

The Process of a Typical Commercial Case

India

Litigation Guide

IBA Litigation Committee

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THE PROCESS OF A TYPICAL COMMERCIAL CASE

1. Limitation issues

Period of Limitation

- The period of limitation for a typical commercial claim (for example, the non-payment for delivery of goods sold and delivered with an agreed price equivalent to US\$100,000 in local currency) is three years from the date of delivery of the goods¹.
- Section 3 of the Limitation Act, 1963, limits the time after which a suit would be barred by operation of the statute of limitation. Every suit must be brought before the Court within the prescribed period unless the provisions of Sections 4 to 24 of the Limitation Act, 1963 absolve the plaintiff from that necessity or otherwise extend the period of limitation. The onus, however, is on the plaintiff to prove such exceptional circumstances.
- If the facts and statements averred in the plaint show, without dispute or doubt, that the suit is barred under the provisions of the Limitation Act, 1963, then the Court shall reject the plaint².

Agreement to Modify or Waive the Limitation Period

- Limitation being a matter of statute in India, parties cannot modify, suspend or renounce the period of limitation³ by contract or otherwise.
- An agreement which curtails the period of limitation would be void under Section 28 of the Indian Contract Act, 1872 as such an agreement would absolutely restrict a party from enforcing its right even though the claim may be within the period prescribed under the Limitation Act, 1963. An agreement which extends the period of limitation is void under Section 23 of the Indian Contract Act, 1872 as such an agreement would defeat the provisions of law and the Courts will not recognize such an arrangement between parties.

Effect of Acknowledgment in writing

- Prior to expiry of the period of limitation for a suit in respect of any property or right, if the party against whom such property or right is claimed, or any person through whom such party derives title or liability, provides a written and signed acknowledgement of liability in respect of the same, a fresh period of limitation shall be computed from the time when the acknowledgment was thus signed⁴.

¹ Section 3 read with Article 14 of the Schedule to the Limitation Act, 1963

² Order 7 Rule 11(d) of the Code

³ Prescribed by the Limitation Act, 1963

⁴ Section 18 of the Limitation Act, 1963

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- If, prima facie the averments in the plaint indicate that the suit is barred by limitation, the Court shall reject the plaint⁵. However, where *ex facie* the plaint discloses that the suit is barred by time but an acknowledgement of liability is relied upon as saving limitation, such acknowledgment must be specifically averred in the plaint.

2. Pre-litigation requirements

Jurisdiction

- In general, civil courts have jurisdiction to try all civil suits except where cognizance is expressly or impliedly barred⁶. Such exclusion is not to be readily inferred; the rule of interpretation being that a presumption is to be made in favour of the existence of such jurisdiction rather than its exclusion.
- Every suit is to be instituted in the Court of the lowest grade competent to try it⁷.
- Jurisdiction may be: (i) territorial or local, (ii) pecuniary, and (iii) relating to subject matter.
- Territorial Jurisdiction: Subject to pecuniary or other statutory limitations, suits relating to immovable property or recovery of movable property under distraint or attachment shall be tried by the Court within whose jurisdiction the suit property is situated⁸. A suit to obtain relief in respect of immovable property that falls within the jurisdiction of different Courts may be instituted in a Court within the local limits of whose jurisdiction any part of the suit property is situated⁹. In cases where it is uncertain as to within the local limits of jurisdiction of which of two or more Courts any immovable property is situated, any one Court may record a statement to that effect and proceed to dispose of the suit relating to that property¹⁰.
- Suits for compensation for wrongs (i.e. tort or actionable wrong) done to a person or to movable property, may be filed by the plaintiff either within the local limits of jurisdiction of the Court where the cause of action arose or where the defendant resides or carries on business¹¹.
- Subject to the limitations set out in Section 15 to 19 of the Civil Procedure Code, 1908 (the “**Code**”), every suit shall be filed by the plaintiff in a Court within the local limits of whose jurisdiction (i) the defendant (at the time of commencement of suit) resides, carries on business or works for gain, (ii) any of the Defendants

⁵ Under Order 7 Rule 11(d) of the Code

⁶ Section 9 of the Code

⁷ Section 15 of the Code

⁸ Section 16 of the Code

⁹ Section 17 of the Code

¹⁰ Section 18 of the Code

¹¹ Section 19 of the Code

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reside, carry on business or work for personal gain subject to leave of the Courts and acquiescence of the other defendants, or (iii) the cause of action has accrued¹².

