Judicial Functions of Revenue Courts

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Part – 1
Applicability of CPC to Revenue Courts

1. **Section 214 of UP Revenue Code, 2006:** According to Section 214 of the UP Revenue Code, 2006, unless otherwise expressly provided by the UP Revenue Code, provisions of the CPC, 1908 and the Limitation Act, 1963 shall apply to every suit, application or proceedings under the UP Revenue Code.

2. **Summary proceedings of revenue courts and non-applicability of CPC:** According to Rule 186 of the UP Revenue Code Rules 2016, provisions of the CPC shall not be applicable to the **summary proceedings** of the revenue courts but the principles enshrined in the CPC, 1908 and the principles of natural justice shall be observed in the disposal of such proceedings.

3. **Strict provisions of Evidence Act/BSA do not apply to summary proceedings like mutation etc. before the revenue courts:** Mutation proceedings u/s 34 are purely summary and fiscal in nature because they only determine who is liable to pay the land revenue based on prima facie possession of the land and do not decide the legal title. The strict standards of the Evidence Act / BSA to prove will deed or title deed in a civil court do not apply to the revenue court. See: Judgment dated 25.07.2025 of the Allahabad High Court passed in Writ-C no.7065 of 2025 , Lallau Vs. State of UP

4. **Every procedure is valid unless expressly prohibited by law:** Rules of procedure are handmaids of justice. Section 151 CPC gives inherent powers to the court to do justice. That provision has to be interpreted to mean that every procedure is permitted to the court for doing justice unless expressly prohibited, and not that every procedure is prohibited unless expressly permitted. See: Rajendra Prasad Gupta Vs. Prakash Chandra Mishra & Ors., AIR 2011 SC 1137.

5. **Prohibition of a procedure cannot be presumed unless it is expressly prohibited in law**: Courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for by the CPC but on the converse principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law. As a matter of general principle prohibition cannot be presumed. See: Raj Narain Saxena Vs. Bhim Sen & others, AIR 1966 Allahabad 84 (Full Bench).

6. **An act should be done in the manner prescribed or not at all :** Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily forbidden. This rule squarely applies where the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other way. See:

(i) State of Kerala Vs. Kerala Rare Earth & Minerals Ltd., (2016) 6 SCC 323 (Three-Judge Bench),

(ii). Ram Chandra Keshav Adke Vs. Govind Toti Chavare, AIR 1975 SC 915 (Three-Judge Bench).

(iii) Dhananjaya Reddy Vs State of Karnataka, (2001) 4 SCC 9

(iiv) State of UP Vs. Singhara Singh, AIR 1964 SC 358 (Three-Judge Bench)

7. **Exercise of power in a manner other than prescribed by law is necessarily forbidden:** It is settled law that where law requires a thing to be done in a certain manner or where a power is given to do a certain thing in a certain manner, the thing must be done in that way or manner or not at all and other methods of performance are necessarily forbidden. This is what the maxim "ex pressio unius est exclusio alterius" means. See:

(i).J. Jayalalithaa Vs State of Karnataka, (2014) 2 SCC 401.

(ii) Dhananjaya Reddy Vs. State of Karnataka, (2001) 4 SCC 9 (para 23)

(iii) Ram Chandra Keshav Adke Vs. Govind Joti Chavare, AIR 1975 SC 915

(iv) State of UP Vs. Singhara Singh, AIR 1964 SC 358

8. **Procedure other than statutory procedure cannot be adopted even if there is unanimous understanding of Central and State Governments :** A procedure other than statutory procedure cannot be adopted even if there is unanimous understanding of the Central Government and the State Governments on a non-statutory procedure. All methods other than statutory methods are necessarily forbidden. What cannot be done directly cannot be done indirectly to defeat statutory scheme. See **:** Manohar Lal Sharma Vs. Principal Secretary & Others, (2014) 9 SCC 516 (Three-Judge Bench).

9. **What could not be done directly cannot be done indirectly also** : It is well recognized principle of law that what could not be done directly can also not be done indirectly. See :

(i) H.H. Maharajadhiraj Madhav Rao Jiwaji Rao Sindia Bahadur Vs. Union of India, AIR 1971 SC 530 (Eleven-Judge Bench)

(ii) Madanlal Fakir Chand Dudhedia Vs. Shree Changdev Sugar Mills Ltd. AIR 1962 SC 1543

(ii) M/s. Taxi Owners United Transport Vs. State Transport Authority, Orissa, AIR 1983 SC 281.

10. Procedural irregularities not to be allowed to defeat the ends of justice : Non compliance with any procedural requirement relating to a pleading, memorandum of appeal or application for substt. or other relief should not entail automatic dismissal or rejection unless the relevant statute or rule so mandates—Procedural defects or irregularities which are curable should not be allowed to defeat the substantive rights or to cause injustice. Procedure, a hand-maiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. Procedural law is not to be tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.

(a) The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.

(b) The object is to expedite the hearing and not to scuttle the same.

(c) Justice delayed may amount to justice denied, but justice hurried may amount to justice buried.

(d) Actus curiae neminem gravabit (an act of court shall prejudice no man)

(e) Lex non cogit ad impossibilia (the law does not compel a man to do what he cannot possibly perform) See:

(f) (i).Ashok Kumar Kalra Vs. Surendra Agnihotri, (2020) 2SCC 394 (Three-Judge Bench).

(ii).Shaikh Salim Haji Abdul Khayumsab vs. Kumar & ors., 2006 (1) ARC 334 (SC)

(iii).Uday Shankar Triyar vs. Ram Kalewar Prasad Singh, 2006 (1) ARC 1 (SC) (Three-Judge Bench)

11. Procedural defects when fatal : The procedural defects or lapses would not vitiate the proceedings except under the following circumstances:

(i) where the statute prescribing the procedure, also prescribed specifically the consequence of non-compliance.

(ii) where the procedural defect is not rectified even after it is pointed out and due opportunity is given for rectifying it.

(iii) where the non-compliance or violation is proved to be deliberate or mischievous.

(iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court.

(v) in case of memorandum of appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant. See : Uday Shankar Triyar vs. Ram Kalewar Prasad Singh, 2006 (1) ARC 1 (SC) (Three-Judge Bench).

12. Procedural lapses when not to defeat substantive justice ? : Non compliance with any procedural requirement relating to a pleading, memorandum of appeal or application for substitution or other relief should not entail automatic dismissal or rejection unless the relevant statute or rule so mandates. Procedural defects or irregularities which are curable should not be allowed to defeat the substantive rights or to cause injustice. Procedure is a hand-maiden to justice and the same should never be made a tool to deny justice or perpetuate injustice by any oppressive or punitive use. The **recognized exceptions** to this principle are as under:

(i) Where the statute prescribing the procedure also prescribed specifically the consequence of non-compliance.

(ii) Where the procedural defect is not rectified even after it is pointed out and due opportunity is given for rectifying it.

(iii) Where the non-compliance or violation is proved to be deliberate or mischievous.

(iv) Where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court.

(v) In case of memorandum of Appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant. See :

(vi) Uday Shankar Triyar Vs Ram Kalewar Prasad Sing, 2006 (1) ARC 1 (SC) (Three-Judge Bench) *(it was an appeal where vakalatnama signed by the appellant was not presented with the memorandum of appeal and the appeal was dismissed by the Addl. District Judge. The Hon'ble Supreme Court held that permission to sign the vakalatnama should have been granted)*.

(ii) Bihar State Electricity Board Vs. Pohowra Kankanee Collieries Ltd., 1984 (suppl.) SCC 597 *(where vakalatnama was not filed with the memo of appeal)*

(iii) Shastri Yagnapurus Das Ji & Others Vs Muldas Pohundaradas Vaishya & Others, AIR 1966 SC 1119 *(where vakalatnama was in favour of "X" but the memorandum of appeal was signed and filed by "Y")*

13. Procedural law cannot be a tyrant but a servant, not an obstruction but an aid to justice: In the case noted below, the Hon'ble Supreme Court has ruled that the procedural law cannot be a tyrant but a servant, not an obstruction but an aid to justice:

(a) Procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the hand maid and not the mistress, a lubricant, not a resistant in the administration of justice.

(b) The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.

(c) The object is to expedite the hearing and not to scuttle the same.

(d) Justice delayed may amount to justice denied, but justice hurried may amount to justice buried.

(e) Actus curie heminem gravabit (an act of court should prejudice no man)

(f) lex non cogit ad impossibilia (the law does not compel man to do what he cannot possibly perform) See : Saikh Salim Haji Abdul Khayamsab Vs. Kumar & Others, 2006 (1) ARC 334 (SC)

Note : *It was a case under Order 8, rule 1 CPC for extension of time for filing written statement beyond 90 days.*

14. Violation of procedural law to be ignored if it does not cause prejudice to any party: If violation of any procedural law does not cause any prejudice, it has to be treated as directory despite the use of the word "shall". See :

(i). Sugandhi Vs. P.Rajkumar, AIR 2020 SC 5486

(ii).Shivjee Singh Vs. Nagendra Tiwary, AIR 2010 SC 2261

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Part – 2
Appreciation of Evidence by Revenue Courts

1. **Application of Evidence Act or BSA, 2023 to Revenue Courts:** There is no express provision in UP Revenue Code, 2006 or UP Revenue Code Rules, 2016 providing for application of the Evidence Act, 1872 or the BSA, 2023 to the proceedings before the revenue courts. Section 1(2) of the BSA, 2023 provides that the BSA shall apply to " *all judicial proceedings in or before any court but not to affidavits presented to any court or officer."*

2. **Judicial proceedings before revenue courts:** Proceedings of trials of suits before revenue courts relating to declaratory suits u/s 144 and partition suits u/s 116 of the UP Revenue Code, and all those proceedings before them wherein titles and rights of parties are adjudicated, empower the revenue courts to take evidence. By virtue of Section 214 of the UP Revenue Code, Order 16 CPC relating to summoning of witnesses, Order 18 CPC relating to examination and cross-examination of witnesses and Order 19 CPC relating to affidavits apply to revenue courts. Such proceedings of the revenue courts are essentially judicial in nature. Therefore, by virtue of Section 1(2) of the BSA 2023, its provisions relating to witnesses and proof of documents apply to such judicial proceedings before the revenue courts.

3. **BSA, 2023 not to apply to summary proceedings of the revenue courts:** Strict rules of Evidence Act, 1872 and BSA, 2023 do not apply to summary proceedings like mutation u/s 33 to 35 of the UP Revenue Code, 2006 and under Rules 29 to 34 of the UP Revenue Code Rules, 2016.

4. **Principles of natural justice, and not CPC, apply to summary proceedings of revenue courts:** As per Rule 186 of the UP Revenue Code Rules 2016, strict rules of CPC do not apply to summary proceedings of the revenue courts. But principles enshrined in the CPC and the principles of natural justice apply to summary proceedings of the revenue courts.

5. **Principles of natural justice:** Principles of natural justice are: (i)Rule against bias,(ii) providing opportunity of hearing and (iii) no one can be judge in his own cause.

6. **Observance of principles of natural justice mandatory:** When a departmental enquiry is conducted against a government servant, it cannot

be treated as a casual exercise. The enquiry proceedings also cannot be conducted with the closed mind. The Enquiry Officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but it is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service. See: State of UP & Others Vs. Saroj Kumar Sinha, AIR 2010 SC 3131.

7. **Principles of natural justice must be realistically and pragmatically applied:** Principles of natural justice, though universal, must be realistically and pragmatically applied. See: Manohar Lal Sharma Vs. Principal Secretary, (2014) 9 SCC 614 (Three-Judge Bench).

8. **Observance of principles of natural justice must even when Rules are silent:** Even where the rules require action without notice or opportunity of explanation and defence to the delinquent, the principles of natural justice must be read into the rules. See:

(i) Maneka Gandhi Vs. Union of India, (1978) SCC 248 (Section 10 passports Act-rule of natural justice may be followed by giving post decisional opportunity) AIR 1978 SC 579(1), *(Seven-Judge Bench).*

(ii) Vinay Kumar Tripathi Vs. State of UP 1995 Suppl (1) SCC 552 (Censure-Rule 55B of erstwhile CCA Rules; rule 6(2)(a) of the U.P. Subordinate Courts Staff (Punishment and Appeal Rules, 1976).

9. **Issuing notice for hearing and to submit objections by the person likely to be affected by the order must:** In the case of **Suresh Chandra Nanhorya Vs. Rajendra Rajak, 2006 (65) ALR 323 (SC),** it has been ruled by the Hon'ble Supreme Court that *"non issue of notice to other side for hearing is grossly against the settled principles of natural justice. Right of a person to be heard in his defence is the most elementary protection and is the essence of fair adjudication. Even God did not pass sentence upon Adam before he was called upon to make his defence. Adam, says God "where art thou, has thou not eaten of the tree whereof I commanded thee that thou should not eat".*

10. **Personal oral hearing when not required:** It has never been held either in this country or elsewhere that the rule of *audi alteram partem* takes within its sweep the right to make oral submissions in every case. It all depends upon the demands of justice in a given case. See: Mohd. Arif Vs. Registrar, Supreme Court of India, (2014) 9 SCC 737 (Five-Judge Bench)

11. **Lekhpal's report and its evidentiary value:** Lekhpl's report on Form 19 of Revenue Code is a preliminary piece of information to

initiate eviction proceedings and the Lekhpal must appear before the revenue court for his cross-examination on his report. See: Rishipal Singh Vs. State of UP, 2023 (1) ADJ 154

12. **Non-examination or lack of cross-examination of the Lekhpal does not automatically invalidate an eviction order:** Lucknow Bench of the Allahabad High Court has held that the guidelines in the case of Rishipal Singh Vs. State of UP, 2023 (1) ADJ 154 are mere directory, and not mandatory, until formally adopted by the State by amendment in the Rules. Section 67 proceedings are summary in nature under Section 225-A of the UP Revenue Code and the Revenue Code Rules, 2016. Consequently, non-examination or lack of cross-examination of the Lekhpal does not automatically invalidate an eviction order. See: Shahban Vs. State of UP, 2026 AHC-LKO 21285

13. **Law regarding appreciation of evidence**: Proper appreciation of evidence is the most important part of the judicial functioning of a trial Judge or Magistrate and also of the appellate courts during the course of trial of a case or disposal of appeal. The soundness of findings of facts and the quality of judgment depend upon whether or not the trial Judge or Magistrate or the appellate Judge is familiar with the laws applicable to the appreciation of different sorts of evidence brought on record. Article 141 of the Constitution of India provides that the law declared by the Supreme Court shall be binding upon all courts. High Court being the highest court of the concerned State, the law declared by it is also binding in that State. The courts in India are therefore bound to follow the law on any subject as interpreted by the Supreme Court and of the High Court within the concerned State. Once a legislative provision is interpreted by the Supreme Court in a particular manner, it is then that interpreted law that has to be followed by all courts as the ultimate and binding law, and not the legislative provisions enacted by the Legislature. Accuracy of findings of fact or judgments will depend on whether or not the same have been recorded or passed as per the law declared by the Supreme Court or as per the law declared by the State High Court. It can therefore be unhesitatingly said that without the knowledge of the important and leading judicial pronouncements of the Supreme Court and of the High Courts regarding appreciation of evidence, no qualitative judgment can be written by the trial courts and the appellate courts. Apart from the bare provisions contained in the Evidence Act/ BSA regarding appreciation of evidence, judicial pronouncements of the Supreme Court have over the years been guiding the trial and appellate courts to properly analyze and evaluate the evidence led by the parties during the course of trial of cases and appeals. For proper understanding of various laws relating to appreciation of different

types of evidence, certain important aspects of the subject are being discussed here with the help of the leading judicial pronouncements of the Supreme Court and of the Allahabad High Court.

14. **Triple tests to rely on evidence :** The Evidence Act teaches us principles on perception and discrimination of relevant facts. The perception permitted as a relevant fact does not automatically amount to a fact proved till the same passes the tests of discrimination, namely, the triple tests of **relevancy, admissibility and competence of the witness**. See: Dharmrao Vs. Syeda Arifa Praveen, (2026) 3 SCC 460 (Para 38)

15. **No evidence can be led without pleadings:** No evidence can be led on a plea not raised in the pleadings and no amount of evidence can cure defect in the pleadings. No amount of evidence or arguments can be looked into or considered in absence of pleadings and issues. See:
    (i) Mohammed Abdul Wahid Vs. Nilofer and Another, (2024) 2 SCC 144.
    (ii) M. Siddiq (Ram Janmabhumi Temple) Vs.Suresh Das, (2020) 1 SCC 1 (Five-Judge Bench) (Para 1143,YF).
    (ii) Ravinder Singh vs. Janmeja Singh, (2000) 8 SCC 191
    (iii) Union of India vs. R. Bhusal, (2006) 6 SCC 360
    (iv) Anathula Sudhakar Vs. P. Buchi Reddy, 2008 (2) AWC 1768(SC)

16. **A finding without pleadings and issue is not binding on the parties:** A finding without pleadings and issue is not binding on the parties. See: Mohd. Mustafa Vs.Abu Baker, AIR 1971 SC361.

17. **Non-framing of issues immaterial when parties went to trial and led all evidence:** Non-framing of issues is immaterial when parties went to trial and led all evidence. See: Baini Prasad Vs Durga Devi, (2023) 6 SCC 708

18. **Plaintiffs and defendants are also witnesses:** Nowhere in the Evidence Act has a party been precluded from presenting himself as a witness and therefore this differentiation based only on meaning as it appears cannot be countenanced. A perusal of Sections 137, 138 and 139 of the Evidence Act does not make any difference between a party as witness and a witness simpliciter. Examination-in-chief, cross examination and re-examination are all facets of a trial which can be availed by a party or adversary. See: Mohammed Abdul Wahid Vs. Nilofer and Another, (2024) 2 SCC 144.

19. **Variance between pleadings and evidence—effect? :** Such evidence which is at variance with the pleadings of the party cannot be relied upon and, moreover, an adverse inference is to be drawn when the pleadings and evidence are self-contradictory. See: Kashi Nath vs. Jag Nath, (2003) 8 SCC 740.

20. **Plaintiff not to be allowed to set up a new case:** Plaintiff cannot be allowed to set up a new case in his evidence. He cannot be allowed to go outside his pleadings and lead evidence on a fact not pleaded. See: M.M.B. Catholicos vs. T. Paulo Avira, AIR 1959 SC 31 (Five-Judge Bench).

21. **Relief not claimed in plaint not to be granted:** A relief larger than the one claimed by plaintiff in the suit cannot be granted by court. It is not open to the court to grant a relief to the plaintiff on a case for which there is no basis in the pleadings. See:

(i) Meena Chaudhary Vs. Commissioner of Delhi Police, (2015) 2 SCC 156.
(ii) Rajendra Tewary vs. Basudeo Prasad, 2002 (46) ALR 222 (SC)
(iii) (iii). Om Prakash Vs. Ram Kumar, (1991) 1 SCC 441 (Para 4).
(iv) (iii).Srinivas Ram Kumar Vs. Mahabir Prasad, AIR 1951 SC 177 (Three-Judge Bench)
(v) (iv). M. Siddiq (Ram Janmabhumi Temple Vs. Suresh Das, (2020) 1 SCC 1 at pages 737 & 738 (Para 1228) (Five-Judge Bench).
(vi) (v). Venkataramana Devaru Vs. State of Mysore, AIR 1958 SC 255 (Five-Judge Bench) (Para 14).

22. **Standard of proof in civil and criminal cases:** Standard of proof required in the civil and criminal proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that findings recorded in one procedure may be treated as final or binding in the other as both the cases have to be decided on the basis of the evidence adduced therein. See:

(i) Bhagwan Jagannath Markad Vs. State of Maharashtra, (2016) 10 SCC 537
(ii) Iqbal Singh Marwah Vs. Meenakshi Marwah, (2005) 4 SCC 370 (Five-Judge Bench)*(para 32)*

23. **Pleadings not as substitute for proof**: Mere pleadings of a party cannot be treated as substitute for proof. See: Manager, Reserve Bank

of India, Bangalore Vs. S. Mani, (2005) 5 SCC 100 (Three-Judge Bench).

24. **Non-examination as witness of the party pleading—effect?**: Where a party to the suit does not appear in the witness-box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption u/s 114(g) of the Evidence Act would arise that the case set up by him is not correct. See:

(i) Adivekka vs. Hanamavva Kom Venkatesh, AIR 2007 SC 2025
(ii) Vidhyadhar vs. Manikrao, (1999) 3 SCC 573.

25. **Adverse presumption u/s 114(g) of the Evidence Act to be drawn against the party not entering into witness box in support of his pleading:** Adverse presumption u/s 114(g) of the Evidence Act can be drawn against the defendant if he does not present himself for cross-examination and refuses to enter witness box in order to refute the allegations made against him or support his pleadings in his written statement. See: Iqbal Basith Vs N. Subbalakshmi, (2021) 2 SCC 718 (Three-Judge Bench)

26. **Withholding material evidence and effect thereof? :** If a party withholds from court the best evidence or some material evidence (document) or witness, adverse presumption against such party can be drawn u/s 114(g) of the Evidence Act. See: M/s. Sri Ram Industrial Enterprizes Ltd. vs. Mahak Singh, AIR 2007 SC 1370

27. **Plea covered by issue by implication and within the knowledge of parties –effect? :** Explaining the provisions under Order 6, rule 2 CPC regarding implicit pleading and implied plea, the Supreme Court has held that if the plea was covered by issue by implication and the parties knew that the said plea was involved in trial, in such a case mere fact that the plea was not expressly taken in pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. In other words, if an issue is framed and parties were conscious of it, went to trial on that issue, adduced evidence and had an opportunity to lead evidence and cross examine, then objection as to want of specific pleading cannot be raised. See:

(i) Standard Chartered Bank vs. Andhra Bank Financial Services Ltd., (2006) 6 SCC 94 (Three-Judge Bench)
(ii) Sardul Singh vs. Pritam Singh, 1999 (36) ALR 1 (SC)
(iii) Bhagwati Prasad vs. Chandramaul, AIR 1966 SC 735

28. **Party not bound to prove a case not pleaded:** A party to a suit or proceeding cannot be compelled to prove a fact or issue which was never part of his case. No adverse inference u/s 114 III, (g) & 5

Evidence Act can be drawn against such party. See: Standard Chartered Bank vs. Andhra Bank Financial Services Ltd., (2006) 6 SCC 94 (Three-Judge Bench)

29. **POA Holder not to depose for principal:** A power of attorney holder cannot depose for the principal for the acts done by the principal and in respect of matters of which only the principal can have personal knowledge. See:

(i) Janavi Vashdeo Bhojwani vs. Industrial Bank Ltd., 2005 (1) SCJ 520

(ii) Smt. Rajni Shukla vs. Spl. Judge, Banda, 2007 (69) ALR 801 (Allahabad)

30. **POA Holder has no right to plead or argue before court:** Only the advocates enrolled under the Advocates Act, 1961 have been authorized to plead and argue before a court of law. Interpreting the provisions of Section 29 of the Advocates Act 1961, Section 2 of the Powers of Attorney Act 1882 and Order 3, rules 1 & 2 CPC, it has been held by the Calcutta High Court that the holder of Power of Attorney has no right to plead or argue a case before the court. See: Usha Kant Das Vs S.M. Sefalika Ash, AIR 2019 Calcutta 145.

24. **Burden of proof immaterial where both parties have led their entire evidence:** Rule of burden of proof u/s 101 Evidence Act is irrelevant when the parties have actually led their evidence (oral and documentary) and that evidence has to be considered by court. When the entire evidence is before the court, the burden of proof becomes immaterial and the court has to come to a decision on a consideration of all materials. Section 110 Evidence Act merely enunciates the burden of proof as to ownership. See:

(i) Standard Chartered Bank vs. Andhra Bank Financial Services Ltd., (2006) 6 SCC 94 (Three-Judge Bench)

(ii) Sita Ram Bhau Patil vs. Ram Chandra Nago Patil, (1977) 2 SCC 49 (Three-Judge Bench)

(iii) Arumugham vs. Sundarambal, AIR 1999 SC 2216

(iv) Narayan vs. Gopal, AIR 1960 SC 100 (Three-Judge Bench)

(v) M.M.B. Catholicos vs. T. Paulo Avira, AIR 1959 SC 31 (Five-Judge Bench)

(vi) Narayan Govind Gavate vs. State of Maharashtra, (1977) 1 SCC 133 (Three-Judge Bench)

32. **Kinds of " Burden of Proof ":** Burden of proof is of two kinds: (i) legal burden and (ii) evidential burden. Legal burden of proof arises from pleadings and it never shifts. Section 101 of the Evidence Act provides for legal burden of proof. Evidential burden of proof may

shift from one party to the other as the trial progresses according to the balance of evidence given at particular stage and then the burden rests upon the party who would fail if no evidence at all, or no further evidence, is adduced by either side. Section 102 of the Evidence Act deals with the evidential burden of proof. See: Rajesh Jain Vs Ajay Singh, (2023) 10 SCC 148 (Paras 28 & 29)

33. Meaning of "proof", "burden of proof", "onus probandi": "Proof", which is the effect of evidence led is defined by the provisions of Section 3 of the Evidence Act. The effect of evidence has to be distinguished from the duty or burden of showing to the court what conclusions it should reach. This duty is called the "onus probandi", which is placed upon one of the parties in accordance with appropriate provisions of law applicable to various situations; but the effect of the evidence led is a matter or inference or a conclusion to be arrived at by the court. The total effect of evidence is determined at the end of a proceeding not merely by considering the general duties imposed by Sections 101 and 102 of the Evidence Act but also the special or particular ones imposed by other provisions such as Sections 103 and 106 of the Evidence Act. In judging whether a general or a particular or special onus has been discharged, the court will not only consider the direct effect of the oral and documentary evidence led but also what may be indirectly inferred because certain facts have been proved or not proved though easily capable of proof if they existed at all which raise either a presumption of law or of fact. Section 114 of the Evidence Act covers a wide range of presumptions of fact which can be used by courts in the course of administration of justice to remove lacunae in the chain of direct evidence before it. It is, therefore, said that the function of a presumption often is to "fill a gap" in evidence. True presumptions, whether of law or of fact, are always rebuttable. In other words, the party against which a presumption may operate can and must lead evidence to show why the presumption should not be given effect to. The result of a trial or proceeding is determined by a weighing of the totality of facts and circumstances and presumptions operating in favour of one party as against those which may tilt the balance in favour of another. The original or stable onus laid down by Section 101 and Section 102 of the Evidence Act cannot be shifted by the use of Section 106 of the Evidence Act. The totality of circumstances has to be examined, including the recitals, to determine whether and to what extent each side had discharged its general or particular onus. The doctrine of onus of proof becomes unimportant when there is sufficient evidence before the court to enable it to reach a particular conclusion. The principle of onus of proof becomes important in cases of either paucity of evidence or in cases where evidence given by two sides is

so equi-balanced that the court is unable to hold where the truth lay. See: Narayan Govind Gavate vs. State of Maharashtra, (1977) 1 SCC 133 (Three-Judge Bench)

34. **Number of witnesses required for proof of a fact:** According to Section 134 of the Evidence Act, no particular number of witnesses in any case is required for the proof of any fact.

35. **Plaintiff bound to prove his case even when the defendant fails to prove his case:** The plaintiff (in an ejectment suit) must succeed on the strength of his own title. This can be done by adducing sufficient evidence to discharge the onus that is on him irrespective of whether the defendant has proved his case or not. A mere destruction of the defendant's title, in the absence of establishment of his own title, carries the plaintiff nowhere. In order to succeed in his suit, the burden u/s 101, 102, 103 Evidence Act to prove his case lies upon the plaintiff. See: M.M.B. Catholicos vs. M.P. Athanasius, AIR 1954 SC 526 (Three-Judge Bench).

36. **Plaintiff not to take benefit of any weaknesses in defendant's case**: Where the plaintiff had instituted the suit for declaration of title and possession, it has been held by the Supreme Court that burden of proof u/s 101 of the Evidence Act rests on the plaintiff to prove his title and entitlement to possession. Plaintiff cannot succeed on any alleged weakness in title or possession of the defendant. See:

(i) Ratnagiri Nagar Parishad Vs. Gangaram Narayan Ambekar, (2020) 7 SCC 275.
(ii) State of M.P. Vs. Ushadevi, (2015) 8 SCC 672 (Para 33)
(iii) Union of India Vs. Vasavi Co-operative Housing Society Limited, (2014) 2 SCC 269.
(iv) T.K. Mohammed Abulbucker vs. P.S.M. Ahamed Abdul Khader, AIR 2009 SC 2966.

37. **Burden of proof on plaintiff when case proceeds ex-parte:** Even an ex-parte decree under Order 9, rule 6(a) of the CPC should satisfy the description of "judgment" as laid down in Order 20, rule 4(2) CPC. A 'judgment' for its sustenance must contain not only findings on the points but must also contain what evidence consists of and how does it prove plaintiff's case. A judgment unsupported by reasons is no judgment in the eye of law because reasons are the links between the material on record and the conclusion arrived at by the Court. Mere fact that the defendant absented himself on the date of hearing and the suit proceeded ex-parte did not by itself entitle the plaintiff to get a decree in his favour. The court is under an obligation to apply its mind to whatever ex-parte evidence or affidavit filed under Order 19 of the

CPC is on the record of the case and application of mind must be writ large on the face of record. This is possible only if the court directs itself to whatever material is on record of the case, analyze the same and then comes to any conclusion on the basis of evidentiary value of the ex-parte evidence or affidavit brought on record by the plaintiff. See :

(i) Commissioner of Income-tax, vs. Surendra Singh Pahwa, AIR 1995 All 259

(ii) Rameshwar Dayal vs. Banda, 1993 All.C.J. 597 (SC)

38. Ex-parte judgments and appreciation of evidence: Ex-parte decree cannot be passed by court without plaintiff having proved his case and by only accepting uncontroverted version of plaint. Plaintiff must prove his case even if the defendant failed to file written statement. The court has not to act blindly upon the admission of a fact made by the defendant in his written statement Nor the court should proceed to pass judgment blindly merely because a written statement has not been filed by the defendant traversing the facts set out by the plaintiff in his plaint filed in the court. In a case where W.S. has not been field, the court should be a little cautious in proceeding u/o 8, rule 10 CPC. Before passing the judgment against the defendant, it must see to it that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint. See:

(i) Commissioner of Income Tax vs. Surendra Singh Pahwa, AIR 1995 All 259

(ii) Smt. Indra Sharma vs. Lt. Col. S.K. Sharma, 2005 (4) AWC 3122 (All)

(iii) Balraj Taneja vs. Sunil Madan, 1999 (4) AWC 2 (129) NOC (SC)

39. Ex-parte judgments and evidence on affidavit (Order 19, rule 1-A CPC): In view of the amended provisions of Order 19, rule 1-A CPC w.e.f. 10.2.1981, evidence on affidavit can be received by court where the case has proceeded ex-parte. In such cases the court may permit the plaintiff to adduce his evidence on affidavit. See:

(i) Ayaaubkhan Vs. State of Maharashtra, AIR 2013 SC 58

(ii) Smt. Rajeshwari Devi vs. Ram Chandra Gupta, 1997 (2) ARC 516 (All)

40. Judgment u/o 8, rule 10 CPC in the absence of written statement by defendant and appreciation of evidence: In a case where written statement has not been filed by the defendant, the court should be a little cautious in proceeding u/o 8, rule 10 CPC. Before passing the judgment against the defendant, it must see to it that even if the facts

set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint. See: Balraj Taneja vs. Sunil Madan, 1999 (4) AWC 2 (129) NOC (SC).

41. **Production of additional documents after framing of issues when to be permitted :** Where the documents were missing and could not be filed by the defendant at the time of filing of his written statement and were sought to be produced at the time of final hearing, explaining the provisions of Order 8, rule 1- A (3) and Order 13, rule 1 CPC, it has been held by the Supreme Court that as the defendant had shown cogent reasons for not filing the said documents along with his written statement and the documents were necessary for arriving at just decision in the suit, permission to produce the documents should have been granted. See: Sugandhi Vs. P.Rajkumar, AIR 2020 SC 5486

42. **Document/additional evidence not to be admitted after conclusion of final arguments and reserving judgment:** Document/additional evidence cannot be admitted by Court after conclusion of final arguments and reserving of judgment. See: Arjun Singh Vs. Mohindra Kumar, AIR 1964 SC 993

43. **Merits of the case not to be discussed when court has no jurisdiction:** It is settled law that once court holds that it has no jurisdiction in the matter, it should not consider the merits of the matter. See: Jagraj Singh vs. Birpal Kaur, AIR 2007 SC 2083.

44. **Jurisdiction and maintainability of suit should be decided first before passing any interim order:** Question of jurisdiction would assume importance even at stage a court considers question of grant of interim relief. Where an interim relief is claimed in a suit before a civil court and party to be affected by grant of such relief, or any other party to the suit, raises a point of maintainability thereof or that it is barred by law and also contends on that basis that interim relief should not be granted, grant of relief in whatever form, if at all, ought to be preceded by court by formation and recording of at least a prima facie satisfaction that suit is maintainable or that it is not barred by law. In the present case, defendant had challenged the maintainability of the suit before the trial court by taking a plea in his written statement that the suit property was a Bhumidhai land owing to which the suit was barred by Section 331 of the UP ZA & LR Act, 1950 and also by Section 41(h) of the Specific Relief Act,1963 and as such not maintainable before the civil court. What was required of the trial court in such a situation was to record a satisfaction, at least prima facie, that the suit was maintainable and then proceed to pass such

orders as it considered proper in the circumstances of the suit. It would be inappropriate for the court to abstain from recording its prima facie satisfaction on the question of maintainability, yet, to proceed to grant protection pro tem on the assumption that the question of maintainability of the suit has to be decided as a preliminary issue under Order 14, rule 2 CPC. But without deciding the question of maintainability of the suit, the trial court decreed the suit under Order 8, rule 10 CPC against all defendants including those who had not filed their written statements. See: Asma Lateef Vs Shabbir Ahmad, (2024) 4 SCC 696(Three- Judge Bench) (Paras 50, 51)

45. **Court can pass interim order even when question of jurisdiction is pending:** Objection as to jurisdiction to be decided by the court as a preliminary issue would not prevent the court from passing interim orders while the decision on question of jurisdiction is pending if called for in the facts and circumstances of the case. Any violation of such interim order would be punishable under Order 39, rule 2-A CPC even if later on the court holds that it had no jurisdiction to entertain the suit. See: Tayabbhai M. Bagasarwalla vs. Hind Rubber Industries Pvt. Ltd., (1997) 3 SCC 443

46. **Valuation, court fee and maintainability of suit:** When there is challenge to jurisdiction, valuation or sufficiency of court fee or maintainability of suit, the court is to first decide these issues and then to decide the application for temporary injunction and other matters. See: Arun Kumar Tiwari vs. Smt. Deepa Sharma, 2006 (1) ARC 717 (All) (DB)

47. **Criminal courts have no jurisdiction to decide civil disputes:** A criminal court while deciding bail application u/s 437, 439, 438, 389 CrPC has no jurisdiction to decide a civil dispute as between the parties. See: Mahesh Chandra vs. State of U.P., (2006) 6 SCC 196

48. **Admission of fact as efficacious proof of the facts admitted:** It is true that evidentiary admissions are not conclusive proof of the facts admitted and may be explained or shown to be wrong; but they do raise an estoppel and shift the burden of proof on to the person making them or his representative-in-interest. Unless shown or explained to be wrong, they are an efficacious proof of the facts admitted. Until the presumption raised by the admission is rebutted, the fact admitted must be taken to be established. See:
    (i) United India Insurance Co. Ltd. vs. Samir Chandra, (2005) 5 SCC 784
    (ii) Avadh Kishore Dass vs. Ram Gopal, AIR 1979 SC 861

49. **Admission must be proved:** If admission is proved and if it is thereafter to be used against the party who has made it the question comes within the provisions of Section 145 of the Evidence Act. The provisions in the Evidence Act that 'admission is not conclusive proof' are to be considered in regard to two features of evidence. First, what weight is to be attached to an admission? In order to attach weight it has to be found out whether the admission is clear, unambiguous and is a relevant piece of evidence. Second, even if the admission is proved in accordance with the provisions of the Evidence Act and if it is to be used against the party who has made it, it is sound that if a witness is under cross-examination on oath, he should be given an opportunity, if the documents are to be used against him, to tender his explanation and to clear up the point of ambiguity or dispute. This is a general salutary and intelligible rule. Therefore, a mere proof of admission, after the person whose admission it is alleged to be has concluded his evidence, will be of no avail and cannot be utilized against him. See: Sita Ram Bhau Patil vs. Ram Chandra Nago Patil, (1977) 2 SCC 49 (Three-Judge Bench).

50. **Admission of a party is only a piece of evidence and not conclusive of the fact admitted:** Admission of a party is only a piece of evidence and not conclusive of the fact admitted. Where there is no clear-cut admission as to the fact concerned, it would be of no consequence. See: Bhagwat Sharan Vs. Purushottam, (2020) 6SCC 387.

51. **Party making the admission must be confronted during cross examination:** Explaining the provisions of Sec. 17 & 145 of the Evidence Act together, it has been held by the Supreme Court that an admission before being used against any person must not only be proved but also the party must be confronted at the stage of cross-examination with its previous admission. See: Sita Ram Bhau Patil vs. Ram Chandra Nago Patil, (1977) 2 SCC 49 (Three-Judge Bench).

52. **Admission of a party is only a piece of evidence and not conclusive of the fact admitted:** Admission of a party is only a piece of evidence and not conclusive of the fact admitted. Where there is no clear-cut admission as to the fact concerned, it would be of no consequence. See: Bhagwat Sharan Vs. Purushottam, (2020) 6SCC 387.

53. **Admission of a fact not in issue and not relevant does not amount to admission:** If a statement in relation to a fact is not in issue and not relevant, then it is not an admission. See: Sita Ram Bhau Patil vs. Ram Chandra Nago Patil, (1977) 2 SCC 49 (Three-Judge Bench)

54. **Admission to be admissible must be clear, unequivocal and not ambiguous:** An admission to be admissible in evidence must be clear, unequivocal and not ambiguous. See: Sita Ram Bhau Patil vs. Ram Chandra Nago Patil, (1977) 2 SCC 49 (Three-Judge Bench)

55. **Admission as best evidence:** An admission is the best evidence that an opposing party can rely upon, and though not conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous. See: Narayan vs. Gopal, AIR 1960 SC 100 (Three-Judge Bench)

56. **Non-denial of or non-response to a plea that is not supported by evidence cannot amount to admission:** Non-denial of or non-response to a plea that is not supported by evidence cannot be deemed to be admitted by applying the doctrine of non-traverse. The Evidence Act does not say to the contrary. Pleadings are not substitute for proof. See: Manager, Reserve Bank of India, Bangalore vs. S. Mani, (2005) 5 SCC 100 (Three-Judge Bench).

57. **Failure to prove defence does not amount to admission:** Failure to prove his defence by defendant does not amount to an admission of the case of plaintiff by the defendant. See: Manager, Reserve Bank of India, Bangalore vs. S. Mani, (2005) 5 SCC 100 (Three-Judge Bench)

58. **Failure to prove a defence does not discharge the initial burden of proof:** Failure to prove his defence by the defendant does not discharge or reverse initial burden of proof of his case by the plaintiff. See: Manager, Reserve Bank of India, Bangalore vs. S. Mani, (2005) 5 SCC 100 (Three-Judge Bench).

59. **Value of admission contained in a rejected application for amendment of pleadings:** Value of admission contained in a rejected application for amendment of pleadings cannot be treated as admission of the party. See: Smt. Rajeshwari Devi vs. Smt. Laxmi Devi, 1998 (16) LCD 799 (All).

60. **Admission made in ignorance of legal rights or under duress:** Any admission made in ignorance of legal rights or under duress cannot bind the maker of the admission. See: Shri Krishan vs. Kurukshetra University, Kurukshetra, AIR 1976 SC 376 (Three-Judge Bench).

61. **Facts admitted need not be proved:** In terms of Section 58 of the Evidence Act 1872, facts admitted need not be proved. See:

(i) Vice Chairman Kendriya Vidyalaya Sangathan vs. Girdharilal Yadav, (2004) 6 SCC 325 (Three, -Judge Bench)

(ii) Inder Sain Bedi vs. Chopra Electricals, (2004) 7 SCC 277

62. **Effect of non cross-examination of witness on a fact appearing in examination-in-chief (Secion 137 Evidence Act):** Where a particular material assertion is made by a witness in his examination-in-chief and the witness is not cross-examined in respect of that assertion, it will be taken that the party affected had admitted the truth of that assertion. See: Kunwar vs. State of U.P., 1993 (3) AWC 1305 (All)(DB)

63. **Once a document has been properly admitted, the contents of that document would also stand admitted in evidence:** Once a document is admitted in evidence, the contents of that document are also admitted in evidence, though those contents may not be conclusive evidence. Moreover, once certain evidence is conclusive, it shuts out any other evidence which would detract from the conclusiveness of that evidence. There is a prohibition for any other evidence to be led which may detract from the conclusiveness of that evidence and the court has no option to hold the existence of the fact otherwise when such evidence is made conclusive. Thus, once a document has been properly admitted, the contents of the document would stand admitted in evidence, and if no objection has been raised with regard to its mode of proof at the stage of tendering in evidence of such a document, no such objection could be allowed to be raised at any later stage of the case or in appeal. But the document can be impeached in any other manner, though the admissibility cannot be challenged subsequently when the document is produced in evidence. See: Neeraj Dutta Vs State NCT of Delhi, (2023) 4 SCC 731 (Five-Judge Bench) (Para 62)

64. **Contents of documents and their proof:** Explaining the provisions of Sections 17, 61, 62 of the Evidence Act together, it has been held by the Supreme Court that mere production and marking of a document as exhibit is not enough. Execution of the document has to be proved by admissible evidence. But where documents produced are admitted by the signatories thereto and then marked as exhibits, no further burden to lead additional evidence to prove the writing and its execution survives. See: Narbada Devi Gupta vs. Birendra Kumar Jaiswal, (2003) 8 SCC 745

65. **Contents of document cannot be proved by oral evidence:** Section 59 of Evidence Act: When the entire case is based on construction of a document (insurance policy), the question of adducing any oral evidence would be irrelevant as per Section 59 of the Evidence Act. See: Peacock Plywood (P) Ltd. Vs. OIC Ltd., (2006) 12 SCC 673.

66. **Admission of genuineness of document not to be confused with admission of truth of contents (Rule 54, G.R. Civil):** According to Rule 54 of the General Rules (Civil), when a certified copy of any private document is produced in Court, inquiry shall be made from the opposite party whether he admits that it is a true and correct copy of the document which he denies, or whether it is a true and correct copy of the document the genuineness of which he admits without admitting the truth of its contents, or whether he denies the correctness of the copy as well as of the document itself. Admission of the genuineness of a document is not to be confused with the admission of the truth of its contents or with the admission that such document is relevant or sufficient to prove any alleged fact. See: Kapil Core Packs Pvt. Ltd Vs. Harvansh Lal, (2010) 8 SCC 452.

