

# LAW SCHOOL NOTES

SUBJECT TITLE:

## APPEALS UNDER CPC

PROCEDURAL GUIDELINES



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- (A) Appeals from original Decrees (Sec. 96-99A) & Order
- (B) Appeals from Appellate Decrees (Sec. 100-101)
- (C) Appeals from Decrees (Sec. 104-106) (Order XLII)
- (D) General Provisions of Appeal (Sec. 107-108)
- (E) Appeals to S.C. (Sec. 108)

### (A) Appeals from original Decrees

Appeal - not defined in Code

meaning - taking proceeding before a superior court or authority for testing the purpose of testing the soundness of the decision of inferior court.

- a complaint made to higher court that decree of lower court is unsound or wrong

It is continuation of original proceeding

\* Ganga Bai v. Vijay Kumar (1974) S.C.

difference b/w Right of suit or Right of appeal

J. Chandrachud pointed out every person can bring suit of civil nature unless barred by statute but appeal inheres in no one & must have clear authority of law

\* Dayawati v. Dadasit AIR (1966) S.C.

J. Hidayatullah pointed out appeal only reviews & corrects the proceedings in cause already constituted but does not create cause

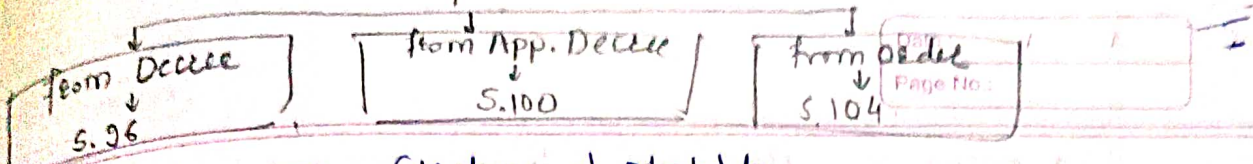
### Appeal

Judicial examination of decision of lower court by higher

3 elements

- i) A decision (judgment) being
- ii) Aggrieved party by that decision
- iii) A reviewing body ready & willing to entertain appeal

# Appeal



Appeal



Creation of statute

- not inherent right
- first appeal - substantive right

## Appeal from original Decree [s. 96-100] & Order XLI

s. 96 (1) An appeal from every decree passed by court under original jurisdiction to court authorized to hear appeal

- Appeal may

2 Essentials

- subject matter of appeal must be decree (final adj.)
- Party appealing must have been adversely affected by such determination

No appeal from order & findings

s. 96(2) - Appeal from original decree passed ex-parte

4 remedies

- App<sup>n</sup> U/O. ~~IX~~
- Appeal under/sec. 96
- App<sup>n</sup> for review U/O. XLVII
- A suit on ground of fraud

Appeal can lie against Preliminary Decree (P.D.)

If P.D. is set aside in appeal F.D. becomes ineffective

Who may Appeal?

Ordinarily - Parties to a suit

- L.R.
- transferee of interest
- Auction purchaser

But a person who is not party may prefer appeal with leave of Court

- ↳ If he is either bound by the order
- ↳ Aggrieved by it or prejudicially affected by it.

# Letters Patent of Appeal

Date: / /

Page No.:

S. 96(B) - No appeal from Consent Decrees  
Consent Decrees.

(3) exceptions

i) Decree not passed with consent of parties

ii) passed without recording compromise

iii) App not party to suit but prejudicially affected

based on broad principle of estoppel (K.C. Dora v. Annamaniadu) (1974)

\* Agreement not to file appeal is valid

If it is not illegal & based on lawful consideration

S. 96(4) :- No appeal if subject matter of suit does not  
except subject matter does not exceed Rs 10,000

\* S. 97. - Appeal from F.D. where no appeal from P.D.  
- such party is precluded from disputing correctness of P.D.  
later in appeal.

↑ Talib Ali v. Abdul Aziz (1925) Cal.

\* S. 98 :- Appeal heard by two or more judges

(1) to be decided as per opinion of majority

(2). In case of even no. of judges & difference of opinion  
on point of law, then appeal to be heard by one or  
more judges on such point

\* Sec. 99 :- No decree to be reversed or modified for  
error or irregularity affecting merits of judgment  
↳ for

i) misjoinder

ii) non-joinder of parties

iii) cause of action

iv) any error defect or irregularity

→ not affect merits of case

Not applies to

Non-joinder of necessary parties.

- Aims to prevent technicalities from overruling ends of justice

Kiran Singh v. Chaman Paswan (1955) S.C.R.

