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Review Document

THE CIVIL PROCEDURE CODE, 1908

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ENACTMENT OF THE CODE

The present Code of Civil Procedure was enacted in 1908. The two important Acts of 1951 and 1956 amended the Code. The Code came into force with effect from 1st January 1909.

EXTENT AND APPLICABILITY

The Code extends to the whole of India. It also extends to the Amindivi Islands and East Godavari and Vishakhapatnam Agencies in the State of Andhra Pradesh and the Union Territory of Lakshadweep. By the Amendment Act of 1976, the application of the provisions of the Code have been extended to the Scheduled Areas also.

It has, however, been held that the courts in such areas shall be guided by the spirit of the Code and would not be bound by the letter of CPC.

OBJECT OF THE CODE

The Preamble of the Code states that it was enacted to consolidate and amend the laws relating to the procedure of Courts of Civil Judicature. It is a consolidated Code collecting all the laws relating to the procedure to be adopted by the civil courts and in order that it may form a useful Code applicable to the circumstances existing at the time when the consolidating Act was enacted.¹ It is designed to facilitate justice and further it ends and is not a penal enactment for punishments and penalties. The provisions of the Code should, therefore, be construed liberally and technical objections should not be allowed to defeat substantial justice.² A “hyper technical view” should be avoided by the court.

IMPORTANT PROVISIONS FROM PART II OF THE CODE

➤ EXEMPTION FROM ARREST AND PERSONAL APPEARANCE: SECTION 81

Section 81 of the Code deals with exemption from arrest and personal appearance. If any suit is brought against the Government or any public officer in respect of any act purporting to be done by him in his official power, he shall neither be liable to be arrested nor should his

¹ *Administrator General of Bengal v. Prem Lal Mullick*, 1894 Cal 788.

² *Hukum Chand Boid v. Kamalanand Singh*, ILR (1906) 33 Cal 927.

property be liable to be attached otherwise than in execution of a decree. If the court thinks that he cannot absent himself from his work without detriment to the public service, then he may not appear before the court personally.

➤ **EXECUTION OF DECREE: SECTION 82**

Section 82 of the Code deals with execution of decree. It enacts that no execution shall be issued on any decree passed against the Government or a public officer unless it remains unsatisfied for three months from the date of the decree.

➤ **SUITS BY ALIEN: SECTION 83**

Section 83 of the Code deals with aliens right to sue. It states that aliens residing in India, without the permission of the Central Government, and alien friends, may sue in any court otherwise competent to try a suit, as if they were citizens of India. Alien enemies residing in India without such permission or residing in a foreign country, cannot sue in any court. The *Explanation* to Section 83 of the Code says that every person residing in a country which is at war with India shall be deemed to be an Indian enemy.

➤ **RULERS, AMBASSADORS AND ENVOYS: SECTION 84-87A**

A foreign State may sue in any competent court, provided that such suit is for the enforcement of private right vested in the Ruler of that State or in any officer of such State in his public capacity.³ “Foreign State” means any State outside India which has been recognized by the Central Government.⁴

A Ruler of a Foreign State may sue in the name of his State. Likewise, a Ruler of Foreign State may be sued in the name of his State.⁵ The term “Ruler”, in relation to a Foreign State, means the person who is for the time being recognized by the Central Government to be the head of that State.⁶

The Central Government may, at the request of the Ruler of a Foreign State, appoint any person to prosecute or defend a suit on behalf of such Ruler. Such a person appointed by the Central

³ Section 84.

⁴ Section 87-A(a).

⁵ Section 87.

⁶ Section 87-A(b).

Government shall be deemed to be a recognized agent under the Code of the Ruler of a Foreign State.⁷

Section 86(1) enacts that no suit shall be instituted against a Foreign State, a Ruler of a Foreign State, or an Ambassador or Envoy of a Foreign State, without the consent of the Central Government. Such consent shall not be given unless the Central government is satisfied that the conditions laid down in Section 86(2) of the Code have been fulfilled.

Likewise, no decree can be executed against the property of any Foreign State or a Ruler of Foreign State or an Ambassador or Envoy of a Foreign State, except with the consent of the Central Government. Similarly, a Ruler of a Foreign State, an Ambassador, an Envoy, a High Commissioner of a Commonwealth country or any other member of his staff, as the Central Government may specify, cannot be arrested under the Code.

