

Code of Civil Procedure

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1. Introduction

The Code of Civil Procedure, 1908 (hereinafter referred to as “C.P.C.”) serves as one of the important pillars of the justice delivery system. As a procedural law, it is an essential tool to enforce the legal rights and duties, to redress or prevent legal wrongs and to determine legal defences and for other ancillary purposes. The C.P.C. consists of the substantive provisions laid down under various sections and detailed procedural rules, contained in its orders and rules, intended to be read and applied harmoniously.¹ Even if some inconsistency arises, the statutory sections will prevail over the procedural orders and rules. The C.P.C. is designed in a way to ensure every party to the litigation has an opportunity to be heard, and that mere technicalities cannot be allowed to obstruct the delivery of justice.

In the survey year 2024, the Hon'ble High Court of Judicature at Allahabad, in step with the Supreme Court and other leading High Courts, addressed a wide spectrum of critical issues in civil litigation. The Court examined core questions of jurisdiction, clarifying the forum's competence over subject matter, pecuniary value, and territorial boundaries and reinforced foundational doctrines like *res judicata*, which bars re-litigation of matters finally decided. The application of the C.P.C. to emerging forums such as Family Courts, as well as to arbitral proceedings, came under scrutiny, particularly highlighting the balance between statutory procedure and the need for expeditious, alternative dispute resolution.

Further, the Allahabad High Court issued significant clarifications on the scope and limits of amending pleadings, referencing both the liberal approach prior to the 2002 amendment to Order VI Rule 17 C.P.C. and the stricter “due diligence” framework introduced thereafter. Disputes over the grant and nature of interlocutory orders, including temporary injunctions and orders on interim relief, were addressed, as were important rulings concerning the appointment, powers, and liabilities of receivers, with attention to the court's inherent powers to protect property in dispute. The execution of decrees, and especially the powers and constraints of executing courts under Section 47 C.P.C., continued to be a vital subject, with the court ensuring that parties' rights are not defeated by procedural delays or jurisdictional ambiguities.

Across these areas, the Allahabad High Court demonstrated a consistent commitment to the core objective of civil procedure: not merely to prescribe forms and formalities, but to serve as an effective instrument for the advancement of substantial justice. By interpreting procedural rules with flexibility.²

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¹ Mulla, I *The Code of Civil Procedure* (LexisNexis, New Delhi, 20th edn., 2021).

² Rajesh Suman, "Programme Report on National Conference for High Court Justices on Civil Law" (National Judicial Academy, Bhopal, 2024).



2. Jurisdiction of Civil Courts and Bar Under Special Statutes

Section 9 of the C.P.C. embodies the general rule that civil courts have jurisdiction to try all suits of a civil nature except those whose cognizance is either expressly or impliedly barred.³ This provision is grounded in the fundamental maxim *ubi jus ibi remedium* - where there is a legal right, there is a remedy.⁴ Civil courts are courts of plenary jurisdiction in respect of civil rights, and their exclusion must either explicitly flow from the statute or be clearly implicit in its scheme.⁵ The burden of proving the existence of such a bar lies on the party asserting it, and any provision-curtailling jurisdiction has to be strictly construed.⁶

A suit is expressly barred when a statute in force contains a clear and categorical prohibition on the jurisdiction of civil courts over certain subject-matters. Such legislative exclusion may be made by a competent legislature within the bounds of its legislative competence and is valid so long as it does not contravene constitutional limitations.⁷ For example, special enactments like the Rent Control Acts, the Industrial Disputes Act, 1947, and the Armed Forces Tribunal Act, 2007, etc., often contain provisions stating that “no civil court shall entertain” specified classes of disputes. In such cases, the parties must seek relief before the statutory forum created by the special law.⁸ However, as the Supreme Court held in *Dhulabhai v. State of M.P.*,⁹ even where jurisdiction is expressly excluded, civil courts may still examine whether the statutory tribunal has acted within the scope of its authority or whether the statutory requirements have been complied with or not.

A suit is impliedly barred when, though there is no express exclusion, such a bar can be inferred from the statute's language, scheme, and object. This usually occurs when a statute creates rights or liabilities and provides a comprehensive mechanism for enforcement before a special tribunal, indicating that the legislature intended to oust the jurisdiction of civil courts.¹⁰ The bar may also arise on grounds of public policy, such as in matters involving purely political questions or other disputes considered inappropriate for civil adjudication.¹¹ The principle is that when a statute prescribes a specific remedy, it must be followed, and no

³ The Code of Civil Procedure, 1908, s. 9.

⁴ *Hriday Nath Roy v. Akhil Chandra Roy*, AIR 1921 Cal 34.

⁵ *Ibid.*

⁶ *Dhulabhai v. State of M.P.*, AIR 1969 SC 78.

⁷ *Supra* note 1 at 767.

⁸ See, e.g., Industrial Disputes Act, 1947, s. 9; Recovery of Debts Due to Banks and Financial Institutions Act, 1993, s. 18.

⁹ AIR 1969 SC 78.

¹⁰ *Rajasthan SRTC v. Bal Mukund Bairwa*, (2009) 4 SCC 299.

¹¹ *Supra* note 1 at 768.

recourse can be had to the general jurisdiction of the civil courts for a different form of remedy.¹² As explained in *Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke*,¹³ when the dispute falls squarely within the domain of a special law, civil court jurisdiction is impliedly excluded even if the exclusion is not couched in express language.

Thus, Section 9 C.P.C. grants broad jurisdiction to civil courts over civil rights and obligations, subject to statutory bars. The distinction between “express” and “implied” bar is important: the former operates through clear words in the statute; the latter operates by necessary implication from the legislative intent, the statutory remedy provided, or overriding considerations of public policy. In both situations, exclusion clauses are interpreted strictly, and civil courts retain a narrow jurisdiction to ensure that statutory forums act within their lawful mandate and that access to justice is not arbitrarily denied.¹⁴

In *Harmeet Singh v. Desh Deepak Gupta*,¹⁵ Hon'ble Mr. Justice Subhash Vidyarthi tested the scope of the U.P. Regulation of Urban Premises Tenancy Act, 2021. The petitioner tenant sought a perpetual injunction before the civil court to restrain his landlord from eviction except according to law. The trial court and revisional court rejected the suit as barred under Section 38(1) of the Act, which vests exclusive matters with the Rent Authority or Tribunal. The issues were: (1) does the Act oust civil court jurisdiction for all tenancy disputes; (2) does it provide a remedy for tenants apprehending illegal eviction. The High Court found that the Act codifies the landlord's remedies but is silent on the tenant's right to fair process against wrongful eviction. The jurisdictional bar does not apply to such tenant suits for perpetual injunction. Thus, the lower court orders were set aside, and the civil suit was restored for proper adjudication.

3. Res Judicata and Subsequent Causes of Action

The procedural reform embodied in the C.P.C. highlighted the critical role of the doctrine of *res judicata*, which prevents parties from re-litigating matters that have been or could have been adjudicated previously.¹⁶ The expanded scope of permissible issues under code pleading intensifies the application of *res judicata*, ensuring that parties present all grounds in one proceeding, thus fostering finality and judicial efficiency.¹⁷

¹² *K.S. Venkataraman & Co. v. State of Madras*, AIR 1966 SC 1089.

¹³ (1976) 1 SCC 496.

¹⁴ *Secretary of State v. Mask & Co.* AIR 1940 PC 105.

¹⁵ 2024: AHC-LKO: 63611.

¹⁶ *Satyadhyan Ghosal v. Deorajin Debi*, AIR 1960 SC 941.

¹⁷ *State of Karnataka v. All India Manufacturers' Organisation*, AIR 2006 SC 1846.



