

CIVIL APPEAL AND REVISION

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- ▶ The word “appeal” is not defined under CPC.
- ▶ It must be construed in its plain and natural sense.
- ▶ In its natural and ordinary meaning an appeal is a remedy by which a cause determined by an inferior forum is subjected before a superior forum for the purpose of testing the correctness of the decision given by the inferior forum.
- ▶ An appeal is a proceeding where an higher forum reconsiders the decision of a lower forum, on
 - (a) questions of fact;
 - (b) questions of law,with jurisdiction to confirm, reverse, modify the decision or remand the matter to the lower forum for fresh decision in terms of its directions.

- ▶ Appeal is a creature of statute.
- ▶ Appeal only against the decree, or appealable orders.
- ▶ Right of appeal is a substantive right.
- ▶ Appeal abates on death of a party if LR is not brought on records in the prescribed period.
- ▶ In appeal questions of law and facts both can be agitated.
- ▶ *Suo moto* appeal is not possible.
- ▶ Appeal is a continuation of the suit wherein the entire proceedings are left open before the appellate authority.
- ▶ Subsequent events can be considered by the appellate authority.

Smt. Ganga Bai vs Vijai kumar

Air 1974 SC 1126

- ▶ There is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice.
- ▶ It is no answer to a suit howsoever frivolous the claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit.
- ▶ But the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law.
- ▶ **Appeal only against a decree and not against mere adverse finding.**

Deepchand vs Land Acquisition Officer

AIR 1994 SC 1901

- ▶ Decision of the Civil Court on reference under Section 49(1) of the Land Acquisition Act - whether a decree appealable under Section 96 of CPC.
- ▶ The decision of court hinges upon the convenient or unimpaired use and enjoyment of the house, manufactory or building with residue of the land leftover after the acquiring the other property.
- ▶ Decision under Section 49(1) cannot be compared with the decision under Section 30 of LA Act wherein the title to receive compensation is finally decided between the parties which bind the parties.

Banarsi And Ors vs Ram Phal

(2003) 9 SCC 606

- ▶ The decree, to the extent to which it is against the respondent, cannot be interfered, set aside or modified to his advantage unless he files an appeal or takes cross objection.
- ▶ The power under Rule 33 of Order 41 is subject to at least three limitations:-
 - ▶ firstly, the power cannot be exercised to the prejudice or disadvantage of a person not a party before the Court;
 - ▶ secondly, a claim given up or lost cannot be revived; and
 - ▶ thirdly, such part of the decree which essentially ought to have been appealed against or objected to by a party and which that party has permitted to achieve a finality cannot be reversed to the advantage of such party.

Union Of India vs K.V. Lakshman

AIR 2016 SC 3139

- ▶ Right to file first appeal against the decree under Section 96 of the Code is a valuable legal right of the litigant.
- ▶ The jurisdiction of the first appellate Court is very wide like that of the Trial Court and it is open to the appellant to attack all findings of fact or/and of law in first appeal.
- ▶ It is the duty of the first appellate Court to appreciate the entire evidence and may come to a conclusion different from that of the Trial Court.
- ▶ The first appeal is a valuable right of the parties and unless restricted by law, the whole case therein is open for rehearing both on questions of fact and law.

Madhukar And Ors vs Sangram

AIR 2001 SC 2171

- ▶ The judgment of the Appellate Court must reflect its conscious application of mind, and it should record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties.
- ▶ While reversing a finding of fact the Appellate Court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding.
- ▶ This would satisfy the Court hearing a further appeal that the First Appellate Court had discharged the duty expected of it."

Shasidhar vs Ashwini Uma Method

AIR 2015 SC 1139

- ▶ The Appellate Court did not deal with submissions urged by the parties nor it took note of the grounds taken by the appellants in grounds of appeal nor took note of cross objections filed by plaintiffs nor made any attempt to appreciate the evidence adduced by the parties in the light of the settled legal principles and decided cases applicable to the issues arising in the case with a view to find out as to whether the judgment of the trial Court can be sustained or not and if so, how, and if not, why?
- ▶ First appellate court is expected to decide appeal keeping in view the scope and powers conferred on it. Failure to do so would causing prejudice to the appellant whose valuable right to prosecute the first appeal on facts and law would be adversely affected which, in turn, deprived him of a hearing in the appeal in accordance with law.

