

APPELLATE POWERS OF THE HIGH COURT

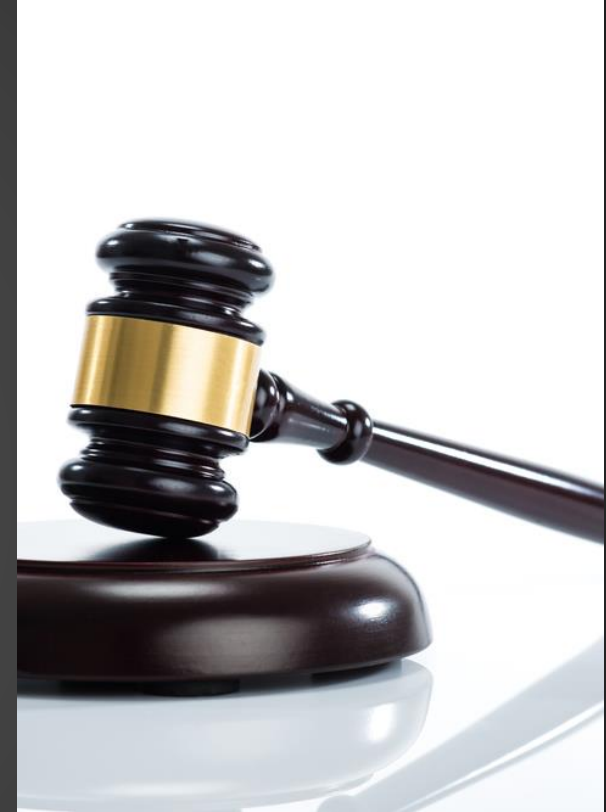
CIVIL & CRIMINAL

FEATURES

- Appellate Jurisdiction a part of Judicial Review
- Appeal is a creature of statute

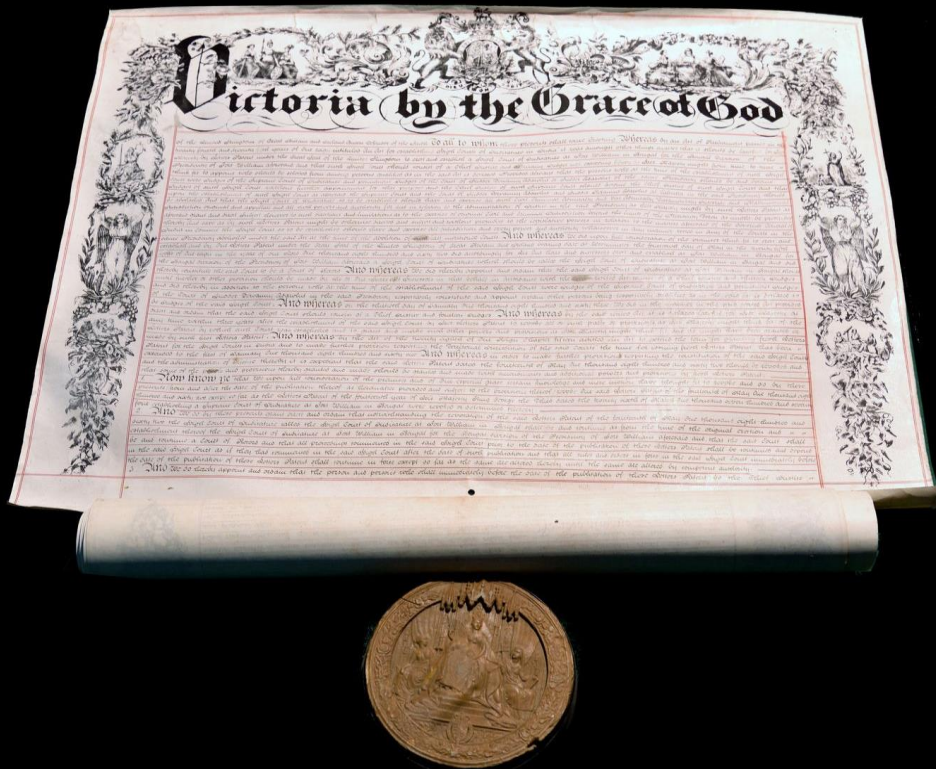
TYPES OF APPEALS IN HIGH COURTS

- ❖ Intra court appeals
- ❖ Statutory appeals



INTRA COURT -

LETTERS PATENT APPEALS



- HISTORY
- SCOPE
- IMPORTANT DECISIONS

HISTORY

- Regulating Act, 1773
- Charters to establish Supreme Courts
- Govt. of India Act, 1858
- Indian High Courts Act, 1861
- 1862 - LETTERS PATENTS



SCOPE

- ❑ Only against 'Judgments'