67. **Use of an unregistered document requiring registration:** A document required by law to be registered, if unregistered, is inadmissible as evidence of a transaction affecting immovable property. But it may be admitted as evidence of collateral facts, or for any collateral purpose, that is, for any purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to immovable property. Courts should have in mind the following factors with regard to the admissibility of an unregistered document:

68. **(i)**document required to be registered, if unregistered, is not admissible into evidence under Section 49 of the Registration Act.
(ii) Such unregistered document can however be used as an evidence of collateral purpose as provided in the Proviso to Section 49 of the Registration Act.
(iii)A collateral purpose must be independent of, or divisible from the transaction to the effect which the law required registration.
(iv)collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating any right, title or interest in immovable property of the vale of one hundred rupees and upwards.
(v) If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose. See: K. B. Saha Vs. Development Consultant Limited, (2008) 8 SCC 564 (Paras 33& 34)

69. **Unregistered will deed in respect of agricultural land not admissible in evidence due to bar of Section 169(3) of UP ZA & LR Act:** All matters relating to right in or over agricultural land including transfer, alienation and devolution were exclusively within

domain of State Legislature. Under UP Zamindari Abolition and Land Reforms Act, restriction has been imposed by State Legislature by way of amendment in Section 169(3) regarding devolution of agricultural land except by way of written and registered deed. Restriction so imposed by State Legislature upon right of Bhumidhar under Special Act is in conformity with objects and purpose of Act which has been framed to reform law relating to land tenure so as to check any unscrupulous person from claiming land of Bhumidhar to exclusion of his heirs and legal representatives, There is no conflict in provincial legislation namely UP Zamindari Abolition and Land Reforms Act and Central legislations that is Succession Act and Registration Act with regard to devolution of interest in land of tenure-holder u/s 17 of Registration Act, registration has been made compulsory for all non-testamentary instruments. Registration of will has not been made compulsory under Succession Act, whereas UP Z.A. & L.R. Act provides restriction in this field. Restriction imposed by State Govt. cannot be said to be in conflict with laws made by Central Legislature. There is no repugnancy as such and it cannot be said that State Legislature was not competent to legislate. It is settled law that when question arises with regard to legislative competence of legislature in regard to particular enactment with reference to entries in various lists, it is necessary to examine the pith and substance of Act and find out if matter comes substantially within item in list. Scheme of Act under scrutiny, its object and purpose, its true nature and character and the pith and substance of legislature are to be focused at. It is fundamental principle of Constitutional law that everything necessary to exercise of power is included for grant of power itself. Non-observance clause is sometimes added to Section in beginning, with view to give enacting part of Section, in case of conflict, overriding effect over provisions of Act mentioned in that Clause. In other words, in spite of provisions of Act mentioned in that clause, enactment following it, will have its full operation or that provisions enacted in non-obstante Clause will not be impediment in operation of enactment. It is well known rule of interpretation that on construction, entire Act must be looked into as whole. Court cannot add words to Statute or read words into it which are not there. When purpose and object or reason and spirit pervading through Statute is clear, Court must adopt purposive approach in interpreting such Statute. Restriction imposed by Section 169(3) of UP ZA & LR Act upon Bhumidhar for devolution of his Bhumidhari land would be operative w.e.f. 23.08.2004 i.e. date of commencement of Amendment Act by which registration of Will has been made compulsory. Restriction so imposed by aforesaid provision is on right of Bhumidhar to bequeath his property except by way of registered instrument. Restriction is not upon person who is claiming his right on

basis of Will rather it is on testator of Will. Thus, no, Bhumidhari land could be bequeathed after 23-8-2004 except by way of registered will, whole idea is that land of village remains with tiller of land. See: Jahan Singh Vs. State of UP, AIR 2017 All 247(paras 13, 14, 21, 22, 24, 26 & 27).

70. **How to prove a will-deed?:** If objection is raised on genuineness of the will-deed by pointing out suspicious circumstances against the will-deed, the propounder has to remove them. Propounder has to establish that the testator had signed the will in a sound disposing state of mind and understanding the nature and effect of disposition. See: Leela Vs. Muruganantham, (2025) 4 SCC 289 (Paras 25-28)

71. **A fact learnt from other person not admissible in evidence:** Statement of the wife of the deceased before the court made on the basis of what she had learnt from her husband, of which she had no personal knowledge, was found not admissible in evidence under Section 32 of the Evidence Act. See: Subhash Harnarayanji Laddha Vs. State of Maharashtra, (2006) 12 SCC 545.

72. **Admission of genuineness not to be confused with admission of truth of contents (Rule 54, G.R. Civil):** When a certified copy of any private document is produced in Court, inquiry shall be made from the opposite party whether he admits that it is a true and correct copy of the document which he also admits, or whether it is a true and correct copy of the document which he denies, or whether it is a true and correct copy of the document the genuineness of which he admits without admitting the truth of its contents, or whether he denies the correctness of the copy of the copy as well as of the document itself. Admission of the genuineness of a document is not to be confused with the admission of the truth of its contents or with the admission that such document is relevant or sufficient to prove any alleged fact.

73. **Once a document has been properly admitted, the contents of the documents would stand admitted in evidence:** Once a document is admitted, the contents of that document are also admitted in evidence, though those contents may not be conclusive evidence. Moreover, once certain evidence is conclusive, it shuts out any other evidence which would detract from the conclusiveness of that evidence. There is a prohibition for any other evidence to be led which may detract from the conclusiveness of that evidence and the court has no option to hold the existence of the fact otherwise when such evidence is made conclusive. Thus, once a document has been properly admitted, the contents of the documents would stand admitted in evidence, and if no objection has been raised with regard to its mode of proof at the stage

of tendering in evidence of such a document, no such objection could be allowed to be raised at any later stage of the case or in appeal. But the documents can be impeached in any other manner, though the admissibility cannot be challenged subsequently when the document is bound in evidence. See**:** Neeraj Dutta Vs. State NCT of Delhi, (2023) 4 SCC 731 (Five-Judge Bench) (Para 62)

74. **Admission or denial on documents by opposite party (Rule 42, G.R. Civil):** According to Rule 42 of the General Rules (Civil), a party desiring to produce any document in court shall, before producing it in court, obtain admission or denial recorded on the back of the document by the opposite party's lawyer. If the opposite party is not represented by a lawyer, the Court shall get admission or denial recorded by the party in its presence and may, for the purpose, examine the party.

75. **Evidence in cross or connected civil cases (Rule 86, G.R. Civil):** According to Rule 86 of the General Rules (Civil), whenever by consent of parties evidence given in one case is admitted by a Civil Court as evidence in another case, separate proceeding stating the fact shall be recorded, signed by the Judge and placed on the records of both cases.

76. **Exhibited documents and their admissibility in evidence:** Explaining the provisions of Sections 17, 61, 62 of the Evidence Act together, it has been held by the Supreme Court that mere production and marking of a document as exhibit is not enough. Execution of the document has to be proved by admissible evidence. But where documents produced are admitted by the signatories thereto and then marked as exhibits, no further burden to lead additional evidence to prove the writing and its execution survives. See:
    (i) G.M. Shahul Hameed Vs. Jayanthi R. Hegde, (2024) 7 SCC 719 (Paras 23 & 24)
    (ii) Jagmail Singh Vs. Karamjit Singh, (2020) 5 SCC 178
    (iii) Narbada Devi Gupta Vs. Birendra Kr. Jaiswal, (2003) 8 SCC 745
    (iv) Smt. Sudha Agarwal Vs. VII ADJ, Ghaziabad, 2006 (63) ALR 659 (Allahabad)
    (v) R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami, (2003) 8 SCC 752
    (vi) Sait Tarajee Vs. Khimchand Vs. Yelamarti Satyam, AIR 1971 SC 1865.
    (vii) Judgment dated 03.01.2017 of the Division Bench of the Allahabad High Court in Civil Appeal No. 790/2008, New Okhla

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77. **Mere exhibition of a document not sufficient:** Mere admission of a document in evidence does not amount to its proof. In other words, mere marking of exhibit on a document does not dispense with its proof which is required to be done in accordance with law. See:
(i) G.M. Shahul Hameed Vs. Jayanthi R. Hegde, (2024) 7 SCC 719(Paras 23 & 24)
(ii)LIC of India Vs. Ram Pal Singh Visen, (2010) 4 SCC 491.

78. **Non-exhibition of documents only a procedural lapse:** Non-exhibition of documents is only a procedural lapse. Non-exhibition of documents cannot disentitle a claim when otherwise sufficient evidence is adduced and the documents established the fact in controversy. See: Vimla Devi Vs National Insurance Company Limited, (2019) 2 SCC 186.

79. **Document brought on record but not proved cannot be read:** Document brought on record but not proved cannot be read in evidence. See: Nand Ram Vs. Jagdish Prasad, (2020) 9 SCC 393.

80. **Stage of raising objection against the admissibility of an exhibited document:** Objection as to admissibility of a secondary documentary evidence produced u/s 65 of the Evidence Act can be classified as **(i)** objection that the document sought to be proved is itself inadmissible, and **(ii)** objection directed not against the admissibility of the document but against the mode of proof thereof on the ground of irregularity or insufficiency. Objection under category **(i)** can be raised even after the document has been marked as "an exhibit" or even in appeal or revision, but the objection under category **(ii)** can be raised when the evidence is tendered but not after the document has been admitted in evidence and marked as an exhibit. See:
(i) Ranvir Singh vs. Union of India, 2005 (4) AWC 3152 (SC)
(ii) R.V.E. Venkatachala Gounder vs. Arulmgu Viswasaraswami & V.P. Temple, (2003) 8 SCC 752

81. **Sale deed, whether original or certified copy, is not a public document:** What Section 74 of the Evidence Act, 1872 provides is that public records kept in any State of private documents are public documents, but private documents of which public records are kept are not in themselves public documents. A registered document, therefore, does not fall under either Clause (e) or (f) of Section 65 of the Evidence Act. The entry in the register book is a public document, but the original is a private document. A deed of sale is a conveyance.

A deed of conveyance or other document executed by any person is not an act nor record of an act of any sovereign authority or of any official body or tribunal, or of any public officer, legislative, judicial and executive. Nor is it a public record kept in a State of any private documents. A sale deed (or any other deed of conveyance) when presented for registration under the Registration Act is not retained or kept in any public office of a State after registration on completion of the process of registration. An original registered document is not therefore a public record kept by a State of a private document. Consequently, a deed of sale or other registered document will not fall under either of the two classes of documents described in Section 74 as " public document". Any document which is not a public document is a private document. Hence, any registered conveyance or any other registered document is not a public document but a private document. Moreover, a certified copy of a registered instrument is also not a public record of a private document under Section 74 (2) of the Evidence Act, 1872 for the reason that original has to be returned to the party under Section 61 (2) of the Registration Act, 1908. Thus, the factum of registration of what is otherwise a private document inter partes does not clothe the document with any higher legal status by virtue of its registration. See: Deccan Paper Mills Company Limited Vs. Regency Mahavir Properties, (2021) 4 SCC 786 (Para 22) (Three-Judge Bench)

82. Secondary/certified copy of sale deed not admissible in evidence: A sale deed is not a public document and therefore its certified copy is not admissible in evidence unless an explanation is given u/s 65 of the Evidence Act in support of non-availability of the original sale deed. See: Dr. Gurmukh Ram Madan vs. Bhagwan Das Madan, 1998 (2) ARC 517 (SC)

83. Certified copy of sale deed is admissible in evidence: A certified copy of a sale deed can be filed to prove ownership and possession over the disputed property. See: Ved Prakash Rastogi Vs. Nagar Palika Budaun, AIR 2008 All 27.

84. Certified copy of gift deed admissible in evidence: Where the original gift deed had been lost, its certified copy issued by the competent authority is admissible in evidence. See: Debananda Chaubey Vs. Narayan Bigraha, 2007 (54) AIC 349 (Gauhati).

85. Observations dated 03.01.2017 of Division Bench in New Okhla Industrial Development Authority case regarding admissibility of documents in evidence: The main observations of the Division Bench of the Allahabad High Court in its judgment dated 03.01.2017

in Civil Appeal No. 790/2008, New Okhla Industrial Development Authority Vs. Kendriya Karmachari Sahkari Grih Nirman Samiti Ltd. as contained in its Paragraphs 36 to 60 are as under:

(i) ***Order 13, rule 7 CPC****: Provides that documents which are admitted in evidence shall form part of record of suit. The documents not admitted in evidence shall not form part of record and shall be returned to the persons respectively producing them.*

(ii) ***Order 13, rule 8 CPC****: Empowers Court to impound a document and keep in the custody of officer of Court, if it sees sufficient cause, for such period and subject to such conditions, as Court thinks fit.*

38. Rule 9 provides for return of admitted documents after suit is disposed of, and, either time for filing appeal has expired or appeal has been disposed of. Proviso covers a situation where a document may be returned at any time earlier than the period provided hereinabove in certain conditions. Rule 10 states that Court may, of its own motion, and its discretion, upon application of any of the parties to suit, send for, either from its own record or from any other Court, record of any other suit or proceeding, and inspect the same. Conditions applicable when such order is passed on the application, are contained in sub-rule 2 of Rule 10. Sub-rule 3 declares that Rule 10 shall not enable Court to use in evidence, any document which under the law of evidence would be inadmissible in suit. Rule 11 extends provisions relating to documents to all other material objects producible as evidence.

(iii) *In exercise of supervisory powers under* ***Article 227 of Constitution of India read with Section 122 CPC, GR (C), 1957*** *have been notified in supersession of all existing Rules on the subject. These Rules have 28 Chapters dealing with different aspects of procedure to be followed, not only in trial of civil suits etc., but also tell subordinate Courts, manner of maintenance of record of various proceedings and other administrative aspects.*

(iv) *Part (A) deals with parties to the proceedings; (B) with applications and pleadings; (C) with Documents; (D) Commissions; (E) Affidavits; (F) Adjournments; (G) Hearing of suit; (H) Transfer or withdrawal of cases; and, (I) Judgment and decree.*

(v) ***Rule 40, GR (Civil)****: specify the persons who may produce documents in the Court and says that it may be by parties, by persons, other than parties and on requisition issued by Court. Rule 41 imposes an obligation where the documents produced by party or his witness is in a language other than Hindi, Urdu*

or English and says that it shall be accompanied by a correct translation of the document in Hindi, written in Devnagri script. Such translation shall bear a certificate of party's lawyer to the effect that the translation is correct. If parties are not represented by a lawyer, Court shall have the translation certificate of any person appointed by it in this behalf at the cost of the party concerned.

(vi) ***Rule 42, GR (Civil):*** *Contemplates that parties desiring to produce any document in Court, shall, before producing it in any Court, obtain admission or denial, recorded on back of the document by the opposite party's lawyer. If opposite party is not represented by lawyer, Court shall get admission or denial by the party in its presence and may, for the purpose, examine the party*

(vii) ***Rule 43, GR(Civil)****: Lays procedure of list of documents contemplated in Order VII Rule 14 and Order XIII Rule 1 CPC and says that such list of documents shall be in form (part IV-71). It further says that no document whensoever produced, shall be received unless accompanied by the said form duly filled up. In case a document is produced by a witness or person summoned to produce documents, form shall be supplied by the parties at whose instance the document is produced. It also requires that list as well as the documents shall be immediately entered in the general index.*

(viii) *If there is any erasures or additions in the documents, other than a registered documents or certified copy, Rule 44, GR (Civil) states that such document shall be accompanied by a statement clearly describing such erasure, addition or inter-lineation and signed by such party. Reference to such statement shall be made in the list form (part IV-71) with which paper is filed.*

(ix) ***Rule 45, GR(Civil)****: Is basically a provision for safety and convenience of perusal of documents when it is a small piece of paper or of historic value or written on both sides. It reads as under:-*

"45. Small documents and documents of historic value.--Small documents when filed in Court shall be filed pasted on a paper equal to the size of the record, and the margin of the paper should be stitched to the file so that no part of the document is concealed by the stitching. If a document contains writing both on the front and the back, it should be kept in a separate cover, which should be stitched to the file at the proper place leaving the main document untouched."

(x) *When a party require production of a public record, Rule 46 says that application shall be submitted by such party accompanied by an affidavit showing how such party requiring record has satisfied itself that it is material to the suit and why a certified copy of document cannot be produced or will not serve the purpose.*

(xi) ***Rule 47, GR(Civil)**: When a public record is ordered to be produced but its production require sanction of Head of Department, Rule 47 deals with such a situation and says as under:-*

"47. Documents for production of which sanction of head of department is necessary.--When a Court decides that in the interests of justice it is necessary that it should have before it a document which cannot be produced without the sanction of the head of the department concerned, it shall in its order asking for such document set out as clearly as possible (a) the facts, for the proof of which the production of the document is sought; (b) the exact portion or portions of the document required as evidence of the facts sought to be proved. The Court summoning the document shall fix a date for its production, which should not be less than three weeks from the date of issue of summons."

(xii) ***Rule 48, GR(Civil)**: deals with public record of different offices like Sub Registrar, Police, Municipal and District Board and Post Office and says as under:-*

"48. Registers from Sub-Registrar's office:

(1) A summons for the production of any register or book belonging to the office of a Sub- Registrar shall be addressed to the District Registrar and not direct to the Sub-Registrar.

(2) Production of documents in police custody.-A summons for the production of documents in the custody of the police should be addressed to the Superintendent of Police concerned, and not to the Inspector General.

(3) Production of Municipal and District Board Records.-When duly authenticated and certified copies of documents in the possession of Municipal and District Boards15 are admissible in evidence, the Court shall not send for original records unless, after perusal of copies filed, the Court is satisfied that the production of the original is absolutely necessary.

(4) Post Office records not to be unnecessarily disclosed.-When any journal or other record of a post office is produced in Court, the Court shall not permit any portion of such journal or record to be disclosed, other than the portion or portions which seem to the Court necessary for the determination of the case then before it."

(xiii) ***Rule 49, GR(Civil)****: For summoning of settlement record, procedure is prescribed in Rule 49 and reads as under:*

"49. Settlement Records.--When a Court requires the production of any Settlement Record in which the Settlement Officer acted in a judicial capacity, it shall be summoned in the manner provided by Order XIII, Rule10. In other cases the procedure prescribed in Order XVI, Rule 6 shall be followed. The summons to produce such documents shall be issued to the Collector/Deputy Commissioner, who may send the document by messenger or registered post."

(xiv) ***Rule 50, GR(Civil)****: deals with payment of postage fee, travelling charges and other expenses for transmission or requisition of record etc. Rule 51 says that documents received by registered post, then the registered cover shall not be destroyed but shall be attached to the file of proceedings in the case to which the document is referred.*

(xv) ***Rule 52, GR(Civil)****: Then comes Rule 52 which says that all document received must be received by the Court and must be dealt with in one or the other of three means i.e. (a) returned; (b) placed on record; and (c) impounded.*

(xvi) ***Rule 53, GR(Civil)****: Thereafter Rule 53 imposes a duty upon Court to inspect documents as soon as they are produced before Court. It says that documents which are proved or admitted by party against whom they are produced in evidence, shall be marked as exhibit in the manner prescribed in Rule 57 and this fact shall be noted in the record. The document which are not proved or not admitted by parties against whom they are produced in Court, shall be kept in record pending proof and shall be rejected at the close of evidence, if not proved or admitted. Documents that are found to be irrelevant or otherwise inadmissible in evidence shall be rejected forthwith. There is a note under Rule 53 stating that no document unless admitted in evidence shall be marked as an exhibit.*

(xvii) ***Rule 54, GR(Civil)****: Rule 54 of GR (C), 1957 clarifies that admission of genuineness is not to be confused with admission of truth of contents and reads as under:*

"54. Admission of genuineness not to be confused with admission of truth of contents.-(1)When a certified copy of any private document is produced in Court, inquiry shall be made from the opposite party whether he admits that it is a true and correct copy of the document which he also admits, or whether it is a true and correct copy of the document which he denies, or whether it is a true and correct copy of the document the genuineness of which he admits without admitting the truth of its contents, or whether he denies the correctness of the copy as well as of the document itself. Admission of the genuineness of a document is not to be confused with the admission of the truth of its contents or with the admission that such document is relevant or sufficient to prove any alleged fact.

(2) A Sessions Clerk who fails to furnish security as required by the preceding sub-rule shall not be allowed to hold that most and also other posts of equivalent status.

Explanation.--Posts of Suits Clerk, Execution Clerk, Appeals Clerk and Readers of the courts of Judge, Small Causes, Civil Judges and Munsif shall, for purposes of this rule, be deemed to be in status equivalent to that of a Sessions Clerk."

(xviii) ***Rule 55, GR(Civil)****: The expression which are to be used by parties while admitting or not admitting documents, is provided in Rule 55 and reads as under:*

"55. Proper expression about admissions of documents.- Admission of a document by a party shall be indicated by the endorsement "Admitted by the plaintiff" or "Admitted by the defendant". Admission of a document in evidence by the Court shall be indicated by the endorsement "Admitted in evidence". If any question is raised as to the correctness of a copy and the correctness of its is admitted, the endorsement shall be "correctness of copy admitted". The use of the expression "Admitted as a copy" in endorsement on document is prohibited."

(xix) ***Rule 56, GR(Civil)****: Talks of documents filed in suits which are compromised or dismissed in default and says:*

(xx) *Endorsement on documents in suits compromised or dismissed for default.-Documents filed in suits, which are dismissed for default or compromised, shall, before being dealt with in the manner provided in Rules 59 and 60 be endorsed with the particulars mentioned in Order XIII, Rule 4(i)and the result of the suit."*

(xxi) ***Rule 57, GR(Civil)****: Provides the manner in which marking is to be made in documents and reads as under:*

"57. Marking of documents.-(1) Documents produced by a plaintiff and duly admitted in evidence shall be marked with a number, and documents produced by a defendant shall be marked with a number and the letter A, or, where there are more than one set of defendants by the letter A for the first set of defendants, by the letter B for the second, and so on. Where a document is produced by order of the Court and is not produced by any party, the serial number shall be prefaced by the words "Court Exhibit" or an abbreviation of the same.

(2) Where a document is produced by a witness at the instance of a party, the number of the witness shall be endorsed thereon, e.g., Ex.P.W.1 if it is produced by the plaintiff's first witness, and Ex.-A/D.W.1 if it is produced by the defendant's first witness.

(3) The party at whose instance a document is produced by a witness shall deposit the cost of the preparation of a certified copy of that document before it is placed on the record. The office shall then prepare a certified copy and keep it with the original document. If the witness wants to take back his document it shall be returned to him unless there are special reasons for keeping the original on the record. Provided that a certified copy shall not be necessary where the document is written in a language other than Hindi or English, and a translation has been filed as prescribed by Rule 41.

(4) Every exhibit-mark shall be initialed and dated by the Judge."

(xxii) ***Rule 58, GR(Civil)****: If a number of documents of same nature are admitted than the manner in which such documents are marked, is provided in Rule 58 as under:*

"58. Marking of documents.- Where a number of documents of the same nature are admitted, as for example, a series of receipt for rent, the whole series should bear one figure or capital letter or letters, a small figure or letter in brackets being added to distinguish each paper of the series."

(xxiii) ***Rule 59, GR(Civil)****: States that documents which are rejected as irrelevant or otherwise inadmissible under Order 13 Rule 3 CPC or not proved, unless impounded under Order 13 Rule 8 or rendered wholly void or useless by force of decree, be returned to the person producing it or to the pleader and such person or pleader shall give a receipt for same in column 4 of list (Form Part IV-71).*

(xxiv) ***Rules 60 and 61 GR(Civil)****: Deal with retention of impounded and certain other documents and care of impounded documents. Rule 63 talks with the manner in which documents are to be returned. Rule 64 specifically concerned with books of business and read as under:*

"64. Books of business.-If a document be an entry in a letter book, a shop book, or other account in current use or an entry in a public record, produced from a public office or by a public officer, a copy of the entry, certified in the manner required by law, shall be substituted on the record before the book, account or record is returned, and the necessary endorsement should be made thereon, as required by Order XIII, Rule 5."

86. Law does not expect impossible evidence from a party: Law does not demand the impossible. When there is disability that makes it impossible to obey the law, the alleged disobedience of the law is excused. A party cannot be expected to produce an evidence which is impossible to be produced. See: Arjun Panditrao Khotkar Vs. Kailash Kushan Rao Gorantyal, (2020) 7 SCC 1 (Three-Judge Bench).

87. Distinction in standard of proof in civil and criminal cases: Explaining Section 3, 101, 102, 110 of the Evidence Act, it has been held by the Supreme Court that the test of "**Proved", "Disproved"** and **"Not Proved"** in a civil or a criminal case is one and the same. However, it is the valuation of the result drawn by the applicability of the rule contained in Section 3 of the Evidence Act that makes the difference. In a suit for possession of property based on title, if the plaintiff creates a **high degree of probability** of his title to ownership, instead of proving his title **beyond any reasonable doubt**, that would be enough to shift the onus on the defendant. If the defendant fails to shift back the onus, the plaintiff's burden of proof would stand discharged. See:

(i) V.D. Jhingan vs. State of U.P., AIR 1966 SC 1762 (Three-Judge Bench)

(ii) R.V.E. Venkatachala Gounder vs. Arulmgu Viswasaraswami & V.P. Temple, (2003) 8 SCC 752

88. Standard of proof when civil case involving allegation of charges of criminal or fraudulent character: It is apparent from definitions of the words 'proved', 'disproved' and 'not proved' given in Section 3 of the Evidence Act that it applies the same standard of proof in all civil cases. It makes no difference between cases in which charges of a fraudulent or criminal character are made and cases in which such charges are not made. But this is not to say that the Court will not, while striking the balance of probability, keep in mind the

presumption of honesty or innocence or the nature of the crime or fraud charged. It is wrong to insist that such charges must be proved clearly and beyond reasonable doubt. See: Gulabchand vs. Kudilal, AIR 1966 SC 1734 (Five-Judge Bench)

89. **Seeking cancellation of sale-deed on ground of undue influence executed by weak and old lady:** No presumption of undue influence in executing a registered sale-deed can arise merely because the parties are related to each other or the executant is old or of weak character. In view of Section 49 of Registration Act, 1908, registration of sale-deed re-enforces valid execution of the sale-deed and carries presumption of its validity. Burden of proof lies on the party challenging the genuineness of the transaction to show that the transaction is not valid in law. A registered document carries with it a presumption that it was validly executed. See:
(i) Jamil Begam Vs. Shami Mohd, AIR 2019 SC 72.
(ii) Prem Singh Vs. Birbal, (2006) 5 SCC 353.
(iii) Vishwanath Bapurao Sabale Vs. Shalinibai Nagappa Sabale, (2009) 12 SCC 101.

91. **Cancellation of a document, whether registered or unregistered, can be sought only in civil court:** A document, whether registered or unregistered, can be cancelled by the court. See: Deccan Paper Mills Company Limited Vs. Regency Mahavir Properes, (2021) 4 SCC 786 (Para 22) (Three-Judge Bench)

92. **Standard of pleading and evidence seeking cancellation of sale deed**: Person alleging that a registered sale deed is a sham must satisfy the rigorous standards of pleading as required under Order 6, rule 4 CPC by making clear, cogent, convincing averments and providing material particulars in his pleading and evidence. A clever drafting creating illusion of cause of action would not be permitted and a clear right to sue would have to be shown in the plaint. Mere suspicious or nebulous averments without material particulars would not be sufficient to dislodge the presumption under Sections 91 and 92 of the Evidence Act. Such a suit could have been dismissed at the initial stage by rejecting the plaint under Order 7, rule 11 CPC. See: Hemalatha Vs. Tukaram, (2026) 5 SCC 168 (Paras 34,35)

93. **Presumption of genuineness of a registered document is attached to it:** Presumption of genuineness of a registered document is attached to it. Initial onus to prove it to be forged document lies on the plaintiff. In the present case, plaintiff lady had denied her signature on the sale deed. Divergent opinions of hand writing experts were produced by the plaintiff and the defendant. Ground taken by the

plaintiff that the document/sale deed was the result of copied forgery could not be substantiated only on the basis of the opinion of the handwriting expert. Opinion of an expert is not binding piece of evidence if not corroborated by other pieces of evidence. In the said case, plaintiff had failed to prove that her signatures on the documents i.e. general power of attorney and the sale deed were forged. See: Rattan Singh Vs. Nirmal Gill, AIR Online 2020 SC 854

94. Presumption of knowledge of execution of document from date of its registration: When a document is required by law to be registered and is got registered, then the whole world comes to know (by way of constructive notice) about the execution and registration of such document from the date of its registration. Referring to Explanation I to Section 3 of the Transfer of Property Act, 1882, it has been held by the Supreme Court that knowledge of execution and registration of such document for purposes of limitation starts from the date of its registration. See:

(i). Uma Devi Vs. Anand Kumar, (2025) 5 SCC 198 (Para 13)
(ii). Suraj Lamp & Industries (P) Limited Vs. State of Haryana, (2012) 1 SCC 656 (Paras 15 &17)

95. Sale deed got executed by a person belonging to Scheduled Caste without permission of Collector u/s 157-AA would be void: Section 157-AA of the U.P. ZA & LR Act specifically provides that no person belonging to the Scheduled Caste having become Bhumidhar with transferable rights u/s 131-B of the U.P. ZA & LR Act shall have the right to transfer the land by way of sale, gift, mortgage or lease to a person other than a person belonging to Scheduled Caste and such transfer, if any, shall be in the following order of preference:

1. landless agricultural laborer
2. Marginal Farmer
3. Small Farmer, and
4. A person other than a person referred to in Clauses (a), (b) & (c).

If before execution of the sale deed, no permission from the competent authority i.e. Assistant Collector, was obtained, then the sale-deed would be void and the purchaser on the basis of such sale deed would not acquire any right in the land purchased by him through such sale-deed. See: Prem Chandra Vs. Addl. Commissioner (Admin), Lucknow Mandal and Others, 2015 (129) RD 417

96. Secondary evidence and its admissibility : Certified copy of sale deed: Where a certified copy of registered sale deed was being

marked as exhibit and admitted in evidence u/s 65 of the Evidence Act without any objection from the opposite party but later on the opposite party raised objections regarding the mode of proof of the certified copy for want of primary evidence, it has been held by the Supreme Court that since the objection was not as to the admissibility of the certified copy but only against the mode of proof being irregular and insufficient, the document was admissible in evidence and such objections could have been taken before the document was marked as an exhibit and admitted to the record. See :

(i) Dayamathi Bai vs. K.M. Shaffi, (2004) 7 SCC 107
(ii) R.V.E. Venkatachala Gounder vs. Arulmgu Viswasaraswami & V.P. Temple, (2003) 8 SCC 752

97. **Certified copy of will deed admissible in evidence:** A certified copy of a will deed is admissible in evidence for purposes of proving contents of the original document in view of Sections 63(1), 65(f) and 79 of the Evidence Act read with Section 57 of the Registration Act. See: Hameed Vs. Kanhaiya, AIR 2004 All 405.

98. **Proof of contents of documents:** By mere filing of a document, its contents are not proved. A certificate issued by an expert should be brought on record by examining him. By mere marking of an Exhibit on a document, it does not mean that the document has been proved. See:

(i) Subhash Maruti Avasare Vs. State of Maharashtra, (2006) 10 SCC 631.
(ii) K. Subramani Vs. P. Rajesh Khanna, 2009 AIHC (NOC) 800 (Madras).

99. **Proof of contents of documents:** Once a document is properly admitted in evidence, its contents are also admitted in evidence though they may not be conclusive. See: P.C. Purushothama Vs. S. Perumal, AIR 1972 SC 608.

100. **Photostat copy of document not admissible in the absence of its factual foundation:** Pleas of party that original documents were misplaced cannot be relied on and the party cannot be permitted to lead secondary evidence by producing photostat copies of the documents in the absence of factual foundation that the original documents really existed but were lost or misplaced as is required u/s 63 and 65 of the Evidence Act. See:

(i) Amarjit Singh Vs. Surinder Singh Arora, AIR 2017 Delhi 198,
(ii) U. Sree Vs. U. Srinivas, AIR 2013 SC 415
(iii) H. Siddiqui Vs. A. Ramlingam, AIR 2011 SC 1492.

(iv) Narbada Devi Gupta Vs. Birendra Kr. Jaiswal, (2003) 8 SCC 745
(v) Smt. Sudha Agarwal Vs. VII ADJ, Ghaziabad, 2006 (63) ALR 659 (Allahabad)
(vi) R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami, (2003) 8 SCC 752
(vii) Sait Tarajee Vs. Khimchand Vs. Yelamarti Satyam, AIR 1971 SC 1865.
(viii) Judgment dated 03.01.2017 of the Division Bench of the Allahabad High Court in Civil Appeal No. 790/2008, New Okhla Industrial Development Authority Vs. Kendriya Karmachari Sahkari Grih Nirman Samiti Ltd..

101. Ordinary secondary evidence is admissible only when both original and certified copies are lost: An ordinary secondary copy of a document is admissible in evidence only when both the original and certified copies are lost. See: M. Kumhar Vs. B.G. Ganeshpuri, AIR 2000 SC 2629.

102. Secondary copy of document can be admitted in evidence only on proof that the original was in existence earlier: A secondary evidence, as a general rule, is admissible in evidence only in the absence of primary evidence. If the original itself is found to be inadmissible through failure of the party who files it to prove it to be valid, the same party is not entitled to introduce secondary evidence of its contents where the original documents are not in existence/available, photocopy of the documents are not admissible in evidence. See: J. Yashoda Vs. Shobarani, (2007) 5 SCC 730.

103. Affidavit must in support of application seeking production of secondary evidence: An application for the production of secondary evidence must give full details and must be supported by a proper affidavit. See: State of Rajasthan Vs. Khemraj, AIR 2000 SC 1759.

104. Stolen documents from custody of Govt. admissible in evidence: Secret documents relating to Rafale fighter jets were removed/stolen from the custody of the Ministry of Defence, Govt. of India and their photocopies were produced before the Supreme Court. The objection raised before the Supreme Court by the Central Govt. was that the secret stolen documents were not admissible in evidence. The Supreme Court held that all the documents in question were admittedly published in newspapers and thus already available in public domain. No law specifically prohibits placing of such secret documents before the Court of law to adjudicate legal issues. Matter involved complaint against commission of grave wrong in the highest

echelons of power. Review petition could be adjudicated on merits by taking into account the relevance of the documents. See: Yashwant Sinha Vs. Central Bureau of Investigation, AIR 2019 SC 1802 (Three-Judge Bench)

105. Newspaper reports to be treated as hearsay evidence: As per Section 60 of the Evidence Act, newspaper reports would be regarded as hearsay evidence and cannot be relied upon. See:

(i) Chandrabhan Sudam Sanap Vs. State of Maharashtra,(2025) 7 SCC 401 (Three-Judge Bench) (Paras 121)

(i) Joseph M. Puthussery Vs. T.S. John, AIR 2011 SC 906.
(ii) Laxmi Raj Shetty Vs. State of T.N., AIR 1988 SC 1274.
(iii) Quamarul Ismam Vs. S.K. Kanta 1994 Supp. (3) SCC 5.

106. Test whether an information/document is protected from disclosure u/s 123, Evidence Act: Section 123 of the Evidence Act relates to the affairs of the State. Claim of immunity u/s 123 has to be adjudged on the touchstone that the public interest is not put to jeopardy by requesting disclosure of any secret document. Documents in question (stolen papers of the Rafale fighter jets from the Ministry of Defence, Govt. of India) being in public domain were already within the reach and knowledge of the citizens. The Supreme Court held that the claim of immunity u/s 123 of the Evidence Act raised by the Central Govt. was not tenable and the documents in question were admissible as evidence. See: Yashwant Sinha Vs. Central Bureau of Investigation, AIR 2019 SC 1802 (Three- Judge Bench).

107. Authenticity of entries of public document like school register or T.C. may be tested by court: So far as the entries made in the official record by an official or person authorized in performance of official duties are concerned, they may be admissible u/s 35 of the Evidence Act but the court has a right to examine their probative value. The authenticity of the entries would depend on whose information such entries stood recorded and what was his source of information. The entries in school register or school leaving certificate require to be proved in accordance with law and the standard of proof required in such cases remained the same as in any other civil or criminal case. See:

(i) C. Doddanarayana Reddy Vs. C. Jayarama Reddy, (2020) 4 SCC 659 (Para 18)
(ii) Madan Mohan Singh Vs. Rajni Kant, (2010) 9 SCC 209 (Para 20)
(iii) Updesh Kumar Vs. Prithvi Singh,(2001) 2 SCC 524
(iv) State of Punjab Vs. Mohinder Singh, (2005) 3 SCC 702.

108. Family Settlement: Whether its registration is compulsory?: A memorandum of family settlement or family arrangement requires compulsory registration as per Section 17 (2) (v) of the Registration Act, 1908 only when it creates or extinguishes for the first time any right, title or interest in an immovable property among the family members. If it records only pre-existing right in the immovable property or arrangement or terms already settled between the parties in respect of the immovable property, it does not require registration. See:

(i) Ravinder Kumar Grewal Vs. Manjit Kaur, (2020) 9 SCC 706

(ii) Kale Vs. Director of Consolidation, (1976) 3 SCC 1194

109. Unregistered family arrangement or partition deed or oral partition under Hindu law can be relied on for collateral purposes: An unregistered family arrangement or partition deed or oral partition under Hindu law can be relied on for limited collateral purposes like severance of joint family status and title, explaining nature of possession, recording arrangement made thereunder and evidencing parties' subsequent conduct. Reality of disruption of joint family status by a cumulative assessment of conduct of parties that includes separate possession, separate cultivation, separate residence, independent dealing with lands allotted, and revenue records that consistently reflect such separation can be proved by such mutual written or oral family settlement. Transfer by an heir apparent being mere spes succession is ineffective to convey any right. By mere release deed, no transfer took place. Father of the appellants did not have any right at all which he could transfer or relinquish. Oral partition can be accepted if proved by conduct of parties or by mutual family arrangement severing the status, possession on separate shares. The reasoning of the lower courts on " *not acted upon* " was not proper and not acceptable. Long standing conduct of parties can be treated as creating an equitable estoppel against the party setting up a contrary claim now. See:

(i)Anjanappa Vs. Nanjundappa, (2026) 4 SCC 492 (Paras 31 to 38)

(ii) Shanmugam Pillai Vs. K. Shanmugam Pillai, (1973) 2 SCC 312 (Paras 13, 22)

(iii)TVR Subbu Chetty Vs. M. Raghava Mudaliar, AIR 1961 SC 797 (Para 9.5)

(iv)Kalyani Vs. Narayana, (1980) Suppl SCC 298 (Para 18)

110. A compromise decree in respect of immovable suit property does not require registration: A compromise decree passed by a court in respect of immovable property which is subject matter of the suit would ordinarily be covered by Section 17(1)(b) of the Registration Act and would not require registration. But if the compromise is

entered into in respect of an immovable property other than the subject- matter of the suit or proceeding would be covered under Section 17 (2) (vi) of the Registration Act and the same would require registration**.** See: Khushi Ram Vs Nawal Singh, AIR 2021 SC 1117 (Paras18 &19)

111. **Photostat copy of a document and its admissibility:** In the case of photostat copy of a document, before it is admitted in evidence, it has to be explained as to what were the circumstances under which photocopy was prepared and who was in the possession of the original document at the time when its photocopy was taken and this should be above suspicion. See: Ashok Dulichand vs. Madahavalal, AIR 1975 SC 1748.

112. **Photostat copy when can be produced as secondary evidence? :** Where original document is in existence, but not produced, secondary evidence by production of copies is not admissible unless conditions of Sections 65 and 66 of the Evidence Act are satisfied. These provisions have been designed to provide protection to persons who, in spite of their best efforts, are unable to, for the circumstances beyond their control, to place before the Court, primary evidence of a document as required by law. Secondary evidence should not and cannot be allowed unless the circumstances exist to justify as provided under Act, 1872. Further, if the document is to be admitted in secondary evidence, the facts thereof have to be proved. The certified copy of the original can be treated as secondary evidence. But the contents of the documents sought to be marked as secondary evidence cannot be admitted in evidence without production of the original document. Under no circumstances can secondary evidence be admitted as a substitute for inadmissible primary evidence. …. Under what circumstances the secondary evidence relating to document must be provide by primary evidence is an exception to the cases falling under Sections 65 and 66 of Act, 1872. The person seeking to produce secondary evidence relating to a document can do so only when the document is not in his possession. To enable a person to take recourse to Sections 65 and 66 of Act, 1872, it would be necessary to establish that the document sought to be summoned was executed and that the said document is not with him, but in possession of the person against whom the application is made to be produced for proving against him. …. Also whenever a secondary evidence is to be admitted, very existence of such a document has to be established. See: Ram Das Singh Vs. Duli Chand, AIR 2014 (NOC) 218 (All.)

113. **Proof of signature or initial:** Explaining Sections 3 & 45 of the Evidence Act, the Supreme Court has held that the genuineness of an

initial cannot be doubted merely because only initials are used instead of full name of the signatory. See: Gouni Satya Reddi vs. Govt. of A.P., (2004) 7 SCC 398.

114. Omission to take signature of witness on his deposition not to render his deposition inadmissible: Where deposition of witness was recorded on commission but signature of the witness was not taken on it, it has been held by a Three-Judge Bench of the Supreme Court that correctness and authenticity of the deposition of the witness could not be disputed for want of signature on his depositions. Defect of not taking signature is not fatal to reception of deposition in evidence. See: Owners and Parties interested in M.V. 'Vali Pero' Vs. Fernandeo Lopez, AIR 1989 SC 2206 (Three-Judge Bench).Note : Section 114(e) of the Evidence Act is also relevant here.

115. Mutation entries and their evidentiary value: It is settled law that mutation entries are only for the purpose of enabling the State to collect the land revenue from the person in possession but it does not confer any title to the land. The title would be derived from an instrument executed by the owner in favour of an alienee as per the Stamp Act and registered under the Registration Act. Even if the suit property has been mutated in favour of defendant, the case of the plaintiff which is based on title cannot be adversely affected as the mutation is not proof of title. **Revenue record is not a document of title**. It merely raises a presumption of possession u/s 110 of the Evidence Act. See :

(i) Smt. Bhimabai Mahadeo Kambekar Vs. Arthur Import and Export Company, AIR 2019 SC 719.
(ii) Union of India Vs. Vasavi Co-operative Housing Society Limited, (2014) 2 SCC 269
(iii) Gurunath Manohar Pavaskar vs. Nagesh Siddappa Navalgund, 2008 (70) ALR 176 (SC)
(iv) State of U.P. vs. Amar Singh, (1997) 1 SCC 734
(v) Talat Fatima Hussain vs. Nawab Syed Murtaza Ali Khan, 1997 All.L.J. 312 (All)

116. Presumption of truth about revenue records: Presumption of truth is attached to revenue record. However, this presumption is rebuttable. It is for the party who alleges that the revenue entries are wrong to lead evidence to rebut this presumption. See: Vishwasrao Satwarao Naik Vs State of Maharashtra, (2018) 6 SCC 580.

117. Khasra entries not proof of title and ownership of land: Khasra entries are not proof of title and ownership of land. See: Municipal Corporation, Gwalior Vs. Puran Singh, (2015) 5 SCC 72

118. Entries in municipal records not proof of ownership: Entries in municipal records are not proof of ownership. See:
(i)Hemalatha Vs. Tukaram, (2026) 5 SCC 168 (Para 64)
(ia)Suraj Bhan Vs. Financial Commissioner, (2007) 6 SCC 186
(ii)Suman Verma Vs. Union of India, (2004) 12 SCC 58
(ii)Municipal Corporation, Aurangabad Vs. State of Maharashtra, (2015)16 SCC 689
(iii)Ajit Kaur Vs.Darshan Singh, (2019) 13 SCC 70

119. Adverse possession and injunction: A person claiming the title by virtue of adverse possession can maintain a suit under Section 65 of the Limitation Act, 1963 for declaration of title or for a permanent injunction seeking protection of his possession thereby retraining the defendant or for restoration of possession in case of illegal dispossession. **See:**

(i) Ravinder Kaur Grewal Vs. Manjit Kaur, 2019 SCC Online SC975 (Three-Judge Bench).
(ii) M. Siddiq (Ram Janmabhumi Temple) Vs. Suresh Das, (2020) 1 SCC 1(Five-Judge Bench) (Para 1143 to 1155).

Note: Three contrary previous decisions of the Supreme Court by Two- Judge Benches reported in (i) Gurudwara Sahab Vs. Gram Panchayat Village Sirthala, (ii) State of Uttarakhand Vs.Mandir Shri Lakshmi Siddh Signature Not Verified Maharaj and (iii) Dharampal Vs. Punjab Waqf Board have now been over-ruled by the judgment in Ravinder Kaur Grewal's case stand overruled.

120. Suit for declaration of title and possession on the basis of adverse possession: A person who has perfected his title by adverse possession can use it as a sword and file a suit for declaration of his title and possession. See: Mohd. Vs Rajkumar, (2020) 10 SCC 264

121. Adverse possession and its elements to be proved: A party claiming to have perfected his title to an immovable property through adverse possession must prove following facts:

a. title of the true owner of the property must be admitted by the party claiming to be in adverse possession,
b. such possession must be without the consent of the true owner

c. such possession must be continuous or uninterrupted at least for twelve years

d. such possession must be open and hostile to the knowledge of the true owner See:

(i) Nand Ram Vs. Jagdish Prasad, (2020) 9 SCC 393.

(ii) Uttam Chand Vs. Nathu Ram, (2020) 11 SCC 263.