Chinthamani Ammal vs Nandagopal Gounder (2007) 4 SCC 163

- ▶ Not to have seen witnesses puts appellate judges in a permanent position of disadvantage against the trial judge.
- ▶ Unless it is shown that the trial judge has failed to use or has palpably misused his advantage ...the higher court ought not reverse the conclusions so arrived at on the basis of its own comparisons and criticisms of the witnesses, and of its view of the probabilities of the case. ...
- ▶ when there is conflict of oral evidence and the decision hinges upon the credibility of the witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial Judges notice, the appellate court should not interfere with the finding of the trial Judge on a question of fact.

O.41, R.27 CPC

- ▶ **Production of additional evidence in Appellate Court.**— (1) The parties to an appeal shall not be entitled to produce additional evidence, in the Appellate Court. But if—
 - ▶ (a) refusal by trial court to admit evidence which ought to have been admitted.
 - ▶ (aa) the evidence was not within the knowledge of the party or he could not produce the same in trial court even after due diligence.
 - ▶ (b) the Appellate Court **requires** any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,
- ▶ (2) Whenever additional evidence is allowed to be produced, the Court shall record the reason for its admission.

Union Of India vs Ibrahim Uddin

(2012) 8 SCC 148

- ▶ Order XLI Rule 27 CPC enables the Appellate Court to take additional evidence in exceptional circumstances.
- ▶ The Appellate Court may permit additional evidence only and only if the conditions laid down in this rule are found to exist.
- ▶ The parties are not entitled, as of right, to the admission of such evidence.
- ▶ The matter is entirely within the discretion of the court and is to be used sparingly.
- ▶ Such a discretion is only a judicial discretion circumscribed by the limitation specified in the rule itself.

- ▶ The words "for any other substantial cause" must be read with the word "requires",
- ▶ Thus, where, for any other substantial cause, the Appellate Court requires additional evidence, that this rule will apply.
- ▶ Whenever the appellate Court admits additional evidence it should record its reasons for doing so. (Sub-rule 2). (Mathad v. Rudrayya S. Mathad and Ors., AIR 2008 SC 1108)
- ▶ An application under Order XLI Rule 27 CPC should be considered at the time of hearing of appeal on merits so as to find whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved.

A. Andisamy Chettiar vs A. Subburaj Chettiar (2015) 17 SCC 713

- ▶ In our view the approach of the High Court in revision at that interim stage when the appeal was pending before the Additional District Judge was not justified and the High Court should not have interfered with the order.
- ▶ The appellate court could exercise jurisdiction one way or the other under Order XLI, Rule 27 specially clause (b)
- ▶ If the order was wrong on merits, it would always be open for the respondent to challenge the same in accordance with law if an occasion arises to carry the matter in second appeal after an appellate decree is passed.

Parsotim Thakur & Ors. v. Lal Mohar Thakur & Ors., AIR 1931 PC 143

- ▶ O.41, R.27 are clearly not intended to allow a litigant who has been unsuccessful in the lower Court to patch up the weak parts of his case and fill up omissions in the Court of appeal.
- ▶ Under R.27, Cl.(1) (b) it is only where the appellate Court “requires” it (i.e. finds it needful) the order shall be made.
- ▶ The legitimate occasion for the exercise of this discretion is not whenever before the appeal is heard a party applies to adduce fresh evidence, but “when on examining the evidence as it stands, some inherent lacuna or defect becomes apparent”.
- ▶ The defect may be pointed out by a party,, but the requirement must be the requirement of the court upon its appreciation of evidence as it stands.

Shyam Sundar Sarma vs Pannalal Jaiswal

(2005) 1 SCC 436

- ▶ Explanation to Order IX Rule 13 of CPC
- ▶ “Where there has been an appeal against a decree passed ex parte under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside the ex parte decree.”
- ▶ An appeal filed along with an application for condoning the delay in filing that appeal when dismissed on the refusal to condone the delay is nevertheless a decision in the appeal.
- ▶ Dismissal for default or on the ground of it being barred by limitation cannot be equated with a withdrawal of the appeal.

Bhanu Kumar Jain vs Archana Kumar

(2005) 1 SCC 787

- ▶ When an ex-parte decree is passed, the defendant has two clear options, one, to file an appeal and another to file an application for setting aside the order under Order 9, Rule 13.
- ▶ He can take recourse to both the proceedings simultaneously.
- ▶ If the appeal is dismissed/decided and the ex-parte decree merges with the that of the appellate court, a petition under Order 9, Rule 13 would not be maintainable.
- ▶ However the converse is not true.
- ▶ When an application under Order 9, Rule 13 of the Code is dismissed, the defendant can prefer an appeal in terms of Order 43, Rule 1 of the Code. Once such an appeal is dismissed, the Appellant cannot raise the same contention in the First Appeal.