Res judicata operates through two principal aspects: Firstly, it bars the same cause of action from being tried again between the same parties once a final judgment is rendered.¹⁸ Secondly, as elucidated in Section 10 C.P.C., it prevents parallel trials by barring courts of concurrent jurisdiction from trying subsequent suits where the matter in issue is “directly and substantially” the same as in a pending suit involving the same parties litigating under the same title.¹⁹ This section seeks to avoid conflicting judgments and the burden of multiplicity of suits.²⁰ The “matter in issue” must constitute the entire controversy substantially involved in both proceedings, not merely incidental or collateral matters,²¹ and the previously instituted suit must have been pending in a court competent to grant the relief claimed in the subsequent suit.²²

For Section 10 to be applicable, the essential conditions include the existence of two suits, one previously instituted suit and another subsequent one; the parties must be the same or litigating under the same title; the matter directly and substantially in issue must be identical in both suits; the previous suit must be pending; and the prior court must have the subject matter jurisdiction to try the previous suit.²³ The Supreme Court has highlighted that the decision in the previous suit, once reaching finality, operates as *res judicata* in the subsequent suit, mandating cessation of the later trial.²⁴ However, Section 10 applies only to suits - not applications or complaints and does not extend to proceedings instituted under other statutes.²⁵ The court has the discretion to stay or dismiss suits brought in breach of these principles to prevent duplication and harassment.²⁶

Section 11 C.P.C. extends the applicability of the *Doctrine of Res Judicata* further by prohibiting not only re-litigation of the same matters but also litigation on matters that could or ought to have been raised in the earlier suit, known as constructive *res judicata*.²⁷ This principle bars parties from presenting claims or defences that were available but omitted in the initial proceeding, thereby consolidating all possible facets of the dispute in one suit and preventing multiplicity of litigation.²⁸ The essential elements under Section 11 include the same parties or their privies, the same matter directly and substantially in issue, and a

¹⁸ *Alka Gupta v. Narender Kumar Gupta*, AIR 2011 SC 9.

¹⁹ *National Institute of Mental Health & Neuro Sciences v. C. Parameshwara*, AIR 2005 SC 242.

²⁰ *Manohar Lal v. Rao Raja Seth Hira Lal*, AIR 1962 SC 527.

²¹ *Rajesh Singh v. Manoj Kumar*, AIR 2010 MP 16.

²² *P.V. Shetty v. B.S. Giridhar*, AIR 1982 SC 83.

²³ *Ibid.*

²⁴ *Gupte Cardiac Care Centre v. Olympic Pharma Care (P) Ltd.*, 2004 AIR SCW 2427.

²⁵ *Bhola Prasad v. Jagrata*, 1954 ALJ 696.

²⁶ *Pukhraj D. Jain v. G. Gopalakrishna*, AIR 2004 SC 3504.

²⁷ *Forward Construction Co. v. Prabhat Mandal*, AIR 1986 SC 391.

²⁸ *State of U.P. v. Nawab Hussain*, AIR 1977 SC 1680.

competent court that has heard and finally decided the issues, including those that might have been raised.²⁹ The doctrine functions to enforce finality and respect for judicial decisions, based on legal maxims that no one should be subjected to litigation twice for the same cause, that there must be an end to the litigation, and that judicial decisions are to be accepted as conclusive and correct.³⁰

Hon'ble Lucknow Bench of the Allahabad High Court, while dealing with the first appeal in the suit between husband and wife, arose after a failed earlier divorce petition for desertion in 2005-2013 and a subsequent petition in 2021, this time alleging both new instances of cruelty and renewed desertion (with allegedly new facts and incidents post-2017). The Family Court dismissed the second suit as *res judicata*, considering the legal grounds already adjudicated. The issues before the High Court were whether presentation of a second matrimonial suit based on new subsequent causes of action (i.e., allegedly fresh incidents of cruelty and subsequent periods of desertion) was maintainable, and whether *res judicata* applied. The High Court ruled that *res judicata* only bars suits based on identical earlier causes of action. Here, the facts and grounds for divorce (including incidents of cruelty post-dating the prior decision) presented a fresh case. The earlier dismissal thus did not foreclose a new petition founded on subsequent and independent grounds. The Family Court's order was set aside, and remand was made for a merits-based determination.³¹

4. Scope of Section 47 C.P.C. in Arbitration Award Enforcement

Section 47 of the C.P.C. governs the jurisdiction of an executing court to decide “all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree.”³² The settled law is that this power is microscopic in nature: the executing court cannot treat objections under Section 47 as a rehearing of the case on merits or as an appeal in disguise.³³ Its duty is strictly limited to examining whether the decree is executable, whether there is any inherent lack of jurisdiction in the court or tribunal passing it, and whether such a lack is patent.³⁴ It cannot travel beyond the boundaries of the decree to adjudicate on substantive rights or legal issues unrelated to execution.³⁵

²⁹ *Ram Gobindav. Bhakta Bala*, AIR 1971 SC 664.

³⁰ *Supra* note 17.

³¹ 2024: AHC-LKO: 76761-DB.

³² *Supra* note 3, s. 47(1).

³³ *Sunder Dass v. Ram Prakash*, AIR 1977 SC 1201.

³⁴ *Kiran Singh v. Chaman Paswan*, AIR 1954 SC 340.

³⁵ *State of U.P. v. Raj Veer Singh*, 2024 SCC OnLine All 1094.



The Supreme Court has held that a decree passed without jurisdiction, whether territorial, pecuniary, or over the subject matter, is *void ab initio* and considered as a nullity, and its invalidity can be challenged at any stage, including enforcement or collateral proceedings.³⁶ Such an inherent lack of jurisdiction strikes at the competence of the court and cannot be cured by consent or waiver.³⁷ In *Urban Improvement Trust, Jodhpur v. Gokul Narain*, the Court reiterated that a decree suffering from a jurisdictional defect is void and cannot be enforced either during execution or in collateral proceedings.³⁸ However, apart from such nullities, execution cannot be refused on grounds questioning the correctness of the decree.³⁹

The Courts in appropriate cases refused execution of arbitral awards under Section 47 on grounds such as unilateral appointment of a sole arbitrator,⁴⁰ patent and *ex facie* lack of jurisdiction of the tribunal,⁴¹ invalid reference to arbitration,⁴² *per se* illegality of the award,⁴³ or violation of natural justice principles including failure to furnish a copy of the award to a party to enable challenge.⁴⁴ The overarching principle remains that Section 47 C.P.C. is a safeguard, not a substitute for appeal or review. It protects parties against enforcement of decrees or awards tainted by fundamental jurisdictional defects, while respecting the finality and efficiency of both court judgments and arbitral proceedings.

In the case of *Sanjay Agarwal v. Rahul Agarwal and Others*,⁴⁵ Hon'ble Mr. Justice Alok Mathur addresses the issue of enforceability of arbitral awards and objections at the stage of execution. The facts show a family settlement styled as an arbitration award, with objections raised at execution that there was no valid arbitration agreement and the so-called award was not a true arbitral award. Further, the award was not challenged under Section 34. The issue was whether such objections could be validly raised at the execution stage under Section 47 C.P.C. The High Court held that the Arbitration and Conciliation Act, 1996, provides an exclusive and exhaustive challenge mechanism for awards: if not challenged within the limitation under Section 34, an award becomes final and enforceable as a decree, and the executing court cannot go behind its merits or jurisdiction.

³⁶ *Ibid.*

³⁷ *Kiran Singh v. Chaman Paswan*, AIR 1954 SC 340.

³⁸ *Urban Improvement Trust, Jodhpur v. Gokul Narain*, AIR 1996 SC 1819.

³⁹ *Sunder Dass v. Ram Prakash*, AIR 1977 SC 1201.

⁴⁰ *Kotak Mahindra Bank Ltd. v. Narendra Kumar Prajapat*, 2023 SCC OnLine Del 3148.

⁴¹ *R.K. Textiles v. Sulabh Textiles Pvt. Ltd.*, 2002 SCC OnLine Bom 279.

⁴² *Prabartak Commercial Corpn. Ltd. v. Chief Administrator, Dandakaranya Project*, (1991) 1 SCC 498.

⁴³ *Public Works Department v. Prakash Constructions*, 2019 SCC OnLine Mad 410.

⁴⁴ *J.K. Govindarajulu v. Sriram City Finance Ltd.*, 2020 SCC OnLine Mad 4697.

⁴⁵ Civil Revision No. 27 of 2019 : AHC-LKO.