122. Burden of proof of possession, dispossession & adverse possession: Where a plaintiff is suing for possession on the basis of dispossession the burden lies on him to show that from the date of his dispossession or discontinuance of possession which gave him the cause of action for the suit was within twelve years of the suit, while if the suit is not for possession based on the ground of dispossession or discontinuance of possession but is a suit for possession of immovable property not specially provided for in any other Article of the Act then Art. 144 would apply and on proof of title the plaintiff's suit cannot be dismissed until the defendant further establishes his adverse possession for more than twelve years. There is obviously some distinction between the mere dispossession or discontinuance of the possession of the plaintiff and the adverse possession of the defendant. Ordinarily an owner of property is presumed to be in possession of it and such presumption is in his favour where there is nothing to the contrary. It would, therefore, follow that an owner of property starts with the presumption in his favour that he is in possession of his property, but where the plaintiff himself says that he was dispossessed by the defendant and, therefore, is no longer in proprietary possession of the property in suit, at the time of the institution of the suit, the Court cannot start with the presumption in his favour that the possession of the property was with him. No doubt in many cases the distinction is very fine and the line of demarcation between dispossession and adverse possession is thin but it is incumbent on the plaintiff to prove as to when he has been dispossessed or has discontinued his possession to establish the date of dispossession or discontinuance of possession and to show that it was within twelve years of the institution of the suit (vide Article 12 of the First Schedule to the Limitation Act). See: Qadir Bux vs. Ramchand, AIR 1970 All 289 (F.B.)

123. Suit to be decreed on proof of possessory title: Where in suit for permanent injunction, plaintiff had proved his possessory title over the suit property, though not the full title, and the defendant had failed to prove any title to the suit property, it has been held by the Supreme Court that the plaintiff's suit deserved to be decreed against the interference of the defendant with the plaintiff's possession over the

suit property. See: Iqbal Basith Vs N. Subbalakshmi, (2021) 2 SCC 718 (Three-Judge Bench)

124. **Injunction suit without seeking declaration of title maintainable if there is no cloud on title of plaintiff:** A prayer for declaration of title in a suit for injunction will be necessary only if the denial of title by the defendant or challenge to the plaintiff's title raises a cloud on the title of the plaintiff to the property. A cloud is said to raise over a person's title when some apparent defect in his title to a property or when some prima facie right of a third party over it is made out or shown. An action for declaration is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that the defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raise a serious dispute or cloud over the plaintiff's title, then there is a need for the plaintiff to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief even after the suit for injunction is dismissed where the suit raised only the issue of possession and not any issue of title. In the present case, there was no issue involved about the title of the plaintiff and his father. It is not as if the respondent-defendants had set up a title in themselves or were claiming through somebody who was claiming the title. Their plea was of adverse possession against the appellant which presupposes that the appellant was the owner. When in a suit simpliciter for a perpetual injunction based on title, the defendant pleads perfection of his title by adverse possession against the plaintiff or his predecessor, it cannot be said that there is any dispute about the title of the plaintiff. Hence, the plaintiff need not claim a declaration of title in such a case as the only issues involved in such a suit are whether the plaintiff has proved that he was in possession on the date of the institution of the suit and whether the defendant has proved that he has perfected his title by adverse possession. Therefore, in the present case, it was not necessary for the appellant/plaintiff to claim a declaration of ownership in the suit for injunction. There was no cloud on his title. Therefore, the suit, as originally filed, was maintainable. **See: K.M.**

Krishna Reddy Vs. Vinod Reddy, (2023) 10 SCC 248 (paras 16 & 17).

125. **Possession of mere a licensee does not amount to possession:** A licence does not create any interest in the immovable property. Possession of holder of any interest or estate in immovable property i.e. the possession of any owner is distinguishable from mere occupation of a licensee whose possession under licence does not amount to possession against the holder of interest in the immovable property. See: Victory Iron works Ltd Vs. Jitendra Lohia, (2023) 7 SCC 227

126. **Examination-in-Chief on affidavit:** Order 18, rule 4 CPC w.e.f. 01.07.2002 provides for production of oral evidence of examination-in-chief of witnesses on affidavit. Copies of such affidavits shall be supplied by the party to the opposite party. The opposite party shall have right to cross-examine such witnesses on their affidavits filed under Order 18, rule 4 CPC.

127. **Court may permit examination-in-chief in civil suits to be recorded in court:** U/o 18, rule 4(1) CPC the parties to a civil suit are required to file their affidavits in support of their pleadings in the form of their examination-in-chief. In appropriate cases court may permit examination-in-chief to be recorded in court. There is no question of inadmissible documents being read into evidence merely on account of such documents being given exhibit numbers in the affidavit filed by way of the examination-in-chief. See: Salem Advocates' Bar Association Vs. Union of India, (2005) 6 SCC 344 (Three-Judge Bench).

128. **Affidavits before revenue courts:** Section 214 of the UP Revenue Code, 2006 permits applicability of CPC to revenue courts. Therefore, affidavits filed before the revenue courts are governed by Order 19 of the CPC.

129. **Affidavits not "evidence" u/s 3 of the Evidence Act:** Affidavits have got no evidentiary value as the affidavits are not included in the definition of "evidence" in Section 3 of the Evidence Act and can be used as evidence only if for sufficient reasons court passes an order like the one under Order 19, rules 1 & 2 of the CPC. See:

    (i) Judgment dated 21.5.2026 of the Supreme Court in Parvathi Nairthi Vs. Laxmi Nairthy, 2026 INSC 521
    (ii) Ayaaubkhan Vs. State of Maharashtra, AIR 2013 SC 58

(iii) Smt. Sudha Devi Vs. M.P. Narayanan & others, AIR 1988 SC 1381.

130. Uncontroverted affidavit and its evidentiary value: If the averments contained in an affidavit are not controverted by counter affidavit, the facts contained in that affidavit can be accepted as correct and true. In such cases presumption in terms of illustration (g) of Section 114, Evidence Act can be drawn in favour of the party/deponent whose affidavit has gone uncontroverted. See:

(i) Managing Committee Shiksha Parishad, Nagawa Ballia vs. Assitant Registrar, Firms, Chits & Societies, Azamgarh, 2005 (2) AWC 1951 (All)

(ii) State of Gujarat vs. S. Tripathy, AIR 1987 SC 479

131. Defective affidavits filed u/o 19, rule 1 CPC and rectification thereof: If there is some slight defect or irregularity in filing of affidavit, party concerned should be given an opportunity to rectify the same. What needs to be seen in such matters is whether there is substantial compliance with the requirements regarding the rules relating to affidavits and their verification and even if there is some breach or omission, whether it can be fatal to the case of the party. The plea of defects in affidavits cannot be allowed to be raised after inordinate delay. See:

(i) Associated Journals Ltd. Vs. Mysore Paper Mills Ltd., (2006) 6 SCC 197

(ii) Malhotra Steel Syndicate vs. Punjab Chemi-Plants Ltd., 1993 Supp. (3) SCC 565.

132. Permission to replace defective affidavit: Improper verification of affidavit is not fatal. If the court finds that the affidavit is not properly sworn or verified in accordance with the procedure prescribed under the rules of the court, the court may direct the person swearing the affidavit to replace the same by filing a proper affidavit but such defect in the affidavit cannot be said to be fatal in any manner. See: Dr. Umesh Kumari vs. State of U.P., 1999 (17) LCD 463 (All)(LB).

133. Production of additional evidence at late stage of trial: It has been held by the Hon'ble Supreme Court that even after deletion of Order 18, Rule 17-A CPC w.e.f. 01.07.2002, Court has inherent power to permit parties to produce evidence not known to them earlier or which could not be produced in spite of due diligence. Order 18, Rule 17-A CPC did not create any new right but only clarified the position. Therefore, deletion of Order 18, Rule 17-A CPC does not disentitle the parties to produce evidence at a later stage. If a party satisfies the Court that after exercise of due diligence or the evidence was not

within his knowledge or could not be produced at the time when the party was leading his evidence, Court may permit leading of such evidence at a later stage on such terms as may appear to be just. See: Salem Advocates' Bar Association vs. Union of India, (2005) 6 SCC 344 (Three-Judge Bench).

134. One P.W. cannot be contradicted by the evidence of other P.Ws. (Sec. 145 & 157, Evidence Act—When and How Attracted) : Sec. 145 of the Evidence Act applies when the same person makes two contradictory statements. It is not permissible in law to draw adverse inference because of alleged contradictions between one prosecution witness vis-à-vis statements of other witnesses. It is not open to court to completely demolish evidence of one witness by referring to the evidence of other witnesses. Witness can only be contradicted in terms of Section 145 of the Evidence Act by his own previous statement and not with the statement of any other witness. Sec. 145 has no application where a witness is sought to be contradicted not by his own statement but by the statement of another witness. See:

(i) Chaudhary Ramjibhai Narasangbhai vs. State of Gujarat, AIR 2004 SC 313.
(ii) Mohanlal Gangaram vs. State of Maharashtra, AIR 1982 SC 839.

135. Witness may be cross-examined by drawing his attention to contents of document to be produced in court during the course of cross-examination: Plaintiff or defendant at their own behest may enter evidence in court. Further, it is permissible to produce a document for cross-examination or to refresh the memory of a witness whether that be a party to the suit or a witness called by them without any distinction. Inter alia, being precluded from effectively putting questions to a witness and receiving answers from either party to a suit, with aid of these documents, will put the other side at risk of not being able to put forth complete veracity of their claim thereby fatally compromising the proceedings. See: Mohammed Abdul Wahid Vs. Nilofer and Another, (2024) 2 SCC 144.

136. Value of expert opinion u/s 45: Opinion of an expert u/s 45 of the Evidence Act is only opinion evidence. It does not help court in interpretation. Expert evidence is a secondary evidence which cannot be given importance as primary evidence. See:

(i) Anand Singh vs. State of U.P., 2009 (67) ACC 99 (All) (DB).
(ii) Forest Range Officer vs. P. Mohammed Ali, AIR 1994 SC 120

137. Hand-writing expert's opinion u/s 45/73 of Evidence Act can be invoked only for an admitted document: In a suit for declaration and injunction, it is for the plaintiff to prove his case. Section 45 read

with Section 73 of the Evidence Act can only be invoked for an admitted document for the purpose of comparison of signatures or handwriting. See: Hussain Bin Awaz Vs. Mittapally Venkataramulu, 2025 LiveLaw (SC) 1083

138. **Handwriting expert's opinion u/s 45 Evidence Act not to be accepted unless corroborated by other evidence, either direct or circumstantial:** The handwriting expert's evidence u/s 45 Evidence Act is only opinion evidence and it can rarely, if ever, take the place of substantive evidence. Before acting on such evidence, it is usual to see if it is corroborated either by clear direct evidence or by circumstantial evidence. See:
    (i) Rattan Singh Vs Nirmal Gill, AIR 2021 SC 899
    (ii) (ii).Padum Kumar Vs. State of UP, (2020) 3 SCC 35
    (iii) (iii).Sashi Kumar Banerjee vs. Subodh Kumar Banerjee, AIR 1964 SC 529 (Five-Judge Bench)

139. **Expert evidence not to be treated as substantive evidence:** The handwriting expert's evidence u/s 45 Evidence Act is only opinion evidence and it can rarely, if ever, take the place of substantive evidence. Before acting on such evidence it is usual to see if it is corroborated either by clear direct evidence or by circumstantial evidence. See: Sashi Kumar Banerjee Vs. Subodh Kumar Banerjee, AIR 1964 SC 529 (Five-Judge Bench).

140. **Value of Expert Evidence under Section 45 of the Evidence Act:** The courts normally look at expert evidence with a greater sense of acceptability but it is equally true that the courts are not absolutely guided by the report of the experts especially if such reports are perfunctory, unsustainable and are the result of a deliberate attempt to misdirect the prosecution. Where the eye witness account is found credible and trustworthy, medical opinion pointing to alternative possibilities may not be accepted as conclusive. The expert witness is expected to put before the court all materials inclusive of the data which induced him to come to the conclusion and enlighten the court on the technical aspect of the case by examining the terms of science, so that the court, although not an expert, may form its own judgment on those materials after giving due regard to the expert's opinion because once the expert opinion is accepted it is not the opinion of the Medical Officer but that of the court. The skill and experience of an expert is the ethos of his opinion which itself should be reasoned and convincing. Not to say that no other view would be possible but if the view of the expert has to find due weightage in the mind of the court, it has to be well authored and convincing. See: Dayal Singh Vs. State of Uttaranchal, AIR 2012 SC 3046.

141. Expert evidence is like secondary evidence & not as primary evidence: Opinion of an expert u/s. 45 of the Evidence Act is only opinion evidence. It does not help court in interpretation. Expert evidence is a secondary evidence which cannot be given importance as primary evidence. See:

(i) Anand Singh vs. State of U.P., 2009 (67) ACC 99 (All—D.B.)

(ii) Forest Range Officer vs. P. Mohammed Ali, AIR 1994 SC 120

142. Handwriting experts opinion to be relied upon with great caution: It is well settled that the opinion of a handwriting expert must always be received with great caution. See: Magan Bihari Lal vs. State of Punjab, (1977) 2 SCR 1007.

143. Courts should be slow in basing their findings on mere handwriting expert's opinion: Where in a suit for specific performance of agreement, the attesting witness had deposed that the executants had put his signatures on the agreement under compulsion without knowing the contents thereof and the handwriting expert on the basis of photocopies of admitted documents had opined that signatures on agreement did not tally with specimen signatures of the executants and the trial court, on proper appreciation of evidence, dismissed the suit but the High Court in appeal relied upon the untrustworthy, shaky and vague evidence to grant discretionary relief of specific performance in contravention of mandate of Section 20 of the Specific Relief Act, 1963, it has been held by the Hon'ble Supreme Court that the handwriting expert's opinion u/s 45 & 73 of the Evidence Act is a week evidence and courts should be slow to base their findings solely on such opinion but should apply their own mind and take a decision. See: Garre Mallikharjuna Rao (Dead) By LRs. & Others Vs. Nalabothu Punniah, (2013) 4 SCC 546.

144. Handwriting expert & appreciation of his opinion evidence: A handwriting expert is a competent witness whose opinion evidence is recognized as relevant under the provisions of Sec. 45 & 73 of the Evidence Act and has not been equated to the class of evidence of an accomplice. It would, therefore, not be fair to approach the opinion evidence with suspicion but the correct approach would be to weigh the reasons on which it is based. The quality of his opinion would depend on the soundness of the reasons on which it is founded. But the court cannot afford to overlook the fact that the science of identification of handwriting is an imperfect and frail one as compared to the science of identification of finger-prints; courts have, therefore, been wary in placing implicit reliance on such opinion evidence and have looked for corroboration but that is not to say that it is a rule of

prudence of general application regardless of the circumstances of the case and the quality of expert evidence. No hard and fast rule can be laid down in this behalf but the court has to decide in each case on its own merits what weight it should attach to the opinion of the expert. See: State of Maharashtra vs. Sukhdev Singh @ Sukha, AIR 1992 SC 2100.

145. **Handwriting expert's opinion to be relied upon when supported by other evidence:** The opinion of a handwriting expert u/s. 45 of the Evidence Act can be relied on when supported by other evidence. Though there is no rule of law that without corroboration the opinion evidence cannot be accepted but due caution and care should be exercised and it should be accepted after probe and examination. See:
(i) Rattan Singh Vs Nirmal Gill, AIR 2021 SC 899
(ii) Alamgir vs. State of NCT, Delhi, (2003) 1 SCC 21

146. **Effect of adverse remarks against handwriting expert in some of past cases:** Where there were some adverse remarks against the handwriting expert in some of past proceedings but nothing could be shown as to how experts report suffered from any infirmity then his evidence cannot be treated as totally irrelevant or no evidence on the basis of said adverse remarks. See: Lalit Popli vs. Canara Bank, AIR 2003 SC 1796.

147. **Opinion of an expert not to be relied on unless examined as witness in court:** Unless the expert submitting his opinion is examined as witness in the court, no reliance can be placed on his opinion alone. See: State of Maharashtra vs. Damu, AIR 2000 SC 1691.

148. **Qualifications required of an expert u/s 45, Evidence Act:** Sec. 45 of the Evidence Act which makes opinion of experts admissible lays down that when the court has to form an opinion upon a point of foreign law or of science or of art or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting, or finger impressions are relevant facts. Therefore, in order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject. See:
(i) Ramesh Chandra Agrawal vs. Regency Hospital Ltd., 2009 (6) Supreme 535
(ii) State of H.P. vs. Jai Lal, (1999) 7 SCC 280

149. Necessary qualifications of an expert u/s 45, Evidence Act: Sec. 45 of the Evidence Act which makes opinion of experts admissible lays down that when the court has to form an opinion upon a point of foreign law or of science or of art or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting, or finger impressions are relevant facts. Therefore, in order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject. See:

(i) Ramesh Chandra Agrawal vs. Regency Hospital Ltd., 2009 (6) Supreme 535

(ii) State of H.P. vs. Jai Lal, (1999) 7 SCC 280

150. Handwriting experts opinion to be relied upon with great caution: It is well settled that the opinion of a handwriting expert must always be received with great caution. See: Magan Bihari Lal vs. State of Punjab, (1977) 2 SCR 1007

151. Opinion of an expert not to be relied on unless examined as witness in court: Unless the expert submitting his opinion is examined as witness in the court, no reliance can be placed on his opinion alone. See: State of Maharashtra vs. Damu,AIR 2000 SC 1691

152. Comparison of handwritings or signatures not a science at all but only an art: Comparison of hand writings or signatures is not a science at all much less any scientific approach is involved in making such comparison. It is only an art which has to be acquired by experience. In so far as judicial officers in State are concerned, they are provided with the subject of introduction to comparison of signatures and hand writing during their basic induction course at the time of their induction into the subordinate judiciary after selection. They are taken to several premier forensic and scientific institutions for practical experience and also are provided with lectures by faculty on the above subject. It is not as if judicial officers undertake the power under Section 73 of the Evidence Act, in a gullible manner. They are provided with basic confidence in undertaking this subject. It cannot be said that lower Court which is Court presided over by senior subordinate judicial officer cannot undertake work of comparison of signatures in exercise of power under Section 73 of Evidence Act, particularly when that Court did not entertain any doubt on this aspect of matter. After all, evidence of a person who claims to be an expert, is not conclusive. An expert's evidence has to be scrutinized and adjudicated again by Court, like any other witness for

the party, as to his approach to his conclusion and also reliability of such report. Judicial discretion thus exercised by lower Court in refusing to send disputed documents and admitted document to expert for comparison of signatures, proper. See: J. Krishna Vs. Maliram Agarwal & Others, AIR 2013 AP 107 *(paras 9 &10)*

153. **Court can compare a disputed signature with an admitted one**: Court can compare a disputed signature with an admitted one u/s 73 of the Evidence Act but it would be hazardous to rely solely on this comparison without the assistance of an expert. See: Dharmrao Vs. Syeda Arifa Praveen, (2026) 3 SCC 460 (Para 46.1)

154. **Judicial Officers are provided training during their basic induction training course and are competent to themselves compare the handwritings/signatures:** Comparison of hand writings or signatures is not a science at all much less any scientific approach is involved in making such comparison. It is only an art which has to be acquired by experience. In so far as judicial officers in State are concerned, they are provided with the subject of introduction to comparison of signatures and hand writing during their basic induction course at the time of their induction into the subordinate judiciary after selection. They are taken to several premier forensic and scientific institutions for practical experience and also are provided with lectures by faculty on the above subject. It is not as if judicial officers undertake the power under Section 73 of the Evidence Act, in a gullible manner. They are provided with basic confidence in undertaking this subject. It cannot be said that lower Court which is Court presided over by senior subordinate judicial officer cannot undertake work of comparison of signatures in exercise of power under Section 73 of Evidence Act, particularly when that Court did not entertain any doubt on this aspect of matter. After all, evidence of a person who claims to be an expert, is not conclusive. An expert's evidence has to be scrutinized and adjudicated again by Court, like any other witness for the party, as to his approach to his conclusion and also reliability of such report. Judicial discretion thus exercised by lower Court in refusing to send disputed documents and admitted document to expert for comparison of signatures, proper. See: J. Krishna Vs. Maliram Agarwal & Others, AIR 2013 AP 107 *(paras 9 &10)*

155. **Judicial discretion available to refuse disputed and admitted documents to expert for comparison of signatures u/s 73 of the Evidence Act:** Comparison of hand writings or signatures is not a science at all much less any scientific approach is involved in making such comparison. It is only an art which has to be acquired by

experience. In so far as judicial officers in State are concerned, they are provided with the subject of introduction to comparison of signatures and hand writing during their basic induction course at the time of their induction into the subordinate judiciary after selection. They are taken to several premier forensic and scientific institutions for practical experience and also are provided with lectures by faculty on the above subject. It is not as if judicial officers undertake the power under Section 73 of the Evidence Act, in a gullible manner. They are provided with basic confidence in undertaking this subject. It cannot be said that lower Court which is Court presided over by senior subordinate judicial officer cannot undertake work of comparison of signatures in exercise of power under Section 73 of Evidence Act, particularly when that Court did not entertain any doubt on this aspect of matter. After all, evidence of a person who claims to be an expert, is not conclusive. An expert's evidence has to be scrutinized and adjudicated again by Court, like any other witness for the party, as to his approach to his conclusion and also reliability of such report. Judicial discretion thus exercised by lower Court in refusing to send disputed documents and admitted document to expert for comparison of signatures, proper. See: J. Krishna Vs. Maliram Agarwal & Others, AIR 2013 AP 107 *(paras 9 &10).*

156. Bankers' Books Evidence Act, 1891: No person can be charged with liability merely on the basis of entries in books of account, even where such books of account are kept in the regular course of business. There has to be further evidence to prove payment of the money which may appear in the books of account in order that a person may be charged with liability thereunder, except where the person to be charged accepts the correctness of the books of account and does not challenge them. The original entries alone u/s 34 of the Evidence Act would not be sufficient to charge any person with liability and as such copies produced u/s. 4 of the Bankers' Books Evidence Act obviously cannot charge any person with liability. See: Chandradhar Goswami vs. Gauhati Bank Ltd., AIR 1967 SC 1058

157. Author's opinions in text books & their evidentiary value: Though opinions expressed in text books by specialist authors may be of considerable assistance and importance for the Court in arriving at the truth, cannot always be treated or viewed to be either conclusive or final as to what such author says to deprive even a Court of law to come to an appropriate conclusion of its own on the peculiar facts proved in a given case. In substance, though such views may have persuasive value cannot always be considered to be authoritatively binding, even to dispense with the actual proof otherwise reasonably required of the guilt of the accused in a given case. Such opinions

cannot be elevated to or placed on higher pedestal than the opinion of an expert examined in Court and the weight ordinarily to which it may be entitled to or deserves to be given. See: State of M.P. vs. Sanjay Rai, AIR 2004 SC 2174

158. **Commissioner's report to be evidence in suit (Or. 26, rule 10(2) CPC):** The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record.

159. **Points for commission to be defined by the court (Rule 68, G.R, Civil):** According to Rule 68 of the General Rules (Civil), when issuing a commission for making a local inspection u/o. 26, rule 9 CPC, court shall define the points on which the commissioner has to report. No point which can conveniently and ought to be substantiated by the parties by evidence at the trial shall be referred to commissioner.

160. **Commissioner may be examined as witness [Or. 26, rule 10(2) CPC]:** Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

161. **When Depositions of Witnesses Contain-- (i) Contradictions, (ii) Exaggerations, (iii) Inconsistencies (iv) Embellishments, (v) Falsus in uno, falsus in omnibus:** If there are no material discrepancies or contradictions in the testimony of a witness, his evidence cannot be disbelieved merely on the basis of some normal, natural or minor contradictions, inconsistencies, exaggerations, embellishments etc. The distinctions between material discrepancies and normal discrepancies are that minor discrepancies do not corrode the credibility of a party's case but material discrepancies do so :
(i) Jagat Singh vs. State of U.P., AIR 2009 SC 958
(ii) Sanjay vs. State of U.P., 2008(62) ACC 52 (Allahabad – D.B.)
(iii) Dimple Gupta (minor) vs. Rajiv Gupta, AIR 2008 SC 239
(iv) Kulvinder Singh vs. State of Punjab, AIR 2007 SC 2868
(v) Kalegura Padma Rao vs. State of A.P., AIR 2007 SC 1299
(vi) State of Punjab vs. Hakam Singh, 2005(34) AIC 929 (SC)
(vii) Krishna Mochi vs. State of Bihar, (2002) 6 SCC 81
(viii) Leela Ram vs. State of Haryana, 2000(40) ACC 34 (SC)

In the case of **Sucha Singh vs. State of Punjab, (2003) 7 SCC 643**, the Supreme Court has held as under :

"Maxim 'falsus in uno, falsus in omnibus' is not applicable in India. It is merely a rule of caution. Thus even if a major portion of evidence is found to be deficient, in case residue is sufficient to prove the guilt of an accused, notwithstanding acquittal of number of other co-accused persons, his conviction can be maintained. The court has to separate grain from chaff and appraise in each case as to what extent the evidence is acceptable. If separation cannot be done, the evidence has to be rejected in toto. A witness may be speaking untruth in some respect and it has to be appraised in each case asto what extent the evidence is worthy of acceptance and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. Falsity of particular material witness on a material particular would not ruin it from the beginning to end. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment." Rulings relied upon:

(i) Ram Rahis vs. State of U.P., 2008 (61) ACC 925 (All—D.B.)
(ii) Sohrab vs. State of M.P., (1972) 3 SCC 751
(iii) Ugar Ahir vs. State of Bihar, AIR 1965 SC 277
(iv) Nasir Ali vs. State of U.P., AIR 1957 SC 366

162. When two witnesses making contrary statements on the same fact: One statement by one of witnesses may not be taken out of context to abjure guilt on the part of all accused persons. When the case of the prosecution is based on evidence of eye witnesses, some embellishments in prosecution case caused by evidence of any prosecution witness although not declared hostile, cannot by itself be ground to discard entire prosecution case. On the basis of mere statement of one P.W. on a particular fact, the other P.W. cannot be disbelieved. See:

(i) Bhanwar Singh vs. State of M.P., AIR 2009 SC 768
(ii) Dharmendrasingh @ Mansing Ratansing vs. State of Gujarat, (2002) 4 SCC 679

163. Electronic records & their appreciation: With the passage of the **'Information Technology Act, 2000'** as further amended by the Parliament in the year 2008 (Central Act No. 10 of 2009), the expression "document" now includes **"electronic records"** also**.**

164. Public Documents: Sections 35 & 74 of Evidence Act: A document which fulfills following three conditions is a public document:

(i) that the document is required to be prepared under some laws;
(ii) that such document has been prepared by a public servant;

(iii) that the public servant prepared such document in discharge of his official duty.

165. Certain public documents: Followings are treated to be public documents.

(i) **Khasara & Khatauni** prepared under land laws.

(ii) **Map** prepared by police officer during investigation of crime. See: Rajasthan State Road Transport Corporation Vs. Nand Kishore, AIR 2001 Rajasthan 334.

(iii) **Court record**. See: P.C. Thomas Vs. P.M. Ismail, (2009) 10 SCC 239.

(iv) **FIR** registered u/s 154 CrPC. See: Hasib Vs. S, AIR 1972 SC 283 and Vimlesh Kumari Vs. Rajendra Kumar, 2010 (4) ALJ (NOC) 422(All).

(v) **Electoral roll (voter list).** See: Raghunath Behera Vs. Balaram Behera, AIR 1996 Orissa 38.

(vi) **Charge sheet** submitted by an investigating officer u/s 173(2) CrPC is a public document within the meaning of Sec. 35 of the Evidence Act. See: Standard Chartered Bank Vs. Andhra Bank Financial Services Ltd., (2006) 6 SCC 94 (Three-Judge Bench)

(vii) **Statement of a witness or confessional statement of an accused recorded by Magistrate u/s 164 CrPC is a 'Public Document'** within the meaning of Sections 74 & 80 of the Evidence Act" (now u/s 74 & 79 of the BSA) and as such it can be read or used per se by the court without calling the Magistrate as witness to prove it. See: State of Uttar Pradesh Vs. Singhara Singh, AIR 1964 SC 358 (Para 5) (Three-Judge Bench)

(ix) **PMR being public document, its certified copy is admissible:** Since the PMR, FIR & other such documents or public documents therefore their certified copies would be admissible in evidence u/s 63 of the Evidence Act. See : Vimlesh Kumari Vs. Rajendra Kumar, 2010 (4) ALJ (NOC) 422(All)

(x) **Govt school register and T.C. :** So far as the entries made in the official record by an official or person authorized in performance of official duties are concerned, they may be admissible u/s 35 of the Evidence Act but the court has a right to examine their probative value. The authenticity of the entries would depend on whose information such entries stood recorded and what was his source of information. The entries in school register or school leaving certificate require to be proved in accordance with law and the standard of proof

required in such cases remained the same as in any other civil or criminal case. See:

(i) C. Doddanarayana Reddy Vs. C. Jayarama Reddy, (2020) 4 SCC 659 (Para 18)

(ii) Madan Mohan Singh Vs. Rajni Kant, (2010) 9 SCC 209 (Para 20)

(iii) Updesh Kumar Vs. Prithvi Singh,(2001) 2 SCC 524

(iv) State of Punjab Vs. Mohinder Singh, (2005) 3 SCC 702.

(viii) **Birth and death registers** are public documents. See: Thambi Vs. V.M. Duraisamy, 2009 (76) AIC (Summary of Cases) 11 (Madras).

(ix) Certified copy of registered **Power of Attorney** is not a public document. See: Bidhan Paul Vs. P.C. Ghosh, AIR 2002 Gauhati 46.

(x) **Driving licence** is a public document within the meaning of Section 74 of the Evidence Act and its entries are admissible in evidence under Section 77 of the Evidence Act. There is no further necessity of proving its contents by examining any witness. See: OIC Limited Vs. Smt. Poonam Kesarwani, 2009(3) ALJ 613 (All)(DB).

(xi) **G.O.** issued by Government is a public document. But, its mere cyclo styled copy is not admissible in evidence. See: Union of India Vs. Nirmal Singh, AIR 1987 All 83.

(xii) **Extract of Government notification** published in a newspaper is not admissible in evidence. See: Laxmi Raj Shetty Vs. State of T.N., AIR 1988 SC 1274.

166. Document as old as 20 years: Section 90 of Evidence Act: Presumption of its due execution.

167. Electronic record as old as 05 years: Section 90A of Evidence Act: Presumption of its due execution.

168. Section 3 (as amended vide the Information Technology (Amendment) Act, 2008) (Central Act No. 10 of 2009): The expressions, Certifying Authority, electronic signature, Electronic Signature Certificate, electronic form, electronic records, information, secure electronic record, secure electronic signature and subscriber shall have the meanings respectively assigned to them in the Information Technology Act, 2000.

169. Section 17 : Admission defined : An admission is a statement, (Oral or documentary or contained in electronic form), which suggests any inference as to any fact in issue or relevant fact, and which is made by

any of the persons, and under the circumstances, hereinafter mentioned.

170. Section 22-A : When oral admission as to contents of electronic records are relevant : Oral admissions as to the contents of electronic records are not relevant, unless the genuineness of the electronic record produced is in question.

171. Evidence of witness in support of contents of oral agreement admissible: Where the witnesses had deposed that in their presence the parties had negotiated about an oral agreement for reconveyance and such agreement was made, it has been held by the Supreme Court that it will be too hyper technical to contend that the witnesses should not only state that in their presence negotiation for oral agreement was held but they had heard the talks between the parties**.** See: Achutananda Vaidya Vs. Praffulya Kumar Gayen, AIR 1997 SC 2066.

172. Section 34 : Entries in books of accounts including those maintained in an electronic form, when relevant: (Entries in books of accounts including those maintained in an electronic form), regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

173. Section 35 : Relevancy of entry in public record or an electronic record made in performance of duty : An entry in any public or other official book, register or record or an electronic record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record or an electronic record is kept, is itself a relevant fact.

174. Section 39 : What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers.

175. Section 45-A : Opinion of Examiner of Electronic Evidence

176. Section 47-A : Opinion as to electronic signature which relevant

177. Section 59 : Proof of facts by oral evidence

178. **Section 65-A :** Special provisions as to evidence relating to electronic record.

179. **Section 65-B :** Admissibility of electronic records

180. **Section 67-A :** Proof as to electronic signature

181. **Section 73-A :** Proof as to verification of digital signature

182. **Section 81-A :** Presumption as to Gazettes in electronic forms

183. **Section 85-A :** Presumption as to electronic agreements

184. **Section 85-B :** Presumption as to electronic records and electronic signature

185. **Section 85-C:** Presumption as to Electronic Signature Certificates

186. **Section 88 :** Presumption as to telegraphic messages

187. **Section 88-A :** Presumption as to electronic messages

188. **Section 90-A :** Presumption as to electronic records five years old

189. **Section 131 :** Production of documents or electronic records which another person, having possession, could refuse to produce.

190. **Science of identification of finger-prints has attained near perfection as compared to identification of hand-writing:** The science of identification of finger-prints has attained near perfection and the risk of an incorrect opinion is practically non-existent. On the other hand, the science of identification of hand-writing is not nearly so perfect and the risk is, therefore, higher. See:
(i) C. Kamalakkannan Vs, State of Tamil Nadu, (2025) 4 SCC 487 (Para 13)
(ii) Murari Lal Vs. State of MP, (1980) 1 SCC 704 (Paras 4,6,11)

191. **Finger prints & its evidentiary value:** There is no gainsaying the fact that a majority of fingerprints found at crime scenes or crime articles are partially smudged, and it is for the experienced and skilled fingerprint expert to say whether a mark is usable as fingerprint evidence. Similarly it is for a competent technician to examine and give his opinion whether the identity can be established, and if so whether that can be done on eight or even less identical characteristics

in an appropriate case. See: Mohan Lal Vs. Ajit Singh, (1978) 3 SCR 823.

192. Fingerprint experts report not substantive evidence: Evidence of fingerprint expert u/s 45 of the Evidence Act is not substantive evidence. It can be used to corroborate some items of substantive on record. See: Musheer Khan Vs. State of M.P, 2010 (70) ACC 150(SC)

193. Non-examination of finger print expert & its effect: Where the crime article, before its seizure, was handled by many persons, non-examination of the finger print expert in such a case would not have any adverse effect on prosecution case. See: Keshavlal Vs. State of M.P., (2002) 3 SCC 254.

194. Thumb impression & expert's evidence: Science of identifying thumb impression by an expert u/s. 45 of the Evidence Act is an exact science and does not admit of any mistake or doubt. See: Jaspal Singh Vs. State of Punjab, AIR 1979 SC 1708.

195. Science of identification of finger-prints has attained near perfection as compared to identification of hand-writing: The science of identification of finger-prints has attained near perfection and the risk of an incorrect opinion is practically non-existent. On the other hand, the science of identification of hand-writing is not nearly so perfect and the risk is, therefore, higher. See:
(i) C. Kamalakkannan Vs, State of Tamil Nadu, (2025) 4 SCC 487 (Para 13)
(ii) Murari Lal Vs. State of MP, (1980) 1 SCC 704 (Paras 4,6,11)

196. Typewriter expert: Overruling an earlier Three-Judge Bench decision in Hanumant vs. State of M.P., AIR 1952 SC 343, a Five-Judge Bench of the Supreme Court has held that the word 'expert' in Sec. 45 of the Evidence Act includes expert in typewriters as well. Typewriting also falls within the meaning of work 'handwriting'. Hence opinion of typewriter expert is admissible in evidence. The examination of typewriting and identification of the typewriter on which the questioned document was typed in based on a scientific study of certain significant features of the typewriter peculiar to a particular typewriter and its individuality which can be studied by an expert having professional skill in the subject and, therefore, the opinion of the typewriter expert is admissible u/s. 45 of the Evidence Act. See: State Through CBI Vs. S.J. Choudhary, AIR 1996 SC 1491 (Five-Judge Bench).

197. Agreement for sale does not convey title to prospective purchaser: Legally an agreement to sell may not be regarded as a transaction of sale or a document transferring the proprietary rights in an immovable property but the prospective purchaser having performed his part of the contract and lawfully in possession acquires possessory title which is liable to be protected in view of Section 53-A of the Transfer of Property Act, 1882. The said possessory rights of the prospective purchaser cannot be invaded by the transferor or any person claiming under him. See: Ghanshyam Vs. Yogendra Rathi, (2023) 7 SCC 361.

198. Undivided share of co-parcener can be transferred but possession cannot be handed over to him: An undivided share of co-parcener (co-sharer) can be transferred but possession cannot be handed over to vendee unless the property is partitioned by metes and bounds either by decree of court in partition suit or by settlement among co-sharers. See:

(i) Gajara Vishnu Gosavi Vs. Prakash Nanasahed Kamble, (2010) 2 SCC 1105 (Para 13)

(ii) Ramdas Vs. Sitabai, (2009) 7 SCC 444 (Para 14)

(iii)M.V.S.Manikayala Rao Vs Narasimhaswami, AIR 1966 SC 470 (Para 5)

(ii)Sidheshwar Mukherjee Vs, Bhubneshwar Prasad Narain Sing, AIR 1953 SC 487

199. Court can refuse to examine the case of the party on merits if it misleads the court and does not place before it all the material facts: If a party does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits and such a party requires to be dealt with for contempt of court for abusing the process of the court. See: Kusha Vs. State of Odisha, (2024) 4 SCC 432.

Part – 3
How to Write Judgements

1. Writing judgments and orders is virtually an art which often varies from judge to judge as no form or format has been provided in law as to how judgments and orders should be written by the judges. But the long drawn practices evolved by the courts over the decades have, to certain extent, settled the method of writing of judgments and orders of the courts & tribunals, etc. Arriving at conclusions and making of decisions in cases out of the material available on records of cases is the most cumbersome part of the judicial function of the judges. Writing qualitative judgments and orders requires a lot of experience and skill which a judge acquires in his career over the period. The Supreme Court of India has over the years given several land mark judgments highlighting the various methodologies to be adopted in writing of judgments and orders of various natures. Let us discuss here the various methods and manners of writing of judgments and orders of different natures with the help of the leading judicial pronouncements of the Supreme Court and High Courts.

2. **Definition of "judgment" u/s 2(9) CPC:** Section 2(9) CPC defines the word "judgment" thus: "judgment" means the statement given by the Judge of the grounds of a decree or order.

3. **Judgment : What is ? :** Judgment is a formal expression of opinion by the court. See : Boards & Boards Private Limited, Jaipur Vs. Himalaya Paper (Machinery) Pvt. Ltd., New Delhi, AIR 1990 Rajasthan 120

4. **A judgment is manifestation of reasons and judgment writing is a critical instrument in fostering the rule of law and in curbing rule by the law:** A judgment culminates in a conclusion. But its content represents the basis for the conclusion. A judgment is hence a manifestation of reason. The reasons provide the basis of the view which the decision-maker has espoused, of the balances which have been drawn. That is why reasons are crucial to the legitimacy of a judge's work. They provide an insight into judicial analysis, explaining to the reader why what is written has been written. The reasons, as much as the final conclusion, are open to scrutiny. A judgment is written primarily for the parties in a forensic contest. The scrutiny is first and foremost by the person for whom the decision is meant, the conflicting parties before the court. At a secondary level, reasons furnish the basis for challenging a judicial outcome in a higher

forum. The validity of the decision is tested by the underlying content and reasons. But there is more. Equally significant is the fact that a judgment speaks to the present and to the future, judicial outcomes taken singularly or in combination have an impact upon human lives. Hence, a judgment is amenable to wider critique and scrutiny, going beyond the immediate contest in a courtroom. Citizens, researchers and journalists continuously evaluate the work of courts as public institution committed to governance under law. Judgment writing is hence a critical instrument in fostering the rule of law and in curbing rule of thumb by the law. See: State Bank of India vs. Ajay Kumar Sood, (2023) 7 SCC 282 (Para 16)

5. **Features of an ideal judgment:** The Supreme Court has enumerated following features of an ideal judgment to be written by the courts and tribunals, etc.:

(i) plain language
(ii) focusing on core factual and legal issues
(iii) paragraphing / numbering
(iv) table of contents if the judgement is complex and longer
(v) conciseness of clarity
(vi) avoiding mentioning unnecessary and excessive citations
(vii) avoiding showing unnecessary academics
(viii) avoiding harsh remarks & strictures against all and sundry
(ix) timely delivery of judgment. See:

(a) State Bank of India Vs. Ajay Kumar Sood, 2022 INSC 833
(b) Joint Commissioner of Income Tax, Surat Vs. Saheli Leasing & Industries Ltd., (2010) 6 SCC 384.

6. **Judgment writing is a layered exercise:** Judgment writing is a layered exercise. In one layer, a judgment addresses the concerns and arguments of parties to a forensic contest. In another layer, a judgment addresses stakeholders beyond the conflict. It speaks to those in society who are impacted by the discourse. In the layered formulation of analysis, a judgment speaks to the present and to the future. Whether or not the writer of a judgment envisions it, the written product remains for the future, representing another incremental step in societal dialogue. If a judgment does not measure up, it can be critiqued and criticised. Behind the layers of reason is the vision of the adjudicator over the values which a just society must embody and defend. In a constitutional framework, these values have to be founded in the Constitution. The reasons which a Judge furnishes provide a window, an insight, into the work of the court in espousing these values as an integral element of the judicial function. See: State Bank of India vs. Ajay Kumar Sood, (2023) 7 SCC 282 (Para 17)

7. **Essentials of a judgment:** According to Order 20, rule 4(2) CPC, the essential components of a judgment are :

(i) concise statement of the case
(ii) points for determination (issues)
(iii) decision thereon
(iv) reasons for such decision. See:
(a). Cellular Operators Association of India Vs. Union of India, AIR 2003 SC 899.
(b). Union of India Vs. Manager, Jain Associates, AIR 2001SC 3381
(c). Balraj Taneja Vs. Sunil Madan, AIR 1999 SC3381.

8. **What a judgment must reflect?:** Fact that judgment is accurate is not sufficient. It must also be reasonable, logical and easily comprehensible. Judicial opinion is to be written in such a way that it elucidates in convincing manner and proves the fact that the verdict is righteous and judicious. Therefore, it is desirable that judgment should have clarity, both on facts and law, and on submissions, findings, reasonings and ultimate relief granted. See: Shakuntala Shukla Vs State of UP, AIR 2021 SC 4384

9. **A judgment without reasons is no judgment in the eye of law**: A judgment for its sustenance must contain not only findings on the points, but must also contain what evidence consists of, and how does not prove plaintiff's case. A judgment unsupported by reasons is no judgment in the eye of law. It is well settled that the reasons are the links between the material on record and the conclusion arrived at by the court. See :

(i) Shakuntala Shukla Vs State of UP, AIR 2021 SC 4384
(ii) Commissioner of Income Tax Vs. Surendra Singh Pahwa, AIR 1995 All 259.

10. **Facts :**Necessary facts relating to the rights and liabilities of the parties or the core controversies involved in between the parties which require adjudication by the court must be mentioned in the judgment. But unnecessary facts narrated by the parties in their pleadings or applications which do not reflect upon the rights and liabilities of the parties or controversies involved in the case need not be stated in judgments or orders. Brevity indicates clarity and therefore every fact mentioned in the pleadings etc. of the parties should not be quoted. After proper marshalling of facts, only relevant facts to decide the controversy or the rights or liabilities of the parties should be discussed. See:Shakuntala Shukla Vs State of UP, AIR 2021 SC 4384

11. **Evidence and its appreciation:** Only that much part of oral or documentary evidence including electronic records should be quoted and analytically appreciated in the judgments or orders which is really needed for deciding the rights and liabilities of the parties or the controversies involved in a case. Unnecessary or irrelevant part of the evidence should normally be avoided and need not be discussed. The derivative or the conclusion derived from the appreciation of evidence should be recorded in the form of findings with clarity in the judgments or orders. See:Shakuntala Shukla Vs State of UP, AIR 2021 SC 4384

12. **Law and rulings:** The provisions of law and the relevant Rulings which are attracted and applicable in the light of facts and evidence on record must be quoted & analyzed and only then the conclusions or findings should be recorded in the judgments or orders.