P. Kiran Kumar vs AS Khadar

(2002) 5 SCC 161

- ▶ Mere filing of appeal does not take away the jurisdiction of trial court to entertain an application for setting aside an ex parte decree.
- ▶ If the trial court decree merges with the order of the appellant court by reversal, confirmation or varying it, the trial court is precluded from setting aside the ex parte decree.
- ▶ Explanation was added to discourage the two pronged attacks on the decree i.e. by preferring an application to the trial court under Order IX Rule 13 for setting aside the decree and by filing an appeal to the superior court against it.

- ▶ Section 115
- ▶ (1) The High Court may call for the record of any **case which has been decided** by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate court appears
 - ▶ (a) to have exercised a jurisdiction not vested in it by law, or
 - ▶ (b) to have failed to exercise a jurisdiction so vested, or
 - ▶ (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,
- ▶ the High Court may make such order in the case as it thinks fit:

- ▶ Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or order proceeding, except where
- ▶ (a) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding, or
- ▶ (b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.
- ▶ (2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.
- ▶ Explanation: In this section, the expression "Any case which has been decided: includes any order made, or any order deciding an issue, in the course of a suit or other proceeding."

- ▶ [Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.]
- ▶ [(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.]
- ▶ [(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.]
- ▶ *Explanation.*— In this section, the expression “any case which has been decided” includes any order made, or any order deciding an issue, in the course of a suit or other proceeding.

- ▶ Section 115 CPC invests the power of Revision in High Courts.
- ▶ The power of revision is limited to keep subordinate courts within the bounds of their jurisdiction.
- ▶ J Hidayatullah in Major Khanna Vs Dillon (AIR 1964 SC497) observed: ‘the section is concerned with jurisdiction and jurisdiction alone involving a refusal to exercise jurisdiction where one exists or an assumption of jurisdiction where none exists and lastly acting with illegality or material irregularity.’
- ▶ Where there is no question of jurisdiction in this manner the decision cannot be corrected because the Court has jurisdiction to decide wrongly as well as rightly
- ▶ Primary object is to prevent subordinate courts from acting arbitrarily, capriciously, illegally or irregularly in exercise of their JURISDICTION.

CASE DECIDED

- ▶ The phrase was neither defined in CPC 1882 nor in CPC 1908.
- ▶ By CPC Amendment Act 1976 by an Explanation an inclusive definition has been given which says that **“the expression case decided shall include any order made or any order deciding as issue, in the course of a suit or other proceedings”**
- ▶ Before this amendment there was a sharp divergence in the judicial opinion as to what was meant by the words case decided.
- ▶ Cuming J of Calcutta High Court observed : I can conceive of the High Court sending for the record of the case . I cannot conceive of its sending for record of an issue.”

MAJOR S S KHANNA vs BRIG. F J DILLON

AIR 1964 SC 497

- ▶ The expression 'case' includes civil proceedings other than suit, and is not restricted by any thing contained in the section to the entirety of the proceeding in a civil court.
- ▶ To interpret the expression 'case' as an entire proceeding only and not a part of the proceeding would be to impose a restriction upon the exercise of powers of superintendence which the jurisdiction to issue writs and the supervisory jurisdiction are not subject to.
- ▶ This may result in certain cases in denying relief to an aggrieved litigant where it is most needed, and may result in the perpetration of gross injustice.
- ▶ Exercise of jurisdiction is discretionary: the High Court is not bound to exercise jurisdiction merely because the conditions are satisfied.

- ▶ It is not necessary that entire suit or other proceeding should come to an end.
- ▶ If a distinct part of the suit or other proceedings is finally disposed of, so far as the subordinate court is concerned, it would be a 'Case Decided'
- ▶ The test is whether there is an adjudication on the rights and obligations of the parties to the Lis.
- ▶ Rejection of an amendment application in a suit by which the plaintiff wanted to add further items of properties in the plaint would be a case decided.
- ▶ Permitting the plaintiff to adduce evidence after closure of evidence by defendant would not be a case decided.

Case Decided : Illustrative cases

- ▶ A Decision as to maintainability of suit.
- ▶ A Finding on a preliminary issue of jurisdiction of the court.
- ▶ A Decision that a suit is not barred by *res judicata*.
- ▶ Staying or refusing to stay a suit under Section 10 of the Code.
- ▶ An order bringing or refusing to bring on record LR of the deceased party.
- ▶ Allowing or refusing to a suit to be withdrawn with liberty to bring a fresh suit.