5. Section 92 C.P.C.: Jurisdiction and Non-arbitrability of Public Trust Disputes

Section 92 of the C.P.C. is a special jurisdictional provision aimed at addressing the mismanagement and malfunctioning of public trusts established for religious or charitable purposes.⁴⁶ In the absence of a comprehensive central law governing public trusts, Section 92 C.P.C. has assumed a *parens patriae* character, enabling civil courts to regulate, protect and, where necessary, reform trust administration.⁴⁷ It confers the civil courts with original jurisdiction to entertain representative suits instituted by the Advocate General or by two or more persons having an interest in the trust, with the court's leave.⁴⁸ The reliefs available include removal and appointment of trustees, settlement of schemes, and, in exceptional circumstances, alterations in the original purpose of the trust.⁴⁹ State amendments, as well as the operation of specific enactments like the Religious Endowments Act, 1863, may qualify or limit its application.⁵⁰

The pre-conditions for invoking Section 92 C.P.C. have been judicially crystallised: (i) the existence of a public trust of a religious or charitable nature; (ii) occurrence of breach of trust; (iii) the suit must seek one or more of the specific or analogous reliefs enumerated in the section; and (iv) it must be filed in a representative capacity for the benefit of the public.⁵¹ Courts distinguish public trusts from private trusts by employing a “multiple factor test” that examines public participation, public benefit, and public funding rather than the founder's intention alone.⁵² Once substantial dedication to public purposes is shown, even bodies not formally constituted as trusts - including *constructive public trusts* or cases of *trustee de son tort* - may be brought within the ambit of Section 92.⁵³ However, registered societies, even if engaged in charitable work, are generally excluded due to their statutory corporate character; such bodies fall under Section 25 of the Societies Registration Act, 1860, though this parallel remedy is narrower in scope.⁵⁴

Until the 1976 amendment, the consent of the Advocate General was mandatory; now, leave of the court suffices, with the object of preventing frivolous or vexatious litigation while not stifling genuine public-interest suits.⁵⁵ Courts exercise this jurisdiction

⁴⁶ *Supra* note 3, s. 92.

⁴⁷ *Board of Commissioners v. Veeraraghavacharlu*, (1935) 69 MLJ 466.

⁴⁸ *Supra* note 3, s. 92(1).

⁴⁹ *Id.*, cls. (a)-(h).

⁵⁰ See, e.g., Religious Endowments Act, 1863; Bombay Public Trusts Act, 1950.

⁵¹ *Pragdasji Guru Bhagwandasji v. Patel Ishwarlalbhai Narsibhai*, AIR 1952 SC 143.

⁵² *Deoki Nandan v. Murlidhar*, AIR 1957 SC 133.

⁵³ *Ramakrishnan v. M. Subramanian*, AIR 1983 Mad 73.

⁵⁴ *Abhaya v. Raheem*, 2009 (3) KLT 500.

⁵⁵ *Vidyodaya Trust v. Mohan Prasad R.*, (2008) 4 SCC 115.



even when parallel administrative remedies exist, particularly in serious allegations like fraud or diversion of trust property.⁵⁶ However, in jurisdictions where special state enactments regulate public trusts and contain express exclusion clauses, Section 92 generally yields to such specific legislation unless overridden by a later enactment.⁵⁷ Thus, Section 92 C.P.C. remains a vital procedural tool for protecting the integrity of public trusts, balancing the autonomy of trust administration with judicial intervention to safeguard public interest.

The non-arbitrability of public trust disputes in India is firmly grounded in the framework of Section 92 of the C.P.C., which equips civil courts with original jurisdiction over public charitable or religious trusts. This provision offers wide judicial powers, including the alteration of a trust's purpose in exceptional cases, serving as an alternative or supplement to specific statutory laws like the Religious Endowments Act, 1863.⁵⁸

In contrast, arbitration law in India, governed by the Arbitration and Conciliation Act, 1996, offers a private, consensual dispute resolution mechanism designed for expeditious and confidential adjudication of commercial and contractual disputes. However, trust disputes, especially public trusts, have traditionally been regarded as non-arbitrable. The Supreme Court decisively upheld this view in *Shri Vimal Kishor Shah v. Jayesh Dinesh Shah*, concluding that the Trusts Act, 1882, contemplates civil court jurisdiction exclusively for remedies relating to trusts and that a trust deed cannot serve as an arbitration agreement, especially since beneficiaries do not express contractual consent.⁵⁹

The divergence between Section 92 C.P.C. and arbitration on this issue is further highlighted by the Indian judiciary's insistence on courts' supervisory jurisdiction over trusts, an inherent feature originating from equity jurisprudence. Unlike arbitration tribunals, courts are empowered to appoint trustees, remove defaulters, and modify trust schemes comprehensively under Section 92, thereby assuming a *parens patriae* role unsuitable for private arbitral forums.⁶⁰ The egalitarian and public character of these trusts calls for public law safeguards, making their disputes non-arbitrable irrespective of party consent, distinguishing them from private commercial disputes that are arbitration-amenable.⁶¹

⁵⁶ *Sudhir G. Angur v. M. Sanjeev*, (2016) 1 SCC 348.

⁵⁷ *R.M. Narayana Chettiar v. N. Lakshmanan Chettiar*, (1991) 1 SCC 48.

⁵⁸ Ranak Banerji, "Rethinking the Arbitration of Trust Disputes in India" 18 *NUJS Law Review* 3-5 (2025).

⁵⁹ *Shri Vimal Kishor Shah & Ors. v. Jayesh Dinesh Shah*, 2016 SCC OnLine SC 825.

⁶⁰ *Supra* note 58.

⁶¹ *Id.* at 12-16.

While jurisdictions like the UK and Australia have more permissive arbitration regimes for trusts and have adopted measures to alleviate concerns about unascertained beneficiaries and public oversight, India's position remains conservative. The Indian Trusts Act, 1882 and judicial precedent maintain that arbitration cannot substitute statutory and public law remedies for public trust disputes.⁶² While discussions on reform exist, until such legislative changes occur, Section 92 C.P.C. stands as the principal procedural mechanism, reinforcing the exclusive role of civil courts in adjudicating and regulating public trust disputes in India.

In *Jyantri Prasad and 9 Others v. Shri Ram Janki Lakshman Ji Virajman Mandir, Pratapgarh, through Ram Shiromani Pandey and Others*,⁶³ Hon'ble Mr. Justice Subhash Vidarthi dealt with the issues centered on the maintainability of a public trust suit under Section 92 C.P.C. The petitioners sued for declarations and directions concerning the management of a temple, but the Court of Civil Judge dismissed the suit, citing the absence of a written trust deed and holding that only the District Judge (Principal Civil Court) could try such suits. The High Court clarified that Section 92 C.P.C. does not require a written deed; a public charitable or religious trust can be established informally or by conduct. However, the C.P.C. mandates the suit be instituted only before the District Judge or a specially empowered Court, not before the Civil Judge (Senior Division). The High Court set aside the lower court's technical rejection and recognised the petitioners' right to sue, if the essential requirements were fulfilled, and directed the proper forum for future proceedings.⁶⁴

In the case of *Sanjit Singh Salwan and Others v. Sardar Inderjit Singh Salwan and Others*,⁶⁵ the Allahabad High Court dealt with the issue that whether disputes regarding public charitable trust management, including membership and administration, can be referred to arbitration, and whether arbitral awards in such matters are valid. The facts involve a trust dispute - parties having litigated over management, removal and reinstatement of trustees, eventually referred matters to arbitration (and multiple, conflicting arbitral awards were made). The Commercial Court declared these disputes non-arbitrable under Section 92 C.P.C. and set aside both interim and final arbitral relief. The main issues were: (1) the arbitrability of trust disputes, (2) the jurisdictional exclusivity of Section 92 C.P.C. for such actions, and (3) whether a private arbitration agreement or consent could override public law limits. The High Court, after full analysis of earlier precedents, ruled that such disputes are actions in rem and must be adjudicated as statutory schemes in public

⁶² *Id.* at 17-18.

⁶³ 2024:AHC-LKO:66071.

⁶⁴ 2024:AHC-LKO: 66071.

⁶⁵ 2024:AHC: 139469-DB.



courts (for public protection and transparency), so arbitral awards thus obtained are nullities in law. Thus, the appeal filed was dismissed, and the commercial court's order was upheld.

6. Amendment of Pleadings: Order VI Rule 17 C.P.C.

Order VI Rule 17 of the C.P.C. empowers the Courts to allow amendments to pleadings, at any stage of the proceedings, provided that such amendments are necessary for determining the real questions in controversy between the parties.⁶⁶ Before the 2002 amendment, this provision was interpreted liberally, with Courts allowing amendments even at advanced stages of litigation, so long as they did not fundamentally alter the nature of the case or cause irremediable prejudice.⁶⁷ Delay alone was rarely treated as a sufficient reason to refuse an amendment, and there were no statutory constraints linking timing to the party's diligence.⁶⁸

The 2002 amendment introduced a significant restriction in the form of a proviso, which bars amendments to the pleadings after the commencement of trial, unless the court is satisfied that, despite due diligence, the party could not have raised the issue earlier.⁶⁹ This change reflects a legislative intent to curb delays and discourage late-stage changes that might derail proceedings.⁷⁰ It shifts the focus from mere relevance of the amendment to the procedural conduct of the party, making "due diligence" a mandatory threshold for post-trial-commencement amendments.⁷¹

Judicial interpretation has clarified that "commencement of trial" occurs when the stage of recording evidence begins with the framing of issues - rather than at earlier procedural milestones.⁷² This means that amendments sought before this point remain subject to the earlier liberal principles, while those sought after must meet the strict statutory standard.⁷³ The due diligence requirement places a positive burden on the applicant to explain convincingly why the new facts, pleas, or grounds could not have been included earlier.⁷⁴

Importantly, the proviso does not apply retrospectively to suits instituted before 1 July 2002. In such pre-amendment cases, courts continue to apply the more liberal pre-2002⁷⁵

⁶⁶ S.S. Upadhyay, "Amendment of Pleadings" 3 (Law Helpline, 2024).

