

facts, or where monetary compensation is adequate relief.

Notice: The Court shall before granting an injunction, give notice to the opposite party, except where it appears that the object of granting the injunction would be defeated by the delay.⁸

According to proviso to Rule 3, when an ex parte injunction is proposed to be given the Court has to record the reasons for coming to the conclusion that the object of granting the injunction would be defeated by the delay and the Court shall order the applicant -

- a. to deliver or to send by registered post a copy of the application for injunction together with -
 - i) a copy of affidavit filed in support of application,
 - ii) a copy of the Plaint, and
 - iii) copies of documents on which the applicant relies, and
- b) to file, on the day on which injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent immediately to the opposite party.

In case of ex-parte injunction, the Court shall make an endeavour to finally dispose of the application within 30 days from the date on which the ex-parte injunction was granted. Where the Court finds it difficult to dispose of the application within the period of 30 days, the reasons are required to be recorded. (Rule 3-A)

An order of injunction may be discharged, varied or set aside by the Court on application being made by any party dissatisfied with such order;⁹ or where such discharged, variation or set aside has been necessitated by the change in the circumstances, or where the Court is satisfied that such order has caused undue hardship to the other side.

Provided that if an application for temporary injunction or in any affidavit supporting such application, a party has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without "giving" notice to the opposite party, the Court shall vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary to do in the interest of justice." **First**

Proviso to Rule 4

Provided further that where an order for injunction has been passed after giving a party an opportunity of being heard, the order shall not be discharged, varied or set-aside on the application of that party except where such discharged, variation or set aside has been necessitated by the change in the circumstances, or unless the Court is satisfied that" the order has caused hardship to that party. **Second Proviso to Rule 4**

Provided also that if at any stage of the suit it appears' to the Court that the Party" in whose favour the order of injunction exists is dilating the proceedings or is otherwise abusing the process of the Court, it shall set aside the order for injunction. **U.P. State Amendment**

Consequences Of Disobedience Or Breach Of Injunction: Section 94(c) and Rule 2-A of Order 39 provide for the consequences of disobedience or breach of an order of an injunction issued by the Court. The penalty for disobedience or breach of injunction may be either arrest or attachment of his property or both of the opposite party who has committed breach. However, the detention in civil prison shall not exceed three months and the attachment of property shall not remain in force for more than one year. [Rule

2-A(1)]

If the disobedience or breach still continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party. [Rule 2-A(2)]

The transferee Court can also exercise his power and can punish for breach of injunction granted by the transferor Court. [Rule 2-A(1)]

Injunction on insufficient grounds: When in any suit in which an order of temporary injunction has been obtained by the plaintiff on insufficient grounds, or where the suit of the plaintiff fails and it appears to the Court that there was no reasonable or probable ground for instituting it, on application being made by the defendant, the Court may order the plaintiff to pay such amount not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury to reputation caused to him.¹⁰

An order declining to grant injunction and issuing notice to defendants V/s Rule 3 of Order 39 is not appealable under Order 43 Rule 1 (2) of the Code but when the ex-parte interim injunction is refused illegally, the Court can in exercise of its power of Superintendence under Section 115 of the Code, grant ad-interim injunction.

Interlocutory Orders (Order XXXIX Rules 6 to 10)

Meaning: Interim orders or interlocutory orders are those orders passed by a Court during the pendency of a suit or proceeding which do not determine finally the substantive rights and liabilities of the parties in respect of the subject-matter of the suit or proceeding.

After the suit is instituted by the plaintiff and before it is finally disposed of, the Court may make interlocutory orders as may appear to the Court to be just and convenient. [Section 94 (e)]

Interim orders or interlocutory orders are made in order to assist the parties to the suit in the prosecution of their case or for the purpose of protection of the subject matter of the suit.

Interlocutory Orders Under Order XXXIX:

- 1. Power of Court to Order Interim Sale:** On the application of any party (an application by the plaintiff¹¹ under Rules 6 or 7 may be made at any time after the institution of the suit while by the defendant,¹² it may be made at any time after appearance) to the suit, the Court may, order the sale of any moveable property, being the subject-matter of such suit, or attach before judgment in such suit, which is subject to speedy and natural delay, or which for any just and sufficient cause it may be desirable to have been sold at once.¹³
- 2. Detention, Preservation, Inspection, etc, of Subject-matter of Suit :** The Court may make an order for detention, preservation and inspection of any property which is the subject-matter of the suit, or as to which any question may arise therein;¹⁴ and authorize any person to enter upon or into any land or building in the possession of any other party to such suit;¹⁵ and authorize any sample to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.¹⁶

Notice to Opposite Party: No order under rule 6 or 7 shall be made without giving notice to the

opposite party, except where it appears to the Court that the object of making such order would be defeated by delay.¹⁷

3. **When party may be put in immediate possession of land, the subject matter of suit:**

