of Civil Procedure Code, 1908 would also be barred in terms of Order 9 Rule 9 of Civil Procedure Code, 1908. (Smt. Parkash Kumari Vs Balwant Singh & Ors.) 2005(2) Civil Court Cases 299 (P&H)

Civil Procedure Code, 1908, Order 9 Rules 9, 8, Order 2 Rule 2 - Dismissal of suit in default - Subsequent suit on same cause of action is barred - Same cause of action includes a cause of action which could have been included but plaintiff omitted to do so - In other words, a suit which is barred in terms of O.2 Rule 2 CPC would also be barred in terms of O.9 Rule 9 CPC. (Smt. Parkash Kumari Vs Balwant Singh & Ors.) 2005(2) Civil Court Cases 299 (P&H)

Civil Procedure Code, 1908, Order 9 Rule 9, East Punjab Urban Rent Restriction Act, 1949, Section 13 - Provision of Order 9 Rule 9 of Civil Procedure Code, 1908 is not applicable to proceedings under East Punjab Urban Rent Restriction Act. (Surinder Kaur & Anr. Vs Rattan Chand Diggall) 2005(3) Civil Court Cases 730 (P&H)

Civil Procedure Code, 1908, Order 9 Rule 9, East Punjab Urban Rent Restriction Act, 1949, Sections 13, 14 - Eviction petition - Ground of

personal necessity - Ground of personal necessity duly proved but petition dismissed on the ground that earlier a similar petition was filed which was dismissed for default - Held, dismissal for default of earlier petition does not bar a second petition on the same ground as earlier petition was not decided on merits - Provision of Order 9 Rule 9 of Civil Procedure Code, 1908 is not applicable to proceedings under East Punjab Urban Rent Restriction Act - Eviction order of tenant passed. (Surinder Kaur & Anr. Vs Rattan Chand Diggall) 2005(3) Civil Court Cases 730 (P&H)

Civil Procedure Code, 1908, Order 9 Rule 9, Hindu Marriage Act, 1955, Section 13 - Second divorce petition - On the same cause of action - Barred under Order 9 Rule 9 of Civil Procedure Code, 1908- However second divorce petition is maintainable on grounds which have accrued after dismissal of first petition or on ground in which there is continuous cause of action and it has continued even after dismissal of the first petition. (Malti Vs Ramesh Kumar) 2006(4) Civil Court Cases 30 (Delhi)

Civil Procedure Code, 1908, Order 9 Rule 9, Limitation Act, 1963, Section 5 - Restoration application - Time barred - Application for condonation of delay also filed - Condonation application is required to be decided first - Suit ordered to be restored without considering pendency of condonation application - Order of restoration is without jurisdiction - Order set aside directing disposal of condonation application first. (Bongaigaon Stores & Anr. Vs Moolchand Kucheria & Ors.) 2004(2) Civil Court Cases 369 (Gauhati)

Civil Procedure Code, 1908, Order 9 Rule 9, Limitation Acts, 1963, Section 5, Art. 122 - Restoration of application for condonation of delay filed at appellate stage - Provision of Art. 122 is attracted to an application for restoration of application for condonation of delay filed at appellate stage. (Madhumati Suresh Raut & Anr. Vs Namdeo Tukaram Yadav since deceased through his LRs.) 2006(1) Civil Court Cases 626 (Bombay)

Civil Procedure Code, 1908, Order 9 Rule 9, Order 21 - Execution - Provision of Order 9 Rule 9 is not applicable to execution proceedings - Provision precludes plaintiff from bringing a fresh suit and not execution as in an execution the rights of parties already stand settled. (Yash Pal Sharma Vs Ajit Singh & Ors.) 2006(4) Civil Court Cases 207 (P&H)

Civil Procedure Code, 1908, Order 9 Rule 9, Sections 141, 107, Limitation Act, 1963, Section 5 - Restoration of suit - Condonation of delay
- Provision of Section 141 is applicable to an application for condonation of delay in filing the application for restoration of suit - It also applies to similar proceedings filed at appellate stage in view of provision of Section 107(2) of Civil Procedure Code, 1908. (Madhumati Suresh Raut & Anr. Vs Namdeo Tukaram Yadav since deceased through his LRs.) 2006(1) Civil Court Cases 626 (Bombay)

Civil Procedure Code, 1908, Order 9 Rule 9 - Dismissal for default
- Restoration - Application when filed within statutory period of 30 days, suit should normally be restored provided absence was not mala fide or intentional
- Reason for dismissal stated that Counsel was busy in another Court and applicant engaged in performance of religious ceremony - Held, dismissal of application on ground that reason given for non appearance is not sufficient, is unjustified - Suit restored. (V.Narayanaswamy Vs Smt.Doddavenkatamma & Ors.) 2006(2) Civil Court Cases 37 (Karnataka)

Civil Procedure Code, 1908, Order 9 Rule 9 - Dismissal for default - Restoration - Such application to be decided as expeditiously as possible and preferably within three months. (V.Narayanaswamy Vs Smt. Doddavenkatamma & Ors.) 2006(2) Civil Court Cases 37 (Karnataka)

Civil Procedure Code, 1908, Order 9 Rule 9 - Plaintiff appeared through Advocate - His Advocate however was not ready to go on with matter
- In circumstances O.9 Rule 9 has no application as plaintiff has appeared in matter. (State Bank of India Vs M/s Kumar Apparel Industries) AIR 2003 Bombay 128

Civil Procedure Code, 1908, Order 9 Rule 9 - Restoration of suit
- Application for restoration of suit on behalf of Bank filed by an officer different than the one who filed the suit - Held, successor in office can file application for restoration of suit. (M/s.Madanchand & Broders & Anr. Vs Bank of Baroda) 2005(2) Civil Court Cases 94 (Rajasthan)

Civil Procedure Code, 1908, Order 9 Rule 9 - Restoration of suit dismissed on basis of "No instruction" pleaded by counsel - Application can be filed when plaintiff comes to know of dismissal of suit - Application u/s 5 Limitation Act is not necessary in such case - Cause of plaintiff's absence

on date fixed explained in affidavit - Plaintiff not informed by Court of his counsel's plea of no instruction - Counsel also not informing plaintiff of dismissal of suit - Suit ordered to be restored. (M/s.Aravali Stone Company Vs Urban Improvement Trust) 2003(3) Civil Court Cases 342 (Rajasthan)

Civil Procedure Code, 1908, Order 9 Rule 9 - Same cause of action - Includes cause of action on which plaintiff could have claimed the relief in the previous suit. (Smt.Parkash Kumari Vs Balwant Singh & Ors.) 2005(2) Civil Court Cases 299 (P&H)

Civil Procedure Code, 1908, Order 9 Rule 9 - Suit fixed for framing of issues - Non appearance of plaintiff - Suit not to be dismissed for default when case is fixed for framing of issue - When presence of party on a particular date is not required and Court can proceed with the suit even without assistance of party and his advocate, then it is always desirable that Court should not dismiss the suit. (M/s.Madanchand & Broders & Anr. Vs Bank of Baroda) 2005(2) Civil Court Cases 94 (Rajasthan)

Civil Procedure Code, 1908, Order 9 Rule 9 - Suit which is barred in terms of O.2 Rule 2 is also barred in terms of O.9 Rule 9 CPC. (Smt.Parkash Kumari Vs Balwant Singh & Ors.) 2005(2) Civil Court Cases 299 (P&H)

Civil Procedure Code, 1908, Order 9 Rule 9 - Suit which is barred in terms of Order 2 Rule 2 is also barred in terms of Order 9 Rule 9 of Civil Procedure Code, 1908. (Smt.Parkash Kumari Vs Balwant Singh & Ors.) 2005(2) Civil Court Cases 299 (P&H)

Civil Procedure Code, 1908, Order 9 Rule 9(2), R.13 - Restoration of suit - Notice to opposite party is mandatory - Suit restored without notice to the opposite party - Thereafter defendant proceeded ex parte and ex parte decree passed - Held, restoration of suit without notice to opposite party is illegal and contrary to O.9 Rule 9(2) CPC - Ex parte decree set aside. (Manager, Personal Banking Division, State Bank of India, Madras Vs P.S.Maragatham) 2003(3) Civil Court Cases 693 (Madras)

Civil Procedure Code, 1908, Order 9 Rule 9(2) - Restoration of suit - Notice of restoration application to opposite party is mandatory. (Manager, Personal Banking Division, State Bank of India, Madras Vs P.S.Maragatham) 2003(3) Civil Court Cases 693 (Madras)

Civil Procedure Code, 1908, Order 9 Rules 13 - Exparte order of eviction - Setting aside - Reason for non appearance is to be shown on the date when order proceeding ex parte was passed and not on the date when exparte eviction order was passed. (Nazeer Vs Sundaran Rajan) 2006(1) Civil Court Cases 260 (Kerala)

SC Civil Procedure Code, 1908, Order 9 Rule 13, Explanation - Exparte decree - Appeal against - Dismissed as barred by limitation - Held, after disposal of appeal on any ground other than withdrawal of appeal, application U.O.9 Rule 13 CPC for setting aside exparte decree is not maintainable. (P.Kiran Kumar Vs A.S.Khadar & Ors.) 2003(1) Apex Court Judgments 100 (S.C.)

Civil Procedure Code, 1908, Order 9 Rule 13, Hindu Marriage Act, 1955, Section 13 - Divorce - Exparte divorce decree in favour of husband - Wife living separately with minor female child - If exparte divorce decree is allowed to stand then life of minor child is likely to be ruined - Even otherwise efforts should be made that matrimonial alliance remains intact - In civil disputes, matters are required to be decided on merits and not on technicalities - Exparte divorce decree set aside. (Veeralpal Kaur Vs Rashpal Singh) 2006(4) Civil Court Cases 92 (P&H)

Civil Procedure Code, 1908, Order 9 Rule 13, Hindu Marriage Act, 1955, Section 13 - Ex parte divorce decree - Setting aside - Service of summons - Registered notice received back with endorsement “not found” - Dasti notice not found to be served by ‘nishan dehi’ - Service of summons on the basis of telegram is not available - Service by affixation highly suspicious - Service not proved - Ex parte decree set aside. (Smt.Sulekha Vs Bhupendra Singh Naruka) 2006(3) Civil Court Cases 159 (Rajasthan) (DB)

Civil Procedure Code, 1908, Order 9 Rule 13, Hindu Marriage Act, 1955, Section 13 - Ex parte divorce decree - Setting aside - Service of summons - Telegram - There is no presumption of service available on the basis of receipt of telegram only - Ex parte divorce decree set aside. (Smt.Sulekha Vs Bhupendra Singh Naruka) 2006(3) Civil Court Cases 159 (Rajasthan) (DB)

Civil Procedure Code, 1908, Order 9 Rule 13, Limitation Act, 1963, Art.123 - Exparte decree - Setting aside - Application filed immediately

after defendant came to know about passing of ex parte decree - Starting point of limitation for filing such an application is the date of knowledge and not the date of passing of the exparte decree - Order allowing application, upheld. (Rajesh Kumar Vs Des Raj Arora & Ors.) 2006(2) Civil Court Cases 708 (P&H)

Civil Procedure Code, 1908, Order 9 Rule 13, Limitation Act, 1963, Art.123 - Exparte decree - Setting aside - Limitation - In case there is due service limitation to file application to set aside exparte decree is 30 days from the date of decree - In case summons or notice was not duly served then limitation is 30 days of knowledge of the decree. (Jonnalagadda Shuhasini & Ors. Vs Ravele Arogyaiah) 2006(4) Civil Court Cases 692 (A.P.)

Civil Procedure Code, 1908, Order 9 Rule 13, Limitation Act, 1963, Art.123 - Exparte decree - Setting aside - Limitation - Thirty days - Time begins to run from the date of knowledge of decree, or when the applicant had the knowledge of the decree. (Pravinchandra Vs Murli Agro Products Ltd.) 2005(3) Civil Court Cases 614 (Bombay)

Civil Procedure Code, 1908, Order 9 Rule 13, Limitation Act, 1963, Section 5 - Exparte decree - Setting aside - Delay - Counsel assured party that he will take care of the case but he never informed the defendant about any date fixed in the trial Court - Defendant met with an accident and remained admitted in hospital and that he was on bed rest for about a period of six months - - Defendant however himself admitted in his evidence that his son was in touch with his counsel - Held, it is not a case of simple negligence on the part of the counsel of the defendant rather it is a case of gross negligence and total inaction on the part of the defendant himself - Conclusion of both Courts below that there was no explanation for delay - No interference with order rejecting application for setting aside exparte decree. (Ladu Ram Vs Smt.Gyatri Devi & Ors.) 2004(3) Civil Court Cases 631 (Rajasthan)

Civil Procedure Code, 1908, Order 9 Rule 13, Limitation Act, 1963, Section 5 - Exparte decree - Setting aside - Delay of 10 years - Condonation - Defendant failed to appear despite service of summons - No reason shown for not appearing in the case despite service of summons - Sufficient cause for delay not shown - Application dismissed. (M/s Gulf Air Company Vs V.M.Rajalingam) 2006(2) Civil Court Cases 103 (Madras) (DB)

Civil Procedure Code, 1908, Order 9 Rule 13, Limitation Act, 1963, Section 5 - Joint application U.O.9 Rule 13 CPC 7 & S.5 Limitation Act can be filed - Separate application to condone delay is not required to be filed if grounds in both the applications are one and the same - Both the reliefs can be prayed in one petition U.O.9 Rule 13 CPC. (M.Narasimha Reddy & Ors Vs Begari Samuel) 2003(1) Civil Court Cases 169 (A.P.)

Civil Procedure Code, 1908, Order 9 Rule 13, Limitation Act, 1963, Section 5 - Section 5 of the Limitation Act is applicable to an application filed U.O.9 Rule 13 CPC. (Dilip B.Joshi Vs Vidya Sahakari Bank Ltd.) 2004(3) Civil Court Cases 180 (Bombay)

Civil Procedure Code, 1908, Order 9 Rule 13, Limitation Act, 1963, Section 5 - Section 5 of the Limitation Act is applicable to an application filed under Order 9 Rule 13 of Civil Procedure Code, 1908. (Dilip B.Joshi Vs Vidya Sahakari Bank Ltd.) 2004(3) Civil Court Cases 180 (Bombay)

Civil Procedure Code, 1908, Order 9 Rule 13, Order 17 Rule 2 - Exparte decree - Setting aside - Defendant filed written statement and counter claim - Issues framed and plaintiff filed evidence affidavit - On subsequent date defendant and his counsel absent - Suit decreed - There was no order calling upon defendant to produce evidence - Decree passed is one under Order 17 Rule 2 - Remedy available is one under Order 9 Rule 13 to set aside exparte decree. (Videocon International Ltd. Vs Video Links & Ors.) 2006(4) Civil Court Cases 126 (Bombay)

Civil Procedure Code, 1908, Order 9 Rule 13, Order 37 Rules 2, 3 - Provision of Order 9 Rule 13 is not applicable to a decree passed under Order 37 Rules 3(6) or Rule 2(3). (Eskay Enterprises Vs Suresh P.Hinduja) 2005(3) Civil Court Cases 38 (Bombay)

SC Civil Procedure Code, 1908, Order 9 Rule 13, Order 43 Rule 1(d) and S.96(2) - Exparte decree - Two options are available - One to file appeal and second to file application U.O.9 Rule 13 - If appeal is dismissed then application U.O.9 Rule 13 is not maintainable but not the vice versa - On dismissal of application U.O.9 Rule 13 remedy of appeal U.O.43 Rule 1 is available - In case of dismissal of such an appeal then in the first appeal same contention cannot be raised as regards the correctness or otherwise of the order proceeding ex parte - However, the decree can be assailed on the

ground that material brought on record by plaintiff is not sufficient for passing a decree in his favour or the suit was otherwise not maintainable - Lack of jurisdiction of the Court can also be a possible plea in such an appeal. (Bhanu Kumar Jain Vs Archana Kumar & Anr.) 2005(1) Apex Court Judgments 121 (S.C.) : 2005(1) Civil Court Cases 725 (S.C.)

SC **Civil Procedure Code, 1908, Order 9 Rule 13, Order 43 Rule 1(d) and Section 96(2)** - Exparte decree - Two options are available - One to file appeal and second to file application under Order 9 Rule 13 - If appeal is dismissed then application under Order 9 Rule 13 is not maintainable but not the vice versa - On dismissal of application under Order 9 Rule 13 remedy of appeal under Order 43 Rule 1 is available - In case of dismissal of such an appeal then in the first appeal same contention cannot be raised as regards the correctness or otherwise of the order proceeding ex parte - However, the decree can be assailed on the ground that material brought on record by plaintiff is not sufficient for passing a decree in his favour or the suit was otherwise not maintainable - Lack of jurisdiction of the Court can also be a possible plea in such an appeal. (Bhanu Kumar Jain Vs Archana Kumar & Anr.) 2005(1) Apex Court Judgments 121 (S.C.) : 2005(1) Civil Court Cases 725 (S.C.)

Civil Procedure Code, 1908, Order 9 Rule 13, Order 5 Rule 19-A
- Exparte decree - Setting aside - Defendant proceeded ex parte on the basis of presumption raised under Order 5 Rule 19-A of Civil Procedure Code, 1908- Registered cover and summons not addressed on the correct address
- No illegality or infirmity in order setting aside ex parte decree. (Rajesh Kumar Vs Des Raj Arora & Ors.) 2006(2) Civil Court Cases 708 (P&H)

Civil Procedure Code, 1908, Order 9 Rule 13, Order 5 Rule 20, Limitation Act, 1963, Art.123 Explanation - Exparte decree - Setting aside
- Service of summons through substituted service by publication of notice in newspaper - Limitation - Starts to run from the date of knowledge of ex parte decree and not from the date of passing of the decree - Important aspect as to acquiring knowledge has to be inquired into by allowing defendant to lead evidence. (S.K.Austin & Ors. Vs Corporation Bank, K.H.Road, Bangalore) 2006(3) Civil Court Cases 301 (Karnataka)

Civil Procedure Code, 1908, Order 9 Rule 13, Order 5 Rule 20
- Exparte decree - Setting aside - Substituted service - Summons returned

unserved due to wrong address - Correct address not furnished - Court ordered substituted service on being made to believe by filing affidavit that defendant could not be served despite various efforts made - No reason to order substituted service - No service in the eye of law - Ex parte decree set aside. (Abbu Bakar & Anr. Vs Deen Dayal & Anr.) 2006(4) Civil Court Cases 555 (Rajasthan)

SC **Civil Procedure Code, 1908, Order 9 Rule 13, Order 6 Rules 1 & 2** - Ex parte decree - Setting aside - Fraud - To prove fraud it must be pleaded and proved - To prove fraud it must be proved that representation made was false to the knowledge of the party making such representation or that the party could have no reasonable belief that it was true - Level of proof in such cases is extremely higher - An ambiguous statement cannot per se make the representor guilty of fraud - To prove a case of fraud, it must be proved that the representation made was false to the knowledge of the party making such representation. (A.C. Ananthaswamy Vs Boraiah (dead) by LRs) 2004(2) Apex Court Judgments 719 (S.C.) : 2004(3) Civil Court Cases 624 (S.C.)

Civil Procedure Code, 1908, Order 9 Rule 13, Section 11 - Ex parte decree - Separate suit to challenge - Not maintainable - Remedy available against an ex parte decree is either to file an application under Order 9 Rule 13 of Civil Procedure Code, 1908 or an appeal under Section 96 of Civil Procedure Code, 1908. (Parkash Kaur & Ors. Vs Satta & Ors.) 2006(2) Civil Court Cases 253 (P&H)

Civil Procedure Code, 1908, Order 9 Rule 13, Section 148 - Ex parte decree - Set aside subject to payment of costs by a certain date - Costs not paid by that date - Application filed for enlargement of time - Held, an application for enlargement of time can be filed even in a case where a default clause, or a stipulation that no further extension would be granted, are incorporated - Application is maintainable. (M.A. Mukheed Vs C. Pandurangam) 2005(2) Civil Court Cases 614 (A.P.)

Civil Procedure Code, 1908, Order 9 Rule 13, Section 47 - Ex parte decree - Subsequent suit for setting aside ex parte decree - Separate suit is not maintainable - Grievance could be agitated before Executing Court or should resort to remedy U.O. 9 Rule 13 CPC for setting aside ex parte decree or to file an appeal against ex parte decree - Order of trial Court in subsequent suit restraining plaintiff in earlier suit from executing ex parte decree set

aside. (Mohanlal Vs Khandelwal Brothers Ltd.) 2003(1) Civil Court Cases 24 (Bombay)

Civil Procedure Code, 1908, Order 9 Rule 13, Section 96(2) - Exparte decree - Remedy to file appeal in an ex parte decree is also available to an aggrieved party - It is not necessary, for an aggrieved party to first file an application U.O.9 Rule 13 CPC. (Gram Panchayat Vs Ranjit Singh) 2005(2) Civil Court Cases 267 (P&H)

Civil Procedure Code, 1908, Order 9 Rule 13, Section 96(2) - Exparte decree - Remedy to file appeal in an ex parte decree is also available to an aggrieved party - It is not necessary, for an aggrieved party to first file an application under Order 9 Rule 13 of Civil Procedure Code, 1908. (Gram Panchayat Vs Ranjit Singh) 2005(2) Civil Court Cases 267 (P&H)

Civil Procedure Code, 1908, Order 9 Rule 13 - ‘Prevented by any sufficient cause from appearing’ - To be liberally construed to do complete justice between the parties. (Baldev Singh Vs Labh Singh) 2003(3) Civil Court Cases 58 (P&H)

Civil Procedure Code, 1908, Order 9 Rule 13 - “No instructions” - If counsel has not informed about no instructions and there is no notice to the party about “no instruction” then the entire proceedings will become illegal. (Jayalakshmi Vs Avara) 2003(3) Civil Court Cases 284 (Kerala)

SC **Civil Procedure Code, 1908, Order 9 Rule 13** - Eviction petition - Tenant not appearing despite service of summons by registered post and through process server - Tenant proceeded exparte and exparte eviction order passed - Application to set aside ex parte order dismissed and tenant did not file any appeal - High Court in such a situation cannot set aside ex parte order in exercise of power under Article 227 of Constitution of India - Benefit of extra ordinary jurisdiction cannot be given to a person who himself has not pursued his application under Order 9 Rule 13 of Civil Procedure Code, 1908 which was dismissed. (Narender Vs Pradeep Kumar) 2005(2) Apex Court Judgments 55 (S.C.) : 2005(2) Civil Court Cases 556 (S.C.)

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree - Application to set aside - Dismissed - Appeal against ex parte decree thereafter is maintainable. (Khurshed Banoo Vs Vasant Malikarjun Manthalkar) AIR

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree - For sustaining exparte decree it is incumbent upon the successful party to show the presence of adequate evidence to sustain the findings - Merely because one of the party is absent would not ipso facto lead to the conclusion that evidence adduced by successful party supports his case - Mere fact that plaintiff had chosen to adduce some evidence cannot by itself entitle him to an ex parte decree - Decree has to be passed on the basis of reliable evidence - Duty is cast upon Court to ensure that in exparte cases decree is based on cogent and reliable evidence. (Gram Panchayat Vs Ranjit Singh) 2005(2) Civil Court Cases 267 (P&H)

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree - Set aside - Suit to proceed from the stage the defendant was ordered to be proceeded exparte - Defendant granted one opportunity to conclude his entire evidence at his own responsibility and without the assistance of Court. (Balkar Singh & Ors. Vs Harnam Singh & Ors.) 2006(4) Civil Court Cases 425 (P&H)

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree - Setting aside - 'Sufficient cause' - Has to be construed liberally - Sufficiency of grounds has to be examined - Expression 'sufficient cause' and 'upon such terms as to costs' and 'otherwise as it thinks fit' gives considerable amount of latitude to the court when defendant comes to court for setting aside ex parte decree. (Thomas P.Abraham Vs Aleyamma Abraham) 2004(2) Civil Court Cases 86 (Kerala)

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree - Setting aside - "No instructions" reported by Advocate without prior intimation to the party - No reliable material placed before Court in support of the said plea - Advocate not made a party to the application filed to set aside the ex parte decree - His affidavit not even filed - Such a conduct of an Advocate, if true, amounts to violation of rules of conduct framed by Bar Council of India - No complaint made against him - Held, in the absence of any positive proof, no presumption can be drawn about the conduct of Advocate - Exparte decree cannot be set aside on such a ground not established. (M.Sidda Reddy & Ors. Vs Lakshamma & Anr.) 2003(2) Civil Court Cases 270 (A.P)

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree - Setting aside - Appellants appearing before Executing Court on 20.1.1996 and application to set aside ex parte decree filed on 12.2.1996 - Appellants not disclosing on what information they so appeared - Appellants having knowledge of ex parte decree at least by 29.11.1995 - Application dismissed - Order upheld. (Harkori Vs Tehal Singh) 2003(2) Civil Court Cases 535 (Rajasthan)

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree - Setting aside - Applicant filed revision against decree which was pending before Revisional Court - Held, merely filing of or pendency of revision does not take away jurisdiction of trial Court to entertain and dispose of application - When applicant was proceeded exparte without due service of notice, dismissal of his application for setting aside decree is unsustainable in law. (Ashok Motors, Bangalore Vs H.Ibrahim) 2004(2) Civil Court Cases 596 (Karnataka)

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree - Setting aside - Costs - Suit amount more than Rs.23 lakhs - Considering the quantum of suit claim, ex parte decree set aside subject to payment of Rs.10,000/- as costs - Held, it is not the quantum of the suit claim that is to be considered but the question to be considered is whether there was any wilful default of the party in not appearing when the case was taken up for hearing - Petition filed on the same day when defendant was proceeded ex parte - Cost reduced from Rs.10,000 to Rs.2,000/-. (Aiswarya Cashew Co. Vs Krimpexx Overseas (P) Ltd.) 2005(1) Civil Court Cases 500 (Kerala)

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree - Setting aside - Counsel busy in another Court and an application submitted seeking adjournment - Request rejected, respondents proceeded exparte and suit decreed - While passing the decree, the discussion reads like this "Perused the evidence of P.Ws.1 and 2 and Exs.10 and 12. Suit claim proved. Hence, the suit is decreed as prayed for". - Even in a case where defendant is absent or set ex parte, trial Court is not relieved of its duty to examine the merits of the matter and to render a reasoned order - Lower appellate Court allowing application and setting aside ex parte decree - Order upheld. (Namburi Chenna Reddy & Ors. Vs Devireddy Kotareddy & Ors.) 2006(3) Civil Court Cases 180 (A.P.)

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree - Setting aside - Counsel pleaded “No instructions” without informing the defendant - If there was non-cooperation on behalf of the party counsel ought to have given them registered notice before pleading no instructions - Parties not afforded an opportunity for leading their evidence with regard to sufficiency of grounds for non appearing in the Court on the date fixed in the suit - Matter remitted to trial Court for deciding it afresh after affording an opportunity to the parties to lead their evidence. (Pooranmal & Ors. Vs Ashok Kumar & Ors.) 2004(2) Civil Court Cases 477 (Rajasthan)

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree - Setting aside - Counter claim set up by defendant - Defendant absent - Suit decreed exparte - In application relief claimed as to setting aside exparte decree and to restore suit - No relief claimed nor granted of setting aside the dismissal of counter claim and of restoring the same to be tried on merits - Held, it is not open to trial Court to proceed with the counter-claim until the order passed thereon is set aside and the same is restored to the file. (Videocon International Ltd. Vs Video Links & Ors.) 2006(4) Civil Court Cases 126 (Bombay)

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree - Setting aside - Court can impose conditions which may include direction to deposit costs or the decretal amount or any portion thereof - However, such conditions should be reasonable and not harshly excessive - In the instant case condition imposed was to deposit 75% of decretal amount and costs which is about two lakhs - Held, condition imposed is onerous and harsh - Order modified directing deposit of only a sum of one lakh besides decretal costs and exemplary costs imposed by Court below. (Vakati Prabhakar Reddy Vs Tenali Mohan Rao) 2003(2) Civil Court Cases 316 (A.P.)

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree - Setting aside - Court order that party did not turn up till 3.45 p.m. - Stand taken by petitioner contrary to what has been recorded by Presiding Officer - Such a stand not to be accepted. (Sant Ram Vs Smt.Raj Bhardwaj) 2006(4) Civil Court Cases 122 (P&H)

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree - Setting aside - Court should be liberal which deciding such an application and should make every effort to decide the lis between the parties on merits,

as passing of an ex parte decree at time amount to causing grave injustice to a party. (Smt.Sudesh Vs Addl.Dist.Judge)2006(4) Civil Court Cases 142 (Allahabad)

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree - Setting aside - Decree of maintenance - Claim of maintenance meagre and moderate and was granted long before - Husband not providing any maintenance to wife for a long period - Ends of justice do not tilt in favour of husband so as to interfere with the ex parte decree of maintenance with the aid of O.9 Rule 13 CPC. (Kunjabihari Pradhan Vs Jayanti Pradhan) 2003(3) Civil Court Cases 129 (Orissa)

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree - Setting aside - Defendant failing to appear in transferee Court - Defendant appearing in Court before transfer of case and he knew of next date fixed - Counsel of defendant served with notice of transfer - Counsel not informing defendant, is a matter between defendant and his counsel - Refusal to set aside exparte decree - Order upheld. (Surajbhan Vs Laxmi Narayan) 2006(2) Civil Court Cases 497 (Rajasthan)

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree - Setting aside - Exparte decree can be set aside when summons are not duly served or that defendant was prevented by sufficient cause for not appearing when the suit was called for hearing - Exparte decree cannot be set aside merely on the ground that there had been an irregularity in service of summons and if Court is satisfied that defendant had notice of the date of hearing and had sufficient time to appear and answer the claim. (Avutu Vijayalakshmi & Anr. Vs M/s.Sri Pujitha Chit Fund, Vijayawada) 2005(1) Civil Court Cases 334 (A.P.)

SC Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree - Setting aside - Exparte decree for Rs.37 lakhs - While setting aside exparte decree condition of furnishing security of Rs.37 lakhs either in the form of bank guarantee or in cash imposed - Held, while setting aside a decree, conditions can be imposed but such conditions should not be unreasonable or harshly excessive - Interest of justice will be met if respondent is directed to furnish security to extent of Rs.5 lakhs. (Tea Auction Ltd. Vs Grace Hill Tea Industry & Anr.) 2006(3) Apex Court Judgments 234 (S.C.) : 2006(4) Civil Court Cases 275 (S.C.)

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree - Setting aside - Exparte decree set aside as (a) Process server not examined; (b) Non furnishing of copy of plaint with summons; (c) Non filing of affidavit by plaintiff in support of reply filed to the application U.O.9 Rule 13 CPC - Order upheld. (Baldev Singh Vs Labh Singh) 2003(3) Civil Court Cases 58 (P&H)

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree - Setting aside - Exparte decree set aside subject to payment of half of the decretal amount - Order modified directing defendant to deposit 1/4th of the decretal amount and costs. (Ch.Sudhakar Vs T.S.R.Anjaneyulu) 2006(3) Civil Court Cases 346 (A.P.)

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree - Setting aside - Failure to file written statement - Counsel made efforts to contact defendant but could not contract - It is rather duty of party to contact his counsel - It is defendant and not Advocate who is negligent - No error in rejecting application to set aside exparte decree. (M/S.Tawa Nine & Anr. Vs The Bank of Rajasthan Ltd. & Anr.) 2006(4) Civil Court Cases 517 (Rajasthan)

SC Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree - Setting aside - Fraud - Non service of summons does not constitute fraud or misrepresentation. (A.C.Ananthaswamy Vs Boraiah (dead) by LRs) 2004(2) Apex Court Judgments 719 (S.C.) : 2004(3) Civil Court Cases 624 (S.C.)

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree - Setting aside - Imposing conditions - Past conduct of defendant considered - Condition imposed to deposit entire cost of suit - Condition cannot be said to be onerous or without jurisdiction. (Bathini Sambaiah Vs Juluru Narayan) 2003(1) Civil Court Cases 605 (A.P)

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree - Setting aside - Irregularity in service of summons - Exparte decree cannot be set aside merely on the ground that there has been irregularity in service of summons if it is satisfied that defendant had knowledge of date of hearing and had sufficient time to appear and answer the plaintiffs claim. (Trinatha @ Trilochan Behera Vs Mirza Sabir Beg & Ors.) 2005(2) Civil Court Cases 180 (Orissa)

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree - Setting aside - More than one defendants - Application filed by only one defendant - Exparte decree can be set aside against other defendants also if decree is of such a nature that it cannot be set aside only against the defendant who made the application - Exparte decree set aside against only that defendant who filed application as relief claimed against him is different from the relief claimed against other defendants. (Palakurthy Vs Noroju Manorama) 2003(2) Civil Court Cases 480 (A.P.)

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree - Setting aside - Noting wrong date of case - Evidence to this effect remained unshaken during cross examination - Such plea accepted and the same affirmed by appellate Court - High Court cannot interfere with the same in revisional jurisdiction. (Bramhananda Mishra Vs Jogne Kumar Mishra) AIR 2004 Orissa 87

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree - Setting aside - One of the grounds that first appellant who was looking after the suit fell sick and therefore could not attend on the day fixed in the case - Material to prove sickness not produced - Plea belied by the facts that it is the third appellant (son of first appellant) who has filed the affidavit in petition to set aside ex parte decree - Third appellant not gave any reason for his absence on the relevant date - Dismissal of petition by trial Court - Not liable to interference. (M.Sidda Reddy & Ors. Vs Lakshamma & Anr.) 2003(2) Civil Court Cases 270 (A.P.)

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree - Setting aside - Practice of advocate filing his affidavit for setting aside ex parte decree - Totally wrong and illegal. (Pasupuleti Subba Rao Vs Nandavarapu Anjaneyulu) AIR 2003 A.P. 445

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree - Setting aside - Relevant date for consideration of absence of defendant is the date when he was proceeded exparte - Contention that defendant failed to appear on subsequent dates does not merit acceptance. (Baldev Singh Vs Labh Singh) 2003(3) Civil Court Cases 58 (P&H)

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree - Setting aside - Service of summons - Mention of pendency of suit in written

statement filed in another case against husband of one of the petitioners - Does not amount to be sufficient service of notice on the petitioner. (Smt. Sudesh & Ors. Vs Addl.Dist.Judge & Ors.) 2006(4) Civil Court Cases 142 (Allahabad)

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree - Setting aside - Service of summons - Notice sent through Advocate Commissioner who recorded refusal but two witnesses recorded on report were inimical to defendant - Limitation to file application begins to run from date of knowledge of passing of exparte decree - Courts should adopt liberal approach in the matter while dealing with delay of condonation application - Exparte decree set aside. (Smt.Sudesh & Ors. Vs Addl.Dist.Judge & Ors.) 2006(4) Civil Court Cases 142 (Allahabad)

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree - Setting aside - Service of summons - Plea that defendant was not properly served and that he came to know about the exparte decree only when bailiff came to deliver possession of shop - Person present at that time not examined as witnesses to corroborate version of defendant - Defendant failed to explain delay in filing application under Order 9 Rule 13 of Civil Procedure Code, 1908- Application dismissed. (Pawan Kumar Vs Harinder Singh & Ors.) 2004(3) Civil Court Cases 637 (P&H)

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree - Setting aside - Service of summons by registered post - No mention therein as to when it was served - There is one signature on A.D. but name is not clear - Defendant denied signatures to be his or his family members in his deposition - Service not proved - Exparte decree set aside. (Ashok Vs Bank of India & Ors.) 2005(3) Civil Court Cases 130 (M.P.)

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree - Setting aside - Service through Munadi - Petitioner absent despite service through Munadi and hence proceeded ex parte - Brother of petitioner filed an appeal against judgment and decree - It is difficult to believe that petitioner had no knowledge of the litigation against him - This shows that petitioner had not come to Court with clean hands. (Nimmo Devi & Anr. Vs Manni Devi & Ors.) 2004(2) Civil Court Cases 625 (P&H)

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree -

Setting aside - Sufficient cause for non appearance - Plea that defendant had gone outside State to earn his livelihood and pairakar failed to take proper care of the case - Plea shows sufficient cause for non appearance as well as delay in filing application - Ex parte decree set aside subject to payment of Rs.4,000/- as costs. (Hardeo Singh Vs Ramavati Devi) 2006(3) Civil Court Cases 448 (Patna)

Civil Procedure Code, 1908, Order 9 Rule 13 - Ex parte decree - Setting aside - Valuable rights of defendant involved - Defendant nothing to gain by remaining absent from Court - Once the application is filed within limitation and no mala fide intention was involved in the absence of defendant on the date fixed then trial Court should adopt a liberal approach in dealing with the controversy - Ex parte decree set aside. (Balkar Singh & Ors. Vs Harnam Singh & Ors.) 2006(4) Civil Court Cases 425 (P&H)

Civil Procedure Code, 1908, Order 9 Rule 13 - Ex parte decree - Setting aside - Where Court is satisfied that there was no service of summons and that party was not aware of suit proceedings and decree passed therein, it is open to Court to set aside ex parte decree. (Nagamma Vs Gurupadappa (Deceased) By L.Rs.) 2003(1) Civil Court Cases 133 (Karnataka)

SC Civil Procedure Code, 1908, Order 9 Rule 13 - Ex parte decree - Setting aside - While setting aside a decree, conditions can be imposed but such conditions should not be unreasonable or harshly excessive. (Tea Auction Ltd. Vs Grace Hill Tea Industry & Anr.) 2006(3) Apex Court Judgments 234 (S.C.) : 2006(4) Civil Court Cases 275 (S.C.)

Civil Procedure Code, 1908, Order 9 Rule 13 - Ex parte decree - Setting aside - Written statement not filed inspite of repeated adjournments - Costs also imposed but not paid - Defendant not present and hence proceeded ex parte - Application to set aside ex parte decree dismissed - Appeal against - Written statement not filed with appeal and defendant even not ready with written statement and seeking further time - Defendant is in the habit of procrastinating and dodging the matter - Defendant even misrepresented facts in appeal and obtained stay of execution - Defendant not approached with clean hands - Defendant by his act and conduct does not deserve any indulgence - Order dismissing application, upheld. (Avutu Vijayalakshmi & Anr. Vs M/s.Sri Pujitha Chit Fund, Vijayawada) 2005(1) Civil Court Cases 334 (A.P.)

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree
- Suit fixed for evidence of defendant - Defendant or his counsel absent
- Defendant proceeded exparte and case posted for judgment - On that day application under Order 9 Rule 7 of Civil Procedure Code, 1908 filed - Application dismissed and exparte decree passed - Held, it is not a decree on merits - Application under Order 9 Rule 13 of Civil Procedure Code, 1908 is maintainable. (Ch.Sudhakar Vs T.S.R.Anjaneyulu) 2006(3) Civil Court Cases 346 (A.P.)

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte decree granted in matrimonial proceedings can be set aside under Order 9 Rule 13 of Civil Procedure Code, 1908. (Gitanjali Rath @ Satapathy Vs Satyabrata Satapathy) 2006(2) Civil Court Cases 475 (Orissa) (DB)

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte eviction order - Setting aside - Ground to set aside ex parte proceedings not only found to be incorrect but also totally false - Petitioner in fact put in appearance and was proceeded exparte but the proceedings were sought to be set aside on the ground that he was never served - Held, such a false plea does not merit any consideration by Court. (M/s Mahajan General Store Vs Piara Singh) 2006(2) Civil Court Cases 762 (P&H)

Civil Procedure Code, 1908, Order 9 Rule 13 - Exparte eviction order - Setting aside - Service of summons - Adult members of the family available to accept notice refused to accept service and also failed to divulge the address of the tenant - It amounts to refusal of service - Exparte decree upheld. (Bal Kishan & Ors. Vs Tara Chand & Ors.) 2005(3) Civil Court Cases 278 (P&H)

Civil Procedure Code, 1908, Order 9 Rule 13 - Limitation Act, 1963, Art.123 - Exparte decree - Setting aside - Limitation - 30 days from date of knowledge - Application filed on the next date of acquiring knowledge of exparte decree - Not effectively controverted by plaintiff by filing an affidavit in support of their reply - Application has to be treated within limitation. (Baldev Singh Vs Labh Singh) 2003(3) Civil Court Cases 58 (P&H)

SC **Civil Procedure Code, 1908, Order 9 Rule 13** - Lis pendens transferee - Not brought on record - Has right to file application to set aside exparte decree passed against his transferor, the defendant in the suit. (Raj

Kumar Vs Sardari Lal & Ors.) 2004(1) Apex Court Judgments 438 (S.C.)

Civil Procedure Code, 1908, Order 9 Rule 13 - No instructions - When counsel pleads no instructions it is duty of Court to issue notice to the party - No such notice issued - Exparte decree set aside. (Usha Rani Vs Prem Singh) 2005(2) Civil Court Cases 492 (P&H)

Civil Procedure Code, 1908, Order 9 Rule 13 - Pendency of an application U.O.9 Rule 13 CPC ipso facto does not render judgment and decree ineffective or non-operative. (Kunjabihari Pradhan Vs Jayanti Pradhan) 2003(3) Civil Court Cases 129 (Orissa)

Civil Procedure Code, 1908, Order 9 Rule 13 - Separate suit to set aside ex parte decree - Not maintainable except when in the fresh suit a case of fraud or collusion is made out - Provision of Order 9 Rule 13 of Civil Procedure Code, 1908 is an implied bar for the fresh suit. (UCO Bank Vs Ramchandra Namdeo Shirke & Ors.) 2006(1) Civil Court Cases 458 (Bombay)

Civil Procedure Code, 1908, Order 9 Rule 13 & Section 141, Guardians and Wards Act, 1890, Section 25, Family Courts Act, 1984, Section 10 - Exparte decree passed under section 25 Guardians and Wards Act giving custody of child to father - Application for setting aside exparte decree - Dismissal of application by holding that as order passed under Section 25 Guardians and Wards Act does not amount to decree as such application under Order 9 Rule 13 of Civil Procedure Code, 1908 is not maintainable - Held, such application is maintainable before Family Court in view of Section 141 of Civil Procedure Code, 1908 and Family Court is bound to decide such application in accordance with law. (Aruna Kumari Vs Dr. Ambrish Kumar Sengar) 2006(3) Civil Court Cases 384 (M.P.) (DB)

SC Civil Procedure Code, 1908, Order 9 Rule 13 Explanation - Exparte decree - Setting aside - Application is not maintainable when an appeal against ex parte decree is dismissed may be on ground of limitation or dismissal for default - By virtue of explanation disposal of appeal on any ground whatever, apart from its withdrawal, constitutes sufficient reason for bringing the ban into operation. (Shyam Sundar Sarma Vs Pannalal Jaiswal & Ors.) 2005(1) Apex Court Judgments 01 (S.C.) : 2005(1) Civil Court Cases 202 (S.C.)

Civil Procedure Code, 1908, Order 9 Rule 13 Expln. - Exparte decree - Setting aside - Application to set aside ex parte decree or appeal against ex parte decree to superior Court can be filed - Application to set aside ex parte decree is maintainable only if appeal against ex parte decree is not opted or where an appeal had been preferred the same has been withdrawn. (Vijay Kumar Vs Tara Chand) 2003(2) Civil Court Cases 452 (P&H)

Civil Procedure Code, 1908, Order 10 Rule 2, Section 100 - Suit for partition - Both Courts below misunderstood real point for determination and dismissed suit without considering admission made by defendant U.O.10 Rule 2 that there was partition between parties earlier - Dismissal of suit is liable to be set aside being based on inadmissible evidence. (Rasheed Ahmed Vs Karima Khatoon) AIR 2002 Allahabad 195

Civil Procedure Code, 1908, Order 11 Rule 1, 11, 21 - Interrogatories - Leave to deliver interrogatories does not amount compelling the other party to answer interrogatories - In absence of an order under Order 11 Rule 11 compelling the other party to answer interrogatories there can be no dismissal of suit or striking off defence - First leave of Court to deliver interrogatories has to be obtained - If other party fails to answer then an order under Order 11 Rule 11 has to be passed compelling the other party to answer interrogatories - Even then if other party fails to answer interrogatories then an order as to dismissal of suit or striking off defence can be passed - Condition for exercising power under Order 11 Rule 21 is that there must be an order under Order 11 Rule 11 of Civil Procedure Code, 1908 and not an order Order 11 Rule 1 of Civil Procedure Code, 1908. (Kuchimanchi Subba Rao & Ors. Vs Kanchana Prabhakara Rao (died) per L.Rs.) 2006(3) Civil Court Cases 596 (A.P.)

Civil Procedure Code, 1908, Order 11 Rule 12 - Discovery of documents - Court may issue direction under R.12 to any party to suit to make discovery on oath of documents which are or have been in his possession or power - If such discovery is found to be unnecessary, then such a prayer can be declined on the ground that it is not necessary for disposing of the suit. (Sharvan Kumar Vs Sumeet Kumar Garg) 2003(1) Civil Court Cases 456 (P&H)

Civil Procedure Code, 1908, Order 11 Rule 12 & 14 - Production of documents - Production of orders, directions passed by Minister and

by officials of defendant - Notings by various officials at various stages and even orders or directions passed by Minister or Secretary is irrelevant until and unless communicated to the party - Defendant cannot be asked to produce the entire file with all such notings and drafts for approval or suggestions of various functionaries - Application for production of such notings is highly misconceived - Application dismissed. (Bigdot Advertising & Communications Pvt. Ltd. Vs Union Of India) 2003(2) Civil Court Cases 672 (Delhi)

Civil Procedure Code, 1908, Order 11 Rules 12, 14 - Matter in question - Documents containing information, directly or indirectly, enabling a party to advance his own case or to damage his opponent's are documents which relate to the matter in question in the suit - Even document which will throw any light on the case is a document relating to a matter in dispute though it might not be admissible in evidence. (New India Assurance Company Ltd. Vs Sumer Chand & Ors.) 2005(2) Civil Court Cases 183 (Rajasthan)

Civil Procedure Code, 1908, Order 11 Rules 12, 14 - Production of documents - Can be allowed to be produced at any time (stage) during the pendency of suit if the document is in possession or power of the party against whom the order is made and secondly the documents must relate to the matter in question in the suit. (New India Assurance Company Ltd. Vs Sumer Chand & Ors.) 2005(2) Civil Court Cases 183 (Rajasthan)

Civil Procedure Code, 1908, Order 11 Rules 14 & 21 - Dismissal order under Order 11 Rule 21 - Not to be made unless Court is satisfied that plaintiff is wilfully withholding information by refusing to answer interrogatories or by withholding documents. (Kunjumol Vs Jose Valiyaveedan) 2006(4) Civil Court Cases 739 (Kerala)

Civil Procedure Code, 1908, Order 11 Rule 14 - Production of documents - Order has to be speaking one - Order passed without assigning any reasons on mere ground that counsel for opposite party refused to address arguments when opposite party had contested application by filing reply - Is invalid. (Madhavulu Vs Boya Eshwaraiah) AIR 2004 A.P. 164

Civil Procedure Code, 1908, Order 11 Rule 14 - Production of documents - Request is never declined if documents relate to any fact in issue or relevant facts - Refusal can only be in regard to privileged documents.

(Sharvan Kumar Vs Sumeet Kumar Garg) 2003(1) Civil Court Cases 456 (P&H)

SC **Civil Procedure Code, 1908, Order 11 Rule 15** - Documents - Inspection of - Stipulation 'at or before settlement of issues' instead of 'at any time' is directory. (Salem Advocate Bar Association, Tamil Nadu Vs Union of India) 2005(2) Apex Court Judgments 492 (S.C.) : 2005(3) Civil Court Cases 420 (S.C.)

Civil Procedure Code, 1908, Order 11 Rule 21 - Non compliance with order of discovery of document - Dismissal of suit or striking off defence can only be in case of wilful defiance of order - It is not wilful defiance of order when document ordered to be discovered is not traceable. (Ramesh Chandra Vs Sarpnach, Bagri Nagar) 2003(1) Civil Court Cases 113 (Rajasthan)

Civil Procedure Code, 1908, Order 12 Rule 6 - Admission - Decree on basis of admission - Admission of fact, as contained in any document even outside the pleadings, must be clear and must be of such a nature that if it stands then it would be impossible for the party making admission to succeed in the case. (Anup Jindal Vs Jagdish Chander Gupta) 2003(2) Civil Court Cases 465 (Delhi)

SC **Civil Procedure Code, 1908, Order 12 Rule 6** - Admission - Decree on basis of admission - If there was no fraud in passing the decree, then said decree is good and valid and cannot be ignored on the ground that the same is not registered. (2002(2) PLR 512 (S.C.) followed.) (Hari Singh Vs Gurcharan Singh) 2003(3) Civil Court Cases 183 (P&H)

SC **Civil Procedure Code, 1908, Order 12 Rule 6** - Admission - If there is an admission on behalf of the defendant or an admission can be inferred from the facts and circumstances of the case without any dispute then in order to expedite and dispose of the matter such admission can be acted upon. (Charanjit Lal Mehra & Ors. Vs Smt.Kamal Saroj Mahajan & Anr.) 2005(1) Apex Court Judgments 622 (S.C.)

Civil Procedure Code, 1908, Order 12 Rule 6 - Admission - Judgment - Tenant admitting creation of lease by plaintiff and that lease had expired by efflux of time - Tenant however raising plea that unless plaintiff, one of the co-owners proves himself to be owner of premises suit is not

maintainable - Plea not tenable - Such plea is available in suits for title when there is dispute as to title and not in suit for recovery of possession against tenant - Plaintiff entitled to decree for possession on admission of tenant. (Zulfiquar Ali Khan Vs J.K.Helene) AIR 2002 Delhi 425

Civil Procedure Code, 1908, Order 12 Rule 6 - Admission in written statement - Court is competent to pass a decree in favour of one party and against the other to the extent of admission contained in the written statement. (Central Bank of India Vs Lalit Kumar Bhargava (HUF)) 2006(3) Civil Court Cases 774 (Delhi) (DB)

Civil Procedure Code, 1908, Order 12 Rule 6 - Conviction on basis of acceptance of charge of guilt as to breach of trust in criminal proceedings - It will be regarded as an admission U.O.12 Rule 6 CPC and a decree can be based on such an admission. (Pransukhlal Mafatlal Hindu Swimming Boat Club Trust & Ors. Vs Vasant Joshi & Ors.) 2005(1) Civil Court Cases 384 (Bombay)

Civil Procedure Code, 1908, Order 12 Rule 6 - Conviction on basis of acceptance of charge of guilt as to breach of trust in criminal proceedings - It will be regarded as an admission under Order 12 Rule 6 of Civil Procedure Code, 1908 and a decree can be based on such an admission. (Pransukhlal Mafatlal Hindu Swimming Boat Club Trust & Ors. Vs Vasant Joshi & Ors.) 2005(1) Civil Court Cases 384 (Bombay)

SC **Civil Procedure Code, 1908, Order 12 Rule 6** - Decree based on admission - Held, merely because a decree is based on admission, it does not mean that the decree is vitiated by collusion. (Som Dev & Ors. Vs Rati Ram & Anr.) 2006(3) Apex Court Judgments 585 (S.C.) : 2006(4) Civil Court Cases 427 (S.C.)

Civil Procedure Code, 1908, Order 12 Rule 6 - Judgment on admission - Admission should be unconditional, unequivocal and unambiguous - In the instant case one part of admission was unconditional and there was no controversy on the part of the opposite party - Held, power can be exercised U.O.12 Rule 6 qua that part - However, the other part which is disputed cannot be made subject to exercise of this power. (Meera Gupta Vs Dinesh Chand) 2003(1) Civil Court Cases 43 (Delhi)

Civil Procedure Code, 1908, Order 12 Rule 6 - Judgment on admission - Expression 'Otherwise' allows Court to pass judgment on the basis of statements made by the parties either in any document or even in the statement in the Court. (Union Bank of India Vs Sushila Goela & Ors.) 2006(2) Civil Court Cases 153 (Delhi) (DB)

Civil Procedure Code, 1908, Order 12 Rule 6 - Judgment on admission - Provision can be invoked at any stage of the suit - Mere fact that issues have been framed is not a ground to reject application U.O.12 Rule 6 CPC. (Meera Gupta Vs Dinesh Chand) 2003(1) Civil Court Cases 43 (Delhi)

Civil Procedure Code, 1908, Order 12 Rule 6 - Plaintiff discounted bills of defendant - Two post dated cheques issued but dishonoured - On repeated requests defendant made part payment - Two letters written by defendant showing clear admission about its undischarged liability - Liability was thus admitted by defendant in said letters - Plaintiff is entitled to judgment on admission against defendant. (UIC Finance Pvt. Ltd. Vs Carews Pharmaceuticals Pvt.Ltd.) AIR 2004 Calcutta 68

Civil Procedure Code, 1908, Order 12 Rule 6 - To attract the provision there must be categorical admission by the defendant - When number of facts are disputed and evidence is required to prove those fact then provision of O.12 Rule 6 CPC is not attracted. (Sudesh Kumar Vasudeva Vs Mrs.Veena Garg) 2004(3) Civil Court Cases 311 (P&H)

Civil Procedure Code, 1908, Order 12 Rule 6 - To attract the provision there must be categorical admission by the defendant - When number of facts are disputed and evidence is required to prove those fact then provision of Order 12 Rule 6 of Civil Procedure Code, 1908is not attracted. (Sudesh Kumar Vasudeva Vs Mrs.Veena Garg) 2004(3) Civil Court Cases 311 (P&H)

Civil Procedure Code, 1908, Order 13 Rule 2 - Application for producing documents - Objection by other party regrading admissibly of document being forged - Order admitting documents cannot be passed without deciding issue by reasoned order. (Chander Shekhar Vs Roop Shanker) AIR 2003 Rajasthan 102

Civil Procedure Code, 1908, Order 13 Rule 2 - Document - Relating to the year 1992 whereas suit filed in 1995 - No question of ignorance of document - Three witnesses already examined - No satisfactory explanation for inordinate delay - Held, there is no material irregularity in rejection of application. (Mohan Raj Vs Karan Chand) 2003(1) Civil Court Cases 103 (Rajasthan)

Civil Procedure Code, 1908, Order 13 Rule 2 - Documents - Late production - Application for late production of documents filed after 15 years of settlement of issues - Documents in power and possession and knowledge of applicant - Documents neither relied upon nor produced at appropriate stage - Production sought on pretext of clarification of points crept in during cross-examination - No reasons shown for non production at appropriate stage - Production of documents not allowed. (Hardyal Singh Vs Smt.Kamlinder Kaur) 2003(1) Civil Court Cases 647 (Delhi)

Civil Procedure Code, 1908, Order 13 Rule 2 - Documents - Late production - No satisfactory explanation of inordinate delay - Court must refuse to admit the document on record. (Mohan Raj Vs Karan Chand) 2003(1) Civil Court Cases 103 (Rajasthan)

Civil Procedure Code, 1908, Order 13 Rule 2 - Documents - Production at a subsequent stage of proceedings - Cannot be permitted unless good cause is shown - Good cause requires a lower degree of proof as compared to sufficient cause - Said rule not to be construed liberally - Dismissal of application cannot be interfered with in revision even if order is erroneous unless Court acted with material irregularity and unless it results in failure of justice. (Palakurthy Vs Noroju Manorama) 2003(2) Civil Court Cases 480 (A.P.)