⁶⁷ *L.J. Leach and Co. Ltd. v. Jardine Skinner and Co.*, AIR 1957 SC 357.

⁶⁸ *Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil*, AIR 1957 SC 363.

⁶⁹ The Code of Civil Procedure (Amendment) Act, 2002, s. 7.

⁷⁰ *Salem Advocate Bar Assn. (II) v. Union of India*, (2005) 6 SCC 344.

⁷¹ *Vidyabai v. Padmalatha*, (2009) 2 SCC 409.

⁷² *Kailash v. Nanhku*, (2005) 4 SCC 480.

⁷³ *Ajendraprasadji N. Pandey v. Swami Keshavprakeshdasji N.*, (2006) 12 SCC 1.

⁷⁴ *Baldev Singh v. Manohar Singh*, (2006) 6 SCC 498.

⁷⁵ *State Bank of Hyderabad v. Town Municipal Council*, (2007) 1 SCC 765.

standard even if the amendment application itself is filed later.⁷⁶ Overall, the post-amendment framework seeks to balance two objectives - ensuring that genuine disputes are fully adjudicated while preserving procedural discipline, efficiency, and the expeditious disposal of cases.⁷⁷

Recently, Hon'ble Allahabad High Court in the case of the *Sinha Development Trust and Another v. State of Uttar Pradesh and Others*, dealt with the application of the 2002 amendment to Order VI Rule 17 C.P.C. regarding the conditions and timing for amendment of pleadings. The case arose when the petitioners, who had instituted Original Suit No. 288 of 1991 for the return of land and compensation, moved at the final hearing stage (in 2024) to amend the plaint to specify that land/compensation would vest in the trust, not in private parties. The trial court rejected this amendment, citing delay and lack of due diligence (as required by the proviso to Order VI Rule 17 added after the 2002 amendment). The main issue was whether this 2002 proviso - demanding explanation for delay and due diligence - applied to suits filed before the amendment. The High Court held, with reference to *State Bank of Hyderabad v. Town Municipal Council*,⁷⁸ that the proviso does not apply retrospectively to pending suits. The Court found the amendment meritorious since it only clarified and did not alter the nature of the claim, and determined that delay alone was not a ground for rejection in such old proceedings. The impugned order refusing the amendment was quashed by the Court, and the amendment was allowed. The Court also gave clear directions for further trial.

In the case of *Indra Bahadur Yadav v. Harkhas Aam & Another*,⁷⁹ the Allahabad High Court addressed the issue of whether an appeal lies to the order of the rejection of the amendment application in the proceedings of probate. The appellant sought a letter of administration of a will under Section 278 of the Indian Succession Act, 1925. The trial court dismissed the application for amendment of pleadings for a change in the date of the will. The petitioner then filed the appeal under Section 299 of the said act.

While considering the appeal, the High Court clarified that orders passed by the District Judge are appealable under Section 299 of the Indian Succession Act, 1925, subject to the provisions of the C.P.C. The court also highlighted that under Order XLIII Rule 1 are appealable, but the order of rejection of the amendment is not in the list of the appealable orders provided under it. As per Section 295, the proceedings under the Indian Succession Act, 1925, are treated as regular civil proceedings, and orders which are only appealable

⁷⁶ *Ibid.*

⁷⁷ *Usha Balashaheb Swami v. Kiran Appaso Swami*, (2007) 5 SCC 602.

⁷⁸ *State Bank of Hyderabad v. Town Municipal Council*, (2007) 1 SCC 765.

⁷⁹ 2024:AHC-LKO:16291.



under the civil suit are also appealable here. So, the High Court held that an appeal does not lie under Section 299 of the Act. The appropriate remedy is to file the revision under Section 115 of the C.P.C. or a petition under Article 227 of the Constitution of India. The Court held that the right to appeal must be expressly granted by the statute, and it cannot be presumed on its own.

Before the 2002 amendment, Order VI Rule 17 C.P.C. was subject to liberal interpretation, but the approach shifted to the application of strict interpretation after the commencement of the trial. This balances the need for complete adjudication of disputes with promoting procedural discipline, efficiency, and timely disposal of cases.

7. Rejection of Pleat and Limitation: Order VII Rule 11 C.P.C.

Order VII Rule 11 of the C.P.C. lays down specific grounds upon which a pleat can be rejected at the initial stages of the proceedings. These include, inter alia, situations where the pleat does not disclose a cause of action or the relief claimed is undervalued, where insufficient court fees have been paid, or the suit appears to be barred by any law, where the pleat has not been filed in duplicate or is in violation of provisions relating to the filing of suits in paper form.⁸⁰ The purpose of this provision is to prevent the continuation of meritless, vexatious, or legally untenable litigation which serves no purpose other than to waste judicial time.⁸¹ Courts have consistently held that if a pleat falls within any of these prescribed categories, it “shall” be rejected, the term indicating a mandatory duty on the judge.⁸²

The object of Rule 11 has been emphasised in numerous decisions. The Supreme Court has observed that the provision aimed at filtering out irresponsible and sham litigation at the earliest opportunity so that genuine disputes alone consume valuable court resources.⁸³ The rule also protects defendants from being compelled to contest a non-maintainable suit through protracted and expensive trials. By summarily ending proceedings that are bound to fail, it upholds procedural efficiency and prevents unnecessary harassment of litigants.⁸⁴

In applying Rule 11, Courts are confined strictly to examining the pleat and the documents annexed thereto. They cannot rely on the contents of the written statement or any defence material at this stage.⁸⁵ The test is whether the averments in the pleat, taken as a

⁸⁰ *Supra* note 3, O. VII, r. 11(a) - (f).

⁸¹ *V. Bragan Nayagi v. R.R. Jeyaprakasam*, 2015 (4) MLJ 538 (Mad).

⁸² *Dahiben v. Arvinbhai Kalyanji Bhansali*, 2020 SCC OnLine SC 562, para. 12.

⁸³ *Sopan Sukhdeo Sable v. Asstt. Charity Commr.*, (2004) 3 SCC 137.

⁸⁴ *Dr. L. Ramachandran v. K. Ramesh*, 2015 (4) LW 585 (Mad) (DB).

⁸⁵ *Gunaseelan v. Valarmathi*, 2009 (5) CTC 693 (Mad).

whole and assumed to be true, would entitle the plaintiff to a decree in law.⁸⁶ Clever drafting, which sometimes creates an illusion of a cause of action, must be decisively dealt with at this stage, as per the Supreme Court's well-known dictum in *T. Arivandandam v. T.V. Satyapal*.⁸⁷ If, upon a meaningful reading of a plaint, it is discovered to be vexatious and meritless, the court is bound to reject it.

There is no restriction as to the stage at which the power under Order VII Rule 11 can be exercised. It may be invoked at any point before registration of the plaint, after summons has been issued, or even before the conclusion of the trial.⁸⁸ The application for rejection of the plaint must be decided before proceeding further with the trial; failure to do so may amount to procedural irregularity affecting jurisdiction.⁸⁹ Moreover, the court may even exercise this power *suo motu* - without a formal application by the defendant - if it detects any of the vitiating grounds prescribed in the rule.⁹⁰

In the case of *Shrivatsa Goswami v. Anant Prasad Singh and Another*,⁹¹ a seminal question has arisen as regards the legal remedy available against an order passed in an appeal arising out of an order of rejection of the plaint passed under Order VII Rule 11 C.P.C. It has been pointed out that there is considerable obfuscation on the issue, with no clear enunciation of the law on the point. The dispute pertains to a suit instituted by the plaintiff/respondent in 2022 seeking to declare two registered gift deeds from 1968 and 1987, in favour of the defendant/appellant and his predecessor, as null and void. Due to the lapse of time, the defendant moved an application under Order VII Rule 11(d) C.P.C., requesting rejection of the plaint on the ground of limitation. The trial court accepted this application and rejected the plaint. The plaintiff filed an appeal before the Additional District Judge, which set aside the order of rejection, restored the suit, and directed the trial court to proceed with the trial. The defendant/appellant then filed a second appeal under Section 100 C.P.C., challenging the order of the lower appellate court as well as questioning its maintainability, contending that the appellate order was not a decree but an order of remand.