13. **Mode of quoting rulings in judgments and orders:** (C.L. No. 36/IV-h-35 dated 11.4.1956 & C.L. No. 105/Ivh-35 dated 3.10.1956): Judicial officers should give correct citations of reported cases in their judgments. The proper way to do this is to state the names of parties first followed by the citation within brackets as indicated here :See: State of Bombay vs. United Motors, (1955) SCR 1069

14. **Effect of non-mentioning or wrong mentioning of correct provision of law in judgment or order :** It is well settled law that if an authority has jurisdiction to take particular action, mere mention of incorrect provision or non-mention of correct provision does not make the action without jurisdiction unless the authority has no jurisdiction in the matter. Wrong mentioning or non-mentioning of a statutory provision under which power was exercised in passing the order would not vitiate the order for which there was a source under general law or statute law. See :
    1. Kaushalya Kanya Inter College, Moradabad vs. State of UP, 2005 (2) AWC 1383 (All)
    2. High Court of Gujarat vs. Gujarat Kisan Mazdoor Panchayat, (2003) 4 SCC 712

15. **Clarity in findings:** There must be clarity in the views or findings recorded by the judge in his judgment or order and it should be devoid of ambiguity or confusions. See: Shakuntala Shukla Vs State of UP, AIR 2021 SC 4384

16. **Judges may have their own style of judgment writing:** Individual Judges can indeed have different ways of writing judgments and continue to have variations in their styles of expression. The

expression of a judge is an unfolding of the recesses of the mind. However, while recesses of the mind may be inscrutable, the reasoning in judgment cannot be. While Judges may have their own style of judgment writing, they must ensure lucidity in writing across these styles. See: State Bank of India vs. Ajay Kumar Sood, (2023) 7 SCC 282 (Para 28)

17. **Operative part of judgment to be clear :** The relief granted or refused for the liability etc. imposed and the ultimate result or fate of the case should be clearly recorded in the last part of the judgment or order which is generally called operative part and it should be given a separate paragraph. See: Shakuntala Shukla Vs State of UP, AIR 2021 SC 4384

18. **Grant of relief claimed in plaint implied if the decree merely says that the suit is decreed:** If the plaintiff has sued for an injunction and the decree merely says that the suit is decreed, the grant of an injunction, as prayed for in the plaint, is implied. It makes no difference that the decree is based on a compromise. The decree must be co-related to the relief claimed in the plaint. Of course, one must search for the real intent of the parties and decide if the prohibitions in the comprise were intended to be enforced as an injunction. See: Harihar Pandey vs. Mangala Prasad, AIR 1986 All 9.

19. **Ambiguity, confusions and words with uncertain meanings should be avoided :** Judge should normally express his views or conclusions or findings in judgments or orders in simple language with sufficient clarity capable of conveying to the parties or their counsel of what the judge intends to say. Ambiguity, confusions, want of clarity into expressions and language with uncertain meaning should be avoided. See: Shakuntala Shukla Vs State of UP, AIR 2021 SC 4384

20. **Simple language should be preferred in judgments and orders:** Using simple words and language easily understandable by the litigants, lawyers and the ordinary people should be preferred in the judgments and orders.

21. **Use of dignified & Proper words for lawyers:** Use of only dignified language and words for the lawyers conducting the case has been very long drawn tradition of the courts. Use of words like **"Learned or Ld."** for the lawyers for the parties has been the tradition of courts and therefore whenever and wherever there is a need to mention the word counsel or advocate, it should be prefixed by the dignified word learned or Ld.

22. **Harsh and offending words and language should be avoided in judgments and orders:** Recording harsh or offending or critical or derogatory remarks against the parties, their counsel, witnesses or against any other person in judgments and orders should be avoided. Judges must act independently and boldly while deciding a case but should not make atrocious remarks against the party or a witness or even against the subordinate court. Judges must not use strong and carping language, rather they must act with sobriety, moderation and restraint as any harsh and disparaging strictures passed by them against any person may be mistaken or unjustified and in such an eventuality they do more harm and mischief than good resulting in injustice. Maintenance of judicial independence is characterized by maintaining a cool, calm and poised mannerism as regards every action and expression of the members of the judiciary and not by using in appropriate, unwarranted and contumacious language. See **:** State of Gujarat Vs. Justice (retired) R.A. Mehta, (2013) 3 SCC 1 (para 104).

23. **Unbalanced language not be used in judgments and orders:** Unbalanced language is generally out of place in judicial adjudication. See:

(i).N. S. Gujral Vs. Custodian, Evacuee Property, AIR 1968 SC453.

(ii). Macropollo & Co. Vs. Macropollo Co. Employees Union, AIR 1958 SC 1012.

Note: For detailed discussions and the Supreme Court pronouncements on the subject, kindly see my Article "Law on Strictures and Defences Against Judicial Assaults" on my website on Google **lawhelpline.in**

24. **Lengthy sentences should avoided:** Writing lengthy sentences in judgments and orders should normally be avoided as mistakes and want of clarity may occur in the findings recorded by the court.

25. **Standard legal words and phrases generally used in courts should be preferred:** While writing judgments or orders, only legally prescribed or approved words and phraseology should be employed therein. However, if no such standard words are prescribed in statutes or legal glossaries etc., then the words and phraseologies spoken in ordinary parlance by the parties and their lawyers may also be used by the judge.

26. **Abbreviations, code words and difficult words in judgments and orders should be avoided:** A common man cannot and shall not be able to understand the abbreviations and the code words used in the judgment. It is well settled that the use of abbreviations and the code

words should be strictly avoided. It is equally well settled that the judgment should be so precise and so clear that a common man or a litigant must understand the judgment. The language should be sober, temperate and clear. See: Smt. Hina Singh Vs. Satya Kumar Singh, AIR 2007 Jharkhand 34 (DB).

27. **Proverbs, idioms, exaggerations, embellishments, ornamentations etc should be avoided in judgments and orders:** Use of proverbs, idioms, exaggerations, embellishments, ornamentation etc. should be avoided by the judges while expressing their views in their judgments and orders and only legally permissible and prevalent words and phrases should be used.

28. **Numbering of paragraphs:** Each paragraph in a judgment or lengthy order should be numbered.

29. **Sequencing of paragraphs:** Every important and material controversy relating to the rights and liabilities of the party in a judgment or order should be written in separate paragraphs according to the need of discussions.

30. **Task of numbering of paragraphs in a judgment requires great skill**: The task of paragraph numbering and internal referencing requires skill and judgment in great measure. The editor who inserts para numbering must know how legal argumentation and legal discourse is conducted and how a judgment of a court of law must read. Often legal arguments or conclusions are either clubbed into one paragraph in the original judgment or parts of the same argument are given in separate paragraphs. It requires judgment and the capacity for discernment for determining whether to carve out a separate paragraph from an existing paragraph in the original judgment or to club together separate paragraphs in the original judgment of the Court. Setting of paragraphs by the appellants of their own in the judgment entailed the exercise of the brain work, reading and understanding of subject of disputes, different issues involved, statutory provisions applicable and interpretation of the same and then dividing them in different paragraphs so that chain of thoughts and process of statement of facts and the application of law relevant to the topic discussed is not disturbed, would require full understanding of the entire subject of the judgment. Making paragraphs in a judgment could not be called a mechanical process. It requires careful consideration, discernment and choice and thus it can be called as a work of an author. Creation of paragraphs would obviously require extensive reading, careful study of subject and the exercise of judgment to make paragraph which has dealt with particular aspect of the case, and separating intermixing of a

different subject. Creation of paragraphs by separating them from the passage would require knowledge, sound judgment and legal skill. In our opinion, this exercise and creation thereof has a flavour of minimum amount of creativity. See: Eastern Book Company And Others v. D.B Modak And Another, (2008) 1 SCC 1 (Para 61)

31. **Distinct paragraphs for different parts of controversies requiring adjudication:** The judgment or order should be divided into different paragraphs according to its needs. Normally a separate paragraph should be given for a particular part of controversy involved in between the parties regarding their rights of liabilities.

32. **No personal view should be injected in the judgment by the judge:** See: A judge should not inject his personal view in the judgment. See: Director, Studies Vs. Vaibhav Singh Chauhan, AIR 2008 SC(Suppl) 696.

33. **No subjectivity in judgment:** Judges should avoid to incorporate in their judgments or orders their subjective views, individual philosophy, imaginary or fanciful ideas not on record or germane to the case in hand. Objectivity must be given precedence over subjectivity**.** While writing judgments or orders, the Judges must keep them confined to the controversy involved in the case, material available on record and to the law and practices permissible.

34. **Courts not to be swayed away by emotions** : Where the court was swayed away by emotions and sentiments while recording conviction of the accused for offences u/s 302, 201 IPC despite the fact that there was no evidence to connect the accused Dr. Mahender Singh Dahia with the murder of his wife Namita, a British National of Indian origin, who was murdered in a hotel in Brussels, Belgium, on the very first night of her marriage, and the conviction was set aside by the Delhi High Court ant the accused was acquitted, it has been observed (in para 20) by the Hon'ble Supreme Court that given the tendency of human beings to become emotional and subjective when faced with the crimes of depravity, the courts have to be extra cautious not to be swayed away by strong sentiments of repulsion and disgust. It is in such cases that the court has to be on its guard and to ensure that the conclusion reached by it are not influenced by emotion but are based on the evidence produced in the court. See; State through CBI Vs. Mahender Singh Dahia, 2011(74) ACC 914(SC)

35. **No repetitions:** There should be no repetitions of the views already expressed by the judge in his judgment/order.

36. **Judgment must not contain self-contradictory passages into it:** A judgment should not be inconsistent in itself and should not incorporate passages repugnant to each other. See: State of West Bengal Vs. Kesoram Industries Ltd, AIR 2005 SC 1646**.**

37. **I, My, Me, Mine should be avoided in judgments and orders:** Use of words like I, My, Me, Mine in judgments or orders by the Judges for themselves should be avoided and instead following words and phrases should be preferred:

(i). court is satisfied that
(ii). court is of the view that
(iii). in the opinion of the court
(iv). court finds that
(v). court concludes that
(vi). court directs that
(vii). court holds that
(viii). application is hereby rejected by the court
(ix). accused persons are granted bail by the court
(x). court fails to understand as to why he preferred to waive his rights.

38. **Checking of the draft judgment :** After preparing the draft of the judgment or order, it should be carefully read by the judge preparing the draft so that before signing, dating and pronouncing it, the mistakes may be checked and rectified.

39. **Cuttings and erasures etc in judgments and orders should be avoided:** In case any over-writings, cuttings or erasures occur in judgments or orders, the same should be initialed by the judge pronouncing the judgment or order.

40. **Long judgments not necessarily great:** Brevity in judgment writing has not lost its virtue. All long judgments or orders are not great nor are brief orders always bad. What is required of any judicial decision is due application of mind, clarity of reasoning and focused consideration. A slipshod consideration or cryptic order or decision without due reflection on the issues raised in a matter may render such decision unsustainable. Hasty adjudication must be avoided. Each and every matter that comes to the court must be examined with the seriousness it deserves. See: Board of Trustees of Martyrs Memorial Trust and Another Vs. Union of India and Others, (2012) 10 SCC 734 (Para 22)

41. **Passing lengthy orders should be avoided:** The time has reached to adopt all possible measures to expedite the court procedures and to

chalk out measures to avert all roadblocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail paced progress of proceedings in trial courts would further be slowed down. It can be appreciated if such a detailed order has been passed for culminating the proceedings before them. But it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages in the trial. If there is no legal requirement that the trial court should write an order showing the reasons for framing a charge, why should the already burdened trial courts be further burdened with such an extra work. See: Kanti Bhadra Shah Vs. State of West Bengal, 2000 CrLJ 746 (SC)

42. **Number of pages covered in a judgment not material:** Writing unnecessarily lengthy judgments than required should be avoided. It is not the number of pages in a judgment but sufficiency of reasons in support of the conclusions arrived at by the judge that is relevant. Judgments or orders must be reasoned and speaking to justify the conclusion. See : Union of India vs. Essel Mining & Industries Ltd., 2005 (6) SCC 675

43. **Laboured judgment:** Writing unnecessarily lengthy judgments than required should be avoided. It is not the number of pages in a judgment but sufficiency of reasons in support of the conclusions arrived at by the judge that is relevant. Judgments or orders must be reasoned and speaking to justify the conclusion. See : Union of India vs. Essel Mining & Industries Ltd., 2005 (6) SCC 675

44. **Brief judgment when valid?:** Where a finding is arrived at cursorily, the judgment based on such a finding is not vitiated if the finding is supported by evidence. See: Satya Pal Vs. Ved Prakash, AIR 1980 All 268.

45. **Brief judgment when invalid?:** A judgment may be brief, but not so brief as not to disclose the points for determination or to discuss the evidence led thereon . See: Kuldip Oil Industries Vs. Pratap Singh, AIR 1959 All 505.

46. **No oral judgments and orders:** CPC does not provide for oral judgments and orders. Section 142 CPC provides that all orders and notices served on or given to any person under the CPC shall be in writing. See: K. V. Rami Reddy Vs. Prema, AIR 2008 SC 1534.

47. **Proforma judgment or order:** Recording of reasons in support of the conclusions arrived at in a judgment or order by the Courts in our judicial system has been recognized since the very inception of the judicial system. Right to know the reasons for the decisions made by the Judges is an indispensable right of a litigant. Even a brief recording of reasoned opinion justifying the decision made would suffice to withstand the test of a reasoned order or judgment. A non-speaking, unreasoned or cryptic order passed or judgment delivered without taking into account the relevant facts, evidence available and the law attracted thereto has always been looked at negatively and judicially de-recognized by the courts. Mere use of the words or the language of a provision in an order or judgment without any mention of the relevant facts and the evidence available thereon has always been treated by the superior courts as an order incapable of withstanding the test of an order passed judicially. Ours is a judicial system inherited from the British Legacy wherein objectivity in judgments and orders over the subjectivity has always been given precedence. It has been judicially recognized perception in our system that the subjectivity preferred by the Judge in place of objectivity in a judgment or order destroys the quality of the judgment or order and an unreasoned order does not subserve the doctrine of fair play as has been declared by the Apex Court in the matter of Andhra Bank v. Official Liquidator, 2005(3) SCJ 762**.** For a qualitative decision arrived at judicially by the courts, it is immaterial in how many pages a judgment or order has been written by the Judge as has been declared by the Apex Court in the matter of Union of India v. Essel Mining & Industries Ltd., (2005) 6 SCC 675.

48. **Non-speaking or cryptic judgment and order:** Recording of reasons in support of the conclusions arrived at in a judgment or order by the Courts in our judicial system has been recognized since the very inception of the system. Right to know the reasons for the decisions made by the Judges is an indispensable right of a litigant. Even a brief recording of reasoned opinion justifying the decision made would suffice to withstand the test of a reasoned order or judgment. A non-speaking, unreasoned or cryptic order passed or judgment delivered without taking into account the relevant facts, evidence available and the law attracted thereto has always been looked at negatively and judicially de-recognized by the courts. Mere use of the words or the language of a provision in an order or judgment without any mention of the relevant facts and the evidence available thereon has always been treated by the superior courts as an order incapable of withstanding the test of an order passed judicially. Ours is a judicial system inherited from the British Legacy wherein objectivity in judgments and orders over the subjectivity has always been given

precedence. It has been judicially recognized perception in our system that the subjectivity preferred by the Judge in place of objectivity in a judgment or order destroys the quality of the judgment or order and an unreasoned order does not subserve the doctrine of fair play as has been declared by the Apex Court in the matter of Andhra Bank v. Official Liquidator, 2005(3) SCJ 762. For a qualitative decision arrived at judicially by the courts, it is immaterial in how many pages a judgment or order has been written by the Judge as has been declared by the Apex Court in the matter of Union of India v. Essel Mining & Industries Ltd., (2005) 6 SCC 675.

Note: For more Supreme Court pronouncements on the subject, kindly see my Article on "**Necessity of Passing Speaking & Reasoned Orders"** available on Google on my website **(lawhelpline.in).**

49. Judgment to be pronounced only in open court: (G.L. No.14 dated 22.10.1904) **:-** In miscellaneous proceedings as well as in suits and appeals, judgment must not only be pronounced in open court, but also dated and signed in open court at the time when it is pronounced and before the decree or order in pursuance of such judgments is drawn up.

50. Time limit for pronouncing judgment from the date of conclusion of arguments: (C.L. No. 106/1971, dated 30.8.1973) : (1) Where argument is heard day after day or arguments are heard afresh, cases in which judgments are delivered more than one month after the close of evidence have to be entered in the quarterly return though no explanation need be furnished in the last column of the said return if the judgment is pronounced within one month of the commencement of argument i. e. within one month of the first date on which the arguments were heard.

(2) On receipt of the quarterly return, the District Judge should scrutinize all cases in which judgment is delivered more than one month after the conclusion of arguments and satisfy himself that there was no unnecessary delay in the conclusion of the arguments or that arguments were heard afresh for some valid reason.

(3) While scrutinizing the quarterly statement, the District Judge should also scrutinize those cases where it appears that there has been unreasonable time gap between the close of evidence and the conclusion of arguments. In such cases, he can note his comments and, if necessary, obtain the explanation of the officer also.

51. Courts and Tribunals must ensure uploading of their judgments and orders and their accessibility by using digital signatures, but not mere their scanned versions of printed copies: The importance of making judgments accessible to persons from all section of society,

especially persons with disability, needs emphasis. All judicial institutions must ensure that the judgment and orders being published by them do not carry improperly placed watermarks as they end up making the documents inaccessible for persons with visual disability who use screen readers to access them. On the same note, courts and tribunals must also ensure that the version of the judgment and orders uploaded is accessible and signed using digital signatures. They should not be scanned versions of printed copies. The practice of printing and scanning documents is a futile and time-consuming process which does not serve any purpose. The practice should be eradicated form the litigation process as it tends to make documents as well as process inaccessible for an entire gamut of citizens. . See: State Bank of India vs. Ajay Kumar Sood, (2023) 7 SCC 282 (Para 22)

52. **Full particulars of accused persons such as their names, parentage, complete address etc. must be mentioned in the judgments of sub-ordinate courts :** Full particulars of accused persons such as their names, parentage, complete address etc. must be mentioned in the judgments of sub- ordinate courts. See : State of UP Vs. Mahipal, 2014 (84) ACC 488 (All)(DB).

53. **Duty of Magistrate while passing summoning order in complaint case:** Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused. See: Pepsi Foods Ltd. vs. Special Judicial Magistrate, 1998 SCC (Criminal) 1400.

54. **Arguments: How much part of arguments should be quoted in judgments or orders?:** It is not necessary for a judge to quote and discuss every argument advanced by the parties or their counsel. But

all such points raised in the arguments by the counsel for parties which reflect upon the real controversy involved in the case or on the rights and liabilities of the parties must be quoted discussed by the judge in his judgment or order. **Advancing lengthy arguments** has been deprecated by the Courts in the cases noted below :

1. Gauri Shankar vs. DDC, Allahabad, 2005 (4) AWC 3259 (All)
2. LIC of India vs. Escorts Ltd., AIR 1986 SC 1370

55. Only lawyer, not Judge, is expected to know the law: There is a presumption in law that a lawyer knows the law but there is no absolute presumption that a Judge should know the law. A Judge is only called upon to balance the two sides of an argument presented before him. See: Judgment dated 01.05.2014 passed by Hon'ble Justice Rajiv Narain Raina of the Punjab and Haryana High Court in CR. No. 3791 / 2013 (O&M), Nirmal Singh & Others Vs. Tarsem Singh & Others

56. Sentimental arguments should not be entertained by courts: It has been clarified by the Supreme Court that sentimental arguments advanced by the Bar should not be entertained. See: Gopal Singh vs. State Cadre Forest Officers' Association, AIR 2007 SC 1878

57. Total 20 days for arguments in Bihar Fodder Scam case granted by the Supreme Court : In the Bihar fodder scam case, an application for transfer of the case from the court of trail judge (at Ranchi) was moved before the Supreme Court by one of the accused persons namely Shri Lalu Prasad Yadav on the ground that the trial judge was close relative of a Minister in the Govt. of Bihar and who was Lalu Prasad's political rival and there was no chance to get justice from the court of the trial judge. The Supreme Court rejected the transfer application with the directions/observations that : *"The order-sheet of the fodder scam case reveals that the exercise of power by the Special Judge cannot be faulted except its intimation to the parties in the midst of the arguments and compelling them to file written arguments on or before 1.7.2013 and judgment to be pronounced on 15.7.2013. Except the said recourse, which is not in consonance with the scheme of the CrPC in a criminal trial, considering the magnitude of the case pending since 1997, the conduct of the judge cannot be faulted. In view of the same, this court is inclined to provide further time for the accused as well as prosecution to complete their arguments, if they so desire. However, keeping in view the submissions made that arguments are still to be advanced, a further time of five days for the prosecution and fifteen days for all the accused including the appellant herein is granted. The Special Judge should pronounce the decision as early as possible without being*

influenced by the observations made by the superior courts." See: Lalu Prasad alias Lalu Prasad Yadav Vs. State of Jharkhand, (2013) 8 SCC 593 *(Paras 13, 17, 21, 22).*

58. For verbally pronounced judgment in open court, See: Order 41, rule 31 CPC as amended in UP.

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Part – 4
Revisions (Section 210 RC)

1. **Revision: Section 210 of UP Revenue Code, 2006:** Section 210 of UP Revenue Code, 2006 reads thus: **Power to call for the records**.—
[(1) The Board or the Commissioner may call for the record of any suit or proceeding decided by any subordinate Revenue Court in which no appeal lies for the purpose of satisfying itself or himself as to the legality or propriety of any order passed in such suit or proceeding, and if such subordinate Court appears to have—

(a) exercised a jurisdiction not vested in it by law; or

(b) failed to exercise a jurisdiction so vested; or

(c) acted in the exercise of such jurisdiction illegally or with material irregularity;

the Board, or the Commissioner, as the case may be, may pass such order in the case as it or he thinks fit.

(2) If an application under this section has been moved by any person either to the Board or to the Commissioner, no further application by the same person shall be entertained by the other of them.

Explanation.—For the removal of doubt, it is hereby declared that when an application under this section has been moved either to the Board or to the Commissioner, the applicant shall not be permitted to be withdrawn for the purpose of filing the application against the same order to the other of them.

(3) No application under this section shall be entertained after the expiry of a period of **sixty days** from the date of the order sought to be revised or from the date of commencement of this Code, whichever is later.

2. **No revision u/s 210 of Revenue Code lies where order is appealable u/s 207 of the Code:** No revision u/s 210 of the Revenue Code, 2006 lies where the order is appealable u/s 207 of the Revenue Code. See: Judgment dated 03.09.2026 of the Allahabad High Court passed in Surendra Deo Vs. Board of Revenue.

3. **No revision u/s 210 of Revenue Code lies against mere interlocutory or procedural orders:** No revision u/s 210 of Revenue Code lies against mere interlocutory or procedural orders. Orders like an order recalling ex-parte status quo are not revisable. See : Judgment dated 04.10.2024 of Allahabad High Court passed in Mohd. Muslim Vs. State of UP

4. **Revision when maintainable u/s 210 of UP Revenue Code**? : A revision is maintainable u/s 210 of UP Revenue Code under the following conditions:

(i) When no appeal lies against the impugned order
(ii) Order must have decided a proceeding
(iii) Not an interlocutory order
(iv) Jurisdictional error or illegality
(v) Order passed without jurisdiction
(vi) Failure to exercise jurisdiction
(vii) Illegality or material irregularity. See:

(a) Judgment dated 04.10.2024 of Allahabad High Court passed in Mohd. Muslim Vs. State of UP
(b) Judgment dated 18.08.2023 of Allahabad High Court in Writ-C no. 10192 of 2023 Paltoo Ram Yadav Vs. State of UP

5. **Revision when not maintainable u/s 210 of UP Revenue Code**? : A revision is not maintainable u/s 210 of UP Revenue Code under the following conditions:

(i) Alternative remedy of appeal
(ii) Interlocutory order
(iii) Second revision. See:

(a) Judgment dated 04.10.2024 of Allahabad High Court passed in Mohd. Muslim Vs. State of UP
(b) Judgment dated 18.08.2023 of Allahabad High Court in Writ-C no. 10192 of 2023 Paltoo Ram Yadav Vs. State of UP

6. **Revisional Court cannot interfere with the order of the Subordinate Court merely because it has a different view:** The mere fact that the revisional court had a different view on the same facts would not confer jurisdiction on it to interfere with an order passed by the revisional court/executing court. See: Varadarajan Versus Kanakavalli And Others, (2020) 11 SCC 598.

7. **Meaning of words "illegally" and "material irregularity" occurring in Section 115 CPC:** The words "illegally" and "material irregularity" do not cover either errors of fact or law. They do not refer to the decision arrived at but to the manner in which it is reached. The errors contemplated relate to material defects of procedure and not to errors of either law or fact after the formalities which the law prescribes have been complied with. See: Ngaitlang Dhar Versus Panna Pragati Infrastructure Private Limited and Another, (2022) 6 SCC172 (Para 34).

8. **Difference between revisional and appellate jurisdiction:** Where both expressions "appeal" and "revision" are employed in a statute,

obviously, the expression "revision" is meant to convey the idea of a much narrower jurisdiction than that conveyed by the expression "appeal". The use of two expressions "appeal" and "revision" when used in one statute conferring appellate power and revisional power is not without purpose and significance. Ordinarily, appellate jurisdiction involves a rehearing while it is not so in the case of revisional jurisdiction when the same statute provides the remedy by way of an "appeal" and so also of a "revision". If that were so, the revisional power would become co-extensive with that of the trial court or the subordinate tribunal which is never the case. See: Hindustan Petroleum Corporation Limited Vs. Dilbahar Singh, (2014) 9 SCC 78 (Five-Judge Bench).

9. **Revisional and appellate jurisdiction compared:** Revisional jurisdiction in effect and substance is an appellate jurisdiction. But it cannot be equated with a full-fledged appeal. See :

(i) G.L. Vijain vs. K. Shankar, AIR 2007 SC 1103

(ii) Narinder Mohan Arya vs. United India Insurance Co. Ltd., (2006) 4 SCC 713

(iii) Chandrika Prasad vs. Umesh Kumar Verma, (2002) 1 SCC 531

10. **Revision u/s 115 CPC not a substantive right:** It is well-settled position in law that the right of appeal is a substantive right but there is no substantive right to file revision u/s 115 CPC. See :

(i) Hindustan Petroleum Corporation Limited Vs. Dilbahar Singh, (2014) 9 SCC 78 (Five-Judge Bench).

(ii) Shiv Shakti Cooperative Housing Society, Nagpur Vs. Swaraj Developers & others, AIR 2003 SC 2434

11. **Exercising original powers of trial court by revisional court disapproved by the Supreme Court:** Where the Hon'ble Himachal Pradesh High Court had allowed the Criminal Revision by entering into merits (assuming original powers of the trial court) by re-appreciating entire evidence and forming opinion that there was no prima facie case against the accused for framing charge, it has been held by the Hon'ble Supreme Court that the order of the High Court was improper in as much as the High Court in its revisional jurisdiction cannot appraise the evidence. It is the trial court which has to decide whether evidence on record is sufficient to make out a prima facie case against the accused so as to frame charge against him. Pertinently, even the trial court cannot conduct roving and fishing inquiry into evidence. It has only to consider whether evidence collected by the prosecution discloses prima facie case against the accused or not. See: Ashish Chadha Vs. Smt. Asha Kumari & another, AIR 2012 SC 431.

12. **Exercising original powers of lower court by revisional court disapproved by Allahabad High Court:** Where in a revision filed before Sessions Judge against rejection of application by Magistrate u/s 156(3) CrPC, the Sessions Judge (by exercising original powers of the Magistrate) himself had directed the police for registration of FIR, it has been held that the Sessions Judge could not have directed the police to register FIR u/s 156(3) CrPC. See :
    (i) Hari Prakash kasana vs. State of U.P., 2009 (5) ALJ 750 (All)
    (ii) Nawal Kishor Gupta vs. State of U.P. 2010 (5) ALJ 338 (All)

13. **Orders of civil or criminal courts can be challenged only by way of an appeal or revision or by way of a petition under Article 227 of the Constitution and not under Article 226:** Judicial orders passed by civil courts or criminal courts are not amenable to challenge under Articles 32 or 226 of Constitution. Orders of the civil courts or criminal courts can be challenged only by way of an appeal or revision or by way of a petition under Article 227 of the Constitution. See:
    (i) Neeta Singh Vs. State NCT of Delhi, (2026) 6 SCC 817 (Paras 3 & 4)
    (ii) Radhey Shyam Vs. Chhabi Nath, (2015) 5 SCC 423 (Three-Judge Bench)

14. **"Admission" – Meaning of ? :** Admission of a case does not amount to a decision on merits. It only means a prima facie case for adjudication is made out. When the court has admitted the proceedings without going into the merits of the case and on question of its maintainability, its only an order in the nature of an interlocutory order i.e. it is not a "case decided". No rights flow from the order of admission in favour of either of the parties. The question of maintainability of the proceeding (revision, appeal, writ or any other proceedings) may be examined by the court at any stage subsequent to the order passed regarding admission of the case. See : Brij Bala vs. Distt. Judge, Kanpur Nagar, 2006 (65) ALR 238 (Allahabad)

15. **Duty of court while passing order of admission:** The court should provide its own grounds and reasons for rejecting the claim/prayer of a party whether at the very threshold i.e. at admission stage or after regular hearing, howsoever concise they may be. The requirement of stating reasons for judicial orders necessarily does not mean a very detailed or lengthy order but there should be some reasoning recorded by the court for declining or granting relief to the party. While dealing with the matter at the admission stage, even recording of concise reasons dealing with the merit of the contentions raised before the court may suffice, in contrast a detailed judgment while the matter is

being disposed of after final hearing may be more appropriate. But in both events, it is imperative for the court to record its own reasoning however short it may be. See : CCT Vs. Shukla & Brothers, (2010) 4 SCC 875.

16. **Revision u/s 115 CPC when to be dismissed at the admission stage? :** In the present case, the Motor Accident Claim Tribunal, on an application made to it by the claimant, had issued a certificate for the compensation amount to the Collector. The impugned order was passed by the Tribunal in terms of Section 174 of the Motor Vehicles Act, 1988. The Hon'ble Uttarakhand High Court held that there was no good ground to entertain the revision. The learned counsel for the revisionist could not show that the learned Tribunal had not applied its judicial mind while passing the impugned order or the Tribunal had exercised jurisdiction not vested in it by law, or had failed to exercise a jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularities. Hence, the revision was dismissed at the admission stage itself. See: Gurmeet Kaur and Another Versus Amit Kumar, 2022 SCC OnLine Uttarakhand 455.

17. **Merits not to be discussed when revision is not maintainable:** It is settled law that once court holds that it has no jurisdiction in the matter, it should not consider the merits of the case. See: Jagraj Singh vs. Birpal Kaur, AIR 2007 SC 2083.

18. **Hearing in revision:** A revisional court must issue notice to the other side to be heard in the revision u/s 115 CPC. Non issue of notice to other side for hearing is grossly against the settled principles of natural justice. Right of a person to be heard in his defence is the most elementary protection and is the essence of fair adjudication. Even God did not pass sentence upon Adam before he was called upon to make his defence. Adam, says God "where art thou, has thou not eaten of the tree whereof I commanded thee that thou should not eat". See: Suresh Chandra Nanhorya Vs Rajendra Rajak, 2006 (65) ALR 323 (SC).

19. **Party despite receiving notice of hearing not availing opportunity of being heard cannot take shelter to principles of natural justice:** Principles of natural justice regarding opportunity for hearing cannot be put into a strait-jacket formula. If a party after having proper notice chose not to appear, he at a later stage cannot be permitted to say that he had not been given a fair opportunity of hearing. The principles of natural justice cannot be stretched too for. See :
(i) N.K. Prasada Vs Govt. of India, (2004) 6 SCC 299 (Three-Judge Bench)

(ii) Sohan Lal Gupta Vs Asha Devi Gupta, (2003) 7 SCC 492.

20. Court should lean in favour of hearing of parties: In the matters of civil revisions filed u/s 115 CPC, as far as possible, the court's discretion should be exercised in favour of hearing and not to shut out hearing. See :

(i) Kashi Nath vs. Board of Revenue, 2001 (19) LCD 1426 (All)
(ii) Ramji Das vs. Mohan Singh, 1978 ARC 496 (SC)

21. Dismissal of revision in default: Where the revisionist and his counsel were not present at the time when the revision was called out for hearing and the revision was dismissed in default and the application for restoration of the revision was also dismissed by the revisional court without giving opportunity to the revisionist of being heard, it has been held by the Supreme Court that the revision deserves to be restored and decided on merits. See: Jwala Prasad vs. Ajodhya Prasad, AIR 1983 SC 304.

22. Stay order when and how to be passed in revisions? : In the case noted below, the Hon'ble Supreme Court has issued following directions to the courts while passing orders staying the proceedings pending before the lower court **:**

(i). There must be a speaking order while granting stay of the proceedings.
(ii). Once an stay order is passed, the challenge should be decided within **two to three months** and the matter should be taken up on a day today basis.
(iii). Stay order should not be passed unconditionally or for indefinite period. Conditions may be imposed.
(iv). Stay order shall automatically **lapse after six months** if not extended further and the proceeding before the trial court shall automatically commence.
(i) Extension of stay order can be passed only by an speaking order showing extra-ordinary situation.
(vi). The above directions shall apply to both the civil as well as criminal matters.
(vii). The above directions shall apply to both civil and criminal appellate and revisional jurisdictions. See: Asian Resurfacing of Road Agency (P) Ltd. Vs. CBI, (2018)16 SCC 299 (Three-Judge Bench).

Note: Asian Resurfacing of Road Agency (P) Ltd. Vs. CBI, (2018)16 SCC 299 (Three- Judge Bench) has now been overruled by a Five-Judge Constitution Bench of the Hon'ble Supreme Court by its

judgement dated 29.02.2024 passed in High Court Bar Association, Allahabad vs. State of U.P, 2024 SCC Online SC 207

23. **No automatic expiration of interim stay order after six months:** Overruling its previous Three-Judge Bench judgement in Asian Resurfacing of Road Agency (P) Ltd. Vs. CBI, (2018)16 SCC 299, a Five-Judge Constitution Bench of the Hon'ble Supreme Court has ruled that an interim stay order would not expire after expiration of six months from the date of passing of the stay order. See: High Court Bar Association, Allahabad vs. State of U.P, 2024 SCC Online SC 207

24. **Lower court not to stop its proceedings unless stayed by the superior court: (C.L. No. 6/Admn. 'G' dated 8 February, 1995):** The Hon'ble Chief Justice and Judges of the Allahabad High Court have been pleased to direct that all the Judicial Officers may be advised that mere filing of an appeal, revision or even a writ petition against an order or judgment does not, by itself, constitute any valid or justifiable ground to stay the operation thereof. In other words, unless the implementation of the impugned order or judgment is stayed by the competent court, it must be given effect to and carried out. Disregard of these directions cannot but invite serious adverse note.

25. **Discontinued interim injunction or stay order cannot be continued further:** An interim injunction/stay order when extended to a particular date but not extended further beyond that particular date would be presumed to have ceased from the date of non-extension. See: Ashok Kumar vs. State of Haryana, AIR 2007 SC 1411.

26. **Meaning of "Stay Order" ?: "**While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority

continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending.**"** See: Shree Chamundi Mopeds Limited Vs. Church of South India Trust Association CSI Cinod Seceretariat, Madaras, (1992) 3 SCC 1 (Three-Judge Bench) (Para 10)

27. **Infructuous revisions:** Where the revisional court (High Court) u/s 115 CPC had decided the revision against non issue of notice u/s 80 CPC on its merits though the suit was dismissed during the pendency of revision, the Supreme Court held that the revisional court (High Court) committed error in deciding the revision on merits as the same had become in fructuous. See: Ram Kumar vs. State of Rajasthan, AIR 2009 SC 4

28. **Extent of powers of revisional court u/s 115 CPC while examining the impugned order :** Where the trial court had dismissed the suit on the ground of non-payment of costs u/s 35-B CPC and on revision being filed by the plaintiff u/s 115 CPC, the High Court as revisional court held that the suit based on the claim of ownership of property by adverse possession was not maintainable, the said order of the High Court passed in revision was set aside by the Hon'ble Supreme Court and the matter was remanded to the High Court for fresh disposal by observing that the High Court as revisional court should have examined the ground of dismissal of suit by the trial court and should not have taken the view that the suit itself was not maintainable before the trial court. A revisional court should examine only the grounds/determination of issues based on which court below had passed the order impugned in revision. See **:** Jhau Lal Vs. Mohan Lal, (2013) 9 SCC 446.

29. **Appraisal of evidence in revision:** Revisional court cannot re-appreciate evidence u/s 115 CPC particularly when the lower court has not committed any jurisdictional error or breach of law in appreciating the evidence on record. Where there is no legal infirmity in the findings of fact recorded by the lower court, the revisional court u/s 115 CPC cannot re-assess the evidence. See :

(i) Hindustan Petroleum Corporation Limited Vs. Dilbahar Singh, (2014) 9 SCC 78 (Five-Judge Bench).

(ii) Bhanwarlal Dugar vs. Bridhichand Pannalal, 2010 (2) ARC 730 (SC)

(iii) N. Eswari vs. K. Swaraiya Lakshmi, 2009 (6) Supreme 572

(iv) P.T. Thomas vs. Thomas Job, 2005(6) SCC 478

(v) Gurdial Singh vs. Raj Kumar Aneja, AIR 2002 SC 1003

(vi) Mudigonda Chandra Mouli Sastry vs. Bhimanepalli Bikshalu, (1999) 7 SCC 66

(vii) Sri Kempaiah vs. Smt. Chikkaboramma and others, AIR 1998 SC 3335
(viii) Ram Avtar vs. Ram Dhani, AIR 1997 SC 107
(ix) Rukmini Amma vs. Kallyani Sulochana, AIR 1993 SC 1616
(x) Masjid Kacha Tank, Nahan vs. Tuffail Mohammed, AIR 1991 SC 455

30. **Finding of fact not to be altered u/s 115 CPC:** Finding recorded by the Sub-ordinate Judge based on material on record that there was no forgery of the signatures of the party on the compromise petition could not have been interfered with by the Revisional Court/High Court in revision as the Revisional Court can only go into question of jurisdiction. See: Deb Ratan Biswas Vs Most Anand Moyi Devi, 2011 (113) RD 451 (SC)

31. **Revisional court can interfere with the finding of fact u/s 115 CPC only when the same is perverse & arbitrary:** U/s 115 CPC, the revisional court cannot re-appreciate the evidence and cannot set aside the findings of the court below by taking a different view of the evidence. Revisional court u/s 115 CPC cannot exercise its powers as an appellate court to re-appreciate or re-assess evidence for coming to different findings of fact. The revisional court is empowered to interfere with the findings of fact if the findings are perverse or there has been non-appreciation or non-consideration of the material evidence on record by the court below. Simply because another view of the evidence may be taken is no ground for the revisional court to interfere in its revisional jurisdiction. See :
(i) Kasthuri Radhakrishnan Vs. M. Chinniyan, AIR 2016 SC 609.
(ii) S.F. Engineer Vs. Metal Box India Ltd., (2014) 6 SCC 780
(iii) Masjid Kacha Tank, Nahan vs. Tuffail Mohammed, AIR 1991 SC 455

32. **Evidence not to be appreciated by revisional court merely because another view is possible :** Simply because another view of the evidence laid before the lower court may be taken, is no ground for the revisional court u/s 115 CPC to interfere with the findings of facts recorded by the lower court. See: Masjid Kacha Tank Nahan vs. Tuffail Mohammed, AIR 1991 SC 455.

33. **Summary of law regarding interference by the revisional court with the evidence and findings of fact recorded by the lower Court:** From the decisions of the Hon'ble Supreme Court discussed at various sub-heads notedabove, the scope for interference by the revisional court with the findings of fact recorded by the lower Court may be summarized as under :

(i) findings of fact recorded by lower court on an evidence not available on record.
(ii) material evidence, which could have reflected on the merits and the decision
of the case, has been ignored by the lower Court.
(iii) finding of fact recorded on an evidence not admissible.
(iv) material evidence discarded by treating it as inadmissible.
(v) finding of fact being perverse in terms of law.
(vi) but while disturbing the findings of fact recorded by the lower Court, the revisional court would not proceed to appreciate or re-appreciate the evidence itself. The revisional court would only make its observations on the illegality committed by the lower court in appreciating the evidence and recording findings of fact and by setting right the mistakes of law committed by the lower court, would set aside the findings and the order of the lower court by directing it to re-appreciate the evidence, record fresh findings of fact as per law by keeping in view the observations made by the revisional court and pass fresh orders.

34. **Revisional order must be speaking :** A revisional order or any other judicial or quasi-judicial order must be reasoned and speaking. See : -
(i) State of Rajasthan vs. Rohitas, 2008 (61) ACC 678(SC)
(ii) M.M. RDA, officer's Association vs. Mumbai RDA, 2005 (1) SCJ 126
(iii) Chandrika Prasad Yadav vs. State of Bihar, (2004) 6 SCC 331
(iv) Cyril Lasrado vs. Juliana Maria Lasrado, (2004) 7 SCC 431
(v) Chairman, & M.D., UCO Bank vs. P.C. Kakkar, (2003) 4 SCC 364
(vi) Raj Kishore Jha vs. State of Bihar, 2003(47) ACC 1068(SC)
(vii) Kaushalya Devi Vohra vs. Mohinder Lal Gupta, (2000) 9 SCC 417
(viii) Harbans Sharma vs. Smt. Pritam Kaur, (1982) 3 SCC 386

35. **Second revision:** A second revision against the same order is not maintainable u/s. 115 CPC. See :

(i) Rukmini Amma vs. Kallyani Sulochana, AIR 1993 SC 1616
(ii) Aundal Ammal vs. Sadasivan Pillai, AIR 1987 SC 203

36. **Time barred revisions & condonation of delay:** According to Article 131 of the Limitation Act, 1963, limitation period for preferring a revision u/s 115 CPC is 90 days from the date of order under challenge or from the date of knowledge of the order by the revisionist. Section 5 of the Limitation Act applies to civil revisions also and if the delay is satisfactorily explained, the same may be

condoned by the revisional court. While considering the question of condonation of delay u/s 5 of the Limitation Act, 1963, the court should not adopt a pedantic or hyper technical approach. The Court should rather adopt liberal approach. Substantive justice should be preferred over technical justice. A party seeking condonation of delay should not be required to explain the delay for every day because if the delay for every day is asked to be explained then why not the delay for every hour, every minute and every second. See :

(i) Sainik Security vs. Sheel Bai, 2008 (71) ALR 302 (SC)
(ii) State of Nagaland vs Lipok AO, 2005 (52) ACC 788 (SC)
(iii) Balkrishnan vs. M. Krishnamurthy, AIR 1998 SC 3222
(iv) State of Haryana vs. Chandra Mani, 1996 (3) SCC 132
(v) Spl. Tehsildar vs. K.V. Ayisumma, AIR 1996 SC 2750
(vi) G. Ramagowda Major vs. The Special L.A.O. Bangalore, AIR 1988 SC 897
(vii) Collector L.A. Anentnag vs. Smt. Katiji, AIR 1987 SC 1353
(viii) O.P. Kathpalia vs. Lakhmir Singh, 1984 (4) SCC 66

37. **Revision u/s 115 CPC not to lie against dismissal of application u/s 5 for condonation of delay to file appeal against ex-parte decree passed u/o 9, Rule 13 CPCs:** Relying upon the Supreme Court decisions reported in (i) Shyam Sundar Sarma Vs. Pannalal Jaiswal, AIR 2005 SC 226 (ii) Sheodan Singh Vs. Daryao Kunwar, AIR 1966 SC 1332 and (iii) Ratan Singh Vs. Bijoy Singh & Others, AIR 2001 SC 279, it has been held by the Division Bench of tha Calcutta High Court that "Order of dismissal of proceedings u/o 9, Rule 13 CPC is appealable u/o 43 of the CPC, therefore, application for dismissal of application u/s 5 of **the Limitation Act, 1963** in connection thereto will obviously be appealable but order of dismissal of application u/s 5 simpliciter is of no effect. Order dismissing application for condonation of delay under Section 5 is an appealable order. Revisional proceedings u/s 115 CPC or under any provisions of law would not lie against such order. See : **Md. Ali Sardar Vs. Hossain Ali Mondal, AIR 2012 Calcutta 171 (D.B.)**

38. **Revisional court under Order 9, rule 13 CPC cannot decide application for setting aside ex parte decree while deciding revision u/s 115 CPC only against the order of condonation of delay:** Revisional court under Order 9, rule 13 CPC cannot decide application for setting aside ex parte decree while deciding revision u/s 115 CPC only against the order of condonation of delay. See: C. Prabhakar Rao Vs, Sama Mahipal Reddy, (2025) 9 SCC 716 (Paras 14 & 17)

39. **Conversion of revision into appeal :** It is open to a court to convert an appeal into a revision and a revision into an appeal. In case, on technical ground, the appeal is not maintainable, in that event, it can be treated to be a revision. See: Ram Kumar Agarwal vs. District Judge, Mainpuri, 1999 (37) ALR 493 (All)

40. **Conversion of appeal into revision & vice-versa:** Court has discretionary power to convert an appeal into revision u/s 115 CPC when the court whose order is appealed against has illegally exercised its jurisdiction. See :
    (i) Bar Council of India vs. Manikant Tewari, AIR 1983 All. 357 (DB)
    (ii) B.P. Gautam vs. Dr. R.K. Agarwal, AIR 1977 All. 103(FB)
    (iii) The Reliable Water Supply Service of India vs. Union of India, (1972) 4 SCC 168

41. **Revision not to lie u/s 115(2) CPC where order (decree) is appealable:** Where a suit was dismissed on the ground of res judicata conclusively determining the rights of parties with regard to one of the matters viz. res judicata, it has been held by the Supreme court that such an order amounts to decree as defined u/s 2(2) CPC and the same being appealable u/s 96 r/w Order 41, rule 1 CPC, revision does not lie u/s 115(2) CPC against such order (decree). See: Rishabh Chand Jain Vs. Ginesh Chandra Jain, AIR 2016 SC 2143.