Case Not Decided : Illustrative cases

- ▶ Overruling an objection to a question put to a witness.
- ▶ Refusal to decide an issue as a preliminary issue.
- ▶ An order permitting further evidence to be produced.
- ▶ A decision to issue or not to issue a commission.

AMIR HASSAN KHAN VS SHEO BAKSH SINGH (1884) 11 IA 237

- ▶ Interpreting the words “or to have acted in the exercise of its jurisdiction illegally or with material irregularity.” PC observed as follows:-

The question then is, did the judges of the Lower Courts in this case, in the exercise of their jurisdiction, act illegally or with material irregularity. It appears that they had perfect jurisdiction to decide the question which was before them, and they did decide it. Whether they decided it rightly or wrongly, they had jurisdiction to decide the case; and even if they decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity

BALAKRISHNA UDAYARVSVASUDEVA AIYAR AIR 1917 PC 71

It will be observed that the section applies to jurisdiction alone, the irregular exercise or non-exercise of it, or the illegal assumption of it. The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved.

N.S. VENKATAGIRI AYYANGAR VS H.R.E. BOARD, AIR 1949 PC 156

- ▶ S. 115, C.P.C., applies only to cases in which no appeal lies and where the legislature has provided no right of appeal the manifest intention is that the order of the trial Court **right or wrong** shall be final.
- ▶ The section empowers the High Court to satisfy itself upon three matters (1) that the order of the Subordinate Court is within its jurisdiction; (2) that the case is one in which the Court ought to exercise jurisdiction; and (3) that in exercising jurisdiction the Court has not acted illegally, i.e., in breach of some provision of law or with material irregularity, i.e., by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision.
- ▶ If the High Court is satisfied upon those three matters it has no power to interfere because it differs however profoundly, from the conclusions of the Subordinate Courts upon questions of fact or law.

D.L.F. Housing & Construction vs Sarup Singh AIR 1971 SC 2324

- ▶ The mass of reported cases only serve to show that the High Courts do not always appreciate the limits of their jurisdiction under this section.
- ▶ This section is not directed against the conclusions of law or fact in which the question of jurisdiction is not involved. This view was approved by this Court in Keshav Deo v. Radha Kissan (AIR 1953 SC 23) and has since been reaffirmed in numerous decisions.

Prem Bakshi vs Dharam Deo

(2002) 2 SCC 2

- ▶ Under clause (a), the High Court would be justified in interfering with an order of a subordinate court if the said order finally disposes of the suit or other proceeding.
- ▶ By way of illustration we may say that if a trial court holds by an interlocutory order that it has no jurisdiction to proceed the case or that suit is barred by limitation, it would amount to finally deciding the case and such order would be revisable.
- ▶ The order in question by which the amendment was allowed could not be said to have finally disposed of the case and, therefore, it would not come under clause (a).
- ▶ It is almost inconceivable how mere amendments of pleadings could possibly cause failure of justice or irreparable injury to any party.

Shiv Shakti Coop. Housing vs Swaraj Developers (2003) 6 SCC 659

- ▶ A plain reading of Section 115 as it stands makes it clear that the stress is on the question whether the order in favour of the party applying for revision would have given finality to suit or other proceeding.
- ▶ If the answer is 'yes' then the revision is maintainable. But on the contrary, if the answer is 'no' then the revision is not maintainable.
- ▶ The legislative intent is crystal clear. Those orders, which are interim in nature, cannot be the subject matter of revision under Section 115
- ▶ Preferring an application under Section 115 of the Code is not a substantive right.
- ▶ It is a source of power for the High Court to supervise the subordinate courts

Durga Devi vs Vijay Kumar Poddar & Ors (2010(2) PLJR 954)

- ▶ From the aforesaid enunciation of law, it is clear as day that their Lordships have held that in case an order is interim in nature, it cannot be the subject matter of revision under Section 115 of the Code. It has been categorically held that if the order in favour of the party applying for revision would have given finality to a suit or other proceedings and the answer is `yes`, then the revision would be maintainable and, if the answer is negative in nature, then the revision is not maintainable.
- ▶ The acid test that is to be applied in every case is to discern and find out whether the order though interim would dispose of the suit or other proceedings.

Thank You

The background features abstract, overlapping geometric shapes in various shades of green, ranging from light lime to dark forest green. These shapes are primarily located on the right side of the frame, creating a modern, layered effect against the white background.