The High Court examined the relevant provisions and clarified that the trial court's order of rejection of the plaint is indeed a decree within the meaning of Section 2(2) C.P.C., thus appealable under Section 96, with a second appeal lying under Section 100 if affirmed. However, when the first appellate court reverses this order and remands the suit for trial, the

⁸⁶ *Hardesh Ores (P) Ltd. v. Hede & Co.* (2007) 5 SCC 614.

⁸⁷ *T. Arivandandam v. T.V. Satyapal* AIR 1977 SC 2421.

⁸⁸ *Saleem Bhai v. State of Maharashtra* AIR 2003 SC 759.

⁸⁹ *R.K. Roja v. U.S. Rayudu* 2016 SAR (Civil) 930.

⁹⁰ *Mani v. P. Ramakrishnan* 2018 (4) MLJ 182 (Mad).

⁹¹ 2024 (2) ADJ 763.



appellate order ceases to be a decree and instead becomes an order of remand under Order XLI Rule 23, subject only to appeal under Section 104 read with Order XLIII Rule 1(u) C.P.C., not a second appeal under Section 100. The Court emphasised that such appeals from orders, while not denominated second appeals, are nevertheless heard on substantial questions of law consistent with the criteria applicable to second appeals, following authoritative Supreme Court precedents.

In another case, *Om Prakash Upadhya v. Vijay Kumar*,⁹² the petitioner challenged the rejection of an application under Order VII Rule 11(d) C.P.C., which contended that the suit filed against him was barred in view of a prior suit dismissed in default under Order IX Rule 9 C.P.C. The Allahabad High Court observed that while the suit was previously dismissed, the averments in the plaint of the current suit did not, on their face, show that the suit was barred by law, since the defence regarding the earlier dismissal could not be considered at the stage of Order VII Rule 11 C.P.C., which requires examination of the plaint alone. The Court also considered submissions regarding possession under Sections 37 and 41 of the Specific Relief Act, 1963, and found no bar to the suit on that ground. The Court held that an application under Order VII Rule 11 can only be entertained if the plaint on its face discloses a cause of action or shows that the suit is barred by law.

In *Dheeraj v. Chetna Goswami*,⁹³ the appeal before the High Court arose under Section 19 of the Family Courts Act, 1984, challenging the judgment and order passed by the Family Court at Ghaziabad in a guardianship petition under Section 25 of the Guardians and Wards Act, 1890. The respondent, Smt. Chetna Goswami had sought custody of her minor son, Master Kunj. The appellant, Dheeraj, contested the petition and argued that the Ghaziabad Family Court lacked territorial jurisdiction because the minor was living and studying in Bhiwani, Haryana. The Ghaziabad Court ruled that the minor's "ordinary residence" was determined by his father's permanent address in Ghaziabad and not his temporary residence in Bhiwani. The decision was challenged in the High Court on the ground that whether lower court made an error in rejecting the appellant's application under Order VII Rule 11(d) C.P.C., by interpreting the provisions of Section 9 of the Guardians and Wards Act, 1890, without a full inquiry into the facts.

The High Court, while upholding the lower court's decision, held that the question of the minor's "ordinary residence" involves a combination of fact and law, which cannot be decided solely based on the allegations in the plaint at the Order VII Rule 11 stage. The court emphasised that the phrase "where the minor ordinarily resides" under Section 9(1) of the

⁹² 2024:AHC:123318.

⁹³ 2024:AHC:87786-DB.

Guardians and Wards Act, 1890, is a key factor in establishing jurisdiction. It does not refer to temporary residence or a place where the minor moved just before filing the application. The court explained that an application under Order VII Rule 11 should be decided solely on the allegations made within the plaint itself. This stage is not meant for examining evidence or resolving disputed questions of fact or law. Since the issue of “ordinary residence” was contested, it could not be settled at this initial stage.

In *Chandra Prakash Mishra v. State of U.P.*,⁹⁴ the appellants filed a civil suit, but failed to pay the proper *ad valorem* court fees, due to which the trial court rejected the civil suit, invoking Order VII Rule 11(c). The appellant, while appealing, deposited ₹2,27,000 as court fees. The main dispute was whether, once the suit was revived, the appellants would be required to pay the court fees again in the trial court or whether the fee already deposited in the High Court should be treated as sufficient. The High Court decided on two contentions that (a) when a trial court rejects a plaint for non-payment of court fees, but the appellate court reverses that decision and remands the matter, then whether plaintiffs are required to deposit court fees before the trial court and (b) whether the appellants are entitled to a refund or adjustment of the court fees paid at the appellate stage under Section 13 of the Court Fees Act, 1870.

The High Court, while setting aside the trial court's order, held that under Section 13 of the Court Fees Act, 1870, when a plaint is revived in appeal or when a matter is remanded, the litigant cannot be compelled to pay the court fees twice. The court substantiated its decision by referring to *Chandra Bhushan Misra v. Jayatri Devi*⁹⁵ and its affirmation by the Supreme Court in *State of U.P. v. Chandra Bhushan Misra*.⁹⁶ The court stressed the point that the court fees cannot be levied more than once in the progress of a suit, even if remanded or retrial. The court directed that the payment of ₹2,27,000 would be treated as sufficient court fees for the suit.

In the case of *Smt. Reeta Devi and Others v. Raj Kamal Sahakari Awas Yojna and Another*,⁹⁷ the plaintiff, a cooperative housing society, filed a suit seeking a declaration of a sale deed as null and void. The trial court framed an issue regarding valuation and court fees, directing the plaintiff to make good the deficiency. However, the plaintiff failed to comply, resulting in rejection of the plaint under Order VII Rule 11(c) C.P.C. The plaintiff's Secretary died before this order, and the counsel duly informed the court of the death on the same day. The appellate court set aside the rejection order and remanded for trial, noting that the civil

⁹⁴ 2024:AHC:197567.

⁹⁵ AIR 1969 ALL 142.

⁹⁶ 1980 AIR 591.

⁹⁷ 2024:AHC:106332.



court retains the power to enlarge the time for compliance under Section 148 C.P.C. The Allahabad High Court upheld the appellate court's decision and observed that rejecting the plaint against a deceased person was improper without following the procedure for substitution or due representation under Order 22 Rule 10A C.P.C.

In *Naveen Chand Jain v. Manav Sharma*,⁹⁸ the appellant operated a petrol pump on property originally owned by the respondent, asserting an oral agreement and payment of ₹60,00,000 for its sale. The respondent sold the property to a third party but continued to interfere with the appellant's possession and business. The trial court rejected the plaint under Order VII Rule 11 C.P.C. on three grounds: the defendant was no longer the owner, thus no cause of action arose; the appellant failed to pursue the “equally efficacious remedy” of specific performance under Section 41(h) of the Specific Relief Act, 1963; and no privity existed between the plaintiff and defendant. On appeal, the High Court set aside this order, holding that the plaint did disclose a cause of action, and therefore, the rejection of the plaint was not justified. It was further observed that Section 41(h) of the Specific Relief Act, 1963 cannot be invoked at this stage, as the concept of “equally efficacious remedy” doesn't directly apply when the cause of action is based on the defendant's “unwarranted interference” with the plaintiff's right to operate the petrol pump, especially since the defendant is now a stranger to the property.

The cases highlight how courts interpret Order VII Rule 11 C.P.C., confirming its role as a filter for frivolous or technically flawed suits. Order VII Rule 11 C.P.C. serves as a vital procedural checkpoint in civil litigation. By mandating early judicial scrutiny of the maintainability of a suit, it preserves judicial time, protects defendants from needless litigation, and reinforces the principle that courts exist to adjudicate real and substantive disputes rather than to provide a forum for speculative, vexatious, or time-barred claims. Its mandatory nature, limited scope of scrutiny, and flexibility in timing together give it a crucial role in ensuring both fairness and efficiency in civil justice administration.