Civil Procedure Code, 1908, Order 13 Rule 3 - Rejection of document - Court may at any stage of suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection. (T.Basavaraju (Died) per L.Rs Vs T.Nagaratnam & Ors.) 2006(1) Civil Court Cases 790 (A.P.)

Civil Procedure Code, 1908, Order 13 Rule 3 - Unregistered partition deed - Proper course for Court is to mark such document subject to objections and decision at final hearing whether such document can be looked

into for collateral purposes. (Sri K.Anajneya Setty Vs Sri K.H.Rangiah Setty)
AIR 2002 Karnataka 387

SC Civil Procedure Code, 1908, Order 13 Rules 3, 4 - Mode of proof - Objection as to - Falls within procedural law - Objection if not taken before the document is marked as an exhibit and admitted to record then the same is considered to be waived. (Smt.Dayamathi Bai Vs Sri K.M.Shaffi) 2004(2) Apex Court Judgments 245 (S.C.) : 2005(1) Civil Court Cases 108 (S.C.)

Civil Procedure Code, 1908, Order 13 Rules 3, 6 - Documents - Objection to admissibility - Court is obliged to first decide the question of admissibility of document before making endorsement thereon - Postponing the consideration of objections raised by the other party to the stage of final arguments is legally unsustainable. (Girdhari Lal Vs Ritesh Mahajan & Anr.) 2006(1) Civil Court Cases 253 (P&H)

SC Civil Procedure Code, 1908, Order 13 Rules 3,4 - Mode of proof - Objection as to - Falls within procedural law - Objection if not taken before the document is marked as an exhibit and admitted to record then the same is considered to be waived. (Smt.Dayamathi Bai Vs Sri K.M.Shaffi) 2004(2) Apex Court Judgments 245 (S.C.) : 2005(1) Civil Court Cases 108 (S.C.)

SC Civil Procedure Code, 1908, Order 13 Rule 4, Evidence Act, 1872, Section 66 - Marking of a document as exhibit - Cannot be held to be its due proof - Its execution has to be proved by admissible evidence - Situation is however different where the documents are produced, and they are admitted by opposite party, signatures on them are also admitted and they are marked thereafter as exhibits by the Court. (Narbada Devi Gupta Vs Birendra Kumar Jaiswal) 2004(1) Apex Court Judgments 171 (S.C.) : 2004(2) Civil Court Cases 337 (S.C.)

Civil Procedure Code, 1908, Order 13 Rule 4, Registration Act, 1908, Section 17, Stamp Act, 1899, Sections 35, 36 - Carbon copy of earlier family settlement - Relating to immovable property of the value of more than Rs.100/- - Once the original is not stamped and registered, its carbon copy is not admissible in evidence till it is properly stamped and registered. (T.Basavaraju (Died) per L.Rs Vs T.Nagaratnam & Ors.) 2006(1) Civil Court Cases 790 (A.P.)

Civil Procedure Code, 1908, Order 13 Rule 4, Stamp Act, 1899, Sections 33, 38 and 40 - Document - Insufficiently stamped - Impounding of - Question of impounding of document by Court arises only when it is sought to be tendered for admission under Order 13 Rule 4 of Civil Procedure Code, 1908. (C.Sreedhara Raja Vs S.Vittoba Rao) 2005(2) Civil Court Cases 562 (A.P.)

Civil Procedure Code, 1908, Order 13 Rule 4, Stamp Act, 1899, Sections 35 & 36 - Suit for partition - Earlier partition - Document relating thereto - Such a document goes to the root of the matter and it is not pressed into service for any collateral purpose - Such a document is pressed into service to prove that there was an earlier partition and the present suit itself is not maintainable under law - Unless and until such a document is properly stamped and registered it is not admissible in evidence. (T.Basavaraju (Died) per L.Rs Vs T.Nagaratnam & Ors.) 2006(1) Civil Court Cases 790 (A.P.)

Civil Procedure Code, 1908, Order 13 Rule 4 - Admissibility of document - Ad hoc and provisional identification mark, if any, given to a document, when it was presented along with an affidavit, in lieu of chief examination, cannot be treated as a step taken by Court, receiving it in evidence. (T.Arthi Vs K.Anand Reddy & Ors.) 2006(4) Civil Court Cases 05 (A.P.)

Civil Procedure Code, 1908, Order 13 Rule 4 - Affidavit tendered in evidence - Admissibility in evidence - Question whether affidavit has to be read in support of case or not has to be decided before proceeding further in the matter. (Raj Kumar Vs Bawa Jai Gopal Singh) 2006(2) Civil Court Cases 654 (P&H)

Civil Procedure Code, 1908, Order 13 Rule 4 - Document - Admissibility - Merely exhibiting a document subject to decision of objection at a later stage does not amount to admitting that document in evidence. (Kavitha Goud, rep. by her G.P.A., K.Prakash Vs Nookala Sudarshan Reddy & Ors.) 2005(3) Civil Court Cases 575 (A.P.)

Civil Procedure Code, 1908, Order 13 Rule 4 - Document - Admissibility - Unstamped and unregistered mortgage deed - Trial Court to decide objection as to its admissibility before proceeding further. (LRs of Late Shri Chittar Mal Vs Addl.Civil Judge (SD) & Ors.) 2004(2) Civil Court

Cases 565 (Rajasthan) : 2004(2) Civil Court Cases 565 (Rajasthan)

Civil Procedure Code, 1908, Order 13 Rule 4 - Document - Marking
- Objection on ground of non registration - Except in case of objection relating to deficiency of stamp duty, document can be marked in evidence subject to its decision in the final judgment - Appellate Court can decide the correctness of the said finding, if raised, without remanding the matter for fresh disposal. (Mulla Alamsabgari Dastigiri Vs B.Pullamma & Ors.) 2005(1) Civil Court Cases 126 (A.P.)

Civil Procedure Code, 1908, Order 13 Rule 4 - Document admitted in evidence - Mere procedural irregularities in marking a document during evidence is not fatal. (Johny Vs James) 2006(3) Civil Court Cases 665 (Kerala)

Civil Procedure Code, 1908, Order 13 Rule 4 - Document exhibited in terms of rule 4 - Cannot be rejected thereafter under Order 13 Rule 6 CPC. (Saifuddin Saheblal Vazir Vs Habjabai Mishra Patel) AIR 2003 Bombay 36

Civil Procedure Code, 1908, Order 13 Rule 4 - Document exhibited without objection to its admissibility at the time when it was tendered in evidence - Held, no objection to the admissibility of the document can be raised lateron. (Sunehri Devi Vs Lachhmi) 2004(3) Civil Court Cases 45 (P&H)

Civil Procedure Code, 1908, Order 13 Rule 4 - Document marked as exhibits subject to decision of objections later on - Does not mean that objection has been overruled - It means that objection has been postponed and Court would be bound to decide same at subsequent stage before suit is finally disposed of. (Santosh Kumar Gupta Vs Jay Prakash Agrawal) AIR 2004 Chattisgarh 11

Civil Procedure Code, 1908, Order 13 Rule 4 - Documents - Not properly endorsed - Admission of document as exhibits improper - However, keeping in view that documents were admitted and acted upon by both sides the same allowed to be relied upon. (Raman Pillai Krishna Pillai Vs Kumaran Parameswaran) AIR 2002 Kerala 133

Civil Procedure Code, 1908, Order 13 Rule 4 - Lease deed -

Admissibility - Document whether lease or merely receipt acknowledging rent in advance - Court to decide the same when document is sought to be tendered in evidence by the party after entering into the witness box. (Saifuddin Saheblal Vazir Vs Smt.Habjabai Mishra Patel) 2003(1) Civil Court Cases 521 (Bombay)

Civil Procedure Code, 1908, Order 13 Rule 4 - Mere marking of document itself is not sufficient and there should be judicial determination as to the nature of the document and its admissibility. (T.Basavaraju (Died) per L.Rs Vs T.Nagaratnam & Ors.) 2006(1) Civil Court Cases 790 (A.P.)

Civil Procedure Code, 1908, Order 13 Rule 4 - Proof of document - Exhibiting a document is an administrative act - It has nothing to do with proof. (Bama Kathari Patil Vs Rohidas Arjun Madhavi & Anr.) 2004(3) Civil Court Cases 14 (Bombay)

Civil Procedure Code, 1908, Order 13 Rules 4 & 6 - Exhibit in evidence - A document can be exhibited in evidence only when such a document is admissible in evidence and not otherwise. (Saifuddin Saheblal Vazir Vs Smt.Habjabai Mishra Patel) 2003(1) Civil Court Cases 521 (Bombay)

Civil Procedure Code, 1908, Order 13 Rules 4,6 - Document admitted and exhibited in terms of R.4 - Cannot be rejected thereafter under O.13 Rule 6 CPC. (Saifuddin Saheblal Vazir Vs Smt.Habjabai Mishra Patel) 2003(1) Civil Court Cases 521 (Bombay)

Civil Procedure Code, 1908, Order 13 Rule 9 - Return of documents - Documents sought to be returned were certified copies of original from record of file - Cannot be returned as only original document filed can be returned after its certified copies delivered to proper officer for being substituted for original. (Des Raj Vs Raghunath Singh) AIR 2004 J&K 64

SC Civil Procedure Code, 1908, Order 13 Rule 14 - Admissibility of a document - Can be classified into two classes (1) Document when in itself is inadmissible in evidence (2) Mode of proof - In the first case if a document is exhibited, an objection to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision - In the second case objection should be taken before evidence is tendered and once the document

is admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. (R.V.E.Venkatachala Gounder Vs Arulmigu Viswesaraswami & V.P.Temple & Ors.) 2004(2) Civil Court Cases 01 (S.C.) : 2003(2) Apex Court Judgments 614 (S.C.)

Civil Procedure Code, 1908, Order 14 Rule 1 - Issues - Framing of - It is one of the important steps in adjudication of suit - When a specific plea is taken in written statement, Court ought to frame an issue on said plea - Non framing of an issued on a vital aspect - Unjust. (Thota Rambabu @ Ramu Vs Cherukuri Venkateswara Rao @ Pedababu & Ors.) 2006(1) Civil Court Cases 576 (A.P.)

Civil Procedure Code, 1908, Order 14 Rule 1 - Issues - Non framing of - Both parties aware of the principal question involved in the suit and had invited findings relating to same - Parties conscious of controversy - Plea of non framing of issue raised at stage of second appeal - Not tenable. (Samdani Begum Vs Dir Mohammed Khan) AIR 2004 A.P. 272

SC Civil Procedure Code, 1908, Order 14 Rule 1 - Issues of res judicata, constructive res judicata and maintainability of suit - Can be treated as preliminary issues - Such issues, in fact, when facts are admitted, ordinarily should be decided as preliminary issues. (Abdul Rahman Vs Prasony Bai & Anr.) 2003(1) Apex Court Judgments 302 (S.C.)

Civil Procedure Code, 1908, Order 14 Rule 1 - Parties leading evidence though issue not framed on a specific plea - Court can decide the said plea if both parties have led evidence thereon. (Pradeep Kumar Vs Mahaveer Pershad) 2003(2) Civil Court Cases 586 (A.P.)

Civil Procedure Code, 1908, Order 14 Rule 1 - Preliminary issue - Issue as to Court fee not framed even when there was a specific plea in the written statement - Issues framed in presence of the parties - Application filed for treating non existent issue of Court fee as preliminary issue - To say that it is duty of Court to frame issues lacks complete merit - Application dismissed. (Raghubir Singh Vs Smt.Bhateri & Ors.) 2004(3) Civil Court Cases 22 (P&H)

Civil Procedure Code, 1908, Order 14 Rules 1, 2 - Issues - Once the parties go to trial being alive to the controversy between them even then, in the absence of a specific issue having been framed, the court is not precluded from recording a finding of fact on that controversy provided that the parties have pleaded the case and have led their evidence. (Tika Vs Ram Chander) 2003(3) Civil Court Cases 691 (P&H)

SC **Civil Procedure Code, 1908, Order 14 Rules 1,2** - Non framing of a particular issue - Parties going to trial knowing fully well the real issues involved and adduced evidence - Objection as to non framing of a particular issue cannot be raised. (Swamy Atmananda & Ors. Vs Sri Ramakrishna Tapovanam & Ors.) 2005(2) Apex Court Judgments 471 (S.C.) : 2005(3) Civil Court Cases 397 (S.C.)

Civil Procedure Code, 1908, Order 14 Rules 1,2 - Non framing of issues - Parties conscious of the lis pending between them and both parties leading evidence for and against the respective contentions - Non framing of issues cannot be invoked to set aside the impugned order. (Ajit Singh Vs Joint Development Commissioner, Punjab) 2005(2) Civil Court Cases 827 (P&H)

Civil Procedure Code, 1908, Order 14 Rules 3,5 - Additional issue - Framing of - Suit for recovery of possession from tenant - Plea of tenant that he was a licensee and not tenant - ssue framed was “whether defendant was Tenant” - In the interest of justice plea of licensee included and issue amended as “whether defendant was tenant or licensee.”. (Yatendra Nath Gupta Vs Jagdish Chander Sharma) AIR 2003 Delhi 267

Civil Procedure Code, 1908, Order 14.Rule 2, Partnership Act, 1932, Section 69 - Unregistered firm - Suit for accounts of dissolved firm - Suit whether barred by S.69(1) of Partnership Act - Issue as to - Treated as preliminary issue being a pure question of law - Trial Court rightly exercised jurisdiction to decide the said issue as preliminary issue. (Shoib Ullah Vs Bhartesh Chandra Jain) 2003(2) Civil Court Cases 645 (Allahabad)

Civil Procedure Code, 1908, Order 14 Rule 2, Order 20 Rule 5 - Court is not under an obligation to decide an issue which is not pressed. (Mahabir Vs Sadhu Ram & Anr.) 2005(2) Civil Court Cases 157 (P&H)

Civil Procedure Code, 1908, Order 14 Rule 2 - Court fee - Issue as to - Preliminary issue - Application rejected - Ground that same is not necessary for adjudication of suit - Held, approach of trial Court is perverse and contrary to well settled law of treating issue of Court fee as preliminary. (M/s Laxmi Cotton Co. Vs Sri Mahant Cotton Co.) 2003(3) Civil Court Cases 152 (Karnataka)

Civil Procedure Code, 1908, Order 14 Rule 2 - Issues - Limitation - Issue as to bar of limitation can be treated as preliminary issue only in cases where it can be disposed of as an issue of law and not otherwise. (Shraddha Associates, Pune Vs St.Patrick's) 2003(2) Civil Court Cases 627 (Bombay)

Civil Procedure Code, 1908, Order 14 Rule 2 - Limitation - Question of limitation is a mixed question of law and fact - To be decided on basis of evidence to be led by the parties. (Jagdish Vs Jagat Pal) 2003(2) Civil Court Cases 635 (P&H)

Civil Procedure Code, 1908, Order 14 Rule 2 - Preliminary issue - Bar of limitation - Refusal to try issue as preliminary issue - No interference when the issue is a mixed issue of law and fact. (Sidh Nath Vs District Judge, Mirzapur) AIR 2002 Allahabad 356

Civil Procedure Code, 1908, Order 14 Rule 2 - Preliminary issue - Can be allowed if claimed at the time of filing of written statement or before the settlement of issues - After framing of issues and recording evidence of parties, preliminary issue cannot be claimed. (Punjab Digital Industries System Limited, Mohali Vs Presiding Officer, Labour Court, Patiala) 2004(2) Civil Court Cases 453 (P&H)

Civil Procedure Code, 1908, Order 14 Rule 2 - Preliminary issue - Decision on basis of preliminary issue can be made when issue relates to either jurisdiction of Court or bar to suit created by law - Disposal of suit after deciding issues which could not have been treated as preliminary issue and which involved mixed questions of facts and law - Not proper. (J&K Bank Ltd. Vs Mohammad Farooq Rather) AIR 2003 J&K 25

Civil Procedure Code, 1908, Order 14 Rule 2 - Preliminary issue - If Court is of the opinion that suit or any part thereof can be disposed of on a

issue of law, it may try that issue first - Otherwise, as a matter of fact, Court is required to pronounce judgment on all issues. (Hemant Kumar Vashishta Vs Krishan Kumar Vashishta & Ors.) 2005(2) Civil Court Cases 730 (P&H)

Civil Procedure Code, 1908, Order 14 Rule 2 - Preliminary issue - Issue as to limitation, maintainability, Court-fee and res judicata - Treated as preliminary issue and case fixed for evidence - Held, order does not suffer any from infirmity. (Jagdev Singh Vs Sardarni Prem Parkash Kaur) AIR 2002 P&H 330

Civil Procedure Code, 1908, Order 14 Rule 2 - Preliminary issue - Issue as to whether partition has been effected between the parties and whether suit is not maintainable - These issues cannot be said to be pure issues of law only - Cannot be treated as preliminary issues. (Hemant Kumar Vashishta Vs Krishan Kumar Vashishta & Ors.) 2005(2) Civil Court Cases 730 (P&H)

Civil Procedure Code, 1908, Order 14 Rule 2 - Preliminary issue - Issue of Will - Cannot be treated as preliminary issue. (Geetanjali Sawhney Vs Prem Bhandari & Ors.) 2006(4) Civil Court Cases 87 (P&H)

SC **Civil Procedure Code, 1908, Order 14 Rule 2** - Preliminary issue - Suit or any part if can be disposed of an issue of law only then it can be treated as preliminary issue and if that issue relates to (a) the jurisdiction of the Court, or (b) a bar to the suit created by any law for the time being in force - Mixed issue of law and fact cannot be tried as a preliminary issue - Where the decision on issue of law depends upon decision of fact, it cannot be tried as a preliminary issue. (Ramesh B.Desai & Ors. Vs Bipin Vadilal Mehta & Ors.) 2006(3) Civil Court Cases 577 (S.C.)

Civil Procedure Code, 1908, Order 14 Rule 2 - Suit for partition - Maintainability of suit on ground of partial partition - Question as to whether interest of parties in the subject property is as co-owners or tenants in common or is it joint family property - Nature of ownership of subject property not clear - Suit for partial partition is permissible if property that is left out is outside the territorial jurisdiction of Court - Adjudication of issue of maintainability of suit at this stage on basis that subject property is a joint family property could not be made as issue is a mixed question of fact and law - Defendant cannot be said to have out a case for dismissal of suit at this stage. (Sunil Baran Chowdhury Vs Anath Bandhu Chowdhury & Ors.)

2006(3) Civil Court Cases 372 (Calcutta)

Civil Procedure Code, 1908, Order 14 Rule 2 - Undervaluation of suit and payment of deficient Court fee - Issue to be treated as preliminary issue. (Smt.Kamla & Anr. Vs Shri Ramesh Chandra) 2003(1) Civil Court Cases 58 (Rajasthan)

Civil Procedure Code, 1908, Order 14 Rule 5, Section 115 - Additional issues - Revision against order refusing to frame additional issues - Framing of issues and additional issues is a matter or an essential step as the whole trial, recording of evidence and also recording of findings depends upon issues only and hence such order refusing to frame issues or additional issues falls under “case decided” and hence revision is maintainable. (Dr.S.V.S.Ravi Krishna Vs K.Sita Ramaiah & Anr.) 2003(3) Civil Court Cases 431 (A.P.)

Civil Procedure Code, 1908, Order 14 Rule 5 - Additional issue - Application cannot be rejected on ground of delay and without considering it on merits. (Anneppa Channappa Shetkar Vs Bandevva) AIR 2004 Karnataka 276

Civil Procedure Code, 1908, Order 14 Rule 5 - Additional issues - Case reserved for judgment - Court of its own framed additional issues and decided case on basis of material already available on record - Held, whenever Court frames additional issues, an opportunity is to be granted to parties to lead evidence and then to decide - Procedure adopted by trial Court amounts to infringement of principles of natural justice - Judgment and decree set aside - Matter remitted back for fresh consideration. (Perikal Malappa Vs T.Venkatesh Gupta) 2006(4) Civil Court Cases 320 (Karnataka)

Civil Procedure Code, 1908, Order 14 Rule 5 - Additional issues - When issue framed is comprehensive and all additional issues which are ancillary issues the same need not to be separately framed. (Dr.S.V.S.Ravi Krishna Vs K.Sita Ramaiah & Anr.) 2003(3) Civil Court Cases 431 (A.P.)

Civil Procedure Code, 1908, Order 14 Rule 5 - Issue of title in a suit for injunction - Defendant asserted in written statement that he has perfected his title by adverse possession - When a specific averment as to adverse possession is made in written statement issue as to title cannot be ignored - However it is for the Court to record a finding as to whether the

said issue of adverse possession was an incidental issue or substantial issue basing on the evidence on record. (Venkata Subbamma Vs Praneshachari & Anr.) 2004(2) Civil Court Cases 614 (A.P.)

Civil Procedure Code, 1908, Order 14 Rule 5 - Issues - Additional issues - Proposed issues relating to inter-se dispute between defendants - Trial Court holding that such issues neither relevant nor necessary to be framed - Order upheld. (Surendra Pal Singh Vs Chander Parkash & Ors.) 2006(2) Civil Court Cases 528 (Allahabad)

Civil Procedure Code, 1908, Order 14 Rule 5 - Issues - Framing, re-framing or re-casting of issues - Exercise of power by Court is not subject to pre-hearing of the parties - Consequent to such reframing or recasting or striking of the issues, parties are not precluded from approaching the Court if there is any error on the part of the Court. (Shraddha Associates, Pune Vs St.Patrick's) 2003(2) Civil Court Cases 627 (Bombay)

Civil Procedure Code, 1908, Order 14 Rule 5 - Striking out an issue - Court is competent to strike out an issue that appears to be wrongly framed - It is the duty of the Court to ensure that proper issues are framed and no estoppel arises even if the issues have been framed in the presence of the parties. (Jasso Vs Harbans Singh) 2003(1) Civil Court Cases 126 (P&H)

SC Civil Procedure Code, 1908, Order 15 Rule 5, East Punjab Urban Rent Restriction Act, 1949, Section 13(2)(1) - 'First hearing' - Means the day on which Court applies its mind to the case which ordinarily would be when either issues are determined or evidence taken. (M/s Mangat Singh Trilochan Singh & Ors. Vs Satpal) 2004(2) Civil Court Cases 141 (S.C.)

SC Civil Procedure Code, 1908, Order 15 Rule 5, Section 115 - Delay in deposit of rent - Trial Court not striking off defence exercising its discretion - High Court not justified to interfere in revision. (M/s Mangat Singh Trilochan Singh & Ors. Vs Satpal) 2004(2) Civil Court Cases 141 (S.C.)

Civil Procedure Code, 1908, Order 15 Rule 5, Transfer of Property Act, 1882, Section 106, Haryana Urban (Control of Rent and Eviction) Act, 1973, Sections 1(3) and 13 - License - Cancellation - Non payment of rent - Ejectment petition filed within 10 years from the date of completion of the building - Protection of Rent Act not available - Cancellation of tenancy

for non payment of rent and striking off defence U/O 15 Rule 5 of Civil Procedure Code, 1908 is sufficient to justify passing of a decree of ejectment. (Rakesh Bhargav Vs Akhil Bhartiya Bhargav Sabha Registered) 2006(2) Civil Court Cases 505 (P&H)

SC **Civil Procedure Code, 1908, Order 15 Rule 5** - Rent - Deposit - Delay - It is not obligatory to strike off defence - Court has discretion in the matter and power to strike off defence is to be exercised with due regard to the facts and circumstances of each case. (M/s Mangat Singh Trilochan Singh & Ors. Vs Satpal) 2004(2) Civil Court Cases 141 (S.C.)

SC **Civil Procedure Code, 1908, Order 15 Rule 5 (As in P&H)** - Arrears of rent - Failure to deposit admitted rent - Striking off defence - It is not obligatory for Court in every case to strike off defence only because there is delay in deposit of arrears of rent - Court has discretion in the matter and the power to strike off defence is to be exercised with due regard to the facts and circumstances of each case. (M/s. Mangat Singh Trilochan Singh Thr. Mangat Singh (dead) Thr. LRs. & Ors. Vs Satpal) 2003(2) Apex Court Judgments 464 (S.C.)

SC **Civil Procedure Code, 1908, Order 15 Rule 5 (As in P&H)** - Arrears of rent - Failure to deposit admitted rent - Striking off defence - Summons stated only a date of appearance and not date of hearing - Trial Court refused to strike off defence for more than one valid reason - High Court in revision struck off the defence - Held, High Court has no justifiable reason to strike off defence when trial Court had exercised its jurisdiction in accordance with law in refusing to strike off the defence of tenant. (M/s. Mangat Singh Trilochan Singh Thr. Mangat Singh (dead) Thr. LRs. & Ors. Vs Satpal) 2003(2) Apex Court Judgments 464 (S.C.)

Civil Procedure Code, 1908, Order 16 Rule 1 - Witnesses - Summoning - At the stage when case was fixed for final arguments defendant sought summoning of a witness not named in list - Rejection of application is justified. (Shantilal Vs Mahendra Kumar & Ors.) 2003 (2) Civil Court Cases 706 (Raj.)

Civil Procedure Code, 1908, Order 16 Rule 1(3) - Summoning of witnesses - Application rejected on ground that liberty had been given to petitioner to produce his witnesses, which he failed to produce despite

opportunity - Witness a doctor, not willing to appear without summons - Duty of Court is to summon such witness - Impugned order set aside. (LIC of India & Ors. Vs Ram Prakash) 2003(2) Civil Court Cases 220 (Rajasthan)

Civil Procedure Code, 1908, Order 16 Rules 1 - List of witnesses - Failure of party to file list of witnesses within 15 days of settlement of issues - Such party can make an application under sub-rule (3) of Rule 1 for permission of the Court to summon any witness and examine him in support of his case. (Rehman Hussain Vs Althaf Hussain) 2004(2) Civil Court Cases 197 (Karnataka)

Civil Procedure Code, 1908, Order 16 Rules 1,2 - Opposite party - Summoning as a witness - Can be allowed when there are very good reasons - If a party does not appear as his own witness then summoning him as a witness by the opposite party merely for the reason to bring out the truth by itself is not sufficient - Adverse inference for non appearance of a party as his own witness can be considered by Court at the appropriate stage. (Dina Nath & Anr. Vs Smt.Shanti Devi) 2006(2) Civil Court Cases 598 (P&H)

Civil Procedure Code, 1908, Order 16 Rule 6 - Summons to produce documents - Provision of Order 16 Rule 6 of Civil Procedure Code, 1908 enables Court to summon any person to produce document without being summoned to give evidence - Provision does not apply where party himself seeks to summon production of a particular document - Relevancy of documents can be scrutinized at the time of summoning the same. (D.Ram Mohan Rao Vs M/s Sridevi Hotels Pvt. Ltd. & Ors.) 2006(2) Civil Court Cases 501 (A.P.)

Civil Procedure Code, 1908, Order 16 Rule 6 & S.151 - Document - Summoning of - Every application not to be allowed automatically - Court to allow summoning of a document only on considering the bona fides of the application. (Sunder Vs Mohd. Ismail & Anr.) 2004(3) Civil Court Cases 633 (A.P.)

Civil Procedure Code, 1908, Order 16 Rule 6 & Section 151 - Document - Summoning of - Every application not to be allowed automatically - Court to allow summoning of a document only on considering the bona fides of the application. (Sunder Vs Mohd. Ismail & Anr.) 2004(3) Civil Court Cases 633 (A.P.)

Civil Procedure Code, 1908, Order 16 Rule 7 - Production of document by person present in Court - Dispute regarding execution of partnership between parties - Petitioner seeking permission to file 'partnership deed' by getting it summoned from State Financial Corporation through its officer - Rejection of permission to adduce evidence of said witness - Not proper - Moreso when said witness was present before Court on date evidence was to be recorded. (Ramesh Chand Vs Shriram) AIR 2002 Rajasthan 65

Civil Procedure Code, 1908, Order 16 Rule 10 - Witness - Failure to attend despite service of summons - A single absence in spite of service need not necessarily lead to an inference that the witness has failed to attend without lawful excuse - There is no bar to issue summons to the witness for the second time. (Dilawarkhan Ahmedkhan Vs Manbee Ahmed Khan) 2003(2) Civil Court Cases 449 (Bombay)

Civil Procedure Code, 1908, Order 16 Rule 21 - Witness - Defendant as plaintiff's witness - Can be allowed - Partition suit - Plaintiff confident that evidence of defendant would be clinching on vital issues of partition - Application rejected on ground of physical condition of defendant and condemnability of practice in calling adverse party as witness - Improper - If physical incapability of defendant continues trial Court shall appoint doctor who will accompany commissioner and then evidence of defendant be recorded. (Braja Mohan Patra Vs Ananta Charan Patra & Ors.) 2004(2) Civil Court Cases 382 (Orissa)

SC Civil Procedure Code, 1908, Order 17 - Adjournments - Not to be granted more than three times to a party during hearing of the suit - Costs to be imposed when adjournment is found to be avoidable but is being granted on account of either negligence or casual approach of a party or is being sought to delay the progress of the case or on any such reason and the costs imposed should be realistic - Limitation of three adjournments does not apply where adjournment is to be granted on account of circumstances which are beyond the control of a party. (Salem Advocate Bar Association, Tamil Nadu Vs Union of India) 2005(2) Apex Court Judgments 492 (S.C.) : 2005(3) Civil Court Cases 420 (S.C.)

Civil Procedure Code, 1908, Order 17 Rule 1 - Adjournment - Not to be granted more than three times during hearings of suit - Even these three adjournments cannot be claimed as of right as adjournment is in the

discretion of the Court and cannot be claimed as of right. (Chandra Prakash Ojha Vs District Judge, Bareilly & Ors.) 2004(3) Civil Court Cases 367 (Allahabad)

Civil Procedure Code, 1908, Order 17 Rule 1 (As amended) - Adjournments - Court have to implement and give effect to the amended provisions and should not grant adjournment in violation of said statutory provisions. (Laxman Das Vs Deoji Mal) 2003(2) Civil Court Cases 212 (Rajasthan)

SC Civil Procedure Code, 1908, Order 17 Rule 2 Expln. - Court can exercise jurisdiction under Expln. to Rule 2 of Order 17 CPC only when evidence on record is sufficient to substantiate the absentee party's stand and for disposal of the suit - It is also imperative for the Court to record its satisfaction in that perspective - If the evidence on record is sufficient for disposal of suit then there is no need for adjourning the suit or deferring the decision. (B.Janakiramaiah Chetty Vs A.K.Parthasarathi & Ors.) 2003(1) Apex Court Judgments 515 (S.C.)

SC Civil Procedure Code, 1908, Order 17 Rule 2 Expln., Order 9 Rule 13 - Order of Court "No representation for the defendants hence suit decreed with costs..." - This is an ex parte adjudication and not a decision on merits - There is no indication as to what evidence was evaluated and/or whether the merits were tested - Application U.O.9 Rule 13 CPC allowed - Order upheld. (B.Janakiramaiah Chetty Vs A.K.Parthasarathi & Ors.) 2003(1) Apex Court Judgments 515 (S.C.)

Civil Procedure Code, 1908, Order 17 Rules 2, 3, Order 9 Rule 9 - Suit adjourned for next date for decision on one of issues - Plaintiff remaining absent - Dismissal of suit - Is in exercise of power U.O.17 Rule 2 and not under O.17 Rule 3 as no notice of final disposal was issued to plaintiff - Application for restoration is maintainable. (Makhan Singh Vs XIth ADJ) AIR 2004 Allahabad 136

Civil Procedure Code, 1908, Order 17 Rule 3 - Closure of evidence - Last opportunity granted to conclude entire evidence - Case transferred and transferee Court closed evidence - Plaintiff never knew that case is transferred and he alongwith his witnesses present where the case was earlier pending - Justice warrants that full opportunity is given to the plaintiff to lead his

evidence and is not made to suffer on technicalities - Order closing evidence set aside. (Murti Mata Bhadhar Kali & Anr. Vs Municipal Corporation, Amritsar & Anr.) 2005(3) Civil Court Cases 605 (P&H)

Civil Procedure Code, 1908, Order 18 Rule 1 - Provision does not confer any power on the Court to direct the defendant to adduce evidence first if defendant himself has not claimed such right in view of the contingencies mentioned in the provision. (Gouri Food Products Vs Priya Trading Co.) 2003(1) Civil Court Cases 576 (Bombay)

Civil Procedure Code, 1908, Order 18 Rules 1 & 3 - Two sets of defendants - Main issue of actual partition - That issue supported by one set of defendants - Defendant supporting the issue to lead evidence first - That defendant can keep his right reserved to lead rebuttal evidence, the onus of which is on the other set of defendants. (Chandra Sekhar Pattjoshi Vs Jogendra Pattjoshi & Ors.) 2004(2) Civil Court Cases 09 (Orissa)

Civil Procedure Code, 1908, Order 18 Rules 1 & 3 & S.11 - Application U.O.18 Rule 1 dismissed being not filed at the time when case was first posted for evidence - Does not operate as res judicata for filing application U.O.18 Rule 3 - O.18 Rule 1 and O.18 Rule 3 though lead to same consequence but they stand on different sequence. (Chinanchitti Raj Kishore Subudhi Vs M.Manjula) 2003(3) Civil Court Cases 246 (Orissa)

Civil Procedure Code, 1908, Order 18 Rule 2 - Partition suit - Certain defendants supporting the case of plaintiff - Whether they should begin their evidence first in preference to other defendants who do not support the plaintiff's case? - Held, No - None of the parties in the suit for partition can be said to have the claim against other - This is not adversary litigation and therefore the question of supporting the plaintiff or opposing the plaintiff in part or whole does not arise in a suit for partition. (Mohammed Sultan Mohammed & Ors. Vs Mohammed Nurani Mohammed & Ors.) 2005(3) Civil Court Cases 724 (Bombay)

Civil Procedure Code, 1908, Order 18 Rule 2 - Some of the defendants when supporting plaintiff - Sequence of leading evidence should be - (1) Those defendants who fully support the case of plaintiff; (2) Those defendants who partly support the case of plaintiff and (3) Those defendants who do not support the case of the plaintiff in any part. (Sunil Chhatrapal

Kedar Vs Y.S.Bagde & Anr.) 2005(1) Civil Court Cases 99 (Bombay)

Civil Procedure Code, 1908, Order 18 Rule 2 (As in P&H), Section 151 - Additional evidence - Application moved at the stage when parties had closed their evidence and case was fixed for arguments - Order allowing additional evidence upheld. (Basant Raj Vs Kaushal Kishore) 2005(3) Civil Court Cases 269 (P&H)

Civil Procedure Code, 1908, Order 18 Rule 2 (As in P&H), Section 151 - Additional evidence - Court can permit adducing of additional evidence either on its own accord or on an application of a party subject to the condition that good reasons are required to be recorded. (Basant Raj Vs Kaushal Kishore) 2005(3) Civil Court Cases 269 (P&H)

Civil Procedure Code, 1908, Order 18 Rule 2 (As in P&H), Section 151 - Additional evidence - Court itself felt necessity of adducing additional evidence as it would be helpful in bringing on record a clear picture - Held, once such an opinion is expressed by Court then additional evidence can be traced to Order 18 Rule 2 (as in P&H) - Order allowing additional evidence, upheld. (Basant Raj Vs Kaushal Kishore) 2005(3) Civil Court Cases 269 (P&H)

Civil Procedure Code, 1908, Order 18 Rule 2 & S.151 - Case reserved for judgment - At that stage permission sought to lead further evidence - Held, once case is finally heard and posted for judgment, nothing is required to be done except to pronounce judgment - No application can be filed after the final arguments are heard and the matter is posted for judgment. (Rabiya Bi Kassim M. Vs The Country-Wide Consumer Financial Service Limited, Bangalore) 2004(3) Civil Court Cases 593 (Karnataka)

Civil Procedure Code, 1908, Order 18 Rule 2 & Section 151 - Case reserved for judgment - At that stage permission sought to lead further evidence - Held, once case is finally heard and posted for judgment, nothing is required to be done except to pronounce judgment - No application can be filed after the final arguments are heard and the matter is posted for judgment. (Rabiya Bi Kassim M. Vs The Country-Wide Consumer Financial Service Limited, Bangalore) 2004(3) Civil Court Cases 593 (Karnataka)

SC **Civil Procedure Code, 1908, Order 18 Rule 2(4)** - Omission of

provision - Does not take away Court's inherent power to call for any witness at any stage either suo moto or on prayer of a party. (Salem Advocate Bar Association, Tamil Nadu Vs Union of India) 2005(3) Civil Court Cases 420 (S.C.)

Civil Procedure Code, 1908, Order 18 Rule 3 - Minor - Suit filed through guardian - Guardian examined as a witness - Evidence closed in affirmative - Minor attaining majority during pendency of suit - Minor sought to be examined as a witness in rebuttal - Excuse of minor to appear as a witness after attaining majority cannot be accepted because there is no bar for a minor to appear as a witness - Plea of minority raised is frivolous and without any substance. (Sachin Vs Smt.Sunita Vashisht & Ors.) 2005(2) Civil Court Cases 780 (P&H)

Civil Procedure Code, 1908, Order 18 Rule 3 - Rebuttal evidence - After closing evidence by defendant case posted for arguments - Plaintiff moved application for rebuttal evidence before final arguments - Rejection of application - Order set aside - Plaintiff allowed to produce evidence in rebuttal. (Prem Sagar Gupta Vs Smt.Kamlesh Kumari) AIR 2004 Delhi 136

Civil Procedure Code, 1908, Order 18 Rule 3 - Rebuttal evidence - In case where burden of proof on all issues is on the plaintiff, question of his reserving a right to adduce rebuttal evidence does not arise. (Venkata Ramana Agencies Vs Koppu Guranna) 2003(1) Civil Court Cases 67 (A.P.)

Civil Procedure Code, 1908, Order 18 Rule 3 - Rebuttal evidence - Plaintiff leading evidence touching his own case - Plaintiff has right to lead evidence in rebuttal. (L.M.P.Precession Engineering Company (P) Ltd. Vs Ram Narayan) 2004(2) Civil Court Cases 429 (Rajasthan)

Civil Procedure Code, 1908, Order 18 Rule 3 - Rebuttal evidence - Rent note not relied in written statement - Rent note not put to plaintiff when he appeared as his own witness - Rent note produced by defendant in his evidence - Plaintiff is entitled to rebut the evidence so produced by defendant - Plaintiff permitted to lead evidence to rebut evidence led by defendant in respect of rent note. (Chand Singh Vs Kartar Singh) 2006(4) Civil Court Cases 566 (P&H)

Civil Procedure Code, 1908, Order 18 Rule 3-A - Party as his own witness - Examination before other witnesses are examined by him - Provision is not mandatory and breach of rule does not necessarily render party's evidence nullity. (C.Sesha Reddy Vs T.Basavana Goud) 2004(2) Civil Court Cases 23 (Karnataka)

Civil Procedure Code, 1908, Order 18 Rule 3-A - Party as its own witness - To appear before any other witnesses on his behalf is examined - Court in exceptional circumstances after recording reasons in writing can allow a party to appear as a witness at a later stage. (Sachin Vs Smt.Sunita Vashisht & Ors.) 2005(2) Civil Court Cases 780 (P&H)

Civil Procedure Code, 1908, Order 18 Rule 3-A - Plaintiff as his own witness - Examination of plaintiff before examination of other witnesses - Two witnesses examined but defendant did not raise any objection as to examination of plaintiff first - Defendant is estopped by his act and conduct to raise the point. (Gurmail Chand Vs Ashok Verma) 2004(2) Civil Court Cases 716 (P&H)

Civil Procedure Code, 1908, Order 18 Rule 3-A - Two witnesses examined but defendant did not raise any objection that plaintiff should be examined first as in the list of witnesses name of plaintiff as a witness was not cited - Held, merely because the name of plaintiff is not cited in the list of witnesses does not mean that plaintiff cannot be examined as a witness - A witness can always be examined without being summoned and it would not be a valid ground to discard the testimony of such a witness - Contention of defendant is without any merit. (Gurmail Chand Vs Ashok Verma) 2004(2) Civil Court Cases 716 (P&H)

Civil Procedure Code, 1908, Order 18 Rule 3(4)(2), Order 18 Rule 4 - Witness - Examination - Audio visual link - Witness living abroad - Appearance of witness on audio visual screen in Court is as good as his physical presence in Court - When recording of evidence of witness, through mechanical process is permissible under provision of Code, use of audio visual link which is also mechanical process, for cross examination and re-examination of witness whose examination-in-chief is done on affidavit, cannot be barred. (Twentieth Century Fox Film Corporation, Los Angeles, U.S.A. & Anr. Vs NRI Film Production Associates (Private) Limited, Mysore) 2004(2) Civil Court Cases 388 (Karnataka)

Civil Procedure Code, 1908, Order 18 Rule 3(A), 3(B), 3(C) & 3(D) - Written arguments - Can be filed with express permission of Court and before conclusion of oral arguments - Copy of written arguments is required to be furnished to the opposite party. (Madan Lal Vs Sardar Lakhwinder Singh) 2004(2) Civil Court Cases 256 (P&H)

Civil Procedure Code, 1908, Order 18 Rule 4, Evidence Act, 1872, Section 137 - Affidavit filed by way of examination-in-chief - Right of cross examination of that witness is not taken away. (Shamrao Vishnu Kunjir Vs Suresh Vishnu Kunjir & Ors.) 2005(3) Civil Court Cases 219 (Bombay)

Civil Procedure Code, 1908, Order 18 Rule 4, Evidence Act, 1872, Section 142 - Witness - Examination-in-chief by way of affidavit - Leading questions - Prohibition of putting leading questions in examination-in-chief has no application to affidavit taken in lieu of examination-in-chief of witness. (Ibrahim Farukmiya Karajgi Vs Kasimkhan) 2003(2) Civil Court Cases 171 (Karnataka)

SC Civil Procedure Code, 1908, Order 18 Rule 4, Order 26 Rules 16, 16-A, 17 & 18, Evidence Act, 1872, Section 154 - Witness - Examination by Commission - Commission examining a witness has no right to declare a witness hostile - For declaring a witness hostile permission of Court has to be taken and it is only after grant of such permission by Court that Commissioner can allow a party to cross examine his own witness. (Salem Advocate Bar Association, Tamil Nadu Vs Union of India) 2005(2) Apex Court Judgments 492 (S.C.) : 2005(3) Civil Court Cases 420 (S.C.)

Civil Procedure Code, 1908, Order 18 Rule 4 - Affidavit of examination-in-chief - Copies of affidavits to be furnished to opposite party well in advance. (F.D.C.Limited Vs Federation of Medical Repres.) 2003(3) Civil Court Cases 41 (Bombay)

Civil Procedure Code, 1908, Order 18 Rule 4 - Chief affidavit - Must invariably be in the language of the witness - Such affidavit to be read in Court and affirmation of deponent obtained - At this stage Court must rule on the objection, if any, raised by the adversary and documents marked and categorised as admitted, not admitted or admitted subject to objection and then cross examination to start. (Johny Vs James) 2006(3) Civil Court Cases 665 (Kerala)

Civil Procedure Code, 1908, Order 18 Rule 4 - Examination-in-chief of a witness on affidavit - Rule does not differentiate between appealable and non-appealable cases. (F.D.C.Limited Vs Federation of Medical Repres.) 2003(3) Civil Court Cases 41 (Bombay)

SC **Civil Procedure Code, 1908, Order 18 Rule 4** - Examination-in-chief of a witness on affidavit or cross examination before a Commissioner - Right of cross examination and re-examination in open Court is not disturbed by Order 18 Rule 4 inserted by amendment - Power under Order 18 Rule 4(2) is required to be exercised with great circumspection having regard to the facts and circumstances of the case - There is no conflict between Order 26 Rule 9 and Order 18 Rule 5(a) and 5(b) - Order 18 Rule 19 and Order 26 Rule 4A override Order 18 Rule 5(a) and (b). (Salem Advocate Bar Association, Tamil Nadu Vs Union of India) 2005(2) Apex Court Judgments 492 (S.C.) : 2005(3) Civil Court Cases 420 (S.C.)

Civil Procedure Code, 1908, Order 18 Rule 4 - Examination-in-chief of witnesses on affidavit - Both plaintiff and defendant can be asked simultaneously to file - It does not violate O.18 Rule 1 - Cross examination of plaintiff's witnesses has nothing to do with examination-in-chief of defendant's witnesses. (Kamal Kumar Modi Vs Krishan Saigal) 2003(2) Civil Court Cases 391 (Delhi)

Civil Procedure Code, 1908, Order 18 Rule 4 - Party as his own witness - Requirement of filing affidavit applies to party also if he chooses to be witness in his own case. (Ibrahim Farukmiya Karajgi Vs Kasimkhan) 2003(2) Civil Court Cases 171 (Karnataka)

Civil Procedure Code, 1908, Order 18 Rule 4 - Provision applies to parties also who are examined as a witness. (F.D.C.Limited Vs Federation of Medical Repres.) 2003(3) Civil Court Cases 41 (Bombay)

Civil Procedure Code, 1908, Order 18 Rule 4 - Witness - Recording evidence through Audio-Video Link - Permissible - It requires certain safeguards which are analysed - Court can also impose such other conditions as are necessary in a given set of facts - Expenses and arrangements to be borne by the applicant who wants this facility. (Twentieth Century Vs NRI Film) 2003(2) Civil Court Cases 435 (Karnataka)

SC

Civil Procedure Code, 1908, Order 18 Rule 4(1) (As amended) -

Examination-in-chief to be by affidavits - Court has power to direct either all the evidence recorded in Court or all the evidence recorded by Commissioner or partly by Commissioner and partly by Court - Evidence may be recorded either in writing or mechanically - 'Mechanically' indicates that evidence can be recorded with the help of electronic media, audio or audio-visual - Held, it will be advisable that there should be simultaneously at least an audio recording of the statement of the witnesses so as to obviate any controversy at a later stage. (Salem Advocate Bar Association Vs Union of India) 2003(1) Civil Court Cases 198 (S.C.)

Civil Procedure Code, 1908, Order 18 Rule 4(1) & 5 (As amended)

- Witness - Examination-in-chief - It is to be on affidavit and copies of affidavit are to be supplied to opposite party by party who has called witness for evidence - Procedure is mandatory and applies to every case whether appealable or not - This provision which empowers Court to treat affidavit as evidence of facts stated therein is exception to O.18 Rule 5 whereunder evidence of witness is taken down by Court in language of Court - Opposite party is entitled to cross-examine witness who has filed affidavit and evidence elicited in course of such cross-examination is to be recorded by Court in manner prescribed in O.18 Rule 5 or it can be recorded on commission also. (Ibrahim Farukmiya Karajgi Vs Kasimkhan) 2003(2) Civil Court Cases 171 (Karnataka)

Civil Procedure Code, 1908, Order 18 Rule 4(2), Order 26 Rule

1 - Local Commissioner to record evidence of a witness - Before appointing a Commissioner, Court to ensure (i) filing of examination-in-chief in the form of an affidavit with a copy to the opposite party; (ii) Immediately thereupon Court to resolve questions as regards the proof and admissibility of documents which are relied upon by plaintiff in the course of examination-in-chief; (iii) Court then to appoint a Local Commissioner for recording evidence of a witness. (Bharat R.Desai & Anr. Vs Naina Mohanlal Bhal) 2004(3) Civil Court Cases 49 (Bombay)

Civil Procedure Code, 1908, Order 18 Rules 4, 5 - Examination-

in-chief by way of affidavit - In appealable as well as in non appealable cases examination-in-chief of a witness is to be by way of affidavit - The expression 'every case' in O.18 Rule 4 CPC would be rendered illusory and

otiose if recording of examination-in-chief by affidavit is confined to only those cases which are not appealable as no such intention is discernible from rules 4 & 5 of Order 18 CPC. (Karam Singh Vs Dana Singh) 2003(2) Civil Court Cases 227 (P&H)

SC **Civil Procedure Code, 1908, Order 18 Rules 4, 5** - O.18 Rule 4 does not make any distinction between appealable and non appealable cases so far as mode of recording evidence is concerned - Such a difference is found only in Rule 5 and 13 of Order 18 - Rules 4 and 5 are required to be harmoniously construed - Both provisions are required to be given effect to, as Rule 5 cannot be read as an exception to Rule 4 - Defendant would not be prejudiced in any manner whatsoever if the examination-in-chief is taken on an affidavit - If he desires to cross examine the said witness, he would be permitted to do so in open Court - There may be cases where a party may not feel the necessity of cross-examining a witness, examined on behalf of the other side and thus time of Court would not be wasted in examining such witness in open Court. (Ameer Trading Corporation Ltd. Vs Shapoorji Data Processing Ltd.) 2004(1) Apex Court Judgments 136 (S.C.) : 2004(2) Civil Court Cases 238 (S.C.)

Civil Procedure Code, 1908, Order 18 Rules 4, 5 & 13 - Affidavit - Procedure of preparation - Affidavit has to be prepared in accordance with the rules comprised under Order XIX of Civil Procedure Code, 1908 and the method of filing or placing on record has to be in accordance with Order 18 Rule 4 read with Rules 5 and 13 thereof in appealable and non-appealable cases respectively - Once legislature prescribes a specific procedure for the purpose of preparation of affidavit and filing thereof in the Court, the Courts cannot assume the role of super legislature to prescribe a totally different procedure - Directions issued in the matter of preparation of affidavit laid down in Writ Petition No.9523 of 2004 quashed being contrary to the provisions of law. (Bar Council of Maharashtra & Goa & Ors. Vs Shamrao Vishnu Kunjir & Ors.) 2006(3) Civil Court Cases 496 (Bombay) (DB)

Civil Procedure Code, 1908, Order 18 Rules 4, 5 & 13 (As amended) - Examination-in-chief by way of affidavit - Ultimate judgment or decree when appealable evidence to be recorded by Court U.O.18 Rule 5 CPC - However in cases where ultimate judgment or decree is not appealable then discretion is conferred upon Court to accept examination-in-chief in the form of affidavit as provided U.O.18 Rule 4 CPC - 'In every case' contained in

O.18 Rule 4 have to be understood in a limited sense that every case wherein the ultimate order is not appealable and by no means it can take in its ambit the orders which would be appealable. (Laxman Das Vs Deoji Mal) 2003(2) Civil Court Cases 212 (Rajasthan)

Civil Procedure Code, 1908, Order 18 Rule 16 - Examining plaintiff immediately - Plaintiff 92 years of age - Plaintiff may not be available by the time suit reaches stage of recording of evidence - Statement of plaintiff very important and necessary for just and appropriate decision - Fit case for exercise of power U.O.18 Rule 16 for the purpose of recording statement of plaintiff without waiting for the suit to have reached the stage of evidence. (Daulat Jehangir Mehta Vs Miss Piloo Dadabhoy Broacha & Ors.) 2005(1) Civil Court Cases 616 (Bombay)

Civil Procedure Code, 1908, Order 18 Rule 17 - Rebuttal evidence by plaintiff - Cannot be allowed to be led on the issues the burden of which was on the plaintiff. (Dinesh Kumar Vs State of Haryana)_ 2003(1) Civil Court Cases 445 (P&H)

Civil Procedure Code, 1908, Order 18 Rule 17 - Recall of a witness for further cross examination - Witness already cross examined on that point - No reason to recall the witness. (Soma Devi Vs Guin Devi) AIR 2003 H.P. 158

Civil Procedure Code, 1908, Order 18 Rule 17 - Recall of witness - Not at the instance of a party - Recall can be for examination by Court - Court in a given case can invoke inherent powers to recall witness for cross-examination - Lapse on part of a party to object to production of documents in course of evidence - Would not enure to its benefit to seek assistance of Court to get witness recalled and cross-examined in exercise of inherent powers. (Balkrishna Shivappa Shetty Vs Mahesh Nenshi Bhakta and others) AIR 2003 Bombay 293

Civil Procedure Code, 1908, Order 18 Rule 17 - Recall of witness - Power cannot be exercised by Court for cross-examination of witnesses by either of parties but for purpose of examination by Court itself. (Balkrishna Shivappa Shetty Vs Mahesh Nenshi Bhakta) 2003(3) Civil Court Cases 156 (Bombay)

Civil Procedure Code, 1908, Order 18 Rule 17 - Witness - Recall

- Court at any stage of suit may recall a witness who has been examined
- Examination includes cross-examination as well. (M/s National Agro-Chemical Industries Ltd. Vs National Research Development Corporation) 2006(3) Civil Court Cases 493 (Delhi)

Civil Procedure Code, 1908, Order 18 Rule 17 - Witness - Recall

- For further cross examination - Questions to be put to witness need not be written in the application as that may defeat the very purpose of cross examination. (M/s National Agro-Chemical Industries Ltd. Vs National Research Development Corporation) 2006(3) Civil Court Cases 493 (Delhi)

Civil Procedure Code, 1908, Order 18 Rule 17 - Witness - Recall

- Plea that after amendment of Civil Procedure Code, 1908a witness cannot be recalled by the party under any circumstances - Plea repelled. (M/s National Agro-Chemical Industries Ltd. Vs National Research Development Corporation) 2006(3) Civil Court Cases 493 (Delhi)

Civil Procedure Code, 1908, Order 18 Rule 17 - Witness - Recall

- for further cross examination - Ground that petitioner could not instruct his counsel properly on date of examination of said witness - Is a vague ground
- Application being not bona fide, hence dismissed. (Botsa Appala Narasayya Vs Smt.Raghunanda Lakshmi) AIR 2004 A.P. 82

Civil Procedure Code, 1908, Order 18 Rule 17 - Witness - Recall for

- further cross examination - Reason stated that proper instructions could not be given to counsel on date of examination of said witness - Not a relevant ground for recall of witness for further cross examination - Application dismissed. (Botsa Appala Narasayya Vs Smt.Raghunanda Lakshmi & Ors.) 2004(2) Civil Court Cases 112 (A.P.)



Civil Procedure Code, 1908, Order 18 Rule 17-A - Additional

- evidence - Deletion of Order 18 Rule 17-A does not disentitle production of evidence at a later stage - On a party satisfying the Court that after exercise of due diligence that evidence was not within his knowledge or could not be produced at the time the party was leading evidence, Court may permit leading of such evidence at a later stage on such terms as may appear to be just. (Salem Advocate Bar Association, Tamil Nadu Vs Union of India)

2005(2) Apex Court Judgments 492 (S.C.) : 2005(3) Civil Court Cases 420 (S.C.)

Civil Procedure Code, 1908, Order 18 Rule 17-A - Further evidence

- Court should be liberal in permitting the parties to adduce such evidence as they wish to bring on record, provided it is not an abuse of process of Court or a part of delaying tactics. (Venkata Ramana Agencies Vs Koppu Guranna) 2003(1) Civil Court Cases 67 (A.P.)