- Pecuniary Jurisdiction: Courts will not have jurisdiction to try suits the value of the subject-matter of which exceeds the pecuniary limits of its original jurisdiction. It is the plaintiff's valuation in his plaint which prima facie determines the pecuniary jurisdiction of the Court and not the amount found or decreed by the Court.
- Under Section 9A of the Code¹³, when hearing an application for interim relief in a suit, the Court shall decide the issue of jurisdiction not at the interlocutory stage but at the threshold itself before proceeding with the matter on other issues. However, the Court may grant ad-interim relief pending determination of the preliminary issue of jurisdiction. Therefore, as per the Maharashtra State Amendment, objection to jurisdiction would be decided as a preliminary issue.

3. Starting proceedings

Commencement of commercial proceedings

- A suit is instituted by the presentation of a *plaint* or in such other manner as may be prescribed. In every plaint, facts are proved by an affidavit¹⁴ and this requirement of an affidavit extends to the written statement as well¹⁵.
- Once a suit is duly instituted, summons is issued to the defendant to appear and answer the claim and to file a written statement of his defence (if any) within thirty days from the date of service of summons on the defendant.
- In summary, the rules as regards pleadings in general under Order 6 of the Code are as following:
 - State your entire case including all material facts on which you are placing reliance for your claim or defence
 - State facts and not law; if any matter of law is set out in your opponent's pleading, do not plead it
 - State material facts only
 - State only material facts on which reliance is placed and not the evidence by which they are to be proved
 - State facts of the case in concise and accurate manner

¹² Section 20 of the Code

¹³ Amendment for the State of Maharashtra w.e.f. 19-12-1977

¹⁴ Section 26 read with Order 4 Rule 1 of the Code

¹⁵ Order 6 Rule 15 Sub-rule 3 of the Code

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Preliminary issues

- Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall pronounce judgment on all issues¹⁶. This mandate is relaxed to a limited extent by conferring discretionary powers upon the Court such that if the Court is of the opinion that the case (or any part thereof) may be disposed of on an issue of law (to the extent such issues relates to (i) the jurisdiction of the court, or (ii) a bar to the suit created by a law in force); *the Court may try that issue first*¹⁷.
- Issues relating to Jurisdiction: Depending upon the facts of each case, a question relating to jurisdiction may be a pure question of law, or a mixed question of law and fact. When a decision on the question of jurisdiction cannot dispose of the suit, the issue cannot be tried as a preliminary issue. Where the issue of jurisdiction is a mixed question of law and fact, the same cannot be treated as a preliminary issue. Further, an issue of jurisdiction involving facts cannot be tried as a preliminary issue. If at any time it is apparent to the court on averment in the plaint itself that it has no jurisdiction, either pecuniary or territorial, to entertain the matter, the court can always direct return of the plaint¹⁸ and no preliminary issues¹⁹ need to be framed for that purpose.
- Bar to the suit under law: A suit may be barred under the Limitation Act, 1963, by the principle of *res judicata*²⁰ or by reason of jurisdiction (in respect of such suits) having been conferred on tribunals created by statutes which expressly or by necessary implication exclude jurisdiction of civil courts. In such cases, Courts in India have a mixed opinion as to whether issues relating to such a bar can be dealt with as a preliminary issue if some evidence is brought on record to establish such a bar.