8. Counter-claim

A counter-claim is an independent and separable claim made by the defendant in a civil suit against the plaintiff, functioning as a cross-action that enables the court to address both the plaintiff's claim and the defendant's counter-claim in a single proceeding, thereby preventing multiplicity of suits and expediting justice.⁹⁹ The specific provisions related to

⁹⁸ 2024:AHC:191871.

⁹⁹ P. Ramanatha Aiyar, *Advanced Law Lexicon* 1093 (LexisNexis, New Delhi, 7th edn., 2024).

counter-claims under Order VIII Rules 6A to 6G C.P.C.¹⁰⁰ were introduced by the 1976 Amendment Act, allowing defendants to assert such claims for rights accruing either before or after the filing of the suit, provided the proceedings have not concluded and the claim is not barred by limitation. The counter-claim retains its legal force and is decided on merits even if the plaintiff's suit is withdrawn, dismissed, or discontinued. This principle was upheld in *Gurbhachan Singh v. Bhog Singh*,¹⁰¹ where the Supreme Court emphasized that counter-claims are to be treated as independent suits and decided on their merits irrespective of the original suit's fate.

In *Ishita Dua v. Tarun Kumar Sharma*,¹⁰² was whether the withdrawal of the divorce petition by the wife amounted to the withdrawal of the counter-claim of child custody by the husband as well. The trial court allowed the withdrawal of the divorce petition by the wife but also held that the husband's counter-claim should proceed as a separate suit. The appellant's wife filed the appeal against the Trial Court's order, contending that the divorce petition was 'withdrawn' and not 'dismissed', and thereby Order VIII Rule 6D C.P.C. (which allows counter-claims to be treated separately when the main suit is dismissed/ discontinued) shall not apply. The High Court upheld the Trial Court's decision and held that withdrawal of the divorce petition amounts to discontinuance of the suit under Order VIII Rule 6D and dismissed her appeal at the admission stage, allowing the husband's counter-claim to be treated as a separate suit.

Under C.P.C., a counter-claim is treated as a cross-suit and carries an independent character once filed. The withdrawal or discontinuance of the main suit does not automatically nullify the counter-claim, as it survives for adjudication on its own merits as provided in Order VIII Rule 6D C.P.C.,¹⁰³ which specifically safeguards the defendant's rights in the counter-claim, which are not defeated by the plaintiff's withdrawal of proceedings. Thus, a counter-claim may proceed as a separate suit irrespective of the fate of the main suit.

9. Order IX Rule 13 C.P.C.

Order IX Rule 13 C.P.C. provides a remedy to a party against whom an *ex parte* decree has been passed to seek the setting aside of such decree by showing “sufficient cause” for non-appearance. The scope of this rule has been affirmed and clarified by the Supreme

¹⁰⁰ *Supra* note 3, O. VII, rr. 6A-6G.

¹⁰¹ AIR 1996 SC 1087.

¹⁰² 2024:AHC:79757-DB.

¹⁰³ *Supra* note 3, O. VII, r. 6D.

¹⁰⁴ (2000) 3 SCC 54.

¹⁰⁵ (2011) 3 SCC 545.



Court in cases such as *G.P. Srivastava v. R.K. Raizada*¹⁰⁴ and *Parimal v. Veena*,¹⁰⁵ establishing that the rule embodies the principles of natural justice and the right to be heard. The application must be made within the prescribed limitation period, and the applicant bears the burden to demonstrate genuine reasons for absence. The court exercises its discretion judiciously, while it must not lightly set aside decrees; the principle of fair hearing remains paramount, especially where absence results from valid and bona fide grounds.

A further layer of complexity arises where the cause of non-appearance involves disputed questions of fact; in such situations, the court may need to take evidence. The rejection or acceptance of an Order IX Rule 13 application results in a final order, appealable under Section 96(2) C.P.C., as the Supreme Court observed in *Arjun Singh v. Mohindra Kumar*.¹⁰⁶ The process is not intended for routine avoidance of decrees; rather, it is a safeguard to prevent grave injustice due to exceptional circumstances. Moreover, courts have consistently held that the requirement of “sufficient cause” under Rule 13 should be interpreted liberally to advance substantive justice while preventing misuse by litigants seeking to delay proceedings.

Section 10 of the Family Courts Act, 1984, mandates the applicability of the provisions of the C.P.C. to all suits and proceedings before a Family Court.¹⁰⁷ It was clarified in *Manju Singh v. Ajay Veer Singh*,¹⁰⁸ that the Family Court shall be deemed to be a Civil Court and have all the powers of such a Court. Further, as per Section 7 of the Act, the Family Courts are empowered to exercise all jurisdiction as by the district court or subordinate civil court in respect of the matrimonial and other family-related disputes enumerated in the explanation to that section.¹⁰⁹ Section 10 empowers a Family Court to lay down its own procedure to arrive at a settlement or to ascertain the truth of the facts alleged, illustrating the special, problem-solving character of these courts.¹¹⁰ However, it was emphasised by the Supreme Court in *Aman Lodha v. Kiran Lohiya*,¹¹¹ that Family Courts remain bound by the mandatory procedural norms and principles of fairness codified under the C.P.C.

Hon'ble Allahabad High Court in *Nagendra Sharma v. Court of Principal Judge, Family Court, Gonda*, involved a challenge to Family Court jurisdiction over an application under Order IX Rule 13 C.P.C. seeking to set aside an *ex parte* divorce decree. The husband contended that only an appeal, not a recall, was maintainable; the Family Court disagreed.

¹⁰⁶ AIR 1964 SC 993.

¹⁰⁷ The Family Courts Act, 1984, s. 10(1).

¹⁰⁸ (2019) 4 SCC 375

¹⁰⁹ *Supra* note 107, s. 7 and Explanation.

¹¹⁰ *Id.*, s. 10(3).

¹¹¹ (2021) 9 SCC 1.

The issues were: Does the Family Court have the power to entertain recall/setting aside applications under Order IX Rule 13, or are its decrees subject only to statutory appeals? The High Court affirmed the Family Court's powers under Section 10 of the Family Courts Act (which applies all C.P.C. provisions to its proceedings) and declined to issue a writ of prohibition. Thus, the recall applications are held to be maintainable before the Family Courts.¹¹²

Section 17 of the Provincial Small Causes Courts Act, 1887, adds an additional requirement for tenants seeking to set aside *ex parte* eviction decrees. It mandates that the applicant must deposit the amount due under the decree or obtain the court's leave to furnish security when applying under Order IX Rule 13. The Supreme Court in *Kedarnath v. Mohan Lal Kesarwari*¹¹³ has held this requirement to be mandatory, with non-compliance rendering the application unsustainable.

In *Smt. Gayatri Devi and another v. Smt. Shanti Devi*,¹¹⁴ the landlord, filed an eviction suit against the tenant for arrears of rent. The tenant failed to appear, and an *ex parte* decree was passed. The tenant later filed an application under Order IX Rule 13 C.P.C. to set aside the decree, citing illness as a reason for absence, but initially did not deposit the security amount as required under Section 17 of the Provincial Small Causes Courts Act, 1887. The Trial Court allowed the tenant to deposit the amount later without objection from the landlords. The landlords challenged this in the High Court, claiming non-compliance with Section 17 rendered the application invalid. However, the High Court held that since the deposit was accepted and no objection was raised, the landlords waived their right to object, and the Trial Court's order was upheld.

Dealing with a similar issue in the case of *Om Prakash v. B.N. Public School*,¹¹⁵ wherein the tenant failed to appear during the suit, leading to an *ex parte* decree. To set aside the decree, he was required to file an application under Order IX Rule 13 C.P.C., with Section 17 of the Provincial Small Causes Courts Act, 1887, but instead, he filed a recall application under Section 151 C.P.C., which was dismissed as not maintainable. Later on, he filed an application under Order IX Rule 13 with Section 17, which was also rejected. The High Court held that Section 151 C.P.C. cannot be used to circumvent the mandatory deposit under Section 17 when a specific remedy under Order IX Rule 13 exists. The tenant's attempt to evade this requirement resulted in confirmation of the *ex parte* eviction decree.

Order IX Rule 13 C.P.C. allows a defendant to set aside an *ex parte* decree passed

¹¹² 2024: AHC-LKO: 70332.

¹¹³ (2002) 2 SCC 16.

¹¹⁴ 2024: AHC:107190.