SC Civil Procedure Code, 1908, Order 18 Rule 17-A (As amended)

- Provision is deleted with a view that unnecessarily applications are not filed primarily with to prolong the trial. (Salem Advocate Bar Association Vs Union of India) 2003(1) Civil Court Cases 198 (S.C.)

Civil Procedure Code, 1908, Order 18 Rule 18 - Inspection by

Court - Eviction petition on ground of unfit and unsafe for human habitation
- Expert witness clearly stated about the condition of the demised premises
- There is hardly any confusion - No occasion for the Court to undertake an inspection. (Kailsho Devi Vs Chhabhi Parkash) 2004(3) Civil Court Cases 669 (P&H)

Civil Procedure Code, 1908, Order 18 Rule 18 - Inspection by Court

- Inspection note whether substantive piece of evidence - Held, No when expert witness clearly stated about the condition of the demised premises and there was no occasion for the Court to undertake an inspection and secondly expert witness was not subjected to any cross examination which clearly indicated the dilapidated condition of the demised premises. (Kailsho Devi Vs Chhabhi Parkash) 2004(3) Civil Court Cases 669 (P&H)

Civil Procedure Code, 1908, Order 18 Rule 18 - Inspection by

Court - Permissible only in case of confusion or to appreciate evidence in a better way - Court cannot base its judgment solely on the basis of inspection note recorded by it. (Kailsho Devi Vs Chhabhi Parkash) 2004(3) Civil Court Cases 669 (P&H)

Civil Procedure Code, 1908, Order 19 Rule 3 - Affidavit - Advocate

- An Advocate is not supposed to file affidavits in any proceedings except where certain facts relating to his conducting of the case are required to be stated - Relief must be claimed on the strength of the pleadings made by the

parties and not the Advocates. (Lakshmi Trading Company, Samalkot Vs Dokkoda Satyavani & Anr.) 2006(4) Civil Court Cases 237 (A.P.)

Civil Procedure Code, 1908, Order 20 Rule 1, Order 18 Rule 2 & S.11 - Judgment - Opportunity of hearing - Cannot be denied to party on ground that identical matter had been decided by previous order. (Teku Ram Vs State of Himachal Pradesh) AIR 2002 H.P. 89

Civil Procedure Code, 1908, Order 20 Rules 1, 5 - Finding not found in operative portion of judgment - After discussion of an issue if it is held that issue is decided accordingly then there is no necessity to sum up the case in the operative portion i.e. last portion of the judgment - In such an event entire discussion portion automatically becomes operative and whatever be the finding in that portion shall bind the parties concerned and parties concerned cannot shirk their responsibility or liability on the ground that the finding does not find place in the operative portion of judgment. (Smt.Sarojini, LRs. of Deceased 1st defendant Vs Kumari Bhagyavathi & Ors.) 2005(3) Civil Court Cases 327 (Madras)

Civil Procedure Code, 1908, Order 20 Rule 8 - Preliminary decree - Passing of supplementary preliminary decree - Availability of items in the plaint schedule disputed by persons not impleaded before preliminary decree but impleaded in the final decree proceedings - Held, preliminary decree can be reopened to consider whether they are available or not. (Kochukunju Stephen Vs Ashia Ummal) 2005(2) Civil Court Cases 202 (Kerala)

Civil Procedure Code, 1908, Order 20 Rule 11 - Executing Court has no power to order the payment of decretal amount in instalments - However, keeping in view the heavy rains causing damage in the area, J.D. permitted to make payment in two instalments. (Moguluru Eswaraiah Vs Gollapalli Venkataramaiah) 2006(3) Civil Court Cases 260 (A.P.)

Civil Procedure Code, 1908, Order 20 Rule 11 - Executing Court has no power to order the payment of decretal amount in instalments. (Tota Singh Vs Manjit Singh) 2004(2) Civil Court Cases 312 (P&H)

Civil Procedure Code, 1908, Order 20 Rule 11 - Instalments - Court which passed decree is competent to grant instalments either at the time of passing of decree or even thereafter - Executing Court is not competent to

grant instalments during the course of execution. (G.Laxmaiah Vs State Bank of Hyderabad & Anr.) 2005(2) Civil Court Cases 455 (A.P.)

Civil Procedure Code, 1908, Order 20 Rule 11 - Instalments - Executing Court has no power to grant instalments in case of money decree. (Guna Yerrannaidu Vs Guna Venkanna) AIR 2002 A.P. 37

Civil Procedure Code, 1908, Order 20 Rule 12, Order 26 Rule 8 and Evidence Act, 1872, Section 83 - Suit for possession on the basis of title under encroachment by defendant - Encroachment proved by evidence of Cadestal Surveyor - No actual measurement noted down in map prepared by Cadestal Surveyor - It is therefore not admissible - Matter remitted back to trial Court - Plaintiff shall make an application before trial Court for appointment of Cadestal surveyor within a period of three months and in default the suit shall stand dismissed. (Sukhdeo Parashramji Bhugul Vs Wamanrao Nagorao Charhat) 2004(3) Civil Court Cases 333 (Bombay)

Civil Procedure Code, 1908, Order 20 Rule 12, Suits Valuation Act, 1887, Section 4 - Suit for possession - Valuation - Market value - Can be best assessed on the basis of instances of sale and purchase of similar properties. (Manohar Lal Malhotra Vs Mrs.Premalata Malhotra) 2006(1) Civil Court Cases 405 (Delhi)

SC Civil Procedure Code, 1908, Order 20 Rule 12, Transfer of Property Act, 1882, Section 111 - Mesne profits - Tenant litigating for 25 years without payment of arrears and occupation charges falling due month by month - Tenant directed to pay a sum of Rs.2 lakhs as a condition to pursue their writ in High Court. (Achal Mishra Vs Rama Shankar Singh & Ors.) 2006(3) Civil Court Cases 528 (S.C.) : 2006(2) Apex Court Judgments 557 (S.C.)

SC Civil Procedure Code, 1908, Order 20 Rule 12, Transfer of Property Act, 1882, Section 111 - Mesne profits - Unauthorised occupant - Liable to pay rent equivalent to mesne profits with effect from the date from which they are found to have ceased to be entitled to retain possession of the premises as tenants and for such period the landlord's entitlement cannot be pegged down to the standard rent. (Achal Mishra Vs Rama Shankar Singh & Ors.) 2006(2) Apex Court Judgments 557 (S.C.) : 2006(3) Civil Court Cases 528 (S.C.)

Civil Procedure Code, 1908, Order 20 Rule 12 - Mesne profits - Lease of flat - Defendant not vacating despite notice - Plaintiff claiming mesne profits at the rate of Rs.50/- per sq. feet for unauthorised use and occupation - Plaintiff did not lead any satisfactory evidence regarding market rate of rent - Court, however, fixed rate of rent at the rate of Rs.20 per sq. feet on estimated basis with interest at the rate of 12%. (W.H.Deeth (Ballabgarh) & Co. Vs Punjab National Bank) 2003(2) Civil Court Cases 701 (Delhi)

Civil Procedure Code, 1908, Order 20 Rule 12 - Mesne profits - Quantum - Wrongful possession of land measuring 31 Kanals - Mesne profits on the basis of least of land of 10 marlas of the year when land was illegally occupied - No sale deeds or lease deed produced by defendant - Keeping in view the smallness of leased land to the suit land as well as the fact that it was a developed site a cut of 1/3 applied to the quantum of mesne profits determined by trial Court. (Punjab Small Scale Industries Corporation Vs Kartar Singh & Ors.) 2005(1) Civil Court Cases 310 (P&H)

Civil Procedure Code, 1908, Order 20 Rule 12 - Mesne profits - Wrongful possession - A person in wrongful possession is liable to pay mesne profits - Mesne profits are payable even when there is no issue with regard thereto. (Punjab Small Scale Industries Corporation Vs Kartar Singh & Ors.) 2005(1) Civil Court Cases 310 (P&H)

Civil Procedure Code, 1908, Order 20 Rule 12 - Residential accommodation by virtue by employment - License co-terminus with tenure of employment of the Licensor firm - Termination of service - Employee has no right to continue - Contention of employee that he is not liable to vacate the premises till final outcome of the decision of Labour Court - Not tenable - Employee ordered to pay mesne profits for unauthorised occupation at the rate of Rs.7,500/-. (Sarla Ahuja Vs Kundan Lal) 2003(2) Civil Court Cases 674 (Delhi)

Civil Procedure Code, 1908, Order 20 Rule 13 - Single suit for administration of estate of more than one deceased persons - Maintainable. (K.K.Thankappan Vs K.S.Jayan) AIR 2003 Kerala 114

Civil Procedure Code, 1908, Order 20 Rule 15, Partnership Act, 1932, Section 44(d) - Partnership at will - Court can dissolve the firm if meeting of partnership was never held after execution of the partnership deed

in spite of repeated requests by plaintiff, managing partner did not show him the accounts and confidence between the partners i.e. plaintiff on the one hand and defendant on the other found lost. (P.N.Shanmugam & Anr. Vs P.D.Vadivelu & Anr.) 2006(4) Civil Court Cases 660 (A.P.)

Civil Procedure Code, 1908, Order 20 Rule 15, Partnership Act, 1932, Section 44(d) - Suit for rendition of accounts - Managing partner if stated in evidence that firm has been dissolved and fresh partnership is constituted, it amounts to dissolution by notice on the date of deposition - Court can grant relief of dissolution of firm even if plaintiff has not asked for it and order rendition of accounts prayed for. (P.N.Shanmugam & Anr. Vs P.D.Vadivelu & Anr.) 2006(4) Civil Court Cases 660 (A.P.)

Civil Procedure Code, 1908, Order 20 Rule 15 - Partnership - Dissolution of partnership or suit for rendition of accounts - Form of decree - Court to pass a preliminary decree declaring shares of partners fixing the day on which partnership shall stand dissolved or be deemed to have been dissolved and directing such accounts to be taken, and other acts to be done, as it thinks fit, before passing final decree. (P.N.Shanmugam & Anr. Vs P.D.Vadivelu & Anr.) 2006(4) Civil Court Cases 660 (A.P.)

Civil Procedure Code, 1908, Order 20 Rules 15, 18 - Dissolution of partnership and rendition of accounts - Suit for - One partner making prayer to call upon other partners to deposit amount which was of debit balance in the capital account of such partners as that amount being payable by them to the firm - Held, firm and its partners are not distinct entities - Such partners can not held to be debtors of company before settlement of accounts - Refusal by receiver to direct them to deposit so called debt amount, proper. (Jayesh H.Pandya Vs Sukanya Holdings Pvt.Ltd.) AIR 2003 Bombay 148

Civil Procedure Code, 1908, Order 20 Rule 16, Order 7 Rule 2 - Suit for account - Does not lie when a crystallised amount is due as there is no account to be settled between the parties - Suit for accounts is entertainable when there are circumstances of special complication necessitating the taking of accounts. (Brothers Chitty Fund Vs Jacob Mathew) 2004(2) Civil Court Cases 262 (Kerala)

Civil Procedure Code, 1908, Order 20 Rule 18, Order 26 Rules 13, 14 - Partition suit - Final decree - Ascertaining value of joint family

property for purpose of allocation of shares following final decree - Value to be ascertained is market value as on date of decree - It is open to parties to seek issue of commission to ascertain value. (Vasudeva Murthy (Deceased) by L.Rs Vs Mariyappa (Deceased) By L.Rs & Anr.) 2004(2) Civil Court Cases 440 (Karnataka)

SC **Civil Procedure Code, 1908, Order 20 Rule 18** - 'Present possession of parties shall be respected as far as possible' - Means person in possession should be allowed to retain it by equalization of share - It does not mean that a person out of possession of all immovable properties should not be allowed any part of the immovable property whatsoever. (M.L.Subbaraya Setty (Dead) by LRs. & Ors. Vs M.L.Nagappa Setty (Dead) by LRs. & Ors.) 2003(1) Apex Court Judgments 160 (S.C.)

Civil Procedure Code, 1908, Order 20 Rule 18 - Co-owner - Selling his undivided share in property - Purchaser is entitled to joint possession or partition - For seeking partition there is no prescribed period of limitation. (Moin Khan Vs Amin Zema Khan) 2005(2) Civil Court Cases 126 (Jharkhand)

SC **Civil Procedure Code, 1908, Order 20 Rule 18** - Gift of property after passing of preliminary decree but before passing of final decree - Preliminary decree in partition suit passed on 13.2.1978 which was not on stamp paper but defined shares by metes and bound - Final decree drawn, a replica of preliminary decree on 24.5.1979 but on stamped paper - High Court holding that donors had no title before final decree - Not correct - Application of Rule of Feeding grant by estoppel applies - Appeal allowed. (Renu Devi Vs Mahendra Singh & Ors.) 2003(1) Apex Court Judgments 626 (S.C.)

Civil Procedure Code, 1908, Order 20 Rule 18 - Partition - Defendant taking plea of previous partition by metes and bounds about 60 years ago - Defendant averred that they were in service and purchased property from their own earnings - No evidence what were their earnings from service - Documentary evidence such as rent receipts, canal purchase etc. not establishing partition - Held, there was unity of title and possession in respect of property which might be subjected to partition between parties especially when parties belonged to Mitakshara School of Hindu Law under which there is presumption of jointness. (Hardeo Yadav Vs Dinanath Yadav) AIR 2002 Patna 60

Civil Procedure Code, 1908, Order 20 Rule 18 - Partition - Preliminary decree - Succession law amended during pendency of appeal giving right to applicant daughter to claim equal share in joint family property - Applicant not seeking setting aside of preliminary decree on basis of said amendment - Decree confirmed in appeal - It would finally determine rights/shares of parties - Decree cannot be questioned or varied in final decree proceedings. (Smt.Prema Vs Nanje Gowda) AIR 2003 Karnataka 104

SC **Civil Procedure Code, 1908, Order 20 Rule 18** - Partition - Shares, bonds and securities - Non availability at the time of partition - By itself not a ground to deny plaintiff his share if he is otherwise entitled thereto. (M.L.Subbaraya Setty (Dead) by LRs. & Ors. Vs M.L.Nagappa Setty (Dead) by LRs. & Ors.) 2003(1) Apex Court Judgments 160 (S.C.)

SC **Civil Procedure Code, 1908, Order 20 Rule 18** - Partition - Shares, bonds and securities - Non availability at the time of partition - Party in possession is liable to give accounts for the rents, income, profits and dividends in respect of the joint family property to others. (M.L.Subbaraya Setty (Dead) by LRs. & Ors. Vs M.L.Nagappa Setty (Dead) by LRs. & Ors.) 2003(1) Apex Court Judgments 160 (S.C.)

SC **Civil Procedure Code, 1908, Order 20 Rule 18** - Partition proceedings - Final decree in the first instance can be passed - Preliminary decree U.O.20 Rule 18 CPC not necessarily required to be passed - Final decree in the first instance can be passed if the rights of the parties are finally determined and no further inquiry remains to be held for the purposes of completing the proceedings in partition - Such cases are often which are based on compromise. (Renu Devi Vs Mahendra Singh & Ors.) 2003(1) Apex Court Judgments 626 (S.C.)

SC **Civil Procedure Code, 1908, Order 20 Rule 18** - Preliminary and final decree - Distinction - A preliminary decree merely declares the rights and shares of the parties and leaves room for some further inquiry to be held and conducted pursuant to the directions made in the preliminary decree which inquiry having been conducted and the rights of the parties finally determined a decree incorporating such determination needs to be drawn up which is the final decree. (Renu Devi Vs Mahendra Singh & Ors.) 2003(1) Apex Court Judgments 626 (S.C.)

Civil Procedure Code, 1908, Order 20 Rule 18 & O.26 Rules 13,

14 - Partition - Partition of each item of property by metes and bounds is not necessary - Essential requirement is equalisation of shares on basis of value of joint family property as on date of final decree - As far as possible person in possession of property should be permitted to retain his possession by providing for payment of equity - Party getting property of higher value to pay to party getting property of less value - Order of trial Court directing Court Commissioner to divide each item of property in terms of preliminary decree not sustainable in law. (Vasudeva Murthy (Deceased) by L.Rs Vs Mariyappa (Deceased) By L.Rs & Anr.) 2004(2) Civil Court Cases 440 (Karnataka)

SC Civil Procedure Code, 1908, Order 20 Rule 18 & O.26 Rules 13

& 14 - Suit for partition - Valuation of the property - Ordinarily it has to be the date of passing of the final decree and not the date of filing of the suit for partition - The actual partition is effected by passing of the final decree as such valuation has to be on the date of final decree. (M.L.Subbaraya Setty (Dead) by LRs. & Ors. Vs M.L.Nagappa Setty (Dead) by LRs. & Ors.) 2003(1) Apex Court Judgments 160 (S.C.)

SC Civil Procedure Code, 1908, Order 21, Limitation Act, 1963,

Art.136 - Execution - Limitation - Starting point - Whether from date of decree or when decree becomes enforceable - Matter referred to a larger bench. (Ram Bachan Rai & Ors. Vs Ram Udar Rai & Ors.) 2006(2) Apex Court Judgments 151 (S.C.) : 2006(2) Civil Court Cases 569 (S.C.)

SC Civil Procedure Code, 1908, Order 21, Limitation Act, 1963,

Section 5 - An application under Section 5 of Limitation Act is not maintainable in a proceeding arising under Order 21 of Civil Procedure Code, 1908. (Damodaran Pillai & Ors. Vs South Indian Bank Ltd.) 2005(2) Apex Court Judgments 594 (S.C.) : 2005(3) Civil Court Cases 530 (S.C.)

Civil Procedure Code, 1908, Order 21, Limitation Act, 1963,

Section 5 - Provision of S.5 Limitation Act is not applicable to an application under O.21 CPC. (Mangilal Narsingdas Gattani Vs Shaligram Ukarda Payghan) 2003(1) Civil Court Cases 497 (Bombay)

Civil Procedure Code, 1908, Order 21, Order 9 Rule 9 - Execution

- Dismissal in default - Second execution application without setting aside the order of dismissal in default - Held, maintainable if filed within period

of limitation as provision of Order 9 Rule 9 of Civil Procedure Code, 1908 is not applicable to execution proceedings. (Yash Pal Sharma Vs Ajit Singh & Ors.) 2006(4) Civil Court Cases 207 (P&H)

Civil Procedure Code, 1908, Order 21, Section 11 - Execution - Dismissal in default - Order does not operate as res judicata as order of dismissal in default is not a final decision of Court after hearing the parties. (Yash Pal Sharma Vs Ajit Singh & Ors.) 2006(4) Civil Court Cases 207 (P&H)

Civil Procedure Code, 1908, Order 21 Rule 1 - Execution - Payment of interest, cost and part of principal amount by J.D. - Calculation of interest thereafter on the whole principal amount by D.H. - Not permissible. (R.Lingaraj Vs Dr.Arumugha Pandian) AIR 2002 Madras 254

Civil Procedure Code, 1908, Order 21 Rule 1 - Stay of execution subject to deposit of decretal amount - Not a payment to D.H. in terms of Order 21 Rule 1 - Cannot be adjusted towards the principal amount. (Tosh & Sons India Ltd. Vs Khanna) 2006(3) Civil Court Cases 711 (Delhi)

Civil Procedure Code, 1908, Order 21 Rule 1, 2 - Payment of decretal amount out of Court - D.H. in his income-tax return had shown that he was to recover only some amount out of balance amount - Is sufficient for purposes of satisfaction of Court that payment is evidenced in writing - Further as return was submitted by D.H. of his own accord as such he is estopped from denying such payment. (Bapulal Walchand Jain Vs Pandurang Vithal Pingle) AIR 2003 Bombay 5

Civil Procedure Code, 1908, Order 21 Rule 2, Limitation Act, 1963, Art.125 - Execution - Payment made outside Court - J.D. must get certificate from Court of payments made to D.H. out of Court - Limitation for such certificate is thirty days from the date of payment. (Moguluru Eswaraiah Vs Gollapalli Venkataramaiah) 2006(3) Civil Court Cases 260 (A.P.)

Civil Procedure Code, 1908, Order 21 Rule 2 - Decree - Satisfaction - Rs.8,000/- alleged to be paid by J.D. in a compromise towards the satisfaction of decree - Writing to this effect undated and thumb marked by D.H. - There are no witnesses to the said writing and the same not signed or thumb marked by J.D. - Held, the said writing is not in conformity with the provision of O.21

Rule 2 CPC and the same cannot be taken to be adjustment of the decree. (Nahra Vs Surji & Ors.) 2004(2) Civil Court Cases 308 (P&H)

Civil Procedure Code, 1908, Order 21 Rule 2 - Execution - Payment made outside court - J.D. must get certificate from Court of payments made to D.H. out of Court - Uncertified payments cannot be taken cognizance by Executing Court. (Moguluru Eswaraiiah Vs Gollapalli Venkataramaiah) 2006(3) Civil Court Cases 260 (A.P.)

SC **Civil Procedure Code, 1908, Order 21 Rule 2** - Execution - Payment or Adjustment - Not certified or recorded under sub-rule (1) or (2) of Order 21, shall not be recognised by the court executing decree. (Padma Ben Banushali & Anr. Vs Yogendra Rathore & Ors.) 2006(2) Apex Court Judgments 299 (S.C.) : 2006(3) Civil Court Cases 195 (S.C.)

Civil Procedure Code, 1908, Order 21 Rule 2-A, Limitation Act, 1963, Art.125 - Execution - Payment or adjustment - Not to be recognised if not certified or recorded by Court within 30 days from the date when the payment or adjustment is made. (Joseph Vs Kanakam) 2003(1) Civil Court Cases 387 (Kerala)

Civil Procedure Code, 1908, Order 21 Rule 2-A - Decree - Satisfaction - Unless certified or recorded payment or adjustment cannot be recognised by executing Court. (Gouri Sirkar Vs Goutam Sirkar) AIR 2002 Calcutta 70

Civil Procedure Code, 1908, Order 21 Rules 2(i) and 97 & S.47 - Ejectment order - Execution - Objections - Fresh tenancy alleged to be created by one of the D.H. - Execution cannot be stayed - Any adjustment of decree which is not recorded by Court U.O.21 Rule 2(i) cannot be recognised by the executing Court and that too within the prescribed period of limitation of 30 days. (Ramesh Kumar Vs Vijay Kumar & Ors.) 2004(3) Civil Court Cases 644 (P&H)

Civil Procedure Code, 1908, Order 21 Rules 2(i) and 97 & Section 47 - Ejectment order - Execution - Objections - Fresh tenancy alleged to be created by one of the D.H. - Execution cannot be stayed - Any adjustment of decree which is not recorded by Court under Order 21 Rule 2(i) cannot be recognised by the executing Court and that too within the prescribed period

of limitation of 30 days. (Ramesh Kumar Vs Vijay Kumar & Ors.) 2004(3) Civil Court Cases 644 (P&H)

Civil Procedure Code, 1908, Order 21 Rule 2(2) - Eviction decree - Execution - Fresh lease during pendency of execution outside Court - Fresh least amounts to adjustment or satisfaction of decree - Application for recording of compromise must be made within 30 days of execution of fresh lease - In absence of recording of compromise, landlord is entitled to have decree executed and to recover possession. (B.M.Rajanna (Deceased) by L.Rs Vs K.S.Lingappa) 2005(1) Civil Court Cases 659 (Karnataka) : 2005(1) Civil Court Cases 659 (Karnataka)

Civil Procedure Code, 1908, Order 21 Rule 2(3) - Payment made out of Court - However, plaintiff admitting payment of certain amounts by defendants before Executing Court - Such admission tantamount to D.H. certifying such payment - Court to record the same accordingly - Failure of Court to record it - Art.125 of Limitation Act providing that application to record adjustment or satisfaction of decree would be made within 30 days of date of payment - Not applicable in such cases - Once Executing Court was intimated about receipt of amount by D.H. it is duty of Court to record the same and there is no limitation prescribed for it. (Dilipkumar Vs Industrial Credit & Development Syndicate Limited) AIR 2004 Bombay 117

Civil Procedure Code, 1908, Order 22 Rule 4 - L.R's - Not entitled to take up a new plea other than the one taken up by the deceased defendant - They are to proceed with the case from the stage of death of defendant. (J.Vijaya Bhaskar & Ors. Vs J.Jayalakshmi & Ors.) 2004(3) Civil Court Cases 176 (Madras)

Civil Procedure Code, 1908, Order 21 Rule 6A - Sale of entire property without considering J.D's plea that sale of only a portion would be sufficient - Order is illegal. (Thanka Vs Francis) AIR 2002 Kerala 379

Civil Procedure Code, 1908, Order 21 Rule 11, Order 15 Rule 6 - Execution - Verification - Pleadings and execution cannot be placed on same pedestal - Requirement of O.21 Rule 11(2) is deemed to be fulfilled if verification is to the satisfaction of the Court. (International Security and Intelligence Agency Limited Vs Municipal Corporation) AIR 2002 Delhi 347

Civil Procedure Code, 1908, Order 21 Rule 11 - Motor Accident Claim - Execution - Award of Motor Accident Claims Tribunal is to be treated as a decree of Civil Court and application under Order 21 Rule 11 of Civil Procedure Code, 1908 is maintainable - Claimants cannot be asked to go to District Collector for same relief - Tribunal possesses inherent jurisdiction to enforce its own award in accordance with the provisions of Civil Procedure Code, 1908 as applicable to execution of orders and decrees passed by a Civil Court - When the Claims Tribunal possesses inherent jurisdiction to enforce its own award, the claimants cannot be asked to follow another procedure. (Pushpa Mishra & Ors. Vs MACT & Anr.) 2004(3) Civil Court Cases 68 (Rajasthan)

Civil Procedure Code, 1908, Order 21 Rule 12 - Decree for possession - When under mortgage deed mortgagee is not entitled to induct tenants who would continue even after expiry of mortgage then actual physical possession is to be delivered as no relationship of landlord and tenant exists between mortgagor and tenant and tenant is not entitled to protection of Rent Act. (Gopal Sharan & Ors. Vs Smt. Radha Devi & Ors.) 2004(2) Civil Court Cases 163 (Rajasthan)

Civil Procedure Code, 1908, Order 21 Rule 15 - Execution - Possession taken with help of police - During pendency of execution proceedings some of decree holders entered into agreement of tenancy along with J.D. and entered into said premises with help of unruly element - Defendants can be treated as trespassers - Since said agreement of tenancy is illegal it is not permissible for Court to create a new decree in said agreement which is in variance with original decree. (Manik Chandra Naskar Vs Smt. Tara Debi and others) AIR 2004 Calcutta 207

Civil Procedure Code, 1908, Order 21 Rule 15 - Joint decree holders - Death of one D.H. - During pendency of execution and after death of deceased D.H. his heirs executed a relinquishment deed in favour of remaining D.H.'s - Provision of Order 21 Rule 15 of Civil Procedure Code, 1908 is applicable and execution can proceed without bringing on record L.R's of deceased D.H. (Rifakat Ali & Anr. Vs Shyam Sunder & Ors.) 2005(2) Civil Court Cases 20 (Allahabad)

SC Civil Procedure Code, 1908, Order 21 Rule 16, Sections 47, 11 - Assignment of decree - Validity - Question of assignment decided during

hearing of appeal - Same cannot be reagitated in execution of decree. (Saraswati Devi Gupta Vs Sudha Rani & Ors.) 2006(1) Apex Court Judgments 494 (S.C.) : 2006(1) Civil Court Cases 357 (S.C.)

Civil Procedure Code, 1908, Order 21 Rule 16 - Execution - By L.R's - Succession certificate is a must. (Sangappa Mallappa Kuri Vs Special Land Acquisition Officer) AIR 2003 Karnataka 142

Civil Procedure Code, 1908, Order 21 Rule 21 - Execution - Money decree - Simultaneous execution for arrest of J.D. and also to proceed against his property - It is almost a rarity - Even in the limited situations, which permit such a course, discretion is to be used, more to refuse it, than to accord permission. (P.Laxma Reddy Vs Syndicate Bank & Ors.) 2006(1) Civil Court Cases 103 (A.P.)

Civil Procedure Code, 1908, Order 21 Rule 22 - Execution petition filed within two years of passing of decree - Notice need not to be issued to J.D. (Moguluru Eswaraiah Vs Gollapalli Venkataramaiah) 2006(3) Civil Court Cases 260 (A.P.)

Civil Procedure Code, 1908, Order 21 Rule 22 - Execution within two years - Option is given to Court to give or not to give notice to J.D. - However, once notice is ordered to be given to J.D., withdrawing of same at the instance of D.H. on the ground of long delay in litigation and ordering delivery of possession without hearing other side is not legal - Impugned order set aside - Matter remanded to Court below to dispose of execution afresh after hearing both the parties. (R.Kanthamma Vs Boyapati Ravindra) 2003(2) Civil Court Cases 655 (A.P.)

SC Civil Procedure Code, 1908, Order 21 Rule 22 - Suit for specific performance - During pendency of suit parties amicably settled the dispute and filed consent terms - As per consent terms there were mutual obligations on the part of both the parties - Parties directed to give effect to terms of the consent decree - Both parties failing to comply with their mutual obligations - Directions made by Court. (Rangnath Haridas Vs Dr.Shrikant B.Hegde) 2006(3) Apex Court Judgments 747 (S.C.)

Civil Procedure Code, 1908, Order 21 Rule 29 - Decree - Execution - Stay - Decree remains in force till it is set aside - It should not be lightly dealt

with on the basis of surmises and conjectures that in the suit filed subsequently the same may be set aside - A person should not be deprived of the fruits of the decree merely because of suits of frivolous character are instituted - Stay, if granted, should be on suitable terms. (Youth Club, Bolangir Vs Premalata Kumari Devi & Ors.) 2005(2) Civil Court Cases 750 (Orissa)

Civil Procedure Code, 1908, Order 21 Rule 29 - Decree - Execution - Stay - Principles governing - Petitioner is required to make out sufficient cause - Sufficient cause is established if petitioner is able to prove that he would incur substantial loss, that there are fairly arguable questions and that the petitioner has come without delay. (Youth Club, Bolangir Vs Premalata Kumari Devi & Ors.) 2005(2) Civil Court Cases 750 (Orissa)

Civil Procedure Code, 1908, Order 21 Rule 30, Section 51 - Money decree - Execution - It does not lie in the mouth of J.D. to ask D.H. to first exhaust his remedies against his immovable property and only then to seek his arrest and detention in civil prison - Decree holder is at liberty to execute the decree either by seeking detention of J.D. in civil prison or by attachment and sale of his property or by both. (Guvvala Sudhakara Reddy Vs Katamreddy Venugopala Reddy) 2006(2) Civil Court Cases 769 (A.P.)

Civil Procedure Code, 1908, Order 21 Rule 30 - In execution D.H. received certain amount from the principal debtor and the balance was to be paid in instalments - Default in payment of instalments - For recovery of the remaining decretal amount, D.H. cannot proceed against surety without exhausting his remedies against principal debtor completely. (G.Laxmaiah Vs State Bank of Hyderabad & Anr.) 2005(2) Civil Court Cases 455 (A.P.)

Civil Procedure Code, 1908, Order 21 Rule 30 - Money decree against principal debtor and surety with joint and several liability for recovery of amount due - Principal debtor paid certain amount and offered to pay the balance in monthly instalments - Execution petition closed by order with these terms to which D.H. did not object - Principal debtor committed default in payment of instalments - Recovery from surety - Held, once D.H. having chosen to proceed against a J.D. and received certain amount from him, he cannot proceed against another J.D. without exhausting his remedies in execution against the first J.D. till the legal or logical end. (G.Laxmaiah Vs State Bank of Hyderabad & Anr.) 2005(2) Civil Court Cases 455 (A.P.)

Civil Procedure Code, 1908, Order 21 Rule 30 - Property purchased vide registered sale deed prior to its attachment in execution - Decree holder cannot proceed against property in question. (Linga Vs M/s Saravana Enterprises) AIR 2003 Karnataka 128

Civil Procedure Code, 1908, Order 21 Rule 30 - Property purchased vide registered sale deed prior to its attachment in execution - No specific direction in decree creating any charge on said property - General observation in decree that D.H. is entitled to proceed against assets of J.D. - Does not amount to creating charge on property - Decree holder is not entitled to attach and sale of property in execution. (Linga Vs M/s Saravana Enterprises) AIR 2003 Karnataka 128

Civil Procedure Code, 1908, Order 21 Rule 32, Limitation Act, 1963, Art.136 Proviso - Injunction decree - Execution - It has a permanent and perpetual life - It can be put into execution at any time to prevent breach or to prevent apprehended breach. (Yashodabai Ganesh Naik Gaunekar Vs Gopi Mukund Naik) 2003(1) Civil Court Cases 264 (Bombay)

Civil Procedure Code, 1908, Order 21 Rule 32 - Decree of permanent injunction restraining defendants from interfering in possession - Dispossession in violation of decree - Court can restore possession U.O.21 Rule 32 CPC. (Inder Singh and others Vs Dharma and others) 2003(3) Civil Court Cases 363 (P&H)

Civil Procedure Code, 1908, Order 21 Rule 32 - Decree of restitution of conjugal rights - Execution - Wife sought execution of decree after 2-1/2 years - Decree can be executed by attachment and sale of property of defaulting party but Court cannot give physical custody of J.D. to decree holder. (Yudhisthar Singh Vs Smt.Sarita Sankhala) 2005(1) Civil Court Cases 353 (Rajasthan)

Civil Procedure Code, 1908, Order 21 Rule 32 - Permanent injunction decree restraining interference in peaceful possession - J.D. claiming to be in possession of suit land prior to passing of decree and also after passing of decree - This fact indicates that J.D. not ready to obey the decree passed by the civil Court - Decree ordered to be enforced by detention of J.D. in civil prison and by attachment of his property - Order upheld. (Ram Singh & Anr. Vs Shiv Narain) 2006(4) Civil Court Cases 518 (P&H)

Civil Procedure Code, 1908, Order 21 Rule 32 & 26, Order 41 Rule 5 - Appeal - Order of status quo regarding possession passed in an appeal against decree of specific performance - Execution not stayed - Executing Court directed to proceed with the execution and get the sale deed executed in favour of D.H. in accordance with law. (Jagir Singh Vs Sanjeev Kumar) 2003(3) Civil Court Cases 267 (P&H)

Civil Procedure Code, 1908, Order 21 Rule 32 & S.151, Order 39 Rules 1,2 - Ad interim injunction - Its enforcement by filing application U.O.21 Rule 32 r/w S.151 - Not proper as stage for making such application arises only after passing of decree - Proceedings for violation, disobedience of injunction order can be initiated U.O.39 Rule 2-A CPC. (Kishan Lal Vs Smt.Naaheed Maylkat) AIR 2002 M.P. 149

Civil Procedure Code, 1908, Order 21 Rule 32 & S.51 - Injunction decree - Execution - Attachment of property or by imprisonment - Can be resorted to only when J.D. had an opportunity of obeying the decree and has deliberately failed to obey it. (Yashodabai Ganesh Naik Gaunekar Vs Gopi Mukund Naik) 2003(1) Civil Court Cases 264 (Bombay)

Civil Procedure Code, 1908, Order 21 Rule 32 & S.51 - Injunction decree - Execution - Despite civil imprisonment J.D. ventured to commit successive breaches - Effective order against him could be attachment and sale of his property and in absence thereof detention in civil prison again. (Yashodabai Ganesh Naik Gaunekar Vs Gopi Mukund Naik) 2003(1) Civil Court Cases 264 (Bombay)

Civil Procedure Code, 1908, Order 21 Rule 32 & S.51 - Injunction decree - Execution - Detention of J.D. in civil prison is no substitute for compliance of decree - Compliance of decree can only be by resort to penal actions Liability or obligation flowing from the decree cannot be taken to have been discharged by detaining a person liable to comply with the decree, to jail. (Yashodabai Ganesh Naik Gaunekar Vs Gopi Mukund Naik) 2003(1) Civil Court Cases 264 (Bombay)

Civil Procedure Code, 1908, Order 21 Rule 32 Expln. - Prohibitory injunction - Decree of - Can now be enforced to a practicable extent in the same way as decrees for mandatory injunctions. (Ajayakumar Vs Damayanthi) 2004(2) Civil Court Cases 383 (Kerala)

Civil Procedure Code, 1908, Order 21 Rule 34, Section 11 - Draft of document in terms of decree delivered to Court - Objection relating to nature of decree is not permissible - However, identical objections raised by J.D. were dealt with by executing Court - In view of principle of res judicata, it was not open for him to raise same objections again - Finding of executing Court that decree in question has to be treated as a decree for specific performance of duties cast upon J.D. cannot therefore be faulted. (Rasika Vs Mount Mary Vaikunta Co-Op.Hous. Society Ltd.) 2003(3) Civil Court Cases 72 (Bombay)

Civil Procedure Code, 1908, Order 21 Rule 34 - Decree for execution of conveyance - Defendant neither applied for setting aside ex parte decree nor did he challenge the same in appeal - He cannot be allowed to raise any objection in execution. (Rasika Vs Mount Mary Vaikunta Co-Op. Hous. Society Ltd.) 2003(3) Civil Court Cases 72 (Bombay)

Civil Procedure Code, 1908, Order 21 Rule 34 - Draft of document in terms of decree delivered to Court - It contained name of dead person - Direction given to substitute it with that of his L.R's. (Rasika Vs Mount Mary Vaikunta Co-Op.Hous. Society Ltd.) 2003(3) Civil Court Cases 72 (Bombay)

Civil Procedure Code, 1908, Order 21 Rule 34 - Draft of document in terms of decree delivered to Court - Objections thereto - Decided by Court - Objector can file appeal U.O.43 Rule 1(i) - Scope of appeal is restricted - Appellate Court while exercising its jurisdiction under order 43 cannot travel beyond purview of its appellate jurisdiction. (Rasika Vs Mount Mary Vaikunta Co-Op.Hous. Society Ltd.) 2003(3) Civil Court Cases 72 (Bombay)

Civil Procedure Code, 1908, Order 21 Rule 34 - Sale deed - Execution by Court - Draft of sale deed furnished by D.H. in execution of decree - J.D. remained exparte - Draft sale deed therefore not served on J.D. - Sale deed executed and registered - Rule 34 requires the Court and not the D.H. to serve the draft sale deed on J.D. - Object of service is to enable J.D. to raise any objections - However, J.D. has not pointed out any defect or illegality in draft sale deed in spite of their being aware of the contents of sale deed - Only objection raised is that it was not served on them - Objection that sale deed is not valid since draft of sale not served on J.D. is not sustainable. (S.Hassan & Anr. Vs Sha Peerchand, Pawn Broker & Money Lender) 2005(2)

Civil Court Cases 40 (A.P.)

Civil Procedure Code, 1908, Order 21 Rule 34 - Sale deed - Execution by Court - Executing Court is competent to refer to pleadings, if circumstances warrant for understanding the decree - Suit decreed directing plaintiff to pay balance of consideration agreed after giving credit to amount paid as advance and the amounts due as on the date of filing of suit under two pronotes executed - Amounts payable under pronotes shall be treated as part of consideration - If interest calculated upto date of filing of suit as per terms of decree, no amount remained unpaid by plaintiff towards consideration under the agreement - Contention that interest is not payable after filing of agreement of sale, that plaintiff has not paid balance of consideration as directed by decree and that therefore decree is not executable, not tenable as plaintiff cannot be said to have not complied with terms of agreement and decree - Sale deed executed by Executing Court is valid. (S.Hassan & Anr. Vs Sha Peerchand, Pawn Broker & Money Lender) 2005(2) Civil Court Cases 40 (A.P.)

Civil Procedure Code, 1908, Order 21 Rule 34 - Specific performance - Execution of decree - Mistake as to western boundary - D.H. is entitled to take property as per schedule mentioned in the agreement and not beyond that - Courts are bound to see entire record to find out real property agreed to be sold. (Sukhdev Soni (died) per L.Rs. Vs Ramesh Chandra Sarda) 2006(4) Civil Court Cases 353 (A.P.)

Civil Procedure Code, 1908, Order 21 Rule 35, Transfer of Property Act, 1882, Section 52 - Property of a co-sharer purchased during pendency of proceedings - Principle that purchase made during pendency of litigation is unsustainable applies only if purchase is made from J.D. and not from a co-sharer - Share of first plaintiff, one of the coparceners, sold to respondent by his wife on his death - To the extent of his share, decree stood extinguished - Interest of coparceners in the property is undefined and indeterminate - E.P. filed by L.Rs. of second plaintiff claiming recovery of possession of entire property having knowledge of the sale of share of first plaintiff in favour of respondent and also claiming to be the L.Rs of both the plaintiffs - Defective and not entertainable. (Katepaga Yadagiri & Ors. Vs B.Maheshwar Reddy) 2004(2) Civil Court Cases 174 (A.P.)

Civil Procedure Code, 1908, Order 21 Rule 35 - Execution -

Dismissed as withdrawn - Decree not satisfied - Subsequent execution application is maintainable. (Jit Singh Vs Bhago) AIR 2002 P&H 340

Civil Procedure Code, 1908, Order 21 Rule 35 & Section 144

- Decree for possession - Possession delivered and delivery of possession acknowledged by D.H. - D.H. subsequently dispossessed forcibly - Second application for delivery of possession is not maintainable - Application for restitution as provided in Section 144 of Civil Procedure Code, 1908 is also not maintainable in such case - Remedy available to D.H. in such case is to again seek possession in accordance with law. (Mrs. Rosane Jerome D'Souza Vs Bhagvandas Gangaram Kamble (Deceased) By L.Rs) 2005(3) Civil Court Cases 362 (Karnataka)

Civil Procedure Code, 1908, Order 21 Rule 36 - Tenant -

Redemption of mortgage - Tenant inducted by mortgagee - Property redeemed and remortgaged and tenancy continued - Held, as tenant was not inducted by mortgagor as such tenant is liable to be evicted in execution of final decree of redemption obtained against the second mortgagee. (Shambhu Dayal Vs Shivcharan Lal & Anr.) 2004(2) Civil Court Cases 607 (Rajasthan)

Civil Procedure Code, 1908, Order 21 Rule 37, Section 51 Proviso

- Money decree - Execution - Arrest and detention - Notice to J.D. to show cause instead of warrant of arrest - Notice to be issued to J.D. to appear before the Court - However, such notice is not necessary when Court is satisfied by affidavit or otherwise, that with the object or effect of delaying the execution of the decree, J.D. is likely to abscond or leave the local limits of the jurisdiction of the Court. (Neelam Gautam Vs Balwinderjit Singh @ Bikramjit @ Happy) 2004(3) Civil Court Cases 121 (P&H)

Civil Procedure Code, 1908, Order 21 Rule 37 - Decretal amount

- Non payment - Arrest of J.D. - Not to be ordered without giving a specific finding that J.D. is avoiding to make payment having sufficient means - Order of arrest without such a finding set aside - J.D. permitted to pay the decretal amount in five monthly equal installments. (Vesapogu Yeshaiah Vs Muppalla Subba Rao) 2003(1) Civil Court Cases 496 (A.P.)

Civil Procedure Code, 1908, Order 21 Rule 37 - Execution - Arrest

and detention - Application for arrest and detention of J.Drs. for recovery of decretal amount - Order of attachment of salary of one of the J.Drs. when

application is made under rule 37 is unwarranted and uncalled for. (S.Ismail & Anr. Vs Agraseni Chit Funds (P) Ltd. & Ors.) 2005(1) Civil Court Cases 518 (A.P.)

Civil Procedure Code, 1908, Order 21 Rule 37 - Execution - Arrest of J.D. in civil prison - J.D. denying that he has any means to repay decretal amount - Further, no source of income or cash in hand of J.D. brought on record by D.H. - In such circumstances fair and decretal order of executing Court dismissing application - Cannot be interfere with by High Court. (K.M.Kannu Goudner Vs. Mahboob Ali Sahib) AIR 2003 Madras 362

Civil Procedure Code, 1908, Order 21 Rules 37, 39 & 40, Section 51(c) - Execution - Money decree - Arrest & detention - Executing Court shall hold an enquiry and give a finding to the correct means of J.D. to discharge the decree before ordering arrest - Order passed without conducting such enquiry and without following procedure bad in law and set aside. (Ganesh Vs Sankaran & Anr.) 2006(4) Civil Court Cases 16 (Madras)

Civil Procedure Code, 1908, Order 21 Rules 37, 40 - Execution - Arrest and detention - Rule 40 is not only procedural but also mandatory in nature and confers certain powers upon the executing Court during the pendency of an enquiry to be conducted - 'Enquiry' contemplated under rule 40 means an enquiry with regard to defence, if any, taken by J.D. and also to enquire into the averments by D.H. before the J.D. is sent to civil prison - An enquiry has to be conducted before the Executing Court passes an order sending J.D. to civil prison. (S.Ismail & Anr. Vs Agraseni Chit Funds (P) Ltd. & Ors.) 2005(1) Civil Court Cases 518 (A.P.)

Civil Procedure Code, 1908, Order 21 Rules 37, 40 - Execution - Money decree - Arrest and detention of J.D. - Notice for appearance issued - J.D. appeared through Advocate - Order issuing warrant of arrest upheld, as appearance contemplated is appearance in person and not through recognized agent or pleader. (Goparaju Venkata Satya Suryanarayana Vs Tallapragada Naga Venkata Suryanarayana Murthy) 2006(4) Civil Court Cases 219 (A.P.)

Civil Procedure Code, 1908, Order 21 Rules 37, 40 & Section 51 - Execution - Detention - Before ordering detention of J.D. Court must record finding as to the existence of circumstances stipulated in clause (a) to

(c) of proviso to Section 51 of Civil Procedure Code, 1908. (P.Laxma Reddy Vs Syndicate Bank & Ors.) 2006(1) Civil Court Cases 103 (A.P.)

Civil Procedure Code, 1908, Order 21 Rules 37, 40 & Section 51

- Execution - Detention - Procedure prescribed in Rules 37 & 40 of Order 21 of Civil Procedure Code, 1908 is to be followed before arrest of J.D. is ordered. (P.Laxma Reddy Vs Syndicate Bank) 2006(1) Civil Court Cases 103 (A.P.)

Civil Procedure Code, 1908, Order 21 Rules 37 & 40 - Appearance

- Use of word 'appearance' in Order 21 Rule 37(1), Order 21 Rule 40(2) & Order 21 Rule 40(3) connotes the physical appearance of J.D. and not appearance through recognized agent or pleader. (Goparaju Venkata Satya Suryanarayana Vs Tallapragada Naga Venkata Suryanarayana Murthy) 2006(4) Civil Court Cases 219 (A.P.)

Civil Procedure Code, 1908, Order 21 Rules 37 and 38 & Section

41 - Arrest & detention - J.D. a man of no means - J.D. doing coolie work - When a person does not have any means to clear of his debts, he cannot be arrested - Order directing arrest of J.D. set aside. (Dharmalingam Vs Pavalkodi) 2005(1) Civil Court Cases 342 (Madras)

Civil Procedure Code, 1908, Order 21 Rules 38, 40 - Execution -

Arrest of J.D. - Court hearing counsel for parties and then issuing warrant under R.38 - It is not order under R.40 - It is order under R.38 without conduct of enquiry under R.40 - It being one under R.38, is not without jurisdiction. (K.Manokaran Vs A.U.Subbananan) AIR 2002 Madras 340

Civil Procedure Code, 1908, Order 21 Rules 40, 37, Section 51 -

J.D. brought under arrest as he failed to appear inspite of notice - Provision of Order 21 Rule 40 is still applicable - Order 21 Rule 40 is mandatory in nature - Opportunity be given to J.D. to show cause why he should not be imprisoned before ordering his imprisonment - Unless decree holder proves the means and also the circumstances specified under Section 51(c) of the Act, J.D. who is brought before Court under arrest cannot be ordered to be detained in civil prison. (Raju Vs Indian Overseas Bank) 2006(3) Civil Court Cases 688 (Kerala)

Civil Procedure Code, 1908, Order 21 Rule 41, 11(2) - Application

U.O.21 Rule 41 is not an application for execution of decree - Application can precede filing of execution petition. (United Phosphorous Ltd. Vs A.K.Kanoria) AIR 2003 Bombay 97

Civil Procedure Code, 1908, Order 21 Rules 43, 54, Order 32 Rule 15 - Lunatic - Attachment of property of a lunatic - Lunatic defended by a guardian appointed by a Court - Property can be attached in execution of decree. (Jolly Vs Oriental Kuries Ltd.) 2003(2) Civil Court Cases 484 (Kerala)

Civil Procedure Code, 1908, Order 21 Rules 43, 54 and 90 - Machinery embedded in earth and fastened with bolts - It is still movable property - Auction sale cannot be set aside for not following the procedure applicable to sale of immovable property. (Shree Arcee Steel Private Limited, Bangalore & Anr. Vs Bharat Overseas Bank Limited, Bangalore & Anr.) 2005(2) Civil Court Cases 238 (Karnataka)

SC Civil Procedure Code, 1908, Order 21 Rules 49, 50 - Decree against partnership firm - Execution can be granted against the partnership property - D.H. can also proceed against the separate property of partners. (Ashutosh Vs State of Rajasthan & Ors.) 2005(2) Apex Court Judgments 657 (S.C.) : 2005(3) Civil Court Cases 606 (S.C.)

Civil Procedure Code, 1908, Order 21 Rule 50 & O.30 Rule 6 - Decree against firm - Can be executed against partner individually who had been served with notice of suit and had appeared in suit individually - Personal property of such partner when attached in execution of decree against firm and he not objecting to same then objection against such attachment filed subsequently by L.R's of partner who were brought on record on death of partner during pendency of execution, is not sustainable. (Shivalingeshwara Oil Mill Vs Channaveerappa) 2005(2) Civil Court Cases 375 (Karnataka)

Civil Procedure Code, 1908, Order 21 Rule 50 & Order 30 Rule 6 - Decree against firm - Can be executed against partner individually who had been served with notice of suit and had appeared in suit individually - Personal property of such partner when attached in execution of decree against firm and he not objecting to same then objection against such attachment filed subsequently by L.R's of partner who were brought on record on death of partner during pendency of execution, is not sustainable. (Shivalingeshwara

Oil Mill Vs Channaveerappa) 2005(2) Civil Court Cases 375 (Karnataka)

SC **Civil Procedure Code, 1908, Order 21 Rule 54(2)** - Auction sale
- Proclamation - Proclamation of sale by beat of drum is not mandatory so long as the sale notice is proclaimed at or adjacent to the property. (Saheb Khan Vs Mohd. Yusufuddin & Ors.) 2006(2) Apex Court Judgments 282 (S.C.) : 2006(2) Civil Court Cases 293 (S.C.)

Civil Procedure Code, 1908, Order 21 Rules 54, 54 (1-a), 66, 90
- Notice - Mere issuance of notice U.O.21 Rule 54(1) cannot be construed as notice U.O.21 Rule 54(1-A) - Only when notice U.O.21 Rule 54(1-A) is issued proviso to O.21 Rule 66(2) springs into action i.e. when notice U.O.21 Rule 54(1-A) is issued then no further notice as required U.O.21 Rule 66(2) is required. (Pappasani Narayana Reddy Vs Mandem Reddappa Reddy) 2005(1) Civil Court Cases 480 (A.P.)

Civil Procedure Code, 1908, Order 21 Rules 54, 54 (1-a), 66, 90 - Notice - Mere issuance of notice under Order 21 Rule 54(1) cannot be construed as notice under Order 21 Rule 54(1-A) - Only when notice under Order 21 Rule 54(1-A) is issued proviso to Order 21 Rule 66(2) springs into action i.e. when notice under Order 21 Rule 54(1-A) is issued then no further notice as required under Order 21 Rule 66(2) is required. (Pappasani Narayana Reddy Vs Mandem Reddappa Reddy) 2005(1) Civil Court Cases 480 (A.P.)

Civil Procedure Code, 1908, Order 21 Rules 54, 66 - Attachment
- Omission to affix order of attachment in the notice board of the office of District Collector - Does not amount to material irregularity - Private sales will be valid only if it is shown that substantial injustice was done to the persons who purchased the property under private sales by virtue of non-compliance with the provisions in O.21 Rule 66 or O.21 Rule 54 CPC. (Peta Thallamma Vs Pedamallu Gopala Krishna Murthy) 2003(3) Civil Court Cases 90 (A.P.)

Civil Procedure Code, 1908, Order 21 Rule 57 - Attachment in execution - Dismissal of execution petition - Order of attachment ceases to exist. (Linga Vs M/s Saravana Enterprises) AIR 2003 Karnataka 128

Civil Procedure Code, 1908, Order 21 Rule 58, Order 38 Rule 8,

Order 9 Rule 9 - Attachment - Appellant purchased the property and applied for raising of attachment - Application dismissed for default - Property put to sale in auction - Application U.O.21 Rule 58 filed in execution - Inquiry provided U.O.38 Rule 8 is to be conducted like a trial in a regular suit and an order passed thereunder amounts to a decree against which an appeal lies - Held, second application in execution petition does not lie as the same is barred U.O.9 Rule 9 CPC. (Satyamsetti Somaraju Vs Ramiseti Naidu @ Vekata Rao & Anr.) 2004(2) Civil Court Cases 590 (A.P.)

Civil Procedure Code, 1908, Order 21 Rule 58, Order 7 Rule 11 - Claim petition - Every claim petition need not be insisted to be tried as a suit on merits - Petition can be dismissed for non disclosure of cause of action U.O.7 Rule 11 CPC. (P.Divya (Kumari) Vs P.Jayender Rao & Anr.) 2004(2) Civil Court Cases 438 (A.P.)

Civil Procedure Code, 1908, Order 21 Rule 58, Order 7 Rule 11 - Claim petition - Every claim petition need not be insisted to be tried as a suit on merits - Petition can be dismissed for non disclosure of cause of action under Order 7 Rule 11 of Civil Procedure Code, 1908. (P.Divya (Kumari) Vs P.Jayender Rao) 2004(2) Civil Court Cases 438 (A.P.)