42. **Production of evidence in revision:** If no attempt was made to produce a document/evidence in lower court, the same cannot be permitted to be produced in revisional court u/s 115 CPC. See :
    (i) Lekh Raj vs. Muni Lal, AIR 2001 SC 996.
    (ii) Km. Rakhi vs. Ist ADJ, Firozabad, AIR 2000 All 166

43. **Revision u/s 115 CPC against admitting documents after arguments were over not maintainable:** Revision u/s 115 CPC against admitting documents after arguments were over is not maintainable. See: Hemendra Chaudhary Vs. Punjab National Bank, AIR 1993 All 49.

44. **Revision against issue of notice u/o 39, rule 3 CPC:** Revision u/s 115 CPC against issue of notice by court u/o 39, rule 3 CPC is not maintainable. See :
    (i) Ram Dhani Vs Raja Ram, 2011 (113) RD 657 (All-DB)
    (ii) Lucknow Diocesan Trust Assn. vs. Sri B.C. Jain & others, 2006 (1) ARC 153 (All)
    (iii) Col. Anil Kak (Retd.) vs. Municipal Corp., Indore, 2006 (1) ARC 39 (SC)
    (iv) Bhagwati Pd. Lohar vs. State of U.P., 2005 (99) RD 333 (All)
    (v) Gayatri Devi vs. Shashi Pal Singh, 2005 (1) SCJ 637

(vi) Yashwant Sakhalkar vs. Hirabat Kamat Mhamai, (2004)6 SCC 71
(vii) Suryadeo Rai vs. Ram Chander Rai, (2003) 6 SCC 675
(viii) Rajendra Singh vs. Sri Brij Mohan Agarwal, 2003(1) ARC 270 (All)
(ix) Shiv Shakti Co-operative Housing Society vs. Swaraj Developers, (2003) 6 SCC 659
(x) Ravinder Kaur vs. Ashok Kumar, (2003) 8 SCC 289
(xi) United India Insurance Co. Ltd. vs. Rajendra Singh, AIR 2000 SC 1165
(xii) Rajbir Singh vs. VII ADJ, Muzaffarnagar, 1998 RD 483 (All)
(xiii) S.P. Chengal Varaya Naidu vs. Jagannath, AIR 1994 SC 853

Note: In compliance with the order of Hon'ble Allahabad High Court passed in writ petition no. 802 (M/s) of 2007, Lalit Mohan Srivastava vs. Distt. Judge, Ambedkar Nagar & others, C.L. No. 18/2007, dated 11.5.2007 and the C.L. No. 15/Admin 'G' 2006, dated 3.5.2006 in compliance with the directions issued in the case of Bhagwati Pd. Lohar vs. State of U.P., 2005 (99) RD 333 (All) circulated amongst the judicial officers of the State of U.P. directs that revision u/s. 115 CPC against issue of notice u/o 39, rule 1, 2, 3 CPC being interlocutory is not maintainable.

45. Appeal not maintainable against an interlocutory order of injunction passed by appellate court u/o 43, rule 1(r) of CPC: Since there is no express provision for an appeal from an interlocutory appellate order upon the appellate court exercising the power u/s 107(2) CPC, whether or not read with Section 108 CPC, the interlocutory order of injunction passed by the appellate court would not be appealable order. No appeal is maintainable against interlocutory order of injunction passed by appellate court whether u/o 43, rule 1(r) CPC or otherwise. But petition under Article 227 of the Constitution would be obviously maintainable. See : Sabyasachi Chatterjee Vs Prasad Chatterjee, AIR 2013 Calcutta 231 (Full Bench).

46. Revision not maintainable against grant of amendment application u/o 6, rule 17 CPC: Revision u/s 115 CPC is not maintainable when an amendment application has been allowed by the court u/o 6, rule 17 CPC. Order allowing amendment would not even remotely cause failure of justice or irreparable injury to any party as the respondent would get opportunity to file a written statement and he would be able to raise all his defence and he would also have a chance to take up points decided against him before the appellate court. See : Prem Bakshi & others vs. Dharam Dev & others, AIR 2002 SC 559.

47. **Revision maintainable against rejection of application u/o 6, rule 17 CPC:** Revision against an order rejecting amendment application u/o 6, rule 17 CPC is maintainable. See :

(i) Suresh Kumar Yadav Vs. Prashant Arora, 2012 (116) RD 275 (All)

(ii) Vishwanath Mehrotra vs. High Court of Judicature at Allahabad, 2010 (3) ARC 73 (All)

(iii) Mukhtar Ahmad vs. Sirajul Haq, 2006 (63) ALR 718 (All)

48. **Revision against impleadment:** Revision u/s 115 CPC against impleadment of party is maintainable. See: K.S.M. Basheer Mohammad vs. Ram Bali Singh 2001(3) AWC 2429 (All) (LB)

49. **Revision against order rejecting transposition u/o 1, rule 10 CPC:** An order disposing of an application u/o 1, rule 10 CPC amounts to a "case decided" and revision against such order is maintainable. Revision is also maintainable u/s 115 CPC against an order disposing of transposition application. See :

(i) Patel Dineshbhai Mohanbhai vs. Naranbhai Ramdas, AIR 2005 Guj 100

(ii) Bhagwan Prasad vs. Mata Prasad, 1977 ALJ 894 (All)

(iii) Razia Begum vs. Sahebzadi, AIR 1958 (SC) 886

50. **Revision against disposal of Commissioner's report Rejection of application for issue of commission:** Revision u/s. 115 CPC does not lie against rejection of an application for issue of commission. A trial court or appellate court is vested with the discretion u/o. 26, R. 9 CPC to issue or not to issue a commission for local investigation and no party to the suit can claim as of right to get a commission issued for the purpose of local investigation. However exercise of such discretion by court should be judicial and not arbitrary. See :

(i) Javed Ali Vs. Ahmed Urooz, 2014 (102) ALR 105 (All)

(ii) Ram Ishwar vs. Laxmi Narain, 2007 (66) ALR 195 (All)

(iii) M/s. Kisanotthan Co-operative Housing Society, Lucknow vs. O.P. Srivastava, 2007 (25) LCD 919 (All—L.B.)

(iv) Lekh Raj vs. Muni Lal, AIR 2001 SC 996

(v) Dr. K.C. Tandon vs. IXth Addl. District Judge, 1998(33) ALR 267 (All)

51. **Rejection of report of Amin:** Revision against order rejecting report of Amin is not maintainable. See: Satyendra Prasad Jain vs. State of U.P., AIR 1996 All. 77.

52. **Revision against insufficiency of court fee:** Revision by defendant does not lie u/s 115 CPC on a question of insufficiency of court fee where no

question of jurisdiction is involved. Defendant has no legal right to challenge insufficiency of court fee. See :

(i) Siddhartha Gautam Ram vs. Sarveshwari Samooh Kustha Sewashram, Rajghat, AIR 1995 All 52

(ii) Shamsher Singh vs. Rajinder Prasad & others, AIR 1973 SC 2384

(iii)Sri Rathnavarmaraja vs. Smt. Vimla, AIR 1961 SC 1299

Note: In the case of Ram Krishna Dhandhania vs. Civil Judge (SD), Kanpur Nagar, 2005 (2) ARC 531 (All—D.B.), the Allahabad High Court, interpreting the provisions of Sec. 12 of the Court Fee Act, 1870 (as amended, updated and applied in the State of U.P.), Sec. 149 CPC r/w Order VII, r. 11 CPC, has held that the defendant has a right to raise all objections on the valuation and deficiency of the Court fees. The mater is to be adjudicated upon and decided by the Court u/s. 12 of the Court Fee Act, 1870 and the decision so taken by the trial Court shall be final. The defendant cannot raise the grievance against the said decision unless the valuation suggested by him affects the jurisdiction of the Court. However, the appellate or revisional Court always can test the issue suo motu and make the deficiency good as the purpose of the Act is not only fixing the pecuniary jurisdiction of the Court but also creating revenue for the State. Similarly, in the case of Arun Kumar Tiwari vs. Smt. Deepa Sharma, 2006 (1) ARC 717 (All—D.B.), interpreting the provisions of Sec. 34 and 37 of the Specific Relief Act, 1963, Sec. 6-A (2) of the Court Fee Act, 1870 and Order 39, r. 1 & 2 CPC, a Division Bench of the Allahabad High Court has held that when there is challenge to jurisdiction, valuation, sufficiency of Court fee or maintainability of suit, the Court is to first decide these issues and then to decide injunction application and other matters.

53. **Revision u/s 115 CPC against an order directing payment of court fee not maintainable:** Since statutory remedy to file an appeal u/s 104 CPC is available against an order directing to make good deficiency in court-fee, therefore, revision u/s 115 CPC against such order is not maintainable. See : Smt. SatyaDevi vs. Smt. Janak, AIR 2012 (NOC) 50 (Uttaranchal High Court).

54. **Revision maintainable against refusal of leave u/s 80(2) CPC to file suit:** Revision against an order passed u/s 80(2) CPC refusing permission to file suit is maintainable. See: M/s. Bajaj Hindustan Sugar & Industries Ltd. vs. Balrampur Chini Mill Ltd., AIR 2007 SC 1906.

55. **Revision not maintainable against an order passed u/o 21, rule 97 to 103 CPC:** Revision u/s 115 CPC does not lie against an order passed by executing court u/o 21, rule 97 to 103 CPC as such an order amounts to a

decree and only appeal lies against such order. See: S. Rajeswari vs. S.N. Kulasekaran, (2006) 4 SCC 412.

56. **Fresh Vakalatnama can be required in revision:** In the case of Uday Shankar Triyar vs. Ram Kalewar Prasad Singh, 2006(1) ARC 1(Supreme Court) (Three-Judge Bench), the Supreme Court, expressing concern in regard to the manner in which defective vakalatnamas are routinely filed in courts, has clarified the necessity of filing fresh vakalatnamas at different stages of proceedings like original suits, appeals, revisions, executions and misc. proceedings and also the manner of filing the vakalatnamas. The Supreme Court has ruled that: "Vakalatnama, a species of Power of Attorney, is an important document, which enables and authorizes the pleader appearing for a litigant to do several acts as an agent which are binding on the litigant who is the principal. It is a document which creates the special relationship between the lawyer and the client. It regulates and governs the extent of delegation of the authority to the pleader and the terms and conditions governing such delegation. It should, therefore, be properly filled, attested, and accepted with care and caution. Obtaining the signature of the litigant on blank vakalatnamas and filling them subsequently should be avoided. The Supreme Court took judicial notice of the following defects routinely found in vakalatnamas filed in courts :

(1) Failure to mention the name/s designation or authority of the person executing the vakalatnama and leaving the relevant column blank.

(2) Failure to disclose the name, designation or authority of the person executing the vakalatnama on behalf of the grantor (where the vakalatnama is signed on behalf of a company, society or body) either by affixing a seal or by mentioning the name and designation below the signature of the executants (and failure to annex a copy of such authority with the vakalatnama).

(3) Failure on the part of the pleader in whose favour the vakalatnama is executed to sign it in token of its acceptance.

(4) Failure to identify the person executing the vakalatnama or failure to certify that the pleader has satisfied himself about the due execution of the vakalatnama.

(5) Failure to mention the address of the pleader for purpose of service (particularly in cases of outstation counsel).

(6) Where the vakalatnama is executed by someone for self and on behalf of someone else, failure to mention the fact that it is being so executed. For example, when a father and the minor children are parties, invariably there is a single signature of the father alone in the vakalatnama without any endorsement/statement that the signature is for self and as

guardian of his minor children. Similarly, where a firm an it is partner, or a company and it's Director, or a Trust and it's trustee, or an organization and it's office bearer execute a vakalatnama, invariably there will be only one signature without even an endorsement that the signature is both in his/her personal capacity and as the person authorized to sign on behalf of the corporate body/firm/society/organization.

(7) Where the vakalatnama is executed by a power-of-attorney holder of a party, failure to disclose that it is being executed by an attorney holder and failure to annex a copy of the power of attorney.

(8) Where several persons sign a single vakalatnama, failure to affix the signatures seriatim, without mentioning their serial numbers or names in brackets as many a times it is not possible to know who have signed the vakalatnama where the signature are illegible scrawls.

(9) Pleaders engaged by a client, in turn, executing vakalatnamas in favour of other pleaders for appearing in the same matter or for filing an appeal or revision. It is not uncommon in some areas for mofussil lawyer to obtain signature of a litigant on a vakalatnama and come to the seat of the High Court and engage a pleader for appearance in a High Court and execute a vakalatnama in favour of such pleader.

(10) The abovenoted routine defects are found as registries/offices do not verify the vakalatnamas with due care and caution they deserve, such failure many a time leads to avoidable complications at later stages. The need to issue appropriate instructions to the registries/offices to properly check and verify the vakalatnamas filed requires emphasis.

(11) Filing a fresh vakalatnama with the memorandum of appeal etc. will always be convenient to facilitate the processing of the appeal by the office.

57. **Revision against enlargement of time u/s 148 CPC:** An order passed u/s 148 CPC enlarging time for making any payment (or doing any act under CPC) cannot be interferred with in revision u/s 115 CPC. See :
   (i) Johri Singh vs. Sukh Pal Singh, AIR 1989 SC 2073
   (ii) Also see for powers of court u/s. 148 CPC: Salem Advocates Bar Association vs. Union of India, 2005 (3) AWC 2996 (SC)

58. **Revision maintainable against an order passed u/s 151 CPC:** Revision is maintainable u/s 115 CPC against an order passed u/s 151 CPC as such order is not appealable. See : Shipping Corpn. of India Ltd. Vs. Machado Brothers, AIR 2004 SC 2093.

59. **Revision u/s 115 CPC not to lie against discretionary orders:** When an order has been passed by the lower court in its discretionary powers and such discretion has not been exercised erroneously or with any irregularity, the same cannot be interfered with by the revisional court u/s 115 CPC. See : Southern Sales & Services & others Vs. Sauermilch Design and Handles Gmbh, AIR 2009 SC 320.

60. **SCC revisions u/s 25 of the PSCC Act, 1887: Appraisal of Evidence & Recording of Finding of Facts :** A revisional court u/s 25 of the PSCC Act, 1887 cannot re-assess the evidence and record fresh finding of facts. See :

(i) Hari Gopal vs. Vijay Kumar, 2007 (66) ALR 694 (All)
(ii) Smt. Mundri Lal vs. Smt. Sushila Rani, 2007 (69) ALR 477 (SC)
(iii) Ram Karan Gupta vs. III ADJ, Moradabad, 2006 (63) ALR 758 (All)
(iv) Smt. Urmilesh Kumari vs. Nagendra Kr. Shukla, 2006 (65) ALR 525 (All)
(v) Raja Ram Sharma vs. X ADJ, 2006 (64) ALR 355 (All)
(vi) Bimal Kishore Paliwal vs. IV ADJ, Muzaffarnagar, 2005 (2) ARC 672 (All)
(vii) Chhote Lal vs. II ADJ, Jhansi, 2005 (4) AWC 3718 (All)
(viii) Laxmi Kishore vs. Har Prasad Shukla, 1981 ACR 545 (All.—D.B.)
(ix) Smt. Anjali Awasthi vs. Mohammad Shafique, 2006 (65) ALR 204 (All)

Note**:** In the case of Smt. Anjali Awasthi, the question of issue of notice u/s. 106 TP Act was involved and the High Court, by recording severe **strictures** against the ADJ, Kanpur Nagar/AJSCC directed the copy of the judgment to be placed on his personal service record.

61. Rewriting overruled judgment amounts to judicial indiscipline: If a judgment is overruled by the higher court, the judicial discipline (on remand) requires that the Judge whose judgment is overruled must submit to the judgment (of the higher court). He cannot, in the same proceedings or in collateral proceedings between the same parties, rewrite the overruled judgment. See :

(i) Markio Tado Vs. Takam Sorang, (2013) 7 SCC 524 *(para 31)*
(ii) State of W.B. Vs. Shivananda Pathak, (1998) 5 SCC 513 *(para 28)*

62. **Order of lower authority merges into that of the superior authority:** A judicial order passed by the trial court merges in the order passed by the appellate or revisional court. It cannot be said that an appellate or revisional decision in which the decision of the trial court has merged is still a case arising out of the original suit. After merger, the decision arising out of the original suit vanishes. See: Jaswant Singh Vs. Smt. Kusum Lata Devi, 2012 (116) RD 383 (All)(LB).

63. **Revision against award of Lok-Adalat:**Revision u/s 115 CPC does not lie against an award passed by Lok-Adalat u/s 21 of the Legal Services Authority Act, 1987. The award can also not be challenged in appeal u/s 96 CPC and under Article 226 of the Constitution. See: P.T. Thomas vs. Thomas Job, (2005) 6 SCC 478

64. Revision not maintainable against an order refusing permission to cross-examine deponent of affidavit: Revision does not lie u/s 115 CPC against an order rejecting application seeking cross-examination of deponent of affidavit u/o 19, rule 2 CPC as such an order does not amount to a case decided. See :

(i) S.D. Jain vs. Rakesh Jain, AIR 1986 All 30

(ii) Kailash Singh vs. Agarwal Export Corpn., 1984 ALJ 30 (All)

65. **Revision maintainable against an order staying suit u/s 10 CPC:** Revision u/s 115 CPC is maintainable against an order passed u/s 10 CPC staying or refusing to stay the proceedings of a suit as such an order amounts to a "case decided". See: AIR 1975 P & H 171

66. **Revision not maintainable against an order permitting production of additional evidence:** Revision u/s 115 CPC is not maintainable against an order granting permission to produce additional evidence as the opposite party can take appropriate pleas in appeal if the decree goes against it. See: Punjab National Bank, Rajpura Township vs. Amrit Industries, (2000) 10 SCC 38

67. **Revisional court under Order 9, rule 13 CPC cannot decide application for setting aside ex parte decree while deciding revision u/s 115 CPC only against the order of condonation of delay:** Revisional court under Order 9, rule 13 CPC cannot decide application for setting aside ex parte decree while deciding revision u/s 115 CPC only against the order of condonation of delay. See: C. Prabhakar Rao Vs, Sama Mahipal Reddy, (2025) 9 SCC 716 (Paras 14 & 17

68. **Revision not maintainable against order setting aside ex-parte decree u/o 9, rule 13 CPC:** An order setting aside ex-parte decree u/o 9, rule 13 CPC does not decide the suit finally and does not occasion failure of

justice. Entertaining and allowing revision u/s 115 CPC against such an order is wholly illegal and without jurisdiction. See : Ambika Chaudhary vs. District Judge Ballia, 2004 (54) ALR 83 (All)

69. **Revision not maintainable against an order of restoration of suit not to be allowed:** Where the suit was restored on imposition of cost but the High Court in revision u/s 115 CPC set aside the restoration order, it has been held by the Supreme Court that the High Court ought not to have interfered with the order of the trial court allowing the application for the restoration. See: Shyamal Ghosh vs. Anupama Ghosh, 2010 (2) ARC 793 (SC).

70. **Revision against order rejecting plaint u/o 7, rule 11 CPC:** Order of rejection of plaint u/o 7, rule 11 CPC is decree within the meaning of Sec 2(2) CPC and only appeal would lie against such order. Revision against order rejecting plaint is not maintainable. See :
    (i) Kartar Singh vs. Smt. Shanti, AIR 2004 NOC 318 (Delhi)
    (ii)Mable vs. Dolores, AIR 2001 Kerala 353 (D.B.)

71. **Proper remedy against an order rejecting plaint under Order 7, rule 11 CPC is first appeal u/s 96 CPC :** Proper remedy against an order rejecting plaint under Order 7, rule 11 CPC is first appeal u/s 96 CPC. Writ petition under Article 227 of the Constitution against order rejecting plaint is not maintainable. See: Sayyed Ayaz Ali Versus Prakash G. Goyal and Others, (2021) 7 SCC 456.

72. **Plaint should not be rejected under Order 7, Rule 11 CPC on the ground of limitation if the same is connected with the merit of the case:** Application of the defendant moved under Order 7, Rule 11 CPC for rejection of plaint on the ground of limitation was rejected by the Civil Judge (Senior Division), Dehradun**.** Order of the Civil Judge was challenged by the defendant before the Uttarakhand High Court. Dismissing the revision at the admission stage itself, the Hon'ble Uttarakhand High Court held that if the question of limitation is connected with the merit of the claim, such issue is to be tried along with other issues. A plaint cannot be rejected on the ground of limitation especially when it is a mixed question of fact and law and where there is no clear or specific admission in the plaint suggesting that the suit is barred by limitation. The learned counsel for the revisionist could not show that the learned Trial Court did not apply its judicial mind while passing the impugned order or the learned Trial Court had exercised jurisdiction not vested in it by law, or had failed to exercise a jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularity. Therefore, the revision was dismissed at the

admission stage. See: Sunil Kumar Mittal Versus Madhu Garg and Others, 2022 SCC OnLine Uttarakhand 234**.**

73. **Revision not maintainable against an order refusing to decide preliminary issue first u/o 14, rule 2(2) CPC:** An order refusing to decide a preliminary issue like limitation first u/o 14, rule 2(2) CPC is discretionary. Revision u/s 115 CPC against such an order is not maintainable. See: Sidh Nath vs. District Judge, Mirzapur, AIR 2002 All 356

74. **Revision not maintainable against an order refusing to recall witness:** Revision u/s 115 CPC is not maintainable against an order passed by court to recall a witness u/o 18, rule 17-A CPC (now deleted wef 01.07.2002) for further examination. See: Sunder Theatres vs. Allahabad Bank, Jhansi, AIR 1999 All 14.

Note: Vide Salem Advocates' Bar Association vs. Union of India, (2005) 6 SCC 344 (Three Judge Bench), despite deletion of O. 18, r. 17-A CPC w.e.f. 1.7.2002 court's inherent power still exists to grant permission to the parties to lead their evidence which could not have been led due to lack of knowledge or despite due diligence.

75. **Revision maintainable against mode of execution of decree:** Civil revision u/s 115 CPC is maintainable against an order passed by the executing court finally deciding the manner in which the decree is to be satisfied. See: Radhey Shyam Gupta vs. Punjab National Bank, AIR 2009 SC 930

76. **Revision questioning jurisdiction maintainable:** Revision questioning jurisdiction of lower court is maintainable. See :

(i)Wada Arun Asbestos (P) Ltd. vs. Gujarat Water Supply & Sewerage Board, AIR 2009 SC 1027

(ii)Radha Charan Das vs. Th. Mohini Behariji Maharaj, AIR 1975 All 368

77. **Order rejecting application for permission to sue in representative capacity is revisable u/s 115 CPC:** Order rejecting application for permission to sue in representative capacity is revisable u/s 115 CPC. See : Nakuleswar Paul vs. State of Tripura, AIR 2005 Gauhati 54.

78. **Court can refuse to examine the case of the party on merits if it misleads the court and does not place before it all the material facts:** If a party does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent abuse of its process to discharge the rule nisi and refuse to proceed further with the examination

of the case on merits and such a party requires to be dealt with for contempt of court for abusing the process of the court. See**:** Kusha Vs. State of Odisha, (2024) 4 SCC 432

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Part – 5
First Appeals
(Section 207 RC)

1. First Appeal: Section 207 of UP Revenue Code, 2006 reads thus:
(1) Any party aggrieved by a final order or decree passed in any suit, application or proceeding specified in [column 2] of the Third Schedule, may prefer a first appeal to the Court or officer specified against it in [column 4], where such order or decree was passed by a Court or officer specified against it in [column 3] thereof.
(2) A first appeal shall also lie against an order of the nature specified-
(a) in section 47 of the Code of Civil Procedure, 1908; or
(b) in section 104 of the said Code; or
(c) in Order XLIII, Rule 1 of the First Schedule to the said Code.
(3) The period of **limitation** for filing a first appeal under this section shall be **thirty days** from the date of the order or decree appealed against.

2. Laws governing the civil appeals: Laws applicable to the civil appeals are as under :
(i) Sections 96 to 99-A CPC & Order 41 CPC (appeals from original decrees)
(ii) Sections 100 to 103 CPC & Order 41 CPC (appeals from appellate decrees)
(iii) Sections 104 to 112 CPC & Order 43 CPC (appeals from orders)
(iv) Provisions in Special Acts regarding appeals
(v) Judicial pronouncements of the Supreme Court & High Courts

3. A first appeal filed u/s 96 CPC is continuation of the original suit: A first appeal filed u/s 96 CPC is continuation of the proceedings of the original suit. See:
(i) Ram Lal Versus Jarnail Singh, 2025 SCC OnLine SC 584 (Paras 46, 47)
(ii) Triloki Nath singh Vs. Anirudh Singh, (2020) 6 SCC 629
(iii) Dilip Vs. Mohd. Azizul Haq, AIR 2000 SC 1976

4. Right to appeal a substantive right: Right to appeal is not merely a matter of procedure. It is a matter of substantive right. The right of appeal from decision of inferior tribunal to a superior tribunal becomes vested in a party when the proceedings are first initiated in, and before a decision is given by the inferior court. The pre-existing right of appeal is not destroyed by the amendment if the amendment is not made retrospective by express words or necessary intendment.

However, unless a right of appeal is clearly given by a Statute, it does not exist. See

(i) Gujarat Agro Industries Vs. Municipal Corporation of Ahmedabad, AIR 1999 SC 1818

(ii) Hoosein Kasam Dada (India) Ltd Vs. State of M.P., AIR 1953 SC 221

5. **'First appeal' a valuable right of the parties** : The first appeal is a valuable right of the parties and unless restricted by law the whole case is open for rehearing both on questions of fact and law. See:

(i) Parimal Vs. Veena, AIR 2011 SC 1150

(ii) Santosh Hazari Vs. Purushottam Tiwari, AIR 2001 SC 965

6. **An appeal lies only against a decree and not against judgment:** Under Section 96 CPC, an appeal lies only against a decree and not against judgment. See :

(i) Banarasi Vs Ram Phal, (2003) 9 SCC 606

(ii) Hari Shanker Vs. Jag Dayee, (2000) 39 ALR 120 (All)

7. **Appeal u/s 96 CPC lies only against decree :** An appeal u/s 96 CPC lies only against decree and not against judgment or any findings. See: Banarasi & Others Vs. Ram Phal, (2003) 9 SCC 606.

8. **Tests for determination whether order passed is a decree?** : The court with a view to determine whether an order passed by it is a decree or not must take into consideration the pleadings of the parties and the proceedings leading upto the passing of an order. The circumstances under which an order had been made would also be relevant. An order to qualify as decree must satisfy the following tests:

(i) There must be 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 of the matters in controversy in the suit

(iv) Such determination must be of a conclusive nature

(v) There must be a formal expression of such adjudication.
See : S. Satnam Singh & others Vs. Surender Kaur & another, AIR 2009 SC 1089.

9. **Preliminary decree is appealable (Sec 97 CPC)**: An appeal lies against a preliminary decree. As per Section 97 CPC, failure to appeal against a preliminary decree precludes the aggrieved party from challenging the final decree. See:

(i) Mool Chand Vs. Dy. Director of Consolidation, AIR 1995 SC 2493.

(ii) Phool Chand Vs. Gopal Lal, AIR 1967 SC 1470

10. **Appeal to be filed in the appellate court and not in the trial court:** Despite introduction of amendment in Order 41, rule 9 CPC w.e.f. 01. 07 2002, it has been held by the Supreme Court that the apprehension that under Order 41, rule 9 CPC as amended w.e.f. 1.7. 2002, the appeal can be filed in the court from whose decree the appeal is to be filed is unfounded. Appeal has to be filed under Order 41, rule 1 CPC in the court in which it is maintainable. All that Order 41, rule 1 CPC requires is that a copy of the memorandum of appeal should also be presented before the trial court which passed the decree. See: Salem Advocates Bar Association Vs Union of India, AIR 2003 SC 189 (Three-Judge Bench)

11. **No condition to be imposed while admitting appeal:** No condition should be imposed while admitting appeal for hearing on merits. Question of imposing condition would arise while passing execution of decree under Order 41, rule 5 CPC. See: G.L.Vijain Vs K. Shankar, AIR 2007 SC 1103.(Also see UP amendment in Order 41, rule 5(5) CPC.

12. **Who can file appeal u/s 96 CPC**? : Unless a person is prejudicially or adversely affected by the decree, he is not entitled to file an appeal u/s 96 or u/s 100 CPC. See**:** Banarasi & Others Vs. Ram Phal, (2003) 9 SCC 606.

13. **Anyone out of several parties to suit aggrieved by decree can file appeal (Order 41, Rule 33 CPC)**? : Where there are several defendants, who are equally aggrieved by a decree on a ground common to all of them, and only one of them challenges the decree by an appeal his own right, the fact that the other defendants do not choose to challenge the decree or that they have lost their right to challenge the decree, cannot render the appeal of the appealing defendant in fructuous on this ground. In fact, R. 4 and R. 33 of O. 41 CPC are enacted to deal with such a situation. In the instant, case, there were several defendants equally aggrieved by decree against them of whom "s" filed appeal which was failed for non-compliance with the office objections said fact cannot have the consequence of defeating the appeal of the another appellant "B", O. 41, R. 4 read with R. 33 CPC invests the Supreme Court with sufficient power to entertain the appeal of "B" before the court and to make any appropriate order thereupon consonant with justice, equity and good conscience. See: Bajranglal Shivchandrai Ruia Vs. Shashikant N. Ruia, AIR 2004 SC 2546(Three-Judge Bench).

14. **Only aggrieved person with the decree or order competent to file appeal:** To be entitled to file an appeal the person must be one aggrieved by the decree. Unless a person is prejudicially or adversely affected by the decree is not entitled to file an appeal. See: Banarsi Vs. Ram Phal, (2003) 9 SCC 606

15. **Only aggrieved person with the decree or order competent to file appeal:** A person aggrieved by and dissatisfied with the judgment and decree has locus standi. Against a decree, an appeal would be maintainable in terms of section 96 CPC. Such an appeal, however, would be maintainable only at the instance of a person aggrieved by it. Locus of a person to prefer an appeal is vital. A court cannot enlarge the scope of locus. An ex parte decree can be set aside by the court passing it or by an appellate court only at the instance of a person aggrieved thereby. See: Baldev Singh Vs. Surinder Mohan Sharma, AIR 2003 SC 225

16. **Only aggrieved person with the decree or order competent to file appeal:** Appeal is creature of statute, hence can be filed only by person permitted by the statute and subject to the statutory permission regarding the filing of such appeal. See: Northern Plastics Ltd. Vs. Hindustan Photo Films Mfg. Co. Ltd. (1997) 4 SCC 452

17. **Appeal by only one of several defendants (Order 41, rule 4, 33 & 11CPC) :** Appeal by one of the several defendants- another appeal subsequently filed by co-defendant dismissed for default – effect of on the earlier appeal- would not result in defeating the other defendants of the appeal. See : Bajranglal Shiv Chandra Rai(2004)5 SCC 272.

18. **Memorandum of appeal must contain the grounds for appeal:** The appeal is the judicial examination. The memorandum of appeal contains the grounds on which judicial examination is invited for purpose of limitations and rules. A written memorandum is required to be filed. See: Laxmiratan Engg. Works Ltd. Vs. C.S.T., AIR 1968 SC 488(Three-Judge Bench).

19. **Right to appeal can be exercised in the manner prescribed by law :** Right to appeal has to be exercised within the limits and according to the procedure provided by law. It is filed for invoking the powers of superior court to redress the error of court below, if any. See : State of Haryana Vs. Maruti Udyog Ltd., AIR 2000 SC 2941

20. **Copy of appeal to be filed in the trial court (C.L. No. 19/2008 dated 4.09.2008** : Upon consideration of the judgment and order dated 25.10.2002 passed by the Apex court in Salem Advocates Bar

Association Vs. UOI, the Hon'ble court has been pleased to direct that the appeal shall be filed u/o 41, rule 1 CPC in the court in which it is maintainable and a copy of the 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 the endorsement thereof shall be made by the decreeing court in a book called the " Register of appeals".

Note- *Earlier contrary Circular letter dated 13.12.2007 stood superseded vide aforesaid CL No. 19/2008 dated 4.09.2008.*

21. **Defects in the memorandum of appeal not to invalidate appeal:** Order 41, Rule 1 and Order 3, Rule 4CPC: Deficiencies will not invalidate memo of appeal if such omission or defect is not deliberate and signing of memo of appeal or presentation thereof before appellate court was with knowledge and authority of appellant. Said deficiency can be subsequently rectified either of motion of party or *suo moto* grant of permission by court. If pleader signing memo of appeal had appeared for the party in court(s) below, then he need not present a fresh vakalatnama along with memo of appeal as vakalatnama filed in court(s) below would be sufficient to sign and present memo of appeal. See: Udai Shankar Triyar Vs. Ram Kalewar Prasad Singh, AIR 2006 SC 269.

22. **Second appeal after withdrawl of first appeal is maintainable? :** Right to file a proper appeal is not affected by withdrawal of an earlier incompetent appeal. An incompetent appeal will indeed be no appeal in the eye of law and cannot in any way prejudice the right of any appellant to file a proper appeal, if the right of appeal is not otherwise lost by lapse of time or any other valid reason. Order 23 Rule 1 CPC does not stand in the way of maintainability of the subsequent appeal. See : M. Ramnarain (P) Ltd. Vs. State Trading Corpn. Of India Ltd., AIR 1983 SC 786.

23. **Admission of appeal and duty of appellate court:** It is the duty of appellate court to examine the appeal at the stage of order 41, Rule 11 CPC and to dismiss the same, if it lacks merit and does not deserve admission. No alleged convention or practice can be allowed to override the mandatory provision u/o 41 Rule 11 CPC. See: Shyam Prasad Mishra vs Vijay Pratap Singh, AIR 2006 All 56.

24. **Admission or rejection of appeal in part permissible:** Appellate Court has power u/s 96 & 100 CPC read with Order 41, rule 3 CPC to admit an appeal in part if parts thereof are severable. See: Bolin Chetia Vs. Jogadish Bhuyan, (2005) 6 SCC 81.

25. **Ordering deposit of money as condition precedent for admission of appeal not proper:** It is open for the appellate court to impose any condition as it may think fit and proper in the facts and circumstances of the case. Otherwise imposing a condition of deposit of money subject to which an appeal may be admitted for hearing on merits is not legally justified and such order cannot be sustained. See: Management of Devi Theatre Vs VishwaNath Raju, AIR 2004 SC 3325.

26. **Summary dismissal of appeal when possible u/s 96 CPC?** : Court hearing first appeal against finding of facts must record its reasons, especially if it is the final court on finding of facts. One word order 'Dismissed' not permissible. While affirming judgment of lower court detailed discussion is not required. See: Kerala Transport Co. Vs. Shah Manilal Mulchand, 1991 Supp. (2) SCC 461

27. **Ex parte ad interim injunction order is appealable u/o 43, rule 1(r) CPC:** Order granting temporary injunction under Order 39, rule 1 CPC is appealable u/o 43, rule 1(r) CPC. Plea that only orders granting injunction which finally decide application 6-C2 are alone appealable is not tenable. All orders under Order 39, rule 1 CPC are interim orders and cannot be bifurcated as final orders and interim orders. See : Cosmopolitan Club Vs. Vinayak Kripa Inframart Co. Ltd, 2010 (5) ALJ (NOC) 601 (Allahabad) (DB).

28. **Appeal under Order 43, rule 1 CPC maintainable against an ex parte order of injunction passed u/o 39, rule 1& 2 CPC:** Appeal against an order passed on an application under Order 39, rule 1&2 CPC is maintainable under Order 43, rule 1 CPC. The choice is of the party affected by the order either to move the appellate court or to approach the same court which passed the ex parte order for any relief. See:
    (i) A. Venkatasubbiah Naidu vs. S. Chellappan, AIR 2002 SC 3032.
    (ii) New Kenilworth Hotel Pvt. Ltd vs. Orissa State Finance Corporation, (1997) 3 SCC 462
    (iii) Moradabad Development Authority vs. Sai Sidhi Developers, AIR 2019 All 196 (Paras 11, 33)

29. **Relief not claimed in plaint not to be granted:** A relief larger than the one claimed by plaintiff in the suit cannot be granted by court. It is not open to the court to grant a relief to the plaintiff on a case for which there is no basis in the pleadings. See:
    (i) Meena Chaudhary Vs. Commissioner of Delhi Police, (2015) 2 SCC 156.
    (ii) Rajendra Tewary vs. Basudeo Prasad, 2002 (46) ALR 222 (SC)

(iii) Om Prakash Vs. Ram Kumar, (1991) 1 SCC 441 (Para 4).
(iv) Srinivas Ram Kumar Vs. Mahabir Prasad, AIR 1951 SC 177 (Three-Judge Bench)
(v) M. Siddiq (Ram Janmabhumi Temple Vs. Suresh Das, (2020) 1 SCC 1 at pages 737 & 738 (Para 1228) (Five-Judge Bench).
(vi) Venkataramana Devaru Vs. State of Mysore, AIR 1958 SC 255 (Five-Judge Bench) (Para 14).

30. Extent of powers of first appellate court: An appellate court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is open for re-hearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons on all issues arising alongwith the contentions put forth and pressed by the parties for decision of the appellate court. While reversing a finding of fact, the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it. See :

(i) State Bank of India & another Vs. M/s. Emmsons International Ltd. and another, AIR 2011 SC 2906
(ii) Santosh Hazari Vs. Purushottam Tiwari, AIR 2001 SC 965.

31. Extent of powers of first appellate court u/s 96 read with Order 41, rule 33 CPC: First appellate court can go into the questions of facts and appraise the evidence on record. See: Madanlal Vs. Yoga Bai, AIR 2003 SC 1880.

32. Jurisdiction of first appellate court u/o 41, Rule 11 CPC: The jurisdiction of the court in first appeal extends to examine the question of facts as well as that of law. It is though true that of under O. 41 R. 11 CPC it would be open for the court to dismiss the appeal *in limine* at the time of admission but even examining the matter from that point of view the court while considering question of admission of appeal filed under Section 96 CPC, may admit the appeal if considered fit for full hearing having prima facie merit. Otherwise, if it finds that appeal lacks merit, it may be dismissed at the initial stage itself. Admission of appeal, subject to condition of deposit of some given amount, is not envisaged in section 96 read with O. 41 R. 11 CPC. Moreover, deposit of money would obviously have no connection with the merit of the case. Imposing a condition of deposit of money subject to which an appeal may be admitted for hearing on merit is not legally justified

and such order cannot be sustained. See: Devi Theatre Vs. Vishwanath Raju, (2004) 7 SCC 337.

33. **Powers of first appellate court under Order 41, rules 33 & 22 CPC are in three parts**: The first part confers on the appellate court very wide power to pass such order in appeal as the case may require. The second part contemplates that this power will be exercised by the appellate court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents. The third part is where there have been decrees in cross suits, this power is exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees. See: Biahr Supply Syndicate Vs. Asiatic Navigation, AIR 1993 SC 2054.

34. **Power of first appellate court:** First appellate court can re-appreciate the entire evidence and come to a different conclusion from a trial court. When a High Court either without adverting to a certain findings of a trial court or without reversing other findings, allowed first appeal, it was held improper because points involved required deeper consideration of the trial court's findings. Matter remitted for decision afresh. See: Jagannath Vs. Arulappa, (2005) 12 SCC 303.

35. **Duty of first appellate court:** first appellate court, being the last court of appeal on facts, it is a duty of the first appellate court to go into all the questions raised in the appeal and also the challenge of the evidence led in the case. If this not having being done the matter must be remitted for decision afresh. See: Rama Pulp & Paper Ltd Vs. Maruti N. Dhotre, (2005) 12 SCC 186.

36. **Duty of first appellate court:** First appellate court, in exercise of its powers u/s 96 CPC read with Order 41, rule 31 CPC is obliged to decide all issues arising in the case both on facts and law after appreciating the entire evidence. Disposal of appeal in a cryptic manner by a judgment bereft of concise statement of points for determination and decisions thereon and reasons is improper. See: UPSRTC, Uttar Pradesh Vs. Kumari Mamta, 2016 (2) ALJ 645 (SC)

37. **Duty of first appellate court:** First appellate court u/s 96 CPC must record it findings only after dealing with all the issues of law as well as of facts and with the evidence, oral as well as documentary, led by the parties. The appellate court must give reasons in support of its findings. If the court does not fulfill its obligations, the parties would not get the true benefit of the first appeal which is a valuable right on the basis of which parties have a right to be heard on questions of law

as well as of facts. See: Madhukar Vs. Sangram, (2001) 4 SCC 756 (Three-Judge Bench)

38. **All questions of fact and law decided by the Trial Court remain open for re-consideration by the first appellate court :** Section 96 of the CPC provides for filing of an appeal from the decree passed by a court of original jurisdiction. Order 41, Rule 31 CPC provides the guidelines to the appellate court for deciding the appeal. This rule mandates that the judgment of the appellate court shall state:

(a) points for determination;
(b) the decision thereon;
(c) the reasons for the decision; and
(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.
(e) Thus, the appellate court has the jurisdiction to reverse or affirm the findings of the Trial Court. It is settled law that an appeal is a continuation of the original proceedings. The appellate court's jurisdiction involves a rehearing of appeal on questions of law as well as fact. The first appeal is a valuable right, and, at that stage, all questions of fact and law decided by the Trial Court are open for re-consideration. The judgment of the appellate court must, therefore, reflect conscious application of mind and must record the court's findings, supported by reasons for its decision in respect of all the issues along with the contentions put forth and pressed by the parties. Needless to say, the first appellate court is required to comply with the requirements of Order 41, Rule 31 CPC and non-observance of these requirements lead to infirmity in the judgment. See: Somakka (Dead) by LRs Versus K.P. Basavaraj (Dead) by LRs, 2022 SCC OnLine SC 736.

39. **Complying with the essentialities of order 41, rule 31 CPC is mandatory for the first appellate court:** It is mandatory for the first appellate court to comply with the essentialities of order 41, rule 31 CPC while deciding the first appeal. Without complying with the provisions of order 41, rule 31 CPC, first appeal cannot be decided. See:

(i) Manjula Versus Shyam Sundar, (2022) 3 SCC 90.
(ii) K.Karuppuraj Versus M. Ganesan, (2021) 10 SCC 777.
(iii) Malluru Mallappa Versus Kuruvathappa And Others, (2020) 4 SCC 313.

40. **Recording of reasons must for appellate court:** If having regard to the nature of oral evidences adduced before it, the Trial Judge came to the conclusion that the appellant had failed to prove her case, the first appellate court, as has rightly been held by the High Court, could not

have reversed the said finding without assigning sufficient and cogent reasons thereof. See: Chinthamani Ammal Vs. Nadagopal Gounder, (2007) 4 SCC 163

41. **Cryptic and non-speaking appellate order not justifiable:** Dismissal of regular first appeal passing cryptic order on facts is not proper. If a first appeal deserved to be dismissed at the admission stage itself some reasons however brief, must be recorded therefor. See: Delhi, U.P., M.P. Transport Co. Vs. New India Assurance Co. (2006) 9 SCC 213

42. **Appellate court has discretion to pass a decree in favour of a non-appealing party if he is entitled to such a decree:** No rigid rule can be laid down and it would depend on facts of each case. In exceptional cases appellate court can pass such decree or order as ought to have been passed even in favour of a party who had not preferred an appeal. O. 41, R. 33 CPC enables the appellate court to pass any order or decree which ought to have been made and to make such further order or decree as the case may be in favour of all or any of the parties even though (i) the appeal is as to part only of the decree and, (ii) such party or parties may not have filed an appeal. See:
    (i) Chandramohan Vs Bapu, AIR 2003 SC 1754
    (ii) K. Muthuswami Gounder Vs. N. Palaniappa Gounder, AIR 1998 SC 3118.