¹¹⁵ 2024: AHC:200122.



against him if sufficient cause for non-appearance is shown. Section 17 of the Provincial Small Causes Courts Act, 1887, deals with the deposit of security, which needs to be strictly complied with as it is essential for the application to be maintainable. Courts may condone initial delays if there is no objection filed in the earlier stage of the proceeding. Remedy under general provisions like Section 151 will not be permitted if there is a direct remedy given under Order IX Rule 13 C.P.C. The rule ensures both fairness to absent defendants and finality to court decrees.

10. Interlocutory Orders and Receivership: Order XL & Section 151/152 C.P.C.

Order XL of the C.P.C. empowers the court to appoint a receiver where it appears to be “just and convenient”.¹¹⁶ Such an appointment may be made before or after the decree, either *suo motu* by the Court or upon an application by a party or an interested third party.¹¹⁷ The object is primarily to preserve, protect, and manage the property in dispute during the pendency of the suit.¹¹⁸ The powers conferred on a receiver under clause (1)(d) include bringing and defending suits, realising, managing, and preserving the property, collecting rents and profits, and executing documents as the owner could have done. However, sub-rule (2) safeguards possessory rights by providing that no person in possession whom a party has no present right to remove should be displaced.¹¹⁹

Though the appointment of a receiver is a matter of judicial discretion, it needs to be exercised prudently. The Supreme Court in *Krishna Kumar v. Grindlays Bank* laid down four guiding principles: (a) the discretion rests with the court; (b) the objective is preservation of the property; (c) the plaintiff must prima facie have an excellent chance of success; and (d) such appointment should only prevent manifest injury or wrong.¹²⁰ In *Parmanand Patel v. Sudha A. Chowgule*, it was emphasised that the plaintiff must also show circumstances of emergency, danger, or potential loss demanding immediate action.¹²¹ Since an appointment deprives a party of *de facto* possession, such power is not to be exercised lightly, particularly in cases of bona fide possession, unless cogent reasons exist.¹²² The court will consider not only the legal rights but also the conduct of the parties before granting the relief.

A receiver is an officer of the Court and a “public servant” within the meaning of

¹¹⁶ *Supra* note 3, O. XL, r. 1(1).

¹¹⁷ *Issar Das Lulla v. Hari*, AIR 1962 Mad 458.

¹¹⁸ *Krishna Kumar v. Grindlays Bank*, AIR 1991 SC 889.

¹¹⁹ *Supra* note 3, O. XL, r. 1(2).

¹²⁰ *Krishna Kumar v. Grindlays Bank*, AIR 1991 SC 889.

¹²¹ *Parmanand Patel v. Sudha A. Chowgule*, AIR 2009 SC 1593

¹²² *Issar Das Lulla v. Hari*, AIR 1962 Mad 458.

¹²³ *Hiralal Patni v. Loonkaran Sethiya*, AIR 1962 SC 21.

Section 2(17) C.P.C., as held in *Hiralal Patni v. Loonkaran Sethiya*.¹²³ His appointment may be for a defined period or “until judgment”; in the latter case, the appointment normally ends with the judgment unless expressly continued.¹²⁴ Even after the final decree, the court has the power to continue the receiver's role if the exigency of the situation demands it.¹²⁵ The C.P.C. also prescribes liabilities for breach of duty - under Order XL Rule 4, for failure to render accounts, to pay amounts due, or for causing loss by wilful default or gross negligence, the court may attach and sell the receiver's property to make good the loss.¹²⁶ The jurisdiction under Order XL is closely related to the court's inherent powers under Section 151 C.P.C. to issue interlocutory orders for safeguarding the ends of justice.¹²⁷

In the case of *Jaigurudev Dharm Pracharak Sanstha and Others v. Pankaj Yadav and Others*,¹²⁸ the Hon'ble Allahabad High Court addressed competing claims over the management and properties of the Jaigurudev Sanstha, where both plaintiffs and counter-claimants sought the appointment of a receiver, alleging mismanagement by the current office-bearers. The Court held that appointment of a receiver under Order XL Rule 1 C.P.C. is a discretionary and exceptional remedy, justified only where there is concrete evidence of emergency, danger, or loss, not mere allegations of mismanagement or delay in seeking relief. The Court found there was no substantive material proving funds or property were unsafe in the hands of the respondents, especially as eight years of inaction and lack of urgency undermined the appellants' case. As such, both appeals were dismissed, with all substantial rights left for the trial.

The case of *Committee of Management Anjuman Intezamia Masjid Varanasi v. Shailendra Kumar Pathak Vyas and Another*,¹²⁹ involved competing claims regarding the right to perform rituals in the “Vyas Ji Tehkhana” a disputed cellar in the Gyanvapi mosque/temple complex. The District Judge initially appointed the District Magistrate as Receiver to maintain the *status quo*, then, by a subsequent order, allowed worship in the cellar - a relief omitted in the original order but later corrected as a clerical mistake under Section 151/152 C.P.C. The main issues revolved around whether the correction was proper, whether a receiver's functions could include sanctioning worship, whether the interim order effectively granted final relief, and whether factual disputes (title, status, and nature of possession) could be resolved at the interlocutory stage. The High Court upheld both orders;

¹²⁴ *Ibid.*

¹²⁵ *Hindustan Petroleum Corporation Ltd. v. Ram Chandra*, AIR 1994 SC 478.

¹²⁶ *Supra* note 3, O. XL, r. 4.

¹²⁷ *Supra* note 3, s. 151; *Rajendra Prasad Gupta v. Prakash Chandra Mishra*, AIR 2011 SC 1137.

¹²⁸ 2024:AHC:178669.

¹²⁹ 2024:AHC:32769.



found the subsequent worship direction was a correction of omission, not new substantive relief, that the District Magistrate was a fit Receiver under the law, and that the trial must decide title/rights. The Court, therefore, rejected the appeal.

In *M/s. M.M.I. Tobacco Pvt. Ltd. v. Iftikhar Alam*,¹³⁰ the plaintiff obtained a temporary injunction against the defendant for trademark infringement, claiming exclusive rights over “Moosa ka Gul”. The appellate court remanded the case to the trial court to reassess the injunction on the merits after the defendant claimed prior use. While the plaintiff’s review petition against the appellate court’s remand was held maintainable, it was dismissed on the merits as there was no apparent error in the remand order. The fresh injunction granted by the trial court in favour of the defendant is now under appeal. Under the C.P.C., an appeal is a statutory remedy allowing a higher court full reassessment of facts and law, while a review is a limited remedy before the same court to correct only apparent errors on the record and is sparingly granted.¹³¹

Thus, the appointment of a receiver is an interlocutory measure to preserve the status quo and protect the subject-matter of the suit. It is not granted as a matter of course but as a matter of prudence and necessity, guided by judicial precedents and the particular facts of each case.

11. Execution of Decrees:

Resistance During Execution and Personal Liability of Corporate Entities

The concept of the execution of a decree lies at the very heart of the civil justice system. Execution refers to the process by which a decree-holder enforces the rights and remedies conferred by a judgment, decree, or order. The Order XXI and Sections 36 to 74 of the C.P.C. provide an exhaustive framework for execution proceedings.¹³² Execution typically begins with the filing of an execution application, invoking Order XXI Rule 11, and proceeds through various judicial processes, including attachment of property, arrest and detention in civil prison, sale of assets, delivery of possession, and appointment of receivers.¹³³ The primary goal is to ensure that the successful litigant receives the fruits of judgment, transforming the declaration of rights on paper into actual, tangible relief.¹³⁴

¹³⁰ 2024:AHC:73463.

¹³¹ *Supra* note 3, O. XLVII, r. 1.

¹³² *Id.*, ss. 36-74, O. XXI rr. 1-106; *Supra* note 1 at 2823.

¹³³ *Supra* note 3, O. XXI, rr. 30-46; B. *Hanumanthappa v. H. Basavanthappa*, AIR 2000 SC 3029.

¹³⁴ *Swaran Singh v. Surinder Kumar*, AIR 1962 SC 1428; R. Prakash, "Execution of Decree - Meaning and Process" 53 *Journal of Indian Law Institute* 249 (2011).