It is, however, made clear that where a request is made to the Central Government for the grant of consent, before refusing the request either in whole or in part, the Central Government must afford to the person seeking such consent reasonable opportunity of being heard.⁸

➤ **SUITS AGAINST RULERS OF FOREIGN INDIAN STATE: SECTION 87-B**

Section 87B of the Code deals with the applications of Section 85 and 86 to Rulers of former Indian State. In the case of any suit by or against the Ruler of any former Indian State which is based wholly or partly upon a cause of action which arose before the commencement of the Constitution the same can be filed in accordance with the provisions in relation to suits by or against foreign Rulers, Ambassadors or Envoys.⁹

“Former Indian State” means any Indian State which may be notified by the Central Government in the Official Gazette, for the purpose of Section 87B of the Code.

➤ **INTERPLEADER SUIT: SECTION 88**

“To interplead” means “to litigate with each other to settle a point concerning a third party”. Section 88 of the Code enacts that two or more persons claiming adversely to one another the same debt, sum of money, or property, movable or immovable from a person who does not

⁷ Section 85.

⁸ *Gaekwar Baroda State Railway v. Hafiz Habib-ul-Haq*, AIR 1938.

⁹ *Tokendra Bir Singh v. Govt. of India*, AIR 1964 SC 1663.

claim any interest therein except the charges and costs incurred by him and is ready to pay or deliver the same to the rightful claimant, may file an interpleader suit.

The primary object of filing an interpleader suit is to get claims of rival defendants adjudicated. It is the process wherein the plaintiff calls upon the rival claimant to appear before the court and get their respective claims decided. The decision of the court in an interpleader suit affords indemnity to the plaintiff on payment of money or delivery of property to the person whose claim has been upheld by the court.¹⁰

➤ **SETTLEMENT OF DISPUTES OUTSIDE THE COURT: SECTION 89**

Section 89 of the Code states that for settling any dispute outside the Court, the Court may refer to arbitration, conciliation, judicial settlement including settlement through Lok Adalat or mediation.

➤ **POWER TO STATE CASE FOR OPINION OF COURT: SECTION 90**

A “friendly suit” (Special Case) is a suit where the parties do not approach a court by presentation of a plaint as is done in ordinary civil litigation. They are, however, interested in the decision of any question of fact or of law. For the said purpose, they enter into any agreement in writing stating such question in the form of a case for the purpose of obtaining the opinion of the court. The court may decide the question if it is satisfied that such question is fit to be decided.¹¹

The procedure provided by Section 90 and Order 36, however, is rarely invoked because a litigant does not get apparent benefit under it.

A decree passed in a “friendly suit” is a compromise decree. It is, therefore, not appealable.

➤ **SECOND APPEAL: SECTION 100**

Section 100 of the Code as amended by the Amendment Act of 1976 declares that an appeal shall lie to the High Court from every decree passed by any appeal of the subordinate court. Such appeal also lies against an appellate decree passed ex parte. The appellant must precisely

¹⁰ *Groundnut Extraction Export Development Assn. v. State Bank of India, (1977) 79 Bom LR 184.*

¹¹ Section 90; Order 36 Rule 1.

state in the memorandum of appeal the substantial question of law involved in the appeal. The High Court will formulate that question only when it is satisfied that the substantial question of law was present in the case. The High Court can hear the appeal on the question so formulated. It, however, permits the respondent to argue on the question formulated by the court as a substantial question of law which is not involved in such question at the time of hearing of the appeal. But the High Court has the power to hear the appeal on any substantial question of law, not formulated by it, if it is satisfied that the case involves such question. The High Court, however, is required to record reasons for such satisfaction.

➤ **NO SECOND APPEAL IN CERTAIN CASES: SECTION 101-102**

Section 101 of the Code states that no second appeal is maintainable except on the ground specified in the Code. According to Section 102 of the Code, no second appeal lies in any suit where the subject-matter of the original suit for recovery of money does not exceed Rs. 25,000. But if the subject matter involves other issues, second appeal is maintainable.¹²

➤ **NO FURTHER APPEAL IN CERTAIN CASES: SECTION 100A**

Section 100A of the Code as inserted by the Amendment Act of 1976 enacts that no further appeal shall lie against the decision of a single judge in a second appeal. In case of letters patent, further appeal will not be entertained.