43. **Non-appealing plaintiffs or defendants can also be granted relief by the appellate court:** Some of plaintiffs whose claim was denied by the trial court and who had not challenged the same by way of appeal before first appellate court were held to be entitled to the relief in second appeal. In a partition suit, all parties stand on the same pedestal and every party is a plaintiff as well as a defendant. Position of plaintiff and defendant can be interchangeable. Trial court could grant relief even to non-appealing plaintiffs and make an adverse order against all defendants and in favour of all plaintiffs, Merely because trial court had not granted relief in favour of some of the plaintiffs, that would not come in the way in the High Court allowing their claim. See: Azgar Barid Verus Mazambi Alias Pyaremabi, (2022) 5 SCC 334.

44. **Appellate Court can pass interim order:** The power to make interim order is, except where it is specifically taken away by the statute, implicit in the power to make a final order. It is exercised by the authority who has to make the final order or an Authority exercising appellate or revisional jurisdiction against an order granting or refusing an interim order like one u/o 39 Rule 1 & 2 CPC. The

exercise of the power implies that the authority seized of the proceedings in which such an order is made will eventually pass a final order, the interim order serving only as a step in aid of such final order. The law does not permit the making of an interim order by one authority or court pending adjudication of the dispute by another. See: L.V. Ashok Kumar Lingala vs. State of Karnataka, AIR 2012 SC 53.

45. **Stay order when and how to be passed? :** The Supreme Court has issued following directions regarding the manner of passing of the stay orders and durations thereof in revisions and appeals filed against the orders of the trial courts:

(a) There must be a speaking order while granting stay of the proceedings

(b) Once an stay order is passed, the challenge should be decided within two to three months and the matter should be taken up on a day today basis

(c) Stay order should not be passed unconditionally or for indefinite period. Conditions may be imposed.

(d) Stay order shall automatically lapse after six months if not extended further and the proceeding before the trial court shall automatically commence

(e) Extension of stay order can be passed only by an speaking order showin extra-ordinary situation

(f) The above directions shall apply to both the civil as well as criminal matters

(g) The above directions shall apply to both civil and criminal appellate and revisional jurisdictions. See: Asian Resurfacing of Road Agency (P) Ltd. Vs. CBI, (2018)16 SCC 299 (Three- Judge Bench)

Note: Asian Resurfacing of Road Agency (P) Ltd. Vs. CBI, (2018)16 SCC 299 (Three- Judge Bench) has now been overruled by a Five-Judge Constitution Bench of the Hon'ble Supreme Court by its judgement dated 29.02.2024 passed in High Court Bar Association, Allahabad vs. State of U.P, 2024 SCC Online SC 207

46. **No automatic expiration of interim stay order after six months:** Overruling its previous Three-Judge Bench judgement in Asian Resurfacing of Road Agency (P) Ltd. Vs. CBI, (2018)16 SCC 299, a Five-Judge Constitution Bench of the Hon'ble Supreme Court has ruled that an interim stay order would not expire after expiration of six months from the date of passing of the stay order. See: High Court Bar Association, Allahabad vs. State of U.P, 2024 SCC Online SC 207

47. **Meaning of "Stay Order"? :** "While considering the effect of an interim order staying the operation of the order under challenge, a

distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending.**"** See: Shree Chamundi Mopeds Limited Vs. Church of South India Trust Association CSI Cinod Seceretariat, Madaras, (1992) 3 SCC 1 (Three-Judge Bench) (Para 10)

48. Discretionary power of appellate court u/o 41, Rule 33 CPC: When circumstances exist which necessitate the exercise of discretion conferred on the appellate court by Order, 41 Rule 33 CPC, the appellate court cannot be found wanting when it comes to exercise its powers. See: Delhi Electric Supply Undertaking vs Basanti Devi, AIR 2000 SC 43.

49. Deficiency in court fee occurred in trial court can be directed to be made good even at appellate stage: It is well known legal position that appeal is continuation of suit and power of appellate court is co-extensive with that of the trial court. Deficiency in court fee occurred in trial court can be directed to be made good even at appellate stage. See**:** Sardar Tajendra Singh Gambhir Vs. Sardar Gurpreet Singh, 2015 (1) ARC 616 (SC).

50. Findings of facts recorded by lower court not to be ordinarily disturbed: Findings recorded by lower court/authority in favour of the appellant cannot be interfered with by the appellate court/authority in absence of any appeal filed by the respondent. The object of R. 33 is to avoid contradictory and inconsistent decisions on the same questions in the same suit. The power under this rule is in derogation of the general principle that a party cannot avoid a decree against him without filing an appeal or cross objection, it must be exercised with care and caution. The rule does not confer an unrestricted right to

reopen decrees which have become final merely because the appellate court does not agree with the opinion of the court appealed from. See: Choudhary Sahu Vs. State of Bihar, AIR SC 98.

51. When can appellate court interfere u/s 96 CPC with the finding of facts recorded by the trial court? : The appellate court may not interfere with the finding of the trial court unless the finding recorded by the trial court is erroneous or the trial court ignored the evidence on record. See: Venkatesh Construction Co. Vs. Karnataka Vidyuth Karkhane Limited, (2016) 4 SCC 119 (para 20) (Three-Judge Bench).

52. Reversal of findings of trial court and duty of appellate court : While reversing a finding of fact, the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it. See :

(i) V. Prabhakara Versus Basavaraj K., (2022) 1 SCC 115.
(ii) State Bank of India & another Vs. M/s. Emmsons International Ltd. and another, AIR 2011 SC 2906
(iii) Santosh Hazari Vs. Purushottam Tiwari, AIR 2001 SC 965.

53. When can appellate court not interfere with the findings of fact recorded by the trial court? : The first appellate court should not disturb and interfere with the valuable rights of the parties which stood crystallized by the trial court's judgment without opening the whole case for re-hearing both on question of facts and law. More so, the appellate court should not modify the decree of the trial court by cryptic order without taking note of all relevant aspects, otherwise the order of the appellate court would fall short of considerations expected from the first appellate court in view of the provisions of Order 41, rule 31 CPC and such judgment and order would be liable to set aside. See:

(i) Parimal Vs. Veena, AIR 2011 SC 1150
(ii) B.V. Nagesh Vs. H.V. Srinivassa Murthy, JT (2010) 10 SC 551

54. Plea of jurisdiction can be raised at appellate stage : Objection as to jurisdiction of the trial court can be raised at any stage. If the trial court had no jurisdiction in the matter, the doctrine of *coram non judice* would apply and the judgment and decree of the lower court being without jurisdiction cannot be upheld. See: Chief Engineer, Hydel Project Vs. Rabinder Nath, (2008) 2 SCC 350.

55. Plea of absence of jurisdiction when not to be entertained by the appellate court? : A decision rendered without jurisdiction would

coram non judice. It is a fundamental principle that a decree passed by a court without jurisdiction is nullity and its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction strikes at the very authority of the court to pass any decree and such a defect cannot be cured even by consent of parties. But a distinction, however, must be made between a jurisdiction with regard to subject matter of the suit and that of territorial and pecuniary jurisdiction. Whereas in the case falling within the former category the judgment would be a nullity, in the later it would not be. See :

(i) Mantoo Sarkar Vs. Oriental Insurance Company Ltd. & another, AIR 2009 SC 1022.

(ii) Harshad Chiman Lal Modi Vs. DLF Universal Limited & another, (2005) 7 SCC 791.

(iii) Chief Engineer, Hydel Project Vs. Rabinder Nath, (2008) 2 SCC 350.

56. **Consent/Waiver/Acquiescence not to confer jurisdiction:** Consent/ waiver/acquiescence cannot confer jurisdiction upon a court incompetent to try the suit. See: Harshad Chiman Lal Modi Vs. DLF Universal Limited & another, (2005) 7 SCC 791**.**

57. **Appellate court can mold relief in accordance with the law having come into force during pendency of appeal**: Appeal is in continuation and rehearing of the suit. Appellate court is entitled to take into account even facts and events which came into existence after passing of decree appealed against. If a new enactment comes into force during the pendency of appeal, appellate court can mould the relief by applying the new enactment. See: Dilip Vs. Mohd. Azizul Haq, AIR 2000 SC 1976.

58. **Merits of the case not to be discussed when court has no jurisdiction:** It is settled law that once court holds that it has no jurisdiction in the matter, it should not consider the merits of the matter. Kindly see: Jagraj Singh vs. Birpal Kaur, AIR 2007 SC 2083.

59. **Procedure to decide first appeal:** Order 41, rule 31 CPC provides for procedure for deciding the appeal. The law requires substantial compliance of the said provisions. The first appellate court being the final court of facts has to formulate the points for its consideration and independently weigh the evidence on the issues which arise for adjudication and record reasons for its decision on the said points. The first appeal is a valuable right and the parties have a right to be heard both on question of law and on facts. See:

(i) H. Siddiqui Vs. A. Ramalingam, AIR 2011 SC 1492
(ii) Parimal Vs. Veena, AIR 2011 SC 1150
(iii) Shiv Kumar Sharma Vs. Santosh Kumari, AIR 2008 SC 171
(iv) Gannamani Anasuya Vs. Parvatini Amarendra Chowdhary, AIR 2007 SC 2380
(v) G. Amalorpvam Vs. R.C. Diocese of Madurai, (2006) 3 SCC 224
(vi) Santosh Hazari Vs. Purushottam Tiwari, AIR 2001 SC 965

60. Considering arguments of the parties must for appellate court: The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons on all issues arising alongwith the contentions put forth and pressed by the parties for decision of the appellate court. See:

(i) State Bank of India & another Vs. M/s. Emmsons International Ltd. & Another, AIR 2011 SC 2906
(ii) Santosh Hazari Vs. Purushottam Tiwari, AIR 2001 SC 965

61. Issues of facts and law both to be decided by the first appellate court: The first appeal has to be decided on facts as well as on law. In the first appeal parties have the right to be heard both on questions of law as also on facts and the first appellate court is required to address itself to all issues and decide the case by giving reasons. See:

(i) State Bank of India & another Vs. M/s. Emmsons International Ltd. and another, AIR 2011 SC 2906
(ii) Parimal Vs. Veena, AIR 2011 SC 1150
(iii) Santosh Hazari Vs. Purushottam Tiwari, AIR 2001 SC 965
(iv) K.N. Swami Vs. Irshad Basith, (2005) 10 SCC 243
(v) Madhukar Vs. Sangram, (2001) 4 SCC 756 (Three-Judge Bench)

62. Appellate court to decide all issues in its judgment: First appellate court is required to consider and decide all issues whether of law or facts or of both. See: State Bank of India & another Vs. M/s. Emmsons International Ltd. and another, AIR 2011 SC 2906

63. Formulating points for determination by appellate court necessary: As per Order 41, rule 31(a) CPC, it is required from the appellate court to formulate points for determination by it so that the contentions and the rival contentions of the parties may be tested on such points of determination. However, the appellate judgment cannot be said to be vitiated merely because proper points for determination are not framed by the appellate court. See:

(i) United Engineers and Contractors Vs Secretary to Govt. of AP, AIR 2013 SC 2239
(ii) Parimal Vs Veena, AIR 2011 SC1150
(iii) H. Siddiqui Vs A. Ramalingam, AIR 2011 SC 1492
(iv) Anasuya Vs. Parvartini Amrendra Chowdhary, AIR 2007 SC 2380
(v) G. Amalarpavam Vs. R.C. Diocese of Madurai, (2006) 3 SCC 224

64. Non-framing of points for determination not to vitiate appellate judgment: Non-framing of points for determination would not vitiate the appellate judgment. See: Rattan Dev Vs. Pasam Devi, (2002) 7 SCC 441

65. Recording of its own reasons must for appellate court: Where the trial court had recorded reasons in its judgment/decree and the same was also upheld by the appellate court but no reasons of its own were recorded by the appellate court, it has been held by the Hon'ble Supreme Court that the appellate court u/s 96 CPC must record its own reasons even if it is upholding the reasons recorded by the trial court. See:
(i) M/s. Malnad Traders Vs. M/s. New India Assurance Company Limited, AIR 2009 SC 2084.
(ii) Madhukar vs. Sangram, (2001) 4 SCC 756 (Three- Judge Bench)

66. Appeal cannot be dismissed on merits in default of appearance of appellant: In view of bar of the explanation added to Order 41, rule 17 CPC w.e.f. 1.2.1977, a civil appeal cannot be dismissed on merits in absence of the appellant or his counsel. The option of the appellate court is to dismiss the appeal in default of the appellant. But the appeal can be heard on merits if the respondent does not appear. See:
(i) Harbans Pershad Jaiswal Vs. Urmila Devi Jaiswal, (2014) 5 SCC 723
(ii) Secretary, Department of Horticulture, Chandigarh Vs. Raghu Raj, AIR 2009 SC 514
(iii) Ramesh Chandra Goyal Vs. IV ADJ, Agra, 2006 (6) ALJ 34
(iv) Ajit Kumar Singh Vs Chiranjibi Lal, (2002) 3 SCC 609
(v) Shokat Ali Vs. VI Addl. District Judge, Bulandshahr, 2000 (3) AWC 2277 (Allahabad)

67. Appeal not to be dismissed in default on merits: Once an appeal is admitted and is placed for hearing on merits, it can be dismissed for default of the appellant or his advocate but cannot be decided on merits in their absence. See: Secretary, Dept. of Horticulture, Chandigarh vs. Raghu Raj AIR 2009 SC 514.

68. **Production of additional evidence by parties at appellate stage and relevant considerations for permitting it**: If an application is filed by the party under Order 41, rule 27 CPC to produce additional evidence at appellate stage, the duty of the court is to decide the same on merit and consider as to whether the document or other evidence sought to be adduced has any relevance or bearing on the issues involved. See:
   (i) Malyalam Plantations Limited Vs. State of Kerala, AIR 2011 SC 559
   (ii) Shyam Gopal Bindal Vs. Land Acquisition Officer, AIR 2010 SC 690
   (iii) Jatinder Singh Vs. Mehar Singh, AIR 2009 SC 354
   (iv) Mahavir Singh Vs. Naresh Chandra, AIR 2001 SC 134.

69. **Production of additional evidence when to be allowed u/o 41, rule 27 CPC:** Additional evidence/ documents which were in existence at time of filing of appeal, can be admitted as additional evidence u/o 41, rule 27 CPC. See:
   (i) Louis Paiva Vs. Nagar Palika Parishad, Saharanpur, 2007 (69) ALR 794 (Alld)
   (ii) Shri Durga Bhagwati Industries Vs. Om Prakash Lohiya, 2006 (64) ALR 492 (Alld)
   (iii) Jaipur Development Authority Vs. Kailashwati Debi, 1997 (31) ALR 678 (SC)

70. **An application filed u/o 41, rule 27 CPC for production of additional evidence during the pendency of appeal to be heard and decided at the time of final hearing of the appeal**: An application u/o 41, rule 27 CPC for taking additional evidence on record at an appellate stage, even if filed during the pendency of the appeal, is to be heard at the time of the final hearing of the appeal at a stage when after appreciating the evidence on record, the court reaches the conclusion that additional evidence was required to be taken on record in order to pronounce the judgment or for any other substantial cause. In case, the application for taking additional evidence on record has been considered and allowed prior to the hearing of the appeal, the order being a product of total and complete non-application of mind, as to whether such evidence is required to be taken on record to pronounce the judgment or not, remains inconsequential/inexecutable and is liable to be ignored. See: Union of India Vs. Ibrahim Uddin, (2012) 8 SCC 148 *(para 52).*

71. **Power of appellate court under order 41, rule 27 CPC discretionary and to be used sparingly:** The general principle is that

the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. The appellate court may permit additional evidence only and only if the conditions laid down in this Rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, the provision does not apply, when on the basis of the evidence on record, the appellate court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the court and is to be used sparingly. Such a discretion is only a judicial discretion circumscribed by the limitation specified in the Rule itself. See: Union of India Vs. Ibrahim Uddin, (2012) 8 SCC 148 *(para 36).*

72. **Appellate court should not ordinarily allow new evidence to be adduced under Order 41, Rule 27 CPC:** The appellate court should not ordinarily allow new evidence to be adduced in order to enable a party to rise a new point in appeal. Similarly, where a party on whom the onus of proving a certain point lies fails to discharge the onus, he is not entitled to a fresh opportunity to produce evidence, as the court can, in such a case, pronounce judgment against him and does not require any additional evidence to enable it to pronounce judgment. Under Order 41 Rule 27 CPC, the appellate court has the power to allow a document to be produced and a witness to be examined. But the requirement of the said court must be limited to those cases where it found it necessary to obtain such evidence for enabling it to pronounce judgment. This provision does not entitle the appellate court to let in fresh evidence at the appellate stage where even without such evidence it can pronounce judgment in a case. It does not entitle the appellate court to let in fresh evidence only for the purpose of pronouncing judgment in a particular way. In other words, it is only for removing a lacuna in the evidence that the appellate court is empowered to admit additional evidence. It is not the business of the appellate court to supplement the evidence adduced by one party or the other in the lower court. Hence, in the absence of satisfactory reasons for the non-production of the evidence in the trial court, additional evidence should not be admitted in appeal as a party guilty of remissness in the lower court is not entitled to the indulgence of being allowed to give further evidence under this Rule. So a party who had ample opportunity to produce certain evidence in the lower court but failed to do so or elected not to do so, cannot have it admitted in appeal. The inadvertence of the party or this inability to understand the legal issues involved or the wrong advice of a pleader or the negligence of a pleader or that the party did not realize the importance of a document does not constitute a "substantial cause"

within the meaning of this Rule. The mere fact that certain evidence is important, is not in itself a sufficient ground for admitting that evidence in appeal. The words "for any other substantial cause" must be read with the word "requires" in the beginning of the sentence, so that it is only where, for any other substantial cause, the appellate court requires additional evidence, that this Rule will apply e.g. when evidence has been taken by the lower court so imperfectly that the appellate court cannot pass a satisfactory judgment. See: Union of India Vs. Ibrahim Uddin, (2012) 8 SCC 148 *(paras 37, 38, 39, 40 & 41).*

73. Relevant considerations for permitting production of additional evidence u/o 41, rule 27 CPC: The true test to be applied in dealing with the application for additional evidence u/o 41, rule 27 CPC is whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. If the additional evidence is allowed to be adduced contrary to the principles governing the reception of such evidence, it will be a case of improper exercise of discretion and additional evidence so brought on record will have to be ignored. See: Natha Singh Vs. The Financial Commissioner, AIR 1976 SC 1053.

74. Vigilance or negligence of party not relevant for invoking power u/o 41, rule 27 CPC to permit production of additional evidence: Invocation of powers of appellate court u/o 41, rule 27(1)(b) CPC does not depend upon vigilance or negligence of parties in producing the evidence but the real test would be whether the document in question would throw light on germane issue and is necessary for pronouncing judgment. See: Wadi Vs. Amilal, (2015) 1 SCC 677.

75. Inadvertence or lack of proper legal advice not a ground to admit additional evidence u/o 41, rule 27 CPC: Inadvertence or lack of proper legal advice cannot be a ground u/o 41, rule 27 CPC to admit additional evidence at appellate stage as it does not constitute substantial cause. See: Haryana State Industrial Development Corporation Vs. M/s Cork Manufacturing Company, AIR 2008 SC 56

76. Rejection of application u/o 41, rule 27 CPC when justified? : It has been held by the Hon'ble Supreme Court that rejection of application for production of additional evidence u/o 41, rule 27 CPC after a period of 10 years from the date of filing of the appeal cannot be termed to be erroneous or an illegal exercise of discretion. See: N. Kamalam Vs. Ayya Samy, AIR 2001 SC 2802

77. **Rejection of application u/o 41, rule 27 CPC when proper? :** Provision u/o 41, rule 27(1)(b) CPC can be invoked only if the court requires any document to be produced or witnesses to be examined to enable it to pronounce judgment or for any other substantial cause. Documents sought to be produced were part of government record and could have been filed earlier. The documents sought to be produced were not documents which came into existence after filing of the suit. Application u/o 41, rule 27 CPC therefore rightly rejected. See: State of Gujarat Vs. Mahendra Kumar Parshottambhai Desai, 2006 (63) ALR 806 (SC).

78. **Documentary evidence when to be admitted u/o 41, rule 27 CPC? :** Two of the documents came into existence after the passing of the decree by the trial court. Appellate court may allow documentary evidence to be produced u/o 41, rule 27 CPC r/w Sec 107 (1)(d) CPC if the party establishes that such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed. See: Adil Jamshed Frenchman Vs. Sardar Dastur Schools Trusts & Others, 2005 (2) SCJ 236.

79. **Lacuna to fill up in evidence not to be allowed u/o 41, rule 27 CPC**: Additional evidence in appeal u/o 41, rule 27(1)(b) CPC cannot be filed by a party at appellate stage as of right. Attempt to fill up gap in the case left out before the trial court cannot be permitted. Additional District Judge therefore illegally allowed application u/o 41, rule 27 CPC and the same was set aside. See:
    (i) Shri Kishore Vs. Roop Kishore, 2006 (62) ALR 414 (Alld)
    (ii) Natha Singh Vs. The Financial Commissioner, AIR 1976 SC 1053

80. **Remand of appeal an 'interlocutory order':** Remand of appeal u/o 41, rule 23-A CPC is an interlocutory order which does not terminate the proceedings and hence it could be challenged from the final order. See:
    (i) Mangal Prasad Tamoli Vs. Narvedshwar Misra, 2005 (2) SCJ 515
    (ii) Chatrughan Vs. Dhanpati Rai, 2007 (69) ALR 861 (All)

81. **Appeal must be remanded to the trial court for deciding as to who is the LR of the deceased party:** Interpreting the provisions of Order 41, rule 25 CPC read with Proviso to Order 22, rules 4 & 5 CPC, it has been ruled by the Hon'ble Supreme Court that if a question arises in appeal as to who is the legal representative of the deceased party, the appeal must be remanded to the trial court as an enquiry on

question as to who is LR of the deceased party can be done only by the trial court. It is, therefore, necessary for the appellate court remand the appeal to trial court for recording such finding. See: Karedla Parthasaradhi Vs. Gangula Ramanamma, AIR 2015 SC 891.

82. Remanding case to trial court to frame fresh issue and decide the suit afresh: If an issue on any specific and material question of fact was not framed and decided by the trial court which in the opinion of the first appellate court appears to be necessary to be framed and decided, then the appellate court should not frame and decide such issue if there is no sufficient evidence available before it to decide the same and in such cases, the appellate court, in exercise of its power under section 96 CPC read with order 41, rule 24 CPC remand the matter to the trial court with the direction to frame such issue and decide the suit afresh. See:

(i) M/s. Divya Exports Vs. M/s. Shalimar Video Company and others, AIR 2011 SC 3063.
(ii) Nicholas V. Menezes Vs. Joseph M. Menezes, (2009) 4 SCC 791
(iii) Remco Industrial Workers House Building Co-operative Society Vs. Lakshmeesha M. & Others, 2003 SAR (Civil) 804 (SC)

Note: *SAR = Supreme Appeals Reporter*

83. Remand order directing retrial/de novo trial of suit when permissible? : If the trial court had disposed of the matter on merits and not on any preliminary issue, the order of the appellate court directing re-trial of the case is valid in terms of its powers under order 41, rule 23-A CPC. See: Jegannathan Vs. Raju Sigamani & another, (2012) 5 SCC 540.

84. Unnecessarily remanding case deprecated by the Supreme Court: Relying upon a Supreme Court decision rendered in Smt. Dr. D. Kaur Vs. Smt. Kanti Khare, 1981 ARC 664 (SC), unnecessarily remanding cases has been deprecated by the Hon'ble Allahabad High Court. See: Dr. Neeraj Bhasin Vs. Ashok Bhasin, 2006 (63) ALR 56 (All)(LB).

85. Appellate Court cannot order a fresh trial under Order 41, rule 27 CPC: An appellate court cannot order a fresh trial. Such a course is not permissible under Order 41, rule 27 CPC when it has not proceeded under Order 41, rule 25 CPC or remanded the case under Order 41, rule 23 CPC. See: The Municipal Corporation of Greater Bombay Vs. Lala Pancham, AIR 1965 SC 1008 (Five-Judge Bench).

86. Rewriting overruled judgment after remand amounts to judicial indiscipline: If a judgment is overruled by the higher court, the judicial discipline (on remand) requires that the Judge whose

judgment is overruled must submit to the judgment (of the higher court). He cannot, in the same proceedings or in collateral proceedings between the same parties, rewrite the overruled judgment. See:

(i) Markio Tado Vs. Takam Sorang, (2013) 7 SCC 524 *(para 31)*
(ii) State of W.B. Vs. Shivananda Pathak, (1998) 5 SCC 513 *(para 28)*

87. **Fresh issue u/o 41, rule 25 CPC when not to be framed? :** Non framing of issues not fatal where parties went to trial fully knowing the rival cases and led all evidence. See:

(i) Sachchidanand Pandey Vs. Dr. Ram Pher Singh, (2004) 22 LCD 350 (All) (LB)
(ii) Parasnath Vs. Rameshwar Ram, 1999 SCD 422 (Allahabad)
(iii) Nedu Nuri Kame Swaramma Vs. Sampati Subba Rao, AIR 1963 SC 884

88. **Failure to frame issues when not fatal?** : Failure to frame formal issues by Court would not invalidate findings of binding judgment between parties. See: Commissioner of Endowments Vs. Vittal Rao, 2005 (2) AWC 1984 (SC)

89. **Ex-parte decree is appealable:** When an application u/o 9, rule 13 CPC for setting aside an ex-parte decree is dismissed, the defendant cannot prefer an appeal u/o 43, rule 1 CPC. The appellant cannot raise same contention in the first appeal. Principles of res-judicata applies in different stages of the same proceedings. Once ex-parte judgment is reserved u/o 20, rule 1 & 2 CPC, application by defendant u/o 9, rule 7 CPC does not lie. Remedy of the defendant is by way of order 9, rule 13 CPC or appeal. See: Bhanu Kumar Jain Vs. Archana Kumar, 2005 (1) SCJ 243 (Three-Judge Bench).

90. **Ex-parte decree and scope of interference by the appellate court**: In case the matter does not fall within the four corners of Order 9, Rule 13 CPC, court has no jurisdiction to set aside ex parte decree. Second proviso to Order 9, Rule 13 CPC makes it obligatory on the appellate court not to interfere with an ex parte decree unless it meets the statutory requirement. See: Parimal Vs. Veena, AIR 2011 SC 1150.

91. **An application u/o 9, rule 13 CPC not to be entertained after disposal of the appeal on the ground of limitation**: An application u/o 9, rule 13 CPC cannot be entertained by the trial court after the appeal against the ex-parte decree was dismissed by the appellate court on the ground of limitation. See:

(i) P. Kiran Kumar Vs. A.S. Khadar, (2002) 5 SCC 161

(ii) Rani Chowdhary Vs. Lt. Col. Suraj Jit Chowdhary, (1982) 2 SCC 596

92. **Appeal u/o 43, Rule 1 CPC maintainable after dismissal of application u/o 9, Rule 13 CPC:** When an ex parte decree is passed, the defendant has two options viz. to file an appeal and to file an application under Order 9, rule 13 CPC. He can take recourse to both the proceedings simultaneously. But in the event of the appeal being dismissed, the result would be that the ex parte decree passed by the trial court would stand merged in the order of the appellate court. Therefore, in view of the Explanation appended to Order 9, rule 13 CPC, application under Order 9, rule 13 CPC would not be maintainable. When an application under Order 9, Rule 13 CPC is dismissed, the defendant can prefer an appeal under Order 43, Rule 1 CPC. The appellant cannot raise same contention in the first appeal. Principle of res judicata applies at different stages of the same proceedings. See: Bhanu Kumar Jain Vs. Archana Kumar, AIR 2005 SC 626 (Three-Judge Bench)

93. **Application to set aside ex parte decree u/o 9, Rule 13 CPC not maintainable after dismissal of appeal against such ex parte decree :** Where there has been an appeal against ex parte decree and the same has been disposed off on any ground (even on limitation), the application u/o 9, Rule 13 CPC would not lie and should not be entertained. See:
(i) Shyam Sundar Sarma Vs. Pannalal Jaiswal, 2005 (1) SCJ 180
(ii) P. Kiran Kumar Vs. A.S Khadar, (2002) 5 SCC 161
(iii) Rani Choudhary Vs. Lt. Col. Suraj Jit Choudhary, (1982) 2 SCC 596.

94. **Limitation period of 90/30 days for filing appeal:** As per Article 116 of the Limitation Act, 1963, limitation period for filing an appeal against a decree or order to the High Court is 90 days and 30 days to any other appellate court from the date of the decree or the order.

95. **Law of limitation or some other law to bar filing of appeal:** The right to appeal conferred on any party may be lost to the party in appropriate cases by the provisions of some law as the law of limitation and also by the conduct of the party and in appropriate cases a party may be held to have become disentitled from enforcing the right of appeal which he may otherwise have. See: M. Ramnarain (P) Ltd. Vs. State Trading Corpn. Of India Ltd., AIR 1983 SC 786.

96. **Time-barred appeal and condonation of delay: (**O. 41 R. 3-A – CPC) Application for condonation of delay in filing appeal- when

defence of limitation is upheld, whether appeal itself is deemed to have been dismissed. There is no corresponding requirement for admission of applications for suits after overcoming the barriers of limitations. A suit which is dismissed on the grounds of limitation may be appealed against as decree. No final view expressed. See: Essar Constructions Vs. N.P. Rama Krishna Reddy, (2000) 6 SCC 94.

97. **Time-barred appeal and condonation of delay (order 41, rule 3-A(1) CPC & 3(1) CPC):** Filing of memorandum of appeal without application for condonation of delay held, consequences not fatal – unintentional lapses of a litigant should not result in closing of doors of the court permanently– word 'shall' in R. 3-A(1) does not foreclose the chance to rectify a mistake. See**:** State of M.P. Vs. Pradeep Kumar, (2000) 7 SCC 372.

98. **Dismissal of time barred appeal and its legal effects:** Dismissal of appeal even on ground of limitation is a dismissal for all purposes – finality of the judgment. See: Bindeshwari Prasad Singh Vs. State of Bihar, AIR 2002 SC 2907.

99. **Delay of 1942 days in filing appeal due to laxity of lawyer held unsatisfactory and not fit to be condoned:** In the case noted below, the appellants took the plea that their lawyer did not take timely steps which resulted in causing delay of 1942 days in filing the appeal. The Supreme Court held that the delay was inordinate and unexplained. The said explanation was found to be insufficient and the Supreme Court refused to condone the delay. See: State Officer, Haryana Urban Development Authority Vs. Gopi Chand Atreja, AIR 2019 SC 1423.

100. **Cross-objections or cross-appeal by defendant not necessary to oppose appeal filed by plaintiff/appellant:** In the case of plaintiff's appeal against partial decree, the respondent can even without filing any appeal or cross-objection, can for the purpose of sustaining the impugned part of decree attack the findings on which the part of decree passed against him was based. Under O. 41 R. 22 CPC, before 1976 amendment, it was open to the respondent defendant who had not taken any cross objection to the partial decree passed against him, to urge in opposition to the appeal of the plaintiff, a contention which if accepted by the trial court would have resulted in total dismissal of the suit. The filing of cross-objection, after 1976 amendment is purely optional and not mandatory. See: Ravinder Kumar Sharma Vs. State of Assam, AIR 1999 SC 3571

101. **No relief to be granted to the party in the absence of cross appeal by him:** When appeal is filed by defendant against the grant of relief

of compensation or refund, the plaintiff as respondent can seek the relief of specific performance of contract or modification of decree only by taking cross-objection or by filing appeal of his own. In absence of cross-objection or cross-appeal appellate court cannot grant relief to plaintiff in exercise of power under O. 41 R. 33. See : Banarsi Vs. Ram Phal, AIR 2003 SC 1989.

102. Right to take cross-objection is substantive right of appeal conferred by Order 41, Rule 22 CPC: Available grounds of challenge against the judgment, decree or order impugned remained the same whether it is an appeal or a cross-objection. The difference lies in the form and manner of exercising the right; the terminus a quo (the starting point) of limitation also differs. See: Municipal Corp. of Delhi Vs. International Security and Intelligence Agency, AIR 2003 SC 1515.

103. Cross Appeals maintainable: Cross Appeals are maintainable u/o 41, Rule 22 CPC. See: Dhanraj Singh Choudhary vs. Nathulal Vishwakarma, AIR 2012 SC 628.

104. Infructuous appeal: For finality of judgment where appeal therefrom is rendered infructuous. See: Dharam Dutt Vs. UOI, AIR 2004 SC 1295.

105. Order of lower authority merges into that of the superior authority: A judicial order passed by the trial court merges in the order passed by the appellate or revisional court. It cannot be said that an appellate or revisional decision in which the decision of the trial court has merged is still a case arising out of the original suit. After merger, the decision arising out of the original suit vanishes. See: Jaswant Singh Vs. Smt. Kusum Lata Devi, 2012 (116) RD 383 (All)(LB).

106. Compromise should be challenged before the judge recording the compromise and not in appeal: Party concerned should approach the court which recorded the compromise in the first instance rather than straight away filing appeals as it is judge before whom the compromise was recorded who is privy to events that led to the compromise order and is thus in a better position to deal with validity of compromise. See: Y. Sleebachen & Others Vs. State of Tamil Nadu through Superintending Engineer Water Recourses Organization/Public works Department and Another, (2015) 5 SCC 747.

107. Compromise decree can be set aside by court which granted the decree or an appeal u/o 43, rule 1-A CPC can also be filed: See: Vipan Aggarwal Vs Raman Gandotra, (2023) 10 SCC 529

108. Suit challenging compromise decree not maintainable: A person questioning lawfulness of a compromise decree must approach the same court which recorded the compromise. Independent suit filed by the stranger to compromise is not maintainable. See: Triloki Nath Singh Versus Anirudh Singh, (2020) 6 SCC 629.

109. Proper remedy against an order rejecting plaint under Order 7, rule 11 CPC is first appeal u/s 96 CPC: Proper remedy against an order rejecting plaint under Order 7, rule 11 CPC is first appeal u/s 96 CPC. Writ petition under Article 227 of the Constitution against order rejecting plaint is not maintainable. See: Sayyed Ayaz Ali Versus Prakash G. Goyal and Others, (2021) 7 SCC 456.

110. Retrospective and prospective application of amended law: Amendment in law during pendency of appeal giving right to party must be applied by court to give benefit of the amended law to the party: A change in law during pendency of appeal must be considered and appropriately applied. It is the duty of court, whether it is trying the original proceedings or hearing an appeal, to take notice of the change in law affecting the pending action and to give effect to the same. Mere severance of status by way of filing of a suit does not bring about the partition and till the date of the final decree. Thus, change in law, and change due to subsequent event, can be taken into consideration. In this case, Section 6 of the Hindu Succession Act, 1956 was amended wef 9.8.2005 giving equal rights to daughter as coparcener co-equal to sons from her birth. A preliminary decree was passed in the partition suit but before passing of the final decree, Section 6 of the Hindu Succession Act, 1956 waqs amended.Preliminary decree was challenged in appeal and during pendency of appeal, Section 6 of the said Act was amended. Supreme Court held that the final decree must have been passed in accordance with the amended Section 6 of the Hindu Succession Act, 1956. See: Prasanta Kumar Sahoo Vs Charulata Sahu, (2023) 9 SCC 641

Part – 6
Second Appeal
(Section 208 RC)

1. **Second Appeal: Section 208 of UP Revenue Code, 2006 reads thus:** (1) Where in any suit, application or proceeding specified in 'column 2 of the Third Schedule, any final order or decree is passed in any first appeal filed under section 207, and any party to such appeal is aggrieved by it, such party may prefer a second appeal to the Court specified against it in column 5.
(2) The appellate Court shall not entertain a second appeal unless it is satisfied that the case involves a substantial question of law.
(3) The period of **limitation** for filing a second appeal under this section shall be **ninety days** from the date of the order or decree appealed against.

2. **Substantial question of law:** In respect of the method of deciding second appeals by the Board of Revenue u/s 208 of the UP Revenue Code, 2006, the Supreme Court has held that the second appellate jurisdiction under the UP Revenue Code, 2006 incorporates the same principles which are provided for deciding the second appeals by the civil courts u/s 100 of the CPC. Framing of substantial question of law for decision by the second appellate court is a mandatory requirement of law both u/s 100 of the CPC as well as u/s 208 of the UP Revenue Code, 2006. **See:** State of Uttarakhand (Previously Uttar Pradesh) Vs. Mohan Singh, (2012) 13 SCC 281.

3. **Grounds for entertaining and deciding second appeal u/s 100 CPC and 208 of UP Revenue Code:** The Supreme Court has enumerated following grounds on which a second appellate court can entertain a second appeal and interfere with the finding of facts recorded by the lower court/ first appellate court:
(i) perversity of findings
(ii) misinterpretation of documents
(iii) misinterpretation of statute
(iv) error of jurisdiction
(v) wrongly shifting burden of proof
(vi) violation of mandatory procedure
(vii) ignoring binding law. See:
(a) Russi Fishers Pvt. Ltd. Vs. Bhavna Seth, 2026 INSC 339
(b) Nazir Mohamed Vs. Kamala, AIR 2020 SC 4321
(c) judgment dated 26.07.2024 of the Supreme Court in Civil Appeal No. 8038 – 8039 of 2024, Nekpal Vs. Nagar Palika Parishad.

4. **Re-evaluation of evidence for fresh finding of fact to be normally avoided by second appellate courts:** A civil or revenue court dealing with second appeals should strictly confine to the questions of law rather than re-evaluating the evidence and recording of fresh findings of facts. **See:** State of Uttarakhand (Previously Uttar Pradesh) Vs. Mohan Singh, (2012) 13 SCC 281.

5. **A second appeal should not be entertained unless the case involves a substantial question of law:** Section 208(2) of the UP Revenue Code, 2006 explicitly mandates that the second appellate court must not entertain a second appeal unless it is satisfied that the case involves a substantial question of law. See: State of Uttarakhand (Previously Uttar Pradesh) Vs. Mohan Singh, (2012) 13 SCC 281.

6. **Appeals against remand orders passed by revenue courts is barred u/s 209 (e) RC:** Section 209(e) of the UP Revenue Code, 2006 expressly provides for bar prohibiting second appeals against orders of remand.

7. **Framing substantial question of law by Board of Revenue mandatory before deciding second appeal u/s 208 RC:** It is mandatory for the board of revenue to find whether any substantial question of law arises in the second appeal and if any such question arises, the board must frame such substantial questions of law and only then it should decide the second appeal. See:
(i) Judgment dated 09.10.2023 of the Allahabad High Court passed in writ -B No. 3357 of 2023 = 2023 AHC 193842, Awadhesh Singh Vs. State of UP.
(ii) Ishwar Dass Jain Vs. Sohan Lal, 2000 (29) ALR 756 (SC)
(iii) Roop Singh Vs. Ram Singh, 2001 (92) RD 374 (SC)
(iv) Giyan Dass Vs. Gram Panchayat, 2006 (101) RD 449 (SC)
(v) Sheel Chandra Vs. Prakash Chandra, 1998 (89) RD 623 (SC)
(vi) Kshitesh Chandra Purakrit Vs. Santosh Kumar Purakrit, (1997) 5 SCC 433.

Part – 7
Law of Precedents

1. **Article 141 of Constitution of India:** Law declared by Supreme Court to be binding on all courts. The law declared by the Supreme Court shall be binding on all courts withing the territory of India.

2. **Article 144 of Constitution of India:** All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.
Declaration of law by Supreme Court binding upon all authorities & courts under Article 141 of the Constitution: Judicial discipline to abide by declaration of law by the Supreme Court, cannot be forsaken, under any pretext by any authority or Court, be it even the highest Court in a State, oblivious to Article 141 of the Constitution of India, 1950. See---
   (i) Union of India Vs Major General Shri Kant Sharma, (2015) 6 SCC 773
   (ii) Suga Ram @ Chhuga Ram vs. State of Rajasthan, AIR 2006 SC 3258
   (iii) State of Punjab vs. Bhag Singh, (2004) 1 SCC 547
   (iv) S.I. Rooplal vs. Lt. Governor, Delhi, AIR 2000 SC 594 (Three Judge Bench)
   (v) Union of India vs. Kantilal Hemantram Pandya, AIR 1995 SC 1349 = (1995) 3 SCC 17.

3. **When does a law declared by Supreme Court comes into effect?:** By virtue of Article 141 of the Constitution of India, a law declared by Supreme Court comes into effect from the day it is pronounced in its judgment**.** See: Prabir Purkayastha Vs. State NCT of Delhi, (2024) 8 SCC 254 (Para 44)

4. **Non observance of rulings of the Supreme Court amounts to judicial impropriety by subordinate courts:** Quoting its earlier **Three-Judge Bench** decision rendered in the case of **Dwarikesh Sugar Industries Ltd. Vs. Prem Heavy Engineering Works (P) Ltd., (1997) 6 SCC 450,** the Hon'ble Supreme Court has ruled thus : *"It is unfortunate that acts of judicial impropriety are repeated in spite of clear judgments of this Court on the significance of Article 141 of the Constitution…when a position in law is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts, to ignore the settled decision and then to pass a judicial*

adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical order which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops." See: Markio Tado Vs. Takam Sorang, (2013) 7 SCC 524 *(paras 30 & 31)*

5. **Tendency of non-observance of precedents set by the Supreme Court deprecated by the Supreme Court:** When a position in law is well settled as a result of judicial pronouncement of the Supreme Court, it would amount to judicial impropriety to say the least, for the subordinate courts including High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops. The aforestated thoughts are not only meaningfully pregnant but also expressively penetrating. They clearly expound the role of a Judge, especially the effort of understanding and attitude of judging. A Judge is expected to abandon his personal notion or impression gathered from subjective experience. The process of adjudication lays emphasis on the wise scrutiny of materials sans emotions. A studied analysis of facts and evidence is a categorical imperative. Deviation from them is likely to increase the individual gravitational pull which has the potentiality to take justice to her coffin. See: (i) Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd. and another (1997) 6 SCC 450 (Three-Judge Bench) (para 32) and (ii) judgment dated 23.11.2017 by Three-Judge Bench of the Supreme Court in Civil Appeal No. 19662/2017 arising out of SLP (C) No. 23410/2017, Medical Council of India Vs. G.C.R.G. Memorial Trust & Others (paras 14 & 15)

6. **Non-observance of precedents indicative of judicial indiscipline**: Where despite several Supreme Court rulings to the effect that the name of the victim of the sexual offences should not be indicated in the judgment, the court (High Court) had disclosed the name of the victim of the sexual offence in its judgment, it has been held by the Supreme Court that non-observance of the precedents on the subject amounts to judicial indiscipline. See:
(i) Judgment dated 07.11.2025 of the Supreme Court passed in Civil Appeal No. 5454/2019, Rohan Vijay Nahar Vs. State of Maharashtra, (Para 14.5)
(ii) State of Orissa vs. Sukru Gouda, A IR 2009 SC 1019.

7. **42.4 Shall & May: Meaning of ?:** The word " Shall" is ordinarily mandatory but not so interpreted if the context or the intention otherwise demand. The essence of the rule is that where the consultation has to be made during the performance of a public duty and an omission to do so occurs, the action cannot be regarded as altogether void, and the direction for consultation may be treated as directory and its neglect as of no consequence to the result. See:
(i) Bank of India Vs. Sri Nangli Rice Mills Private Limited, (2025) 9 SCC 225 (Para 124)
(ii) Sainik Motors Vs. State of Rajasthan, AIR 1961 SC 1480.