The effectiveness of execution is often considered the ultimate test of a civil justice system's credibility. Delays and failures in execution not only frustrate decree-holders but also undermine public faith in the legal process. The Supreme Court has recognised that procedural remedies meant to prevent injustice are sometimes misused to delay and defeat the enforcement of decrees. In *Rahul S. Shah v. Jinendra Kumar Gandhi*, the Court lamented that the prolonged struggle for actual realisation of decreed relief leads successful litigants to lose interest in pursuing execution or, worse, seek gratification from wrongdoers simply to recover, what is lawfully theirs. Such scenarios highlight the imperative for trial courts and executing courts to follow up adjudicated remedies rigorously and ensure their logical and fair conclusion.¹³⁵

Order XXI provides a flexible yet detailed procedure for execution. The C.P.C. empowers courts to issue orders, writs, and warrants for execution, and vests court personnel with responsibilities for attachment, sale, and enforcement actions. Execution is not complicated in theory; effectiveness hinges on strict adherence to procedural requirements and, where necessary, training and skill among court staff.¹³⁶

In *Abdul Hasan v. First Additional District Judge, Pratapgarh and Others*,¹³⁷ the petitioner challenged the rejection of his objections filed under Order XXI Rule 97 C.P.C. concerning resistance during execution of a decree. The petitioner claimed possession and alleged the decree was collusive and unenforceable. The Court observed that Order XXI Rule 97 confers exclusive jurisdiction on the executing court to adjudicate disputes relating to resistance or obstruction in possession during execution proceedings, thereby preventing multiplicity of litigation. It found the rejection of the petitioner's objections and recall application was arbitrary, as the petitioner had valid reasons, namely, an accident for non-appearance, and deserved an opportunity to present evidence. The Court emphasized the petitioner's right as an interested party to raise objections under Rule 97 at the execution stage. Further, the Court highlighted the complementary roles of Order XXI Rules 99 and 100 C.P.C., which provide remedies for restoration of possession and removal of obstruction, highlighting their relevance in safeguarding lawful possession. Consequently, the Court remitted the matter for fresh adjudication of objections, directing the trial court to expeditiously dispose of the matter with the cooperation of parties, thereby reinforcing the objective of the C.P.C. to adjudicate execution disputes within executing courts and avoid fragmented litigation. The writ petition was allowed accordingly.

¹³⁵ (2021) 6 SCC 418, para. 20; *Narayanan v. N. Sreekantan*, AIR 2012 SC 166.

¹³⁶ *Prem Lata Agarwal v. Lakshman Prasad Agarwal*, (2003) 11 SCC 487.

¹³⁷ 2024:AHC-LKO:46942.



In the case of *Dhanush Vir Singh v. Dr. Ila Sharma and Others*, Hon'ble Ashutosh Srivastava, J., considers whether directors or officers of a company can be arrested in satisfaction of a money decree payable by the company. The facts reveal that, after losing a mesne-profits decree against the company (Benett Coleman & Co. Ltd.), the landlord sought to execute by arrest of the company's Vice President/General Manager. The core issue was whether the company's officers could be detained to recover its debts when there was no fraud or express personal liability. The Court held that under the C.P.C. regime, corporate debts are enforced against company assets; arrest and detention of company officers is impermissible unless the "corporate veil" can be lifted for fraud or unless specific statutes make officers personally liable. The High Court quashed the order authorising arrest and directed execution to proceed against corporate assets.

The journey from judgment to satisfaction of a decree must be swift, fair, and effective. The provisions of the C.P.C. are designed not only to create powers for decree-holders but also to ensure that court orders have practical force in society. The Court's emphasis on accountability, discipline, and training in execution proceedings seeks to transform this phase from a bottleneck into a strong pillar of justice delivery.¹³⁸ Execution is the bridge between paper justice and real-world outcomes, and its efficiency is essential for preserving public confidence in the legal system.¹³⁹

12. Second Appeal

The concept of second appeal under Section 100, C.P.C. has undergone considerable evolution aimed at balancing the finality of litigation with the need for legal uniformity. Originally, second appeals could be filed on various grounds, including errors of fact as well as law, but the scope has now been substantially restricted. Under the current legal framework, a second appeal to the High Court is permitted only if the decree passed in the first appeal by a subordinate court raises a "substantial question of law." The memorandum of appeal must clearly specify such substantial question(s), and the High Court is duty-bound to expressly formulate them before proceeding to hear the matter.¹⁴⁰

Though the term "substantial question of law" is not explicitly defined in the C.P.C. but judicial interpretation has clarified its contours. It is not sufficient for a case to merely present a question of law; such a question must have a genuine impact on the rights of the parties and must not be conclusively settled by binding precedents. The Supreme Court in *Sir Chunilal Mehta v. Century Spinning & Manufacturing Co.* held that a substantial

¹³⁸ *Id.* at paras. 22-23; *Supra* note 1 at 2871.

¹³⁹ *Desh Bandhu Gupta v. N.L. Anand & Rajinder Singh*, AIR 1994 SC 104.

¹⁴⁰ *Supra* note 3, s. 100(1)-(5).

question of law is one that either concerns a matter of general public importance or directly and substantially affects the rights of the parties, and has not been definitively settled by the Court.¹⁴¹ Moreover, the High Court may interfere only if there is perversity in the findings of the lower courts or if vital evidence has been ignored; mere possibility of a different view is not a ground for interference.¹⁴²

One of the key underlying aims of allowing second appeals is to promote uniformity and certainty in the law within each state by ensuring that questions of law are settled by the High Court, whose pronouncements are binding on all subordinate courts. However, the appellate jurisdiction in a second appeal is not so extensive as to permit re-appreciation of evidence or a review of findings of fact, except in exceptional circumstances such as where findings are perverse, based on no evidence, or arrived at by ignoring material evidence.¹⁴³ The High Court is thus intended as a 'Court of Law' rather than a 'Court of Facts' at this stage.

The procedural requirements also needed to be strictly enforced. The High Court, at the time of admission, must specifically formulate the substantial question of law that arises, and the appeal is required to be heard only on such question. Any decision in a second appeal without such formulation is a jurisdictional defect, and any judgment so delivered can be set aside on that ground.¹⁴⁴

In the case of *Shyampati v. Ram Karan Pandey and Others*,¹⁴⁵ the appellant filed a suit seeking a permanent injunction to restrain the respondents from disturbing her peaceful possession over a disputed piece of land adjoining her house, which included a courtyard area known as “Sahan” and a storage structure termed “Husk.” The appellant claimed possession dating back prior to the abolition of Zamindari under the U.P. Zamindari Abolition and Land Reforms Act, 1950 supported by documentary evidence such as village records and family registers. The respondents denied these claims, asserting their own possession and ownership, stating that the land was part of their ancestral “Sahan” and used by them continuously for agricultural and domestic purposes. The trial court initially ruled in favour of the appellant, granting the injunction. However, the first appellate court reversed the decision and set aside the trial court's judgment, leading the appellant to approach the Allahabad High Court through a second appeal.

The Allahabad High Court examined whether the first appellate court had erred by failing to frame points of determination as required by procedural law and whether its

¹⁴¹ AIR 1962 SC 1314.

¹⁴² *Gurdev Kaur v. Kaki*, AIR 2006 SC 1975.

¹⁴³ *State Bank of India v. S.N. Goyal*, (2008) 8 SCC 92.

¹⁴⁴ *Kshitish Chandra Purkait v. Santosh Kumar Purkait*, AIR 1997 SC 2517.

¹⁴⁵ 2024:AHC-LKO:58701.



findings were legally tenable. It held that though the appellate court did not explicitly formulate points of determination, it had substantially complied with procedural requirements by addressing the issues framed at trial and providing reasons. However, the court found the appellate court's conclusions to be perverse and based on conjecture, as it had disregarded significant evidence presented by the appellant, including possession records, the impact of a 2005 fire affecting the area, and the nature of the construction claimed as part of the disputed land. The court observed that the burden of proof lies with the party asserting ownership and possession, and that evidence must be properly evaluated without bias or omission. Accordingly, the High Court set aside the appellate judgment, remitted the case for fresh adjudication, and directed expeditious disposal to prevent further delay.

13. Conclusion

In conclusion, the guiding philosophy that emerges from both statutory scheme and judicial pronouncements is that procedure is meant to serve as a handmaiden of justice, not its mistress. As aptly noted, “the function of procedural law is to facilitate justice and further its ends.” The Courts are thus entrusted with significant discretion and inherent powers to ensure that no litigant suffers for want of strict compliance with technicalities where the cause of justice demands otherwise. Whether through flexible application of time limits, cautious exercise of powers to reject complaints or grant adjournments, or through the correction of procedural defects, the overarching aim remains to secure substantial justice and prevent abuse of process. It is this adaptive, justice-oriented approach that sustains public faith in the legal system and enables the machinery of civil procedure to remain responsive to the evolving needs and circumstances of society.