➤ **POWER OF HIGH COURT TO DECIDE ISSUE OF FACT: SECTION 103**

Though no second appeal lies on a question of fact, when such appeal is already before the High Court, and the evidence on record is sufficient, it may decide any issue of fact necessary for the disposal of the appeal, if such issue has not been determined either by the trial court or by the appellate court or by both, or has been wrongly determined by such courts on the grounds of substantial question of law. This provision enables a High court to decide even an issue of fact in certain circumstances.

➤ **ORDER FROM WHICH APPEAL LIES: SECTION 104**

Section 104 of the Code and Order 43 deals with appeals from orders. They state that certain orders are appealable. No appeal lies against other orders. But those orders can be attacked in

¹² *Nagar Palika Thakurdwara v. Khalil Ahmed, (2016) 9 SCC 397.*

an appeal from the final decree. They also provide for the forum of an appeal. The Code has made certain orders appealable. Appeals can be filed only against those orders which are made appealable. No appeal lies from other orders.

Section 104(2) of the Code states that no appeal shall lie from any order made in appeal. A question may arise whether a Letters Patent Appeal would lie against an order passed by a single judge of the High Court.

There was a conflict of opinions on this point in the past, but the controversy has been set at rest by a decision of the Supreme Court in *Shah Babulal v. Jayaben D. Kania*¹³, wherein the Apex Court held that Section 104 applies to appeals to the High Courts from subordinate courts. If a Single Judge of the High Court exercises original jurisdiction and makes an order, an appeal is competent under the Letters Patent to a Division Bench. But if such order is passed by a court subordinate to the High Court and an appeal against that order is decided by the single Judge of the High Court under Section 104, no Letters Patent Appeal is maintainable.

➤ **OTHER ORDERS: SECTION 105, RULE 1A**

Section 105 enacts that every order whether appealable or not, except an order of remand, can be attacked in an appeal from the final decree on the ground that there is an error, defect or irregularity in the order and that affects the decision of the case.

The principle underlying Section 105 is that when an interlocutory order is appealable, the party against whom such order is made is not bound to prefer an appeal against it. There is no such law which compels a party to appeal from every interlocutory order by which he may feel aggrieved. Section 105 makes it clear that an order appealable under Section 104 may be questioned under this section in an appeal from the decree in a suit, even though no appeal has been preferred against the interlocutory order.

➤ **FORUM OF APPEAL: SECTION 106**

Section 106 of the Code states that appeals from orders in cases in which they are appealable, shall lie to the court to which an appeal would lie from the decree in the suit in which the order is made. Where such appeal is made by a court other than a High Court in the exercise of appellate jurisdiction, an appeal shall lie to the High Court.

¹³ AIR 1981 SC 1786.

➤ POWER OF THE APPELLATE COURT: SECTION 107

Section 107(1)(a) and Rule 24 of Order 41 enable the appellate court to dispose of a case finally. Where the evidence on record is sufficient to enable the appellate court to pronounce judgement, it may finally determine the case notwithstanding that the judgement of the trial court has proceeded wholly upon some ground other than that which the appellate court proceeds. The general rule is that a case should, as far as possible, be disposed of on the evidence on record and should not be remanded for fresh evidence except in rare cases, by drawing final curtain on the litigation between the parties.

Section 107(1)(b) has the power to remand. Remand means to send back. By passing an order of remand, an appellate court directs the lower court to reopen and retry the case. The trial court will readmit the suit on remand, in the register of civil suits under its original number. If the appellate court issues any direction then it will proceed to determine.¹⁴

Section 107(1)(c) give the power to frame issues and refer them for trial. When the lower court has omitted to frame any issue, or to try any issue or the determine the question of fact, which is essential to the right decision of the suit upon merits, the appellate court may frame issues and refer them for trial to the lower court and shall direct the court to take the additional evidence required. The lower court shall try such issues and shall return the evidence and the findings within the time fixed by the appellate court.