8. **Precedent: What is & how to be ascertained in a judgement? :** Ratio of the judgment alone is a binding precedent. It has to be ascertained by analyzing all the material facts and the issues involved in the case and argued on both sides. Moreover, the decision should be read with reference to and in the context of the particular statutory provision interpreted by the court. It is neither desirable nor permissible to pick out a word or a sentence from the judgment of the Court, divorced from the context of the question under consideration and treat it to be the complete "law" declared by the Supreme Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before the Supreme Court. The decision on the question involved in the case in which it is rendered and while applying the decision to the later case, the courts must carefully try to ascertain the true principle laid down by the decision and not to pick out words or sentences from the judgment divorced from the context of the question under consideration by the Court. An authority must be understood in the context of facts based on which observations therein are made. See:
(i) State of Rajasthan vs. Ganeshi Lal, AIR 2008 SC 690
(ii) Rajendra Singh vs. State of U.P., AIR 2007 SC 2786
(iii) ICICI Bank vs. Municipal Corporation of Greater Bombay, (2005) 6 SCC 404
(iv) CIT vs. Sun Engg. Works (P) Ltd., (1992) 4 SCC 363
(v) Madhav Rao Scindia vs. Union of India, (1971) 1 SCC 85

9. **Ratio decidendi & its applicability:** The term "ratio decidendi" means reasons for the decision. Broadly speaking, every judgment of superior courts has three segments, namely, (i) the facts and the points at issue, (ii) the reasons for the decision; and (iii) the final order containing the decision. The reasons for the decision or the ratio decidendi is not the final order containing decidendi may point to a particular result, the decision (final order relating to relief) may be

different and not a natural consequence of the ratio decidendi of the judgment. This may happen either on account of any subsequent event or the need to mould the relief to do complete justice in the mater. It is the ratio decidendi of a judgment and not the final order in the judgment, which forms a precedent. The term "judgment" and "decision" are used, rather loosely, to refer to the entire judgment or the final order or the ratio decidendi of a judgment. See: **Sanjay Singh vs. U.P. Public Service Commission, Allahabad, (2007) 3 SCC 720 (Three Judge Bench).**

10. **Principles of "Stare-decisis" & its meaning:** The full form of the principle, stare decisis at non quieta movere, which means 'to stand by decisions and not to disturb what is settled', was put by Coke in his classic English version as: "Those things which have been so often adjudged ought to rest in peace." The doctrine of stare decisis originated in England and is the basis of common law. It is also firmly rooted in American jurisprudence. It is important to further fair and expeditious adjudication by eliminating the need to relitigate every proposition in every case and is regarded as a rule of policy which promotes predictability, certainty, uniformity and stability. An earlier decision may, therefore, be overruled only if the court comes to the conclusion that it is manifestly wrong and not upon a mere suggestion that if the matter were res ingetra, the members of the later court may arrive at a different conclusion. For the application of the rule of stare decisis, it is not necessary that the earlier decision or decisions of longstanding should have considered and either accepted or rejected the particular argument which is advanced in the case on hand. It is sufficient for invoking which arose or was argued, no matter on what reason the decision rests or what is the basic of the decision. In other words, for the purpose of applying the rule of stare decisis, it is unnecessary to enquire or determine as to what was the rationale of the earlier decision which is said to operate as stare decisis. See:
    (i) Dr. Shah Faesal Vs. Union of India, (2020) 4 SCC 1 (Five-Judge Bench).
    (ii) Waman Rao vs. Union of India, (1981) 2 SCC 362 (Five Judge Bench)

11. **Importance of precedents? :** Precedents which enunciate rules of law form the foundation of administration of justice under our system. This is a fundamental principle which every Presiding Officer of a Judicial Forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. Supreme Court has laid down time and again precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bound by the

enunciation of law made by the superior courts. Rule of precedent is an important aspect of legal certainty in the rule of law. See:

(i) Honda Siel Power Products vs. CIT, Delhi, (2007) 12 SCC 596
(ii) S.I. Rooplal vs. Lt. Governor, Delhi, AIR 2000 SC 594 (Three Judge Bench)

12. **Precedents & their application to cases with factual difference:** The ratio of any decision must be understood in the background of the facts of that case. A case is only an authority for what it actually decides and not what logically follows from it. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. A decision cannot be relied upon without disclosing the factual situation. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact-situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's Theorems nor as provisions of the statute and that too taken out of the context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. A little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. See:

(i) Deepak Bajaj vs. State of Maharashtra, AIR 2009 SC 628
(ii) Government of Karnataka vs. Gowramma, AIR 2008 SC 863
(iii) Sarva Shramik Sanghatana, Mumbai vs. State of Maharashtra, AIR 2008 SC 946
(iv) U.P. State Electricity Board vs. Pooran Chandra Pandey, (2007) 11 SCC 92
(v) Bharat Petroleum Corporation Ltd. vs. N.R. Vairamani, AIR 2004 SC 4778
(vi) Bhavnagar University vs. Palittana Sugar Mills Pvt. Ltd., (2003) 2 SCC 111
(vii) Ambika Quarry Works vs. State of Gujarat, (1987) 1 SCC 213

13. **Cautions & pre-conditions in applying ratio of a case to other cases:** Ratio of a case can be extended to other identical situations, factual and legal, but not mechanically disregarding the rationale of that case. Unless and until the facts and circumstances in a cited case are in pari materia in all respects with the facts and circumstances of

the case in hand, it will not be proper to treat an earlier case as a precedent to arrive at a definite conclusion. Hence a given case should be determined on facts and circumstances of that case only and facts arising in the cases cited should not be blindly treated as a precedent to determine the conclusions. A decision is an authority for the questions of law determined by it. While applying the ratio, the court may not pick out a word or a sentence from the judgment divorced from the context in which the said question arose for consideration. A judgment, as is well known, must be read in its entirety and the observations made therein should receive consideration in the light of the questions raised before it. A decision is binding not because of its conclusion but in regard to its ratio and the principle laid down therein. Construction of a judgment should be made in the light of the factual matrix involved therein. What is more important is to see the issues involve therein and a context wherein the observations were made. Any observation made in a judgment, it is trite, should be read in isolation and out of context. A decision is an authority for what it decides and not what can logically be deduced therefrom. See:

(i) Bihar School Examination Board vs. Suresh Prasad Sinha, AIR 2010 SC 93
(ii) Bombay Dyeing & Manufacturing Co. Ltd. vs. Bombay Environmental Action Group, (2006) 3 SCC 434
(iii) Dhodha House vs. S.K. Maingi, (2006) 9 SCC 41
(iv) Ramesh Singh vs. State of A.P., (2004) 11 SCC 305
(v) Mehboob Dawood Shaikh vs. State of Maharashtra, AIR 2004 SC 2890
(vi) P.S. Sathappan vs. Andhra Bank Ltd., AIR 2004 SC 5152 (Five Judge Bench)
(vii) Common Cause vs. Union of India, (2004) 5 SCC 222
(viii) Babu Khan vs. Nazim Khan, (2001) 5 SCC 375
(ix) Sukhwant Singh vs. State of Punjab, (1995) 3 SCC 367
(x) Deena vs. Union of India, (1983) 4 SCC 645 (Three Judge Bench)
(xi) B. Shama Rao vs. Union Territory of Pondicherry, AIR 1967 SC 1480 (Five Judge Bench).

14. **Kinds of precedents:** Precedents are of two kinds:

(i) Binding
(ii) Persuasive

15. **Precedents of other High Courts have only persuasive value:** A precedent which is not of own High Court has only persuasive value over the courts of other states.

16. **Declaration of law by High Court binding within its jurisdiction/state**: The High Court occupies the status of the highest and most superior court in the State and so it becomes incumbent on all persons or authorities within its jurisdiction to respect its orders and abide by well known principles fundamental to the courts of justice that any disobedience or disregard to any order passed by the High Court will be on pain of committal for contempt. It must not be lost sight of that it is implicit in the power of supervision conferred on a superior court that all Tribunals subject to its supervision should conform to the law laid down by it otherwise there would be confusion in the administration of law and respect for law would irretrievably suffer. Law declared by High Court is binding in that state on lower courts and tribunals too. See:

(i) Jagdish Narain Vs. Chief Controlling Revenue Authority, AIR 1994 All 371
(ii) M/s. East India Commercial Co. Ltd., Calcutta Vs. Collector of Customs, Calcutta, AIR 1962 SC 1893 (Three -Judge Bench)

17. **Every High Courts must give due deference to the enunciation of law made by another High Court:** Every High Court must give due deference to the enunciation of law made by another High Court even though it is free to charter a divergent direction. However, this elasticity in consideration is not available where the litigants are the same, since Sections 10 and 11 CPC would come into play. Unless restraint is displayed, judicial bedlam and curial consternation would inexorably erupt since an unsuccessful litigant in one State would rush to another State in the endeavour to obtain an inconsistent or contradictory order. Anarchy would be loosed on the Indian Court system. See: Neon Laboratories Ltd. Vs. Medical Technologies Ltd., (2016) 2 SCC 672 (para 7)

18. **Larger bench decision binding on smaller benches:** In case of any conflict between the views expressed by larger and smaller benches, judicial discipline requires that the views expressed by larger bench should be preferred to those express by smaller bench. See:
(ia) LIC Vs. Vita, (2026) 3 SCC 427 (Three-Judge Bench)
(i) Bharat Petroleum Corporation Ltd. Vs. Mumbai Shramik Sangha, (2001) 4 SCC 448 (Five-Judge bench).
(ii) Shashi Kala Vs. Ganga Lakshmamma, (2015) 9 SCC 150
(iii) Royal Orchid Hotels Limited & others Vs. G. Jayarama Reddy & others, (2011) 10 SCC 608
(iv) Siddharam Satlingappa Mhetre Vs. State of Maharashtra, 2011(1) SCJ 36

(v) Official Liquidator vs. Dayanand, (2008) 10 SCC 1 (Three Judge Bench)
(vi) Kanya Junior High School vs. U.P. Basic Shiksha Parishad, Allahabad, (2006) 11 SCC 92
(vii) State of Punjab vs. Nestle India Ltd., (2004) 6 SCC 465
(viii) Lily Thomas vs. Union of India, (2000) 6 SCC 224
(ix) State of Haryana vs. Maruti Udyog Ltd., (2000) 7 SCC 348
(x) G.M., Telecom vs. A. Srinivasa Rao, (1997) 8 SCC 767
(xi) State of U.P. vs. Ram Chandra, AIR 1976 SC 2547
(xii) Union of India vs. K.S. Subramanian, AIR 1976 SC 2433
(xiii) Parag Lal Behari vs. D.D.C., Gorakhpur, AIR 1985 All 34 (F.B.)
(xiv) Thirumala Tirupati Devasthananams vs. Thallappaka Ananthacharyulu, (2003)8 SCC 1

19. **Subsequent larger bench ruling impliedly overrules earlier ruling of smaller bench:** If a subsequent larger bench lays down law to the contrary, earlier ruling of smaller bench stands overruled. See: Union of India Vs Nirala Yadav, (2014) 9 SCC 457.

20. **Single Judge decision of High Court binding on another Single Judge**: A single Judge's decision of High Court is binding on another single Judge of that High Court. Latter's decision in ignorance of the former does not constitute a binding precedent and can be treated as per incuriam. The judicial decorum and legal propriety demand that where a single judge or a division bench does not agree with the decision of a bench of coordinate jurisdiction, the matter should be referred to a larger bench. It is a subversion of judicial process not to follow this procedure. In our system of judicial review which is a part of our constitutional scheme, is the duty of judges of superior courts and tribunals to make the law more predictable. The question of law directly arising in the case should not be dealt with apologetic approaches. The law must be made more effective a guide to behaviour. It must be determined with reasons which carry convictions within the Courts, profession and public. Otherwise, the lawyers would be in a predicament and would not know how to advise their clients. Subordinate courts would find themselves in an embarrassing position to choose between the conflicting opinions. The general public would be in dilemma to obey or not to obey such law and it ultimately falls into disrepute. If a Judge intends to differ with the decision of another judge, he has to make a reference to division bench. See---
(i) Government of W.B. vs. Tarun K. Roy, (2004) 1 SCC 347 (Three Judge Bench)

(ii) Sundarjas Kanyalal Bhathija vs. The Collector, Thane, Maharashtra, AIR 1990 SC 261
(iii) Irfan Ali Khan vs. Rajendra Singh, AIR 1990 All 78 (D.B.)

21. **Mere reference against a previous decision to a larger Bench does not render it ineffective:** The pendency of a reference before a larger bench does not mean that all other cases involving the same issue would remain stayed till a decision was rendered in the reference. Till such time as the decisions cited at the Bar are not modified or altered in any way, they continue to hold the field. See:
(i) Ashok Sadarangani Vs. Union of India, AIR 2012 SC 1563.
(ii) Rajeev Kiran Vs. State of UP, 2012 (30) LCD 2609 (All-DB)

22. **Law laid down by Supreme Court to apply to all pending proceedings:** Where a Sessions Court allowed a revision before it by passing the decision of Supreme Court on the point involved with the observation that a pronouncement as to the position of law in a judicial decision by the Supreme Court cannot be treated as a sort of legislation by the Parliament giving retrospective effect a to enjoin re-opening of all matters which have already become final and closed, the order of Sessions Court was held unjustified. There is nothing like any prospective operation alone of the law laid down by Supreme Court. The law laid down by that Court applies to all pending proceedings. If there would have been an earlier order of the High Court binding on Sessions Judge it would have been a different matter. He got rid of the effect of Supreme Court's judgment by observing that a decision by that Court cannot be treated as "a sort of legislation by Parliament" and thus overlooked the binding nature of the law declared by Supreme Court, mandating under Art. 141, every Court subordinate to that Court to accept it. See: Major General A.S. Gauraya vs. S.N. Thakur, AIR 1986 SC 1440

23. **Retrospective application of new law on existing rights:** The rule is clear that provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment. The rule is only applicable where it is doubtful from the language used whether or not, it was intended to have such operation. Where the language of a statute plainly gives it a retrospective operation, the rule has no application, for it is obviously competent for the Legislature, if it pleases, in its wisdom to make the provisions of an Act of parliament retrospective. It is not as if all efforts should be made so as not to give a statute a retrospective operation whatever its language is. The rule does not require of the Courts an "obdurate persistence" in refusing to give a statute retrospective operation. In order that the provisions of a

statute dealing with substantive right may apply to pending proceedings the courts have insisted that the law must speak in language which expressly or by clear intendment, takes in even pending matters. See:

(i) K.S. Paripoornan vs. State of Kerala, (1994) 5 SCC 593 (Five Judge Bench)
(ii) Gulab Chand vs. Kudilal, AIR 1958 SC 554 (Five Judge Bench)

24. Prospective overruling & its principles: Tracing the history of prospective overruling & the introduction and development of this concept in Supreme Court decisions, it has been held by a Constitution Bench of the Supreme Court that in view of the powers conferred on Supreme Court by Art. 142 of the Constitution resorting to the principles of prospective overruling was not so necessary. However the said principle, drawn from American Jurisprudence, is now well enshrined in Indian jurisprudence. The principle of prospective overruling does not have the effect of validating an invalid law. Prospective overruling is only a recognition of the said principle. Prospective overruling is a part of the principles of constitutional canon of interpretation and can be resorted to by the Supreme Court while superseding the law declared by it earlier. Purpose of prospective declaration of law under Article 141 of the Constitution by Supreme Court is to avoid re-opening of settled issues and to prevent multiplicity of proceedings. By implication, all contrary actions taken prior to such declaration stand validated. Subordinate courts are thus bound to apply the law to future cases only. See:

(i) Somaiya Organics (India) Ltd. vs. State of U.P., (2001) 5 SCC 519 (Five Judge Bench)
(ii) Babu Ram vs. C.C. Jacob, (1999) 3 SCC 362
(iii) Ashok Kumar Gupta vs. State of U.P., (1997) 5 SCC 201 (Three Judge Bench)
(iv) Golak Nath vs. State of Punjab, AIR 1967 SC 1643 (Eleven Judge Bench)

25. Prospective declaration of law & its effect? : The prospective declaration of law is a device innovated by the Apex Court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a device adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law, it is deemed that all actions taken contrary to the declaration of law prior to the date of declaration are validated. This is done in the larger public interest. Therefore, the subordinate forums which are legally bound to apply the declaration of law made by the Supreme Court, are also duty-bound to apply such dictum to the cases which would arise in future only. In matters where decisions opposed to the said

principle have been taken prior to such declaration of law, cannot be interfered with on the basis of such declaration of law. See---

(i) P.V. George vs. State of Kerala, (2007) 3 SCC 557

(ii) Baburam vs. C.C. Jacob, (1993) 3 SCC 362

26. Amendment in procedural law applies only prospectively: General rule is that in absence of specific mention that said legislation or legislative amendment concerned is retrospective, same is to be treated as prospective in nature, especially when said legislation is dealing with substantive rights. However, where a legislation deals merely with a matter of procedure, such legislation/amendment is normally presumed to be retrospective unless such construction is textually inadmissible. See: **District Collector, Vellore District Vs. K. Govindaraj, (2016) 4 SCC 763 (Three-Judge Bench).**

27. Change in procedural law to apply retrospectively: No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being by or for the Court in which the case is pending and if by an Act of Parliament the mode of procedure is altered he has no other right than to proceed according to the altered mode. In other words a change in the law of procedure operates retrospectively and unlike the law relating to vested right is not only prospective. See: Anant Gopal Sheorey vs. State of Bombay, AIR 1958 SC 915 (Three Judge Bench)

28. Change of law during pendency of proceeding & its retrospective application: When the law comes into force during the pendency of proceedings and is applied on the date of judgment to pre-existing facts for the purpose of giving the benefit of the said law which had come into force, to the party concerned in the pending proceedings, is not retroactivity. See: Ramji Purshottam vs. Laxmanbhai D. Kurlawala, (2004) 6 SCC 455

29. Law declared by Supreme Court during pendency of case applies to it irrespective of the stage of pendency: When in a decision, the Supreme Court enunciates a principle of law, it is applicable to all cases irrespective of the stage of pendency thereof because it is to be presumed that the law declared by the Supreme Court is , in fact, the law from inception. See: New India Assurance Company Limited Vs Sonigra Juhi Uttamchand, (2025) 3 SCC 23 (Para 14) \

30. An order/direction issued by the Supreme Court under Article 142 of the Constitution does not constitute a binding precedent: Many a time, after declaring the law, this Court in the operative part of the judgment, gives some directions which may either relax the

application of law or exempt the case on hand from the rigour of the law in view of the peculiar facts or in view of the uncertainty of law till then, to do complete justice. While doing so, normally it is not stated that such direction/order is in exercise of power under Article 142. It is not uncommon to find that courts have followed not the law declared, but the exemption/relaxation made while moulding the relief in exercise of power under Article 142. When the High Courts repeatedly follow a direction issued under Article 142, by treating it as the law declared by this Court, incongruously the exemption/relaxation granted under Article 142 becomes the law, though at variance with the law declared by this Court. The courts should therefore be careful to ascertain and follow the ratio decidendi, and not the relief given on the special facts, exercising power under Article 142. One solution to avoid such a situation is for this Court to clarify that a particular direction or portion of the order is in exercise of power under Article 142. Be that as it may. The Constitution has, by Art. 142, empowered the Supreme Court to make such orders as may be necessary for doing complete justice in any case or matter pending before it which authority the High Court does not enjoy and as such the similar order cannot be issued by a High Court. Directions issued by the Supreme Court in exercise of its power under Article 142 of the Constitution do not constitute a binding precedent. See:

(i) Indian Drugs & Pharmaceuticals Ltd. vs. Workmen, Indian Drugs & Pharmaceuticals Ltd., (2007) 1 SCC 408
(ii) Indian Bank vs. ABS Marine Products (P) Ltd., (2006) 5 SCC 72
(iii) State of UP Vs. Neeraj Avasthi, (2006) 1 SCC 667 (para 69).
(iv) State of Punjab vs. Surinder Kumar, AIR 1992 SC 1593 (Three Judge Bench)

31. **"Law" & its meaning and purpose**--- Law is a dynamic science, the social utility of which consists in its ability to keep abreast of the emerging trends in social and scientific advance and its willingness to readjust its postulates in order to accommodate those trends. Life is not static. The purpose of law is to serve the needs of life. Therefore, law cannot be static. See: Deena vs. Union of India, (1983) 4 SCC 645 (Three Judge Bench)

32. **Non-mentioning of rulings in order & its effect**: Where in an order passed by court under Order 1, rule 10 CPC, certain rulings cited by the counsel were not mentioned but the order passed was otherwise valid, it has been held that mere non-referring the rulings would not result in different view when the rulings though not referred but were taken into consideration in recording the findings. See-: Jaswant Singh vs. Smt. Shobha Agarwal, 2002 (47) ALR 543 (All)

33. **Quoting High Court Rulings not necessary when clear Supreme Court Ruling available:** Where there exist clear decisions of the Supreme Court, it is not necessary to make comments on the English decisions or the decisions of the High Courts in India for the simple reason that the law laid down by the Supreme Court is binding on all within the territory of India. See: **Rishi Kesh Singh vs. State, AIR 1970 All 51 (Full Bench)(Nine-Judge Bench)**

34. **Circular Orders contrary to law & precedents:** A Circular inconsistent with the provisions of standing statute cannot override the statute and cannot create liability. Executive instructions having no force of law cannot override statutory rules having force of law. See:
    (i) Jhunjhunwala vs. State of U.P., (2006) 8 SCC 196
    (ii) Mangal Dev vs. State Election Commission, 2005 (4) AWC 3127 (All—D.B.)

35. **Judgment & mode of its construction**: A judgment must be read in its entirety. It must be construed reasonably and if necessary, in the light of the constitutional and statutory provisions. See: Bharat Petroleum Corporation Ltd. vs. Maddula Ratnavalli, (2007) 6 SCC 81.

36. **Privy Council decisions having only persuasive value on Supreme Court:** Though the Supreme Court is not bound to follow the decisions of the Privy Council too rigidly since the reasons constitutional and administrative, which sometimes weighed with the Privy Council need not weigh with the Supreme Court, yet some of those principles are useful as furnishing in many cases a sound basis for invoking the discretion of the Court in granting special leave. See: **Pritam Singh vs. The State, AIR (37) 1950 SC 169 (Five-Judge Bench)**

37. **Supreme Court competent to overrule privy council:** Under Art. 141 of the Constitution, Supreme Court authority can overrule authorities of privy council. See: **Master Sewanath vs. Faqir Chand, AIR 1965 J & K 62 (F.B.)**

38. **Federal court decisions whether binding on Indian courts**: A combined reading of Art. 141 and 374(2) of the Constitution leads only to one conclusion that the decisions of the Federal Court given prior to 26.1.1950 shall be binding on all courts within the Territory of India if the second part of sub-clause (2) of Art. 374 makes the decisions of the Federal Court of the same binding nature as if they had been passed by the Supreme Court and if the decisions of the

Supreme Court shall be binding on all the courts within the territory of India then it necessarily follows that the decisions on points of law passed by the Federal Court will be binding on the High Courts. Thus the decisions of the Federal Court on points of law given prior to 26.1.1950 are binding on all the courts within the Territory of India after 26.1.1950. See: **T.M. Arumugam vs. State of Madras, AIR (38) 1951 Madras (D.B.)**

39. **Conflict between Privy Council & Federal Court**: Where, before the coming into force of the Constitution of India, there was a conflict between the view of the Federal Court and the view of the Privy Council of a later date, the courts were bound, u/s. 212, Government of India Act, 1935, to follow the view of the Privy Council. The passing of the Constitution, however, cannot make the law declared by the Federal Court prevail against that declared by the Privy Council, as Art. 141 of the Constitution refers to the law declared by the Supreme Court and not to that declared by the Federal Court. See: **Om Prakash Gupta vs. United Provinces, AIR (38) 1951 All 205 (D.B.)**

40. **Supreme Court decision laying down precedent binding even when the argument raised before the lower court was not raised before the Supreme Court:** A decision rendered by the Supreme Court and laying down some law (upholding the constitutional validity of Sec. 3 of the earlier U.P. Public Moneys (Recovery of Dues) Act, 1972) would be binding as precedent on all inferior courts even if the contention raised before the inferior courts was not raised and considered before the Supreme Court. If the earlier Constitution Bench of the Supreme Court had not taken into account certain points considered in subsequent decision by a smaller bench of the Supreme Court, even then the law declared by earlier bench that is the Constitution Bench is still binding on High Courts. The binding effect of a decision does not depend upon whether a particular argument was considered therein or not provided that the point with reference to which an argument was subsequently advanced was actually decided. See:
    (i) M/s. Chandra Prakash Agarwal & Co. vs. State of U.P., 1990 ALJ 459 (All—F.B.)
    (ii) M/s. Agra Carpet Palace, Khamaria vs. State of U.P., 1988 ALJ 144 (D.B.)
    (iii) Sadhu Ram Agarwal vs. Smt. Shanti Sharma, 1986 ALJ 705 (D.B.)
    (iv) Somawanti vs. State of Punjab, AIR 1963 SC 151
    (v) Ram Manohar Lohia vs. State of U.P., AIR 1968 All 100 (D.B.)

41. **Supreme Court decision not to be ignored on the ground that relevant provision was not brought to the notice of the Supreme court**: A decision rendered by the Supreme Court is binding under Art. 141 of the Constitution and the same cannot be ignored on the ground that the relevant provision was not brought to the notice of the Supreme Court. See: B.M. Lakhani vs. Municipal Committee, Malkapur, AIR 1970 SC 1002 (Three Judge Bench).

42. **Law declared by Supreme Court under Article 141 of the Constitution binding on all even if the party was not served with any notice or was not a party to the proceeding:** A law declared by Supreme Court under Article 141 of the Constitution is binding on all even if the party was not served with any notice or was not a party to the proceedings. See-: **M/s. Star Diamond Co. Ltd. vs. Union of India, AIR 1987 SC 179.**

43. **Supreme Court decision declaring law expressly or by necessary implication to be treated as precedent**: When a question is answered expressly or by necessary implication by Supreme Court the answer cannot be ignored by referring to the decisions appealed against and holding that the real question that must be considered to have been answered was something else. What the judges expressly decided or what they must be considered to have decided by necessary implication by reference to the facts stated by the Judges themselves are what constitute precedents. See: **Gopal Upadhyaya vs. Union of India, AIR 1987 SC 413**

44. **Journal / Approved law report / News paper etc. & precedents:** Quoting precedents from unverified sources or from unapproved law report etc. has been regretted by the Supreme Court. See: **Union of India Vs. P.C Ramakrishnayya, (2010) 8 SCC 644**

45. **Labour Court's decision not to be treated as Precedent:** Labour Court is not a Court of record hence creates no precedents. See: **Rahimuddin & Others Vs. Gossini Fashions Ltd., 2012 (2) SLJ 487 (Delhi High Court**

Part – 8
Mistakes & Duty of Courts

1. **An act should be done in the manner prescribed or not at all :** Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily forbidden. This rule squarely applies where the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other way. See:

   (i).State of Kerala Vs. Kerala Rare Earth & Minerals Ltd., (2016) 6 SCC 323 (Three-Judge Bench),
   (ii). Ram Chandra Keshav Adke Vs. Govind Toti Chavare, AIR 1975 SC 915 (Three-Judge Bench).

2. **Power must be exercised in the manner prescribed by law :** Where law requires a thing to be done in a certain manner, it has to be done in that manner or not at all. A power must be exercised in the manner provided by law. See :
   (i) Dhananjaya Reddy Vs State of Karnataka, (2001) 4 SCC 9
   (ii) State of UP Vs. Singhara Singh, AIR 1964 SC 358.
   Note : *It was a case where the Magistrate had not obtained the signature of the accused on his confessional statement recorded u/s 164(4) of the CrPC.*

3. **Exercise of power in a manner other than prescribed by law is necessarily forbidden:** It is settled law that where law requires a thing to be done in a certain manner or where a power is given to do a certain thing in a certain manner, the thing must be done in that way or manner or not at all and other methods of performance are necessarily forbidden. This is what the maxim "ex pressio unius est exclusio alterius" means. See:
   (i).J. Jayalalithaa Vs State of Karnataka, (2014) 2 SCC 401.
   (ii) Dhananjaya Reddy Vs. State of Karnataka, (2001) 4 SCC 9 (para 23)
   (iii) Ram Chandra Keshav Adke Vs. Govind Joti Chavare, AIR 1975 SC 915
   (iv) State of UP Vs. Singhara Singh, AIR 1964 SC 358

4. **Procedure other than statutory procedure cannot be adopted even if there is unanimous understanding of Central and State Governments :** A procedure other than statutory procedure cannot be adopted even if there is unanimous understanding of the Central

Government and the State Governments on a non-statutory procedure. All methods other than statutory methods are necessarily forbidden. What cannot be done directly cannot be done indirectly to defeat statutory scheme. See **:** Manohar Lal Sharma Vs. Principal Secretary & Others, (2014) 9 SCC 516 (Three-Judge Bench).

5. What could not be done directly cannot be done indirectly also : It is well recognized principle of law that what could not be done directly can also not be done indirectly. See :

(i) H.H. Maharajadhiraj Madhav Rao Jiwaji Rao Sindia Bahadur Vs. Union of India, AIR 1971 SC 530 (Eleven-Judge Bench)

(ii) Madanlal Fakir Chand Dudhedia Vs. Shree Changdev Sugar Mills Ltd. AIR 1962 SC 1543

(iii) M/s. Taxi Owners United Transport Vs. State Transport Authority, Orissa, AIR 1983 SC 281.

6. Procedural irregularities not to be allowed to defeat the ends of justice : Non compliance with any procedural requirement relating to a pleading, memorandum of appeal or application for substt. or other relief should not entail automatic dismissal or rejection unless the relevant statute or rule so mandates—Procedural defects or irregularities which are curable should not be allowed to defeat the substantive rights or to cause injustice. Procedure, a hand-maiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. Procedural law is not to be tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.

(a) The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.

(b) The object is to expedite the hearing and not to scuttle the same.

(c) Justice delayed may amount to justice denied, but justice hurried may amount to justice buried.

(d) Actus curiae neminem gravabit (an act of court shall prejudice no man)

(e) Lex non cogit ad impossibilia (the law does not compel a man to do what he cannot possibly perform) See:

(f) (i).Ashok Kumar Kalra Vs. Surendra Agnihotri, (2020) 2SCC 394 (Three-Judge Bench).

(ii).Shaikh Salim Haji Abdul Khayumsab vs. Kumar & ors., 2006 (1) ARC 334 (SC)

(iii).Uday Shankar Triyar vs. Ram Kalewar Prasad Singh, 2006 (1) ARC 1 (SC) (Three-Judge Bench)

7. **Procedural defects when fatal? :** The procedural defects or lapses would not vitiate the proceedings except under the following circumstances:
   a. where the statute prescribing the procedure, also prescribed specifically the consequence of non-compliance.
   b. where the procedural defect is not rectified even after it is pointed out and due opportunity is given for rectifying it.
   c. where the non-compliance or violation is proved to be deliberate or mischievous.
   d. where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court.
   e. in case of memorandum of appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant. See : Uday Shankar Triyar vs. Ram Kalewar Prasad Singh, 2006 (1) ARC 1 (SC) (Three-Judge Bench).

8. **Procedural lapses when not to defeat substantive justice ? :** Non compliance with any procedural requirement relating to a pleading, memorandum of appeal or application for substitution or other relief should not entail automatic dismissal or rejection unless the relevant statute or rule so mandates. Procedural defects or irregularities which are curable should not be allowed to defeat the substantive rights or to cause injustice. Procedure is a hand-maiden to justice and the same should never be made a tool to deny justice or perpetuate injustice by any oppressive or punitive use. The **recognized exceptions** to this principle are as under :
   (i) Where the statute prescribing the procedure also prescribed specifically the consequence of non-compliance.
   (ii) Where the procedural defect is not rectified even after it is pointed out and due opportunity is given for rectifying it.
   (iii) Where the non-compliance or violation is proved to be deliberate or mischievous.
   (iv) Where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court.
   (v) In case of memorandum of Appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant. See :
   (vi) Uday Shankar Triyar Vs Ram Kalewar Prasad Sing, 2006 (1) ARC 1 (SC) (Three-Judge Bench**)** ***(****it was an appeal where vakalatnama signed by the appellant was not presented with the memorandum of appeal and the appeal was dismissed by the Addl. District Judge. The Hon'ble Supreme Court held that permission to sign the vakalatnama should have been granted)*.

(ii) Bihar State Electricity Board Vs. Pohowra Kankanee Collieries Ltd., 1984 (suppl.) SCC 597 *(where vakalatnama was not filed with the memo of appeal)*

(iii) Shastri Yagnapurus Das Ji & Others Vs Muldas Pohundaradas Vaishya & Others, AIR 1966 SC 1119 *(where vakalatnama was in favour of "X" but the memorandum of appeal was signed and filed by "Y")*

9. Every procedure is valid unless expressly prohibited by law: Rules of procedure are handmaids of justice. Section 151 CPC gives inherent powers to the court to do justice. That provision has to be interpreted to mean that every procedure is permitted to the court for doing justice unless expressly prohibited, and not that every procedure is prohibited unless expressly permitted. See: Rajendra Prasad Gupta Vs. Prakash Chandra Mishra & Ors., AIR 2011 SC 1137.

10. Prohibition of a procedure cannot be presumed unless it is expressly prohibited in law: Courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for by the CPC but on the converse principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law. As a matter of general principle prohibition cannot be presumed. See:

(i) Raj Narain Saxena Vs. Bhim Sen & others, AIR 1966 Allahabad 84 (Full Bench).

(ii) Narsingh Das Vs. Mangal Dubey, ILR 5 All 163 (FB) (1882).

11. Procedural law cannot be a tyrant but a servant, not an obstruction but an aid to justice : In the case noted below, the Hon'ble Supreme Court has ruled that the procedural law cannot be a tyrant but a servant, not an obstruction but an aid to justice :

(a) Procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the hand maid and not the mistress, a lubricant, not a resistant in the administration of justice.

(b) The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.

(c) The object is to expedite the hearing and not to scuttle the same.

(d) Justice delayed may amount to justice denied, but justice hurried may amount to justice buried.

(e) Actus curie heminem gravabit (an act of court should prejudice no man)

(f) lex non cogit ad impossibilia (the law does not compel man to do what he cannot possibly perform) See : Saikh Salim Haji

Abdul Khayamsab Vs. Kumar & Others, 2006 (1) ARC 334 (SC)

Note : *It was a case under Order 8, rule 1 CPC for extension of time for filing written statement beyond 90 days.*

12. **Lapse of procedure when to be ignored ?** : If violation of any procedural law does not cause any prejudice, it has to be treated as directory despite the use of the word "shall". See :

(i). Sugandhi Vs. P.Rajkumar, AIR 2020 SC 5486
(ii).Shivjee Singh Vs. Nagendra Tiwary, AIR 2010 SC 2261.

13. **Omission to take signature of witness on his deposition not to render his deposition inadmissible:** Where deposition of witness was recorded on commission but signature of the witness was not taken on it, it has been held by a Three-Judge Bench of the Supreme Court that correctness and authenticity of the deposition of the witness could not be disputed for want of signature on his depositions. Defect of not taking signature is not fatal to reception of deposition in evidence. See: Owners and Parties interested in M.V. 'Vali Pero' Vs. Fernandeo Lopez, AIR 1989 SC 2206 (Three-Judge Bench).Note : Section 114(e) of the Evidence Act is also relevant here.

14. **Unsigned judgment is valid:** Order 20, rule 3 CPC requires that the judgment should be dated and signed by the judge in open court at the time of its pronouncement. In the case noted below where the judgment did not bear signature of the judge, the Supreme Court held that: "As soon as the judgment is delivered, that becomes the operative pronouncement of the court. The law then provides for the manner in which it is to be authenticated and made certain. The rules regarding this differ but they do not form essence of the matter and if there is irregularity in carrying them out, it is curable. Thus, if a judgment happens not to be signed and is inadvertently acted on and executed, the proceedings consequent on it would be valid because the judgment, if it can be shown to have been validly delivered, would stand good despite defects in the mode of its subsequent authentication**.** See: Surendra Singh Vs. State of Uttar Pradesh, AIR 1954 SC 194.

15. **Unsigned, defective vakalatnama and its correction** : Where in an appeal, the Vakalatnama signed by the appellant was not presented with the memorandum of appeal and the appeal was dismissed by the Addl. District Judge, the Supreme Court held that permission to sign the Vakalatnama should have been granted. See :

(i) Bihar State Electricity Board Vs. Bhowra Kankanee Colliveries Ltd., 1984 (suppl.) SCC 597(vakalatnama was not filed with the memo of appeal)

(ii) Shastri Yagnapurusdasji Vs. Muldal Bhundaradas Vaishya, AIR 1966 SC 1119 (Vakalatnama was in favour of "X" but the memorandum of appeal was signed and filed by "Y").

16. **To perpetuate an error is no heroism:** In the case noted below, it has been held by the Hon'ble Supreme Court that to perpetuate an error is no heroism. To rectify it is the compulsion of the judicial conscience. See : Mayuram Vs. CBI, (2006) 5 SCC 752, (Para 11)

17. **Court bound to rectify its mistake :** Once the court comes to the conclusion that a wrong order has been passed, it becomes the solemn duty of the court to rectify the mistake rather than perpetuate the same. See : State of Orissa Vs. Mamata Mohanty, (2011) 3 SCC 436.

18. **If an order is bad in its inception, it does not get sanctified at a later stage:** It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action or development cannot validate an action which was not lawful at its inception for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin. See: State of Orissa Vs. Mamata Mohanty, (2011) 3 SCC 436 (Para 37).

19. **Observance of principles of natural justice must while rectifying mistakes by Courts :** Observance of principles of natural justice is must while rectifying the mistakes by Courts. See : Saikh Salim Haji Abdul Khayamsab Vs. Kumar & Others, 2006 (1) ARC 334 (SC)

20. **Observance of principles of natural justice must while rectifying mistakes by Courts :** Even when a mistake is to be rectified, principles of natural justice is required to be complied with. See : Shekhar Ghos Vs. Union of India, 2007 (66) ALR 180 (SC).

21. **Providing hearing to the other side must before passing an order against him** : Where a revision filed u/s 115 CPC was allowed by the High Court without issuing notice to the other side and thereafter the review petition wherein this fact was specifically pointed out was also

dismissed by the High Court, it has been held by the Hon'ble Supreme Court that the same was grossly against the settled principles of natural justice. The right of a man to be heard in his defence is the most elementary protection and is the essence of fair adjudication. The Hon'ble Supreme Court made following observations in the case noted below :

"Even God did not pass a sentence upon Adam before he was called upon to make his defence. Adam, says God "where art thou, has thou not eaten of the tree whereof I commanded thee that thou should not eat."See : Suresh Chandra Nanhorya Vs. Rajendra Rajak, 2006 (65) ALR 23 (SC**)**

22. Party not to suffer a wrong occasioned by the inaction or fault on the part of the court : It is settled law that no person should suffer for inaction or fault on the part of the court. See :

(i) Jang Sing Vs. Brij Lal, AIR 1966 SC 1631

(ii) Mudit Verma V. Co-operative Tribunal, 2006 (63) ALR 208 (All)(LB)

Note : *It was a case of non-extension of temporary injunction on the date fixed despite application for extension of the same was moved by the party on the date fixed*.

23. Other party not to suffer for the mistake or negligence committed by the counsel for one party : It is true that if there is a bona fide mistake or negligence on the part of the lawyers, the party should not be made to suffer. But it is equally true that for the negligence of the counsel of one party, the other party should not suffer. See : Smt. Leela Bhanott Vs. Petrolube India, 2006 (64) ALR 403 (All) (DB) *(Para 32)*

Note : *It was a case of MACP wherein the counsel for the claimant, due to negligence, had failed to take steps and the case remained dismissed for a long time. Then it was held by the Division Bench that the opposite parties cannot be made to suffer and to pay interest for that period.*

24. Court not to do injustice to other party while doing justice to one party: In doing justice to one party, the court cannot do injustice to other party. See : Bhagwati Prasad Vs. Chandramaul, AIR 1966 SC 735 (Para 10)

Note : It was a case on other controversies and not on the point of mistake by court. This ruling has been referred to in Standard Chartered Bank Vs. Andhra Bank Financial Services Ltd. (2006) 6 SCC 94 (para 71)

25. **Recall or review of order passed due to error of procedure or mistake :** An order can be recalled or reviewed when proceedings are vitiated by error of procedure or mistake going to the root of the matter and invalidating entire proceedings. See : Kapra Mazdoor Ekta Union Vs. Management of Birla Cotton Mills Ltd., AIR 2005 SC 1782 (Three-Judge Bench).

26. **Judicial order passed in favour of one party not to be recalled or modified without notice to that party :** A judicial order passed in favour of one party cannot be recalled or modified without notice to that party. See : Rejendra Singh Vs. Upper Collector (Admin) Aligarh & Others, 2006 (5) ALJ 740 (All).

Note : *In this case, the Tehsildar Iglas, Aligarh, had recalled his order without notice to the party in whose favour the order was passed and the revision against that order was also dismissed by the ADM (Admin), Aligarh.*

27. **No review or recall of order passed in criminal cases due to bar of Section 362 CrPC:**Due to the absolute bar of Section 362 CrPC (now Section 403 BNSS, 2023), no criminal court can review or recall its own judgment or order. Even the High Court cannot review or recall an order u/s 482 CrPC. See :

(i) State of Kerala Vs. M.M. Manikantan, AIR 2001 SC 2145 (Three-Judge Bench)
(ii) Sunita Jain Vs. Pawan Kumar Jain, 2008 (61) ACC 355 (SC)
(iii) Adalat Prasad Vs. Rooplal Jindal, (2004) 7 SCC 338 (Three-Judge Bench)
(iv) Minu Kumari Vs. State of Bihar, 2006 (55) ACC 541 (SC)
(v) Hari Singh Mann Vs. Harbhajan Singh Bajwa, AIR 2001 SC 43
(vi) Bindeswari Prasad Singh Vs. Kali Singh, AIR 1977 SC 2432.

28. **Party not coming with clean hands not entitled to any relief** : A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final. See :

(i) Dalip Singh Vs. State of UP, (2010) 2 SCC 114.
(ii) Krishna Kumar Vs. State of UP, 2010 (70) ACC 279 (All)(LB)(Para 7)

29. **Equitable doctrines not to apply in the event of fraud etc :** It is settled law that in the event of fraud or deceits etc. being played by a person, all equitable doctrines cease to apply to the case of such fraudster as has been ruled by the Hon'ble Supreme Court. *No person*

should be allowed to keep an advantage which he has obtained by fraud. Fraud can disqualify a man from job.See:

(i).District Primary School Council, West Bengal Vs. Mritunjoy Das and others, 2011 (3) SLJ 239

(ii).Ram Preeti Yadav Vs. UP Board of High School and Intermediate Education & others, (2003) 8 SCC 311

30. Fraud to vitiate even the most solemn act of the authority: It has been repeatedly laid down by the Supreme Court that fraud vitiates even the most solemn act. See: (i) State of AP Vs. T. Suryachandra Rao, 2005 (33) AIC 761 (SC), (ii) Bhavrao Dagdu Paralkar Vs. State of Maharashtra, 2005 (4) AWC 3460 (SC), (iii) N. Khosla Vs. Rajlakshmi, 2006 (63) ALR 534 (SC) and (iv) M/s Reliance Salt Ltd. Vs. M/s Cosmos Enterprises & Others, 2007 (66) ALR 653 (SC).

31. Advantage obtained by a person by playing fraud not to be allowed to be retained: No person should be allowed to keep an advantage which he has obtained by fraud. Fraud can disqualify a man from job. See: (i) District Primary School Council, West Bengal Vs. Mritunjoy Das and Others, 2011 (3) SLJ 239 and (ii) Ram Preeti Yadav Vs. UP Board of High School and Intermediate Education & Others, (2003) 8 SCC 311.

32. Appointment obtained by fraud is non est: An appointment obtained by fraud is non est. Fraud is anathema to all equitable principles and any affair tainted with fraud could not be perpetuated or saved by application of any equitable doctrine. See: (i) Ram Chandra Singh Vs. Savitri Devi, (2003) 8 SCC 319 and (ii) Rajinder Singh Vs. Delhi Transport Corporation & Others, 2011 (3) SLJ 33(CAT) (Principal Bench, New Delhi).

33. Appointment procured on false Caste Certificate liable to be terminated : where the appointee had secured his appointment on the basis of false Caste Certificate, which on verification by the Scrutiny Committee, was found to be false after 10 years of her joining the service and a long time was taken by the Scrutiny Committee to verify the same, it has been held by the Hon'ble Supreme Court that both the counts as above do not validate the Caste Certificate and the consequent illegal appointment because long service on a fraudulent appointment can be no defence. Similarly in the case of Arshad Jamil Vs. State of Uttarakhand & others, 2011 (3) SLJ 367 (SC), it has been ruled by the Hon'ble Supreme Court that an appointment based on wrong Caste Certificate can be terminated.See: Ram Chandra Singh Vs. Savitri Devi, (2003) 8 SCC 319.

34. **Second application after rejection of the first application as not pressed can be moved** : If the initial application having some technical flaws was dismissed as not pressed, the same does not operate as res judicata and a second application can be moved for decision on merits. See : Jagmohan Malhotra Vs. Jai Kumar Misra, 2005(2) AWC 1812 (All)

35. **Amendment like correction of Section in complaint to be allowed**: Where the complainant had mentioned a wrong Section in the complaint and moved an application for amending the same but the Magistrate rejected the application, it has been held by the Allahabad High Court that the Magistrate ought to have allowed the application. Complaint could not have been dismissed merely for wrong mentioning of Section. See : 1980 ACC 19 (All).