(where rights/liabilities decided)

- ❑ Not against any Single Judge order in first, second or miscellaneous appeal (Section 100A – Code of Civil Procedure)

- ❑ Questions of both law and fact

- ❑ Limited scope –

Perverse/ gross legal or factual error

(not merely because another view possible)



IMPORTANT CITATIONS

- (2006) 5 SCC 399 [Midnapore Peoples' Co-op Bank & Ors. v. Chunilal Nanda & Ors.]
- (2008) 17 SCC 714 [Gaudiya Mission v. Shobha Bose & Anr.]
- (2016) 3 SCC 340 [Mngmnt of Narendra & Co. Pvt. Ltd. v. Workmen of Narendra & Co.]
- (2018) 17 SCC 106 [Roma Sonkar v. MP State Public Service Commission & Anr.]
- (2019) 17 SCC 408 [Raghubir Singh v. State of Rajasthan & Ors.]

SALIENT FEATURES OF INTRA-COURT APPEALS

- Both factual and legal issues decided**
- Single Judge not subordinate to Division Bench**
- Division Bench decides on merits, generally not remitted back**
- No interference on finding of fact unless perverse**
- No interference merely because another view possible**
- No contempt appeal lies if no punishment – but if decision on merits in contempt. letters patent appeal lies**

STATUTORY APPEALS

- From the two Codes (CPC, CrPC)
- From Other Statutes (E.g. Probate, Matrimonial, etc.)

STATUTORY APPEALS -

CRIMINAL

CRIMINAL APPEALS - TYPES (UNDER CODE OF CRIMINAL PROCEDURE)

AGAINST CONVICTION

1) BY CONVICTION

- Section 374 – To High Court or Supreme Court
 - Section 379 – To Supreme Court (if High Court reverses Acquittal if Death Sentence / Life Imprisonment / 10 years or more imprisonment)
 - Section 380 – When several persons convicted in same trial and appealable judgment or order is passed against any of them, others convicted in said trial can also appeal
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2) BY STATE

- Section 377 – Against inadequacy of sentence

AGAINST ACQUITTAL

1) *BY VICTIM - SECTION 372 (PROMSO)*

2) *BY STATE - SECTION 378*

NO APPEAL LIES :

- Section 372 – Unless otherwise provided in Cr P C
- Section 375 – When accused pleads guilty
(if before Sessions Judge/Magistrate, appeal lies only to extent of or legality of sentence)
- Section 376 – In petty cases.

POWERS OF APPELLATE COURT

- SECTION 386 - (i) Acquittal – May reverse, direct further inquiry, direct re-trial or commit for trial or find guilty and pass sentence;
- (ii) Conviction – May reverse, acquit or discharge or direct re-trial or commit for trial, alter finding and/or sentence -
BUT CANNOT ENHANCE SENTENCE;
- (iii) For enhancement of sentence – May reverse, acquit/discharge, order retrial, alter finding and/or nature or extent of sentence;
- (iv) Pass any other consequential or incidental order, amend, alter or reverse impugned order.

POWERS OF APPELLATE COURT (CONTD.)

- ❖ Section 389 - Suspend sentence or grant bail during pendency of appeal;
- ❖ Section 390 - Arrest or commit;
- ❖ Section 391 - Take additional evidence for reasons to be recorded – itself or through Sessions Court or Magistrate;
- ❖ Section 393 - Appellate judgment/order final (except Ss. 377, 378)

STATUTORY APPEALS -

CIVIL

TYPES

- ✓ First Appeal
- ✓ Second Appeals
- ✓ Miscellaneous Appeals (First/Second)



FIRST APPEAL – SECTION 96; ORDER XLI C.P.C.

AMBIT

- Both questions of law and fact
- Error, defect or irregularity of any order affecting decision of a case can be set up as a ground in memorandum of appeal from final decree (Section 105, CPC)
- Interference if error of law and/or fact, not merely because another view possible
- Sec. 99 – No decree to be reversed or substantially varied or remanded for misjoinder of party, non-joinder (of non-necessary party) or error, defect or irregularity in proceedings in suit not affecting merits or jurisdiction

POWERS OF APPELLATE COURT

Additional Evidence – Order XLI Rule 27 CPC

- (a) Trial Court refused evidence which ought to have been admitted;
- (b) Party seeking to adduce to establish that, despite due diligence, evidence not within his knowledge OR could not, despite due diligence, produce when Trial Court's decree was passed;
- (c) Appellate Court requires the document or witness to pronounce judgment
- (d) Any other substantial cause.

POWERS OF APPELLATE COURT (CONTD.)

REMAND

Order XLI Rule 23 - If trial court decides suit on preliminary point, Appellate Court may frame issues and remand to be heard on evidence already on record.