Civil Procedure Code, 1908, Order 21 Rule 58, Section 11 - Attachment before judgment - Application for raising of attachment - Dismissed for default - Said default dismissal order became final and conclusive - Another application U.O.21 Rule 58 on same cause of action is not permissible. (Satyamsetti Vs Ramiseti) AIR 2004 A.P. 87

Civil Procedure Code, 1908, Order 21 Rule 58, Section 115 - Attachment - Application for raising attachment - Dismissed - Such dismissal amounts to a decree - Revision against - Not maintainable - Party affected can file appeal but not a fresh suit. (Ravindra Sheregara Vs Syndicate Bank) AIR 2002 Karnataka 324

Civil Procedure Code, 1908, Order 21 Rule 58 - Attachment - Joint Family Property of father, 2 major sons and 2 minor sons - On petition by two major sons raising attachment allowed - Therefore attachment in respect of 2/5th share of two appellant minor sons can also be raised as they stand on same footing. (Kongisi Vs Kongisi) AIR 2003 A.P. 297

Civil Procedure Code, 1908, Order 21 Rule 58 - Attachment - Objections - Court is obliged to reject the objections if it considers that the objections have been designedly or unnecessarily delayed. (Ranjit Singh Vs Kamaljit Singh) 2004(2) Civil Court Cases 318 (P&H)

Civil Procedure Code, 1908, Order 21 Rule 58 - Attachment - Objections - Ownership claimed on the basis of Will dated 21.2.1993 - However on the basis of Will no mutation of inheritance entered and the Will did not see the light of the day till the suit property was attached - Principle laid down in O.21 Rule 58(1) Proviso (b) applies as the objections are filed designedly and unnecessarily to delay the execution - Objections dismissed. (Ranjit Singh Vs Kamaljit Singh) 2004(2) Civil Court Cases 318 (P&H)

Civil Procedure Code, 1908, Order 21 Rule 58 - Collusive decree suffered in favour of sons to avoid payment of accident compensation - Decree suffered after the accident but before filing of accident claim petition - Decree passed in favour of sons is liable to be ignored and there is no need to file a separate suit to challenge the decree. (Surender Singh & Ors. Vs Omvati & Ors.) 2006(1) Civil Court Cases 46 (P&H)

SC Civil Procedure Code, 1908, Order 21 Rule 58 - Money decree - Execution - Attachment of joint property - If the co-owner of property is neither a debtor nor a guarantor then his share in the property cannot be attached merely because that co-owner happens to be the wife of J.D. or a partner in business. (Janki Vashdeo Bhojwani & Anr. Vs Indusind Bank Ltd. & Ors.) 2004(1) Apex Court Judgments 681 (S.C.) : 2004(2) Civil Court Cases 305 (S.C.)

Civil Procedure Code, 1908, Order 21 Rule 58 - Suit for recovery of money - Consent decree passed and decree also ordered sale of one building belonging to defendant - Said building did not fetch sufficient amount to satisfy decree - Sale of other properties - Order not erroneous - Plea that earlier decree was only in respect of sale of property and was not a money decree, not tenable. (Ramzanali Gulamhussain Ramodiya Vs Hamida Karim Ramodiya) AIR 2002 Bombay 526

Civil Procedure Code, 1908, Order 21 Rule 58 - Transfer of property - Law does not prevent transfer of property even after filing of suit unless it is established that defendant has acquired any definite interest in that property.

(Mohammed Ali Nayyar & Ors. Vs Ahraz Hussain & Anr.) 2005(2) Civil Court Cases 625 (A.P.)

Civil Procedure Code, 1908, Order 21 Rules 58, 66 - Execution - Objections - Framing of issues - In normal course issues are liable to be framed - However where parties are alive to the dispute between them, the mere fact that issues have not been framed would not vitiate the validity of order passed, especially when no prejudice is shown to be caused to the objector - Ultimate test is one of prejudice - In case of prejudice the same has to be remedied. (Anokh Singh (Died) & Ors. Vs Nachhattar Singh & Ors.) 2006(4) Civil Court Cases 361 (P&H)

Civil Procedure Code, 1908, Order 21 Rules 63, 97, 98, 101 & 103 & Section 11 - Independent suit after dismissal of objections - Not maintainable after 1976 amendment - Decisions of objections filed by any party, which includes third party, amounts to a decree as contemplated under Rules 101 & 103 - Remedy is only appeal and not an independent suit - Order passed under Rules 97 & 98 operates as res judicata between same parties if not challenged in appeal. (Attar Singh & Ors. Vs Hargyan (Died) thru. LRs.) 2005(3) Civil Court Cases 374 (P&H)

Civil Procedure Code, 1908, Order 21 Rule 64 - Auction - Only such portion of property be put to auction which is sufficient to satisfy the decree - Auction without considering this aspect is to be considered as illegal and without jurisdiction. (Gopalaswamy Kounder Vs Ramaswamy Kounder) 2006(3) Civil Court Cases 134 (Kerala)

Civil Procedure Code, 1908, Order 21 Rule 64 - Proclamation stating that property will be sold in lots - Sale conducted in disregard to said condition - Improper and liable to be set aside, more so when judgment debtor had moved an application that entire property should not be sold in one lot. (M/s Vidya Hatechery Farm Vs Punjab National Bank) AIR 2002 H.P. 92

SC **Civil Procedure Code, 1908, Order 21 Rule 64** - Provision of Order 21 Rule 64 is mandatory - Only such portion of the property is to be sold which is sufficient to satisfy the decree - Sale not in conformity with the mandatory provision is illegal and without jurisdiction. (Balakrishnan Vs Malaiyandi Konar) 2006(1) Apex Court Judgments 572 (S.C.) : 2006(2) Civil Court Cases 64 (S.C.)

Civil Procedure Code, 1908, Order 21 Rule 66, Order 9 Rule 13

- Execution - Ex parte decree - Execution - Sale of property during pendency of application to set aside ex parte decree - Held, once there is an application for stay of execution proceedings in an application for setting aside ex parte decree, trial Court should not proceed to sell the property in post haste manner - Sale of land without notice to J.D. on the basis of refusal report on application U.O.21 Rule 66 CPC shows that the proceedings have been conducted to grant undue benefit to D.H. (Meher Singh & Ors. Vs Firm Pakher Singh) 2003(3) Civil Court Cases 686 (P&H)

Civil Procedure Code, 1908, Order 21 Rule 66 - Notice of application U.O.21 Rule 66 not served upon J.D. - Valuation of property not given by D.H. - Sale of property suffers from material illegality and irregularity and thus the same set aside. (Meher Singh & Ors. Vs Firm Pakher Singh) 2003(3) Civil Court Cases 686 (P&H)

Civil Procedure Code, 1908, Order 21 Rule 66 - Proclamation of sale - To be drawn up after notice to the decree holder and the judgment-debtor and is required to state fairly and accurately (i) the property to be sold or where a part of the property would be sufficient to satisfy the decree, such part; (ii) the revenue assessed upon the estate or part of the estate; (iii) any encumbrance to which the property is liable; and (iv) the amount for the recovery of which the sale is ordered. (Dharam Pal Vs Ludhiana Improvement Trust & Ors.) 2005(1) Civil Court Cases 30 (P&H)

Civil Procedure Code, 1908, Order 21 Rule 66 - Sale without notice to J.D. is nullity - Jurisdiction to sell the right arises in a Court only where the owner is given notice of the execution for attachment and sale of his property - On notice owner can offer his estimate as he is the person who intimately knew the value of his property prevailing in the locality. (Randhir Singh & Ors. Vs New Bank of India) 2003(1) Civil Court Cases 530 (P&H)

Civil Procedure Code, 1908, Order 21 Rule 66(2), Rule 54 (1-A) - Sale proclamation - Failure of J.D. to file objections, if any, on the valuation assessed by D.H. - Even if no valuation was made by D.H. even then J.D. is not precluded from quoting his price - J.D. came forward only to pay some amount and sought for adjournment of sale - Held, when J.D. failed to avail the opportunity at the initial stage in spite of having full knowledge about the sale proclamation and the proceedings of settlement of terms of sale, no

further opportunity need be given to him, at the time of sale. (S.Nooruddin Vs Khadam Gnanoba) 2004(3) Civil Court Cases 696 (A.P.)

Civil Procedure Code, 1908, Order 21 Rule 66(2) - Execution - Reserve price - Court can subsequently reduce the reserve price in case there are no bidders to purchase the property for the price so fixed. (Dhanalakshmi Bank Ltd. Vs Saritha Furniture Mart) 2006(1) Civil Court Cases 560 (Kerala)

Civil Procedure Code, 1908, Order 21 Rule 66(2) and O.5 Rules 20, 15 - Notice - By affixture - Not a valid notice in the absence of process server making repeated efforts to effect personal service and in the absence of Court ordering to follow the procedure contemplated u/o 5 rule 20 CPC on a report of process server. (Pappasani Narayana Reddy Vs Mandem Reddappa Reddy) 2005(1) Civil Court Cases 480 (A.P.)

Civil Procedure Code, 1908, Order 21 Rule 66(2) and Order 5 Rules 20, 15 - Notice - By affixture - Not a valid notice in the absence of process server making repeated efforts to effect personal service and in the absence of Court ordering to follow the procedure contemplated u/o 5 rule 20 of Civil Procedure Code, 1908 on a report of process server. (Pappasani Narayana Reddy Vs Mandem Reddappa Reddy) 2005(1) Civil Court Cases 480 (A.P.)

SC **Civil Procedure Code, 1908, Order 21 Rules 67(1), 54(2)** - Auction sale - Order of trial Court that sale should be given wide publicity - That does not necessarily mean by publication in the newspaper - Provision of Order 21 Rule 67 clearly provide that if sale is to be advertised in the local newspaper, there must be specific direction of Court to that effect - In the absence of such direction, proclamation of sale has to be made under Order 21 Rule 67(1) “as nearly as may be in the manner prescribed by Rule 54, sub-rule (2) of Civil Procedure Code, 1908. (Saheb Khan Vs Mohd. Yusufuddin & Ors.) 2006(2) Apex Court Judgments 282 (S.C.) : 2006(2) Civil Court Cases 293 (S.C.)

Civil Procedure Code, 1908, Order 21 Rule 72A(2) - “Reserve price” and “upset price” - Difference - Though analogous and almost homologous are not synonymous. (Nedungadi Bank Ltd. Vs Ezhimala Agrl. Products) 2004(2) Civil Court Cases 95 (Kerala)

Civil Procedure Code, 1908, Order 21 Rule 77 - Arrears of pay - Sale of property - Petitioner never filed objections - Bank one of the creditors claiming first charge over said property also did not file objections to sale on ground of pendency of proceedings before Debt Recovery Tribunal - Officer of purchaser accepted in absence of better offer - Petitioner and Banker subsequently raising objection to auction on ground of inadequate consideration - Held, not maintainable in absence of any bona fides - Moreover, purchaser has already deposited entire payment and he should not suffer for no fault of his. (M/s Samrat Ashok Exports Ltd. Vs Asstt. Provident Fund Commissioner) AIR 2002 Karnataka 61

Civil Procedure Code, 1908, Order 21 Rules 84, 86 - Auction sale - Deposit of 25% of purchase money in Court immediately after auction - Provision is mandatory - Failure to do so - Renders the auction proceedings a nullity - Sale set aside - D.H. withdrew the amount deposited by auction purchaser subsequently - D.H. to refund the said amount with interest at 10% p.a. within 3 months, in default, to pay interest at 18% p.a. (M/s. Ganry's and Ganry's Vs M/s. J. Sikile (India) Ltd.) 2003(2) Civil Court Cases 237 (A.P.)

Civil Procedure Code, 1908, Order 21 Rule 85, Sections 148 & 151 - 25% of auction money deposited - Failure to deposit the remainder within 15 days - Extension of time - Provision of O.21 Rule 85 is mandatory and Court cannot extend time u/s 148 - Inherent power also cannot be used to extend time fixed by law - Time for deposit of full purchase money fixed by law as 15 days cannot be extended. (United Commercial Bank Vs Mani Ram, Dhani Ram) 2003(3) Civil Court Cases 498 (H.P.)

Civil Procedure Code, 1908, Order 21 Rule 85 - Auction - Deposit of auction amount - Period of 15 days - Provision is mandatory - Court in exercise of power u/ss 148 or 151 cannot extend time. (United Commercial Bank Vs Mani Ram) AIR 2003 H.P. 63

Civil Procedure Code, 1908, Order 21 Rule 85 - Provision is mandatory - Failure to deposit balance purchase money within period of 15 days results in cancellation of sale itself. (Kadeeja Vs Chandrika) 2005(1) Civil Court Cases 635 (Kerala)

Civil Procedure Code, 1908, Order 21 Rule 85 - Purchase money - Deposit - Period expiring on day while strike was on and deposit made on the

working day next after lifting of strike - Deposit is within time. (Limitation Act, 1963, Sections 4, 5 & 9). (Kadeeja Vs Chandrika) 2005(1) Civil Court Cases 635 (Kerala)

Civil Procedure Code, 1908, Order 21 Rule 85 r/w R.72 - Auction sale - Failure to deposit full amount of sale price within specified period of 15 days - Sale becomes a nullity. (Fauja Singh Vs Mohinder Singh) 2003(3) Civil Court Cases 190 (P&H)

Civil Procedure Code, 1908, Order 21 Rule 86 - 25% of purchase money deposited - Failure to deposit the remainder within 15 days - Forfeiture - Default in deposit stated to be due to lack of knowledge of the provision and also due to illness of mother and time consumed in treatment - After deducting the expenses of sale, one half of the remainder of the amount ordered to be forfeited to Govt. and the remaining half is ordered to be refunded to the auction purchaser. (United Commercial Bank Vs Mani Ram, Dhani Ram) 2003(3) Civil Court Cases 498 (H.P.)

Civil Procedure Code, 1908, Order 21 Rules 89, 90, Section 115 - Auction sale - Setting aside - Cannot be allowed to be achieved by maintaining revision - Remedies U.O.21 Rules 89, 90 to be availed. (Vummethala Vs Thameeru) AIR 2003 A.P. 45

Civil Procedure Code, 1908, Order 21 Rules 89, 90 & 48 - Auction sale - Setting aside - Fraud - Sale can be set aside on ground of fraud - Undervaluation by itself is not sufficient to infer fraud - However gross undervaluation coupled with other circumstances such as one of the purchasers being the son of one of the J.D's and another one being a relative of one of the J.D's and the enthusiasm exhibited by J.D's in having the sale of their own property confirmed are circumstances indicating fraud. (Nedungadi Bank Ltd. Vs Ezhimala Agrl. Products) 2004(2) Civil Court Cases 95 (Kerala)

Civil Procedure Code, 1908, Order 21 Rule 90, Limitation Act, 1963, Section 5 - Auction sale - Setting aside - Limitation is 60 days - Time begins to run from the date of sale - Process of moving an application U.O.21 Rule 90 has to precede the confirmation of sale - Provision of S.5 Limitation Act is not applicable to an application under O.21 CPC. (Mangilal Narsingdas Gattani Vs Shaligram Ukarda Payghan) 2003(1) Civil Court Cases 497

(Bombay)

Civil Procedure Code, 1908, Order 21 Rule 90 - Auction sale - Setting aside - Auction sale cannot be set aside upon any ground, which the applicant could have taken on or before the date on which the proclamation of sale was drawn up - If J.D. omits to inform Court, right in time, of his objections he cannot be heard to say on such objections subsequently. (Achutha Prabhu Vs Vijaya Bank & Anr.) 2005(2) Civil Court Cases 487 (Karnataka)

Civil Procedure Code, 1908, Order 21 Rule 90 - Auction sale - Setting aside - Failure to state the existence of a well and mango tree in the sale proclamation - J.D. was present through Advocate when sale proclamation was settled - No such objection was raised at that stage by J.D. - Held, J.D. is prohibited from raising that objection as constituting material irregularity in the conduct of sale in view of provisions of O.21 Rule 90(3) CPC. (Mangilal Narsingdas Gattani Vs Shaligram Ukarda Payghan) 2003(1) Civil Court Cases 497 (Bombay)

SC Civil Procedure Code, 1908, Order 21 Rule 90 - Auction sale - Setting aside - Fraud or material irregularity - Must be specifically made with sufficient particulars - Bald allegations are not sufficient. (Saheb Khan Vs Mohd. Yusufuddin & Ors.) 2006(2) Apex Court Judgments 282 (S.C.) : 2006(2) Civil Court Cases 293 (S.C.)

Civil Procedure Code, 1908, Order 21 Rule 90 - Auction sale - Setting aside - In auction proclamation liabilities of property attached were shown only labour dues and there was no mention of electricity dues - Omission to mention electricity dues, not a ground to set aside auction sale. Order 21 Rule 90 - Auction sale - Setting aside - Property attached can be sold in lots. (District Co-operative Federation Ltd. & Anr. Vs State of U.P. & Ors.) 2005(3) Civil Court Cases 564 (Allahabad)

Civil Procedure Code, 1908, Order 21 Rule 90 - Auction sale - Setting aside - Mere assertion of circumstances not sufficient to prove fraud - No material produced to prove the same - Further application to set aside sale filed beyond period of limitation of sixty days - Application cannot be entertained. (Boban Vs Sajith Kumar) AIR 2004 Kerala 181

SC **Civil Procedure Code, 1908, Order 21 Rule 90** - Auction sale - Setting aside - Mere establishing material irregularity or fraud is not sufficient - Applicant must establish that material irregularity or fraud has resulted in substantial injury to the applicant - Conversely even if applicant has suffered substantial injury by reason of sale, this is not sufficient to set aside sale unless substantial injury has been occasioned by a material irregularity or fraud in publishing or conducting the sale. (Saheb Khan Vs Mohd. Yusufuddin & Ors.) 2006(2) Apex Court Judgments 282 (S.C.) : 2006(2) Civil Court Cases 293 (S.C.)

Civil Procedure Code, 1908, Order 21 Rule 90 - Auction sale - Setting aside - Mere inadequacy of price is not a ground to set aside auction sale - However if there is material irregularity in conducting the sale leading to substantial injury to J.D. then sale has to be set aside. (Randhir Singh & Ors. Vs New Bank of India) 2003(1) Civil Court Cases 530 (P&H)

Civil Procedure Code, 1908, Order 21 Rule 90 - Auction sale - Setting aside - Sale proclamation served on cashier of petitioner - Auction sale cannot be set aside merely on the ground that notice of auction sale was not given to the petitioner. (District Co-operative Federation Ltd. & Anr. Vs State of U.P. & Ors.) 2005(3) Civil Court Cases 564 (Allahabad)

Civil Procedure Code, 1908, Order 21 Rule 90 - Auction sale - Setting aside - Value estimated by Collector by multiplying area with circle rate - No illegality - Non mentioning of estimated value of attached property in prescribed form or sale proclamation - No substantial injury caused - Merely because land adjacent to road had been sold, no injury resulted - Auction sale cannot be set aside on ground of such irregularity or mistake. (District Co-operative Federation Ltd. & Anr. Vs State of U.P. & Ors.) 2005(3) Civil Court Cases 564 (Allahabad)

Civil Procedure Code, 1908, Order 21 Rule 90 - Minor - Mother appointed as guardian in execution proceedings - Next friend of minor is not precluded from filing petition under Order 21 Rule 90 of Civil Procedure Code, 1908 on behalf of minor. (Gopalaswamy Kounder Vs Ramaswamy Kounder) 2006(3) Civil Court Cases 134 (Kerala)

Civil Procedure Code, 1908, Order 21 Rule 90 - Sale - Notice not given to J.D. for drawing up sale proclamation - Amounts to substantial injury

- Sale set aside. (Randhir Singh & Ors. Vs New Bank of India) 2003(1) Civil Court Cases 530 (P&H)

Civil Procedure Code, 1908, Order 21 Rule 90 - Sale - Ordered to be conducted by SDO (Civil) - However, sale not conducted by him - It is material irregularity. (Ludhiana Improvement Trust Vs Balraj Singh) AIR 2002 P&H 277

Civil Procedure Code, 1908, Order 21 Rule 90 - Sale - Setting aside - Limitation - Sale sought to be set aside on ground of material irregularity or fraud in publishing or conducting sale - Held, length of time not to be admitted for refusing relief. (Ludhiana Improvement Trust Vs Balraj Singh) AIR 2002 P&H 277

Civil Procedure Code, 1908, Order 21 Rule 90 - Sale - Setting aside - Notice to J.D. not given - How much property will be sufficient to meet the decretal amount and how much should be the reserve price not decided - No notice to prospective bidders as to postponement of sale - No proclamation of sale in local newspaper - Sale price entered in sale deeds is not the true price as the same is under valued to avoid payment of stamp duty - Sale liable to be set aside. (Randhir Singh Vs New Bank of India) AIR 2002 P&H 264

Civil Procedure Code, 1908, Order 21 Rule 90 - Sale - Setting aside - Sale cannot be set aside merely on irregularity in publishing or conducting sale - Sale can be set aside if there is material irregularity or fraud in conducting or publishing the sale and there is irreparable injury. (Randhir Singh & Ors. Vs New Bank of India) 2003(1) Civil Court Cases 530 (P&H)

Civil Procedure Code, 1908, Order 21 Rule 90 - Sale - Setting aside - Sale found to be nullity - No question of limitation in making application for setting aside sale arises in such cases. (Randhir Singh Vs New Bank of India) AIR 2002 P&H 264

Civil Procedure Code, 1908, Order 21 Rule 90 & Limitation Act, 1963, Art.127 - Auction sale - Setting aside - Limitation - Notice not given to J.D. for drawing up sale proclamation - Sale is a nullity - There is no question of 60 days limitation in making application for setting aside sale. (Randhir Singh & Ors. Vs New Bank of India) 2003(1) Civil Court Cases 530 (P&H)

Civil Procedure Code, 1908, Order 21 Rules 90, 66 - Auction sale - Setting aside - Execution of ex parte decree - Application for stay of execution filed in an application for setting aside ex parte decree - Trial Court should not have proceeded to sell the property in post-haste manner - Sale of land without notice to J.D. on refusal report on an application under Order 21 Rule 66 of Civil Procedure Code, 1908 shows that the proceedings have been conducted to grant undue benefit to D.H. - Sale set aside. (Meher Singh & Ors. Vs Firm Pakhar Singh Amir Singh & Ors.) 2005(1) Civil Court Cases 170 (P&H)

Civil Procedure Code, 1908, Order 21 Rules 90, 66 - Auction sale - Setting aside - Notice under Order 21 Rule 66 of Civil Procedure Code, 1908 not served upon J.D. nor the valuation of property given by D.H. - Held, sale of property suffers from material illegality and irregularity and the same is liable to be set aside. (Meher Singh & Ors. Vs Firm Pakhar Singh Amir Singh & Ors.) 2005(1) Civil Court Cases 170 (P&H)

Civil Procedure Code, 1908, Order 21 Rules 90, 66 - Auction sale - Setting aside - Proclamation of sale - Notice ordered to be issued to J.D. but not served - Proclamation did not contain the correct amount of recovery of which sale was ordered - Court did not record the satisfaction that the sale of property or part of property would be sufficient to satisfy the decree - Proclamation did not contain the estimate given by J.D. in the proclamation - Held, these irregularities are sufficient not to confirm sale. (Dharam Pal Vs Ludhiana Improvement Trust & Ors.) 2005(1) Civil Court Cases 30 (P&H)

Civil Procedure Code, 1908, Order 21 Rules 90, 66 - Execution - Sale of property without notice to J.D. - Sale is nullity. (Randhir Singh Vs New Bank of India) AIR 2002 P&H 264

Civil Procedure Code, 1908, Order 21 Rules 92, 89 to 91, Limitation Act, 1963, Article 127 - Auction sale - Confirmed one month before expiry of limitation of 60 days to file objections - Order confirming sale set aside - As regards limitation, left over time of about 29 days would be available to J.D. - As J.D. has paid the amount as required to be deposited under Order 21 Rule 89 as such four weeks time granted to file objections. (Gosu Venkata Sesha Reddy & Anr. Vs Valluru Krishnaiah Naidu) 2005(2) Civil Court Cases 672 (A.P.)

Civil Procedure Code, 1908, Order 21 Rules 92, 89 to 91, Limitation Act, 1963, Article 127 - Auction sale - Confirmed without waiting for the period of limitation to expire to file objections - Executing Court cannot take step of confirmation of sale without waiting either till the expiry of 60 days time for filing application to set aside sale or if such application is filed, till its disposal - In the instant case sale confirmed almost one month before last date of limitation for filing application to set aside sale - Order confirming sale set aside. (Gosu Venkata Sesha Reddy & Anr. Vs Valluru Krishnaiah Naidu) 2005(2) Civil Court Cases 672 (A.P.)

SC Civil Procedure Code, 1908, Order 21 Rules 92, 93, Companies Act, 1956, Section 457(1)(c), Companies (Court) Rules, 1959, Rr.272, 273, 274 - Auction sale - Set aside - Repayment of purchase price - Interest - Under O.21 Rule 93 CPC it is discretion of Court setting aside sale either to award interest or not to award interest - Obtaining of possession by purchaser on deposit of purchase price is relevant in deciding whether purchaser would be entitled to interest on the purchase price - Interest not allowed keeping in view that purchaser obtained possession even before he had paid the entire purchase price and had paid only 25 per cent or so of the purchase price and kept that possession for 10 years. (Allahabad Bank etc. Vs Bengal Paper Mills Co. Ltd. & Ors.) 2005(1) Apex Court Judgments 657 (S.C.) : 2005(2) Civil Court Cases 196 (S.C.)

SC Civil Procedure Code, 1908, Order 21 Rules 92, 93, Companies Act, 1956, Section 457(1)(c), Companies (Court) Rules, 1959, Rules 272, 273, 274 - Auction sale - Set aside - Repayment of purchase price - Interest - Under Order 21 Rule 93 of Civil Procedure Code, 1908 it is discretion of Court setting aside sale either to award interest or not to award interest - Obtaining of possession by purchaser on deposit of purchase price is relevant in deciding whether purchaser would be entitled to interest on the purchase price - Interest not allowed keeping in view that purchaser obtained possession even before he had paid the entire purchase price and had paid only 25 per cent or so of the purchase price and kept that possession for 10 years. (Allahabad Bank etc. Vs Bengal Paper Mills Co. Ltd. & Ors.) 2005(1) Apex Court Judgments 657 (S.C.) : 2005(2) Civil Court Cases 196 (S.C.)

SC Civil Procedure Code, 1908, Order 21 Rules 92, 94 - Auction sale - Sale becomes absolute on confirmation - It cannot be said to attain finality

only when sale certificate is issued. (Balakrishnan Vs Malaiyandi Konar) 2006(1) Apex Court Judgments 572 (S.C.) : 2006(2) Civil Court Cases 64 (S.C.)

Civil Procedure Code, 1908, Order 21 Rule 95, Limitation Act, 1963, Article 134 - Auction sale - Delivery of possession - Limitation - One year - To be computed from the date on which sale becomes absolute and not from the date the sale certificate is issued. (Abdul Rahman Vs Vth Addl. District Judge & Ors.) 2006(2) Civil Court Cases 470 (Allahabad)

Civil Procedure Code, 1908, Order 21 Rule 97, Order 41 Rule 11 - Dismissal of application U.O.21 Rule 97 - Dismissal to be treated as decree against which an appeal lies. (Balraj Singh & Anr. Vs Ajit Singh) 2004(3) Civil Court Cases 673 (Rajasthan)

Civil Procedure Code, 1908, Order 21 Rule 97, Order 41 Rule 11 - Dismissal of application under Order 21 Rule 97 - Dismissal to be treated as decree against which an appeal lies. (Balraj Singh & Anr. Vs Ajit Singh) 2004(3) Civil Court Cases 673 (Rajasthan)

Civil Procedure Code, 1908, Order 21 Rule 97, Section 115 - Execution - Decree for possession of immovable property - Application of obstructing party dismissed at its threshold on ground of maintainability - No inquiry into right, title and interest of parties made - Held, such an order cannot be deemed to be decree - Revision and not appeal is maintainable against such order. (Ram Kumar Tiwari Vs Deenanath & Ors.) AIR 2002 Chhattisgarh 1

Civil Procedure Code, 1908, Order 21 Rule 97, Section 151 - Application u/s 151 filed in execution petition seeking police protection for effecting delivery of possession - Though application is one u/s 151 but nature of relief sought is one under O.21 Rule 97 for removal of obstruction by third parties - Such an application cannot be ordered without notice - It is mandatory that adjudication be made in such application after giving notice and hearing the parties who are other than J.D's. (Dairapu Satyanarayana & Ors. Vs Omni Appala Naidu & Ors.) 2004(3) Civil Court Cases 505 (A.P.)

Civil Procedure Code, 1908, Order 21 Rule 97, Section 151 - Application under Section 151 filed in execution petition seeking police

protection for effecting delivery of possession - Though application is one under Section 151 but nature of relief sought is one under Order 21 Rule 97 for removal of obstruction by third parties - Such an application cannot be ordered without notice - It is mandatory that adjudication be made in such application after giving notice and hearing the parties who are other than J.D's. (Dairapu Satyanarayana & Ors. Vs Omni Appala Naidu) 2004(3) Civil Court Cases 505 (A.P.)

Civil Procedure Code, 1908, Order 21 Rule 97 - Application U.O.21 Rule 97 filed on 14.10.2003 but Court did not pass any order and posted it for orders on 1.11.2003 - However, on 14.10.2003 order for execution of decree with police help passed - Application U.O.21 Rule 97 CPC will be deemed to have been dismissed. (Balraj Singh & Anr. Vs Ajit Singh) 2004(3) Civil Court Cases 673 (Rajasthan)

Civil Procedure Code, 1908, Order 21 Rule 97 - Application under Order 21 Rule 97 filed on 14.10.2003 but Court did not pass any order and posted it for orders on 1.11.2003 - However, on 14.10.2003 order for execution of decree with police help passed - Application under Order 21 Rule 97 of Civil Procedure Code, 1908 will be deemed to have been dismissed. (Balraj Singh & Anr. Vs Ajit Singh) 2004(3) Civil Court Cases 673 (Rajasthan)

Civil Procedure Code, 1908, Order 21 Rule 97 - Decree for delivery of symbolic possession - Applicant a stranger to decree in possession of suit premises as lessee - Unless and until objections of applicant are heard, no order in execution requiring applicant to handover vacant possession of suit premises can be passed. (Roshanlal Vs Avinash) AIR 2003 Bombay 31

Civil Procedure Code, 1908, Order 21 Rule 97 - Decree for possession - Obstruction by third party - Obstructor claiming possession by virtue of his induction as lessee under oral agreement by D.H. himself during pendency of suit - J.D. held to be in possession as lessee by trial Court and first Appellate Court - Claim made by obstructor cannot be believed in absence of evidence, as there cannot be two tenancies of single tenement - Party claiming under D.H. cannot be obstructor and his petition against execution of decree is not maintainable. (Ramachandra Vs Smt.Kempamma) 2003(2) Civil Court Cases 254 (Karnataka)

Civil Procedure Code, 1908, Order 21 Rule 97 - Eviction petition -

Execution - Death of tenant - Legal heirs of tenant become only joint tenants and not tenants in common - Eviction decree against one of the joint tenants - Decree is binding on other joint tenants - Objection to execution of decree by other joint tenant - Not tenable. (Smt.Munni Vs Smt.Zareena Begum & Ors.) 2005(3) Civil Court Cases 811 (Allahabad)

Civil Procedure Code, 1908, Order 21 Rule 97 - Execution - Decree for possession of immovable property - Objection can be raised by party apprehending dispossession. (Ram Kumar Tiwari Vs Deenanath) AIR 2002 Chhattisgarh 1

Civil Procedure Code, 1908, Order 21 Rule 97 - Execution - Payments made during pendency of suit and/or execution proceedings - Adjustment - Provision of O.21 Rule 97 CPC cannot be invoked to make such an application. (Kokila Manohar Bhavsar & Anr. Vs Sulochana Vasant Bhavsar) 2005(1) Civil Court Cases 340 (Bombay)

Civil Procedure Code, 1908, Order 21 Rule 97 - Execution - Payments made during pendency of suit and/or execution proceedings - Adjustment - Provision of Order 21 Rule 97 of Civil Procedure Code, 1908 cannot be invoked to make such an application. (Kokila Manohar Bhavsar & Anr. Vs Sulochana Vasant Bhavsar) 2005(1) Civil Court Cases 340 (Bombay)

Civil Procedure Code, 1908, Order 21 Rule 97 - Execution - Third party - Has a right to object to the execution of the decree before he is dispossessed. (Padmaja Vs Sajeev) 2006(1) Civil Court Cases 771 (Kerala)

Civil Procedure Code, 1908, Order 21 Rule 97 - Obstruction to possession - In case of obstruction D.H. has to file an application under O.21 Rule 97 - In spite of obstruction Court Nazir taking forcible possession - Illegal - Such an act of Nazir amounts to misconduct - Conduct of Nazir and acceptance of his report by Executing Court in such circumstances of the case is reprehensible. (Katepaga Yadagiri & Ors. Vs B.Maheshwar Reddy) 2004(2) Civil Court Cases 174 (A.P.)

Civil Procedure Code, 1908, Order 21 Rule 97 - Obstructor - Not clear as to what is his position - Order as to enquiry to ascertain position of

obstructor - No illegality or irregularity in order. (Balraj Singh & Anr. Vs Ajit Singh) 2004(3) Civil Court Cases 673 (Rajasthan)

SC **Civil Procedure Code, 1908, Order 21 Rule 97** - Removal of person bound by decree who does not vacate - It would include claim of a person who claims to be in possession in his own right and independently of judgment debtor but whose claim ex facie is unsustainable - However, when resistance is offered or where obstruction proceeds from the claimant claiming to be in possession in his own right and whose claim cannot be rejected on the ground of want of good faith, without investigation, the Decree Holder must proceed U.O.21 Rule 97 CPC. (P.Janardhana Rao Vs Kannan & Ors.) 2004(2) Apex Court Judgments 626 (S.C.)

Civil Procedure Code, 1908, Order 21 Rule 97 & S.11 - Obstructors - Asserted their lawful possession as tenant - Earlier an application based on same facts was rejected - Order became final with dismissal of revision - Trial Court is not required to determine alleged claim of tenancy as the application is barred by res judicata u/s 11 of the Code. (Abdul Sattar & Ors. Vs Gurlingayya) 2003(1) Civil Court Cases 489 (Karnataka)

Civil Procedure Code, 1908, Order 21 Rule 97(2) - Adjudication/enquiry - Adjudication envisaged need not necessarily be a full fledged adjudication akin to O.21 Rule 58 CPC - It need not be a detailed enquiry by collection of evidence - However, if evidence is necessary then parties may be directed to adduce evidence. (Pagidi Padmavathi & Anr. Vs Kanala Nagaraju & Ors.) 2004(2) Civil Court Cases 559 (A.P.)

Civil Procedure Code, 1908, Order 21 Rules 97, 101, 102 - Specific performance decree - Execution - Objections by subsequent purchaser during pendency of suit - Transaction is barred by doctrine of lis pendens - Objections of subsequent purchaser during pendency of suit are not to be adjudicated like a civil suit but have to be summarily disposed of. (Jaswant Singh Vs Ralla Singh & Ors.) 2005(3) Civil Court Cases 262 (P&H)

SC **Civil Procedure Code, 1908, Order 21 Rules 97, 103** - Application under Order 21 Rule 97 - Adjudicatory order is treated as decree against which an appeal and not revision is maintainable. (S.Rajeswari Vs S.N.Kulasekaran & Ors.) 2006(3) Civil Court Cases 456 (S.C.) : 2006(2) Apex Court Judgments 766 (S.C.)

Civil Procedure Code, 1908, Order 21 Rules 97, 99, Order 47 Rule

1 - Decree for specific performance - Execution - Delivery of possession - Obstruction - Obstructing party not having subsisting right or outstanding claim of right in terms of settlement deed - Clause relied on by him in the settlement deed not found valid - Obstruction is not maintainable. (Ittiyachan Vs M.I.Tomy) AIR 2002 Kerala 5

Civil Procedure Code, 1908, Order 21 Rules 97, 99 - Execution -

Decree of specific performance - Objectors claiming to be in possession of suit premises but miserably failing to prove same that he was running school in premises in question - Objections rightly dismissed. (Central Academy Educational Society Vs Mool Chand & Ors.) 2004(2) Civil Court Cases 353 (Rajasthan)

Civil Procedure Code, 1908, Order 21 Rules 97 to 99 & 101 -

Execution - Ex parte decree for specific performance - Third party objections claiming to be owner in possession - Court has to decide third party objections before actual delivery of possession takes place - Court acquires jurisdiction to decide it as a question of title between the parties and adjudication given thereon becomes final even with regard to the question of title over the property in dispute. (Harilal Yadav Vs Ghanshyam Shukla & Anr.) 2006(2) Civil Court Cases 435 (Allahabad)

Civil Procedure Code, 1908, Order 21 Rules 98, 103 - Execution

- Possession - Obstruction by J.D. - Application by D.H. for removal of obstruction and delivery of possession - Order rejecting application on ground that same was not filed within limitation - Revision against - Not maintainable as remedy is to file appeal as order is to be treated as a decree. (Nallasivam Vs Dakshinamurthy) AIR 2004 Madras 387

Civil Procedure Code, 1908, Order 21 Rules 99, 101 - Stay of

execution - Petition for stay not filed alongwith objection petition - Trial Court order that stay petition be decided after hearing both the parties and fixed the stay petition alongwith main file - Held, when petitioner is not vigilant and is responsible for the delay then he is not entitled to stay from High Court - There is no reason to interfere in the impugned order - Petition dismissed. (Jagdish Prasad Vs Civil Judge (J.D.) & Ors.) 2005(2) Civil Court Cases 758 (Rajasthan)

SC **Civil Procedure Code, 1908, Order 21 Rules 99 & 100** - Application U.O.21 Rules 99 & 100 - Requirement for consideration of application is whether applicant claimed a right independent of the judgment debtor or not - A person claiming through or under J.D. may be dispossessed in execution of a decree passed against J.D. but not when he is in possession of the premises in question in his own independent right or otherwise. (H.Seshadri Vs K.R.Natarajan & Anr.) 2003(2) Apex Court Judgments 01 (S.C.) : 2003(3) Civil Court Cases 01 (S.C.)

SC **Civil Procedure Code, 1908, Order 21 Rule 99** - Dispossession - Open vacant land - When possession of open vacant land is delivered in execution of a decree it amounts to dispossession of the owner - Merely because at the time of execution of the decree owner was not physically present it cannot be said that delivery of possession to D.H. by Court does not amount to owners ouster or 'dispossession.' (Ashan Devi & Anr. Vs Phulwasi Devi & Ors.) 2004(1) Apex Court Judgments 25 (S.C.) : 2004(2) Civil Court Cases 212 (S.C.)

Civil Procedure Code, 1908, Order 21 Rule 99 - Restoration of possession - Application U.O.21 Rule 99 is maintainable even if execution petition is closed on delivery of possession - Need to file such an application arises only after dispossession and not earlier - Executing Court can entertain such application and pass appropriate orders - Respondent dispossessed with help of Court Nazir having knowledge of its purchase by him - Impugned order of Court below in ordering restoration of possession to respondent - Not illegal. (Katepaga Yadagiri & Ors. Vs B.Maheshwar Reddy) 2004(2) Civil Court Cases 174 (A.P.)

Civil Procedure Code, 1908, Order 21 Rules 101, 103 - Amended provisions of Order 21 Rules 101, 103 as amended by Amendment Act, 1976 are retrospective in its application as no saving clause has been inserted by the legislature. (Attar Singh & Ors. Vs Hargyan (Died) thru. LRs.) 2005(3) Civil Court Cases 374 (P&H)

SC **Civil Procedure Code, 1908, Order 21 Rules 101, 99, 97** - Open vacant land - In execution of decree owner dispossessed as possession reported to be delivered to D.H. - Owner loses his right and control over the land when Nazir of Court delivered possession to D.H. - Such a person

can make an application to executing Court and seek adjudication of his right and title in accordance with O.21 Rule 101 - Separate suit claiming title not required. (Ashan Devi & Anr. Vs Phulwasi Devi & Ors.) 2004(1) Apex Court Judgments 25 (S.C.) : 2004(2) Civil Court Cases 212 (S.C.)

Civil Procedure Code, 1908, Order 21 Rule 102, Transfer of Property Act, 1882, Section 52 - L.R's of J.D. brought on record in execution - Become J.D. - Cannot raise objection for transfer of property to the auction purchaser by claiming tenancy right in said property - Lease created in favour of L.Rs subsequent to passing of decree - Hit by doctrine of lis pendence - Hence void. (Muppidi Dora Reddy Vs Bollreddy Ramakrishan Reddy) AIR 2003 A.P. 299

Civil Procedure Code, 1908, Order 21 Rule 102 - Claim petition - Order in a claim petition is a decree and appeal and second appeal lies - No revision lies. (Vasanthakumari Vs George Selvaraj) 2004(2) Civil Court Cases 524 (Kerala)

Civil Procedure Code, 1908, Order 21 Rule 105 - 'Hearing' - Meaning - It includes stage of delivery of judgment also. (Smt.Vithabai G.Ghodake Vs The United Western Bank Ltd.) 2003(2) Civil Court Cases 137 (Karnataka)

Civil Procedure Code, 1908, Order 21 Rules 105, 106 & S.151 - Execution - Dismissal for default - Restoration - Where application is filed in time and sufficient cause is shown for non appearance of decree-holder on day of hearing, Court can restore dismissed petition to file - Such restoration does not amount to fresh execution and question of limitation therefore does not arise to bar execution. (Smt.Vithabai G.Ghodake Vs The United Western Bank Ltd.) 2003(2) Civil Court Cases 137 (Karnataka)

Civil Procedure Code, 1908, Order 21 Rule 106, Order 5 Rule 10 and 19-A(2) - Execution - Restoration - Notice returned with endorsement as 'not claimed' - Notice is deemed to be duly served - Fact also within knowledge of parties and inspite of this they not participating - Restoration cannot be therefore said to be bad on ground on non service. (Smt.Vithabai G.Ghodake Vs United Western Bank Ltd.) AIR 2003 Karnataka 266

Civil Procedure Code, 1908, Order 21 Rule 106 - Execution -

Restoration of execution proceedings - Does not amount to fresh execution - Petition for execution filed within period of 12 years - Plea that restoration of execution amounts to fresh execution and is barred by limitation - Not sustainable. (Smt.Vithabai G.Ghodake Vs United Western Bank Ltd.) AIR 2003 Karnataka 266

Civil Procedure Code, 1908, Order 21 Rule 106(1), Section 151

- Execution - Dismissal for default - Restoration - Date on which execution application was dismissed for default was fixed for putting up records and not a date fixed for hearing - Dismissal was not under rule 105(2) and therefore provision of Rule 106 is not attracted - There is no time limit prescribed for filing an application for restoration by invoking Section 151 of Civil Procedure Code, 1908. (Radhakrishnan Vs State of Kerala) 2006(1) Civil Court Cases 477 (Kerala)

SC **Civil Procedure Code, 1908, Order 21 Rule 106(3)** - Execution petition - Dismissal for default - Restoration - Limitation - 30 days - Starting point of limitation is date of said order and not from date of acquiring knowledge about dismissal of execution petition. (Damodaran Pillai & Ors. Vs South Indian Bank Ltd.) 2005(2) Apex Court Judgments 594 (S.C.) : 2005(3) Civil Court Cases 530 (S.C.)

Civil Procedure Code, 1908, Order 22 Rule 1 - Impleading of L.R's - Delay of three years - After further gap of 7 years application for condonation of delay filed - Reason stated that applicant practising on criminal side did not know requirements of civil law and the lack of knowledge as to filing of requisite application - Weak and untenable - Right though valuable got extinguished by passage of time - Application dismissed. (Smt.H.T.Shrimathi Rao Vs Prafulla) AIR 2002 Karnataka 255

Civil Procedure Code, 1908, Order 22 Rules 1 and 4(4) - Death of sole defendant during pendency of application U.O.9 Rule 7 CPC - Plaintiff failing to bring on record L.R's within time - No application for setting aside abatement filed by plaintiff thereafter - Suit automatically abated on date of death of sole defendant. (Dharam Singh & Ors. Vs Mukhtiar Singh & Anr.) 2005(1) Civil Court Cases 622 (Rajasthan)

Civil Procedure Code, 1908, Order 22 Rules 1 and 4(4) - Death of sole defendant during pendency of application under Order 9 Rule 7 of

Civil Procedure Code, 1908- Plaintiff failing to bring on record L.R's within time - No application for setting aside abatement filed by plaintiff thereafter - Suit automatically abated on date of death of sole defendant. (Dharam Singh & Ors. Vs Mukhtiar Singh & Anr.) 2005(1) Civil Court Cases 622 (Rajasthan)

Civil Procedure Code, 1908, Order 22 Rules 2, 4, 6 & 11 - Death of one of defendant during pendency of appeal against decree in partition suit - When right to appeal survives on death of one of several defendants, but his L.R's not brought on record within period of limitation, appeal abates - Judgment pronounced by first Appellate Court when appeal had abated, is of no consequence - Second appeal is not maintainable. (M.R.Laxmana (Dead) by Lrs & Ors. Vs Govindappa) 2004(2) Civil Court Cases 147 (Karnataka)

Civil Procedure Code, 1908, Order 22 Rules 2-B (As in P&H) - L.R's - Duty to implead - Is that of the L.R's of the deceased to get themselves impleaded and not of the person who is dominus litis - In case L.R's do not get themselves impleaded in the suit then later on they cannot contend that decree is not executable against them. (Manju Devi Vs Prem Parkash & Ors.) 2006(2) Civil Court Cases 81 (P&H)

Civil Procedure Code, 1908, Order 22 Rule 3, 4, Arbitration Act, 1940, Section 41 - Arbitration proceedings - Provision of Order 22 do not apply to arbitration proceedings - Arbitration proceedings do not abate on death of a party. (Rani Ramakant Vs The First Additional Civil Judge (SD) Mirzapur) 2006(1) Civil Court Cases 440 (Allahabad)

Civil Procedure Code, 1908, Order 22 Rule 3, Order 8 Rule 1 - L.R's - Cannot take a stand contrary to what had been taken by their predecessor-in-interest. (Smt.Chandrakala Vs Kanak Mal) 2003(2) Civil Court Cases 497 (Rajasthan)

SC **Civil Procedure Code, 1908, Order 22 Rule 3** - Appeal - Death of appellant during pendency of appeal - Applicant came to know about pendency of appeal when he received a communication from Advocate engaged by his father - Application rejected on the ground that there was no prayer for setting aside abatement of appeal nor for condonation of delay - Applicant therefore filed separate applications which were also rejected - Held, such technical objections should not come in doing full and complete justice between the

parties - L.R's allowed to be brought on record. (K.Rudrappa Vs Shivappa) 2005(1) Apex Court Judgments 21 (S.C.) : 2005(1) Civil Court Cases 627 (S.C.)

Civil Procedure Code, 1908, Order 22 Rule 3 - Death of one plaintiff during pendency of first appeal and his L.R's not brought on record - All the plaintiffs claimed common ownership and possession - Appeal stands abated in its entirety. (Arigela Laxmi & Anr. Vs Boodireddy Chandraiah) 2003(2) Civil Court Cases 679 (A.P.

Civil Procedure Code, 1908, Order 22 Rule 3 - Death of party during pendency of appeal against interlocutory order - L.R's impleaded - L.R's on record would enure for subsequent stage of suit. (Kanhaiya Prasad Srivastava Vs Smt.Santosh Kumari) AIR 2004 All. 333

Civil Procedure Code, 1908, Order 22 Rule 3 - Suit by bank - Guarantor dead at the time of filing of suit - Order allowing impleadment of L.R's - Order upheld - Bank is not expected to keep itself informed as to whether guarantors are alive or not - Fact as to death of guarantors when came to knowledge of Bank application for impleading L.R's was filed. (Thakur Singh Vs Bank of India) 2006(4) Civil Court Cases 139 (P&H)

Civil Procedure Code, 1908, Order 22 Rule 3 - Suit for specific performance filed jointly by 3 plaintiffs - One of them dying - L.R's not impleaded within time - Entire suit abates. (Smt.Annabai Devram Kini Vs Mithilal Daisangar Singh) AIR 2002 Bombay 332

Civil Procedure Code, 1908, Order 22 Rules 3, 11 - L.R's - Impleading of beneficiary of Will - Allowed - Order upheld as in the matter of determination of legal representatives, the genuineness of Will is not to be final determined as inquiry for determination of legal representatives is summary in nature. (Daljit Singh Vs Bhupinder Singh) 2004(2) Civil Court Cases 352 (P&H)

SC Civil Procedure Code, 1908, Order 22 Rules 3 & 11, Section 11 - Impleading of L.R's - Application held not maintainable on ground that separate application for condonation of delay not filed - Subsequently separate applications filed - Held, subsequent applications not barred by principle of res judicata. (Ganeshprasad Badrinarayan Lahoti (D) by Lrs. Vs Sanjeevprasad

Jamnabprasad Chourasiya) 2004(3) Civil Court Cases 410 (S.C.) : 2004(2) Apex Court Judgments 281 (S.C.)

SC **Civil Procedure Code, 1908, Order 22 Rules 3,4** - Decree passed in favour of a party who was dead or a decree passed against a party who was dead - Such decree is a nullity. (Kishun @ Ram Kishun (Dead) through Lrs Vs Bihari (Dead) by Lrs.) 2005(2) Apex Court Judgments 556 (S.C.) : 2005(3) Civil Court Cases 462 (S.C.)

Civil Procedure Code, 1908, Order 22 Rules 4, 9, 11, Limitation Act, 1963, Section 5 - L.R's - Impleading of - Delay of six years - Setting aside abatement and condonation of delay - Applicants residents of rural area and not knowing that L.R's have to be brought on record within certain time - Rules of procedure are designed to advance justice and should be so interpreted and not to make them penal statutes for punishing erring parties - Rules of limitation are not meant to destroy the rights of parties - Abatement set aside and L.R's ordered to be substituted. (Jeet Ram Vs Ganga Phal & Ors.) 2006(3) Civil Court Cases 416 (P&H)

Civil Procedure Code, 1908, Order 22 Rules 4, 9 - Impleading of L.R's - Setting aside abatement - Prayer for bringing on record legal representatives - Relief of setting aside abatement though not prayed is implied - Order of abatement set aside. (Ram Dulari & Ors. Vs Maniram Ram Prasad Tiwari & Ors.) 2005(1) Civil Court Cases 297 (Bombay)

Civil Procedure Code, 1908, Order 22 Rules 4, 9 - Sole defendant - Death - L.R's not brought on record - Abatement of suit - Plaintiff had no knowledge of death of defendant - Proceedings of suit stayed because of revision filed by defendant - Death of defendant during pendency of revision - Application to implead L.R's filed after four years - Held, in such circumstances trial Court ought to have exercised discretion for allowing application under rule 4 - Application of plaintiff for substitution treated as consolidated application under rules 4 and 9 and same allowed by condoning delay. (Smt.Mohan Devi @ Mohini Devi Vs Lrs. of Himmat Lal Menaria) 2005(1) Civil Court Cases 431 (Rajasthan)

Civil Procedure Code, 1908, Order 22 Rules 4, 9 & O.43 Rule 1(k) - Abatement - Application to set aside - Dismissal - Appeal and not revision lies - Fact of composite application U.O.22 Rules 4 & 9 alongwith

application u/s 5 Limitation Act is immaterial as fact remains that abatement of suit is automatic on failure to bring on record legal representatives of deceased defendant and order passed is one rejecting application to set aside abatement - Revision dismissed with liberty to file appeal within 15 days from receipt of copy of order. (Manohar Lal Vs Surajmal) 2003(2) Civil Court Cases 257 (Rajasthan)

Civil Procedure Code, 1908, Order 22 Rules 4(3) & 9, Order 43 Rule 1(k) - Death of one of the defendants - Impleading of L.R's - Failure to implead - Suit does not abate when one or some of the legal representative are already on record though in a different capacity. (Gautam Bhawan Nirman Sahkari Samiti Ltd., Jodhpur Vs Smt.Ramnik Kumari & Ors.) 2004(3) Civil Court Cases 318 (Rajasthan)

Civil Procedure Code, 1908, Order 22 Rule 4 - Death of one of the defendants - Impleading L.R's. - Averments in application vague - Date of death not given - Deceased defendant a well known person and Ex-Chief Minister of State whose date of death could be easily ascertained by Bank - Belated application without giving explanation for delay - Filed on date when hearing was concluded and delivery of judgment was reserved - Application rejected. (Indian Bank Vs M/s B.Patnaik Mines (P) Ltd.) AIR 2003 Orissa 81

SC Civil Procedure Code, 1908, Order 22 Rule 4 - L.R's - Non impleading - Abatement - Partial abatement - Question has to be considered depending upon the fact as to whether the decree obtained is joint decree or a severable one - In case of a joint and inseverable decree if appeal abates against one or the other, the same cannot be proceeded with further for or against the remaining parties as well - If decree is joint and several or separable one, being in substance and reality a combination of many decrees, there can be no impediment for the proceedings being carried with among or against those remaining parties other than the deceased. (N.Khosla Vs Rajlakshmi (Dead) & Ors.) 2006(2) Apex Court Judgments 667 (S.C.)

Civil Procedure Code, 1908, Order 22 Rule 4 - L.R's - Not entitled to take up a new plea other than the one taken up by the deceased defendant - They are to proceed with the case from the stage of death of defendant. (J.Vijaya Bhaskar & Ors. Vs J.Jayalakshmi & Ors.) 2004(3) Civil Court Cases 176 (Madras)

Civil Procedure Code, 1908, Order 22 Rule 4 - Legal representative
- Heir and legal representative can be different - One of sons of deceased already on record - Estate of deceased is fully represented - No question of abatement. (Prahlaad Singh Vs The President District Consumer Disputes Redressal Forum & Ors.) 2005(3) Civil Court Cases 223 (Rajasthan)

Civil Procedure Code, 1908, Order 22 Rule 4 - Legal representatives
- Do not ipso facto become entitled to file a fresh written statement or to take pleading inconsistent to that already taken, or additional defence, or the like
- Legal representatives cannot take up a defence which is individual to them and which was not open to deceased defendant. (L.Rs. of Shri Bhanwar Lal Vs L.Rs. of Shri Kanhaiya Lal) 2003(1) Civil Court Cases 255 (Rajasthan)

SC Civil Procedure Code, 1908, Order 22 Rule 4 - Non impleading of L.R's of a defendant who died during pendency of suit - Effect - Suit for possession of seven rooms - It was specifically mentioned in plaint as to which room is in possession of which defendant - If the interest of the co-defendants are separate, as in case of co-owners, the suit will abate only as regards the particular interest of the deceased party - Held, in the instant case suit abates only against deceased defendant whose L.R's not impleaded. (Shahazada Bi & Ors. Vs Halimabi (since dead) by her Lrs.) 2004(2) Apex Court Judgments 437 (S.C.) : 2004(3) Civil Court Cases 689 (S.C.)