A judgment shall not be reversed purely on grounds of technical grounds unless it resulted in failure of justice

~~XII~~  
Order ~~XII~~  
(Rule 1 to 37)

### Form of Appeal

- made in form of Memorandum of Appeal
- Copy of judgment
- Memorandum is to be signed by appealing party

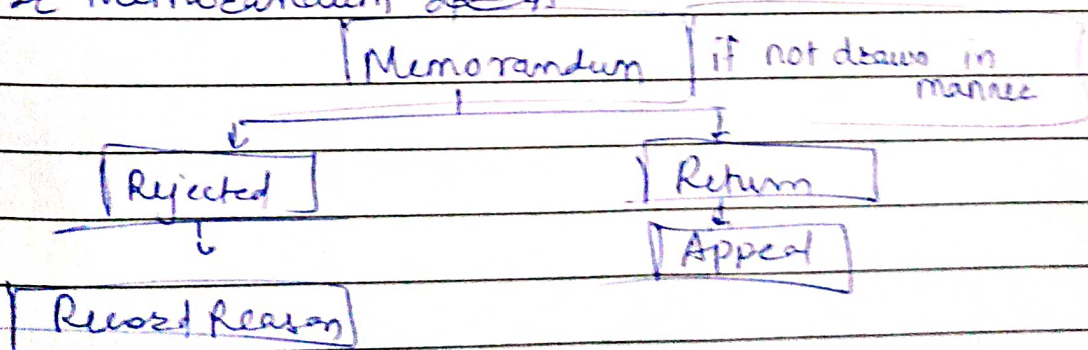
M.O.A - concise form

- state ground of objection

(w/o argument or narrative)

- Appellant is not allowed to argue on any ground not set in M.O.A but court's decision is not confined to same.

### Rejection of Memorandum of Appeal



A court may treat M.O.A. as revision or vice versa if an appeal is preferred in case where no appeal lies.

Rule 3A App<sup>n</sup> for Condorm<sup>n</sup> of Delay with affidavit.

- \* Stay by Appellate Court (Rule 5)
  - Appeal does not operate as stay to decree passed
  - App. Court has power to stay also the court which passed decree

\* Register of Appeals (Rule 11A)

- When M.O.A is admitted it is to register in book of appeal
  - App. Court call records from lower court
  - Court may allow or dismiss appeal
  - to be concluded within 60 days

- \* Rule 17 - If appeal not summ. dismissed to be heard
  - 1) w/o app. presence - dismissed
  - 2) w/o Resp. presence - ex-parte

\* Rule 23 :- Remand of Case by App-Court.

## Appeals from Appellate Decrees (Second Appeals) (Sec. 100-103 Order XLII)

Lies to H.C. → it must involve substantial question of law

- Not matter of right
- 1976 Amendment - continued right to appeal to certain cases

- (E) - Even applies to ex-parte decrees
- (B) - M.O.A. to state substantial question of law
- (4) - If H.C. is satisfied it shall formulate such question
- (5) - Respondent be allowed to argue that it does not involve substantial question of law.

- Principle - There should be an end to litigation
- Appeals within H.C. (does not apply s.100)
- Sec. 102-104 & O. XLVII R.7 (No 2<sup>nd</sup> Appeal)
- 2<sup>nd</sup> does not apply to error or question of fact

S.102

Sec. 101 | 2002 Amendment - No second appeal where amount or value of subject matter does not exceed 25,000/-

S.101

Second appeal on no other ground than in Sec. 100

S.103

If any 2nd appeal, the H.C. may if evidence on record is sufficient, determine any issue necc. for disposal of appeal

- a) which has not been determined by lower App. Court of first instance
- b) which has been wrongly determined by such court

Order 42 says all rules of Order 41 apply to 2nd Appeal

### ③ Appeals from Orders [S. 104-106] & O. 43

→ Only these 5 orders can be appealed & no other

- ① Order of Payment of Compensatory Cost U/s. 35-A.
- ② Order U/s. 91 & 92 (public nuisance & charities)
- ③ Order U/s. 95 (compens<sup>m</sup> for arrest / attachment / info obtained on insufficient grounds)
- ④ Order under any provision - imposing fine or directing any or detention
- ⑤ any order made w/ rules from which an appeal is expressly provided (O. 43)

- No further appeal of such order lies  
↳ but gives Right of appeal under

- a) Letter of Patent
- b) S.C.
- c) Right of Revision or Review)

Other Orders.

No appeal lie from any order made under original or appellate jurisdiction unless expressly provided  
Except Order of Remand

\* Bhagvathi V. Sarangraja (Mad)

Rights of appeal are substantive rights - Not mere matter of procedure. Hence an act which takes away right of appeal must not be applied retrospectively

allows an appealable order which has been associated from to be made the subject of appeal in appeal from decree

Interlocutory order

- 1) Appealable - not bound to prefer appeal
- but can make irregularity in order as ground of objection in M.O.A. where an appeal is preferred from decree in same suit order was passed

Where appeal lies

In the court where decree appeal from decree would lie

In case of appealable court passed order then to High Court

Maryana State & Another v. Gram Panchayat (SC)  
- Apex Court held that issue regarding ownership rights connected with the issue regarding proper interpretation of documents to prove ownership right over the suit land is a substantial question of law. It is obligatory for the second court appeal to decide legality.