Where land paying revenue to government, or a tenure liable to sale, is the subject matter of a suit, or the party in possession of such land or tenure neglects to pay the government revenue, or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure is consequently ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may, upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the court), be put in immediate possession of the land or tenure; and the court in its decree may award against the defaulter the amount so paid, with interest thereon at such rate as the court thinks fit, or may charge the amount so paid, with interest thereon at such rate as the court orders, in any adjustment of accounts which may be directed in the decree passed in the suit.¹⁸

4. **Deposit of money, etc., in court:** Where the subject matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other things as a true for another party, or that it belongs or is due to another party, the court may order the same to be deposited in court or delivered to such last named party, with or without security, subject to the further direction of the court.¹⁹

RECEIVER (ORDER XL)

Meaning: The word has not been defined in the Code. The same may be defined as under:-

"The receiver is an important person appointed by the Court to collect and receive, pending the proceedings, the rents, issues and profits of land, or personal estate, which it does not seem reasonable to the Court that either party should collect or receive, or for enabling the same to be distributed among the persons entitled."²⁰

The receiver is appointed for the benefit of all concerned; he is the representative of the Court, and for all parties interested in the litigation, wherein he is appointed.²¹ He is an officer or representative of the Court and he functions under its directions.²²

Appointment: In order to prevent the ends of justice from being defeated the Court may, if it is so prescribed, appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property.²³ The remuneration for the services of the receiver shall be paid by the order of Court.²⁴

Order XL : Rule 1 (1) provides that:-

Where it appears to the court to be just and convenient, the court may by order-

- a. appoint a receiver of any property, whether before or after decree;
- b. remove²⁵ any person from the possession or custody of the property;
- c. commit the same to the possession, custody or management of the receiver; and
- d. confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the '-':property, the collection of the

rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the court thinks fit.

Duties and Enforcement thereof:²⁶

Rule 3: Duties : Every receiver so appointed shall-

- a. furnish such security (if any) as the court thinks fit, duly to account for what he shall receive in respect of the property;
- b. submit his accounts at such periods and in such form as the court directs;
- c. pay the amount due from him as the court directs; and
- d. be responsible for any loss occasioned to the property by his willful default or gross negligence.
- e. fails to pay the amount due from him as the court directs, or occasions loss to the property by his willful default or gross negligence,

Rule 4: Enforcement of Receiver's Duties: Where a receiver-

- a) Fails to submit his accounts at such periods and in such form as the court directs, or
- b) Fails to pay the amount due from as the courts directs, or
- c) Occasions loss to the property by his willful default or gross negligence,

the court may direct his property to be attached and may sell such property, and may apply the proceeds to make good any amount found to be due from him or any loss occasioned by him, and shall pay the balance (if any) to the receiver.

According to **rule 5**, a collector may be appointed as a receiver where the property is land paying revenue to the Government, or land of which the revenue has been assigned or redeemed, and the court considers that the interests of those concerned will be promoted by the management of the Collector, the court may, with the consent of the Collector, appoint him to be receiver of such property.

Appeals (Section 96 to 112, Order 41-45)

Introduction: The provisions relating to appeals are contained in Sections 96 to 112 and Orders XLI to XLV of the Code of Civil Procedure and can be summarized as under:

- | | |
|--------------------------------|--|
| a. First Appeal, | Sections 96 to 99-A, 107 and Order XLI |
| b. Second Appeal, | Sections 100 to 103, 108 and Order XUI |
| c. Appeals from Orders | Sections 104, 108 and Order XLIII |
| d. Appeals by Indigent persons | Order XLIV |
| e. Appeals to Supreme Court | Section 109 and Order 45 |

Meaning: The appeal means " the Judicial examination of the decisions by a higher Court of the. decisions of an inferior Court"

Right to Appeal: The right to appeal is a vested right. The right to appeal is a substantive right and an appeal is a creature of statute and there is no right of appeal unless it is given clearly in express terms by a statute. Appeal is a vested right and accrues to the litigant and exists as on and from the date the *lis* commences and although it may be actually exercised when the adverse judgment is pronounced. The right of appeal is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.²⁷ This vested right can be taken away only by a subsequent enactment if it so provides expressly or by necessary implication, and not otherwise.

First Appeal : (Sections 96–99-A, 107 and Order XLI)

Appeal from Original Decree:

S. 96 of the Code provides as:

1. Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized. to hear appeals from the decision of such Court.
2. An appeal may lie from an original decree passed ex parte.
3. No appeal shall lie from a decree passed by the Court with the consent of parties.
4. No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of small causes, when the amount or value of the subject- matter of the original suit does not exceed ten thousand rupees.

Who may Appeal: The following persons are entitled to prefer an appeal :

1. A party to the suit who is adversely affected by the decree {Section 96(1)}, or his legal representative. (Section 146)
2. A person claiming under a title party to the suit or a transferee of interests of such party, who, so far as interest is concerned, is bound by the decree, provided his name is entered on the record of the suit. (Section 146)
3. A guardian ad litem appointed by the Court in a suit by or against a minor. (Section 147, Order 32, Rule 5)
4. Any other person, with the leave of the Court, if he is adversely affected by the decree.