4. Timetable and Case management

- A suit is instituted by presenting a plaint to the Court or an officer appointed by the Court in this behalf²¹.
- Thereafter, summons may be issued to the defendant to appear and answer the claim, not later than thirty days from the institution of the suit.
- Defendant is required to file written statement within thirty days from the date of service of summons; Court may extend this date up to ninety days for reasons recorded in writing.

¹⁶ Order 14 Rule 2 Sub-rule 1 of the Code

¹⁷ Order 14 Rule 2 Sub-rule 2 of the Code

¹⁸ Order 7 Rule 10 of the Code

¹⁹ Order 14 Rule (2) of the Code

²⁰ Section 11 of the Code

²¹ Order 4 Rule 1 of the Code

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- Documents may be produced by the plaintiff or defendant, with the leave of the Court at the time of hearing of the suit where such documents could not be filed by the plaintiff along with the plaint or by the defendant along with his written statement.
- Issues are framed by the Court.
- Time-limit for oral arguments by the parties may be fixed by the Courts, at its discretion. No adjournment shall be granted for the purpose of filing the written arguments unless the Court specifically grants the same for reasons to be recorded in writing.
- Examination-in-chief of a witness shall be recorded on affidavit. The cross-examination and re-examination of a witness in the High Courts having original jurisdiction shall be recorded ordinarily by the Commissioner and in Courts subordinate to the High Court, such evidence shall be recorded by the Court or the Commissioner appointed by it in this behalf. A Commissioner shall be required to submit his report within six months from the date of issue of the Commission.
- Judgments are to be pronounced within a definite time frame after a case has been duly heard. The general rule proposed is that a judgment is to be pronounced at once and where it is not practicable to do so, the Court shall endeavour to pronounce judgment within thirty days from the date on which hearing of the case was concluded. In cases where it is not practicable for the Court to pronounce a judgment within (above mentioned) thirty days due to extraordinary or exceptional circumstances, the Court shall fix a day for the pronouncement of judgment which shall not ordinarily be beyond sixty days from the date on which the case was heard.

5. Disclosure of Evidence

Documents relied on in Plaint

- When a plaintiff sues or relies upon a document in support of his claim, the document shall be entered in a list and produced in Court at the time of presentation of the plaint. If the plaintiff fails to comply with the aforesaid provision, the document will not be received as evidence without leave of the Court²².

Discovery by answering Interrogatories

- In any suit, the plaintiff or the defendant with the leave of the Court may deliver interrogatories in writing for the examination of the opposite parties and such interrogatories shall have notes appended at the foot thereof stating which of such interrogatories each of such persons is required to answer.

²² Order 7 Rule 14 of the Code

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- Any objection to answering an interrogatory on the grounds that it is scandalous, irrelevant or not bona fide or that the matters inquired into are not material at the stage of the suit (or on grounds of privilege given below) are to be taken in affidavit²³.

Discovery and Inspection

- Besides discovery by way of answering interrogatories, any party may (*without* filing an affidavit) apply to the Court for an order directing the opposite party to any suit to make discovery of the documents which are or have been in such party's possession or power, pertaining to any matter in dispute therein. Upon hearing such application, the Court may either (i) refuse or adjourn the same if the Court is satisfied that such discovery is not necessary at that stage of the suit or in general in respect of the proceedings, or (ii) pass an order allowing the application for discovery of documents either generally or limit the discovery to certain classes of documents only²⁴.
- The documents sought to be discovered need not be admissible as evidence in the proceedings; however, the Court before granting such an application for discovery of documents under Order 11 Rule 12 of the Code should consider the relevance of the documents to the proceedings.
- These documents may be divided into two classes – (i) those which the adversary is entitled to inspect, and (ii) those which the adversary is not entitled to inspect. In general, a party is entitled to inspect all documents except that production of documents can be resisted as of right on two grounds (i) as being within the doctrine of legal professional privilege, and (ii) as being injurious to public interests, as discussed in detail below.