Section 107(10)(d) empowers an appellate court to take additional evidence. Or require such evidence to be taken such to the conditions laid down in Rule 27 of Order 41.¹⁵

➤ APPEAL TO SUPREME COURT: SECTION 109 & 112

Section 109 and 112 of the Code provides for appeals to the Supreme Court in certain circumstances. Order 45 prescribes procedure for such appeals. These provisions, however, have to be read along with the relevant provisions of the Constitution of India.

If the following conditions are fulfilled then an appeal under Section 109 will lie with the Supreme Court:

- i. A judgement, decree or final order must have been passed by the High Court.

¹⁴ Rule 23.

¹⁵ *K. Venkataramiah v. A. Seetharama Reddy, AIR 1963 SC 1526.*

- ii. A substantial question of law of general importance must have been involved in the case.
- iii. In the opinion of the High Court, the said question needs to be decided by the Supreme Court.

But it is clear that the High Court can grant Certificate under Section 109 only when it is satisfied that the question of law involved in the case is not only substantial but also of general importance.

➤ **REFERENCE TO THE HIGH COURT: SECTION 113**

Section 113 Of the Code empowers a subordinate court to state a case and refer the same for the opinion of the High Court. Such an opinion can be sought when the court itself feels some doubt about a question of law. The High Court may make such order thereon as it thinks fit. When the court entertains reasonable doubt about a question of law while trying a suit, appeal or execution proceeding, the court can then seek such an appeal.

➤ **REVIEW: SECTION 114**

Section 114 of the Code gives a substantive right of review in certain circumstances and Order 47 provides the procedure thereof. An exception to the general rule of this provision is that once the judgement is signed and pronounced by the court it becomes *functus officio* (ceases to have control over the matter) and has no jurisdiction after it.

As a general rule, once an order has been passed by a court, a review o such order must be subject to the rules of the game and cannot be lightly entertained.¹⁶

➤ **REVISION: SECTION 115**

Section 115 of the Code empowers a High Court to entertain a revision in any case decided by any subordinate court in certain circumstances. This jurisdiction is known as revisional jurisdiction of the High Court.

The High Court shall entertain revision under this section only if is satisfied on the following three matters:

- a) That the order of the subordinate court is within the jurisdiction.
- b) That the case is one in which the court ought to exercise its jurisdiction, and

¹⁶ *Sajjan Singh v. State of Rajasthan, AIR 1965 SC 845*

- c) That in exercising jurisdiction the court has not acted illegally, that is, in breach of some provision of law, or with material irregularity, that is, by committing some error of procedure in the course of the trial which is material in it that it may have affected the ultimate decision.

Section 115(a) of the Code states where a subordinate court exercises jurisdiction not vested in it by law, a revision lies.

Section 115(b) of the Code states that a revision also lies where a subordinate court has filed to exercise jurisdiction vested in it by law.

Section 115(c) of the Code states that finally, a revision also lies where the subordinate court has acted in the exercise of its jurisdiction illegally or with material irregularity.

➤ **APPLICATION FOR RESTITUTION**

Section 144 of the Code incorporates only a part of general law of restitution. It is not exhaustive. The doctrine of restitution is based on justice and equity. Its applicability, hence, cannot be confined to cases covered by any statutory provision. This section does not confer any new substantive right to the party not available under the general law. The section merely regulates the power of the court in that behalf. It is the paramount duty of all courts to ensure that they do not cause injury to any litigant. Moreover, this section is not exhaustive and, therefore, even if the case does not fall within the strict terms of Section 144 of the Code, it is always at the discretion of the court to grant relief of restitution.¹⁷

The provisions of Section 144 should be construed liberally. Even where the case is not strictly covered by the said provision, restitution can be ordered in exercise of inherent powers. Even if a decree is executed or order is implemented, restitution proceedings under Section 144 of the Code will not become infructuous.