An appeal may lie against an ex- parte decree {S- 96(2)} and no appeal shall lie from a decree passed with consent of parties {S- 96(3)}. The provision of S-96(3) is based upon principle of Estoppels. Once the decree is shown to have been passed with the consent of parties, Section 96(3) becomes operative and binds them. It creates and Estoppels between the parties as a judgment on consent.

There shall be no appeal in petty cases as provided in Section 96(4) and an appeal lies against preliminary decree as in the case of all decrees, unless a final decree has been passed before the date of filing an

appeal, but there shall be no appeal against final decree when there was no appeal against preliminary decree. In fact, final decree owes its existence to the preliminary decree.²⁸

Conditions before filing an appeal: An appeal can be filed against every decree passed by any Court in exercise of original jurisdiction upon the satisfaction of the following two conditions:

- i) The subject matter of the appeal must be a "decree", and
- ii) The party appealing must have been adversely affected by such determination.

Order XLI - Appeal from Original Decrees.

Form of Appeal: Rule 1 to 4:

Memorandum of Appeal: Contains the grounds on which the judicial examination is invited. In order that an appeal may be validly presented, the following requirements must be complied with:

- a. It must be in the form of memorandum setting forth the grounds of objections to the decree appealed from.
- b. It must be signed by the appellant Court or his pleader.
- c. It must be presented to the Court.
- d. The memorandum must be accompanied by a certified copy of the decree.
- e. The memorandum must be accompanied by a certified copy of the judgment unless the Court dispenses with it; and
- f. Where the appeal is against a money decree, the appellant must deposit the decretal amount or furnish the security in respect thereof as per the direction of the Court.

Appeals From Appellate Decrees (Second Appeal Sections 100 to 103 and Order 42)

Section-100 Second Appeal:

1. Save as otherwise provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is, satisfied that the case involves a substantial question of law.
2. An appeal may lie under this section from an appellate decree passed ex- parte.
3. In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.
4. Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate such question.
5. The appeal shall be heard on the question so formulated and the respondent shall, after hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.

Substantial Question of Law: Means a substantial question of law as between the parties in the case involved. A question of law is a substantial as between the parties if the decision turns one way or the other on the particular view of law. If it does not affect the decision, it cannot be said to be a substantial question of law.²⁹

Form of Second Appeal; A memorandum of second appeal precisely states the substantial question of law involved, but, unlike the memorandum of 1st appeal, it need not set out the ground of objections to the decree appealed from. Order 41 Rule 1.

Appeal From Orders (Section 104 and Order 43)

Section 104: Orders from which appeal lies-

1. An appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force, from no other orders:
 - I. An order under Section 35A; [Sec. 104(1) (ff)]
 - II. an order under Section 91 or Section 92 refusing leave to institute a suit of the nature referred to in Section 91 or Section 92 , as the case may be; [Sec. 104(1) (ffa)]
 - III. an order under Section 95 ; [Sec. 104(1) (g)]
 - IV. an order under any of the provisions of the Code imposing a fine or directing the arrest or detention in the Civil prison of any person except where such arrest or detention is in execution of a decree; [Sec. 104 (1) (h)]
 - V. an order made under rules from which an appeal is expressly allowed by rules; [Sec. 104(1) (i)]

Provided that no appeal shall lie against any order specified in clause (ff) save on the ground that no order, or an order for the payment of a less amount, ought to have been made. {Proviso to, Section 104(1)}

2. No appeal shall lie from any order passed in appeal under this Section.

Section 105:

- a. Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction but, where a decree is appealed from, any error defect or irregularity in any order, affecting the decision of the case may be set forth as a ground of objection in the memorandum of appeal.
- b. Notwithstanding anything contained in sub-section (1) where any party aggrieved by an order of remand from which an appeal lies does not appeal there from, he shall thereafter be precluded from disputing its correctness.

Section 106 : What Courts to hear appeals: Where an appeal from any order is allowed it shall lie to the Court to which an appeal would lie from the decree in the suit in which such order was made, or where such order is made by a Court (not being a High Court) in the exercise of appellate jurisdiction then to the High court.

Appeals from Orders (Order XLIII)

Rule-1: Appeals from Orders: An appeal shall lie to the following orders under the provisions of Section 104, namely:

1. **Rule-1 (a):** An order under rule 10 of Order VII returning a plaint to be presented to the proper Court except where the procedure specified in Rule 10A of Order VII has been followed;
2. **Rule-1 (c):** An order under rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;
3. **Rule-1 (d):** An order under rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed ex parte;
4. **Rule-1 (f) :** An order under rule 21 of Order XI;
5. **Rule-1 (i) :** An order under rule 34 of Order XXI on an objection to the draft of a document or of endorsement;
6. **Rule-1 (j) :** An order under rule 72 or rule 92 of Order XXI setting aside or refusing to set aside a sale;
7. **Rule-1 (ja) :** An order rejecting an application made under sub-rule (1) of rule 106 of Order XXI, provided that an order on the original application, that is to say, the application referred to in sub rule (1) of rule 105 of that Order is appealable.
8. **Rule-1 (k):** An order under rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit;
9. **Rule-1 (l) :** An order under rule 10 of Order XXII giving or refusing to give leave;
10. **Rule-1 (n) :** An order under rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;
11. **Rule-1 (na):** An order under rule 5 or rule 7 of order XXXIII rejecting an application for permission to sue as an indigent person;
12. **Rule-1 (p) :** Order in interpleader suits under rule 3, rule 4 or rule 6 of Order XXXV;
13. **Rule-1 (q) :** An order under rule 2, rule 3 or rule 6 of Order XXXVIII;
14. **Rule-1 (r) :** An order under rule 1, rule 2, rule 2A, rule" 4 or rule 10 of Order XXIX.
15. **Rule-1 (s) :** An order under rule 1 or rule 4 of Order XL;
16. **Rule-1 (t) :** An order of refusal under rule 19 of Order XLI to re- admit, or under rule 21 of Order XLI to

re- hear, an appeal;

17. **Rule-1 (u)** : An order under rule 23 or rule 23-A of Order XLI remanding a case, where an appeal would lie from the decree of the Appellate Court ;
18. **Rule-1 (w)** : An order under rule 4 of Order XLVII granting an application for review.
 1. Where any order is made under this Code against a party and thereupon any judgment is pronounced against such party and a decree is drawn up, such party may, in an appeal against the decree, contend that such order should not have been made and the judgment should not have been pronounced.
 2. In an appeal against a decree passed In a suit after recording a compromise or refusing to record a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise should, or should not have been recorded.

Rule: 2. Procedure: The rules of Order XLI [(and Order XLI-A) by Allahabad High Court Amendment] shall apply, so far as may be, to appeals from orders.

REFERENCE (Section - 113 and Order XIII)

Section 113 provides provisions relating to reference and empowers any Court (subordinate Court) to state a case and refer the same for the opinion of the High Court. Such an opinion can be sought when the Court itself feels some doubt about a question of law. The provisions are subject to such conditions and limitations as may be prescribed.

Object: The object for reference is to enable the subordinate Courts to obtain in non-appealable cases the opinion of the High Court, on a question of law and thereby avoid the commission of an error which could not be remedied later on.³⁰

Conditions for Applications: (Order 46 Rule 1) The following conditions must be fulfilled, before High Court entertains a reference from a sub-ordinate Court, i.e.

1. **Pendency:** There must be pendency of a suit or appeal in which the decree is not the subject to appeal or a pending proceeding in execution of such decree.
2. **Question of law:** A question of law or usage having the force of law must arise in the course of such suit, appeal or proceeding ; and
3. **Doubt in mind of Court:** The Court trying the suit, appeal or executing the decree must entertain a reasonable doubt on such question.

Questions of law: The subordinate Court may be in doubt relating to the questions of law, which may be-

1. Those which relate to the validity of any Act, Ordinance or Regulation and the reference upon such questions of law are obligatory upon the fulfillment of the following conditions³¹:
 1. It is necessary to decide such question in order to dispose of the case;

2. The Sub-ordinate Court is of the view that the impugned Act, Ordinance or Regulation is ultra vires; and
3. That there is no determination by the Supreme Court or by the High Court, to which such Court is Subordinate that such Act, Ordinance or Regulation is ultra vires.

2. Other Questions: In this case the reference is optional.

Procedure:³² **Who can make Reference:** A reference can be made by the Court suo-motu or on application of any party.

Rule 1: The Referring Court must formulate the question of law and give its opinion thereon.

Rule 2: The Court may either stay the proceeding or may pass a decree or order, which cannot be executed until receipt of judgment of High court on reference.

Rule 3: The High Court after hearing the parties, if it so desires, shall decide the point of reference and the Subordinate Court shall dispose of the case in accordance with the said decision.

Provision as in Section 113: The provisions relating to reference, as has been specified in s. 113 of the Code are as under-

Section 113: Reference to High Court: Subject to such conditions and limitations as may be prescribed, any court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit:

PROVIDED that where the court is satisfied that a case pending before it involves a question 9S to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefor, and refer the same for the opinion of, the High Court.

Explanation: In this section, "Regulation" means any Regulation of the Bengal, Bombay or Madras Code of Regulation as defined in the General Clauses Act, 1897 (10 of 1897), or in "the General Clauses Act of a State.

Powers and Duty of Referencing Court: A reference can be made on a question of law arisen between the parties litigating, in a suit, appeal or execution proceeding, during the pendency of such suit, appeal or proceeding and the Court is in doubt on such question of law.

Powers and Duty of High Court: The High Court entertains the consulting jurisdiction in cases of reference and can neither make any order on merits nor can it make suggestions. In case of reference the High Court may answer the question referred to it and send back the case to the referring Court for disposal in accordance with law.³³ Where a case is referred to the High Court under Rule 1 of Order XLVI or under the proviso to section 113, the High Court may return the case for amendment, and may alter, cancel or set-aside any decree or order which the Court making reference has passed or made in the case out of which the reference arose, and make such order as it thinks fit.³⁴

Review (Section 114 and Order XLVII)

Meaning: Review means re-examination or reconsideration of the case by the same judge. It is a judicial re-examination of the case by the same Court and by the same Judge. In it, a Judge, who has disposed of the matter, reviews his earlier order in certain circumstances.