Limits to disclosure

- Professional Privilege: A party is not bound to produce any confidential communication between him and his legal adviser. It is not necessary that such communication should have been made during an actual or even anticipated litigation.
- Public Official Documents whose production would be injurious to Public Interests: A party is not bound to produce public official documents if its production would be injurious to public interests. This head of privilege applies as a rule when a party to the suit is a public officer..

²³ Order 11 Rule 1 of the Code

²⁴ Order 11 Rule 12 of the Code

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6. Administration of Evidence

Documents relied on in Plaintiff

- When a plaintiff sues or relies upon a document in support of his claim, the document shall be entered in a list and produced in Court at the time of presentation of the plaint. If the plaintiff fails to comply with the aforesaid provision, the document will not be received as evidence without leave of the Court²⁵.

Statement and production of evidence

- On the day fixed for the hearing of the suit, the party having the right to begin shall state his case and produce evidence in support of the issues.
- Thereafter, the other party shall state his case and produce evidence (if any) and may address the Court generally on the entire case.
- The party beginning may then reply generally to the whole case. A party may address oral arguments in a case and shall, before he concludes the oral arguments, simultaneously submit written arguments to the Court and the opposite party.
- No adjournment shall be granted for the purpose of filing written arguments unless the Court grants the same for reasons to be recorded in writing.
- The Court shall, in its discretion, fix time-limits for oral arguments made by either of the parties in a given case²⁶.

Recording of Evidence

- In every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be provided to the opposite party.
- The evidence (cross-examination and re-examination) of the witness in attendance, whose evidence (examination-in-chief) by affidavit has been furnished to the Court (other than High Court), shall be taken either by the Court or the Commissioner appointed by it.
- The Court or Commissioner shall record evidence either in writing or mechanically in the presence of the Judge or Commissioner, and where such evidence is recorded by the Commissioner, the Commissioner shall return such evidence together with his report in writing signed by him to the Court appointing him. Such evidence taken thereunder shall form part of the record of the suit.

²⁵ Order 7 Rule 14 of the Code

²⁶ Order 18 Rule 2 of the Code

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- Commissioner may record material remarks as regards the demeanour of the witness while under examination. Any objection raised during the recording of evidence before the Commissioner shall be recorded by him and decided by the Court at the stage of arguments.
- Report of the Commissioner shall be submitted to the Court appointing the commission within sixty days from the date of issue of the commission unless the Court extends the time for submission of the same²⁷.

Memorandum when evidence is not taken down by Judge

- Where the evidence is (i) not taken down in writing by the Judge or from his dictation in open court, or (ii) recorded mechanically in his presence, the Judge shall be bound to make a memorandum of the substance of each witness's deposition (during the examination of each witness) and such memorandum shall be written and signed by the Judge and form a part of the record of the suit²⁸.

Commissions

- The Court may issue commissions:
 - to examine any person;
 - to make a local investigation;
 - to examine or adjust accounts;
 - to make a partition;
 - to hold a scientific, technical or expert investigation;
 - to conduct sale of property which is subject to speedy and natural decay and which is in the custody of the court pending the determination of the suit; or
 - to perform any ministerial act²⁹
- In lieu of issuing a commission, the Court may issue a letter of request to examine a witness residing at any place outside India³⁰.

²⁷ Provisions of Order 26 Rule 16, 16A, 17 and 18 of the Code shall apply to the issue, execution and return of commissions

²⁸ Order 18 Rule 8 of the Code

²⁹ Section 75 of the Code

³⁰ Section 77 of the Code

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Expert Evidence

As a general rule, opinions and beliefs of third persons is irrelevant to the case and therefore, inadmissible. However, cases in which the Court is not in a position to form a correct judgment without the assistance of persons having special skill and experience in a particular subject, this rule is relaxed and expert evidence is admitted.