Order XLI Rule 23A - Same as above, when suit decided otherwise than on preliminary point.

Order XLI Rule 25 - If trial court omitted to frame or try any issue, OR to determine any question of fact, which appears to the Appellate Court to be essential to right decision on merits, limited remand (if necessary upon framing issue) directing Trial Court to take additional evidence – Trial Court shall return evidence with findings and reasons.

Rule 26 - Such evidence and findings part of record – either party may present memorandum of objection to any of the findings.

CROSS OBJECTIONS

Order XLI Rule 22, CPC

- ❖ Respondent may take an objection against any adverse finding in Trial Court's judgment, although the decree was passed in his favour.
- ❖ Respondent may make cross-objection to decree (which he could by way of appeal) in so far as the decree is based on such adverse finding, even if the decree is wholly or partially in favour of the respondent by reason of court's decision on any other finding which is sufficient for decision of the suit.

E.g. Eviction decree on one ground refusing another;

Pecuniary damage decree on malice, though non-pecuniary refused

(1999) 7 SCC 435 – *Ravinder Kr. Sharma vs. State of Assam & Ors.*

SECOND APPEALS

Section 100 ; Order XLII (read with Order XLI), CPC

- Only on Substantial Questions of law (Section 101 CPC – not on other grounds)

(2006) 5 SCC 545 [Hero Vinoth (Minor) vs. Seshammal]

(2008) 8 SCC 92 [SBI & Ors. vs. S.N. Goyal]

WHAT IS “SUBSTANTIAL QUESTION OF LAW”?

- ✓ A question of law, as opposed to fact (need not be of general importance), having material bearing on the decision of the case and affecting the rights of the parties;
- ✓ It is not covered by any specific provision of law or settled legal principle emerging from binding precedents and involves a debatable issue;
- ✓ If the courts below ignore or act contrary to settled legal position;
- ✓ Legal effect of terms of a document or construction of a document having application of any principle of law.
- ✓ Perversity – Courts below overlook germane evidence or rely on inadmissible evidence or pass judgment on no evidence.

STAGE OF FRAMING SUBSTANTIAL QUESTIONS OF LAW

- At the time of admission – Either from memo or additional question formulated
- Subsequent stage (under proviso to Section 100, CPC) – Upon recording reasons, giving notice to parties and hearing parties on question

CONCURRENT FINDINGS – WHEN INTERFERENCE

❑ Courts below have ignored material evidence or acted on no evidence or inadmissible evidence – Perversity.

(“Decision based on no evidence” = Total dearth of evidence OR where evidence, taken as a whole, is not reasonably capable of supporting the finding)

❑ Courts have drawn wrong inferences from proved facts by applying law erroneously.

❑ Courts have wrongly cast burden of proof.

ISSUES OF FACT IN SECOND APPEAL –

HOW FAR PERMISSIBLE

Section 103, CPC – If evidence on record is sufficient, the High Court can determine an issue:

- (a) Which has not been determined by lower Appellate Court or both the Courts below, OR
- (b) Which has been wrongly determined by such Court or Courts *by reason of decision on such question of law as is referred to in Section 100, CPC*

MISCELLANEOUS APPEALS

APPELLABLE ORDERS

- **Section 104 and Order XLIII**

As per Section 104(2), no further appeal from appeals under this section.

DEEMED DECREES

- **Order XXI Rule 97-101 CPC**

Rule 97 application against decree resistor/obstructor – Order u/R.98

Order 99 by dispossessed – Order u/R.100

Rule 103 – Orders adjudicating right, title, interest having same force and subject to same conditions of appeal as a decree

(Therefore second miscellaneous appeals also)

REVISITING NORMS FOR APPELLATE REVIEW:

CONSEQUENCE OF EXCESSIVE AND FREQUENT APPELLATE INTERFERENCE

EFFECTS:

- Finality to litigation frustrated - One cannot get fruits of favourable decree/orders.
- Excessive pendency of cases and delay in disposal - Eats into resources of judiciary (time, expenses, limited judicial strength, etc.)
- Confidence of hierarchically junior courts shaken - affecting justice delivery system and quality of judgments at large.
- Perpetual uncertainty as to effect of decree.
- Leads to avoidance and non-implentation of decrees and orders.

REMEDIES

- ✓ Interference only when error – not merely because another view possible.
- ✓ Strict adherence to legal yardsticks, e.g. substantial question in second appeal, no reappreciation of evidence in first appeal.
- ✓ Less remands – appellate court to decide finally as far as possible.
- ✓ Doing away with archaic formalities – (*Suggested*: Final hearing at admission, Paper Books filed with Memo, etc.)
- ✓ Sensitization of Bench and Bar.