Section 114 and Order XLVII: The provisions relating to review are provided in S. 114 (substantive right) and Order XLVII (procedure). The general rule is that once the judgment is signed and pronounced or an order is made by the Court, it has no jurisdiction to alter it. Review is an exception to this general rule.

Section 114:

Review: Subject as aforesaid, any person considering himself aggrieved

- a. by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred;
- b. by a decree or order from which no appeal is allowed by this Code, or
- c. by a decision on a reference from a Court of Small Causes,

may apply for a review of judgment to the Court which passed the decree or made the order and the Court may make such order thereon as it thinks fit.

Who may apply to Review: Any person aggrieved by a decree or order may apply for a review of Judgment where no appeal is allowed or where an appeal is allowed but no appeal has been filed against such decree or order or by a decision on a reference from a small cause.³⁵

An 'aggrieved person'. means a person who has suffered a legal grievance or against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused in something or wrongfully affected his title to something.³⁶

A person who is not a party to the decree or order cannot apply for review since on general principle of B.W, such decree or order is not binding on him and therefore he cannot be said to be an aggrieved person within the meaning of section 114 and order 47 Rule (1).

A party who has a right to appeal but does not file an appeal, may apply for a review of judgment, even if notwithstanding the pendency of an appeal by some other party, excepts?

- i. Where the ground of such appeal is common to the applicant and the appellant, or
- ii. When, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Grounds of Review: Order XLVII, Rule (1) provides the following grounds:

- i. Discovery of new and important matter or evidence, which after the exercise of due diligence, was not within his (aggrieved person's) knowledge or could not be produced by him (aggrieved person) at the time when the decree was passed or order made; or

ii. on account of some mistake or error appear on the face of the record; or

iii. for any other sufficient reason.

Explanation to section 114 specifically provides that "the fact that the decision on a question of law or which the judgment of the Court is based has been reserved or modified by the subsequent decision or a superior court in any other case, shall not be a ground for review of such judgment".

Procedure: Where the Court is of the opinion that there is not sufficient ground for a review, it shall reject the application³⁸ otherwise it shall grant the same³⁹ but no such application shall be granted without previous notice to the opposite party; to enable him to appear and be heard in support of the decree or order, a review of which is applied for.⁴⁰ Where more than one Judge hears a review application and the Court is equally divided the application shall be rejected.⁴¹

Appeal Against Order on application U/s 114: An order of the Court rejecting the application shall not be appealable, but an order granting the application may be objected to at once by an appeal from the order granting the application or in an appeal from the decree or order finally passed or made in the suit.⁴²

Bar of Certain Application: No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained.⁴³

REVISION (SECTION 115)

Meaning: 'Revision' means "the action of revising, especially critical or careful examination or perusal with a view to correcting or improving".⁴⁴ Revision is "the act of examining action in order to remove a defect or grant relief against the irregular or improper exercise or non-exercise of jurisdiction by a lower Court".

Object: The object of Section 115 is to prevent the subordinate Courts from acting arbitrarily, capricious and illegally or irregularly in the exercise of their jurisdiction. It enables the Court to correct, when necessary, errors of jurisdiction committed by the subordinate Courts and provides the means to an aggrieved party to obtain rectification of a non-appealable order. The powers U/s 115 are intended to meet the ends of justice and where substantial justice has been rendered by the order of the lower Court the High Court will not interfere.

Provision U/s 115:

1. The High Court may call for the record of any case which has been decided by any COI subordinate to such High Court and in which no appeal lies thereto, and if such subordinate court appears-
 - a. to have exercised a jurisdiction not vested in it by law, or
 - b. to have failed to exercise a jurisdiction so vested, or
 - c. to have acted in the exercise of its jurisdiction illegally or with material irregularity, The High Court may make such order in the case as it thinks fit :

PROVIDED that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.

2. The High Court shall not, under this section vary or reverse any decree or order against Which an appeal lies either to the High Court or to any court subordinate thereto.
3. A revision shall not operate as a stay of suit or other proceeding before the court except where such suit or other proceeding is stayed by the High Court.

Explanation: In this section, the expression "any case which has been decided" includes any order made, or any order deciding an issue, in the course of a suit or other proceeding.

Provision relating to Revision in Uttar Pradesh: For S. 115, the following section shall be substituted and be deemed to have been substituted with effect from July 1, 2002, namely:

"115. Revision -

1. A superior Court may revise an order passed in a case decided in an original suit or other proceeding by a subordinate Court where no appeal lies against' the' order and where the subordinate Court has :
 - a) exercised a jurisdiction not vested in it by law; or
 - b) failed to exercise a jurisdiction so vested; or
 - c) acted in exercise of its jurisdiction illegally or with material irregularity.
2. A revision application under sub-section (1), when filed in the High Court. shall contain a certificate on the first page of such application, below the title .OMhe' case, to the effect that no revision in the case lies to the district Court but lies only to the High Court either because of valuation or because the order sought to be revised was passed by the district Court.
3. The superior Court shall not, under this section, vary or reverse any order made except where-,
 - a. the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding; or
 - b. the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it is made.
4. A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the superior Court.

