

APPEAL & REVISION JURISDICTION : CIVIL

**JUSTICE A. N. MITTAL,
CHAIRMAN, STATE LAW COM.**

**Effort is important,
but knowing where to
make an effort makes
all the difference.**



- **Life is like Badminton match...**
- **If we want to win...**
- **Serve well,**
- **Return well,**
- **And do remember that the game starts with**
- **“LOVE ALL”**

MAIN CAUSES OF DELAY IN DISPOSAL OF APPEALS

- Filing additional oral/ documentary evidence.
- Third party moving application for impleadment.
- Application for amendment in pleadings
- Moving application for appointment of receiver/ commission/ spot inspection etc.
- Late receipt of original record.
- Substitution of legal heirs.
- Moving other misc. applications :
 - Application for interim injunction
 - Application for vacation of ex-party interim injunction,
 - Application by a person who had not contested in trial court.

APPEAL

- An appeal is a complaint to a superior court of an injustice done or error committed by an inferior court with a view to its correction or reversal. It is a creature of statute. It is not a Constitutional or inherent right.
- Regarding appeal, the following principles are important:
 - 1. The legal pursuit of remedy, suit, appeal and second appeal are all steps in a series of proceedings, all connected by an intrinsic unity, they are to be regarded as one legal proceeding

- the right of appeal is not a mere matter of procedure but it is a substantive right.
- 2. the institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.
- 3. the right of appeal on being conferred by statute becomes a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit and not by the law that prevails at the date of the decision or at the date of the filing of the appeal.

- This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise. A right to file appeal if conferred becomes a vested right accruing to the party on the date of the institution of the suit.

■ APPEAL FROM ORIGINAL DECREE

- 1. save where otherwise expressly provided in the body of CPC, or by any other law for the time being in force, appeal SHALL lie from every decree passed by any court exercising original jurisdiction to the court authorized to hear appeal from the decisions of such court
- 2. an Appeal may lie from an original decree passed ex-parte
- 3. No appeal shall lie from a decree passed by the court with the consent of the parties.
- 4. No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject matter of the original suit does not exceed Ten thousand rupees.

- 1. An appeal can be maintained by a person interested in the subject matter of the suit.
- 2. a person who is not a party to the suit may prefer an appeal if he is affected by the order of the trial court, provided he obtains leave of the court.

- **INTERFERENCE WITH THE FINDING OF FACT**

- An appellate court is fully competent to re-assess oral as well as documentary evidence and to arrive at its own finding, different from that of the trial court, but before reversing a finding of fact recorded by the trial court the following points must be borne in mind:

- 1. Appreciation of the reasons given by the trial court
- 2. the advantage of the trial court of seeing and hearing the witnesses
- 3. the appellate court should give cogent reasons for disagreeing with the trial court.
- 4. The opinion of the trial judge on appreciation of oral evidence should be disturbed only in exceptional circumstances.
- 5. The pleas given up by a party in the trial court cannot be raised in appeal.
- Remand of matter should be avoided as far as possible.
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- **SECOND APPEAL : only on substantial question of law.**
- **Writ: Doors of justice should not be closed Vs. finality to a decision as per provisions of law as they exist Vs There is no bar to do so and so**
- **Procedure prescribed by law Vs. due process of law .**

■ REVISIONS

- For civil matters, power of revision has been provided in section 115 of the Code of Civil Procedure, which lays down that:
 - “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 to have:
 - a. exercised a jurisdiction not vested in it by law, or
 - b. failed to exercise a jurisdiction so vested , or
 - c. 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 other proceedings, except where:
 - 1. 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, or
 - 2. The High Court shall not vary, reverse any decree or order against which an appeal lies either to the High Court or to any other court subordinate thereto.

- DIFFERENT STATE AMENDMENTS

■ **DISTINCTION BETWEEN APPEAL AND REVISION:**

- In appeal there is right of hearing on the point of law as well as on facts whereas the revisions are maintainable only on the mistake of law.
- Revision may be dismissed at the admission stage, but an appeal cannot be.
- Revision may be finally disposed off with certain directions or guidelines at the admission stage without serving notice to the opposite party but appeal cannot be.
- But at the same time the revision cannot be allowed without hearing the opposite party.
- IN U.P., by an amendment to the C.P.C., the revisional power has been vested in the District Judge for the matters having valuation upto Rs. 5 Lacs.



THANK YOU