Civil Procedure Code, 1908, Order 22 Rule 4 - Substitution of defendants No.4 & 5 as L.R's of deceased defendant No.1 their father - Application not opposed by plaintiff - Contest put up by defendant No.1 not to be taken into consideration for rejection of application - Inter-se dispute of defendants, if any, has to be decided in independent proceedings - Further held, that substitution shall not confer upon defendants No.4 & 5 any right of being trustees in the trust. (Ajay Kumar Jaiswal & Anr. Vs Joginder Kumar & Ors.) 2005(2) Civil Court Cases 186 (P&H)

Civil Procedure Code, 1908, Order 22 Rule 4 - Suit against "Hari Singh HUF of which Kulwant Rai and Kanwar Sain Bansal sons of Hari Singh were the members" - Death of Hari Singh - Hari Singh not a party to the suit - Married daughter of Hari Singh cannot be impleaded as a party to the suit on two counts viz. Hari Singh was not a party to the suit and secondly married daughter cannot be a member of HUF - Order impleading married daughter as a party to the suit set aside. (Ram Pal Vs Akki Devi alias Savitari

Devi) 2006(4) Civil Court Cases 285 (P&H)

Civil Procedure Code, 1908, Order 22 Rule 4 - Suit against dead person - Suit also against some other defendants - Suit still survives - L.R's of deceased defendant allowed to be substituted. (Dhan Singh Vs Gurdev Kaur & Ors.) 2006(1) Civil Court Cases 666 (P&H)

Civil Procedure Code, 1908, Order 22 Rule 4 - Suit against principal debtor and surety - Suit against principal debtor abated - Suit abates in totality and it cannot be decreed against surety alone. (Rajamma Vs C.Puttachari & Anr.) 2005(2) Civil Court Cases 676 (Karnataka)

Civil Procedure Code, 1908, Order 22 Rule 4(2) - L.R's are entitled to take any defence appropriate to their character as legal representatives and can put all contentions which the deceased-defendant could have urged except only those which were personal to the deceased - Legal representatives are not prevented from setting up also their own independent title in which case there could be no objection to the Court impleading them not merely as the L.Rs. of the deceased but also in their personal capacity avoiding thereby a separate suit for a decision on title. (Raghunath Dey alias Ray Vs Mahammad Usman Khan) 2003(2) Civil Court Cases 462 (Orissa)

Civil Procedure Code, 1908, Order 22 Rule 4(2) - Legal representative - Plea raised by defendant and rejected - Same plea cannot be allowed to be reargued by the legal representatives. (Prem Singh Vs Smt. Savitri Devi) 2006(4) Civil Court Cases 178 (Rajasthan)

SC **Civil Procedure Code, 1908, Order 22 Rule 4(4)** - Death of defendant who was proceeded ex parte - L.R's not impleaded - Permission as contemplated under the provision not sought so as not to implead L.R's of deceased defendant - Held, L.R's of such a deceased defendant were entitled to be brought on record in the suit. (Zahirul Islam Vs Mohd.Usman & Ors.) 2003(1) Apex Court Judgments 329 (S.C.)

Civil Procedure Code, 1908, Order 22 Rule 4(4) - Death of sole defendant during pendency of application U.O.9 Rule 7 CPC - Plaintiff himself submitted application for bringing on record LR's of defendant - Suit could not have proceeded without deciding said application - Court was under obligation to issue notice to LR's of defendant - Finding of appellate

Court that plaintiffs were not required to submit any application for bringing on record LRs of defendant as trial Court had already passed exparte order - Liable to be set aside. (Dharam Singh & Ors. Vs Mukhtiar Singh & Anr.) 2005(1) Civil Court Cases 622 (Rajasthan)

Civil Procedure Code, 1908, Order 22 Rule 4(4) - Death of sole defendant during pendency of application under Order 9 Rule 7 of Civil Procedure Code, 1908- Plaintiff himself submitted application for bringing on record LRs of defendant - Suit could not have proceeded without deciding said application - Court was under obligation to issue notice to LRs of defendant - Finding of appellate Court that plaintiffs were not required to submit any application for bringing on record LRs of defendant as trial Court had already passed exparte order - Liable to be set aside. (Dharam Singh & Ors. Vs Mukhtiar Singh & Anr.) 2005(1) Civil Court Cases 622 (Rajasthan)

Civil Procedure Code, 1908, Order 22 Rule 5, Section 11 - Legal representative - Determination - Not res judicata in subsequent proceedings - Determination under O.22 Rule 5 CPC is exclusively for the purpose of ensuring that the deceased is represented effectively by somebody or the other - Such a determination cannot be treated as final pronouncement as to the devolution of, or succession to the rights of the deceased - Separate proceedings have to be initiated for this purpose unless those very questions and issues fall for consideration in that suit or other proceedings itself and all the affected persons are parties to it. (G.N.Kishore Reddy Vs R.Venugopal Rao & Ors.) 2005(1) Civil Court Cases 173 (A.P.)

Civil Procedure Code, 1908, Order 22 Rule 5, Section 11 - Legal representative - Determination - Not res judicata in subsequent proceedings - Determination under Order 22 Rule 5 of Civil Procedure Code, 1908 is exclusively for the purpose of ensuring that the deceased is represented effectively by somebody or the other - Such a determination cannot be treated as final pronouncement as to the devolution of, or succession to the rights of the deceased - Separate proceedings have to be initiated for this purpose unless those very questions and issues fall for consideration in that suit or other proceedings itself and all the affected persons are parties to it. (G.N.Kishore Reddy Vs R.Venugopal Rao & Ors.) 2005(1) Civil Court Cases 173 (A.P.)

Civil Procedure Code, 1908, Order 22 Rule 5 - 'Legal heir' & 'Legal representative' - Distinction - Concept of 'Legal heir' is the result

of operation of law of succession and other related personal laws - Legal representative is a person who is entitled to represent the estate of the deceased in the proceedings in which the necessity arises - Legal heir cannot be treated as legal representative if there is conflict of interests between him and the deceased. (G.N.Kishore Reddy Vs R.Venugopal Rao & Ors.) 2005(1) Civil Court Cases 173 (A.P.)

Civil Procedure Code, 1908, Order 22 Rule 5 - Impleading of L.R's during pendency of revision - Revisional Court to decide application first and then pass order on merits. (Dubbzar Vs Ist ADJ, Azamgarh) AIR 2002 Allahabad 358

Civil Procedure Code, 1908, Order 22 Rule 5 - Legal heirs - Dispute as to who are the legal heirs of the deceased - It is incumbent upon the Court to adjudicate the point and without adjudication, L.R's cannot be brought on record. (Karamjit Kaur & Anr. Vs Gurbant Singh) 2003(3) Civil Court Cases 88 (P&H)

SC **Civil Procedure Code, 1908, Order 22 Rule 5** - Legal representative - Adopted son seeking to be substituted as LR - While deciding application under Order 22 Rule 5, issue cannot be framed as to whether requirements of Sections 7 and 8 of Hindu Adoption and Maintenance Act, 1956 had been complied with or not - Status of applicant as an adopted son cannot be looked into and is irrelevant for the purpose of determination of the issues in suit for injunction. (Chhabil Das Vs Pappu) 2006(3) Apex Court Judgments 730 (S.C.)

Civil Procedure Code, 1908, Order 22 Rule 5 - Legal representative - Dispute as to - It is incumbent upon the court to determine and decide as to who is the legal representative - For such a decision Court must hold an enquiry and for that evidence may even be adduced - Decision is limited and is only for the purpose of carrying on with the suit - Determination of the question of legal representative, does not confer any right to succession or heirship to the estate of the deceased. (Sahab Kaur Vs Avtar Singh & Ors.) 2006(1) Civil Court Cases 31 (P&H)

Civil Procedure Code, 1908, Order 22 Rule 5 - Legal representative - Impleadment - Order as to - Not a final adjudication as to validity of Will - Final adjudication is not required as to the status of L.R. before impleading

him as legal representative. (Shri Bains Parshad Udyog, Jagadhri Vs Nirmal Gupta & Ors.) 2004(2) Civil Court Cases 566 (P&H)

Civil Procedure Code, 1908, Order 22 Rule 5 - Legal representatives
- All the legal heirs giving up their claim in favour of one by filing an affidavit to this effect - No challenge to the affidavit that the same is false or is result of misrepresentation or fraud - Impleading of one legal heir as legal representative of the deceased plaintiff is proper. (Shri Bains Parshad Udyog, Jagadhri Vs Nirmal Gupta & Ors.) 2004(2) Civil Court Cases 566 (P&H)

Civil Procedure Code, 1908, Order 22 Rule 9 - Abatement - Setting aside - Application filed U.O.22 Rule 9 & S.151 - Application and supporting affidavit showing that plaintiff could not know death of defendant and steps for bring on record L.R's could not be taken in time - Application in substance is an application for setting aside abatement - fact that no explicit prayer or setting aside abatement is made - Immaterial. (Smt.Kamlesh Vs Tekchand) AIR 2003 Allahabad 299

Civil Procedure Code, 1908, Order 22 Rule 9 - Provision of Order 22 Rule 9 is applicable only when suit is based on same cause of action. (Chhabutai & Ors. Vs Bakulabai & Ors.) 2006(4) Civil Court Cases 509 (Bombay)

Civil Procedure Code, 1908, Order 22 Rule 10 - Assignee - Has no absolute right to continue the proceedings in a suit - Court has to give leave considering the facts and circumstances of the case. (Johny Vs James) 2006(3) Civil Court Cases 665 (Kerala)

SC **Civil Procedure Code, 1908, Order 22 Rule 10** - Detailed enquiry at the stage of granting leave is not contemplated - Court to be only prima facie satisfied for exercising its discretion in granting leave for continuing the suit by or against the person on whom the interest has devolved by assignment or devolution - Question about the existence and validity of the assignment or devolution can be considered at the final hearing of the proceedings. (Amit Kumar Shaw & Anr. Vs Farida Khatoon & Anr.) 2005(2) Civil Court Cases 423 (S.C.)

Civil Procedure Code, 1908, Order 22 Rule 10-A - Substitution - Application for substitution filed within 90 days from date of communication

of death of respondent - Appeal does not abate. (Narmada Shanker Vs Bajrang Lal & Anr.) 2006(1) Civil Court Cases 434 (Rajasthan)

Civil Procedure Code, 1908, Order 22 Rule 12 - Execution - Death of D.H. during pendency of execution petition - Execution cannot proceed until legal heirs of D.H. are brought on record. (Makkhan Lal Jaiswal Vs Executive Engineer) AIR 2002 All. 75

SC Civil Procedure Code, 1908, Order 23 - Compromise decree - Validity - Remedies available - The only remedy available is to challenge the compromise decree in the Court which recorded the compromise and made a decree in terms of it and establish that there was no compromise - Court which recorded compromise will itself consider and decide the question as to whether there was a valid compromise or not as consent decree is nothing but contract between parties superimposed with the seal of approval of the Court - Validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made. (Pushpa Devi Bhagat (D) Th.Lr. Smt.Sadhna Rai Vs Rajinder Singh & Ors.) 2006(2) Apex Court Judgments 600 (S.C.) : 2006(3) Civil Court Cases 540 (S.C.)

SC Civil Procedure Code, 1908, Order 23 - No appeal is maintainable against a consent decree having regard to the specific bar contained in Section 96(3) of Civil Procedure Code, 1908; (ii) No appeal is maintainable against the order of the court recording the compromise or refusing to record a compromise in view of deletion of clause (m) Rule 1 Order 43 CPC; (iii) No independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Rule 3A; (iv) A consent decree operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree, by an order on an application under the proviso to Rule 3 of Order 23 of Civil Procedure Code, 1908. (Pushpa Devi Bhagat (D) Th.Lr. Smt.Sadhna Rai Vs Rajinder Singh & Ors.) 2006(2) Apex Court Judgments 600 (S.C.) : 2006(3) Civil Court Cases 540 (S.C.)

Civil Procedure Code, 1908, Order 23 Rule 1, Order 2 Rule 1 - Withdrawal of suit - Unconditional withdrawal of suit - Claim which could have been claimed but not claimed, stands relinquished as lost claim and plaintiff cannot file a second suit for such claims. (Hari Ram Vs Lichmaniya & Ors.) 2004(2) Civil Court Cases 244 (Rajasthan)

SC **Civil Procedure Code, 1908, Order 23 Rule 1, Order 3 Rule 1** - Suit for specific performance - Dismissed by trial Court and affirmed by first appellate Court but claim for refund of Rs.2500/- with interest allowed - In second appeal in terms of consensus of both counsels decree modified where respondents were to pay Rs.25,000/- to appellant - Contention that in absence of compromise in writing and signed by parties, impugned decree could not be passed - Held, judgment or decree passed as result of consensus arrived at before Court cannot always be said to be one passed on compromise or settlement and adjustment - No allegation attributing any impropriety to act of counsels - No interference is called for. (Jineshwardas (D) through LR. & Ors. Vs Smt.Jagrani & Anr.) 2003(2) Apex Court Judgments 405 (S.C.) : 2003(3) Civil Court Cases 713 (S.C.)

Civil Procedure Code, 1908, Order 23 Rule 1, Order 37 Rule 1 - Summary suit - Plaintiff can at any time abandon or give up part of claim unilaterally - Recording of statement of plaintiff by Court is sufficient - Making of formal application by plaintiff for same is not necessary. (SICOM Ltd. Vs Prashant S.Tanna) AIR 2004 Bombay 186

Civil Procedure Code, 1908, Order 23 Rule 1 - A litigant should not be allowed to reargue the same cause of action once he has availed an opportunity to approach the Court with respect thereto. (Hari Ram Vs Lichmaniya & Ors.) 2004(2) Civil Court Cases 244 (Rajasthan)

Civil Procedure Code, 1908, Order 23 Rule 1 - Appeal dismissed as withdrawn - Restoration of appeal by recalling the order of dismissal as withdrawn - Maintainable if fraud is played upon plaintiff or appellant as the case may be - In the instant case constructive fraud was played on appellant as such order dismissing appeal as withdrawn recalled and appeal restored to its original number and position. (State Bank of India Vs Firm Jamuna Prasad Jaiswal and Sons and Anr.) 2004(2) Civil Court Cases 119 (Allahabad)

Civil Procedure Code, 1908, Order 23 Rule 1 - Compromise decree - Benefit under decree cannot be defeated merely by death of decree holder. (Manju Lata Sharma Vs Vinay Kumar Dubey) AIR 2004 Allahabad 92

Civil Procedure Code, 1908, Order 23 Rule 1 - Compromise decree - Compromise instrument or compromise decree is to be read as a whole in order to gather intention of parties and for interpretation of any particular

part of expression. (Manju Lata Sharma V. Vinay Kumar Dubey) AIR 2004 Allahabad 92

SC **Civil Procedure Code, 1908, Order 23 Rule 1** - Compromise decree - Recall - Premises vacated on receipt of Rs.7.50 lacs - Respondent however seeking recall of consent decree on the plea that consent was obtained under duress and coercion - Respondent alleged to be forcibly evicted on 24.12.1997 and consent terms signed on 29.12.1997 - If respondent was forcibly evicted on 24.12.1997 then he would not have signed consent terms on 29.12.1997 - Secondly respondent subsequent to consent terms encashed cheques - Encashing of cheques is itself a proof that he himself is bound by the terms of settlement - Held, consent decree passed is valid in law. (Gangadeep Pratishthan Pvt. Ltd. & Ors. Vs M/s.Mechano & Ors.) 2005(2) Civil Court Cases 52 (S.C.)

Civil Procedure Code, 1908, Order 23 Rule 1 - Deletion of name of one of the defendants - Order cannot be challenged by defendant who is still a party to the suit as he has no grievance as to the deletion of name of other defendant. (Brown-Forman Mauritius Ltd., Mauritius Vs M/s Jagatjit Industries Ltd. & Ors.) 2005(1) Civil Court Cases 475 (P&H)

Civil Procedure Code, 1908, Order 23 Rule 1 - Deletion of name of proforma defendant - Held, plaintiff is the dominus litis of the suit and he can choose as to against which party he wants claim as relief - Plaintiff is well within his right to pray for deletion of name of one of the defendants. (Brown-Forman Mauritius Ltd., Mauritius Vs M/s Jagatjit Industries Ltd. & Ors.) 2005(1) Civil Court Cases 475 (P&H)

Civil Procedure Code, 1908, Order 23 Rule 1 - Earlier suit claiming right of pathway not complying with provisions of O.7 Rule 3 - Suit dismissed as not pressed - Not a bar to later suit containing necessary averment for establishment of easement right with schedule as required by O.7 Rule 3 CPC. (Subha Jayan Vs Meenakshy Kumaran & Ors.) 2004(2) Civil Court Cases 669 (Kerala)

Civil Procedure Code, 1908, Order 23 Rule 1 - Earlier suit claiming right of pathway not complying with provisions of O.7 Rule 3 CPC - Suit dismissed as not pressed - Later suit claiming easement right containing necessary averments for establishment of easement right - No contention

regarding maintainability of suit in written statement nor plaint of earlier suit produced as exhibit - Dismissal of suit on issue of maintainability, not justified. (Subha Jayan Vs Meenakshy Kumaran & Ors.) 2004(2) Civil Court Cases 669 (Kerala)

SC **Civil Procedure Code, 1908, Order 23 Rule 1** - Judgment or decree passed as a result of consensus arrived at before Court cannot always be said to be one passed on compromise or settlement and adjustment - It may, at times, be also a judgment on admission. (Jineshwardas (D) through LRs. & Ors. Vs Smt.Jagrani & Anr.) 2003(2) Apex Court Judgments 405 (S.C.) : 2003(3) Civil Court Cases 713 (S.C.)

Civil Procedure Code, 1908, Order 23 Rule 1 - Partition suit - Withdrawal of suit - In partition suit even defendants can seek separate possession of their share by paying necessary Court fee and in case of withdrawal of suit they can seek to transpose themselves as plaintiffs and continue suit - Where defendant has sought separate possession and paid necessary court fee, permitting plaintiff to withdraw suit amounts to denial of defendant's right to continue suit - Such order for withdrawal is liable to be set aside. (Smt.Gowramma Vs Nanjappa) 2003(1) Civil Court Cases 267 (Karnataka)

Civil Procedure Code, 1908, Order 23 Rule 1 - Party desiring to file fresh suit on new cause of action - Leave of Court - Not necessary. (Mahadkar Agency Vs Padmakar Achanna Shetty) AIR 2003 Bombay 136

Civil Procedure Code, 1908, Order 23 Rule 1 - Second suit on the same cause of action filed the day earlier suit was withdrawn - Earlier suit withdrawn without permission of Court to file fresh suit on the same cause of action - Fact of filing of earlier suit not mentioned in the second suit - Second suit dismissed being not maintainable. (Jonnala Sura Reddy & Anr. Vs Tityyagura Srinivasa Reddy & Ors.) 2004(2) Civil Court Cases 417 (A.P.)

Civil Procedure Code, 1908, Order 23 Rule 1 - Unconditional withdrawal of suit as defendant satisfied the plaintiff - Held, if satisfaction of plaintiff has not resulted into a decree and plaintiff withdraws suit unconditionally then plaintiff cannot reagitate the issues which were involved in the suit. (Hari Ram Vs Lichmaniya & Ors.) 2004(2) Civil Court Cases 244

(Rajasthan)

Civil Procedure Code, 1908, Order 23 Rule 1 - Withdrawal of suit - At appellate stage - No explanation as to why an application not filed before trial Court seeking permission of Court to withdraw suit with liberty to file fresh suit - Trial Court on the basis of material available on record, decided the suit on merits against the plaintiff - After judgment and decree by trial Court, certain rights had vested in the party in whose favour the decree had been passed - Appellate Court dismissed application - Order upheld. (Surinder Pal & Anr. Vs Man Singh & Ors.) 2005(2) Civil Court Cases 512 (P&H)

Civil Procedure Code, 1908, Order 23 Rule 1 - Withdrawal of suit - At appellate stage - Not permissible when there is already a judgment against plaintiff. (Bawa Singh & Ors. Vs Smt. Tej Kaur alias Nachhatar Kaur) 2006(1) Civil Court Cases 498 (P&H)

Civil Procedure Code, 1908, Order 23 Rule 1 - Withdrawal of suit - At appellate stage - Suit for perpetual and mandatory injunction dismissed on merits by holding that no part of land belonging to plaintiff was encroached by defendant - Order permitting withdrawal of suit by plaintiff at appellate stage with leave to file fresh suit on the same cause of action is not proper. (Mangat Ram Vs Chura Dutt & Anr.) 2003(3) Civil Court Cases 408 (H.P.)

Civil Procedure Code, 1908, Order 23 Rule 1 - Withdrawal of suit - Defects pointed out as to drafting of plaint, mis-joinder of parties, non-payment of proper Court fees, non valuation of suit property and not claiming proper reliefs - All the defects could have been cured by plaintiff by seeking amendment of plaint - Permission for withdrawal of suit with liberty to file fresh suit on the same cause of action cannot be granted. (Rajaram Vs Baliram) 2006(2) Civil Court Cases 655 (Bombay)

Civil Procedure Code, 1908, Order 23 Rule 1 - Withdrawal of suit at appellate stage - Appellate Court is competent to grant permission to withdraw suit and to institute a fresh suit on the same cause of action. (Amina Vs Kunjubawa) 2006(1) Civil Court Cases 102 (Kerala)

Civil Procedure Code, 1908, Order 23 Rule 1 - Withdrawal of suit at appellate stage - Not permissible. (Gian Chand Modi Vs M/s Sawan Ram Muni Lal) 2003(2) Civil Court Cases 118 (P&H)

Civil Procedure Code, 1908, Order 23 Rule 1 - Withdrawal of suit at appellate stage with liberty to file fresh suit on the same cause of action - To avoid multiplicity of proceedings, suit can be permitted to be withdrawn with liberty to file a fresh suit on the same cause of action. (C.Vaiyapuri Gounder & Ors. Vs Commissioner, H.R. & C.E (Administration Department), Chennai & Ors.) 2005(2) Civil Court Cases 429 (Madras)

Civil Procedure Code, 1908, Order 23 Rule 1 - Withdrawal of suit with liberty to file fresh suit on the same cause of action - It is discretion of Court - Discretion to be exercised where Court is satisfied that suit is filed with a formal defect or there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the same cause of action - Court has also to take into consideration that such permission may result in annulment of a right vested in the defendant or even a third party - Unless there exists proper grounds for granting permission for withdrawal of suit with leave to file fresh suit by the plaintiff, the relief cannot be granted for merely asking for. (T.H.Syed Ahmed Vs T.H.Mustaq Ahmed)2006(2) Civil Court Cases 584 (Madras)

Civil Procedure Code, 1908, Order 23 Rule 1 - Withdrawal of suit with permission to file fresh suit on the same cause of action - Simpliciter suit for injunction - Defendant setting up plea of exclusive possession - If permission is granted to withdraw suit and to file fresh suit for declaration and injunction right of defendant would be greatly prejudiced - Permission declined. (T.H.Syed Ahmed Vs T.H.Mustaq Ahmed) 2006(2) Civil Court Cases 584 (Madras)

Civil Procedure Code, 1908, Order 23 Rule 1 - Withdrawal of withdrawal application - Permissible if fraud is played upon plaintiff or upon the appellant as the case may be. (State Bank of India Vs Firm Jamuna Prasad Jaiswal and Sons and Anr.) 2004(2) Civil Court Cases 119 (Allahabad)

Civil Procedure Code, 1908, Order 23 Rule 1 - Withdrawal of suit - Speaking order not necessary for allowing withdrawal simpliciter. (Mahadkar Agency Vs Padmakar Achanna Shetty) AIR 2003 Bombay 136

Civil Procedure Code, 1908, Order 23 Rule 1(3) - Withdrawal of suit with liberty to file fresh suit on the same cause of action - On filing of fresh suit order passed in previous suit staying execution of decree will not revive. (Krishnan Namboodiri Vs Unnikrishnan Namboodiri) 2005(3) Civil

Court Cases 201 (Kerala)

Civil Procedure Code, 1908, Order 23 Rule 1(3) - Withdrawal of suit at final stage - Not allowed considering large number of pending cases and time required for hearing each case - Also due to absence of special circumstances. (Siddagangappa Vs Thimmanna) AIR 2003 Karnataka 164

Civil Procedure Code, 1908, Order 23 Rule 1(4) - Bar created by O.23 Rule 1(4) does not operate against the successor-in-title. (Harischandra Vithoba Narawade & Ors. Vs Smt.Vatsalabai w/o Narayan Shinde) 2005(1) Civil Court Cases 217 (Bombay)

Civil Procedure Code, 1908, Order 23 Rule 1(4) - Bar created by Order 23 Rule 1(4) does not operate against the successor-in-title. (Harischandra Vithoba Narawade & Ors. Vs Smt.Vatsalabai w/o Narayan Shinde) 2005(1) Civil Court Cases 217 (Bombay)

Civil Procedure Code, 1908, Order 23 Rule 1(4) - Formal defect - Petition allowed to be withdrawn - Grant of liberty to file fresh petition on the same cause of action has to be inferred. (Mangal Sain Vs Jiwan Dass) 2003(1) Civil Court Cases 329 (P&H)

Civil Procedure Code, 1908, Order 23 Rule 1(b) - Withdrawal of suit - Sought immediately after filing of written statement by defendant and before framing of issues as plea of misrepresentation and fraud by inadvertence could not be taken and that detailed particulars of fraud and misrepresentation were sought to be pleaded by filing the new suit - Application allowed. (Narain Vs Rewati) 2005(1) Civil Court Cases 386 (P&H)

SC Civil Procedure Code, 1908, Order 23 Rule 3, Constitution of India, Art.226 - Provisions of Civil Procedure Code, 1908 are not applicable to proceedings under Article 226 of Constitution of India - However, requirement under Order 23 Rule 3 of Civil Procedure Code, 1908 can be pressed into service even in writ proceedings. (K.Venkatachala Bhat & Anr. Vs Krishna Nayak (D) by Lrs. & Ors.) 2005(2) Civil Court Cases 590 (S.C.)

Civil Procedure Code, 1908, Order 23 Rule 3, Order 22 Rule 4 - Compromise decree - Compromise signed by one of the L.R's binds the entire estate of deceased and binds all legal heirs even though one or more of the legal representatives are not impleaded. (Nirankar Dev Vs Lala Sri

Kishan Dass & Ors.) 2005(3) Civil Court Cases 140 (P&H)

Civil Procedure Code, 1908, Order 23 Rule 3, Order 47 Rule 1, Section 151 - Consent decree - Review/recall petition - Does not lie - However, review petition is maintainable u/s 151 only if it is proved that fraud is played on Court. (Smt.Anita Vs R.Rambilas) AIR 2003 A.P. 32

Civil Procedure Code, 1908, Order 23 Rule 3, Registration Act, 1908, Section 17(2)(vi) - Compromise decree - If creates right, title and interest for the first time then it requires compulsory registration. (Dilip Gupta & Anr. Vs Debashish Palit & Ors.) 2006(2) Civil Court Cases 322 (Patna)

Civil Procedure Code, 1908, Order 23 Rule 3, Registration Act, 1908, Section 17(2)(vi) - Compromise decree - Lessor alienated absolutely the right, title and interest in suit property in favour of lessee - By virtue of compromise decree right, title and interest was absolutely alienated, and created for the first time in favour of the lessees - Held, compromise decree requires compulsory registration. (Dilip Gupta & Anr. Vs Debashish Palit & Ors.) 2006(2) Civil Court Cases 322 (Patna)

Civil Procedure Code, 1908, Order 23 Rule 3, Registration Act, 1908, Section 17(2)(vi) - Compromise decree - Registration - Can be summarized as : (1) Compromise decree, if bonafide, in the sense that the compromise is not a device to obviate payment of stamp duty and frustrate the law relating to registration, would not require registration - In a converse situation, it would require registration; (2) If the compromise decree were to create for the first time right, title or interest in immovable property of the value of Rs.100/- or upwards in favour of any party to the suit, the decree or order would require registration; (3) If the decree were not to attract any of the Clauses of Sub-section (1) of Section 17, it is apparent that the decree would not require registration; (4) If the decree were not to embody of the terms of compromise, as was the position in Lahore case, benefit from the terms of compromise cannot be derived, even if a suit were to be disposed of because of the compromise in question; (5) If the property dealt with by the decree be not the “subject matter of the suit or proceedings”, Clause (vi) of sub-section (2) would not operate, because of the amendment of this Clause by Act 21 of 1929, which has its origin in the aforesaid decision of the Privy Council, according to decision of the Privy Council, according to which the original clause would have been attracted, even if it were to

encompass property not litigated. (Dilip Gupta & Anr. Vs Debashish Palit & Ors.) 2006(2) Civil Court Cases 322 (Patna)

Civil Procedure Code, 1908, Order 23 Rule 3, Section 96 - Compromise decree - Appeal against - Not maintainable. (Santosh Kumar Vs Karam Devi) AIR 2002 P&H 20

SC Civil Procedure Code, 1908, Order 23 Rule 3 - 'In writing' & 'signed by the parties' - Counsel possessed of requisite authorization by vakalatnama, can act on behalf of his client - The words 'by parties' refer not only to parties in person, but their attorney holder or duly authorized pleaders - Statements recorded by Court amount to a compromise in writing. (Pushpa Devi Bhagat (D) Th.Lr. Smt.Sadhna Rai Vs Rajinder Singh & Ors.) 2006(2) Apex Court Judgments 600 (S.C.) : 2006(3) Civil Court Cases 540 (S.C.)

Civil Procedure Code, 1908, Order 23 Rule 3 - Application U.O.23 Rule 3 - No ad-valorem court fee needs to be affixed on such an application. (Ravinder Kumar Rishi Vs Sushma Rishi) 2003(2) Civil Court Cases 612 (Delhi)

Civil Procedure Code, 1908, Order 23 Rule 3 - Compromise - Between tenant and one of the landlords - Compromise cannot be enforced qua the other landlords. (Sat Pal & Ors. Vs Firm Sat Pal Sanjeev Kumar & Ors.) 2004(2) Civil Court Cases 422 (P&H)

Civil Procedure Code, 1908, Order 23 Rule 3 - Compromise - By counsel - Consent of client is not needed for a matter which is within the ordinary authority of the counsel - Compromise in Court by the counsel whose authority has not been expressly limited, the client is bound by such compromise - If matter is settled in Court in presence of client, his consent will be inferred. (Girnari Devi Vs Gopal Dass) 2003(1) Civil Court Cases 410 (P&H)

Civil Procedure Code, 1908, Order 23 Rule 3 - Compromise - Entered in two between landlord and tenant and revision disposed of in terms of compromise - Compromise not signed by either of parties or counsel - It violates O.23 Rule 3 - Cannot be enforced - Even if revision is adjusted or disposed of by agreement and there is no final adjudication, same cannot dilute

requirement of compromise being signed in writing by parties. (S.P.Minocha Vs Lila Ram) AIR 2002 Delhi 223

Civil Procedure Code, 1908, Order 23 Rule 3 - Compromise - In writing signed by parties at the time of recording of compromise - Petitioner examined by Court for being satisfied that she had entered into compromise and petitioner admitted factum of compromise - Original compromise petition contained seal of Court on all pages and signatures of all parties and their advocates - It cannot be said that compromise was not lawfully entered. (Ramawati Devi Vs Maheshwar Singh) AIR 2003 Patna 101

SC **Civil Procedure Code, 1908, Order 23 Rule 3** - Compromise - Lawful agreement - It is not necessary for Court to say in express terms that it was satisfied that compromise was a lawful one - There is presumption that Court was so satisfied unless contrary is proved. (Amteshwar Anand Vs Virender Mohan Singh & Ors.) 2006(1) Apex Court Judgments 343 (S.C.) : 2006(1) Civil Court Cases 337 (S.C.)

SC **Civil Procedure Code, 1908, Order 23 Rule 3** - Compromise - Normally Court passes decree in terms of compromise - However Court can make a change - If Court makes a change then reasons for making the change have to be recorded and then decree is not in terms of compromise. (Rajasthan Financial Corporation Vs M/s.Man Industrial Corporation Ltd.) 2003(2) Apex Court Judgments 490 (S.C.)

Civil Procedure Code, 1908, Order 23 Rule 3 - Compromise - On the basis of compromise decree passed and plaintiff acted upon the decree - Held, plaintiff then has no right to say that compromise is the result of mis-representation or fraud. (Jagat Singh (Deceased) Vs Babu Singh & Ors.) 2005(1) Civil Court Cases 789 (P&H) : 2005(1) Civil Court Cases 789 (P&H)

SC **Civil Procedure Code, 1908, Order 23 Rule 3** - Compromise - Recorded in police station during pendency of suit - Suit cannot be disposed of except by recording compromise and that too by following the procedure, and recording the satisfaction, contemplated by O.23 Rule 3 CPC. (Ajad Singh @ Ajad Vs Chatra & Ors.) 2005(1) Apex Court Judgments 385 (S.C.) : 2005(1) Civil Court Cases 577 (S.C.)

Civil Procedure Code, 1908, Order 23 Rule 3 - Compromise - Statement recorded - Plaintiff can withdraw that statement before dismissal of suit as withdrawn. (Mange Ram Vs Sube Singh & Ors.) 2006(1) Civil Court Cases 688 (P&H)

SC **Civil Procedure Code, 1908, Order 23 Rule 3** - Compromise - Validity - Can be challenged before the same Court - Compromise whether void or voidable has to be determined by the Court - Once it is held that compromise is fraudulent the same per se would be unlawful and the Court is required to declare the same as such. (Dwarka Prasad Agarwal (D) by Lrs. and Anr. Vs B.D. Agarwal & Ors.) 2003(2) Apex Court Judgments 453 (S.C.) : 2003(3) Civil Court Cases 546 (S.C.)

Civil Procedure Code, 1908, Order 23 Rule 3 - Compromise - When it is proved to the satisfaction of Court that suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit the Court shall order such agreement, compromise or satisfaction to be recorded and shall pass decree in accordance therewith, so far as it relates to parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit. (Lajja Ram Lalam (Dead) Through LRs. & Ors. Vs Kanhai Chandra & Ors.) 2006(4) Civil Court Cases 08 (Allahabad)

Civil Procedure Code, 1908, Order 23 Rule 3 - Compromise decree - Setting aside - Petitioner in cross examination admitted that opposite Advocate read over compromise petition to them and thereafter they signed it - Thus, petitioners knew contents of compromise but had not raised any objection thereto - Cannot be allowed to challenge compromise decree alleging that it was not prepared according to terms and conditions of settlement reached between parties. (Kalipada Deka Vs Danpati Deka) AIR 2003 Gauhati 64

Civil Procedure Code, 1908, Order 23 Rule 3 - Compromise decree - Testamentary suit - Compromise can be acted upon if same is entered into by all legal heirs of testator - If the heirs compromise then decree will not be binding on other heirs who had not joined compromise. (P.Jothi Bai Vs B.Dorairaj) AIR 2002 Madras 191

SC **Civil Procedure Code, 1908, Order 23 Rule 3** - Provision of Order 23 Rule 3 consists of two parts - First part refers to situation where an agreement or compromise is entered into in writing and signed by the parties and agreed terms are reduced into writing - Second part refers to cases where the defendant has satisfied the plaintiff about the claim - A writing is required in case compromise falls under first part and not in case it falls under part second - Where matter falls under second part, it is sufficient if plaintiff or plaintiff's counsel appears before the Court and informs the Court that the subject matter of the suit has already been settled or satisfied. (Pushpa Devi Bhagat (D) Th.Lr. Smt.Sadhna Rai Vs Rajinder Singh & Ors.) 2006(2) Apex Court Judgments 600 (S.C.) : 2006(3) Civil Court Cases 540 (S.C.)

SC **Civil Procedure Code, 1908, Order 23 Rule 3** - Provision of Order 23 Rule 3 of Civil Procedure Code, 1908 casts an obligation on Court to be satisfied that a suit has been adjusted wholly or in part by a lawful agreement or compromise in writing and signed by the parties. (Amteshwar Anand Vs Virender Mohan Singh & Ors.) 2006(1) Apex Court Judgments 343 (S.C.) : 2006(1) Civil Court Cases 337 (S.C.)

Civil Procedure Code, 1908, Order 23 Rule 3 & S.151 - Compromise decree - Setting aside - Decree alleged to be obtained by fraud - Suit seeking setting aside of compromise dismissed as barred by O.23 Rule 3-A - Said order attained finality - Thereafter petition U.O.23 Rule 3 read with S.151 seeking setting aside of compromise decree - Not maintainable. (Kalipada Deka Vs Danpati Deka) AIR 2003 Gauhati 64

Civil Procedure Code, 1908, Order 23 Rule 3 Proviso, Section 96 - Consent decree - Appeal against - Availability of alternative remedy under Proviso to R.3 of O.23 - Not a ground for non entertaining appeal. (Kantaben T.Shah Vs Devendrakumar C.Shah) AIR 2002 Gujarat 160

Civil Procedure Code, 1908, Order 23 Rule 3-A - Compromise decree - Obtained by fraud and misrepresentation - Court which passed the order has inherent jurisdiction to set aside the order - No separate civil suit is required to be filed for this purpose. (Wassan Singh & Ors. Vs Lakha Singh & Anr.) 2005(2) Civil Court Cases 772 (P&H)

Civil Procedure Code, 1908, Order 23 Rule 3-A and 3-B and S.11, Evidence Act, 1872, Section 115 - Partition suit - Compromise - Decree

passed on basis of compromise reached by parties representing heads of branches without notice to other members of branches who are interested in suit and without obtaining leave of Court to compromise - Such compromise decree does not bind other members of branches - Such member is competent to file suit for appropriate relief ignoring such compromise decree - Such suit is not barred either by principle of res judicata or estoppel. (Siddalingeshwar & Ors. Vs Virupaxgouda & Ors.) 2004(2) Civil Court Cases 655 (Karnataka)

SC **Civil Procedure Code, 1908, Order 23 Rule 3-B** - Consent decree - Suit in a representative character - Leave of Court - Consent terms tendered in Court and Court proceeded to pass decree in accordance with consent terms - It is sufficient to hold that leave of Court was expressly recorded - Held, it is not necessary to use particular words to record leave of the Court - Fact that Court proceeded to pass the consent decree is sufficient indication that Court granted leave. (Milind Moreshwar Kowley Vs Manohar Bhaskar Kowley (D) thr. L.Rs. & Ors.) 2006(3) Apex Court Judgments 102 (S.C.) : 2006(4) Civil Court Cases 154 (S.C.)

SC **Civil Procedure Code, 1908, Order 23 Rule 3-B** - Consent decree - Suit in representative character - Leave of Court - Notice to interested parties - Notice as provided under Order 23 Rule 3-B is not mandatory - In case Court finds that all parties interested in suit had joined in the consent terms and are fully conscious of consent terms, then issuance of notice is an empty formality. (Milind Moreshwar Kowley Vs Manohar Bhaskar Kowley (D) thr. L.Rs. & Ors.) 2006(3) Apex Court Judgments 102 (S.C.) : 2006(4) Civil Court Cases 154 (S.C.)

Civil Procedure Code, 1908, Order 23 Rule 3-B - Partition suit - Compromise decree - Leave not granted by Court - Notice not given to members of branches who are interested in suit - Compromise is void - Person interested in suit but had no notice of compromise is not barred from challenging compromise decree. (Siddalingeshwar & Ors. Vs Virupaxgouda & Ors.) 2004(2) Civil Court Cases 655 (Karnataka)

Civil Procedure Code, 1908, Order 23 Rule 3B - Compromise decree - Court not expressly record grant of leave to parties to enter into compromise and no notice given to persons interested in suit - Compromise held, void - O.23 Rule 3A will not bar subsequent suit challenging compromise decree - Persons interested in said suit can file subsequent suit challenging

consent decree. (Siddalingeshwar Vs Virupaxgouda) AIR 2003 Karnataka 407

Civil Procedure Code, 1908, Order 23 Rules 3, 3-A, 3-B - Compromise decree - Tendency of trial Court to pass mechanically compromise decree without examining whether suit is representative suit and without satisfying itself about lawfulness of compromise - Such tendency is deprecated. (Siddalingeshwar & Ors. Vs Virupaxgouda & Ors.) 2004(2) Civil Court Cases 655 (Karnataka)

Civil Procedure Code, 1908, Order 23 Rules 3, 3-A - Compromise decree - Remedy against - Decree can be assailed either U.O.23 Rule 3 before the Court which passed the compromise decree or by way of an appeal - Suit to assail such decree is barred. (Gopal Lal Vs Babu Lal & Ors.) 2004(2) Civil Court Cases 462 (Rajasthan)

Civil Procedure Code, 1908, Order 23 Rules 3, 3-A - Compromise decree - Remedy against - Decree can be assailed either under Order 23 Rule 3 before the Court which passed the compromise decree or by way of an appeal - Suit to assail such decree is barred. (Gopal Lal Vs Babu Lal) 2004(2) Civil Court Cases 462 (Rajasthan)

Civil Procedure Code, 1908, Order 23 Rules 3A, 3B and S.11 - Representative suit - Decree passed in compromise without complying R.3B - Any person affected by it, but not party to it can file separate suit seeking appropriate relief in regard to said decree by way of declaration or otherwise - He can also file suit for appropriate relief ignoring compromise decree and such suit will not be barred by principle of res judicata. (Siddalingeshwar Vs Virupaxgouda) AIR 2003 Karnataka 407

SC Civil Procedure Code, 1908, Order 23 Rule 4 - Execution - Parties can enter into settlement even in execution proceedings. (N.K.Rajgarhia Vs M/s Mahavir Plantation Ltd. & Ors.) 2006(1) Apex Court Judgments 373 (S.C.) : 2006(1) Civil Court Cases 463 (S.C.)

Civil Procedure Code, 1908, Order 26 Rule 1 - Commissioner - Appointment at pre evidence stage to know the correct ground reality of the suit property - Not improper when no prejudice or hardship is likely to be caused to the opposite party. (Suresh Vs Vijaykumar)2003(2) Civil Court

Cases 584 (Karnataka)

Civil Procedure Code, 1908, Order 26 Rule 1 - Witness - Examination
- On commission - It is not choice of witness. (Rayala Umamaheswara Rao Vs Dantuluri) AIR 2002 A.P. 178

Civil Procedure Code, 1908, Order 26 Rules 1, 5 & 15 - Witness - Examination by Commission - Witness busy in the month of March and cannot attend Court - Not sufficient reason to appoint Commission - Application rightly rejected. (Dutch Ophthalmic Research Centre Vs Ultramed Private Limited) 2005(3) Civil Court Cases 55 (Rajasthan)

Civil Procedure Code, 1908, Order 26 Rule 4 - Commission to examine witness - Affidavit or medical certificate indicating illness and immobility, not filed alongwith application - Held, application was rightly rejected. (Smt.Shanti Bai Vs Udai Raj) 2005(2) Civil Court Cases 56 (Rajasthan)

Civil Procedure Code, 1908, Order 26 Rule 5 - Video conferencing
- Examination of a witness by video conferencing is permissible. (Liverpool & London Steamship Protection and Indemnity Association Ltd. Vs M.V. "SEA SUCCESS I") 2006(2) Civil Court Cases 439 (Bombay)

Civil Procedure Code, 1908, Order 26 Rule 9, 18-A - Local Commissioner - Can be appointed even in execution proceedings. (Chakka Ranga Rao Vs Molla Mustari Banu) 2006(4) Civil Court Cases 147 (A.P.)

Civil Procedure Code, 1908, Order 26 Rule 9, Order 39 Rule 7 - Scope - Provisions of Order 26 Rule 9 & Order 39 Rule 7 operate separately and for different purposes - One is to elucidate the fact in dispute and the other is to obtain full information and evidence mostly for the purpose of keeping on record the existing condition of the property so that if the same is subjected later on to any change, deterioration or mischief by any of the parties or by any other agency or reason, that can be known by the Court if and when required. (Jayalakshmi Constructions & Anr. Vs Nawab Behboob Ali Khan & Ors.) 2006(2) Civil Court Cases 183 (A.P.)

Civil Procedure Code, 1908, Order 26 Rule 9, Section 115 - Local Commissioner - Refusal to appoint - Order is interlocutory - Revision against - Not maintainable. (M/s.Benz Automobiles Private Limited, Vs

C.Mohanasundaram & Ors.) 2004(2) Civil Court Cases 278 (Madras)

Civil Procedure Code, 1908, Order 26 Rule 9 - Commissioner - Appointment - Construction in violation of sanctioned plan and that Municipal Corporation is not taking any action - Appointment of Commissioner to note down physical features of building under construction - Appointment of Commissioner cannot be said to collect evidence for the party - Commissioner's report reflecting fact realities is not final - Both parties are at liberty to file objections - Order appointing Commissioner, upheld. (Mukund Lal Vs Sharada Bai & Ors.) 2006(2) Civil Court Cases 335 (A.P.)

Civil Procedure Code, 1908, Order 26 Rule 9 - Local Commission - Court can appoint suo moto - When local investigation is requisite or proper, Court can appoint Local Commissioner suo moto. (Punjab Wakf Board Vs Shri Neeko) 2004(3) Civil Court Cases 52 (P&H)

Civil Procedure Code, 1908, Order 26 Rule 9 - Local Commissioner - Appointment for knowing as to whose possession - Parties can lead evidence - Appointment of Local Commissioner would amount to collecting evidence on behalf of plaintiff - Order rejecting application justified. (Madhu Sudan Pradhan Vs Santosh Kumar Das) AIR 2004 Orissa 86

Civil Procedure Code, 1908, Order 26 Rule 9 - Local Commissioner - Cannot be appointed to ascertain as to who is in possession. (M/s.Benz Automobiles Private Limited, Vs C.Mohanasundaram & Ors.) 2004(2) Civil Court Cases 278 (Madras)

Civil Procedure Code, 1908, Order 26 Rule 9 - Local commissioner - Court has discretion to order local investigation - In boundary disputes and disputes about identity of land Court should order local investigation. (Kishanlal Maniklal Rathi Vs Dinkar Yashwant Patil) 2004(2) Civil Court Cases 456 (Bombay)

Civil Procedure Code, 1908, Order 26 Rule 9 - Local commissioner - Encroachment - Oral evidence cannot conclusively prove such an issue - To determine the area encroached it is always desirable to get the field measured by an expert and find out the area encroached upon. (Kishanlal Maniklal Rathi Vs Dinkar Yashwant Patil) 2004(2) Civil Court Cases 456 (Bombay)

Civil Procedure Code, 1908, Order 26 Rule 9 - Local Commissioner

- Report of Commissioner - Can be looked into though Commissioner is not examined as a witness and his report is not exhibited - Commissioner may be examined when substantial objections are raised to his report to have a clear picture - Non examination of Commissioner is not a ground not to take his report as evidence. (Shaik Fathima Bi Vs Shaik Nanne Saheb (Died) per L.Rs.) 2005(2) Civil Court Cases 754 (A.P.)

Civil Procedure Code, 1908, Order 26 Rule 9 - Local commissioner
- Sufficient evidence, oral and documentary, on record to resolve the dispute - Application for appointment of Local Commissioner rightly rejected. (Munshi Vs Tejvir) 2006(1) Civil Court Cases 391 (Rajasthan)

Civil Procedure Code, 1908, Order 26 Rule 9 - Local Commissioner
- To ascertain as to which party is in possession - It is beyond the scope of O.26 Rule 9 CPC - This question has to be decided by Court after parties adduce evidence. (Ashutosh Dubey & Anr. Vs Tilak Grih Nirman Sahkari Samiti & Anr.) 2004(3) Civil Court Cases 678 (M.P.)

Civil Procedure Code, 1908, Order 26 Rule 9 - Local Commissioner
- To ascertain as to which party is in possession - It is beyond the scope of Order 26 Rule 9 of Civil Procedure Code, 1908- This question has to be decided by Court after parties adduce evidence. (Ashutosh Dubey & Anr. Vs Tilak Grih Nirman Sahkari Samiti & Anr.) 2004(3) Civil Court Cases 678 (M.P.)

Civil Procedure Code, 1908, Order 26 Rule 9 - Local Commissioner
- When there is a dispute about an encroachment or dimension of a site, Commissioner must be appointed by Court to take joint measurements. (Kashinath Chindhuji Shastri Vs Haribhau Nathuji Bawanthade) 2004(2) Civil Court Cases 436 (Bombay)

Civil Procedure Code, 1908, Order 26 Rule 9 - Second commissioner - Without setting aside the report of the first commissioner, a second commissioner for the self same purpose cannot be appointed. (Jala Swamydas & Anr. Vs Jadani Sumayun Raju) 2006(1) Civil Court Cases 73 (A.P.)

Civil Procedure Code, 1908, Order 26 Rule 9 - Second local commissioner - Merely because the first report was confirmed, subject to the

evidence by the parties, the issuance of the second commission could not be denied. (Ghurhu Vs X Additional District Judge, Varanasi & Ors.) 2004(2) Civil Court Cases 309 (Allahabad)

Civil Procedure Code, 1908, Order 26 Rules 9, 10 - Local Commissioner - - Neither objections raised nor request made for appointment of another Local Commissioner - Presence of Local Commissioner before Court is not necessary - Report of Local Commissioner can be read in evidence. (Jagdish & Anr. Vs Sanjay Kumar & Ors.) 2004(2) Civil Court Cases 286 (P&H)

Civil Procedure Code, 1908, Order 26 Rules 9, 10 - Local Commissioner - Court has power to appoint a Local Commissioner for the purpose of elucidating any matter in dispute. (Piara Lal Vs The Liquidator Cooperative Store, Kapurthala & Ors.) 2004(2) Civil Court Cases 573 (P&H)

Civil Procedure Code, 1908, Order 26 Rules 9, 10 - Local Commissioner can be appointed ex parte - Report of Local Commissioner without issuing notice to the other party is admissible in law - However, report of Local Commissioner is not admissible in evidence unless Local Commissioner is examined in Court and an opportunity is given to the other party to cross examine him. (Piara Lal Vs The Liquidator Cooperative Store, Kapurthala & Ors.) 2004(2) Civil Court Cases 573 (P&H)

Civil Procedure Code, 1908, Order 26 Rules 9, 14(3), Section 115, Constitution of India, Art.227 - Commission report partitioning properties in a final decree proceedings - Order refusing to set aside the report - Order not revisable but correctness of the order can be gone into in exercise of the powers under Art.227 of the Constitution of India. (Nirmala Ravindran Vs Mohanan) 2004(2) Civil Court Cases 81 (Kerala)

Civil Procedure Code, 1908, Order 26 Rule 10, Negotiable Instruments Act, 1881, Section 4 - Pronote - Age of ink in signature and body of pronote - Plea of signatures obtained on blank paper - Held, it would be just and proper exercise of discretion to send the document to Handwriting Expert for his opinion as regards the age of inks in signature and body of pronote. (Penumastha Ramachandra Raju Vs Gaddam Raja Sekhar Reddy) 2006(2) Civil Court Cases 169 (A.P.)

Civil Procedure Code, 1908, Order 26 Rule 10 - Commissioners report - Cannot form basis of decree in absence of proof - Merely because objections not raised by defendant, report cannot be said to be proved. (Khurshed Banoo Vs Vasant Malikarjun Manthalkar) AIR 2003 Bombay 52

Civil Procedure Code, 1908, Order 26 Rule 10-A, 18-A - Scientific investigation - Execution proceedings - Comparison of signatures - Comes within definition of scientific investigation - Application for scientific investigation is maintainable in execution proceedings. (Theetla Vijayudu Vs Gaddam Lakshmidevi & Ors.) 2006(1) Civil Court Cases 143 (A.P.)

Civil Procedure Code, 1908, Order 26 Rule 10-A - Age of ink - Cannot be determined on the basis of the writing. (Yash Pal Vs Kartar Singh) 2003(3) Civil Court Cases 630 (P&H)

Civil Procedure Code, 1908, Order 26 Rule 10-A - Comparison of disputed signature with the admitted ones involves specialized skill based on study, as such it comes within scientific investigation. (AIR 1987 Orissa 7 (D.B.) followed). (Theetla Vijayudu Vs Gaddam Lakshmidevi & Ors.) 2006(1) Civil Court Cases 143 (A.P.)

Civil Procedure Code, 1908, Order 26 Rule 11 - Commission - Examination of witness - Admission of document - Is different from admission of recital - If opportunity to examine witness not given petitioners right of substantial and effective defence would be adversely affected - Order rejecting application for examination of witnesses liable to be set aside. (Dasu Jaya Vani Vs Bala Seethapati) AIR 2003 A.P. 293

Civil Procedure Code, 1908, Order 29 Rule 1 - Principal Officer of Corporation cannot delegate power to file appeal - Appeal filed by District Manager who was authorised by Regional Manager to file appeal is not maintainable. (Food Corporation of India, Hissar Vs Dhani Ram) 2005(1) Civil Court Cases 159 (P&H)

Civil Procedure Code, 1908, Order 29 Rule 2 - Corporation - Service of summons - Service report not indicating that efforts were made to serve summons on Secretary or Director or any other Principal Officer of Corporation in terms of Cl.(a) of R.2 - Resort to mode of service provided by

Cl.(b) of R.2 - Improper. (Rajesh Bansal Vs M/s Ansal Housing Construction)
AIR 2002 Delhi 214

Civil Procedure Code, 1908, Order 30 Rule 1, Order 1 Rule 10

- Partnership firm - Suit for possession - Death of one partner - Partnership comes to an end - Not mandatory to implead L.R's of deceased partner - Suit can be proceeded with in the name of partnership firm - However, in case L.R's seek to be impleaded on the ground of inter se dispute and that their right may be compromised then L.R's should be allowed to be impleaded as a party. (Ujjwal Sarin Vs Om Parkash Baldev Krishan & Ors.) 2006(4) Civil Court Cases 343 (Delhi)

Civil Procedure Code, 1908, Order 30 Rule 1 - Partnership firm

- Registered - Suit filed by person who was one of the partners - Suit is competent. (S.Butail and Co. Vs H.P.State Forest Corpn.) AIR 2002 H.P.1

Civil Procedure Code, 1908, Order 30 Rules 1 & 2 - Suit by one

of the partners of firm - Not invalid for non joinder of firm. (State of Tripura Vs M/s Bhowmik & Company) AIR 2004 Gauhati 19

Civil Procedure Code, 1908, Order 30 Rules 1,3 - Firm - Suit for

or against - Firm to be impleaded as a party - Facility given to serve notice on firm on any of the partners of the firm does not exempt impleading of firm itself in the suit. (Kota Sreevalli & Ors. Vs Chinni Seetharamaiah & Ors.) 2006(3) Civil Court Cases 631 (A.P.)

Civil Procedure Code, 1908, Order 30 Rule 10 - Proprietorship

firm - Suit can be filed by or against the firm in business name than in the name of individual partners. (M/s.Paras Industries, Ludhiana Vs M/s.Paras Special Machine Co.) 2003(3) Civil Court Cases 540 (P&H)

Civil Procedure Code, 1908, Order 30 Rule 10 - Proprietorship

firm - Suit has to be brought in the name of proprietor and not in the trading name. (Municipal Council, Tiroda Vs K.Ravindra & Company) 2003(2) Civil Court Cases 578 (Bombay)

Civil Procedure Code, 1908, Order 32 Rule 1 - Minor - Petition

filed through brother though father alive - Minor can sue through a guardian, who may not have any interest adverse to him/her, it may be, father, mother or brother - Once, brother is held having no interest adverse to the minor, a

lis can be filed through him. (Ramesh Kumar Vs Sunita Devi) 2005(1) Civil Court Cases 572 (P&H)

Civil Procedure Code, 1908, Order 32 Rule 1 - Minor's undivided share in joint family property - Partition suit on behalf of minor filed by mother as next friend of minor against minor's father - Suit is not maintainable where it is not proved that father as natural guardian of minor has neglected to provide for minor's maintenance or denied his right or mismanaged property jeopardizing minor's interest therein. (Smt.Gourawwa Vs Basappa) 2003(3) Civil Court Cases 328 (Karnataka)

Civil Procedure Code, 1908, Order 32 Rule 2 - Minor - Suit filed without next friend - Defective - Irregularity in instituting the suit does not make the suit wholly bad - It is a defect in procedure - Such defect can be corrected only when the defendant makes an application under Rule (2) of Order 32 CPC or when an application is filed by next friend on noticing the said defect. (Y.Chinna Butchi Reddy & Ors. Vs Y.Kesava Madhusudhana Reddy & Ors.) 2004(2) Civil Court Cases 206 (A.P.)