Explanation I : In this section,-

- a) the expression "superior Court" means-
 - I. the district Court, where the valuation of a case decided by a Court subordinate to it does not exceed five lakh rupees;

- ii. the High Court, where the order sought to be revised was passed in a case decided by the district Court or where the value of the original suit or other proceedings in a case decided by a Court subordinate to the district Court exceeds five lakh rupees.
- b) the expression "order" includes an order deciding an issue in any original suit or other proceedings.

Explanation II: The provisions of this section shall also be applicable to orders passed, before or after the commencement of this section, in original suits or other proceedings instituted before such commencement."-U.P. Act 14 of 2003, S.2 (w.e.f. 1-7-2002).

Conditions: The following conditions must be satisfied before the revisional power can be exercised:

- a. a case must have been decided;
- b. the Court deciding the case must be one which is a Court sub-ordinate to the High Court or the Session Courts, as the case may be;
- c. the order should be one in which no appeal lies; and
- d. the sub-ordinate Court must have
 - i. exercised jurisdiction not vested in it by law; or
 - ii. failed to exercise jurisdiction vested in it; or
 - iii. acted in the exercise of its jurisdiction illegally or with material irregularity.

Application of S. 115: ".....While exercising its jurisdiction U/s 115, it is not competent to the High Court to correct errors of fact, however gross they may be, or even errors of law, unless the said errors have relations to the jurisdiction of the Court to try the dispute itself. As cis. (a), (b) and (c) of section 115 indicate, it is only in cases where the sub-ordinate Court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked...."⁴⁵

It was decided by the Supreme Court in re **Smt. Vidyavati Vs Shri Devidas** AIR 1977 S. C. 397, that a revision against order on review application by sub-judge to High Court directly without going into appeal to District Court, is maintainable.

Meaning of Expression "case Decided": Apex Court in **Baldevdas v. Filmistan Distributors** AIR 1970 SC, held that a case may be said to have been decided if the Court adjudicates for the purpose of the suit some right or obligation of the parties in controversy. Every order in the suit cannot be regarded as a case decided within the meaning of S. 115.

Explanation to S.115, which was added by the Amendment Act of 1976, makes it clear that the expression "case decided" includes any order made, or any order deciding an issue, in the course of a suit or proceeding. The expression 'any case which has been decided', now, after the Amendment Act means "each decision which terminates a part of the controversy involving the question of jurisdiction."⁴⁶

Interlocutory Orders: Section 115 applies even to interlocutory orders.⁴⁷ Interlocutory Orders which are not appealable are subject to revision U/s 115 of the Code, if the conditions laid down in the section are fulfilled.

Limitation for Revision: The period of limitation for revision application is 90 days ... decree or order sought to be revised.

Abatement: The provisions of Order XXII do not apply to revision application and such application does not abate on the death of the applicant or on account of failure to bring legal heirs of deceased applicant record.

No letters patent appeal lies from an order made in the exercise of revisional jurisdiction and no revision lies against an order passed by a single judge of a High Court.

RESTITUTION

Restitution is "an act of restoring a thing to its proper owner",⁴⁸ and means restoring to a party the benefit which the other party has received under a decree subsequently held to be wrong. The provisions relating to restitution have been provided in section 144 of the Code. Section 144 does not confer any new substantive right. It merely regulates the power of the court in that behalf.

The doctrine of restitution is an equitable principle and is based upon the well-known maxim "**actus uriae neminem gravabit**", i.e. the act of court shall harm no one.

Lord Cairns has explained in Alexander Roser v Comptoir D's Escompte de Paris, (1871) LR 3 PC that "one of the first and highest duties of all courts is to take care that the act of the court does no injury to the suitors". The law also imposes an obligation on the party who received benefit of an erroneous judgment to make restitution to the other party for what he has lost; and it is the duty of the court to enforce this obligation.

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

Illustration: A obtains a decree against B for possession of immovable property and in execution of the decree obtains possession thereof. The decree is subsequently reversed in appeal. B is entitled under his section to restitution of the property, even though there is no direction for restitution in the decree of the appellate Court.

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

- a. The restitution sought must be in respect of the decree or order which had been reversed or varied;
- b. The party applying for restitution must be entitled to benefit under the reversing decree or order; and

- c. The relief claimed must be properly consequential on the reversal or variation of the decree or order.

In other words, (i) there must be an erroneous judgment; (ii) the benefit of that erroneous judgment has been received by one party; and (iii) the erroneous judgment has been reversed, set aside or modified.

If these conditions are satisfied, the court must grant restitution. It is not discretionary but obligatory.

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

- a. He must be a party to the decree or order varied or reversed.