Order 43

## Appeals by Indigent Person (O. 44).

### Indigent person

↳ unable to pay required fee for M.O.A.

↳ may present an app<sup>n</sup> to appeal as indigent person

→ Rule 1 :- Court may allow such app<sup>n</sup>

Rule 2 :- If app<sup>n</sup> ejected, time may be granted for payment of court fee

Rule 3 :- No further inquiry when the indigent person gave an affidavit of the same but if Respondent or Govt. pleads he holds inquiry then an inquiry shall be held.

## (E) Appeals to Supreme Court [S. 109 - 11.2] [O. 45]

— lie from judgment, decree or final proceeding of High Court if H.C. certifies

i) case involves substantial question of law

ii) in opinion of H.C. said question needs to be decided by S.C.

Art. 133 - Appellate Jurisdiction of S.C. in appeal from H.C.

in civil cases

Art. 136 - SLP

↳ appeal from any judgment, decree, statement,

order by Court or Tribunal in India

## Order 45

- Appeal to S.C. is to be made by petition of court whose decree is complained of
- Every such petition shall be heard expeditiously & to be disposed of within 60 days. (Rule 2).

Rule 3 :- Certificate as to value or fitness:

- Petitioner shall state grounds of appeal & pray for certificate.

1) case involves substantial question of law.

2) in the opinion of court said question to be decided by

- If certificate is refused petition shall be dismissed.
- Court shall direct notice to be served on opp. party to show cause why said certificate should not be granted.

Rule 7 :- On grant of certificate

- a) furnish security for cost of respondent.
- b) deposit amount required for transcribing, translating, indexing.

Rule 8 :- On compliance of Rule 7 the Court shall

- declare appeal is admitted

- give notice thereof to Respondents

- transmit correct copy of record.

- give authentic copy to other party.

Powers of Court pending Appeal

i) Impound any movable prop in dispute.

ii) allow decree appealed to be executed by taking security from respondent for due performance of any order.

- iii) stay the execution of decree appealed by taking security from appellant.
- iv) Place any party seeking assistance or give other directions respecting subject matter of appeal.

\* General Provisions relating to Appeal [S.107 & 108]

→ Powers of Appellate Court.

- i) Final determination [S.107(1)(a), O.41 R.24]
- ii) Remand [S.107(1)(b) R.23, 23A]
- iii) Framing extra issues & referring them for trial [S.107(1)(c), O.41 R.25 & 26]
- iv) Additional Evidence [S.107(1)(d), R.27-29]
- v) Modification of Decree [O.41 R.33]
- vi) Other powers [S.107(2)]

D R F A M O

Civil

- App. Court has same power as court of O.E. jurisdiction
- Power to add, transpose & substitute parties.
- Power to pass interlocutory order in interest of justice.

\* Duties of Appellate

ii) Remand

- sending back the case to the trial court to decide other issue also issue without findings
- Rule 23. Order 41

- \* Cond<sup>n</sup> to remand suit for fresh trial
- i) Suit must have been disposed of trial court on preliminary pt
- ii) Decree under appeal must have been reversed
- iii) Remand considered nec. by App. Court in interest of justice

- An order of remand reverse the decision of lower court & re-opens the case for re-trial (except those decided by App. Court)

### Case law

- ① K. Krishna Reddy v. Collector Land Acquisition, 1988  
- App. court should not exercise power of remand very lightly
- ② Jasraj Inder Singh v. Hemraj Mulchand (1977) S.C.  
while making remand it was not questioned as to its correctness, even then its correctness can be challenged in an appeal arising out of final appeal.

### iv) Additional Evidence [S. 107(1)(d)]

- Rule 27

- ↳ i) when lower court has improperly to admit evidence which ought to have been admitted
- ii) not within knowledge of party
- iii) required to pronounce judgment or determine substantial cause.

### K. Venkataraman v. Sitaram Reddy AIR (1968) SC

- Occasion to admit Addl. Evi. arise only after commencing of hearing of appeal
- can be admitted only when Appellate court requires it.

## \* Duties of Appellate Court

- ① Duty to decide appeal finally (judicial mind)
- ② Duty not to interfere with decree for technical reasons (s. 99 CPC)  
(Kiran Singh v. Charman Paswan)
- ③ Duty to reappreciate evidence to arrive at its own conclusion  
(R.S. Lala Praduman v. Vijendra Goyal 1968)  
↳ not be interfered with only when it is perverse or erroneous
- ④ Duty to record reasons
- ⑤ Certain other duties