Civil Procedure Code, 1908, Order 32 Rule 2 - Suit filed by a person of unsound mind - When such a finding is reached by Court suit is not to be dismissed but plaint is to be taken off the file enabling person of unsound mind to cure irregularities - When defect is cured and person of unsound mind is properly represented then suit continues. (Amrutaben Budhaji Thakore Vs Nitaben Somabhai Patel) AIR 2003 Gujarat 292

Civil Procedure Code, 1908, Order 32 Rules 2, 3 - Minor - Suit filed by minor thinking that he was major based on school certificate which appears to be not correct - On defect being pointed out in written statement his grand mother immediately filed an application to permit her as next friend and to make necessary amendments - Defendant failed to make an application U.O.32 Rule 2(1) - Question of taking the plaint off the file does not arise in such circumstances - Allowing of such application by Court below U.O.32 Rule 2(2) is perfectly justified. (Y.Chinna Butchi Reddy & Ors. Vs Y.Kesava Madhusudhana Reddy & Ors.) 2004(2) Civil Court Cases 206 (A.P.)

Civil Procedure Code, 1908, Order 32 Rules 2, 3 - Minor - Suit filed without next friend - Two contingencies - One is that suit is filed knowing that he is minor and he is incompetent to institute a suit without the next friend

and yet filing a suit with a view to deceive the Court or with some ulterior purposes and the other a minor filing suit without knowing or realizing his minority - In the former case suit is to be dismissed and in the latter case the plaint is to be taken off the file. (Y.Chinna Butchi Reddy & Ors. Vs Y.Kesava Madhusudhana Reddy & Ors.) 2004(2) Civil Court Cases 206 (A.P.)

Civil Procedure Code, 1908, Order 32 Rule 3 - Minor - Compromise - Without leave of Court - Can be attacked in three ways (a) by an application to the Court in which the compromise took place; (b) by a regular suit to set aside the decree and (c) by bringing a fresh suit. (Rama & Ors. Vs Hari Singh & Ors.) 2004(3) Civil Court Cases 708 (P&H)

Civil Procedure Code, 1908, Order 32 Rule 3 - Minor defendant - Sued through mother, natural guardian - Neither an application for appointment of guardian filed nor particulars of all possible guardians and requisite affidavit as required under Order 32 Rule 3(3) & (4) filed - Even certificate not filed to the effect as to who were the persons who had no adverse interest to that of the minors - Even no formal order for appointment of guardian passed - Trial Court decreed suit - First Appellate Court remanded the matter for denovo trial - Order upheld. (Baldev Singh & Ors. Vs Sukhdev Singh & Ors.) 2006(4) Civil Court Cases 438 (P&H)

Civil Procedure Code, 1908, Order 32 Rule 5, Contract Act, 1872, Section 12, Evidence Act, 1872, Section 101, 102 - Unsound mind - Burden of proof - Lies on the person who sets up such a plea - Such burden can be discharged by proving at least by balance of probability that the action of executing the deed of transfer was the outcome of an unsound mind. (Lakshmi Vs Dr.Ajay Kumar & Ors.) 2006(1) Civil Court Cases 588 (P&H)

Civil Procedure Code, 1908, Order 32 Rule 5, Contract Act, 1872, Section 12 - Agreement to sell - Contract with a person of unsound mind - If at the time of making contract a person is capable of understanding the contract and forming a rational judgment to its effect upon his interest then contract is not void - Even a person who is usually of a unsound mind but occasionally of sound mind may enter into a contract when he is sound mind - Burden of proof lies on a party who sets up a plea of unsound mind so as to get a declaration that contract is void. (Lakshmi Vs Dr.Ajay Kumar & Ors.) 2006(1) Civil Court Cases 588 (P&H)

Civil Procedure Code, 1908, Order 32 Rule 5, Contract Act, 1872, Section 12 - Unsound mind - Proof of - The fact of unsound mind can be proved not only by medical evidence but also by conduct. (Lakshmi Vs Dr.Ajay Kumar & Ors.) 2006(1) Civil Court Cases 588 (P&H)

Civil Procedure Code, 1908, Order 32 Rule 7 - Dismissal of suit on basis of report of referee - Contention that judgment is nullity as dispute could not be referred on behalf of minor to referee without leave of Court - Does not make the decree void but voidable at instance of minor. (Rama & Ors. Vs Hari Singh & Ors.) 2004(3) Civil Court Cases 708 (P&H)

SC Civil Procedure Code, 1908, Order 32 Rule 15 - Aged lady - Inability to defend due to advanced age - Appointment of guardian - Guardian can only be appointed after holding an enquiry whether applicant is incapable of protecting her interest by reason of any mental infirmity or not. (Kasturi Bai & Ors. Vs Anguri Chaudhary) 2003(1) Apex Court Judgments 690 (S.C.) : 2003(2) Civil Court Cases 699 (S.C.)

Civil Procedure Code, 1908, Order 32 Rule 15 - Guardian - Appointment - Plaintiff examined himself - Medical certificate proved by doctor - Procedure followed and hence no interference in order of appointment of guardian. (M/s Leelason Breweries Ltd. Vs Beemireddy Lakshminaryana Reddy) AIR 2002 A.P. 253

Civil Procedure Code, 1908, Order 32 Rule 15 - Lunatic - Decree against - No formal order passed appointing a guardian from the date of institution of suit till the appointment - No prejudice caused to the J.D. - Suit not null and void - Court has jurisdiction to try the suit. (Jolly Vs Oriental Kuries Ltd.) 2003(2) Civil Court Cases 484 (Kerala)

Civil Procedure Code, 1908, Order 32 Rule 15 - Unsound mind - Question as to - For this purpose trial Court should examine the alleged lunatic either in open Court or in Chambers and in the presence of medical expert - Trial Court has got ample power to compel the attendance of the alleged lunatic before it and to submit himself for medical examination. (Shakunthala Devi Vs K.S.Naidu & Anr.) 2005(1) Civil Court Cases 271 (Madras)

Civil Procedure Code, 1908, Order 33 Rule 1 - Forma pauperis

- Mere possession of ornaments or a plot is not sufficient - If property in possession of appellant is not sufficient enough to raise money to pay the requisite court fee, he or she should not be deemed to be possessing sufficient means to pay court fee - Appellant allowed to file appeal as forma pauperis. (Smt.Manjulata Vs Sidhkaran) 2005(1) Civil Court Cases 07 (Rajasthan)

Civil Procedure Code, 1908, Order 33 Rule 1 - Permission to sue as indigent person - Petitioner partner in a firm having annual income of Rs.15 lacs - Petitioner also having some immovable property - Plea that if income from firm is used for payment of stamp duty then business will stop - Not tenable - Petitioner cannot be permitted to sue as indigent person. (Lokesh Patawari Vs State of U.P. & Ors.) 2005(2) Civil Court Cases 193 (Allahabad)

Civil Procedure Code, 1908, Order 33 Rule 1 - Permission to sue as indigent person - Report of Collector that husband of applicant has substantial income and that she is living with her husband - Nothing stated about income of applicant - Held, inquiry has to be into the means of the person who applies to sue as indigent person - Permission to sue as indigent person granted. (Janak Kumari Vs Land Acquisition Officer) 2003(1) Civil Court Cases 155 (M.P.)

Civil Procedure Code, 1908, Order 33 Rule 1 - Permission to sue as indigent person - Suit for damages - Facts on record completely belied statement - Plaintiff a person with lots of wealth and resources - Person claiming damages of 29 lakhs must be wealthiest person - Such frivolous attempts by suppressing true facts would be abuse of process of law and make liable for punishment. (S.Saraswathi Vs Executive Member, Karnataka Industrial Area Development Board) AIR 2002 Karnataka 447

Civil Procedure Code, 1908, Order 33 Rule 1 - Permission to sue in forma pauperis - 'Sufficient means' should be understood as means other than the property exempt from attachment in execution of a decree and the subject matter of the suit. (Sanjeevayya Nagar Co-operative House Building Society Vs S.Malla Reddy alias Parvathalu & Ors.) 2006(1) Civil Court Cases 08 (A.P.)

Civil Procedure Code, 1908, Order 33 Rule 1 - Permission to sue in forma pauperis - Collector in his report stated that husband of applicant

has 13 acres of land and is having annual income of Rs.30,000/- Nothing in report that applicant has any source of income and is possessed of any means or sufficient realisable property from which she could arrange for payment of Court fees - Rejection of application, not proper. (Janak Kumari Vs Land Acquisition Officer) AIR 2002 M.P. 253

Civil Procedure Code, 1908, Order 33 Rule 1 - Permission to sue in forma pauperis - Need not be static althrough the proceedings - If plaintiff is found to be capable of paying court fee during course of litigation, he can be directed to pay court fee at any time. (Sanjeevayya Nagar Co-operative House Building Society Vs S.Malla Reddy alias Parvathalu & Ors.) 2006(1) Civil Court Cases 08 (A.P.)

Civil Procedure Code, 1908, Order 33 Rule 1 - Permission to sue in forma pauperis - Where important questions are involved in the suit, Court to adopt liberal approach in granting permission to sue in forma pauperis - Liberal approach does not mean to grant permission for the mere asking - Totality of the overall facts and circumstances of case have to be taken into consideration while arriving at any conclusion in this regard. (Sanjeevayya Nagar Co-operative House Building Society Vs S.Malla Reddy alias Parvathalu & Ors.) 2006(1) Civil Court Cases 08 (A.P.)

Civil Procedure Code, 1908, Order 33 Rules 1 & 5 - Application to sue as indigent person - Suit against Insurance Company for recovery of damages caused to car - Details of property belonging to plaintiff not appended with the application - Plaintiff ex-serviceman and had also purchased a car - Appellate Court, however, protected his interest by referring the matter to trial Court U.O.33 Rule 15-A CPC - Petition dismissed. (Harnam Singh Vs Oriental Fire and General Co.Ltd.) 2003(3) Civil Court Cases 295 (P&H)

Civil Procedure Code, 1908, Order 33 Rules 1,2 - Permission to sue as indigent person - Specific pleading that plaintiff does not possess any property - It amount to compliance of R.2 of O.33 CPC. (Devarakondappa Vs K.Rajeshwari) 2003(3) Civil Court Cases 202 (Karnataka)

Civil Procedure Code, 1908, Order 33 Rules 2,5(a) - Permission to sue as pauper - List of moveable and immovable property with estimated value - Is mandatory - Deliberate omission on part of applicants to show that they do not possess sufficient means - Rejection of application, proper.

(Doddanajappa Vs The Sub Registrar) AIR 2003 Karnataka 205

Civil Procedure Code, 1908, Order 33 Rule 2 - Permission to sue as indigent person - Utmost bona fide is required in matter of disclosure of assets - Deliberate concealment of material particulars of properties entails dismissal of application. (Doddanajappa & Ors. Vs The Sub-Registrar, Hoskote Taluk, Hoskote & Ors.) 2003(3) Civil Court Cases 422 (Karnataka)

Civil Procedure Code, 1908, Order 33 Rule 3 - Refusal to allow to sue as a pauper - Court fee paid - Suit decreed - Suit will be deemed to be instituted the day application seeking permission to sue as indigent person was filed - Decree holder is entitled to interest on the amount decreed from the date of application for permission to sue as an indigent person was filed. (Shiv Dayal & Ors. Vs Ram Kali & Ors.) 2005(2) Civil Court Cases 609 (P&H)

Civil Procedure Code, 1908, Order 33 Rule 3 & S.34 - Application to sue as an indigent person - Permission declined - Suit shall be deemed to be filed the day application seeking permission to sue as indigent person was filed and not on the day Court fee was paid - Interest on the amount decreed is thus payable from the day application seeking permission to sue as indigent person was filed. (Shiv Dayal & Ors. Vs Ram Kali & Ors.) 2005(2) Civil Court Cases 242 (P&H)

Civil Procedure Code, 1908, Order 33 Rules 3, 4 - Permission to sue as indigent person - Application to presented in person by applicant or leave of Court be taken if to be presented by authroised agent or power of attorney holder - Where leave of Court to present application through power of attorney holder is not obtained, Court examining power of attorney holder regarding merits of applicant's claim is without jurisdiction. (Easi Technologies Private Limited, Bangalore Vs S.K.Sannakalegowda) 2004(2) Civil Court Cases 572 (Karnataka)

Civil Procedure Code, 1908, Order 33 Rule 3 & Section 34 - Application to sue as an indigent person - Permission declined - Suit shall be deemed to be filed the day application seeking permission to sue as indigent person was filed and not on the day Court fee was paid - Interest on the amount decreed is thus payable from the day application seeking permission to sue as indigent person was filed. (Shiv Dayal & Ors. Vs Ram Kali)2005(2) Civil

Court Cases 242 (P&H)

Civil Procedure Code, 1908, Order 33 Rule 10 - Permission to sue as indigent person - Court to order in decree as to who among the parties to the suit has to pay the court fee - It is only on the basis of such a term in the decree that State Government can proceed to recover. (Bhaskaran Vs Deputy Tahsildar & Anr.) 2006(3) Civil Court Cases 519 (Kerala)

Civil Procedure Code, 1908, Order 33 Rule 15, 15-A - Permission to sue in forma pauperis - Rejection of application - Court to grant reasonable time to pay requisite Court fee irrespective of whether time to pay Court fee is sought or not - Trial Court was not justified in preventing applicant from prosecuting his suit by rejecting Court fee subsequently tendered on ground that he had not sought Court's permission to prosecute suit. (Smt.B.S.Annapurna & Ors. Vs Kumaraswamy & Anr.) 2004(2) Civil Court Cases 562 (Karnataka)

SC Civil Procedure Code, 1908, Order 34, Limitation Act, 1963, Art.61 - Mortgage - Purchaser of equity of redemption - Original owner mortgaged suit property and mortgagee put in possession - Original owner sold 67 cents from the suit property to plaintiff by a registered sale deed with a recital that there is a mortgage and plaintiff had thus purchased the equity of redemption from the original owner - Defendant not paid amount hence money suit filed - Auction sale in execution of money decree - Defendant 1 purchased the property and she took delivery of possession through Court - Plaintiff issued notice to defendant No.1 to hand over possession of 67 cents from the property to plaintiff - Prayer made to declare auction sale invalid and to put plaintiff in possession of property - Suit for declaration of title and possession is not maintainable - Plaintiff ought to have filed suit for redemption of mortgage and not for declaration of title and possession - Status of defendant No.1 came to an end with the purchase of property. (Rukmani Ammal & Anr. Vs Jagdeesa Gounder) 2006(1) Apex Court Judgments 678 (S.C.) : 2006(1) Civil Court Cases 485 (S.C.)

SC Civil Procedure Code, 1908, Order 34 Rules 5, 8(3)(a) - Mortgage - Redemption - Extinguishment of right of redemption - Unless it is specifically declared in final decree as to the extinguishment of the right of redemption, it continues till the confirmation of sale in pursuance to the decree - In the instant case there being no final decree as such right of mortgagor to redeem

the property is available till confirmation of sale in pursuance of the decree. (Philomina Jose Vs Federal Bank Ltd. & Ors.) 2006(1) Civil Court Cases 683 (S.C.) : 2006(1) Apex Court Judgments 756 (S.C.)

Civil Procedure Code, 1908, Order 34 Rules 7 & 8 - Final decree
- Limitation to file application to pass a final decree starts to run from the date of expiry of the period fixed in the preliminary decree and if no period is fixed, within six months from the date of the preliminary decree unless it is extended by an order of the Court. (Govindan Nair Vs Abraham) 2003(1) Civil Court Cases 206 (Kerala)

Civil Procedure Code, 1908, Order 34 Rule 11 - Bank loan - Suit for recovery - Interest - Reduced from 12% to 6% from date of suit to date of realisation. (M/s Radha Agencies Vs Vijaya Bank) AIR 2002 A.P. 91

Civil Procedure Code, 1908, Order 34 Rule 11 - Mortgaged suit - Interest - Prior to filing of suit and pendente lite interest - Interest payable is contractually fixed between parties. (State Bank of India Vs Swapna Basak) AIR 2002 Gauhati 48

Civil Procedure Code, 1908, Order 35 Rule 5, Sections 10, 151 - Eviction petition - Stay of - During pendency of interpleader suit - A tenant cannot institute interpleader suit against his landlord - Suit for eviction cannot be stayed on filing of a interpleader suit seeking declaration as to who is the owner/landlord of the suit premises and as to whom rent is required to be paid. (Sushila Mehta Vs Smt.Chandrakala & Anr.) 2005(3) Civil Court Cases 128 (Rajasthan)

Civil Procedure Code, 1908, Order 35 Rule 5 - Interpleader suit
- A tenant cannot sue his landlord for compelling him to interplead with any persons other than persons making claim through such landlord - If the other person is claiming the property through the previous landlord and then asking for the rent from the tenant, then to settle such different claims by two or more persons, the tenant can file interpleader suit, but if the other person is claiming the right and interest in the property independently without any reference to the previous landlord and claiming the rent from the tenant, then the interpleader suit filed by the tenant is not maintainable. (Neeraj Sharma Vs The District Sangrur Khadi Gram Udyog Karya Karta Sangh, & Ors.) 2006(2) Civil Court Cases 530 (P&H)

Civil Procedure Code, 1908, Order 37 Rule 1, Order 23 Rules 1 and 1(4) - Summary suit - Plaintiff is entitled at any time to abandon or give up a part of the claim unilaterally - This can be done by making a statement to be recorded by the Court without the necessity of making a formal application for withdrawing the summons for judgment, amending the plaint and taking out fresh summons for judgment. (Sicom Ltd. Vs Prashant S.Tanna & Ors.) 2004(3) Civil Court Cases 495 (Bombay)

Civil Procedure Code, 1908, Order 37 Rule 1 - Summary suit - Counter claim filed - Would not detract or result in suit filed as summary suit being treated as regular suit. (Suraj Sanghi Finance Ltd. Vs Credential Finance Ltd.) AIR 2002 Bombay 481

Civil Procedure Code, 1908, Order 37 Rule 1 - Summary suit - Mere making of an excess claim or not quantifying the same properly does not render a suit not maintainable as a summary suit. (Sicom Ltd. Vs Prashant S.Tanna & Ors.) 2004(3) Civil Court Cases 495 (Bombay)

Civil Procedure Code, 1908, Order 37 Rule 1 - Summary suit - Suit for recovery against guarantor - Suit instituted in terms of agreement - Suit is maintainable as summary suit. (Mukesh Gupta Vs Sicom Ltd., Mumbai) 2004(2) Civil Court Cases 539 (Bombay)

Civil Procedure Code, 1908, Order 37 Rule 1(2), Negotiable Instruments Act, 1881, Section 6 - Suit on basis of dishonoured cheque - Suit is maintainable as a summary suit. (Iram Feroz Vs Ayaz Gadhiya) 2006(2) Civil Court Cases 717 (Bombay)

Civil Procedure Code, 1908, Order 37 Rule 1(2) - Loan by cheque - Non payment - Is not a suit upon a cheque or bill of exchange - Suit is not maintainable as a summary suit. (Ms.Purnima Jaitly Vs Ravi Banshi Jaisingh) 2004(2) Civil Court Cases 364 (Bombay)

Civil Procedure Code, 1908, Order 37 Rule 1(2) - Summary suit - Contract of guarantee - Default committed by principal debtor and suit filed against guarantor in terms of contract treating him as guarantor - Suit cannot be said to be suit on guarantee U.O.37 Rule 1(2) but based on written contract between parties - Suit is maintainable as summary suit. (Mukesh Gupta Vs SICOM Ltd.) AIR 2004 Bombay 104

Civil Procedure Code, 1908, Order 37 Rule 1(2) - Summary suit
- Falling within one of classes of suits - Suit is maintainable even if claim made therein is not properly quantified or is in excess of what the plaintiff is entitled to. (SICOM Ltd. Vs Prashant S.Tanna) AIR 2004 Bombay 186

Civil Procedure Code, 1908, Order 37 Rules 1,4 - Summary suit
- Suit based on invoice - Invoice not containing any terms and conditions entered into between parties regarding supply of goods and its payment - No written contract between parties - Suit not triable as summary suit. (M/s A.R.Electronic Pvt.Ltd. Vs M/s R.K.Graphics Pvt.Ltd.) 2003(2) Civil Court Cases 544 (Delhi)

Civil Procedure Code, 1908, Order 37 Rule 2 - Summary suit - Balance payable confirmed by debtor and creditor - If interest was paid in past at 18% per annum then subject to anything to the contrary it would imply a promise to continue to pay interest at that rate on balance confirmed - In such circumstances it is not necessary to have express stipulation that balance would be paid with interest. (Sun N Sand Hotel Limited Vs M/s.V.V.Kamat, HUF) 2003(3) Civil Court Cases 508 (Bombay)

Civil Procedure Code, 1908, Order 37 Rule 2 - Summary suit - Suit based on balance confirmation letter is maintainable as summary suit. (Sun N Sand Hotel Limited Vs M/s.V.V.Kamat, HUF) 2003(3) Civil Court Cases 508 (Bombay)

Civil Procedure Code, 1908, Order 37 Rule 2 Evidence Act, 1872, Section 34 Bankers Book Evidence Act, 1891, Section 4 - Bank loan - Suit for recovery - Proof of loan - Entries in books of account are not sufficient - Some independent evidence to show that sum has been advanced must be given by Bank - As original loan transaction admitted as such statement of account relied upon. (M/s Radhu Agencies Vs Vijaya Bank) AIR 2002 A.P. 91

Civil Procedure Code, 1908, Order 37 Rule 3 - Defendant served with summons for judgment but failing to apply for judgment with prescribed time - Held, plaintiff is entitled to judgment U.O.37 Rule 3(6). (Kishan Bharwary Vs V.P.Aggarwal) AIR 2002 Delhi 345

Civil Procedure Code, 1908, Order 37 Rule 3 - Entering appearance

- Counsel for defendant filing Vakalatnama by way of entering appearance
- Actual date of service of summons was two months thereafter - Filing of Vakalatnama can be treated as entering appearance in terms of sub-rules (1) and (3) of R.3. (M/s NEPA Ltd. Vs M/s Medica Asia Pvt.Ltd.) AIR 2002 Delhi 128

Civil Procedure Code, 1908, Order 37 Rule 3 - Leave to defend - Pronote - Thumb impression alleged to be obtained on blank pronote - As there is admission of thumb marking the pronote and receipt so there is presumption that it was executed for consideration - Held, order of grant of leave to defend suit subject to deposit of 50% of the suit amount and to furnish security of the remaining amount, upheld. (Negotiable Instruments Act, 1881, Sections 4, 118). (Jaswinder Singh Vs Kabal Singh) 2006(2) Civil Court Cases 46 (P&H)

Civil Procedure Code, 1908, Order 37 Rule 3 - Summary suit - Arbitration agreement - Plea as to arbitration agreement if not raised while seeking leave to defend, cannot be raised when suit has made substantial progress thereafter. (Anis Ahmad Vs Hong Kong & Shanghai Banking Corporation) 2006(4) Civil Court Cases 98 (Delhi)

Civil Procedure Code, 1908, Order 37 Rule 3 - Summary suit - Leave to defend - Conditional leave can be granted in respect of part of the claim and unconditional relief for remaining part of the claim - In such an event if defendant fails to comply with the condition, he would suffer the consequences qua only that of the claim for which conditional leave to defend has been granted and not in respect of that part of the claim for which unconditional leave has been granted. (Sicom Ltd. Vs Prashant S.Tanna & Ors.) 2004(3) Civil Court Cases 495 (Bombay)

Civil Procedure Code, 1908, Order 37 Rule 3 - Summary suit - Leave to defend - Plea that defendant was not served with summons for judgment - Trial Court holding that once the summons in substituted form is served then there is no need to issue summons for judgment - Order 37 Rule 3 prescribes that defendant should file appearance within ten days of service of first summons, then plaintiff has to serve upon defendant summons for judgment - Decree set aside. (Ramesh Vs Narayan Kisnuji Wakodikar) 2006(3) Civil Court Cases 275 (Bombay)

SC **Civil Procedure Code, 1908, Order 37 Rule 3** - Summary suit - Leave to defend - To be granted when there is a triable issue. (UBS AG Vs State Bank of Patiala) 2006(3) Apex Court Judgments 324 (S.C.) : 2006(4) Civil Court Cases 385 (S.C.)

SC **Civil Procedure Code, 1908, Order 37 Rule 3** - Summary suit - Leave to defend - While giving leave to defend the suit the Court shall observe the following principles: (a) If the Court is of opinion that the case raises a triable issue then leave to defend should ordinarily be granted unconditionally - The question whether the defence raises a triable issue or not has to be ascertained by Court from the pleadings before it and the affidavits of parties; (b) If the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to put by the defendant is frivolous or vexatious it may refuse leave to defend altogether; (c) In cases where the Court entertains a genuine doubt on the question as to whether the defence is genuine or sham or whether it raises a triable issue or not, the Court may impose conditions in granting leave to defend. (Defiance Knitting Industries Pvt. Ltd. Vs Jay Arts) 2006(3) Apex Court Judgments 270 (S.C.) : 2006(4) Civil Court Cases 259 (S.C.)

Civil Procedure Code, 1908, Order 37 Rule 3 - Summary suit - Part of claim not disputed - Court as a condition for leave to defend can permit withdrawal of money by plaintiff against guarantee or security. (Motorola India Limited Vs Kiklu I.Malani) AIR 2003 Bombay 92

Civil Procedure Code, 1908, Order 37 Rule 3 - Summary suit - Summons for judgment - To be served on defendant even if he appears more than 10 days after service of suit summons provided an ex parte decree is not passed by the date of such appearance. (Syed Pasha Vs G.B.Prahalad Rao) 2006(4) Civil Court Cases 54 (A.P.)

Civil Procedure Code, 1908, Order 37 Rule 3(4) - Summary suit - Summons for judgment - 'Dasti' service - Is insufficient serve - Cannot be acted upon. (Rajesh Bansal Vs M/s Ansal Housing Construction) AIR 2002 Delhi 214

Civil Procedure Code, 1908, Order 37 Rule 3(4) - Summary suit - Summons for judgment - Affidavit to accompany summons for judgment

- Supply of copy of affidavit before passing of order for issuance of summons for judgment - Is improper. (Rajesh Bansal Vs M/s Ansal Housing Construction) AIR 2002 Delhi 214

Civil Procedure Code, 1908, Order 37 Rule 3(5) - Interest - Claim of - Prior to institution of suit, pendente lite and future - Basis of claim not stated in plaint - Claim of interest unsupported by any written contract/agreement is not covered under the provisions of Order 37 C.P.C. (S.C.Rastogi Vs Renu Kalra & Anr.) 2006(3) Civil Court Cases 211 (Delhi)

Civil Procedure Code, 1908, Order 37 Rule 3(5) - Leave to defend - Notice and plaint - Variation of facts - In plaint claim is based upon 5 cheques while the notice refers to three cheques - Prima facie creates a dent in the case of plaintiff and lends credibility to the stand taken up by the defendants - Leave to defend granted. (S.C.Rastogi Vs Renu Kalra & Anr.) 2006(3) Civil Court Cases 211 (Delhi)

Civil Procedure Code, 1908, Order 37 Rule 3(5) - Promissory note - Summary suit - Failure to reply to notice of demand - Does not amount to admission of the claim made in the notice - Application by defendant disclosing valid defence leading to a triable issue to be decided only after giving opportunity to both sides to substantiate their respective pleas - Dismissal of application on the ground of defendant's failure to reply notice - Not legal. (Manepalli Udaya Bhaskara Rao Vs Kanuboyina Dharmaraju) 2004(3) Civil Court Cases 281 (A.P.) : 2004(3) Civil Court Cases 281 (A.P.)

Civil Procedure Code, 1908, Order 37 Rule 3(5) and (6) - Summary suit - Leave to defend - Order granting leave to defend must show appreciation of material by trial Court while recording a conclusion that a triable issue is raised by the defendant. (Pushpa D.Sood Vs Bobcards Ltd.) 2005(2) Civil Court Cases 679 (Bombay)

Civil Procedure Code, 1908, Order 37 Rule 3(6), Section 96 - Summary suit - Leave to defend - Refusal - Appeal and not revision is maintainable. (V.S.Saini Vs D.C.M. Ltd.) AIR 2004 Delhi 219

Civil Procedure Code, 1908, Order 37 Rules 3 - Leave to defend - Loan given through a loan agreement and a promissory note - Loan amount

given by way of cheque - Petitioner to furnish security instead of bank guarantee. (Avtar Singh Vs Singh Finance) 2006(2) Civil Court Cases 300 (P&H)

Civil Procedure Code, 1908, Order 37 Rules 4, 3(4), O.9 Rule 13 & S.115 - Exparte decree U.O. 37 - Setting aside - Merely a printed line in summons that affidavit as required to be filed U.O.37 Rule 3(4) stands filed is not sufficient whereas in fact no such affidavit is filed - Since there is no compliance with mandatory provision of Order 37 Rule 3(4) exparte decree set aside by treating application U.O.9 Rule 13 to be one U.O.37 Rule 4 CPC. (Mukesh Kumar Vs Bhopal Singh) 2005(1) Civil Court Cases 549 (Rajasthan)

Civil Procedure Code, 1908, Order 37 Rules 4, 3(4), Order 9 Rule 13 & Section 115 - Exparte decree U.O. 37 - Setting aside - Merely a printed line in summons that affidavit as required to be filed under Order 37 Rule 3(4) stands filed is not sufficient whereas in fact no such affidavit is filed - Since there is no compliance with mandatory provision of Order 37 Rule 3(4) exparte decree set aside by treating application under Order 9 Rule 13 to be one under Order 37 Rule 4 of Civil Procedure Code, 1908. (Mukesh Kumar Vs Bhopal Singh) 2005(1) Civil Court Cases 549 (Rajasthan)

SC **Civil Procedure Code, 1908, Order 37 Rule 4, Order 9 Rule 13** - Difference between the two provisions - Enumerated. (Rajni Kumar Vs Suresh Kumar Malhotra & Anr.) 2003(1) Apex Court Judgments 511 (S.C.)

Civil Procedure Code, 1908, Order 37 Rule 4 - Application under Order 37 Rule 4 - Court is required to be satisfied not only about existence of sufficient reasons for earlier non appearance but also that there exist sufficient grounds entitling the defendant for leave to defend. (Eskay Enterprises Vs Suresh P.Hinduja) 2005(3) Civil Court Cases 38 (Bombay)

SC **Civil Procedure Code, 1908, Order 37 Rule 4** - Not only special circumstances which prevented from appearance or applying for leave to defend but also facts, by affidavit or otherwise, have to be shown which would entitle him to defend the suit - In this respect O.37 Rule 4 is different from O.9 Rule 13 CPC. (Rajni Kumar Vs Suresh Kumar Malhotra & Anr.) 2003(1) Apex Court Judgments 511 (S.C.)

SC Civil Procedure Code, 1908, Order 37 Rule 4 - Security - Deposit of decretal amount to serve as security for the suit amount in the event Court granting leave to defend the suit - Relief not granted - Amount can be withdrawn by depositor or he can have it adjusted in satisfaction of the decree. ((Rajni Kumar Vs Suresh Kumar Malhotra & Anr.) 2003(1) Apex Court Judgments 511 (S.C.)

SC Civil Procedure Code, 1908, Order 37 Rule 4 - Sufficient cause for non appearance on the date of passing ex parte decree shown but failure to disclose facts which would entitle him to defend the case - Application rightly dismissed. (Rajni Kumar Vs Suresh Kumar Malhotra & Anr.) 2003(1) Apex Court Judgments 511 (S.C.)

Civil Procedure Code, 1908, Order 37 Rule 4 - Summary suit - Decree - Setting aside - A decree passed under order 37 of Civil Procedure Code, 1908 can only be set aside when special circumstances are established - Decree when passed in contravention of mandatory provisions of Civil Procedure Code, 1908 can certainly be treated as a special circumstance. (Syed Pasha Vs G.B.Prahalad Rao) 2006(4) Civil Court Cases 54 (A.P.)

Civil Procedure Code, 1908, Order 37 Rule 4 - Summary suit on basis of pronote - Defendant disputing execution and amount of pronote and pleading payment as also other pleas as to deficiency of stamp on pronote and money lending licence - Held, triable issues are raised as such leave to defend rightly granted. (Mahesh Chandra Vs Balu Ram) 2003(1) Civil Court Cases 687 (Rajasthan)

Civil Procedure Code, 1908, Order 37 Rule 5, Order 1 Rule 10 - Summary suit - Leave to defend - Letter of Credit/Bank guarantee - Presentation of documents and negotiation thereof made in terms of credit - Dishonoured - Reasons given by Bank not convincing but improper - Leave to defend granted on furnishing security. (Amarnath Sangaria Vs Sonali Bank) AIR 2003 Calcutta 255

Civil Procedure Code, 1908, Order 37 Rule 5 - Summary suit - Leave to defend - Suit on basis of cheques - Leave to defend sought by one of the defendants alleging no passing of consideration - Defence not a possible defence - Applicant not able to deny totally the liability being a partner of firm - Leave to defend granted on condition to deposit proportionate amount

to meet the claim. (P.G.Sadasivam Vs M/s.Andavar Electrical Distributions)
2003(1) Civil Court Cases 65 (Madras)

Civil Procedure Code, 1908, Order 38 Rule 5 - Attachment before judgment - Before passing order of attachment before judgment Court must be satisfied that the defendant with intent to obstruct or delay the execution of any decree that may be passed is about to dispose of the whole or any part of his property or is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court, only then, under such contingencies, Court may direct the defendant within a time to be fixed by it, either to furnish security in such sum specified, to produce and place at the disposal of the Court, when required, the said property or the value or to appear and show cause as to why he should not furnish security. (Southern Petrochemical Industries Corpn. Ltd. Vs S.Rathish Kanna) 2004(2) Civil Court Cases 346 (Madras)

Civil Procedure Code, 1908, Order 38 Rule 5 - Attachment before judgment - Debtor unable to pay debt - Debtor's property cannot be attached merely for this reason - Circumstance that company was in financial strains - Cannot be ground for attachment of its property before judgment. (Saraswat Co-operative Bank Ltd. Vs Chandrakant Maganlal Shah) AIR 2002 Bombay 203

Civil Procedure Code, 1908, Order 38 Rule 5 - Attachment before judgment - Exparte order without giving any opportunity to the defendant - Held, order is arbitrary, unreasonable, illegal and the same set aside. (Southern Petrochemical Industries Corpn. Ltd. Vs S.Rathish Kanna) 2004(2) Civil Court Cases 346 (Madras)

Civil Procedure Code, 1908, Order 38 Rule 5 - Attachment before judgment - If an order of attachment is made without complying with the provisions of sub-rule (1) then order of attachment is void. (Southern Petrochemical Industries Corpn. Ltd. Vs S.Rathish Kanna) 2004(2) Civil Court Cases 346 (Madras)

Civil Procedure Code, 1908, Order 38 Rule 5 - Attachment before judgment - Order on ground that defendant did not appear inspite of notice - Nothing on record to show that defendant with intent to obstruct or delay execution of decree was about to dispose of suit property - Impugned order

of attachment passed without taking into consideration said aspect and recording satisfaction in that respect and also without following guidelines of High Court - Impugned order set aside. (M/s R.B.M.Pati Joint Venture Vs M/s Bengal Builders) AIR 2004 Calcutta 58

Civil Procedure Code, 1908, Order 38 Rule 5 - Attachment before judgment - Sale deed executed prior to attachment order but its registration took place after order of attachment - Sale deed executed prior to attachment can be considered for sustaining claim petition of third party. (Abdul Jalal Vs M/s Mariya Financiers) AIR 2002 Kerala 276

Civil Procedure Code, 1908, Order 38 Rule 5 - Attachment before judgment - Speak order - Not necessary. (Greater Cochin Development Authority Vs Harrison's) AIR 2002 Kerala 119

SC **Civil Procedure Code, 1908, Order 38 Rule 5** - Attachment before judgment - Suit for recovery of money - When defendant is got restrained from alienating his property, then order to attach property before judgment should not be made. (M/s.V.G.Quenim & Anr Vs M/s Bandekar Brothers Pvt.Ltd.) 2003(1) Civil Court Cases 146 (S.C.)

Civil Procedure Code, 1908, Order 38 Rule 5 - Guarantor sold the property of which he had created equitable mortgage in favour of Bank - Bank filed suit for recovery of loan amount - Order of attachment before judgment - Purchaser of property in question being in possession of property has a right to object to the order before attachment - His property cannot be attached before judgment as he was not a party to the suit and had become owner of the property much before filing of the suit - Order of attachment before judgment is bad and illegal. (Subhash Bhimashankar Kalase Vs State Bank of India) 2005(3) Civil Court Cases 61 (Bombay)

Civil Procedure Code, 1908, Order 38 Rule 5 - Mortgaged property - Attachment before judgment - Suit for recovery of money based on mortgage - Order of attachment before judgment can be made even in respect of mortgaged property in exceptional circumstances. (Ananthula Chandrakala Vs Karim Gulam Hussain Lalani) 2006(3) Civil Court Cases 705 (A.P.)

Civil Procedure Code, 1908, Order 38 Rules 5, 6 - Suit for recovery of money - Defendant making attempt to close his business to defraud his

creditors - Attachment of movable ordered to furnish security for suit amount
- Not improper. (Bommanasaree Mandir Vs Manisha Sarees) AIR 2002 A.P.
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**Civil Procedure Code, 1908, Order 38 Rules 5,10 and S.64,
Transfer of Property Act, 1882, Section 40** - Agreement of sale - Executed
prior to order of attachment before judgment - Held, agreement of sale prevails
over the attachment. (Adinarayana Vs S.Gafoor Sab & Ors.) 2004(2) Civil
Court Cases 234 (A.P.)

Civil Procedure Code, 1908, Order 38 Rule 8 - Application under
Order 38 Rule 8 - To be decided either during pendency of suit or alongwith
the suit - This is not as a matter of compliance with any mandatory provisions,
but, as a measure to ensure proper implementation of the provisions of the
Code of Civil Procedure. (Mohammed Ali Nayyar & Ors. Vs Ahraz Hussain
& Anr.) 2005(2) Civil Court Cases 625 (A.P.)

Civil Procedure Code, 1908, Order 38 Rule 9 - Attachment before
judgment - Raising of - Non furnishing of security within 48 hours - Is not a
ground to refuse prayer for raising of attachment - Court can raise attachment
whenever there is offer made by party for accepting security. (Madigiri Kiran
Kumar Vs Swaragiri) AIR 2004 A.P. 104

Civil Procedure Code, 1908, Order 38 Rule 10, Section 64 - Money
decree - Execution - Agreement to sell executed before order of attachment
- Agreement of sale accepted by Court - Decree passed in performance
thereof had become final - Agreement of sale prevails over attachment before
judgment. (Adinarayana Vs S.Gafoor Sab) AIR 2004 A.P. 377

Civil Procedure Code, 1908, Order 39 Rr.1 & 2 - Cosharer in
joint possession - Suit for injunction to restrain the other co-sharer from
selling more than his share and raise construction - Injunction granted as
the defendant not found to be in exclusive possession - Order upheld by the
High Court and further held that equity demands that the property should
be preserved in present state - Status-quo ordered. (Balbir Singh Vs Lamber
Singh) 2004(3) Civil Court Cases 129 (P&H)

Civil Procedure Code, 1908, Order 39 Rule 1, 2 - Temporary
injunction - Restraining from interference in possession - Plaintiff in

possession in exchange of his house with his father, the original owner of suit land - Possession continued on basis of mutation entry and report made in Roznamcha - Defendant claiming ownership over suit land on basis of some consent decree - But said consent decree prima facie found to be result of fraud - In such circumstances injunction can be granted. (Gurmail Singhy Vs Hardy Singh) AIR 2002 P&H 327

Civil Procedure Code, 1908, Order 39 Rule 1 - Interim injunction or ad interim injunction - No qualitative difference between the two. (Rajendraprasad R.Singh Vs Municipal Corporation) AIR 2003 Bombay 392

Civil Procedure Code, 1908, Order 39 Rule 1 - Interim relief not be granted which amounts to final relief - In exceptional circumstances where Court is satisfied that ultimately petitioner is bound to succeed and fact-situation warrants granting such a relief, Court may grant the relief but it must record reasons for passing such an order and make it clear as what are the special circumstances for which such a relief is being granted to a party. (Ashok Kumar Bajpai Vs Dr.Ranjana Bajpai) AIR 2004 All. 107

Civil Procedure Code, 1908, Order 39 Rule 1 - Jurisdiction - Raise an arguable issue and need not be decided at the ad interim stage. (The Bengal Club Ltd. Vs Susanta Kumar Chowdhary) AIR 2003 Calcutta 96

Civil Procedure Code, 1908, Order 39 Rule 1,2 - Police help - Interference in possession inspite of stay order - Held, when an injunction order is not carried out it is always open for the parties to seek police protection to see that the injunction order is properly implemented. (Sk. Yousuf Vs Shaik Madhar) AIR 2003 A.P. 44

Civil Procedure Code, 1908, Order 39 Rule 1,2 - Temporary injunction - Exparte injunction - Granting of injunction on the ground that other side refused to receive notice without recording reasons and without discussing matter on merits - Not legal. (Mididodi Saraswathi & Anr. Vs Mandal Revenue Officer & Ors.) 2005(1) Civil Court Cases 233 (A.P.)

Civil Procedure Code, 1908, Order 39 Rule 1(a) and S.151 - Transporter of goods - Detaining goods and filing suit for recovery of hire charges - One of the defendants Warehousing Corporation who delivered

goods for transportation seeking release of goods claiming himself as custodian of goods - Goods in danger of being wasted or damaged - Can be released on furnishing Bank guarantee. (M/s Central Warehousing Corporation Vs Prabhu Narain Singh) AIR 2003 Allahabad 223

Civil Procedure Code, 1908, Order 39 Rule 1(c) - Temporary injunction - Plaintiff in possession under agreement of sale - Heavy amount paid to vendor on date of execution of agreement - Sale deed could not be executed due to failure of owner to obtain Income-tax Clearance certificate - Plaintiffs cannot be blamed for non payment of remaining amount - Prima facie they were ready and willing - Plaintiff in possession of date of suit, balance of convenience was in their favour - They were likely to suffer substantial injury if temporary injunction was not granted - Held, plaintiff is entitled to temporary injunction. (M/s Chetak Constructions Limited Vs Om Prakash & Ors.) 2003(3) Civil Court Cases 477 (M.P.)

Civil Procedure Code, 1908, Order 39 Rules 1, 2, Constitution of India, Art.226 - Restraining petitioners from transferring suit land or any part thereof to any third person - Father during his life time disposed of 1/3rd share in property and petitioner in possession out of this 1/3rd share which was acquired for valuable consideration - Merely because there was no evidence of partition of property that by itself cannot enure to the benefit of the plaintiff to obtain equitable relief of injunction - Order as far as it imposed restrictions upon the petitioners from transferring or alienating the suit land or any portion thereof or creating any encumbrance quashed. (Ramchandra Shankar Randive & Ors. Vs Uttam Marutrao Randive & Ors.) 2003(3) Civil Court Cases 442 (Bombay)

Civil Procedure Code, 1908, Order 39 Rules 1, 2, Order 2 Rule 2 - Suit barred by Order 2 Rule 2 of Civil Procedure Code, 1908- Temporary injunction cannot be granted - Suit for specific performance - Suit property sold to third party during pendency of suit for injunction - Restraining third party from changing nature of suit property and from raising any construction - Suit for injunction withdrawn without seeking leave of Court or reserving any right - Doctrine of lis pendens not applicable as earlier suit for injunction withdrawn without seeking leave of Court or reserving any right and suit did not come to its logical end - Order dismissing interim stay application - No interference. (Rajinder Pal Puri Vs Dr.Reddy's Laboratories Ltd.) 2006(4) Civil Court Cases 578 (H.P.)

Civil Procedure Code, 1908, Order 39 Rules 1, 2, Order 43 Rule

1 - Interim injunction - Order refusing to grant ex parte injunction - Order is not appealable - Hence, bar of S.115(2) is not applicable - Revision against such order is maintainable. (Smt.Urmila Devi Vs Nagar Nigam) AIR 2003 Allahabad 158

Civil Procedure Code, 1908, Order 39 Rules 1, 2, Order 43 Rule

1 - Temporary injunction - Appellate Court finally deciding disputed question of fact at injunction stage - Order set aside - Case remanded for decision afresh. (Mohd. Sharif Vs ADJ No.2 Sikar & Anr.) 2004(2) Civil Court Cases 682 (Rajasthan)

Civil Procedure Code, 1908, Order 39 Rules 1, 2, Order 43 Rule

1(r) & S.115 - Ex parte ad interim injunction - Order is appealable - Revision does not lie. (Airport Authority of India V. M/s Paradise Hotel & Restaurant) AIR 2002 Gauhati 146

Civil Procedure Code, 1908, Order 39 Rules 1, 2, Order 7 Rule

11 - Rejection of plaint - Appeal against - Held, in such an appeal Appellate Court has power to grant temporary injunction. (Sanjay Purushottam Agrawal & Anr. Vs Nirmaladevi Shantilal Ruparel & Ors.) 2004(2) Civil Court Cases 616 (Bombay)

Civil Procedure Code, 1908, Order 39 Rules 1, 2, Order 9 Rule

13 - Ex parte temporary injunction - Application U.O.9 Rule 13 CPC to set aside ex parte temporary injunction - Grant of ex parte temporary injunction is only an order and not a decree - O.9 Rule 13 CPC is not applicable to set aside such an order. (Mididodi Saraswathi & Anr. Vs Mandal Revenue Officer & Ors.) 2005(1) Civil Court Cases 233 (A.P.)

Civil Procedure Code, 1908, Order 39 Rules 1, 2, Section 104(2),

Order 43 Rule 1(r) - Second appeal against appellate order granting or rejecting injunction - Not maintainable. (Motilal Ramdev Teli Vs Bhandari) AIR 2002 Chhattisgarh 6

Civil Procedure Code, 1908, Order 39 Rules 1, 2, Section 11 -

Temporary injunction - Second application under changed circumstances - Not barred by res judicata. (Bhura Vs Addl. District Judge No.8, Jaipur City & Ors.) 2004(2) Civil Court Cases 90 (Rajasthan)

Civil Procedure Code, 1908, Order 39 Rules 1, 2, Specific Relief Act, 1963, Section 6 - Temporary injunction in a suit under Section 6 of Specific Relief Act can be granted to ensure that property in dispute is not alienated, altered, demolished, removed or destroyed during the pendency of the suit. (Kanakadhara Constructions Vs Smt.K.Jhansi Lakshmi Bai & Ors.) 2006(2) Civil Court Cases 219 (A.P.)

SC **Civil Procedure Code, 1908, Order 39 Rules 1, 2** - Ad interim exparte injunction - Refusal by trial Court - Status quo order passed by Appellate Court - Order of status quo without indicating what the status quo was, is not an order that should be passed at the initial stage. (Kishore Kumar Khaitan & Anr. Vs Praveen Kumar Singh) 2006(2) Civil Court Cases 484 (S.C.)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Ad interim injunction - Co-sharers - Land not partitioned - There can be no alienation of specific portion of land - Parties to maintain status quo with regard to possession as well as alienation. (Rajinder & Anr. Vs Smt.Namarta Bahal & Anr.) 2006(3) Civil Court Cases 76 (P&H)

SC **Civil Procedure Code, 1908, Order 39 Rules 1, 2** - Ad interim injunction - Courts should be slow in interfering at interim stage with schemes which are based on costing. (M.P.Housing Board Vs Anil Kumar Khiwani) 2005(2) Apex Court Judgments 120 (S.C.) : 2005(2) Civil Court Cases 775 (S.C.)

SC **Civil Procedure Code, 1908, Order 39 Rules 1, 2** - Ad interim injunction - Normally Supreme Court is reluctant to interfere with the interim orders passed under Order 39 Rules 1 & 2 of Civil Procedure Code, 1908. (M.P.Housing Board Vs Anil Kumar Khiwani) 2005(2) Civil Court Cases 775 (S.C.)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Ad interim injunction - Person in possession can protect his possession by seeking injunction against any other person but not against the true owner. (Dharamvir Vs Naresh Kumar & Oars.) 2005(1) Civil Court Cases 770 (P&H)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Ad interim injunction - Prima facie case - Previous litigation between same parties albeit

between some parties - Such judgment is relevant to determine prima facie case even at the stage of grant of ad interim injunction. (Amarjit Kaur Vs Sadhu Singh & Ors.) 2006(2) Civil Court Cases 463 (P&H)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Ad interim injunction - Restraining defendants from interfering in peaceful possession - Defendant father of plaintiff owner of entire house - Plaintiff produced no documents showing that nature of property is Joint Hindu Family Property or that he is a co-sharer in any manner - Status of plaintiff cannot be more than a mere licensee - Injunction cannot be granted against the true owner - Interim stay declined - Order upheld. (Dharamvir Vs Naresh Kumar & Ors.) 2005(1) Civil Court Cases 770 (P&H)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Ad interim injunction - Restraining retiring partners to carry on the business in the name and style 'Perfection House' - Partnership firm carried on the business under the name and style "Perfection Silk and Saree Kendra" - Nothing in retirement deed and Section 36 of Partnership Act that prevents defendants from using the word 'Perfection' - No prima facie case made out - Application for injunction dismissed. (Gagandeep Singh Vs B.R.Arya & Ors.) 2006(4) Civil Court Cases 213 (Delhi)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Ad interim injunction - Restraining true owner from interfering in possession - Servant of tenant occupied premises when it was vacated by tenant - Held, possession of servant was in fact an occupation as an agent or a servant of the original tenant and thus his possession cannot amount to actual physical possession by a tenant - Held, plaintiff is not entitled to injunction. (Sahban Khan Vs Rajendra Prasad Srivastava & Anr.) 2005(1) Civil Court Cases 785 (Allahabad)

SC **Civil Procedure Code, 1908, Order 39 Rules 1, 2** - Ad interim injunction - Self financing scheme - Escalation in price - In a self financing scheme, pricing is generally based on cost of construction unlike sale of houses after they are completed, in which cases pricing is generally market related - In the instant case estimated cost of a showroom and departmental store was Rs.39 lacs - Application submitted alongwith 10% of estimated cost - Escalation in price - Proposed actual cost coming to Rs.2,000/- per sq. ft. - Option given to withdraw from the scheme - Respondent objected - Ultimately registration of respondent cancelled - Civil suit for declaration

and injunction filed - Held, trial Court was not justified in restraining the board from allotting the showroom in question to any other person till the disposal of the suit. (M.P.Housing Board Vs Anil Kumar Khiwani) 2005(2) Apex Court Judgments 120 (S.C.) : 2005(2) Civil Court Cases 775 (S.C.)

SC **Civil Procedure Code, 1908, Order 39 Rules 1, 2** - Ad interim injunction - Trade Mark - Prior user - Plaintiff using mark 'Malikchand' but not much publicized - At a subsequent point of time defendant started use of mark 'Malikchand' in a large scale - At relevant time, neither party had a registered trade mark for the respective marks claimed by them - A number of cases registered against defendant under Prevention of Food Adulteration Act - Prima facie establishment of prior user goes a long way in enabling the plaintiff to claim an injunction in a passing-off action - Grant of interim injunction in favour of plaintiff held to be justified. (Dhariwal Industries Ltd. & Anr. Vs M/s M.S.S. Food Products) 2005(1) Apex Court Judgments 546 (S.C.) : 2005(2) Civil Court Cases 261 (S.C.)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Cement factory - Restraining defendant from constructing factory for manufacturing cement cavity box - Licence for running factory duly granted - Manufacturing yet to start - No actionable nuisance caused - Suit filed on ground that activity would cause pollution and spread of disease - Suit lies only after cause of action erupts on account of manufacturing activity - Suit liable to be dismissed. (Thressiamma Vs Sebastian Mathew) AIR 2002 Kerala 1

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Co-sharer - Restraining another co-sharer from raising construction - Defendant seeking permission to raise construction and demolish the same later on after partition - Held, such a course would result into unnecessary complications even in partition proceedings. (Pritam Singh & Ors. Vs Chanan Singh) 2003(1) Civil Court Cases 426 (P&H)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Co-sharer - Restraining another co-sharer from raising construction over superior and valuable portion of the suit property without getting the same partitioned - Held, plaintiff a co-sharer is entitled to protect the suit land to ensure that the nature of suit land is not changed by another co-sharer - Proceedings for partition have been initiated and defendant would not suffer any prejudice because it would soon be clear which of the co-sharer would be entitled to

occupy and possess which portion of the land. (Pritam Singh & Ors. Vs Chanan Singh) 2003(1) Civil Court Cases 426 (P&H)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Defendant seeking injunction against plaintiff - Suit for injunction restraining defendant from interfering with possession and from demolishing structure - Defendant seeking injunction restraining plaintiff from carrying on with construction as plaintiff's father had executed agreement to sell suit property to defendant - Held, relief claimed by defendant is not covered by Order 39 Rule 1(a) - Defendant is not entitled to injunction - It cannot be said that defendant's claim to such relief arose out of plaintiff's cause of action or incidental to it. (B.Lakshminarayan Vs The Corporation of City of Bangalore & Anr.) 2006(2) Civil Court Cases 111 (Karnataka)

SC Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Demolition - Temporary injunction - When structure is unauthorised temporary injunction cannot be granted merely on the ground of sympathy or hardship. (Seema Arshad Zaheer & Ors. Vs Municipal Corporation of Greater Mumbai & Ors.) 2006(3) Apex Court Judgments 83 (S.C.) : 2006(3) Civil Court Cases 634 (S.C.)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Departmental proceedings - Stay during pendency of criminal proceedings launched on the same set of facts - AIR 1997 SC 13 followed wherein held : (i) Both proceedings can continue simultaneously; (2) If charge in criminal case is of a grave nature which involves complicated questions of law and fact then departmental proceedings to be stayed till conclusion of criminal case; (3) Charge being grave or involving complicated questions of fact and law, depends upon nature of offence; (4) factors No.2 & 3 cannot be considered in isolation to stay departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed; (5) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest. (Syama Ghana Biswal Vs General Manager, SBI) 2003(3) Civil Court Cases 305 (Orissa)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Discussion made on documents and findings recorded for disposal of application U.O.39 Rules 1, 2 CPC is only for the purpose of deciding the application - Do not have the effect of adjudicating the relevant issues in the suit. (Upendranath Singh Vs Smruti Ranjan Mohanty) 2003(2) Civil Court Cases 432 (Orissa)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Exclusive copyright over industrial drawings and designs claims - Not registered under Designs Act - Cannot claim copyright - Not entitled to injunction. (M/s Polymer Papers Ltd. Vs Gurmit Singh) AIR 2002 Delhi 530

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Exparte temporary injunction - Court is required to record reasons in support of its conclusions for grant of temporary injunction. (Mididodi Saraswathi & Anr. Vs Mandal Revenue Officer & Ors.) 2005(1) Civil Court Cases 233 (A.P.)