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

- b. He must have become entitled to any benefit by way of restitution or otherwise under the reversing decree or order.

Thus, a trespasser cannot get restitution.

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

Who May Grant Restitution: An application for restitution lies to the court which has passed the decree or made the order.

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

Limitation and Appeal: An application under Section 144 is an application for execution of a decree and is governed by Article 136 of the Limitation Act, 1963. The period of limitation for such an applicator is twelve years and it will start from the date of the appellate decree or order. The determination of (question under Section 144 has been expressly declared to be a "decree" under Section 2(2) of the Code and is, therefore, appealable.

CAVEAT (Section 148-A)

Meaning: The word has not been defined in the Code. Literally, means "let him beware", a forma notice. It is a caution registered in a public Court or office to indicate to the officials that they are not to act in the matter mentioned in the caveat without first giving notice to the caveat.

Caveat meant "anything in the nature of an opposition at any stage, and is not confined to the opposition at the great seal, which was the meaning of 'caveat' under the old practice".⁴⁹

It is a legal notice given by an interested party to some officers not to do a certain act until the party is heard in opposition.

Provision: Section 148-A of the Code provides for lodging of a caveat.

Section 148-A: Right to lodge a caveat:

1. Where an application is expected to be made, or has been made, in a suit or proceeding instituted, or about to be instituted, in a Court, any person claiming a right to appear before the Court on the hearing of such application may lodge a caveat in respect thereof.
2. Where a caveat has been lodged under sub-section (1), the person by whom the caveat has been lodged (hereinafter referred to as the caveator) shall serve a notice of the caveat by registered post, acknowledgment due, on the person by whom the application has been, or is expected to be, made under sub-section (1).
3. Where, after a caveat has been lodged under sub-section (1), any application is filed in any suit or proceeding, the Court shall serve a notice of the application on the caveator.
4. Where a notice of any caveat has been served on the applicant, he shall forthwith furnish the caveator, at the caveator's expense, with a copy of the application made by him and also with copies of any paper or document which have been, or may be, filed by him in support of the application.
5. Where a caveat has been lodged under sub-section (1), such caveat shall not remain in force after the expiry of ninety days from the date on which it was lodged unless the application referred to in sub-section (1) has been made before the expiry of the said period.

Where caveat lie: According to S. 148-A, a caveat can be lodged in a suit or proceeding. The expression 'Civil Proceeding' in S. 141 of the Code includes all proceedings, which are not original proceedings.⁵⁰

Where caveat does not lie : The provisions of section 148-A are applicable only in the cases where the caveator is entitled to be heard before any order is made on the application already filed or proposed to be filed, but does not apply in cases where the Code does not contemplate notice.

Who can file caveat: A necessary as well as proper party may lodge a caveat U/s 148-A. A caveat may be filed by any person who is going to be affected by an interim order likely to be passed on an application which is expected to be made in a suit or proceeding instituted or about to be instituted in a Court.⁵¹

Who may not file caveat: A stranger to the proceeding or a person supporting the application for interim relief made by the applicant cannot lodge a caveat.

Time Limit: According to sub-section (5), a caveat filed U/s 148-A (1) shall remain in force for ninety days from the date of its filing.

Failure to hear Caveator: Once a caveat is filed, it is a condition precedent for passing an interim order to serve a notice of the application on the caveator who is going to be affected by the interim order. But an interim order passed without hearing the caveator is not without jurisdiction and operates unless set-aside.

INHERENT POWERS OF COURTS (SECTIONS 148, 149 AND 151 TO 153-A)

General: Every Court is constituted for the purpose of administering justice between the parties and, therefore, must be deemed to possess, as a necessary corollary, all such powers as may be necessary to do the right and to undo the wrong in the course of administration of justice. The Code is a procedural law and the provisions thereof must be liberally construed to advance the cause of justice and further its ends.

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

The Code is not exhaustive and for the simple reason that the legislature is incapable of contemplating all the possible circumstances which may arise in future litigations, inherent powers come to the rescue in such unforeseen circumstances.

As **Ragbubar Dayal, Justice in Manobarlal. V Seth Heeralal AIR 1962 SC**, rightly states: "The inherent power has not been conferred upon the Court, it is a power inherent in the Court by virtue of its duty to do justice between the parties before it." Thus, this power is necessary in the interest of justice. Sections 148, 149, 151, 152, 153 and 153-A of the Code enact the Law relating to the inherent powers of a Court in different circumstances.

1. Enlargement of time: Section 148
2. Payment of Court Fees: Section 149
3. Under Section 151:-
 - i) Ends of Justice: Section 151
 - ii) Abuse of Process of Court: Section 151
4. Amendments of Judgments, Decrees, Orders and Others Records: Sections 152, 153 and 153-A

1. Enlargement of time Section 148: Provides that where any period is fixed or granted by the Court for the doing of any act, the Court has power to enlarge the said period even if the original period has expired on fulfillment of two Conditions:

- i) A period must have been fixed or granted by the Court; and
- ii) Such period must be for doing an act prescribed or allowed by the Code.