36. **Non-mentioning or wrong mentioning of law in petition or order and its consequences:** It is well-settled principle of law that non-mentioning or wrong mentioning of a provision of law (in the petition or order) does not invalidate an order in the event it is found that a power therefor exists. It is settled law that once it is found that the power exists, the exercise of power under a wrong provision will not render the order illegal or invalid. Non-mentioning or wrong-mentioning of a statutory provision under which power was exercised and order was passed, would not vitiate the order for which there was a source under general law or a statute law. See: (i).Pradeep Ram Vs. State of Jharkhand, AIR 2019 SC 3193. (ii) P.K. Palanisamy Vs. N. Arumughm, 2009 (77) ALR 122 (SC), (iii) T. Nagappa Vs. Y.R. Muralidhar, (2008) 5 SCC 633, (iv) M.T. Khan & Others Vs. Govt. of Andhra Pradesh & Others, AIR 2004 SC 2934 (para 16), (v) High Court of Gujarat Vs. Gujarat Kisan Mazdoor Panchayat, (2003) 4 SCC 712 and (vi) Kishun Singh Vs. State of Bihar, (1993) 2 SCC 16

37. **Action taken by authority within its jurisdiction not invalid for mentioning a wrong Section or other provision of law in its order:** It is well-settled that if an authority has jurisdiction to take particular action, mere mention of incorrect provision or non-mention of correct provision does not make the action without jurisdiction unless the authority has no jurisdiction in the matter. See: Kaushalya Kanya Inter College, Moradabad Vs. State of UP, 2005 (2) AWC 1383 (Allahabad).

38. **A wrong decision made earlier in some other case cannot be applied to another case:** It is also settled legal proposition that

Article 14 of the Constitution does not envisage for negative equality. In case a wrong benefit has been conferred upon someone inadvertently or otherwise, it may not be a ground to grant similar relief to others. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and, therefore, cannot be enforced by a citizen in Court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior Court for repeating or multiplying the same irregularity or illegality or for passing a similar wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. See: (i) Basawaraj Vs. The Special Land Acquisition Officer, AIR 2014 SC 746 and (ii) Chaman Lal Vs. State of Punjab, AIR 2014 SC 3640.

39. **Amendment in procedural law during the pendency of the case to apply retrospectively to all pending proceedings :** No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being by or for the court in which the case is pending and if by any Act of parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode. In other words, a change in the law of procedure operates retrospectively and unlike the law relating to vested rights is not only prospective. See :

(i) Shiv Shakti Co-operative Housing Society Vs. Swaraj Developers, 2003(3) AWC 2198 (SC)
(ii) Anant Gopal Sheoray Vs. the State of Bombay, AIR 1958 SC 915 (Three-Judge Bench)
(iii) Rani Kusum (Smt.) V. Kanchan Devi (Smt.) (2005) 6 SCC 705

40. **Observance of procedural law amended during the pendency of proceedings :** Well settled that when both the parties have led evidence on the point in issue, the burden of proof loses it's

importance and it is the duty and function of court to appreciate the evidence led by both the parties and to arrive at a finding on the basis of appreciation of evidence. See : (i) N.B. Calholies vs. Thuklam Parlo, AIR 1959 SC 31, (ii) Laxman Prasad vs. Ram Kumar Singh, 1993 (II) LCD 728 (LB), (iii) Dhanesara vs. Smt. Sabira, 2005 iz0fu0i0 63 ¼flfoy½ (LB) and (iv) Arumugham vs. Sundarmbal, 1993(3) AWC 2/104 (SC) (NOC)

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Part – 9

Power of Contempt of Revenue Courts

1. **Revenue Court does not have power of contempt :** Revenue court does not have power to punish contemnor for contempt of court.

2. **Revenue Court can punish contemnor under Order 39, Rule 2-A CPC for breach of interim injunction order:** Violation of order of revenue court to maintain Status quo: Contemnor can be punished by revenue court under Order 39, rule 2-A CPC and not under Contempt of Courts Act, 1971. See: judgment dated 21.2.2019 of Allahabad High Court in Contempt Application (Civil) no. 1003 of 2019 in Kalideen Vs. Vijay Vishvas Pant.

3. **Revenue court can make reference of contempt to High Court:** Revenue court can make reference to High Court to punish contemnor. See: Judgment dated 2.12.2025 of Luknow Bench of Allahabad High Court in Parashuram Vs. SDM, Uttraula.

4. **Courts constituted under Special Acts do not have power of contempt under Contempt of Court Acts, 1971:** Midnapore Peoples Co-operative Bank Ltd Vs. Chunulal Nanda, (2006) 5 SCC 399.

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Part – 10
Certain Important Points of Law for Guidance of Courts

1. Relief not claimed in plaint not to be granted: A relief larger than the one claimed by plaintiff in the suit cannot be granted by court. It is not open to the court to grant a relief to the plaintiff on a case for which there is no basis in the pleadings. See:

(i) Meena Chaudhary Vs. Commissioner of Delhi Police, (2015) 2 SCC 156.
(ii) Rajendra Tewary vs. Basudeo Prasad, 2002 (46) ALR 222 (SC)
(iii) Om Prakash Vs. Ram Kumar, (1991) 1 SCC 441 (Para 4).
(iv) Srinivas Ram Kumar Vs. Mahabir Prasad, AIR 1951 SC 177 (Three-Judge Bench)
(v) M. Siddiq (Ram Janmabhumi Temple Vs. Suresh Das, (2020) 1 SCC 1 at pages 737 & 738 (Para 1228) (Five-Judge Bench).
(v) Venkataramana Devaru Vs. State of Mysore, AIR 1958 SC 255 (Five-Judge Bench) (Para 14).

5. Relief claimed in plaint but not discussed in judgment and not grated in writing must be deemed to have been declined: Relief claimed in plaint but not discussed in judgment and not grated in writing must be deemed to have been declined. If a decree is silent as regards any relief claimed by the plaintiff in the plaint, Explanation V to Section 11 CPC declares that such relief must be treated as refused. See: Yashwant Sinha Vs. CBI, (2020) 2 SCC 338(Three-Judge Bench).

6. Merits of the case not to be discussed when court has no jurisdiction: It is settled law that once court holds that it has no jurisdiction in the matter, it should not consider the merits of the matter. Kindly see: Jagraj Singh vs. Birpal Kaur, AIR 2007 SC 2083

7. Onus on party seeking ouster of jurisdiction: Onus lies on party seeking ouster of civil courts jurisdiction u/s. 9 CPC. See: Sahebgouda vs. Ogeppa, (2003) 6 SCC 151

8. Jurisdiction and maintainability of suit should be decided first before passing any interim order: Question of jurisdiction would assume importance even at stage a court considers question of grant of interim relief. Where an interim relief is claimed in a suit before a

civil court and party to be affected by grant of such relief, or any other party to the suit, raises a point of maintainability thereof or that it is barred by law and also contends on that basis that interim relief should not be granted, grant of relief in whatever form, if at all, ought to be preceded by court by formation and recording of at least a prima facie satisfaction that suit is maintainable or that it is not barred by law. In the present case, defendant had challenged the maintainability of the suit before the trial court by taking a plea in his written statement that the suit property was a Bhumidhai land owing to which the suit was barred by Section 331 of the UP ZA & LR Act,1950 and also by Section 41(h) of the Specific Relief Act,1963 and as such not maintainable before the civil court. What was required of the trial court in such a situation was to record a satisfaction, at least prima facie, that the suit was maintainable and then proceed to pass such orders as it considered proper in the circumstances of the suit. It would be inappropriate for the court to abstain from recording its prima facie satisfaction on the question of maintainability, yet, to proceed to grant protection pro tem on the assumption that the question of maintainability of the suit has to be decided as a preliminary issue under Order 14, rule 2 CPC. But without deciding the question of maintainability of the suit, the trial court decreed the suit under Order 8, rule 10 CPC against all defendants including those who had not filed their written statements. See: Asma Lateef Vs Shabbir Ahmad, (2024) 4 SCC 696(Three- Judge Bench) (Paras 50, 51)

9. **Test to decide jurisdiction: (A)** Exclusion of jurisdiction of civil court should not be readily inferred. The tests to be applied to decide whether or not the civil court has jurisdiction are as under:

(i) Is legislative intention of excluding jurisdiction of civil court explicit or clear by necessary implication

(ii) Does the statute provide adequate remedy in case of grievance against the order made under the statute. See: State of A.P. vs. Manjeti Laxmi Kantha Rao, (2000) 3 SCC 689

(B) Test as to whether the civil court has jurisdiction u/s. 9 CPC is of competence of the civil court to take decision. See--- Pankaj Bhargava vs. Mohinder Nath, (1991) 1 SCC 556

(C). Court can pass order despite caveat: Court can pass order(issuing commission) despite caveat under Section 148-A CPC.: See: K. Sadasivan Vs Surendradas Bhanu, AIR 2021 (NOC) 168 Kerala (Full Bench).

10. **When only part of the reliefs maintainable in civil court---** If for part of the reliefs, the suit is maintainable in the forum where it has

been laid, it is not open to the forum to shut out its doors to the suitor (It was a case of back wages and correction of date of birth and the suit was held maintainable in civil court). See--- **Ishar Singh vs. National Fertilizers, 1991 SCC 649 (Three Judge Bench)**

11. **Stage of raising plea against want of jurisdiction of Civil Court (Sec. 21 CPC)---** Exclusion of civil courts jurisdiction is not to be readily inferred. Any objection as to exclusion of civil courts jurisdiction should be taken before the trial court and at the earliest otherwise in the absence of proof of prejudice, the higher court may refuse to entertain such a plea. See--- **Ramesh Chand vs. Anil Panjwani, (2003) 7 SCC 350.**

12. **Purpose of trial:** Purpose of trial is to determine the validity of the allegations. The objective is to secure a fair and impartial administration of justice between the parties to the litigation and not the achievement of a hearing wholly free from errors. Once a civil action has been instituted and issue is joined upon the pleadings, there must be a trial on the issue before a judgement may be rendered. Trial is not a contest between lawyers but presentations of facts to which the law may be applied to resolve the issues between the parties and to determine their rights. It is also not a sport; it is an inquiry into the truth, in which the general public has an interest. The parties are required to help the court to further the overriding objective. Undoubtedly, perhaps unquestionably, the same objectives guide the interpretation of the Civil Procedure Code, 1908. **Objectives in framing rules for conducting civil proceedings can be summed up as under:**

(i) ensuring that the parties are on equal footings;
(ii) saving expense;
(iii) dealing with the case in ways which the proportionate:
  (a) to the amount of money involved;
  (b) to the importance of the case;
  (c) to the complexity of the issues; and
  (d) to the financial position of each party;
(iv) ensuring that it is dealt with expeditiously and fairly; and
(v) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases; and
(vi) enforcing compliance with rules, practice directions and orders. See: Mohammed Abdul Wahid Vs. Nilofer and Another, (2024) 2 SCC 144.

13. **Objection as to jurisdiction at the stage of hearing of the application for interim orders---** Objection u/s. 9-A CPC regarding want of jurisdiction would not prevent the court from passing interim orders while decision on question of jurisdiction is pending if called for in the facts and circumstances of the case. See---

(i) Tayabhai M. Bhagasarwalla vs. Hind Rubber Industries Pvt. Ltd., (1997) 3 SCC443
(ii) Prithavi Nath Ram vs. State of Jharkhand, (2004) 7 SCC 261
1998 (2) JCLR 972 All.

14. **Merits of the case not to be discussed when court has no jurisdiction**--- It is settled law that once court holds that it has no jurisdiction in the matter, it should not consider the merits of the matter. See- Jagraj Singh vs. Birpal Kaur, AIR 2007 SC 2083.

15. **If the court has no jurisdiction to entertain the suit, it cannot decide the issue of limitation on merits:** Question of limitation in no case can be said to be a question of jurisdiction of the court in the context of Section 9-A CPC. Issue of limitation , therefore, cannot be decided as a preliminary issue of jurisdiction u/s 9-A CPC. If the court has no jurisdiction to entertain the suit, it cannot decide the issue of limitation on merits. See: Nusli Neville Wadia Vs. Ivory Properties, (2020) 6 SCC 557 (Three- Judge Bench)

16. **Only averments in plaint can be considered for rejecting plaint u/o 7, rule 11 CPC:** Only averments in plaint can be considered for rejecting plaint under Order 7, rule 11 CPC. Any evidence and averments in written statement cannot be considered at this stage: Nusli Neville Wadia Vs. Ivory Properties, (2020) 6 SCC 557 (Three-Judge Bench)

17. **Only a pure question of law, and not mixed question of law and fact, can be decided as a preliminary issue:** Under Order 14, rule 2 CPC, issues of law as to jurisdiction and bar to suit created by any law are to be decided as preliminary issues. Only a pure question of law and not mixed question of law and fact can be decided as a preliminary issue both u/s 9-A and Order 14, rule 2 CPC. Recording of evidence at that stage is impermissible. See: Nusli Neville Wadia Vs. Ivory Properties, (2020) 6 SCC 557 (Three- Judge Bench)
18. **Consent, waiver or acquiescence & jurisdiction of Civil Courts—** No amount of consent, waiver or acquiescence can confer jurisdiction on a court which it inherently lacks or where none exists. See--- Vithalbhai (P) Ltd. vs. Union Bank of India, (2005) 4 SCC 315.

19. **Sec. 229-B, 229-D, 331 of the UPZA & LR Act, 1950 & the Power of Civil Court to grant injunction---** If the name of the plaintiff is not recorded as tenure holder of the agricultural land in the revenue records and question of declaration of title is involved, the jurisdiction of the civil court to entertain injunction suit and grant interim injunction would be barred u/s. 331 of the U.P. Zamindari Abolition & Land Reforms Act, 1951 as the civil court cannot direct for the expunction or correction of the entries in revenue records and the same can be done only by the revenue courts. The remedy of the plaintiff in respect of the agricultural land under such facts and circumstances would be a suit for declaration of title before the revenue court **u/s. 229-B of the UPZA & LR Act, 1951** and interim injunction can also be granted by the revenue court **u/s. 229-D** of the that Act. But where the name of the plaintiff is recorded in the revenue records as tenure holder of the agricultural land and no question of declaration of title is involved, the plaintiff can institute a suit in civil court for injunction against the defendant for restraining him from transferring the land, interfering with the possession of the plaintiff or demolishing any constructions etc. on such land or cutting trees etc. standing thereon. See---

(i) Kamla Shankar vs. IIIrd ADJ, Mirzapur, 1998(89) R.D. 484 (All)
(ii) Magan Lal Chaturvedi vs. District Judge, Mathura, 1998 ALJ 2323 (All)
(iii) Deokinandan vs. Surajpal, 1996 ALJ 144 (SC)
(iv) Tej Bhan Singh vs. II ADJ, Jaunpur, 1995 ALJ 109 (All)
(v) Surya Narain Pandey vs. Addl. Civil Judge, Gyanpur, 1995 R.D. (H) All
(vi) Jyoti Ram vs. District Judge, Saharanpur, 1995 RD 99 (All)
(vii) Tej Bhan Singh vs. IX ADJ, Jaunpur, 1994 R.D. 476 (All)
(viii) Indra Pal vs. Jagannath, 1993 ALJ 235 (All)
(ix) Bhagwat Prasad vs. Jitendra Narain, 1991 ALJ 971 (All)
(x) Chandra Deo Pathak vs. Swami Nath Pathak, 1987 R.D. 51 (All)
(xi) Vijai Singh vs. 2nd ADJ, Bulandshahr, 1982 ALJ 725 (All)
(xii) 1980 R.D. 32 (Summary of Cases-43) (All—L.B.)
(xiii) Jai Singh vs. Hanumant Singh, 1979 ALJ 645 (All)
(xiv) Kishori Lal vs. Shambhoo Nath, 1978 ALJ 1273 (All)
(xv) Parsottam vs. Narottam, 1970 ALJ 505 (All—D.B.)

20. **Maintainability of the suit to be decided on the basis of pleadings and the reliefs claimed in the plaint---** The question of maintainability of a suit can be decided on the basis of the averments contained in the plaint and the stated reliefs claimed in the plaint and not from the effect which the decree may cause. Defence plea taken in

the written statement cannot be looked into for the purpose of deciding maintainability of the suit. See---

(i) Ramesh Chand vs. Anil Panjwani, (2003) 7 SCC 350
(ii) Saleem Bhai vs. State of Maharashtra, AIR 2003 SC 759
(iii) Ashok Kumar Srivastav vs. National Insurance Company Ltd., (1998) 4 SCC 361
(iv) M/s. Bharat Petroleum Corp. Ltd. vs. Smt. Parvati Devi, 1998 (32) ALR 149
(v) T.Arvindandam vs. Satyapal, AIR 1977 SC 2421

21. **Civil, criminal & departmental proceedings to go on simultaneously:** Civil liability will not cease merely because statute includes the same event under provisions dealing with criminal liability. See:

(i) State Bank of India vs. R.B. Sharma, (2004) 7 SCC 27
(ii) Kendriya Vidyalaya Sangathan vs. T. Srinivas, (2004) 7 SCC 442
(iii) Jiyajeerao Cotton Mills Ltd. vs. Madhya Pradesh Electricity Board, 1989 Supp (2) SCC 52.

22. **Execution proceedings & plea of want of jurisdiction---** In case of a decree being **"nullity" for want of jurisdiction** is patent on the face of the decree, then the executing court may take cognizance of the nullity, else normal rule will prevail that the executing court cannot go behind the decree. A decree suffering from illegality or irregularity of procedure cannot be termed as in-executable by the executing court. The remedy of the person aggrieved by such a decree is to have it set aside in a duly constituted legal proceeding or by a superior court failing which he must obey the command of the decree. See---

(i) Rafique Bibi vs. Sayed Walliuddeen, (2004) 1 SCC 287
(ii) Vasudeo vs. Rajabhai, (1970) 1 SCC 670.

23. **Compromise on behalf of party when to be entered into by the counsel ?:** The counsel appearing for a party is fully competent to put his signature to the terms of any compromise upon which a decree can be passed in proper compliance with the provisions of Order 23 Rule 3 CPC and such decree is perfectly valid, depending on the authority conferred on the counsel in terms of the vakalatnama. It will be prudent for counsel not to act on implied authority except when warranted by the exigency of circumstances demanding immediate adjustment of the suit by agreement or compromise and the signature of the party cannot be obtained without undue delay. In these days of easier and quicker communication, such contingency may seldom

arise. A wise and careful counsel will no doubt arm himself in advance with the necessary authority expressed in writing to meet all such contingencies in order that neither his authority nor integrity is ever doubted. This essential precaution will safeguard the personal reputation of the counsel as well as uphold the prestige and dignity of the legal profession. To insist upon the party himself personally signing the agreement or compromise would often cause undue delay, loss and inconvenience, especially in the case of non-resident persons. It has always been universally understood that a party can always act by his duly authorized representative. If a power-of -attorney holder can enter into an agreement or compromise on behalf of his principal, so can a counsel possessed of the requisite authorization by vakalatnama act on behalf of his client. Not to recognize such capacity is not only to cause much inconvenience and loss to the parties personally, but also to delay the progress of proceedings in court. See :

(i) Prasanta Kumar Sahoo Vs Charulata Sahu,(2023) 9 SCC 641

(ii) Y. Sleebachen & Others Vs. State of Tamil Nadu through Superintending Engineer Water Recourses Organization/Public works Department and Another, (2015) 5 SCC 747 *(paras 16 to 20).*

24. **Compromise by counsel :** After the amendments in Order 23, rule 3 CPC in the year 1976, a compromise needs to be reduced in writing and signed by the parties and not by the counsel alone. See :

(i) Prasanta Kumar Sahoo Vs Charulata Sahu,(2023) 9 SCC 641

(ii)Gurpreet Singh Vs. Chatur Bhuj Goel, (1988) 1 SCC 270

(iii)Banwari Lal Vs. Chando Devi, (1993) 1 SCC 581

(ii)Dr. Jitendra Kumar Jain Vs. ADJ, Roorkee, AIR 2006 (NOC) 1248 (All)

25. **Compromise by counsel alone invalid :** A compromise memo filed by counsel alone under Order 23, rule 3 CPC without signatures of the parties is invalid. Compromise petition must be signed by the parties as well. In the absence of signatures of the parties, a compromise petition containing only the signature of the counsel engaged by the parties should not be accepted by the Court. See :

(i) Premlata Vs. First Addl. Civil Judge Meerut, 1998 (32) ALR 352 (All)

(ii) Lokumal Topandas Vs. Allahabad Bank, AIR 1998 All 398

26. **Compromise by counsel held valid** : The words 'in writing and signed by the parties', inserted in Order 23, R. 3, CPC by the CPC (Amendment) Act, 1976 necessarily mean and include duly authorized

representative and counsel. Thus, a compromise in writing and signed by counsel representing the parties, but not signed by the parties in person, is valid and binding on the parties and is executable even if the compromise relates to matters concerning the parties, but extending beyond the subject matter of the suit. A judgment by consent is intended to stop litigation between the parties just as much as a judgment resulting from a decision of the Court at the end of a long drawn out fight. A compromise decree creates an estoppel by judgment. Counsel's role in entering into a compromise has been traditionally understood to be confined to matters within the scope of the suit. However, a compromise decree may incorporate not only matters falling within the subject matter of the suit, but also other matters which are collateral to it. The position before the amendment in 1976 was that, in respect of the former, the decree was executable, but in respect of the latter, it was not executable, though admissible as judicial evidence of its contents. See :

(i) Byram Pestonji Gariwala Vs. Union Bank of India, AIR 1991 SC 2234
(ii) Jineshwardas Vs. Smt. Jagrani, 2003 (53) ALR 599 (SC)

27. **Entering into compromise by counsel without consent of party amounts to misconduct :** Where an Advocate was not authorized by the party to enter into compromise and the Advocate had yet entered into compromise, it has been held by the Supreme Court that the said act of the Advocate amounted to misconduct within the meaning of Section 35 of the Advocates Act, 1961 and the party was directed to approach the State Bar Council for appropriate disciplinary action against the Advocate concerned. See :

(i) Ram Asarey Vs. DDC, Faizabad, (1998) 6 SCC 480
(ii) Narain Pandey Vs Pannalal Pandey, 2013 (118) RD 674 (SC)

28. **Compromise decree can be set aside by court which granted the decree or an appeal u/o 43, rule 1-A CPC can also be filed**: See: Vipan Aggarwal Vs Raman Gandotra, (2023) 10 SCC 529

29. **Representative suit u/o 1, rule 8 CPC:** It is essential that there must be numerous persons having the same interest in a suit to be filed as a representative suit under Order 1, rule 8 CPC. Before a person can be allowed either to prosecute or defend a suit on behalf of others interested, specific permission of the court is mandated. Order 1, rule 8(2) CPC requires notice of the institution of the suit to be given to all persons interested , in the manner as directed or by advertisement. A person on whose behalf or for whose benefit the suit has been

instituted or is being defended may apply to the court to be impleaded as party to the suit. Under sub-rule 4(4) to rule 8 of Order 1 CPC, no part of the claim in the suit can be abandoned and the suit cannot be withdrawn nor can a compromise, agreement or satisfaction be recorded unless notice has been furnished to all persons interested . See: M. Siddiq (Ram Janmabhumi Temple) Vs.Suresh Das, (2020) 1 SCC 1(Five-Judge Bench) (Para 580).

30. Civil suit and proceedings before executive Magistrate u/s 145 CrPC: No party can be allowed to use the provisions of Section 145 CrPC for ulterior purposes or as a substitute for civil remedies. The jurisdiction and power of the civil court cannot in any manner be hampered. An executive Magistrate cannot decide a party's title or right to possession of the land. . See: M. Siddiq (Ram Janmabhumi Temple) Vs. Suresh Das, (2020) 1 SCC 1(Five-Judge Bench) (Paras 293 to 298).

31. "Cause of action": Meaning of?: The expression "cause of action" 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. It is axiomatic that without a cause, there cannot be any action. See: State of Goa Vs. Sumit Online Trade Solutions Pvt. Ltd., (2023) 7 SCC 791.

32. Inherent power of Civil Court u/s 151 CPC: For the purpose of the discussion of the question in the context of the relevant provisions of the CPC, it is unnecessary to embark on any detailed or exhaustive examination of the circumstances and situations in which it could be predicated that a Court has the inherent jurisdiction which is saved by Section 151 of the Civil Procedure Code. It is sufficient if we proceed on the accepted and admitted limitations to the existence of such a jurisdiction. It is common ground that the inherent power of the Court cannot override the express provisions of the law. In other words, if there are specific provisions of the CPC dealing with a particular topic and they expressly or by necessary implication exhaust the scope of the powers of the Court or the jurisdiction that may be exercised in relation to a matter, the inherent power of the Court under Section 151 CPC cannot be invoked in order to cut across the powers conferred by the CPC. The prohibition contained in the CPC need not be express but may be implied or be implicit from the very nature of the provisions that it makes for covering the contingencies to which it relates. See: Arjun Singh Vs. Mohindra Kumar, AIR 1964 SC 993

33. Power u/s 151 CPC cannot be exercised in conflict with any other power of the Court expressly or impliedly provided in CPC:

Inherent power of the Court u/s 151 CPC is in addition to and complementary to the powers expressly conferred under the CPC but that power will not be exercised in conflict with any of the powers expressly or by implication conferred by other provisions of CPC. If there is a express provision in CPC covering a particular topic, then Section 151 CPC cannot be applied. See:

(i) Vareed Jacob Vs. Sosamma Geevarghese, (2004) 6 SCC 378 (Three-Judge Bench)

(ii) Mahoharlal Chopra Vs. Rai Bahadur, AIR 1962 SC 527

(iii) Ram Chand & Sons Sugar Mills Vs. Kanhyalal Bhargava, AIR 1966 SC 1899

34. Inherent power u/s 151 CPC cannot be exercised so as to nullify the provisions of CPC: Inherent power u/s 151 CPC cannot be exercised so as to nullify the provisions of CPC. Where the CPC deals expressly with a particular matter, the provision should normally be regarded as exhaustive. See:

(i) State of U.P. Vs. Roshan Singh, 2008 (71) ALR 1 (SC)

(ii) National Institute of Mental Health & Neuro Sciences Vs. C. Parmeshwara, 2005 (2) AWC 1865 (SC)

35. Power u/s 151 CPC cannot be invoked to deal with an application for which there is a statutory provision in CPC: Power u/s 151 CPC cannot be invoked to deal with an application for which there is a statutory provision in CPC. Temporary Injunction can be granted by Court under Order 39, rules 1 & 2 CPC and not u/s 151 CPC. See: Satya Prakash Tiwari Vs. Civil Judge (Jr. Div) Etawah & Others, 2006 (62) ALR 431**.** Following cases have been relied on by the High Court in this case**:**

(i) Vareed Jacob Vs. Sosamma Geevarghese, (2004) 6 SCC 378 (Three-Judge Bench)

(ii) Arjun Singh Vs. Mohindra Kumar, AIR 1964 SC 993

(iii) Atmaram Properties Private Limited Vs. Federal Motors Private Limited, 2005 (58) ALR 650

(iv) Chitivalasa Jute Mills Vs. Jaypee Rewa Cement, 2004 (54) ALR 706

(v)Naina Singh Vs. Koowarjee, AIR 1970 SC 997

(vi) State of W.B. Vs. Karan Singh Binayak, (2002) 4 SCC 188

36. Document/additional evidence not to be admitted after conclusion of final arguments and reserving judgment: Document/additional evidence cannot be admitted by Court after conclusion of final arguments and reserving of judgment. See: Arjun Singh Vs. Mohindra Kumar, AIR 1964 SC 993

37. No presumption of abandonment of case by counsel unless client had knowledge of the same and case cannot be dismissed under order 9, Rule 8 CPC: There can be no legal presumption about factum of abandonment of proceedings by counsel. Abandonment has to be express or even if it is to be implied, circumstances must be so strong and convincing that drawing such inference is inevitable rather no other view is possible. For that, court has to advert to material/evidence indicating that appellant/petitioner was duly served with applications filed by respondent and that he was fully aware about discharge of counsel representing him in proceedings including about service of court notices. Even if court were to infer abandonment, it can at best dismiss the petition for default in exercise of power under Order 9, Rule 8 CPC and not on merits as was erroneously done by the Family Court herein in gross violation of mandatory procedure and principles of natural justice. See: Aman Lohia Vs. Kiran Lohia (2021) 5 SCC 489

38. Mandatory directions of Supreme Court for compliance in suits and execution proceedings: The Supreme Court, in Para 42 of its judgement in the case noted below, has issued following mandatory directions to the courts dealing with the civil suits and the execution proceedings of decrees:

42.1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order 10 in relation to third-party interest and further exercise the power under Order 11 Rule 14 asking parties to disclose and produce documents upon oath, which are in possession of the parties to disclose and produce documents upon oath, which are in possession of the parties including declaration pertaining to third-party interest in such properties

42.2. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the court, the court may appoint Commissioner to assess the accurate description and status of the property.

42.3. After examination of parties under Order 10 or production of documents under Order 11 or receipt of Commission report, the court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.

42.4. Under Order 40 Rule 1 CPC, a Court Receiver can be appointed to monitor the status of the property in question as custodial legis for proper adjudication of the matter.

42.5. The court must, before passing the decree, pertaining to delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.

42.6. In a money suit, the court must invariably resort to Order 21 Rule 11, ensuring immediate execution of decree for payment of money on oral application.
42.7. In suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.
42.8. The court exercising jurisdiction under Section 47 or under Order 21 CPC, must not issue notice on an application of third party claiming rights in a mechanical manner. Further, the court should refrain from entertaining any such application(s) that has already been considered by the court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.
42.9. The court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.
42.10. The court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to sub-rule (2) of Rule 98 of order 21 as well as grant compensatory costs in accordance with Section 35-A.
42.11. Under Section 60 CPC the term "…in name of the judgment-debtor or by another person in trust for him or on his behalf" should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.
42.12. The executing court may dispose of the execution proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.
42.13. The executing court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the police station concerned to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the court, the same must be dealt with stringently in accordance with law.
42.14. The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the executing courts.

43. We further direct all the High Courts to reconsider and update all the Rules relating to execution of decrees, made under exercise of its powers under Article 227 of the Constitution of India and Section 122 CPC, within one year of the date of this order. The High Courts must ensure that the Rules are in consonance with CPC and the above directions, with an endeavour to expedite the process of execution with the use of information technology tools. Until such time these Rules are brought into existence, the above directions shall remain enforceable. See: Rahul S. Shah Vs. Jinendra Kumar Gandhi and others (2021) 6 SCC 481 (Three-Judge Bench)

39. Orders of civil or criminal courts can be challenged only by way of an appeal or revision or by way of a petition under Article 227 of the Constitution and not under Article 226:

Judicial orders passed by civil courts or criminal courts are not amenable to challenge under Articles 32 or 226 of Constitution: Orders of the civil courts or criminal courts can be challenged only by way of an appeal or revision or by way of a petition under Article 227 of the Constitution and not under Articles 32 or 226 of the Constitution. See:

(i) Neeta Singh Vs. State NCT of Delhi, (2026) 6 SCC 817 (Paras 3 & 4)

(ii) Radhey Shyam Vs. Chhabi Nath, (2015) 5 SCC 423 (Three-Judge Bench)

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40. Trial in a civil suit when commences? : The date of first hearing in a civil suit is the date fixed for framing issues, i.e., the date on which court applies its mind to the facts and controversies involved in the case. Any date prior to such a date would not be a date of first hearing. Date for filing written statement is not the date for hearing of the suit. Trial in a civil suit commences on the date when the suit is taken up for framing of issues by the court after perusal of pleadings of the parties. But in a proceeding under the PSCC Act, 1887, any date fixed for hearing of the case would be the date of hearing as there is no provision under the PSCC Act, 1887 for framing of issues. See:

(i) S.K. Gupta vs. B.K. Jain,2007 (66) ALR 104(All)
(ii) Vidyabai vs. Padmalatha,2009 (1) Supreme 239
(iii) Mamchand Pal vs. Smt. Shanti Agarwal,2002 (47) ALR 1 (SC)
(iv) Ashok kumar vs. Rishi Ram,2002 (48) ALR 401 (SC)
(v) K.K.Gupta vs. ADJ,2004 (57) ALR 776 (All)

41. When does trial in a civil suit commence?: The Supreme Court has accepted a SLP in 2024 to decide an issue regarding the stage of commencement of trial in a civil suit. The issue has arisen in the

context of interpretation of Order 6 Rule, 17 CPC which provides for amendments of pleadings. The proviso to Order 6 Rule, 17 CPC states that no amendment application can be allowed after commencement of trial.

42. **Transferee pendente lite can be impleaded as party**: Transferee pendente lite can be impleaded as party to, a suit under Order 1, rule 10 CPC. See: Yogesh Goyanka Vs Govind,(2024) 7 SCC 524

43. **Plaintiff being dominus litis cannot be forced to add someone as party to suit unless necessary:** A litigant who has instituted the suit (for recovery of service charges from tenant) is the dominus litis and it is for him to choose his adversary. He cannot be compelled to add a party to defend a suit against his wishes. See: Judgment dated 06.01.2026 of the Supreme Court passed in Nak Engineering Company Pvt Ltd Vs. Tarun Keshrichand Shah

44. **Use of an unregistered document requiring registration:** A document required by law to be registered, if unregistered, is inadmissible as evidence of a transaction affecting immovable property. But it may be admitted as evidence of collateral facts, or for any collateral purpose, that is, for any purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to immovable property. Courts should have in mind the following factors with regard to the admissibility of an unregistered document:
(i)document required to be registered, if unregistered, is not admissible into evidence under Section 49 of the Registration Act.
(ii) Such unregistered document can however be used as an evidence of collateral purpose as provided in the Proviso to Section 49 of the Registration Act.
(iii)A collateral purpose must be independent of, or divisible from the transaction to the effect which the law required registration.
(iv)collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating any right, title or interest in immovable property of the vale of one hundred rupees and upwards.
(v) If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using t as a collateral purpose. See: K. B. Saha Vs. Development Consultant Limited, (2008) 8 SCC 564 (Paras 33& 34)

45. **Undivided share of co-parcener can be transferred but possession cannot be handed over to him:** An undivided share of co-parcener (co-sharer) can be transferred but possession cannot be handed over to

vendee unless the property is partitioned by metes and bounds either by decree of court in partition suit or by settlement among co-sharers. See:

(ii)Gajara Vishnu Gosavi Vs. Prakash Nanasahed Kamble, (2010) 2 SCC 1105 (Para 13)

(ii) Ramdas Vs. Sitabai, (2009) 7 SCC 444 (Para 14)

(iii)M.V.S.Manikayala Rao Vs Narasimhaswami, AIR 1966 SC 470 (Para 5)

(iii) (Sidheshwar Mukherjee Vs, Bhubneshwar Prasad Narain Sing, AIR 1953 SC 487

46. Review (Section 211 RC): A judgment or order can be reviewed under Order 47, rule 1 CPC/ Section 211 RC (especially by BR) on following grounds:

(i) new matter/evidence discovered is of such nature which could change the judgment

(ii) such new matter/evidence was not within the knowledge of the party seeking review

(iii) same could not be produced before court even after due diligence. See: Neethu B Vs. Rajesh Kumar, (2025) 10 SCC 436 (Para 13)

47. Extent of power of court in review on production of new document not produced earlier: Court can under Section 114 read with Order 47 of the CPC consider any document with intrinsic worth having bearing on lis decided earlier which was not on record because despite due diligence, the same could not be produced earlier, and if the same had been produced earlier, outcome of the case could have been different. See: Maharashtra State Transport Corporation Vs. Mahadeo Krishna Naik, (2025) 4 SCC 321 (Paras 38 &39)

48. New Procedure for trial of civil suits as directed by the Supreme Court: The Supreme Court has directed to adopt following procedure for trial of civil suits, service of processes, filing of written statements, costs, adjournments, collection of evidence and the related matters:

(i) All courts at district and taluka levels shall ensure proper execution of the summons and in a time bound manner as prescribed under Order V Rule (2) of CPC and same shall be monitored by Principal District Judges and after collating the statistics they shall forward the same to be placed before the committee constituted by the High Court for its consideration and monitoring.

(ii) All courts at District and Taluka level shall ensure that written statement is filed within the prescribed limit namely as prescribed under Order VIII Rule 1 and preferably within 30

days and to assign reasons in writing as to why the time limit is being extended beyond 30 days as indicated under proviso to sub-Rule (1) of Order VIII of CPC.

(iii) All courts at Districts and Talukas shall ensure after the pleadings are complete, the parties should be called upon to appear on the day fixed as indicated in Order X and record the admissions and denials and the court shall direct the parties to the suit to opt for either mode of the settlement outside the court as specified in sub-Section (1) of Section 89 and at the option of the parties shall fix the date of appearance before such forum or authority and in the event of the parties opting to any one of the modes of settlement directions be issued to appear on the date, time and venue fixed and the parties shall so appear before such authority/forum without any further notice at such designated place and time and it shall also be made clear in the reference order that trial is fixed beyond the period of two months making it clear that in the event of ADR not being fruitful, the trial would commence on the next day so fixed and would proceed on day-to-day basis.

(iv) In the event of the party's failure to opt for ADR namely resolution of dispute as prescribed under Section 89(1) the court should frame the issues for its determination within one week preferably, in the open court.

(v) Fixing of the date of trial shall be in consultation with the learned advocates appearing for the parties to enable them to adjust their calendar. Once the date of trial is fixed, the trial should proceed accordingly to the extent possible, on day-to-day basis.

(vi) Learned trial judges of District and Taluka Courts shall as far as possible maintain the diary for ensuring that only such number of cases as can be handled on any given day for trial and complete the recording of evidence so as to avoid overcrowding of the cases and as a sequence of it would result in adjournment being sought and thereby preventing any inconvenience being caused to the stakeholders.

(vii) The counsels representing the parties may be enlightened of the provisions of Order XI and Order XII so as to narrow down the scope of dispute and it would be also the onerous responsibility of the Bar Associations and Bar Councils to have periodical refresher courses and preferably by virtual mode.

(viii) The trial courts shall scrupulously, meticulously and without fail comply with the provisions of Rule 1 of Order XVII and once the trial has commenced it shall be proceeded from day to day as contemplated under the proviso to Rule (2).

(ix) The courts shall give meaningful effect to the provisions for payment of cost for ensuring that no adjournment is sought for procrastination of the litigation and the opposite party is suitably compensated in the event of such adjournment is being granted.

(x) At conclusion of trial the oral arguments shall be heard immediately and continuously and judgment be pronounced within the period stipulated under Order XX of CPC.

(xi) The statistics relating to the cases pending in each court beyond 5 years shall be forwarded by every presiding officer to the Principal District Judge once in a month who (Principal District Judge/District Judge) shall collate the same and forward it to the review committee constituted by the respective High Courts for enabling it to take further steps.

(xii) The Committee so constituted by the Hon'ble Chief Justice of the respective States shall meet at least once in two months and direct such corrective measures to be taken by concerned court as deemed fit and shall also monitor the old cases (preferably which are pending for more than 05 years) constantly.

(xiii) The Secretary General is directed to circulate the copy of this judgment to the Registrar General of all the High Courts for being placed before the respective Chief Justices for a consideration and suitable steps being taken as opined herein above. See: Judgment dated 20.10.2023 passed by the Hon'ble Supreme Court in Civil Appeal No. 4296 of 2023, Yashpal Jain Vs. Sushila Devi & Others.

49. Direction of Supreme Court to Trial Courts to prepare chart for systematic presentation and exhibition of documents and producing the same in judgments: The Supreme Court has issued directions to all Trial Courts to prepare a chart for systematic presentation and exhibition of documents and producing the same in the judgments. The directions of the Supreme Court as issued by it on 15.12.2025 are reproduced below:

Preparation of Tabulated Charts in all the judgments:

(1) All trial Courts dealing with criminal matters shall, at the conclusion of the judgment, incorporate tabulated charts summarizing- a. Witnesses examined; b. Documents exhibited, and c. Material objects (muddamal) produced and exhibited.

(2) These charts shall form an appendix or concluding segment of the judgment and shall be prepared in a clear, structured and easily comprehensible format.

Standardized Chart of Witnesses:

(1) Each criminal judgment shall contain a witness chart with at least these columns- a. Serial Number; b. Name of the Witness c. Brief Description/Role of the Witness, such as: Informant, Eyewitness, Medical Jurist/Doctor, Investigating Officer (I.O.), Panch Witness, etc.
(2) The description should be succinct but sufficient to indicate the evidentiary character of the witness. This structured presentation will allow quick reference to the nature of testimony, assist in locating the witness in the record and minimize ambiguity.
(3) The judgment featured a Specimen Chart for Witnesses Examined for reference.

Standardized Chart of Exhibited Documents:

(1) A separate chart shall be prepared for all documents exhibited during trial. This chart shall include- a. Exhibit Number; b. Description of document; c. The Witness who proved or attested the document.
(2) Illustratively, the description may include: FIR, complaint, panchnamas, medical certificates, FSL reports, seizure memos, site plans, dying declarations, etc.
(3) The requirement of specifying the witness who proved the document ensures traceability of proof and assist the Court in appreciating compliance with the Evidence Act, 1872/Bharatiya Sakshya Adhiniyam, 2023.
(4) The Judgment also attached a Specimen Chart for Exhibited Documents for reference.

Standardized Chart of Material Objects/Muddamals:

(1) Whenever material objects are produced and marked as exhibits, the trial Court shall prepare a third chart with- a. Material Object (M.O.) Number; b. Description of the Object; c. Witness who proved the Object's Relevance (e.g., weapon, clothing, tool, article seized under panchnama, etc.)
(2) This enables clarity regarding the physical evidence relied upon.
(3) The judgment attached a Specimen Chart for Material Objects/Muddamals

Special Provisions for Cases Involving Voluminous Evidence:

(1) In complex cases, such as conspiracies, economic offences or trials involving voluminous oral or documentary evidence, the list of witnesses and exhibits may be substantially long. Where the number of witnesses or documents is unusually large, the trial Court may prepare charts only for the material, relevant,

and relied-upon witnesses and documents, clearly indicating that the chart is confined to such items. This ensures that the charts remain functional reference tools rather than unwieldy compilations.

Application to Defence Witnesses and Evidence:

(1) The aforesaid directions shall apply, mutatis mutandis, to all witnesses examined and all evidence adduced by the defence.

Adoption of Specimen Format and Permissible Deviations:

(1) The specimen charts provided in the judgment shall ordinarily serve as the standard format to be followed by trial Courts across the country.

Observations Regarding Applicability to Civil Proceedings:

(1) While these directions are primarily intended to streamline criminal trials, we leave it open to the High Courts to consider, wherever appropriate, the adoption of similar tabulated formats in civil matters as well, particularly in cases involving voluminous documentary or oral evidence, so as to promote clarity, uniformity, and ease of reference.

(2) The Supreme Court further directed that the High Courts may consider incorporating the above directions in their respective rules governing the procedure of trial Courts. **See:** Judgement dated 15.12.2025 of the Supreme Court passed in Manojbhai Jethabhai Parmar Vs. State of Gujarat, 2025 SCC OnLine SC 2803.

50. Execution of order not to be stayed merely because some writ, revision, appeal or other petition have been filed by the opposite party against the order of the lower Court: It is the settled proposition of law that merely because some writ, revision, appeal or other petition have been filed by the opposite party against the order of the lower Court, the concerned court / authorities cannot refuse to implement, honour and execute the order of the court unless the operation of the same is stayed by some competent / superior court as has been ruled by the Hon'ble Supreme Court in the cases reported in (i) State of Orrisa Vs. Madan Gopal Rungta, 1951 SCR 28 and (ii) Siliguri Municipality Vs. Amalendu Das (1984) 2 SCC 436.

51. Every procedure is valid unless expressly prohibited by law: Rules of procedure are handmaids of justice. Section 151 CPC gives inherent powers to the court to do justice. That provision has to be interpreted to mean that every procedure is permitted to the court for doing justice unless expressly prohibited, and not that every procedure

is prohibited unless expressly permitted. See: Rajendra Prasad Gupta Vs. Prakash Chandra Mishra & Ors., AIR 2011 SC 1137.

Part – 11

Misc. Subjects

1. Affidavits
2. Recording of Reasons in Order & Judgements
3. Wrong-mentioning or non-mentioning of Provision of Law in Orders
4. Affidavits
5. Order-sheets & their Importance
6. Section 114(e) of Evidence Act
7. Section 119 (e) of BSA, 2023
8. Public Documents: What are?
9. Sale Deeds and Will Deeds etc. and their Proof
10. Exhibition of Documents
11. Value of Report of Lekhpal
12. How to appreciate reports of Advocate Commissioners and Amin Commissioners

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