SC **Civil Procedure Code, 1908, Order 39 Rules 1, 2** - Injunction - An equitable relief - Plaintiff if guilty of inequitable conduct, is not entitled to the relief of injunction. (Kanchusthabam Satyanarayana & Ors. Vs Namuduri Atchutaramayya & Ors.) 2005(1) Apex Court Judgments 607 (S.C.) : 2005(2) Civil Court Cases 187 (S.C.)

SC **Civil Procedure Code, 1908, Order 39 Rules 1, 2** - Interim injunction - Consent eviction decree - Challenged as being obtained by fraud by putting an imposter - Plaintiff not to be dispossessed during pendency of suit. (Sumitra Devi Anand (Dead) by LRs. Vs Shanti Devi (Dead) by Lrs.) 2005(1) Apex Court Judgments 679 (S.C.) : 2005(1) Civil Court Cases 692 (S.C.)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Interim injunction - Plaintiff in lawful possession of suit property situated within development area under U.P.Urban Planning and Development Act and not under Nagar Mahapalika - Plaintiff held entitled to grant of injunction restraining officials of Nagar Nigam from forcible dispossession. (Smt.Urmila Devi Vs Nagar Nigam) AIR 2003 Allahabad 158

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Interim injunction - Plaintiff running nursing home and permitting doctors to practice profession in chambers of cabins - Defendants were in fiduciary relationship with plaintiff - On termination of directorship and withdrawal of permission, defendant

cannot be allowed to disturb working of hospital by committing trespass and nuisance. (Geetanjali Nursing Home (P) Ltd. Vs Dr.Dileep Makhija & Ors.) AIR 2004 Delhi 53

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Interim injunction
- Restraining defendant from interfering in joint use of electric motor connection - In revenue record plaintiff shown to be owner in possession where electric motor is installed - Held, grant of injunction restraining other co-owners from interfering with the joint use of electric motor connection is proper and calls for no interference. (Ajit Singh Vs Tarsem Singh & Ors.) 2005(1) Civil Court Cases 748 (P&H)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Interim injunction
- Unlawful possession or possession without any right to be lawfully in possession of the property - Plaintiff not entitled to injunction against the true owner. (K.Ankaiah Vs Tirumala Tirupati Devasthanams) 2003(1) Civil Court Cases 135 (A.P.)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Interim injunction
restraining defendant from raising any construction over the property in dispute - Undertaking by defendant to raise construction at his own risk and responsibility and that he will not claim any compensation and rather remove the malba in case suit is decided against him - Defendant allowed to raise construction at his own risk subject to the final decision of the suit. (Dr. Bhupesh Mangla Vs Dr.Ravi Chander Mangla) 2004(2) Civil Court Cases 42 (P&H)

SC **Civil Procedure Code, 1908, Order 39 Rules 1, 2** - Interim mandatory injunction - Dispossession despite order of status quo - In absence of a clear prima facie finding that plaintiff was in possession on the date of filing of suit and on the date of passing of ex parte status quo order and that he is dispossessed thereafter, an order for interim mandatory injunction should not be passed. (Kishore Kumar Khaitan Vs Praveen Kumar Singh) 2006(2) Civil Court Cases 484 (S.C.)

SC **Civil Procedure Code, 1908, Order 39 Rules 1, 2** - Interim mandatory injunction - Dispossession despite status quo order - An interim mandatory injunction is not a remedy that is easily granted - It is an order that is passed only in circumstances which are clear and prima facie materials

clearly justify a finding that the status quo has been altered by one of the parties to the litigation and the interests of justice demand that status quo ante be restored by way of an interim mandatory injunction. (Kishore Kumar Khaitan & Anr. Vs Praveen Kumar Singh) 2006(2) Civil Court Cases 484 (S.C.)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Once an application is made by opposite party for referring the matter to arbitration in terms of arbitration agreement, thereafter Court cannot decide the application U.O.39 Rules 1,2 as nothing further is required to be done. (Arbitration and Conciliation Act, 1996, Section 7). (M/s Jagdish Raj & Brothers Vs Jagdish Raj) 2003(1) Civil Court Cases 367 (P&H)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Partner - Restraining retired partner from using trade mark of firm - Defendant alleging no dissolution of firm in the eye of law and that he is still a partner of the firm - In the caveat filed by defendant, intimation to tax authorities and settlement of accounts, though disputed, are sufficient for decision of temporary injunction application that defendant has left the partnership firm - Validity of these documents to be decided at the time of trial - Prima facie case in favour of plaintiff - Trade mark forms part and parcel of the assets of the firm - Temporary injunction as prayed for granted. (Sivaramakrishna Traders Vs Kamal Traders) 2003(3) Civil Court Cases 649 (A.P.)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Plaintiff suppressing material facts in order to get advantage over defendants - Playing fraud on Court - Not entitled to discretionary relief of injunction. (M/s Polymer Papers Ltd. Vs Gurmit Singh) AIR 2002 Delhi 530

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Police help to implement order of temporary injunction - When once an injunction order is not carried out, it is always open for the parties to seek police protection to see that the order of temporary injunction is properly implemented. (Sk. Yousuf & Ors. Vs Shaik Madhar Saheb) 2003(1) Civil Court Cases 392 (A.P.)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Possession - Jamabandi - In absence of clear evidence of possession and title entries in jamabandi cannot constitute the basis for concluding that the plaintiff is in

possession - Vendor cannot pass to the vendee a title better than his own title or rights better than his own rights - Once the vendor of plaintiff was not in possession it remains unexplained as to how entries in the jamabandies have been incorporated showing that the plaintiff is in possession - Held, view taken by appellate Court that it is not believable that vendor of plaintiff is owner in possession does not suffer from any legal flaw - Order upheld. (Jai Pal Singh Vs Ram Dhan Saini) 2003(1) Civil Court Cases 142 (P&H)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Prohibition injunction - Plaintiff not in possession - Grant of injunction in favour of plaintiff is proper when plaintiff is actual owner and defendant fails to prove title by adverse possession. (Mohandas Dattaram Prabhu Vs U.F.M. Mukund Honnappa Naik) AIR 2003 Karnataka 428

SC Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Restitution order - An order of restitution is stayed only in exceptional circumstances. (Kanchusthabam Satyanarayana & Ors. Vs Namuduri Atchutaramayya & Ors.) 2005(1) Apex Court Judgments 607 (S.C.) : 2005(2) Civil Court Cases 187 (S.C.)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Restraining alienation during pendency of suit - Any transfer made during pendency of suit is subject to the provision of S.52 of Transfer of Property Act as such there is no necessity to pass an order of prohibitory injunction prohibiting the alienation of property during pendency of suit. (Upendranath Singh Vs Smruti Ranjan Mohanty) 2003(2) Civil Court Cases 432 (Orissa)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Restraining defendant from raising any construction on suit land - Status quo order granted - Appellate Court vacated order - Not proper in view of fact that there was possibility of defendant altering nature of suit property during pendency of suit - Order of trial Court restored. (Parboti Adhikary Vs Pradip Adhikary) AIR 2004 Gauhati 49

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Status quo order - Normally order of status quo should not be passed as it is either misinterpreted unknowingly or it may be interpreted wrongly and deliberately to create dispute - Court should avoid to pass an order which may lead to dispute on spot and parties should not be left to settle their score on the property instead

of getting the decision from the Court. (Jetha Ram Vs Trilok Chand & Ors.)
2005(2) Civil Court Cases 678 (Rajasthan)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Suit for injunction
- Suit withdrawn without permission of Court to file fresh suit on the same cause of action - Second suit filed without mentioning the fact of filing of earlier suit - Held, injunction is an equitable relief and the same cannot be granted to a person who does not come to Court with clean hands and who is guilty of suppression of facts. (Jonnala Sura Reddy & Anr. Vs Tityyagura Srinivasa Reddy & Ors.) 2004(2) Civil Court Cases 417 (A.P.)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Suit for specific performance - Oral agreement - Original title deeds in possession of plaintiff - Certain other circumstance also in favour of plaintiff - However injunction not granted in view of undertaking given by defendant that he had no intention to sell property. (Haraparbati Thakurrani Bije Vs Ramakanta Gupta) AIR 2002 Orissa 89

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Suit for specific performance - Restraining defendant from transferring suit land by way of sale or by any other mode till the final disposal of the suit - Held, without a prayer for decree of perpetual injunction, an interim injunction cannot be granted. (Ishwarbhai Vs Bhanushali Hiralal Mohanlal Nanda) AIR 2002 Gujarat 328

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Suppression of material facts - Disentitled party for getting discretionary relief of injunction - Plaintiff withholding vital documents relevant to litigation in order to gain advantage on other side - He would be guilty of playing fraud on Court as well as on opposite party - Not entitled to discretionary relief of injunction. (Rohit Dhawan Vs G.K.Malhotra) AIR 2002 Delhi 151

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Telephone booth
- Permission to run PCO in railway premises - Cancellation - No show cause notice or opportunity of hearing given to plaintiff before proposed action - Further application by plaintiff to convert her prayer of temporary injunction into an interim mandatory injunction - Can be allowed - Strong prima facie case, balance of convenience and irreparably injury in favour of applicant
- Direction given to defendant to remove lock from PCO booth, deliver

its possession and to restore electricity supply and telephone connection forthwith to plaintiff. (Smt.Ajra Habib Vs R.K.Gupta) AIR 2002 M.P. 95

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Temporary injunction - Agreement between parties determinable - For breach of such agreement by one party other party could be compensated in terms of money - No interim injunction can be granted. (Cogent Silver Fibre Pte. Ltd. Vs Noble Fibre Technologies Inc. & Ors.) 2006(3) Civil Court Cases 673 (Delhi)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Temporary injunction - Agreement to sell - Suit for specific performance - Restraint order from interference with possession sought - Agreement denied by vendor - Vendor alleged possession of another vendee under registered sale deed - Plaintiff admittedly in possession - Plaintiff having prima facie case on raising a serious and substantial question - Balance of convenience also in favour of plaintiff - Refusal of injunction likely to cause irreparable injury to plaintiff - Consequently direction issued for maintaining status quo subject to deposit of Rs.75,000/- annually to safeguard the interest of purchaser from vendor. (Sukkhia Singh Vs Mahal Singh) 2003(2) Civil Court Cases 547 (Rajasthan)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Temporary injunction - Both plaintiff and defendant seeking temporary injunction - Application of plaintiff dismissed whereas application of defendant allowed and plaintiff restrained from interfering with possession of defendant - Suit stood disposed of for want of prosecution as plaintiff sought permission to withdraw suit - Held, order of temporary injunction passed in favour of defendant is not executable. (Ramesh Akre Vs Mangalabai Pralhad Akre) AIR 2002 Bombay 487

SC **Civil Procedure Code, 1908, Order 39 Rules 1, 2** - Temporary injunction - Can be granted only when (i) prima facie case is made out; (ii) balance of convenience; (iii) irreparable loss and injury - Relief of temporary injunction being an equitable relief it can be granted only when plaintiff's conduct is free from blame and he approaches the court with clean hands. (Seema Arshad Zaheer & Ors. Vs Municipal Corporation of Greater Mumbai & Ors.) 2006(3) Apex Court Judgments 83 (S.C.)

SC **Civil Procedure Code, 1908, Order 39 Rules 1, 2** - Temporary

injunction - Can be granted only when (i) prima facie case is made out; (ii) balance of convenience; (iii) irreparable loss and injury - Relief of temporary injunction being an equitable relief it can be granted only when plaintiff's conduct is free from blame and he approaches the court with clean hands. (Seema Arshad Zaheer & Ors. Vs Municipal Corporation of Greater Mumbai & Ors.) 2006(3) Civil Court Cases 634 (S.C.)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Temporary injunction - Co-sharers - Once the parties are in exclusive possession of their respective shares, the question of issuance of any ad interim injunction qua the suit property does not arise. (Baldev Singh Vs Sewa Singh & Anr.) 2004(2) Civil Court Cases 422 (P&H)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Temporary injunction - Encroachment on road - Report of Local Commissioner that plaintiff has encroached 5 feet street land in front of his house - Held, interim injunction rightly denied to him. (Gian Singh Vs Jarnail Singh) 2003(2) Civil Court Cases 625 (P&H)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Temporary injunction - Grant of - Appeal against - Satisfaction that there is prima facie case - By itself not sufficient to grant injunction - On point of irreparable injury there was no conclusion - No material or affidavit discussed to come to conclusion that balance of convenience is in favour of plaintiff - Reasons also not discussed regarding balance of convenience - Important ingredients for grant of injunction not satisfied - Order granting injunction liable to be interfered with. (Lark Laboratories (India) Ltd. Vs Medico Interpharma Ltd.) AIR 2002 Gujarat 368

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Temporary injunction - Grant of - Guiding principles - (i) prima facie case, (ii) balance of convenience and (iii) irreparable loss and/or injury if temporary injunction is refused - Injunction cannot be granted without examining the matter in detail by merely saying that prima facie case is made, apart from stating that the other two requirements are fulfilled or not - Order granting or refusing to grant interim relief must contain some discussion with respect to the documents placed on record - Order must reflect an application of mind on the part of the Court passing the order. (Ajay Mittal Industrial Premises Co-Operative Society Vs Raj Publicity) 2004(3) Civil Court Cases 639 (Bombay)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Temporary injunction - Inheritance of property by two brothers in equal share by way of Will - Plaintiff claiming to be in possession of room on first floor on portion of his brother - Brother sold out his share - Plaintiff seeking restraint order from demolishing house resulting in demolish of room in his possession on plea that sale deed in favour of defendant did not include room on first floor - No prima facie right of petitioner regarding possession of disputed room - Balance of convenience not in his favour - Held, restraining order rightly declined. (Anil Kumar Vs Smt.Kusum Kannaujiya) 2006(4) Civil Court Cases 224 (Allahabad)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Temporary injunction - It is not necessary for plaintiff to establish his full fledged title over suit property. (Satya Prakash Vs Ist ADJ) AIR 2002 Allahabad 198

SC **Civil Procedure Code, 1908, Order 39 Rules 1, 2** - Temporary injunction - Jurisdiction - Clause in agreement viz. "Court of Bombay and no other Court" - Plea of not consciously agreeing to the exclusion of jurisdiction of Courts other than Bombay - Until a clear finding is recorded that Court has territorial jurisdiction to try the suit, no injunction can be granted in favour of plaintiff by making a general remark that plaintiff has an arguable case and that he did not consciously agree to the exclusion of the jurisdiction of the Court other than Bombay. (Shree Subhlaxmi Fabrics Pvt.Ltd. Vs Chand Mal Baradia & Ors.) 2005(2) Civil Court Cases 227 (S.C.)

SC **Civil Procedure Code, 1908, Order 39 Rules 1, 2** - Temporary injunction - Order passed u/s 145/146 Cr.P.C. - Civil Court has jurisdiction to make an order of injunction inconsistent with the order of Executive Magistrate. (Shanti Kumar Panda Vs Shakuntala Devi) 2005(1) Apex Court Judgments 169 (S.C.) : 2005(1) Civil Court Cases 344 (S.C.)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Temporary injunction - Plaintiff failing to prove long possession - Other party holding registered sale deed executed 20 years back - Refusal of grant of injunction against his dispossession - Proper. (Shetra Pal Vs Renu) AIR 2002 Rajasthan 159

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Temporary injunction - Public property - Encroacher of public land has no right to seek

injunction. (Chunni Lal & Ors. Vs State of Haryana & Ors.) 2004(2) Civil Court Cases 586 (P&H)

SC **Civil Procedure Code, 1908, Order 39 Rules 1, 2** - Temporary injunction - Restraining alienation and raising construction - Temporary injunction cannot be declined on the basis that alienation will be subject to law of lis pendens and construction raised will be at own risk or on the basis of an undertaking that there will be no alienation and construction will be at own risk - Unless and until a case of irreparable loss or damage is made out by a party to the suit, Court should not permit the nature of property being changed with also includes alienation or transfer of property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. (Maharwal Khewaji Trust (Regd.), Faridkot Vs Baldev Dass) 2005(1) Apex Court Judgments 457 (S.C.) : 2005(1) Civil Court Cases 430 (S.C.)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Temporary injunction - Separate electricity meter and water connection - No specific prayer to that effect in plaint - Plaintiff licensee in suit premises - Possession of plaintiff in suit premises not disputed - Relief of separate electricity meter and water connection granted on the basis of balance of convenience as also on humanitarian grounds - No error in granting relief to plaintiff in equity even if there was no specific prayer in plaint to that effect. (Niranjan Lal Joshi & Anr. Vs P.K.Joshi & Ors.) 2005(1) Civil Court Cases 181 (Rajasthan)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Temporary injunction - Street - Encroachment by plaintiff - Held, an encroacher has no right to seek temporary injunction against Gram Panchayat. (Ishwar Singh Vs Gram Panchayat) 2004(2) Civil Court Cases 279 (P&H)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Temporary injunction - Tenanted premises - Reconstruction of roof by tenant - Tenant is duty bound to maintain leased premises in as good a condition, as they were when they were let out - He has right to effect repairs in tenanted premises in terms of S.108(m) Transfer of Property Act - Provision in Rent Act enabling tenant to seek repairs from landlord does not take away right of tenant to effect repairs himself - Held, landlord cannot claim injunction restraining tenant from reconstructing roof of tenanted premises. (Transfer of Property Act, 1882, Section 108(m), U.P.Urban Buildings (Regulation of

Letting, rent and Eviction) Act, 1972, Section 28). (Smt.Saroj Dwivedi Vs Additional District Judge) 2003(3) Civil Court Cases 717 (Allahabad)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Temporary injunction - Violation of copyright - Applicant assessing monetary claim that may result from violation of copyright - Same can be compensated in terms of money - Temporary injunction not granted. (Gee Pee Films Pvt. Ltd. Vs Pratik Chowdhury) AIR 2002 Calcutta 33

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Temporary mandatory injunction - Can be granted - Principles governing are (1) The plaintiff has a strong case for trial i.e., a higher standard than a prima facie case that is normally required for a prohibitory injunction; (2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money; (3) The balance of convenience is in favour of the one seeking such relief. (Appukuttan Nair Vs Hydrose) 2004(2) Civil Court Cases 605 (Kerala)

SC Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Temporary mandatory injunction - Can be granted only in exceptional cases coming within exceptions noticed in Dorab Cawasji Warden case. (Metro Marins & Anr. Vs Bonus Watch Co. Pvt. Ltd. & Ors.) 2005(1) Apex Court Judgments 436 (S.C.) : 2005(1) Civil Court Cases 308 (S.C.)

SC Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Temporary mandatory injunction - Expiry of period of license - Suit for possession - Interim mandatory injunction directing defendant to hand over vacant and peaceful possession of premises - Cannot be granted - Granting of interim order directing handing over of possession would only mean decreeing the suit even before trial. (Metro Marins & Anr. Vs Bonus Watch Co. Pvt. Ltd. & Ors.) 2005(1) Apex Court Judgments 436 (S.C.) : 2005(1) Civil Court Cases 308 (S.C.)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Temporary mandatory injunction - Wall put up across a way which was in existence for more than 12 years and the plaintiff was prevented from using that way to go to his house just two days prior to the institution of suit - Interim injunction, prohibitory or mandatory can be granted even for restoring status quo anterior to the date of the suit if it is found that it is absolutely necessary - Order to

remove wall, upheld. (Appukuttan Nair Vs Hydrose) 2004(2) Civil Court Cases 605 (Kerala)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Tenant can be restrained from making any structural addition or alternations and from changing the existing position or effecting any major repair in the shop illegally or forcibly without the prior consent of the landlord or without the prior permission of the Rent Controller. (M/s Changa Weaving and Hosiery Factory Vs Sanjiv Kumar) 2003(1) Civil Court Cases 20 (P&H)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Tenant on second floor - One room on second floor occupied by servant of landlord - Common latrine and bath room used by tenant and servant of landlord - Tenant cannot seek injunction restraining servants of landlord from using common amenity during pendency of eviction petition. (Smt.Urmila Devi Jain Vs Shorey Lal) AIR 2003 Delhi 6

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Tenanted premises - Destruction overnight - Whether pulled down by landlord? - Can be gone into only after taking evidence - Unless said issue is finally decided no permission can be granted to conduct business in temporary shed - Moreover permission granted by Court to put up shed to house machinery of mill cannot be taken as licence to conduct business in newly erected shed - No permission or licence obtained from Gram Panchayat to conduct business in shed - No prima facie case made out to grant interlocutory injunction. (M.B.Muhammed Ali Vs Ibrahim Haji) AIR 2002 Kerala 336

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Tenanted premises - Use of roof - Staircase and upper floor in exclusive possession of plaintiff - Defendant had no approach to upper floors in any manner as only access to upper floor was through the staircase which was built inside the rented premises and in possession of plaintiff - Even when rent note is silent about tenancy of the roof the same is included in the tenancy - Defendant restrained from interfering with the possession of plaintiff and use of staircase leading to the first floor and also from the second floor. (Bhupinder Singh Vs Manpreet Singh) 2003(3) Civil Court Cases 323 (P&H)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Transfer of immovable property in violation of an order of injunction or prohibition

confers no right, title or interest in the transferee, as it is no transfer at all. (Keshrimal Jivji Shah & Anr. Vs Bank of Maharashtra & Ors.) 2004(3) Civil Court Cases 375 (Bombay)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 - Water and sewerage charges - Authorities seeking fixed sum of money by way of taxes from plaintiff - Refusal of injunction not causing irreparable injury to plaintiff which cannot be compensated in terms of money - Held, interim injunction cannot be granted. (Som Datta Bukders Ltd. Vs Kanpur Jal Sansthan) AIR 2002 Allahabad 249

Civil Procedure Code, 1908, Order 39 Rules 1, 2 & O.19 Rules 1,2 - Injunction - Power of Court to act on affidavits - Is unfettered - Not subject to O.19 Rules 1,2. (Satya Prakash Vs Ist ADJ) AIR 2002 Allahabad 198

Civil Procedure Code, 1908, Order 39 Rules 1, 2 & O.43 Rule 1 - Appeal lies against injunction granted U.O.39 Rules 1,2 while revision lies against injunction granted u/s 151 CPC. (Satya Prakash Vs Ist ADJ) AIR 2002 Allahabad 198

Civil Procedure Code, 1908, Order 39 Rules 1, 2 & O.9 Rule 13 - Exparte temporary injunction - Application U.O.9 Rule 13 to set aside exparte temporary injunction - Not maintainable - For setting aside such an order, only course open is to file an appeal or to seek adjudication of matter on merits. (Mididodi Saraswathi & Anr. Vs Mandal Revenue Officer & Ors.) 2005(1) Civil Court Cases 233 (A.P.)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 & S.115, Constitution of India, Art.227 - Interim injunction - Granted by trial Court - Order reversed by Ist Appellate Court - Revision against - Not maintainable - However, revision treated to be a petition under Article 227 of the Constitution of India. (Dr.Bhupesh Mangla Vs Dr.Ravi Chander Mangla) 2004(2) Civil Court Cases 42 (P&H)

SC Civil Procedure Code, 1908, Order 39 Rules 1, 2 & S.151 - Interlocutory orders - Restoration of suit dismissed for default - Interlocutory orders passed before dismissal of suit revive when dismissal is set aside and suit is restored unless Court expressly or by implication excludes the operation

of interlocutory orders passed during period between dismissal of suit and restoration. (Vareed Jacob Vs Sosamma Geevarghese & Ors.) 2004(1) Apex Court Judgments 487 (S.C.) : 2004(2) Civil Court Cases 365 (S.C.)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 & S.151 - Temporary injunction - Can be issued at the instance of a defendant against co-defendant. (Fr.Simon Vs Fr.Skaria) 2005(1) Civil Court Cases 76 (Kerala)

SC Civil Procedure Code, 1908, Order 39 Rules 1, 2 & Section 151 - Interlocutory orders - Restoration of suit dismissed for default - Interlocutory orders passed before dismissal of suit revive when dismissal is set aside and suit is restored unless Court expressly or by implication excludes the operation of interlocutory orders passed during period between dismissal of suit and restoration. (Vareed Jacob Vs Sosamma Geevarghese) 2004(2) Civil Court Cases 365 (S.C.)

Civil Procedure Code, 1908, Order 39 Rules 1, 2 & Section 151 - Temporary injunction - Can be issued at the instance of a defendant against co-defendant. (Fr.Simon Vs Fr.Skaria) 2005(1) Civil Court Cases 76 (Kerala)

Civil Procedure Code, 1908, Order 39 Rules 1 & 2 - Cosharer in joint possession - Suit for injunction to restrain the other co-sharer from selling more than his share and raise construction - Injunction granted as the defendant not found to be in exclusive possession - Order upheld by the High Court and further held that equity demands that the property should be preserved in present state - Status-quo ordered. (Balbir Singh Vs Lamber Singh) 2004(3) Civil Court Cases 129 (P&H)

Civil Procedure Code, 1908, Order 39 Rules 1,2, Contract Act, 1872, Section 27, Specific Relief Act, 1963, Section 42 - Contract of service - Negative stipulation - As per terms of employment employee was not to disclose trade secrets to others and not to compete with employer for a period of five years after expiry of term of service - Employee resigning voluntarily before expiry of term of service - Setting up his own manufacturing unit - Started manufacture of similar products - Negative stipulation can be enforced against employee even after he ceases to be employee and such enforcement of negative stipulation does not amount to restraint of trade so as to attract bar of Section 27 of Contract Act - Such breach of valid covenant may be

restrained by injunction. (V.V.Sivaram & Ors. Vs Foseco India Limited, Pune) 2006(1) Civil Court Cases 704 (Karnataka)

Civil Procedure Code, 1908, Order 39 Rules 1,2, Easement Act, 1882, Section 15 - Temporary injunction - Light and air - Easementary right - Windows, ventilators and skylighters in existence towards eastern side of building of plaintiff where defendant raising construction without leaving any space for light and air - Prima facie case made out - Entitlement to relief under Section 15 Easement Act to be decided only when parties lead evidence - Depriving plaintiff from light and air is an irreparable loss which cannot be measured in terms of money - Temporary injunction granted as it relates to obstruction to light and air - Defendant at liberty to raise construction by leaving four feet space between both the buildings. (Shashi Agrawal Vs Usha Agrawal & Anr.) 2006(4) Civil Court Cases 102 (M.P.)

Civil Procedure Code, 1908, Order 39 Rules 1,2, Order 26 Rule 9, Order 39 Rule 7 - Ad interim injunction - Local Commissioner - Pending adjudication of ad interim injunction application Local Commissioner can be appointed to note down the physical features of the property in dispute - However, ad interim injunction application is to be decided on the basis of evidence adduced on either side and independent of the observations made, if any by the Commissioner in his report. (Jayalakshmi Constructions & Anr. Vs Nawab Behboob Ali Khan & Ors.) 2006(2) Civil Court Cases 183 (A.P.)

SC Civil Procedure Code, 1908, Order 39 Rules 1,2, Order 7 Rule 11 - Ad interim injunction - Dismissal of application under Order 7 Rule 11 of Civil Procedure Code, 1908 is not of much significance - Disputed questions of fact cannot be gone into while deciding an application under Order 7 Rule 11 but while passing an order on grant of injunction Court can take into consideration disputed question of facts. (M.Gurudas & Ors. Vs Rasaranjan & Ors.) 2006(3) Apex Court Judgments 485 (S.C.) : 2006(4) Civil Court Cases 584 (S.C.)

Civil Procedure Code, 1908, Order 39 Rules 1,2, Order 7 Rule 3 - Temporary injunction - Suit for specific performance - Location or extent of area of land not specified in agreement - Agreement suffering from the vice of uncertainty - Court cannot grant any interim order. (Ram Charitra R.Singh Vs Ramesh L.Agrawal & Ors.) 2006(4) Civil Court Cases 244 (Bombay)

Civil Procedure Code, 1908, Order 39 Rules 1,2, Order 9 Rule 13 - Ex parte temporary injunction - Application under Order 9 Rule 13 of Civil Procedure Code, 1908 to set aside ex parte temporary injunction - Grant of ex parte temporary injunction is only an order and not a decree - Order 9 Rule 13 of Civil Procedure Code, 1908 is not applicable to set aside such an order. (Mididodi Saraswathi & Anr. Vs Mandal Revenue Officer & Ors.) 2005(1) Civil Court Cases 233 (A.P.)

Civil Procedure Code, 1908, Order 39 Rules 1,2, Section 95 - Temporary injunction - Suit for specific performance - Restraining sale of suit property to any other person - Oral agreement to sell - Court while granting temporary injunction can impose reasonable condition to prevent and discourage frivolous litigation - Imposing a condition of furnishing solvent security in the sum of Rs.50,000/- while granting injunction held reasonable. (Chandra Prakash Vs Shri Brij Behari Gupta) 2006(4) Civil Court Cases 280 (Rajasthan)

Civil Procedure Code, 1908, Order 39 Rules 1,2, Section 95 - Temporary injunction - While granting injunction Court can impose reasonable condition to prevent & discourage frivolous litigation - In the instant case imposing a condition of furnishing a solvent security in the sum of Rs.50,000/- held reasonable in circumstances of the case. (Chandra Prakash Vs Shri Brij Behari Gupta) 2006(4) Civil Court Cases 280 (Rajasthan)

Civil Procedure Code, 1908, Order 39 Rules 1,2, Specific Relief Act, Sections 34 & 37, 38 - Suit when once held not maintainable then plaintiff is not entitled to any relief. (Dewaki & Ors. Vs Dayawanti & Ors.) 2006(3) Civil Court Cases 615 (P&H)

SC Civil Procedure Code, 1908, Order 39 Rules 1,2, Trade and Merchandise Marks Act, 1958, Sections 2, 21, 29 & 33 - Trade mark - Infringement - Ad interim injunction - When prima facie case is made out and balance of convenience is in favour of plaintiff then it is not necessary to show loss of goodwill and reputation to fulfil the requirement of condition of irreparable injury - If first two requisites are fulfilled in trade mark actions irreparable injury can be presumed to have taken place. (Ramdev Food Products Pvt. Ltd. Vs Arvindbhai Rambhai Patel & Ors.) 2006(3) Apex Court Judgments 367 (S.C.) : 2006(4) Civil Court Cases 475 (S.C.)

Civil Procedure Code, 1908, Order 39 Rules 1,2, Transfer of Property Act, 1882, Section 108(j), Specific Relief Act, 1963, Section 41

- Lease of land for flour mill - Lessee given permission to raise building for flour mill and make other construction ancillary to flour mill - Lessee started construction of shopping complex to give the same on lease in violation of lease deed - Interest of lessor would suffer by construction of shopping complex and giving the same to sub lessees - Plea that lessor can claim damages and no injunction can be granted, not tenable - Grant of damages would not be adequate compensation if third party interest comes in - It will not be practical to restore land in original position as required under Section 108(o) of Transfer of Property Act - Lessee restrained from doing so by interim injunction. (Shiv Kumar Jatia Vs S.R.G.P. Industries Ltd.)2006(1) Civil Court Cases 15 (All.)

SC **Civil Procedure Code, 1908, Order 39 Rules 1,2** - Ad interim exparte injunction - Refusal by trial Court - Status quo order passed by Appellate Court Order of status quo without indicating what the status quo was, is not an order that should be passed at the initial stage. (Kishore Kumar Khaitan & Anr. Vs Praveen Kumar Singh) 2006(2) Apex Court Judgments 257 (S.C.)

SC **Civil Procedure Code, 1908, Order 39 Rules 1,2** - Ad interim injunction - Conduct of parties is relevant for grant of ad interim injunction - Court while granting an order of injunction would take into consideration as to whether plaintiff has pre-varicated his stand from stage to stage. (M.Gurudas & Ors. Vs Rasaranjan & Ors.) 2006(4) Civil Court Cases 584 (S.C.)

SC **Civil Procedure Code, 1908, Order 39 Rules 1,2** - Ad interim injunction - Court to pass an order having regard to prima facie case, balance of convenience and irreparable injury - Finding on 'prima facie case' is a finding of fact - Court while arriving at a finding of fact must arrive not only that a case for trial has been made out but also other factors requisite for grant of injunction exist - Contention of plaintiff must be bona fide - Question sought to be tried must be a serious question and not only a mere triable issue. (M.Gurudas & Ors. Vs Rasaranjan & Ors.) 2006(4) Civil Court Cases 584 (S.C.)

SC **Civil Procedure Code, 1908, Order 39 Rules 1,2** - Ad interim injunction - Normally Supreme Court is reluctant to interfere with the interim

orders passed under Order 39 Rules 1 & 2 of Civil Procedure Code, 1908. (M.P.Housing Board Vs Anil Kumar Khiwani) 2005(2) Apex Court Judgments 120 (S.C.)

Civil Procedure Code, 1908, Order 39 Rules 1,2 - Ad interim injunction - Person in possession can protect his possession by seeking injunction against any other person but not against the true owner. (Dharamvir Vs Naresh Kumar & Oars.) 2005(1) Civil Court Cases 770 (P&H)

SC **Civil Procedure Code, 1908, Order 39 Rules 1,2** - Ad interim injunction - Principles governing - While deciding the issue of injunction the courts have to consider the cumulative facts i.e. prima facie case, balance of convenience and irreparable loss - Definite findings have to be given on these aspects, on a prima facie basis. (Ajendraprasadji Narendraprasadji Pandey Vs Swamy K.Narayandasji & Ors.) 2005(2) Apex Court Judgments 467 (S.C.) : 2005(3) Civil Court Cases 331 (S.C.)

Civil Procedure Code, 1908, Order 39 Rules 1,2 - Ad interim injunction - Restraining alienation - Plea of plaintiff that he has perfected his title by way of adverse possession - Held, defendant being the true owner cannot be restrained from alienating the suit property - Any sale effected during the pendency of suit shall be hit by doctrine of lis pendens and thus will not affect the rights of plaintiff - Injunction rightly refused by First Appellate Court. (Sonki & Anr. Vs Gurnam Singh & Ors.) 2006(2) Civil Court Cases 630 (P&H)

SC **Civil Procedure Code, 1908, Order 39 Rules 1,2** - Ad interim injunction - Restraining alienation - Prima facie case - To come to such a finding Court can take into consideration the extent of plaintiff's share in the property, if any. (M.Gurudas & Ors. Vs Rasaranjan & Ors.) 2006(4) Civil Court Cases 584 (S.C.)

Civil Procedure Code, 1908, Order 39 Rules 1,2 - Ad interim injunction - Restraining defendants from interfering in peaceful possession - Defendant father of plaintiff owner of entire house - Plaintiff produced no documents showing that nature of property is Joint Hindu Family Property or that he is a co-sharer in any manner - Status of plaintiff cannot be more than a mere licensee - Injunction cannot be granted against the true owner - Interim stay declined - Order upheld. (Dharamvir Vs Naresh Kumar & Oars.)

2005(1) Civil Court Cases 770 (P&H)

Civil Procedure Code, 1908, Order 39 Rules 1,2 - Ad interim injunction - Restraining defendants from realising rent - Prima facie plaintiff not able to demonstrate his title - Plaintiff not a party to the rent agreement - No irreparable loss or injury will be caused to plaintiff in case rent is realised by defendant, as, such a loss can be fully compensated in terms of money - Order refusing to grant ad interim injunction, upheld. (Ramesh Chandra Agarwal Vs Om Prakash Agarwal & Ors.) 2006(2) Civil Court Cases 70 (Allahabad) (DB)

Civil Procedure Code, 1908, Order 39 Rules 1,2 - Ad interim injunction - Restraining true owner from interfering in possession - Servant of tenant occupied premises when it was vacated by tenant - Held, possession of servant was in fact an occupation as an agent or a servant of the original tenant and thus his possession cannot amount to actual physical possession by a tenant - Held, plaintiff is not entitled to injunction. (Sahban Khan Vs Rajendra Prasad Srivastava & Anr.) 2005(1) Civil Court Cases 785 (Allahabad)

Civil Procedure Code, 1908, Order 39 Rules 1,2 - Ad interim injunction - Suit for permanent injunction against demolition of the compound wall - Wall constructed immediately before filing of the suit - Wall constructed between defendants shops and road - Wall ordered to be demolished on an undertaking being given by the defendants that they will reconstruct the wall at their expense if it is found that wall required to be protected on date of suit. (Chairman/Secretary, Bhadreshwar Co-op. Housing Society Ltd. Vs Maharaj Samosa Centre & Ors.) 2006(3) Civil Court Cases 175 (Gujarat)

SC Civil Procedure Code, 1908, Order 39 Rules 1,2 - Ad interim injunction - Trade Mark - Prior user - Plaintiff using mark 'Malikchand' but not much publicized - At a subsequent point of time defendant started use of mark 'Malikchand' in a large scale - At relevant time, neither party had a registered trade mark for the respective marks claimed by them - A number of cases registered against defendant under Prevention of Food Adulteration Act - Prima facie establishment of prior user goes a long way in enabling the plaintiff to claim an injunction in a passing-off action - Grant of interim injunction in favour of plaintiff held to be justified. (Dhariwal Industries Ltd. & Anr. Vs M/s M.S.S. Food Products) 2005(2) Civil Court Cases 261 (S.C.) : 2005(1) Apex Court Judgments 546 (S.C.)

Civil Procedure Code, 1908, Order 39 Rules 1,2 - Co-sharer - Injunction - Restraining defendant from raising construction - A co-sharer in exclusive possession for sufficient long time can raise construction - Question of prohibiting to raise construction by the defendant is dependent singularly on the prime facie finding of fact whether there is mutual partition between the co-sharers so as to conclude that everyone is in possession of their own share for a pretty long time. (M/s DCM Shriram Consolidated Ltd. Vs Jai Singh) 2006(2) Civil Court Cases 106 (P&H)

SC **Civil Procedure Code, 1908, Order 39 Rules 1,2** - Date of birth - Correction - Interim relief - Court should be slow in granting interim relief or continuation in service, unless prima facie evidence of unimpeachable character is produced as in case public servant succeeds, he can always be compensated but if he fails, he would have enjoyed undeserved benefit of extended service and thereby caused injustice to his immediate junior. (State of Uttar Pradesh & Anr. Vs Shiv Narain Upadhyaya) 2005(2) Apex Court Judgments 190 (S.C.) : 2005(3) Civil Court Cases 143 (S.C.)

Civil Procedure Code, 1908, Order 39 Rules 1,2 - Ex parte temporary injunction - Court is required to record reasons in support of its conclusions for grant of temporary injunction. (Mididodi Saraswathi & Anr. Vs Mandal Revenue Officer & Ors.) 2005(1) Civil Court Cases 233 (A.P.)

SC **Civil Procedure Code, 1908, Order 39 Rules 1,2** - Injunction - An equitable relief - Plaintiff if guilty of inequitable conduct, is not entitled to the relief of injunction. (Kanchusthabam Satyanarayana & Ors. Vs Namuduri Atchutaramayya & Ors.) 2005(1) Apex Court Judgments 607 (S.C.) : 2005(2) Civil Court Cases 187 (S.C.)

Civil Procedure Code, 1908, Order 39 Rules 1,2 - Injunction restraining Financial Corporation from taking possession - Default in payment of instalments of balance sale consideration - Possession taken back by Financial Corporation - Plaintiff has thus no prima facie case - Plaintiff claiming possession on basis of unregistered agreement and simultaneously want to take benefit of Section 53-A of Transfer of Property Act - Held, not permissible - Order refusing grant of injunction, upheld. (Mukesh Kumar Mittal Vs U.P. Finance Corporation & Anr.) 2006(1) Civil Court Cases 717 (Uttaranchal) (DB)

SC **Civil Procedure Code, 1908, Order 39 Rules 1,2** - Interim injunction - Consent eviction decree - Challenged as being obtained by fraud by putting an imposter - Plaintiff not to be dispossessed during pendency of suit. (Sumitra Devi Anand (Dead) by LRs. Vs Shanti Devi (Dead) by Lrs.) 2005(1) Apex Court Judgments 679 (S.C.) : 2005(1) Civil Court Cases 692 (S.C.)

Civil Procedure Code, 1908, Order 39 Rules 1,2 - Interim injunction - Restraining defendant from interfering in joint use of electric motor connection - In revenue record plaintiff shown to be owner in possession where electric motor is installed - Held, grant of injunction restraining other co-owners from interfering with the joint use of electric motor connection is proper and calls for no interference. (Ajit Singh Vs Tarsem Singh & Ors.) 2005(1) Civil Court Cases 748 (P&H)

SC **Civil Procedure Code, 1908, Order 39 Rules 1,2** - Interim mandatory injunction - Dispossession despite order of status quo - In absence of a clear prima facie finding that plaintiff was in possession on the date of filing of suit and on the date of passing of ex parte status quo order and that he is dispossessed thereafter, an order for interim mandatory injunction should not be passed. (Kishore Kumar Khaitan & Anr. Vs Praveen Kumar Singh) 2006(2) Apex Court Judgments 257 (S.C.)

SC **Civil Procedure Code, 1908, Order 39 Rules 1,2** - Interim mandatory injunction - Dispossession despite status quo order - An interim mandatory injunction is not a remedy that is easily granted - It is an order that is passed only in circumstances which are clear and prima facie materials clearly justify a finding that the status quo has been altered by one of the parties to the litigation and the interests of justice demand that status quo ante be restored by way of an interim mandatory injunction. (Kishore Kumar Khaitan & Anr. Vs Praveen Kumar Singh) 2006(2) Apex Court Judgments 257 (S.C.)

Civil Procedure Code, 1908, Order 39 Rules 1,2 - Temporary injunction - Absence of identification of subject matter - Injunction refused. (Ram Charitra R.Singh Vs Ramesh L.Agrawal & Ors.) 2006(4) Civil Court Cases 244 (Bombay)

Civil Procedure Code, 1908, Order 39 Rules 1,2 - Temporary injunction - Both parties disputing boundaries of their own plots - Order of

status quo passed. (Vinay Kumar Vs Devi Lal & Ors.) 2006(3) Civil Court Cases 699 (Rajasthan)

Civil Procedure Code, 1908, Order 39 Rules 1,2 - Temporary injunction - Co-sharers - Once the parties are in exclusive possession of their respective shares, the question of issuance of any ad interim injunction qua the suit property does not arise. (Baldev Singh Vs Sewa Singh) 2004(2) Civil Court Cases 422 (P&H)

Civil Procedure Code, 1908, Order 39 Rules 1,2 - Temporary injunction - Grant of - Guiding principles - (i) prima facie case, (ii) balance of convenience and (iii) irreparable loss and/or injury if temporary injunction is refused - Injunction cannot be granted without examining the matter in detail by merely saying that prima facie case is made, apart from stating that the other two requirements are fulfilled or not - Order granting or refusing to grant interim relief must contain some discussion with respect to the documents placed on record - Order must reflect an application of mind on the part of the Court passing the order. (Ajay Mittal Industrial Premises Co-Operative Society Vs Raj Publicity) 2004(3) Civil Court Cases 639 (Bombay)

Civil Procedure Code, 1908, Order 39 Rules 1,2 - Temporary injunction - Grant of temporary injunction is a discretionary and equitable relief - In the matter of granting discretionary and equitable reliefs, Courts must be satisfied about the bona fides and conduct of the person, who claims such a relief. (K.Narasimha Reddy & Anr. Vs G.Sudhakara Chary) 2006(4) Civil Court Cases 130 (A.P.)

SC **Civil Procedure Code, 1908, Order 39 Rules 1,2** - Temporary injunction - Grant or refusal - Appellate Court can interfere when discretion is exercised by granting a temporary injunction when there is 'no material', or refusing to grant a temporary injunction by ignoring the relevant documents produced which are termed as arbitrary, capricious or perverse. (Seema Arshad Zaheer & Ors. Vs Municipal Corporation of Greater Mumbai & Ors.) 2006(3) Apex Court Judgments 83 (S.C.)

SC **Civil Procedure Code, 1908, Order 39 Rules 1,2** - Temporary injunction - Grant or refusal - Appellate Court can interfere when discretion is exercised by granting a temporary injunction when there is 'no material', or refusing to grant a temporary injunction by ignoring the relevant documents

produced which are termed as arbitrary, capricious or perverse. (Seema Arshad Zaheer & Ors. Vs Municipal Corporation of Greater Mumbai & Ors.) 2006(3) Civil Court Cases 634 (S.C.)

SC Civil Procedure Code, 1908, Order 39 Rules 1,2 - Temporary injunction - Jurisdiction - Clause in agreement viz. "Court of Bombay and no other Court" - Plea of not consciously agreeing to the exclusion of jurisdiction of Courts other than Bombay - Until a clear finding is recorded that Court has territorial jurisdiction to try the suit, no injunction can be granted in favour of plaintiff by making a general remark that plaintiff has an arguable case and that he did not consciously agree to the exclusion of the jurisdiction of the Court other than Bombay. (Shree Subhlaxmi Fabrics Pvt.Ltd. Vs Chand Mal Baradia & Ors.) 2005(2) Civil Court Cases 227 (S.C.)

SC Civil Procedure Code, 1908, Order 39 Rules 1,2 - Temporary injunction - Order passed under Section 145/146 Criminal Procedure Code, 1973 - Civil Court has jurisdiction to make an order of injunction inconsistent with the order of Executive Magistrate. (Shanti Kumar Panda Vs Shakuntala Devi) 2005(1) Apex Court Judgments 169 (S.C.) : 2005(1) Civil Court Cases 344 (S.C.)

Civil Procedure Code, 1908, Order 39 Rules 1,2 - Temporary injunction - Possession - If from version of the parties the probability as to possession is more towards plaintiff then Court should not hesitate to grant the relief, and reject it, if it is otherwise. (G.Trinadha Swamy Vs Gandham Satyanarayana & Ors.) 2006(4) Civil Court Cases 393 (A.P.)

Civil Procedure Code, 1908, Order 39 Rules 1,2 - Temporary injunction - Possession - If plaintiff is able to prove his possession on the basis of his title upto a particular point of time then the same state of affairs deserves to be presumed in a forward direction - Such presumption must stop, if it meets a road block, in the form of a more assertive and evident proof of probability of the defendant being in possession of the same property. (G.Trinadha Swamy Vs Gandham Satyanarayana & Ors.) 2006(4) Civil Court Cases 393 (A.P.)

Civil Procedure Code, 1908, Order 39 Rules 1,2 - Temporary injunction - Possession - Title deed not of much use in such matters - Pahanies two years prior to the suit filed - Contention that Panchayat Secretary not

competent to issue the same - Their evidentiary value can be ignored only if defendant comes forward with any better or more reliable documents - Defendant filed Pahanies upto the year 1996-97 and not sure as to who was in possession of the property subsequent to 1996-97 - Plaintiff discharged his basic burden - Defendant not pleading any right in herself - She taking plea that suit property was gifted to her daughter - Registered gift deed not produced - No entry made in revenue record in her favour - Order of trial Court granting temporary injunction restored. (M.Ramaswamy Vs Golla Rangamma) 2006(4) Civil Court Cases 115 (A.P.)

Civil Procedure Code, 1908, Order 39 Rules 1,2 - Temporary injunction - Possession - Title deed not of much use in such matters. (M.Ramaswamy Vs Golla Rangamma) 2006(4) Civil Court Cases 115 (A.P.)

Civil Procedure Code, 1908, Order 39 Rules 1,2 - Temporary injunction - Possession - Title of property plays an important role in the matter of drawing presumption as to possession. (G.Trinadha Swamy Vs Gandham Satyanarayana & Ors.) 2006(4) Civil Court Cases 393 (A.P.)

SC **Civil Procedure Code, 1908, Order 39 Rules 1,2** - Temporary injunction - Restraining alienation and raising construction - Temporary injunction cannot be declined on the basis that alienation will be subject to law of lis pendens and construction raised will be at own risk or on the basis of an undertaking that there will be no alienation and construction will be at own risk - Unless and until a case of irreparable loss or damage is made out by a party to the suit, Court should not permit the nature of property being changed with also includes alienation or transfer of property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. (Maharwal Khewaji Trust (Regd.), Faridkot Vs Baldev Dass) 2005(1) Apex Court Judgments 457 (S.C.) : 2005(1) Civil Court Cases 430 (S.C.)

Civil Procedure Code, 1908, Order 39 Rules 1,2 - Temporary injunction - Restraining defendant from raising construction - Superstructure already raised - Instead of granting injunction, defendant directed to furnish an undertaking that in the event suit is decreed he would remove construction at his own risk and cost. (Kanakadhara Constructions Vs Smt.K.Jhansi Lakshmi Bai & Ors.) 2006(2) Civil Court Cases 219 (A.P.)

Civil Procedure Code, 1908, Order 39 Rules 1,2 - Temporary injunction - Separate electricity meter and water connection - No specific prayer to that effect in plaint - Plaintiff licensee in suit premises - Possession of plaintiff in suit premises not disputed - Relief of separate electricity meter and water connection granted on the basis of balance of convenience as also on humanitarian grounds - No error in granting relief to plaintiff in equity even if there was no specific prayer in plaint to that effect. (Niranjan Lal Joshi & Anr. Vs P.K.Joshi & Ors.) 2005(1) Civil Court Cases 181 (Rajasthan)

Civil Procedure Code, 1908, Order 39 Rules 1,2 - Temporary injunction - Sought restraining retired partner from interfering with the functioning of the factory - Signatures of retiring partner on dissolution deed found to be forged - Cheque issued towards share of retiring partner dishonoured - Held, these two factors are sufficient to deny the equitable relief of injunction. (K.Narasimha Reddy & Anr. Vs G.Sudhakara Chary) 2006(4) Civil Court Cases 130 (A.P.)

SC **Civil Procedure Code, 1908, Order 39 Rules 1,2** - Temporary mandatory injunction - Can be granted only in exceptional cases coming within exceptions noticed in Dorab Cawasji Warden case. (Metro Marins & Anr. Vs Bonus Watch Co. Pvt. Ltd.)2005(1) Apex Court Judgments 436 (S.C.)

SC **Civil Procedure Code, 1908, Order 39 Rules 1,2** - Temporary mandatory injunction - Expiry of period of license - Suit for possession - Interim mandatory injunction directing defendant to hand over vacant and peaceful possession of premises - Cannot be granted - Granting of interim order directing handing over of possession would only mean decreeing the suit even before trial. (Metro Marins & Anr. Vs Bonus Watch Co. Pvt. Ltd. & Ors.) 2005(1) Civil Court Cases 308 (S.C.) : 2005(1) Apex Court Judgments 436 (S.C.)

SC **Civil Procedure Code, 1908, Order 39 Rules 1,2 -- Ad interim injunction** - Conduct of parties is relevant for grant of ad interim injunction - Court while granting an order of injunction would take into consideration as to whether plaintiff has pre-varicated his stand from stage to stage. (M.Gurudas & Ors. Vs Rasaranjan & Ors.) 2006(3) Apex Court Judgments 485 (S.C.)

SC **Civil Procedure Code, 1908, Order 39 Rules 1,2 -- Ad interim**

injunction - Court to pass an order having regard to prima facie case, balance of convenience and irreparable injury - Finding on 'prima facie case' is a finding of fact - Court while arriving at a finding of fact must arrive not only that a case for trial has been made out but also other factors requisite for grant of injunction exist - Contention of plaintiff must be bona fide - Question sought to be tried must be a serious question and not only a mere triable issue. (M.Gurudas & Ors. Vs Rasaranjan & Ors.) 2006(3) Apex Court Judgments 485 (S.C.)

SC **Civil Procedure Code, 1908, Order 39 Rules 1,2 -- Ad interim injunction** - Restraining alienation - Prima facie case - To come to such a finding Court can take into consideration the extent of plaintiff's share in the property, if any. (M.Gurudas & Ors. Vs Rasaranjan & Ors.) 2006(3) Apex Court Judgments 485 (S.C.)

Civil Procedure Code, 1908, Order 39 Rules 1,2 & Order 9 Rule 13 - Exparte temporary injunction - Application under Order 9 Rule 13 to set aside exparte temporary injunction - Not maintainable - For setting aside such an order, only course open is to file an appeal or to seek adjudication of matter on merits. (Mididodi Saraswathi & Anr. Vs Mandal Revenue Officer & Ors.) 2005(1) Civil Court Cases 233 (A.P.)

Civil Procedure Code, 1908, Order 39 Rules 1,2 & Section 151 - Temporary injunction - Implementation - Police protection - Though plaintiff is entitled to initiate proceedings under Order 39 Rule 2-A in the event of violation of order of temporary injunction even then Court is under an obligation to accord necessary protection - By ordering police protection Court is not extending any favour to plaintiff but Court would be taking steps for effective implementation of its own orders and thereby upholding the dignity and effectiveness of the institution of Judiciary. (Neetha Chintawar & Anr. Vs Bodugam Gopi) 2006(4) Civil Court Cases 317 (A.P.)

Civil Procedure Code, 1908, Order 39 Rule 2-A, Contempt of Courts Act, 1971, Sections 10, 11 - Temporary injunction - Violation - Contempt proceedings do not lie as there is equally efficacious alternate remedy available U.O.39 Rule 2-A CPC. (Surinder Singh Vs Rai Rani) 2003(1) Civil Court Cases 195 (P&H)

Civil Procedure Code, 1908, Order 39 Rule 2-A, Order 43 Rule

1(r) - Appeal against - Maintainable - Restricted meaning that appeal lies only in case where the trial Court has refused to initiate action under O.39 Rule 2-A - Does not flow from the provisions of O.43 Rule 1(r). (Rajinder Kaur Vs Sukhbir Singh) AIR 2002 P&H 12

Civil Procedure Code, 1908, Order 39 Rule 2-A, Order 5 Rules 17, 19 - Ad interim injunction - Violation - Violation should be proved by legally acceptable evidence - A mere report of the Process Server that the petitioner refused to receive notice is not enough to hold that petitioner violated the order of injunction - Examination of process server is necessary. (Kunhammad Vs Mammooty) 2006(2) Civil Court Cases 605 (Kerala)

Civil Procedure Code, 1908, Order 39 Rule 2-A, Order 7 Rule 11 - Proceedings U.O.39 Rule 2-A are quasi criminal in nature - In criminal proceedings provision O.7 Rule 11 CPC has no application - If an application for disobeying the order of Court is filed, Court has to examine the allegations in the application, giving full opportunity to the other party of hearing and decide it as a criminal trial. (Urban Improvement Trust, Jodhpur Vs Barkat Khan) 2003(2) Civil Court Cases 119 (Rajasthan)

Civil Procedure Code, 1908, Order 39 Rule 2-A - Injunction - Disobedience - Defendant restrained from causing obstruction in lifting of clinker by plaintiffs in his vehicles from cement factory - Order not referring to particular registration numbers of trucks - Out of these vehicles plaintiff not permitted to lift clinker in one vehicle of which he was not owner - Violation of injunction order - Court holding defendants guilty of disobedience of injunction order on ground that though operative part of order does not refer to particular registration numbers of trucks, the identity of these three trucks was to be found in suit laid by plaintiff - Held, for this purpose pleadings cannot be looked into - Impugned order set aside. (Sushil Mittal & Anr. Vs R.D.Bhardwaj & Anr.) 2004(2) Civil Court Cases 341 (H.P.)