2. Payment of Court Fees Section 149: Empowers the Court to allow a party to make up the deficiency of Court Fees payable on a plaint, memorandum of appeal, etc. even after the expiry of the period of limitation prescribed for filing of such suits, appeals etc. Section 4 of Court Fees act, 1870 provides that no document chargeable with Court Fee under the Act shall be filed or recorded in any Court of Justice, unless the required Court fee is paid.

This section is a sort of proviso to that rule by allowing the deficit to be made good within the time fixed by the Court. If the proper Court fee is not paid at the timing of filing suitor appeal etc., but the deficit Court fee is paid within the time fixed by the Court, it cannot be treated as time barred. The defective document is retrospectively validated for the purposes of limitation as well as Court fees.

3. Ends of Justice: Section 151: The inherent powers saved by section 151 can be used to secure the

ends of justice. Thus the Court can recall its own Orders and correct mistakes, ca set aside as ex parte order against the party, etc. etc. What would meet the ends of justice would always depend upon the facts and circumstances of each case and the requirements of justice.

4. **Abuse of process of Court: Section 151:** The inherent powers saved by section 151 can also be used to prevent the abuse of the process of a Court, which may be committed by a Court itself or by a party.

Abuses by a Court: Where a Court employs a procedure in doing something which it never intended to do and there is miscarriage of justice, the injustice so done to the party must be remedied on the basis of the doctrine actus curiae neminem gravabit (an act of the Court shall harm no one)

Abuses by a Party: e.g., by obtaining benefits by practising fraud on the Court, or upon a party to the suit, or circumventing the statutory provisions etc, etc.

5. **Amendments of Judgments, Decrees, Order and Other Records : Sections 152, 153 and 153-A:**

Sections 152 : Enacts the clerical or arithmetical mistakes in judgments, decrees and orders arising from any accidental slip or omissions; may at any time be corrected by the Court either of its own motion (suo moto) or on application of any of the parties.

The section 1s based upon two important principles:

- i) an act of the Court should not prejudice any party, and
- ii) it is the duty' of the Courts to see that their records are true and they represent the correct state of affairs.

Illustration: A files a suit against B for Rs. 10,000/- and interest in a Court X. The Court passes a decree for RS.10,000/- as prayed. The decree can be amended under this section,

A files a suit against B for Rs. 10,000/- and interest in a Court X. The Court passes a decree for Rs.5,000/- only and nothing more. A applies to amend the decree by adding a prayer for the interest. The decree can not be amended under this section. If aggrieved by the decree, A may file an appeal or an application for review.

Sections 153: Confers a general power on the Court to amend defects or errors in "any proceeding in a suit" and to make all necessary amendments for the purpose of determining the real question at the issue between the parties to ,the suit or proceedings.

Sections 153-A: Provides that where the appellate Court dismisses an appeal summarily under Order 41, Rule 11, the power of amendment under Section 152 can be exercised by the Court of the first instance.

Ambit and Scope: Of inherent powers of a Court u/s 151 by Subba Rao, Justice, as he then was in Ram Chand V Kanhayalal AIR, 1966 SC 1899, after considering all the legal cases on the subject pronounced;

"The inherent power of a Court is in addition to and complementary to the powers expressly conferred under the Code. But the power will not be exercised if its exercise is inconsistent with, or comes into conflict with, any of the powers expressly or by necessary implication conferred by the other provisions of the Code. If there are express provisions exhaustively covering a particular topic, they give rise to a necessary

implication that no power shall be exercised in respect of the said topic otherwise than in manner prescribed by the said provisions. **Whatever limitations are imposed by construction on the provisions of section 151 of the Code, they do not control the undoubted power of the Court conferred under Section 151 of the Code to make a suitable order to prevent the abuse of the process of the Court.**"

IMPORTANT QUESTIONS

- Q.1. Exception to the rule that when once judgment has been pronounced and signed by the court, the court can not alter it. Discuss.
- Q.2. What do you understand by inherent powers of civil court? Discuss.
- Q.3. Define injunction and state its kinds. When can a temporary injunction be issued?
- Q.4. Explain the powers of an appellate court. Can additional evidence be allowed in appeal?
- Q.5. What are the powers of the courts to issue commissions? For what purposes a commission can be issued by the court?
- Q.7. What are the powers of the courts to issue commissions? For what purposes a commission can be issued by the court?
- Q.8. What are the Powers of a Court of revision? Explain.
- a) Letter of Request
 - b) Arrest before judgment.
 - c) Attachment before judgment.
 - d) Interlocutory Order
 - e) Restitution
 - f) Caveat
- Q.9. Distinguish between the following:
- a) Appeal and Revision
 - b) Reference and Revision
 - c) Reference and Review
 - d) Appeal and Review

References:

1. Order XXVI, Rules 1, 3, 4-A; Sections 76,77,78
2. Order XXVI, Rule 4
3. Order XXVI, Rule 4
4. Order XXVI, Rule 4
5. Order XXVI, Rule 5