➤ **LIABILITY OF SURETY: SECTION 145**

Where any person has furnished security or given a guarantee for the performance of any decree or any part thereof; or for the restitution of any property taken in execution of a decree; or for the payment of any money, or fulfillment of any condition imposed on any person, under an order of the court in any suit or in any proceeding's consequent thereon. The decree or order may be executed if he has rendered himself personally liable, against him to that extent; or if

¹⁷ *Kavita Trehan v. Balsara Hygiene Product Ltd., AIR 1995 SC 441*

he has furnished any property as security, by sale of such property to the extent of the security or if the case falls under both the clauses, i.e., he has rendered himself personally liable as well as has furnished security, then to the extent specified in clauses (i) and (ii) of Section 145 of the Code. The person who has furnished the security or given a guarantee shall be deemed to be a party within the meaning of Section 47.

➤ **ENLARGEMENT OF TIME: SECTION 148**

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

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

➤ **RIGHT TO LODGE A CAVEAT: SECTION 148A**

Section 148A enacts that a caveat can be lodged in a suit or proceeding. Sub-section (1) of Section 148A prescribes qualification for the person who intends to lodge a caveat. Sub-section (2), (3) and (4) prescribes the rights and duties of the caveator who lodges a caveat, of the applicant who intends to obtain an interim order and of the court. The caveat lodged under this section will remain in force for 90 days from the date of its filing. After the prescribed period of 90 days is over, caveat may be renewed.

➤ **POWER TO MAKE UP DEFICIENCY OF COURT FEES: SECTION 149**

Section 149 of the Code empowers a court to allow a party to make up the deficiency of court fees payable on a plaint, memorandum of appeal, etc. even after the expiry of the period of limitation prescribed for the filing of such suit, appeal, etc. If the proper court fee is not paid at the time of filing of a memorandum of appeal, but the deficit court fee is to be paid within the time fixed by the court, it cannot be treated as time barred. Thus, the defective document is

retrospectively validated for the purposes of limitation as well as court fees.¹⁸ The power, however, is discretionary and should be exercised, judiciously and in the interests of justice.

➤ **TRANSFER OF BUSINESS: SECTION 150**

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

➤ **SAVING OF INHERENT POWERS OF THE COURT: SECTION 151**

The inherent powers saved by Section 151 can be used to secure the ends of justice. It can also be exercised to prevent the abuse of the process of a court. Such abuse may be committed by a court or by a party. Section 151 is a salutary provision and saves inherent powers of a court, which are to be exercised *ex debito justitiae* (in the interest of justice). They have not been conferred upon the court. They are inherent in every court by virtue of its duty to do justice to the cause.

➤ **AMENDMENT OF JUDGEMENTS, DECREES, ORDERS AND OTHER RECORDS: SECTION 152, 153 & 153A**

Section 152 enacts that clerical or arithmetical mistakes in judgements, decrees or orders arising from any accidental slip or omission may at any time be corrected by the court either of its own motion (*suo motu*) or on the application of the parties. The section is based on two important principles:

- i. An act of court should not prejudice any party.
- ii. It is the duty of courts to see that their records are true and they represent the correct state of affairs.

Section 153, however, confers a general power on the court to amend defects or errors in any proceeding in a suit and to make all necessary amendments for the purpose of determining the real question at issue between the parties to the suit or other proceeding.

¹⁸ *Jugal Kishore v. Dhanno Devi*, (1973) 2 SCC 567.

CONCLUSION

The Code is exhaustive on matters specially dealt with by it. However, it is not exhaustive on the points not specifically dealt with therein. The legislature is incapable of contemplating all the possible circumstances which may arise in future litigation and consequently for providing procedure for them. With regard to those matters, the court has inherent power to act according to the principles of justice, equity and good conscience. Though substantive laws are very important, value and importance of procedural laws cannot be underestimated. But the procedural law must be regarded as such. Thus, the function of adjective law is to facilitate justice and further its ends.

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About the Author



I am Randita Paul from Surendranath Law College, University of Calcutta. I had got a marvellous opportunity for one-month internship under LegalEagle Law Forum. This internship was very enriching for me. I had gathered a lot of experience. An internship like this was very challenging. Reviewing the Bare Acts is tough as well as knowledgeable. I had to go through the Bare Act thoroughly and review the same. This internship was a supplement to my academic education. It allowed me to work with experts in the organisation. An internship like this has bridged the gap between my academic knowledge and practical field. I have gained an outstanding experience that will help me in my future for the real world.

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