Civil Procedure Code, 1908, Order 39 Rule 2-A - Injunction - Disobedience - It is only wilful disobedience of injunction order which invites punitive action depriving a person of his personal liberty and property - Expression “wilful” means a deliberate or voluntary or intentional Act - Unintentional disobedience is not enough to justify an action against the defaulter under O.39 Rule 3 CPC. (Sushil Mittal & Anr. Vs R.D.Bhardwaj & Anr.) 2004(2) Civil Court Cases 341 (H.P.)

Civil Procedure Code, 1908, Order 39 Rule 2-A - Injunction - Disobedience - When an order is passed by the Court, it is not open to a party to go behind the order, by looking into the pleadings together the intention of the Court or mind of the Presiding Officer, to comply with the orders of the Court, particularly when any non-compliance entail punitive consequences. (Sushil Mittal & Anr. Vs R.D.Bhardwaj & Anr.) 2004(2) Civil Court Cases 341 (H.P.)

Civil Procedure Code, 1908, Order 39 Rule 2-A - Injunction - Order violated - Undue advantage taken by flouting the order of injunction - Court has inherent power to restore status quo ante or to disgorge the ill gotten advantage obtained through breach of Court order. (Cheruvannoor Nallalam Grama Panchayat Vs Ravi) 2006(2) Civil Court Cases 193 (Kerala)

Civil Procedure Code, 1908, Order 39 Rule 2-A - Injunction - Violation - By a person not party to the suit - A person knowing full well that an injunction order is passed against the defendant and still violates the injunction order irrespective of fact whether he is a party to the injunction or not and commits violation of the order, is required to face the consequences under Rule 2-A of O.39 CPC. (Mohd.Sharfuddin Vs Mohd.Jamal) 2003(3) Civil Court Cases 695 (A.P.)

Civil Procedure Code, 1908, Order 39 Rule 2-A - Injunction - Violation - High Court in exercise of inherent powers can order demolition of construction in violation of injunction order and bring back status quo ante - Plea that Court should not order demolition and confine its powers only to modalities prescribe under O.39 Rule 20A - Not tenable. (Baishnab Pradhan Vs Guru Charan Pradhan) AIR 2003 Orissa 73

Civil Procedure Code, 1908, Order 39 Rule 2-A - Injunction - Violation - Service of order of injunction - Formal service need not to be proved - It is enough if the party had knowledge about the order of injunction. (Cheruvannoor Nallalam Grama Panchayat Vs Ravi) 2006(2) Civil Court Cases 193 (Kerala)

Civil Procedure Code, 1908, Order 39 Rule 2-A - Injunction - Violation/disobedience - Sale deed executed in disobedience of injunction order - Sale is a nullity - Entire property directed to be attached. (Smt.Savitri Devi Vs Civil Judge (Senior Division), Gorakhpur & Ors.) 2004(2) Civil

Court Cases 90 (Allahabad)

Civil Procedure Code, 1908, Order 39 Rule 2-A - Injunction order
- Violation - Sale deed executed in violation of injunction order restraining alienation - Act which is committed is such which cannot be reversed or rectified or modified voluntarily as sale deed is executed by creating rights in favour of third party - Order of detention in civil prison for three months - No illegality or infirmity - Order upheld. (Balwinder Kumar Vs Rajinder Kumar & Ors.) 2005(2) Civil Court Cases 621 (P&H)

Civil Procedure Code, 1908, Order 39 Rule 2-A - Injunction order against father - Sons after being impleaded as L.R's executed sale deed in violation of injunction order granted against their father - Held, injunction order passed against father is required to be respected by legal representatives who succeeded to the property and having knowledge of the injunction order against their father - L.R's since have violated the order of injunction are liable to be punished. (Mohd.Sharfuddin Vs Mohd.Jamal) 2003(3) Civil Court Cases 695 (A.P.)

Civil Procedure Code, 1908, Order 39 Rule 2-A - Interim injunction - Parties to respect the order so long such order is in force, even if the order is subsequently vacated. (Cheruvannoor Nallalam Grama Panchayat Vs Ravi) 2006(2) Civil Court Cases 193 (Kerala)

Civil Procedure Code, 1908, Order 39 Rule 2-A - Interim order - Breach of - Interest of defendant in all the suit properties attached - When Court has exercised its discretion in attaching interest of defendant in all the suit properties then defendant cannot be put behind civil prison and can also not be burdened with compensation. (Sitabai Kerba Deotarse & Ors. Vs Anil Sahebrao Deotarse & Ors.) 2006(4) Civil Court Cases 21 (Bombay)

Civil Procedure Code, 1908, Order 39 Rule 2-A - Mandatory injunction - Disobedience - Property of J.D. attached - Attachment shall not remain in force for more than one year - After one year, if disobedience or breach continues, attached properties may be sold and compensation as determined by Court may be awarded to D.H. - No evidence that J.D. continued violation of injunction order even after attachment of property - Dismissal of execution petition for sale of attached property - Order upheld. (Davuluri Venkateswararao & Ors. Vs State of A.P. & Ors.) 2006(1) Civil

Court Cases 471 (A.P.)

Civil Procedure Code, 1908, Order 39 Rule 2-A - Order under Order 39 Rule 2-A of Civil Procedure Code, 1908- Cannot be executed through the Executing Court - It is only the Court that passed the order that can impose punishment. (Kalyani Amma Vs Krishna Kurup) 2006(1) Civil Court Cases 328 (Kerala)

Civil Procedure Code, 1908, Order 39 Rule 2-A - Proceedings U.O.39 Rule 2-A CPC are quasi criminal in nature. (Avtar Singh Vs Balkar Singh) 2003(1) Criminal Court Cases 135 (P&H)

Civil Procedure Code, 1908, Order 39 Rule 2-A - Punishment for violation of injunction order - When once the order is violated it is open for the Court either to commit the contemnor for civil prison or to attach the property or to order both - Conditional attachment of property and deposit of Rs.20,000/- in unwarranted as it runs counter to statutory provisions - Conditional order of attachment of property subject to deposit a sum of Rs.20,000/- and permitting the respondents to withdraw the same is not sustainable. (Mohd.Sharfuddin Vs Mohd.Jamal) 2003(3) Civil Court Cases 695 (A.P.)

Civil Procedure Code, 1908, Order 39 Rule 2-A - Status quo - Violation of order - Unless there is clear evidence, person cannot be punished on mere surmises. (Thresia Vs Johnny) AIR 2003 Kerala 97

Civil Procedure Code, 1908, Order 39 Rule 2-A - Temporary injunction - Breach of - It is necessary for trial Court to give notice to a party who allegedly committed breach before proceeding against him in the matter. (Jawahar Singh Vs Des Raj) AIR 2002 J&K 134

Civil Procedure Code, 1908, Order 39 Rule 2-A - Temporary injunction - Breach of injunction - Proper remedy is to move trial Court under Order 39 Rule 2-A of Civil Procedure Code, 1908- Contempt Petition under Sections 10 & 12 of Contempt of Courts Act to High Court can be entertained only in special and extraordinary circumstances. (Jayaprakash Vs Most Rev. Dr.B.P.Sugandher & Anr.) 2006(3) Civil Court Cases 708 (Madras) (DB)

Civil Procedure Code, 1908, Order 39 Rule 2-A - Temporary injunction - Violation - Restraint order of alienation of property - While

deciding preliminary issue plaintiff ordered to be returned for lack of jurisdiction - During pendency of appeal defendant alienated suit property - Held, there is no violation of injunction order as on the date of alienation there was no order of injunction in force and defendant cannot be held to have violated the injunction order merely on the ground that subsequently the appeal was allowed and that order of stay was revived. (Suresh Chandra Vs Kailash Chandra) 2006(4) Civil Court Cases 78 (M.P.)

Civil Procedure Code, 1908, Order 39 Rule 2-A - Undertaking - Breach - When Court acts on an undertaking given by a party, in substance it amounts to an injunction restraining him from acting in breach thereof - Act done in breach thereof is punishable U.O.39 Rule 2-A CPC. (Thiruvalkani K.Nagaraj (in CMP) State of A.P.) Vs Thiruvalkani Sarojamma) 2003(1) Civil Court Cases 281 (A.P.)

Civil Procedure Code, 1908, Order 39 Rule 2-A - Violation of injunction order by L.R. - Separate injunction order against L.R's is not required and L.R's are bound by the injunction order issued against their father and are liable to be punished for violation. (Mohd.Sharfuddin Vs Mohd.Jamal) 2003(3) Civil Court Cases 695 (A.P.)

Civil Procedure Code, 1908, Order 39 Rule 2-A - Violation/ disobedience of injunction order - Proceedings are analogous to the Contempt of Court proceedings but they are taken under the provisions of O.39 Rule 2A CPC - Special provision in the Code prevails over the general law of contempt contained in Contempt of Courts Act. (Smt.Savitri Devi Vs Civil Judge (Senior Division), Gorakhpur & Ors.) 2004(2) Civil Court Cases 90 (Allahabad)

Civil Procedure Code, 1908, Order 39 Rule 2-A - Violation/ disobedience of injunction order - Proceedings under O.39 Rule 2A are quasi criminal in nature which are meant to maintain the dignity of the Court in the eyes of the people so that the supremacy of law may prevail and to deter the people for mustering the courage to disobey the interim injunction passed by the Court. (Smt.Savitri Devi Vs Civil Judge (Senior Division), Gorakhpur & Ors.) 2004(2) Civil Court Cases 90 (Allahabad)

Civil Procedure Code, 1908, Order 39 Rule 2-A & 11 - Interim order - Breach of - Defence struck out and interest of defendant in suit property

attached - Order of striking out defence passed though no application made under Order 39 Rule 11 - Order striking out defence set aside - However order of attaching interest of defendant in suit property not disturbed. (Sitabai Kerba Deotarse & Ors. Vs Anil Sahebrao Deotarse & Ors.) 2006(4) Civil Court Cases 21 (Bombay)

Civil Procedure Code, 1908, Order 39 Rule 3, Order 5 Rule 12 & O.27 Rule 4 - Notice - Suit against Govt. officials - Treating of refusal to receive notice by Asst. Government Pleader appointed for the Court who is Agent of Government as constituting service - Proper. (Mididodi Saraswathi & Anr. Vs Mandal Revenue Officer & Ors.) 2005(1) Civil Court Cases 233 (A.P.)

Civil Procedure Code, 1908, Order 39 Rule 3, Order 5 Rule 12 & Order 27 Rule 4 - Notice - Suit against Govt. officials - Treating of refusal to receive notice by Asst. Government Pleader appointed for the Court who is Agent of Government as constituting service - Proper. (Mididodi Saraswathi & Anr. Vs Mandal Revenue Officer) 2005(1) Civil Court Cases 233 (A.P.)

Civil Procedure Code, 1908, Order 39 Rule 3 - Ad interim injunction - Ex parte grant of injunction - Order passed taking into consideration plaint and other material on record - Order cannot be said to be without jurisdiction. (Akbar Sekh & Ors. Vs M/s Mousumi Factory Agency & Ors.) 2005(1) Civil Court Cases 814 (Delhi)

Civil Procedure Code, 1908, Order 39 Rule 3 - Ex parte ad interim injunction - Recording of reasons is mandatory. (The Bengal Club Ltd. Vs Susanta Umar Chowdhary) AIR 2003 Calcutta 96

Civil Procedure Code, 1908, Order 39 Rule 3-A, Order 43 Rule 1(r) and Ss.104, 115 - Violation of mandate of O.39 Rule 3-A - Appeal lies against such order - When remedy of appeal is available, revision petition is not maintainable. (Dr.Rajaratan Basavanneppa Ghanti Vs Chandrasekhar) 2003(3) Civil Court Cases 253 (Karnataka)

Civil Procedure Code, 1908, Order 39 Rule 3-A - Injunction - Implementation - Application not disposed of within 30 days after passing order of ad interim injunction - Court not recorded its inability to dispose of same within stipulated time - Thus injunction neither confirmed nor extended

for further period - Therefore it cannot be said to be non est in the eye of law - But by efflux of time it has become inoperative - Held, dismissal of application of police aid is proper as order of injunction was not in existence. (Kudithi Vs Gantla) AIR 2002 A.P. 418

Civil Procedure Code, 1908, Order 39 Rule 4, Order 41 Rule 33

- Ex parte ad interim injunction - Appeal against - Appellant can point out before appellate Court that plaintiff before trial Court suppressed facts. (The Bengal Club Ltd. Vs Susanta Kumar Chowdhary) AIR 2003 Calcutta 96

Civil Procedure Code, 1908, Order 39 Rule 4 - “Any party” -

Includes any party who had subsequently come on record as a party. (Celin Vs Thomas Johnson) 2006(2) Civil Court Cases 647 (Kerala)

Civil Procedure Code, 1908, Order 39 Rule 4 - Status quo order

- Variation - At the instance of a person who is neither the owner nor in possession - Not maintainable as he is not to be prejudiced in any manner nor he will suffer any irreparable loss. (Prahallad Ch.Panda Vs Pradeep Kumar Lenka & Ors.) 2006(3) Civil Court Cases 182 (Orissa)

Civil Procedure Code, 1908, Order 39 Rule 4 - Temporary

injunction - Variation/discharge/vacation - Court may consider subsequent events. (Dover Park Builders Pvt.Ltd. Vs Madhuri Jalan) AIR 2003 Calcutta 55

Civil Procedure Code, 1908, Order 39 Rule 11 - Wilful breach of

Court order and undertaking given without justifiable reason - Defence struck off - Contempt jurisdiction is not called for in given circumstances as object of contempt jurisdiction is to maintain majesty of Court and not necessarily to punish every breach of order of Court. (Feroze Homi Duggan Vs Benzer Interiors Pvt.Ltd. & Ors.) 2006(4) Civil Court Cases 567 (Bombay)

Civil Procedure Code, 1908, Order 40 Rule 1 - Receiver -

Appointment - Suit for partition - For appointment of receiver wastage, damage and alienation of property are matters which require consideration. (Dadan Tiwary Vs Ramji Tiwary & Ors.) 2006(4) Civil Court Cases 40 (Patna)

Civil Procedure Code, 1908, Order 40 Rule 1 - Receiver -

Appointment of receiver is considered as one of the harshest remedies and

is allowed only in extreme cases and in circumstances where the interest of person seeking the appointment of receiver is exposed to manifest peril - Protection of properties and safeguarding the rights of the parties are the twin objectives impelling the appointment of a Receiver. (Chandana Veeranjanyulu & Ors. Vs Chandana Panduranganayakamma) 2003(3) Civil Court Cases 688 (A.P.)

Civil Procedure Code, 1908, Order 40 Rule 1 - Receiver - Not to be appointed as a matter of course - As it is a harsh remedy, discretion must be exercised with care and caution - An order of appointment of receiver should not be made where it has the effect of depriving of a party defacto possession which it may cause irreparable loss. (Rabinarayan Mahasuar Vs Lokanath Mahasuar) 2003(1) Civil Court Cases 311 (Orissa)

Civil Procedure Code, 1908, Order 40 Rule 1 - Receiver - Partition suit - Contesting respondents in possession and management of properties of firm - Appointment of a stranger as a receiver would not be in the interest of either party and would occasion injustice - Respondents appointed as receivers pending disposal of suit - This is subject to other party appointing its own nominee who should be a Chartered Accountant. (Sreenivas Lad Vs Ekanath & Ors.) 2006(1) Civil Court Cases 85 (Karnataka)

Civil Procedure Code, 1908, Order 40 Rule 1 - Receiver - Partition suit - Receiver cannot be appointed in respect of properties already alienated by Karta or any of the coparceners - Receiver can only be appointed with regard to properties in the possession or management of Karta of the family. (Manne Krishna Veni @ Veeraveni & Ors. Vs Rangiseti Pavan Kumar & Ors.) 2005(1) Civil Court Cases 474 (A.P.)

Civil Procedure Code, 1908, Order 40 Rule 1 - Receiver - Partnership firm - L.R's of deceased partner, who died during pendency of suit, seeking appointment of receiver - L.R's are non-partners of the firm - Receiver cannot be appointed at the instance of non-partners. (Rabinarayan Mahasuar Vs Lokanath Mahasuar) 2003(1) Civil Court Cases 311 (Orissa)

Civil Procedure Code, 1908, Order 40 Rule 1 - Receiver - Serving judicial officer should not be appointed as receiver. (Dilip Kumar Sharma Vs Civil Judge) AIR 2004 Allahabad 86

Civil Procedure Code, 1908, Order 40 Rule 1 - Receiver - Should not be made without ascertaining right of plaintiff to maintain action - Trial Court to first decide injunction application - Appointment of receiver straightway instead of deciding injunction application which necessarily required it to consider question of locus standi - Is not proper. (Dilip Kumar Sharma Vs Civil Judge (Sr.Divn.) AIR 2004 Allahabad 86)

Civil Procedure Code, 1908, Order 40 Rule 1 - Receiver - Suit for dissolution of partnership - Particulars not given as to property being in danger of being wasted, damaged, transferred or alienated - Respondent looking after business of firm for a pretty long time - No case for appointment of receiver is made out. (Prahlaad Sharma Vs Khubhi Ram & Anr.) 2004(2) Civil Court Cases 571 (Rajasthan)

Civil Procedure Code, 1908, Order 40 Rule 1 - Suit by bank for recovery of advance - Land and factory premises not offered as security to Bank - Held, there is no question of appointment of Receiver in respect of land and factory premises or tenancy rights thereof would arise. (Saraswat Co-operative Bank Ltd. Vs Chandrakant Maganlal Shah) AIR 2002 Bombay 203

SC **Civil Procedure Code, 1908, Order 41 & S.151, Limitation Act, 1963, Arts. 122, 137** - Appeal - Dismissal for non prosecution by persons interested in the matter - Can only be under S.151 CPC and not under any other provision of O.41 CPC - Restoration of appeal dismissed u/s 151 CPC - Art.122 Limitation Act has no application - It is Art.137 Limitation Act which applies. (G.Christudas & Anr. Vs Anbiah (Dead) & Ors.) 2003(1) Apex Court Judgments 471 (S.C.)

SC **Civil Procedure Code, 1908, Order 41 Rule 1, Order 3 Rule 4(2) Explanation (c)** - Appeal - Vakalatnama - Appeal filed by same pleader who appeared in the trial court - Fresh vakalatnama need not be filed - In such an event, a mere memo referring to the authority given to him in the trial Court is sufficient. (Uday Shankar Triyar Vs Ram Kalewar Prasad Singh & Anr.) 2006(1) Apex Court Judgments 166 (S.C.) : 2006(1) Civil Court Cases 416 (S.C.)

SC **Civil Procedure Code, 1908, Order 41 Rule 1, Order 6 Rule 14** - Appeal - Non signing by party or defect in authority of person signing appeal

or omission to file vakalatnama - Such omission or defect being one relating to procedure, it can subsequently be corrected. (Uday Shankar Triyar Vs Ram Kalewar Prasad Singh & Anr.) 2006(1) Apex Court Judgments 166 (S.C.) : 2006(1) Civil Court Cases 416 (S.C.)

Civil Procedure Code, 1908, Order 41 Rule 1 - Appeal - Certified copy of impugned order - Though appeal should accompany impugned order but in exceptional circumstances, appeal can be filed without that order and appellant can be allowed to place on record the same subsequently. (Meher Singh Vs Sadhu Ram) 2003(3) Civil Court Cases 175 (P&H)

SC **Civil Procedure Code, 1908, Order 41 Rule 1** - Cross objections - - When appeal is withdrawn or dismissed, cross objections can still be heard and determined. (Hari Shankar Rastogi Vs Shri Sham Manohar & Ors.) 2005(1) Apex Court Judgments 503 (S.C.) : 2005(2) Civil Court Cases 241 (S.C.)

SC **Civil Procedure Code, 1908, Order 41 Rule 1(3), 5** - Money decree - Appeal against - Stay of execution - Deposit of amount disputed in appeal or to furnish security is a condition precedent for grant of stay of execution of decree - However, it is discretion of Court to order deposit of amount or to furnish security and this discretion is to be exercised judicially and not arbitrarily - Prima facie strong case made out for hearing of appeal - No case of respondent that in the event of appeal being dismissed the decretal amount may not be recovered from the appellant - Impugned order directing appellant to deposit amount set aside. (Sihor Nagar Palika Bureau Vs Bhabhlubhai Virabhai & Co.) 2005(2) Civil Court Cases 731 (S.C.)

Civil Procedure Code, 1908, Order 41 Rule 1(3), 5(5) - Money decree - Appeal against - Stay of execution - Not sought - Appellate Court however can suo motu direct deposit of decretal amount pending appeal. (Bhogvati Sahakari Sakhar Karkhana Ltd. Vs M/s Chaugule and Sons) AIR 2003 Bombay 185

Civil Procedure Code, 1908, Order 41 Rule 1(3) - Rule is directory and not mandatory as the rule does not state that appeal can be dismissed if amount is not deposited or security is not given. (State of Kerala Vs Kuruvilla) 2004(2) Civil Court Cases 95 (Kerala)

SC **Civil Procedure Code, 1908, Order 41 Rules 1,2** - Appeal - By third party - A person whose right is affected by reason of the judgment and decree has right to file an appeal - Appeal by third party is not maintainable when there is no contention that in the event the impugned judgment and decree is allowed to stand the same will cause personal injury to him or shall affect his interest otherwise. (Baldev Singh Vs Surinder Mohan Sharma) 2003(2) Civil Court Cases 16 (S.C.)

Civil Procedure Code, 1908, Order 41 Rule 3-A - Appeal - Delay - Condonation - Application supported by affidavit of counsel that file was misplaced - No requirement of the provision that affidavit must be filed by the party - Affidavit of the person who is responsible for the delay is sufficient. (Abdul Kareem Vs State of Kerala) 2006(3) Civil Court Cases 46 (Kerala)

Civil Procedure Code, 1908, Order 41 Rule 3-A - Appeal - Delay - Condonation - Sufficient cause has to be shown for not filing appeal within limitation. (Special Land Acquisition officer (SIP) & Anr. Vs Jose Prazeres De Piedade Pinto & Ors.) 2006(3) Civil Court Cases 306 (Bombay)

Civil Procedure Code, 1908, Order 41 Rule 3-A - Appeal - Delay - Condonation application - Has to be filed alongwith memo of appeal - Application for condonation of delay if filed subsequently that by itself is not sufficient cause to reject such an application - In such an event Court has to see whether applicant has disclosed sufficient cause for not filing such application alongwith appeal and whether delay in filing of such an application is for a sufficient cause. (Special Land Acquisition officer (SIP) & Anr. Vs Jose Prazeres De Piedade Pinto & Ors.) 2006(3) Civil Court Cases 306 (Bombay)

SC **Civil Procedure Code, 1908, Order 41 Rule 5, Delhi Rent Control Act, 1958, Sections 2(I), 14(1)(b) and 38(3)** - Eviction order - Appeal against - Stay of execution - Contractual rent Rs.371.90 since 1944 - Premises situated in prime commercial locality - Tenant directed to pay Rs.15,000/- per month as charges for use and occupation during pendency of appeal - No fault can be found with the approach adopted by the Tribunal. (M/s.Atma Ram Properties (P) Ltd. Vs M/s.Federal Motors Pvt. Ltd.) 2005(1) Apex Court Judgments 426 (S.C.) : 2005(1) Civil Court Cases 454 (S.C.)

SC **Civil Procedure Code, 1908, Order 41 Rule 5, Delhi Rent Control Act, 1958, Sections 2(l), 14(1)(b) and 38(3)** - Eviction order - Appeal against
- Stay of execution subject to payment of Rs.15,000/- per month in addition to the contractual rate of rent - Tenant as per Delhi Rent Control Act does not include a person against whom an order or decree for eviction is passed
- Tenant, as such, on filing of appeal against order of eviction can be put to reasonable terms and can be directed to pay mesne profits or compensation and landlord is not bound by the contractual rate of rent and that doctrine of merger does not have the effect of postponing the date of termination of tenancy merely because the decree of eviction stands merged in the decree passed by the superior forum at a latter date. (M/s.Atma Ram Properties (P) Ltd. Vs M/s.Federal Motors Pvt. Ltd.) 2005(1) Apex Court Judgments 426 (S.C.) : 2005(1) Civil Court Cases 454 (S.C.)

SC **Civil Procedure Code, 1908, Order 41 Rule 5** - Mere preferring of an appeal does not operate as stay on the decree or order appealed against nor on the proceedings in the Court below - Appellate Court is not ordained to grant an order of stay merely because an appeal has been preferred and an application for an order of stay has been made - Appellate Court while passing an order of stay may put the parties on such terms that enforcement whereof would satisfy the demand for justice of the party found successful at the end of appeal. (M/s.Atma Ram Properties (P) Ltd. Vs M/s.Federal Motors Pvt. Ltd.) 2005(1) Apex Court Judgments 426 (S.C.) : 2005(1) Civil Court Cases 454 (S.C.)

Civil Procedure Code, 1908, Order 41 Rule 5 & S.151 - Declaratory decree - Stay of operation of decree pending disposal of appeal - Held, appellate Court has power to grant stay of operation of decree. (Ramesh Chandra Mohapatra Vs Bishnupriya Mangaraj) 2003(1) Civil Court Cases 307 (Orissa)

Civil Procedure Code, 1908, Order 41 Rule 5(3) r/w O.27 Rule 8A - State is not required to give the security. (State of Kerala Vs Kuruvilla) 2004(2) Civil Court Cases 95 (Kerala)

SC **Civil Procedure Code, 1908, Order 41 Rule 9 (As amended)** - Appeal is to be filed U.O.41 Rule 1 in the Court in which it is maintainable
- All that Order 41 Rule 9 requires is that a copy of memorandum of appeal

which has been filed in the appellate court should also be presented before the court against whose decree the appeal has been filed and endorsement thereof shall be made by the decreeing court in a book called the Register of Appeals - Merely because a memorandum of appeal is not filed under Order 41 Rule 9 will not, to our mind, make the appeal filed in the appellate court as a defective one. (Salem Advocate Bar Association Vs Union of India) 2003(1) Civil Court Cases 198 (S.C.)

SC **Civil Procedure Code, 1908, Order 41 Rules 11 & S.96** - First appeal - Admission of appeal subject of deposit of specific amount is not envisaged by provision of S.96 read with O.41 Rule 11 CPC - Further imposition of condition that failure to deposit the amount would result in dismissal of appeal also cannot be sustained. (Management of Devi Theatre Vs Vishwanath Raju) 2004(2) Apex Court Judgments 137 (S.C.) : 2004(2) Civil Court Cases 568 (S.C.)

SC **Civil Procedure Code, 1908, Order 41 Rules 11 & Section 96** - First appeal - Admission of appeal subject of deposit of specific amount is not envisaged by provision of Section 96 read with Order 41 Rule 11 of Civil Procedure Code, 1908- Further imposition of condition that failure to deposit the amount would result in dismissal of appeal also cannot be sustained. (Management of Devi Theatre Vs Vishwanath Raju) 2004(2) Apex Court Judgments 137 (S.C.) : 2004(2) Civil Court Cases 568 (S.C.)

Civil Procedure Code, 1908, Order 41 Rule 17 - Appeal - Appellant absent - Appeal cannot be decided on merits - Appeal can be dismissed in default either for want of prosecution or for default on the part of appellant. (Bhaurao Namdeorao Subhedar & Ors. Vs Abaji Govindrao Gharote & Ors.) 2006(3) Civil Court Cases 54 (Bombay)

Civil Procedure Code, 1908, Order 41 Rule 17(1) - Appeal - Neither appellant nor his counsel present - Appeal dismissed on merits - Held, Appellate Court can adjourn the appeal or dismiss the same in default but has no jurisdiction to dismiss the same on merits - Matter remanded. (Sohan Lal Vs Hari Ram) 2005(2) Civil Court Cases 550 (P&H)

Civil Procedure Code, 1908, Order 41 Rule 19, Limitation Act, 1963, Section 5 - Appeal - Restoration - Application for condonation of delay - Deciding of both applications simultaneously without affording

opportunity of hearing to pro forma opposite parties - Improper. (Jagsingh Patra Vs Debram Jhakar) AIR 2002 Orissa 191

Civil Procedure Code, 1908, Order 41 Rule 19 - Appeal - Appellant and Advocate absent - Appeal dismissed for default - When an Advocate is engaged it is not duty of appellant to remain present on the date fixed in the case - If Advocate is not present then appellant cannot be blamed for default on the part of his Advocate - Appeal restored subject to payment of Rs.5,000/- as costs. (Annasaheb Virupaksha Bidre Vs Dada Tatoba Patil & Ors.) 2005(2) Civil Court Cases 769 (Bombay)

Civil Procedure Code, 1908, Order 41 Rule 19 - Appeal - Dismissal for default - Restoration - Application filed within 30 days - Appellant ill and failure to inform counsel - Application dismissed on the ground that if one appellant was ill other could appear - Held, it is always in the interest of justice that matter should be adjudicated on merits - Appeal ordered to be restored to be decided on merits. (Khema & Ors. Vs Smt.Ram Dei & Ors.) 2006(3) Civil Court Cases 515 (P&H)

Civil Procedure Code, 1908, Order 41 Rule 19 - Non compliance of Court order - Appeal dismissed - Fault on part of counsel - Party should not suffer for fault of counsel - Appeal ordered to be readmitted. (Rajasthan State Ind. Dev. Vs M/s.Modi Thread Mills) 2003(3) Civil Court Cases 268 (Raj.)

Civil Procedure Code, 1908, Order 41 Rule 22 - Cross objection is to be only on those grounds which could have been available by way of an appeal. (Chandrakant & Ors. Vs Shrinivasrao died, LRs. Mainabai & Ors.) 2005(2) Civil Court Cases 716 (Bombay)

Civil Procedure Code, 1908, Order 41 Rule 22 - Cross objections - Extension of time - Cross objections if not filed within time then period can be extended but that must be done before the hearing of cross objection. (Tarun Chandra Dey & Ors. Vs State of Tripura & Ors.) 2004(2) Civil Court Cases 305 (Gauhati)

Civil Procedure Code, 1908, Order 41 Rule 22 - Cross objections - Not filed within a month from the date fixed by Court for hearing of appeal - Extension of time also not sought - Respondent rather participated in the

hearing on cross objections - Thereafter respondent filed application for condonation of delay - Held, application not maintainable as extension of time can be sought only prior to hearing of cross objections. (Tarun Chandra Dey & Ors. Vs State of Tripura & Ors.) 2004(2) Civil Court Cases 305 (Gauhati)

Civil Procedure Code, 1908, Order 41 Rule 22 - Cross objections - Not filed within time - Period cannot be extended after conclusion of arguments. (Tarun Chandra Dey & Ors. Vs State of Tripura & Ors.) 2004(2) Civil Court Cases 305 (Gauhati)

Civil Procedure Code, 1908, Order 41 Rule 22(4), Land Acquisition Act, 1894, Section 54(2) - Cross objections - Court can hear and determine cross objections even when original appeal in which cross objections are filed, has been dismissed. (Chandrashekar Vs The Assistant Commissioner) 2003(2) Civil Court Cases 498 (Karnataka)

SC Civil Procedure Code, 1908, Order 41 Rules 22, 33 - Appeal by defendant - Plaintiff not filing any cross appeal or cross objections - Appellate Court cannot pass a decree which is to the prejudice of the appellant-defendant and to the advantage of the respondent-plaintiff. (Banarsi & Ors. Vs Ram Phal) 2003(1) Apex Court Judgments 639 (S.C.)

Civil Procedure Code, 1908, Order 41 Rule 23 - Remand - Only when appellate Court arrives at finding that judgment of trial Court is erroneous and is liable to be reversed or set aside - This is a condition precedent for passing of remand order - In the instant case finding by appellate Court that partnership was not dissolved and trial Court has to decide matter on certain issues is not sufficient to sustain order of remand. (Kota Suryanarayana Vs Penumatcha) AIR 2002 A.P. 340

Civil Procedure Code, 1908, Order 41 Rule 23 - Remand - Power of remand cannot be exercised in cases where Appellate Court can decide the issue considering the evidence on record. (Sreenivasan Vs Thilakan) 2003(3) Civil Court Cases 296 (Kerala)

Civil Procedure Code, 1908, Order 41 Rule 23 - Remand - Report of Local Commissioner regarding boundaries of disputed land found unsatisfactory - Remand of entire case for decision afresh - Not proper -

Proper course is to direct appointment of another Commissioner or to call for fresh report. (Gian Chand Khatana Vs Inderjit Chohdha) AIR 2003 H.P. 49

Civil Procedure Code, 1908, Order 41 Rule 23 - Remand of case after framing additional issues - Non application of mind as to whether issues already framed required any amendment, modification or alteration - Appellate Court required to pass such order so that trial Court may decide factual aspects avoiding second chance of remand - Order of Appellate Court set aside - Appellate Court directed to look into those issues which are still alive - Appellate Court after hearing parties to decide whether the entire matter required re-trial or not. (Nandlal Vs Bhanwarlal) 2003(3) Civil Court Cases 64 (Rajasthan)

SC Civil Procedure Code, 1908, Order 41 Rule 23-A - Remand - While remitting the matter High Court not indicated as to what question of facts and law are required to be assessed and the circumstances upon which the High Court found itself unable to decide the matter - Plaintiff given sufficient opportunity to produce the documents and no other documents filed inspite of opportunity - Order of remand set aside - Matter remitted to High Court for decision on merits only on the materials already on record. (Hamebed (D) By LR. & Ors. Vs Kummothummam Kunhi P.P.Amma (D) by LR. & Ors.) 2006(3) Apex Court Judgments 350 (S.C.) : 2006(4) Civil Court Cases 100 (S.C.)

Civil Procedure Code, 1908, Order 41 Rule 25 - Appeal - Additional issue - Remand of case - Omission to frame an issue - Appellate Court to frame issue and direct trial Court to take evidence on that issue and return evidence together with its findings - Case for this purpose cannot be remanded. (Savitri Devi (died) through LR. Vs M/s Jia Lal Baldev Krishan Cheema & Ors.) 2006(4) Civil Court Cases 456 (P&H)

Civil Procedure Code, 1908, Order 41 Rule 27, Order 6 Rule 17 - Eviction order - Appeal thereagainst - Additional evidence sought by way of taking on record documents relating to subsequent events as to starting of business in two independent shops during pendency of suit and appeal by person for whose need decree was passed - Documents allowed to be taken on record being material and relevancy thereof to be adjudicated thereafter - As regards application under Order 6 Rule 17, held, that party can file affidavit

alongwith documents annexed to amendment application. (Murlidhar Vs Nandkishore & Ors.) 2006(4) Civil Court Cases 80 (Rajasthan)

Civil Procedure Code, 1908, Order 41 Rule 27, Section 115 - Additional evidence at appellate stage - Revision is maintainable against an order on an application U.O.41 Rule 27 CPC. (Sailo Ram Vs Kuldip Chand) AIR 2003 H.P. 148

SC **Civil Procedure Code, 1908, Order 41 Rule 27** - Additional evidence at appellate stage - Certified copies of public record - On comparison of these documents with those already on record it was found that the two are at variance - Variance determined either way would have a material bearing on the crucial issue arising for decision between the parties - No prejudice is likely to be caused to the other party in such a case - Production of such documents allowed. (Jayaramdas and Sons Vs Mirza Rafatullah Baig and Ors.) 2004(1) Apex Court Judgments 499 (S.C.)

SC **Civil Procedure Code, 1908, Order 41 Rule 27** - Additional evidence at appellate stage - Eviction order on ground of bonafide need - Additional evidence sought to be produced by tenant during pendency of appeal by way of documents relating to sale of premises, modified plan for construction and brochure seeking donation for construction - Two of the documents came into existence after passing of the eviction order - Documents sought to be produced by tenant are material and if substantiated, would have a material effect on the case of the landlord of his bonafide need - Order of First Appellate Court allowing additional evidence restored and that of High Court set aside. (Adil Jamshed Frenchman (Deceased) by Lrs. Vs Sardar Dastur School Trust & Ors.) 2005(2) Apex Court Judgments 604 (S.C.) : 2005(3) Civil Court Cases 521 (S.C.)

Civil Procedure Code, 1908, Order 41 Rule 27 - Additional evidence at appellate stage - If evidence available on record is not sufficient to decide the dispute in one way or the other and some more evidence is required, then in such cases clause (b) of Sub-rule 1 is to be invoked. (Kamini Das Vs Upendra Biswal) 2006(2) Civil Court Cases 754 (Orissa) (DB)

Civil Procedure Code, 1908, Order 41 Rule 27 - Additional evidence at appellate stage - If on a visual comparison of signatures on document to be produced by way of additional evidence Court finds that signatures differ

with the admitted signatures then Court can decline the prayer for additional evidence. (Ram Chand Premi Vs Nawab Kaur) 2004(2) Civil Court Cases 188 (P&H)

SC Civil Procedure Code, 1908, Order 41 Rule 27 - Additional evidence at appellate stage - Not to be allowed unless a case for admission thereof is made out by reference to clause (a) or (aa) of sub-rule (1) of Rule 27 or unless the Appellate Court requires such evidence to enable it to pronounce judgment or for any other substantial cause within the meaning of clause (b). (Jayaramdas and Sons Vs Mirza Rafatullah Baig and Ors.) 2004(1) Apex Court Judgments 499 (S.C.)

SC Civil Procedure Code, 1908, Order 41 Rule 27 - Additional evidence at appellate stage - Parties are not entitled to produce additional evidence at appellate stage, whether oral or documentary, unless they have shown that in spite of due diligence, they could not produce such documents and such documents are required to enable the court to pronounce proper judgment. (Karnataka Board of Wakf Vs Government of India & Ors.) 2004(2) Apex Court Judgments 379 (S.C.) : 2004(3) Civil Court Cases 326 (S.C.)

Civil Procedure Code, 1908, Order 41 Rule 27 - Additional evidence at appellate stage - Reason for failure to file documents shown as lack of legal knowledge and lack of proper advice - Knowledge about existence of documents being there - Lack of legal knowledge and proper advice not a ground for production of additional evidence at appellate stage - Order rejecting application, upheld. (Enugukonda Venkata Raghavacharyulu & Ors. Vs Pushpagiri Mattam Cuddapah Dist. & Anr.) 2003(3) Civil Court Cases 360 (A.P.)

Civil Procedure Code, 1908, Order 41 Rule 27 - Additional evidence at appellate stage - Relegation of parties to trial Court for providing fair opportunity to opposite party to meet that evidence by appellate Court, proper. (Sheo Shankar Prasad Sinha Vs State of Bihar) AIR 2003 Patna 30

Civil Procedure Code, 1908, Order 41 Rule 27 - Additional evidence in appeal - Cannot be allowed before commencement of hearing of appeal on merit - It is only in course of hearing of appeal on merit if it appears to be expedient for rendering effective decision or for any other substantial cause, the Appellate Court may require additional evidence, documentary or oral, to

be produced by the parties. (Sapam Ibomcha Singh Vs Sapam Ningol Ibema Devi) 2004(2) Civil Court Cases 385 (Gauhati)

Civil Procedure Code, 1908, Order 41 Rule 27 - Delay in filing application - Can never be fatal - Court is to impart justice and for delay other party can be compensated by way of costs - Held, if court requires any evidence same could be ordered under order 41 rule 27 and it should be allowed when a party makes such application. (Punjab Wakf Board Vs Shri Neeko) 2004(3) Civil Court Cases 52 (P&H)

Civil Procedure Code, 1908, Order 41 Rule 27-Appeal - Additional evidence - Failure to establish that such evidence was not within knowledge or could not, after exercise of due diligence, be produced at the time of passing of decree - Application rejected. (Shantilal Vs Mahendra Kumar & Ors.) 2003 (2) Civil Court Cases 706 (Raj.)

Civil Procedure Code, 1908, Order 41 Rule 31 - Appellate Court if deals with all the grounds taken in the Memorandum of appeal and gives decision on those grounds with reasons, it amounts to sufficient compliance of O.41 Rule 31 CPC. (Mohd.Ibrahim Vs Managing Committee of Masjid-e-Khursheed Jah) 2003(3) Civil Court Cases 581 (A.P.)

Civil Procedure Code, 1908, Order 41 Rule 31 - First appeal - Points for consideration - Non framing of - Does not vitiate appellate judgment when there is substantial compliance with provision by considering all aspects, both oral and documentary, in detail answering all the points - Does not vitiate the judgment of appellate Court. (Sughra Bee Vs Kareez Fatima Qureshi) 2004(2) Civil Court Cases 685 (A.P.)

SC Civil Procedure Code, 1908, Order 41 Rule 31 - First appeal - Points for determination - Non framing of - Judgment is not vitiated when first appellate Court considers entire evidence on record and discuss the same in detail and come to a conclusion supported by reasons - It amounts to substantial compliance of the provision of Order 41 Rule 31 of Civil Procedure Code, 1908. (G.Amolorpavam & Ors. Vs R.C.Diocese of Madurai & Ors.) 2006(2) Apex Court Judgments 465 (S.C.) : 2006(3) Civil Court Cases 404 (S.C.)

Civil Procedure Code, 1908, Order 41 Rule 31 - Formulation of

points for determination - Literal compliance thereof not to be insisted upon if Court considers all the questions raised before it and gives reasons for its decision - Judgment is not vitiated just because Court did not formulate a point or points for determination in the appeal - Substantial compliance with the rule is sufficient. (A.Narayan Rao Vs Shanta Bai & Ors.) 2004(2) Civil Court Cases 409 (A.P.)

Civil Procedure Code, 1908, Order 41 Rule 33 - Appellate Court - Powers of - Adoption - Parties abandoning issue of validity of adoption and accepting it as admitted fact before trial Court - It is not open for appellate Court to invalidate said adoption by relying on absence of proof of custom to the contrary. (Sorawar Singh Vs Kan Mal) AIR 2003 Rajasthan 107

Civil Procedure Code, 1908, Order 41 Rule 33 - Interest - Refusal by trial Court - Granted by first appellate Court in absence of an appeal or cross objections - Held, refusal of interest itself constitutes an independent and separable portion of decree, which requires to be appealed against and without which no relief could have been granted by lower appellate Court - In absence of an appeal or cross objections it cannot be said that plaintiff shall be entitled to relief of interest. (Appasani Veera Venkata Satyanarayana Murthy & Anr. Vs Chekka Veera Raja Rao & Ors.) 2005(1) Civil Court Cases 530 (A.P.)

Civil Procedure Code, 1908, Order 41 Rule 33 - Relief in respect of which no appeal is filed - Can be granted if such relief has a direct and inseparable link with the other relief so that without which the latter relief could not have been granted. (Appasani Veera Venkata Satyanarayana Murthy & Anr. Vs Chekka Veera Raja Rao & Ors.) 2005(1) Civil Court Cases 530 (A.P.)

Civil Procedure Code, 1908, Order 41 Rule 33 - Subsequent events - Party must seek amendment of pleadings. (Om Prakash Gupta Vs Ranbir B.Goyal) AIR 2002 S.C. 665

SC Civil Procedure Code, 1908, Order 41 Rules 33, 22 - Decree of specific performance - Appeal against - Relief of possession in decree not granted - High Court in appeal however granted relief of possession without there being a cross objection filed by the plaintiff - Relief of possession as granted by High Court set aside. (Shankar Popat Gaidhani Vs Hiranman Umaji

More (Dead) by Lrs. & Ors.) 2003(1) Apex Court Judgments 633 (S.C.)

Civil Procedure Code, 1908, Order 43 Rule 1, Sections 96, 104 - Suit for declaration and permanent injunction - Trial Court holding that suit in the present form not maintainable and that it has no jurisdiction to entertain the suit - Decree dismissing the suit drawn - Appeal lies u/s 96 - Section 104 & O.43 Rule 1 CPC not attracted. (Kishan Singh Vs M/s East India Cotton Manfg. Co.) AIR 2004 P&H 153

Civil Procedure Code, 1908, Order 43 Rule 1 - Remand - Finding on issue which was not framed - Issue also not framed which arises in the case - Case remanded. (Manubhai Khandubhai Naik Vs Sumantrai Ranchhodji Naik) AIR 2004 Gujarat 73

Civil Procedure Code, 1908, Order 43 Rule 1(u), Section 100 - Appeal U.O. 43 rule 1(u) - Must contain a substantial question of law as contemplated under Section 100 of Civil Procedure Code, 1908. (Kantabai Shivaji Gadakh Vs Jagannath Bhika Gadakh & Ors.) 2006(3) Civil Court Cases 222 (Bombay)

SC Civil Procedure Code, 1908, Order 43 Rule 1(u) - Remand - Appeal against - Appellant under an appeal U.O.43 Rule 1(u) is not entitled to agitate questions of facts - High Court can and should confine itself to such facts, conclusions and decisions which have a bearing on the order of remand and cannot convass all the findings of facts arrived at by the Lower Appellate Court. (Narayanan Vs Kumaran & Ors.) 2004(1) Apex Court Judgments 366 (S.C.) : 2004(2) Civil Court Cases 315 (S.C.)

Civil Procedure Code, 1908, Order 44 Rule 1 - Appeal - By an indigent person - If permission to file suit as an indigent person is granted then petitioner is required to file an affidavit that he has not ceased to be an indigent person since the date of the decree appealed from. (Mrs.Premi Devi Vs State of Haryana & Ors.) 2006(2) Civil Court Cases 417 (P&H)

Civil Procedure Code, 1908, Order 44 Rule 1 - Appeal by an indigent person - Permission to file appeal as an indigent person not accompanied alongwith appeal but filed subsequently - Held, application cannot be dismissed merely for this reason - In case Court does not grant permission to file appeal as an indigent person and rejects application then

an opportunity to pay court fee within such time as may be fixed by Court has to be granted. (Mrs.Premi Devi Vs State of Haryana & Ors.) 2006(2) Civil Court Cases 417 (P&H)

SC Civil Procedure Code, 1908, Order 47 Rule 1, Order 23 Rule 1 - Review - Order 23 Rule 1 of Civil Procedure Code, 1908 is not strictly applicable to review petition - Principles analogous to Order 23 Rule 1 of Civil Procedure Code, 1908 however are applicable to review petition. (Rekha Mukherjee Vs Ashis Kumar Das & Ors.) 2005(2) Apex Court Judgments 220 (S.C.) : 2005(3) Civil Court Cases 337 (S.C.)

Civil Procedure Code, 1908, Order 47 Rule 1, Order 9 Rule 13 - Ex parte decree set aside against only that defendant who made the application - If aggrieved he can challenge the same in superior Court in appropriate proceedings - No mistake or error apparent on the face of record to correct it in a review application - No ground to interfere with dismissal of review petition - Revision petition dismissed. (Palakurthy Vs Noroju Manorama) 2003(2) Civil Court Cases 480 (A.P.)

SC Civil Procedure Code, 1908, Order 47 Rule 1, Section 96 - An appeal during pendency of review petition - Not maintainable. (Rekha Mukherjee Vs Ashis Kumar Das & Ors.) 2005(2) Apex Court Judgments 220 (S.C.) : 2005(3) Civil Court Cases 337 (S.C.)

Civil Procedure Code, 1908, Order 47 Rule 1 - Review - Against order closing evidence of defendant - Not a case of defendant in review application that new and important matter or evidence is discovered or that mistake or error apparent on face of record was evident - Dismissal of review application upheld as no jurisdiction error in said order. (Punjab National Bank Vs V.P.Mehra) AIR 2004 Delhi 135

SC Civil Procedure Code, 1908, Order 47 Rule 1 - Review - Appeal against - Appeal can be preferred only from that part of the decree in respect whereof review is not granted. (Rekha Mukherjee Vs Ashis Kumar Das & Ors.) 2005(2) Apex Court Judgments 220 (S.C.) : 2005(3) Civil Court Cases 337 (S.C.)

Civil Procedure Code, 1908, Order 47 Rule 1 - Review - Application can be filed only by a party to the lis - Review application is not maintainable

at the instance of a third party. (Bangalore Development Authority Vs P.Anjanappa) 2003(3) Civil Court Cases 23 (Karnataka)

Civil Procedure Code, 1908, Order 47 Rule 1 - Review - By a person not party thereto - Not maintainable. (Pujya Sindhi Panchayat Vs Prof.C.L.Mishra) AIR 2002 Rajasthan 274

SC **Civil Procedure Code, 1908, Order 47 Rule 1** - Review - Conclusion arrived that an omission has crept in the judgment - Original decree does not survive. (Rekha Mukherjee Vs Ashis Kumar Das & Ors.) 2005(2) Apex Court Judgments 220 (S.C.) : 2005(3) Civil Court Cases 337 (S.C.)

SC **Civil Procedure Code, 1908, Order 47 Rule 1** - Review - Dismissal of review application - Order is not appealable - In case of granting an application for review, an appeal, against order granting review, or appeal against decree of order finally passed is maintainable. (Rekha Mukherjee Vs Ashis Kumar Das & Ors.) 2005(2) Apex Court Judgments 220 (S.C.) : 2005(3) Civil Court Cases 337 (S.C.)

SC **Civil Procedure Code, 1908, Order 47 Rule 1** - Review - If on appreciation of evidence Court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of record or for some reason akin thereto. (Kerala State Electricity Board Vs Hitech Electrothermics and Hydropower Ltd. & Ors.) 2005(2) Apex Court Judgments 281 (S.C.)

Civil Procedure Code, 1908, Order 47 Rule 1 - Review - Insufficiently stamped and unregistered partition deed admitted in evidence for collateral purpose by Court without deciding the objection raised by other side - It is a mistake on the part of Court which is apparent on the face of record - Application for review is maintainable. (Bolleddula Lakshmi Devi Vs Bolleddula Papanna & Ors.) 2004(2) Civil Court Cases 253 (A.P.)

Civil Procedure Code, 1908, Order 47 Rule 1 - Review - Mere erroneous decision per se does not permit Court to undertake review - Review jurisdiction can be exercised only on ground of error apparent on the face of record and not on any other ground. (Ahmedabad Electricity Co. Vs State of Gujarat) AIR 2003 Gujarat 157

Civil Procedure Code, 1908, Order 47 Rule 1 - Review - Must be heard by same Judge or Court - However, there are exceptions to this general principle - Order passed by District/Additional District Judge during pendency of trial - Can be reviewed by Civil Judge after case is transferred to his Court due to statutory change in pecuniary jurisdiction of Courts vesting same powers and jurisdiction. (Rajiv Lochan Vs Narender Nath) AIR 2004 Delhi 48

Civil Procedure Code, 1908, Order 47 Rule 1 - Review - Not permissible on ground that Court has proceeded on wrong proposition of law - Review is also not permissible on ground that decision is erroneous on merits. (Dolat Industries Vs Krishna Oil Industries) AIR 2002 Gujarat 91

Civil Procedure Code, 1908, Order 47 Rule 1 - Review - Petition is not maintainable on a issue not agitated at the time of passing the impugned order. (Virendra Singh Kothari Vs State of Rajasthan) 2003(3) Civil Court Cases 208 (Rajasthan)

Civil Procedure Code, 1908, Order 47 Rule 1 - Review - Power can be exercised when there is error apparent on the face of record - An error which is not self evident and has to be detected by a process of reasoning cannot be said to be an error apparent on the face of record justifying Court to exercise its power of review - If there is a clear distinction between an erroneous decision and an error apparent on face of record the first can be corrected by higher forum while the latter can only be corrected by exercise of review jurisdiction. (Delta Foundations & Constrictions Vs Kerala State Constructions Corporation Ltd.) 2003(2) Civil Court Cases 297 (Kerala)

Civil Procedure Code, 1908, Order 47 Rule 1 - Review - Power of review can be exercised on discovery of new and important matter or evidence which after exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made - It may be exercised where some mistake or error apparent on the face of record is found - It can also be exercised on any analogous ground - However, power of review cannot be exercised on the ground that the decision was erroneous on merits as that is a province of a Court of appeal. (Mohinder Pal Bali Vs Punjab State Electricity Board, Patiala & Ors.) 2006(1) Civil Court Cases 359 (P&H) (DB)

SC Civil Procedure Code, 1908, Order 47 Rule 1 - Review - Scope - Provision does not postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the Court and thereby enjoyed a favourable verdict. (Haridas Das Vs Smt.Usha Rani Banik & Ors.) 2006(2) Apex Court Judgments 209 (S.C.) : 2006(3) Civil Court Cases 163 (S.C.)

Civil Procedure Code, 1908, Order 47 Rule 1 - Review - Scope of review is limited - Mere fact that another view is possible having regard to the material on record is not a ground for review - Error apparent on the face of record can only be corrected in review - Matter cannot be reargued on merits and another order cannot be substituted in place of the order passed after hearing the parties. (Smt.Chinnamma & Ors. Vs R.Venkataswamy & Ors.) 2004(2) Civil Court Cases 376 (Karnataka)

Civil Procedure Code, 1908, Order 47 Rule 1 - Review - Scope of review is very limited and under the garb of review a party cannot be permitted to reopen the entire case. (Virendra Singh Kothari Vs State of Rajasthan) 2003(3) Civil Court Cases 208 (Rajasthan)

SC Civil Procedure Code, 1908, Order 47 Rule 1 - Review - Successive applications - Not barred if same are otherwise maintainable in law. (Jaya Chandra Mohapatra Vs Land Acquisition Officer, Rayagada) 2005(1) Civil Court Cases 508 (S.C.) : 2005(1) Apex Court Judgments 496 (S.C.)

SC Civil Procedure Code, 1908, Order 47 Rule 1 - Second review - Agreement to sell - Initially suit for injunction filed - By amendment of plaint relief of specific performance allowed - As plaint was beyond pecuniary jurisdiction of Court the same was ordered to be returned and presented in Court of competent jurisdiction within two months - Plaintiff kept quiet for seven years - After seven years request for return of plaint allowed - Revision thereagainst allowed by High Court - Plaintiff filed application in trial Court to treat the plaint as fresh one, which was rejected - In revision thereagainst High Court ordered trial Court to decide application afresh - Held, this in fact is an attempt of second review which cannot be permitted and earlier order cannot be set aside as earlier order had already attained finality. (K.G.Arumugham & Ors. Vs K.A.Chinnappan & Ors.) 2005(1) Apex Court Judgments 666

(S.C.) : 2005(2) Civil Court Cases 63 (S.C.)

SC Civil Procedure Code, 1908, Order 47 Rules 1, 7 - Review - Appeal against order granting review - Cross objections are not maintainable. (Rekha Mukherjee Vs Ashis Kumar Das & Ors.) 2005(2) Apex Court Judgments 220 (S.C.) : 2005(3) Civil Court Cases 337 (S.C.)

Civil Procedure Code, 1908, Order 47 Rule 3 - Review - Application has to be in the form of an appeal, setting out various grounds for review as in the case of an appeal - When review petition is not in proper form then petition to be returned for being presented in proper form as procedural errors or lapses by themselves are not a ground for dismissal of a petition - Petition cannot be dismissed merely on the ground that it is not in proper form. (Palakurthy Vs Noroju Manorama) 2003(2) Civil Court Cases 480 (A.P.)