- It must be proved that the person giving the evidence is an expert;
- An expert's evidence is not confined to what actually took place but covers his opinions on facts as well;
- An expert can refer to and rely upon experiments conducted by him in the absence of other party.
- An expert may refer to well-known books on the subject to refresh his memory.
- An expert may state facts relating to other cases in pari material similar to the case under investigation

7. Remedies

Relief to be specifically stated

- Every plaint must specifically state the relief which the plaintiff claims whether such relief is by way of damages, declaration of title, specific performance, injunction, appointment of receiver, possession of land or relief of any other kind. However, it shall not be necessary to ask for general or other relief which may always be given as the Court may think just and to the same extent as if such relief was specifically stated in the plaint³¹.
- A plaintiff who omits, except with the leave of the Court, to sue for all reliefs to which he may be entitled in respect of the same cause of action will not afterwards be allowed to sue for any relief so omitted³².

Specific Performance

- Specific relief is a remedy which aims at exact fulfilment of an obligation. Such obligation or liability may arise out of either a contract or tort. But an obligation to do as distinguished from an obligation to forbear is a positive duty generally imposed by contract. This form of equitable relief is described as specific performance of contract and is granted by Courts in the cases of breach of contract whereby the defaulting party is enjoined to perform the contract according to its terms and conditions.

³¹ Order 7 Rule 7 of the Code

³² Order 2 Rule 2 Sub-rule 3 of the Code

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- In executory contracts, a suit may be brought to compel the performance of the contract by the person in default. Such relief may be either positive – enforce performance of an obligation or, negative – prevent the commission of certain acts or things enjoined or undertaken, as not to be done. Sections 5 to 35 of the Specific Relief Act, 1963 deals with positive relief, while Sections 36 to 42 deal with preventive relief (temporary and perpetual injunctions).

Injunctive Relief

- There are two kinds of injunctions which can be granted by Indian Courts – perpetual and temporary. A perpetual injunction can only be granted by a decree of the Court. It perpetually enjoins the defendant from the assertion of a right or from the commission of an act, which would be contrary to the rights of the plaintiff.

Interim Relief/Remedies

- Temporary Injunction: The Court may grant a temporary injunction to restrain certain acts of the defendant, staying the disposition of the suit property or dispossession of the plaintiff. The injunction may be granted on an interlocutory application at any stage of the suit. This form of relief is preventive in nature and shall enure for specified period, as for instance, until the disposal of the suit or further orders are passed by the Court³³.
- Power to order interim sale: Court has the power to order the sale of movable property, being the subject matter of the suit or attached before judgment, which property is inherently subject to speedy and natural decay, or which, for other just and sufficient cause, should be sold at once.
- Defendant may be called upon to furnish security for appearance: If, at any stage of a suit³⁴, the Court is satisfied:
 - that the defendant, with the intent to delay or obstruct the execution of any decree that may be passed against him, (i) has left or may leave the local limits of jurisdiction of the Court, or (ii) has disposed of or removed his property (or any part thereof) from the local limits of jurisdiction of the Court; or
 - that the defendant may leave India under circumstances affording a reasonable probability that the plaintiff may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit

³³ Order 39 Rule 1-5 of the Code relates to Temporary Injunctions

³⁴ Except for suits of the nature set out in Section 16, clauses (a) to d) of the Code

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the Court may issue a warrant to arrest the defendant and compel him to appear before the Court and show cause as to why he should not furnish security for his appearance³⁵.

- Defendant may be called upon to furnish security for production of property:
 - Where the Court is satisfied that the defendant, with the intent to obstruct or delay the execution of a decree that may be passed against him, (i) is about to dispose of his property (or any part thereof), or (ii) is about to remove his property (or any part thereof) from the local limits of jurisdiction of the Court, the Court may order the defendant to:
 - furnish security (in accordance with the terms specified in the order),
 - produce and place at the disposal of the Court, the said property or the value of the said property as may be sufficient to satisfy the decree, or
 - appear and show cause why he should not furnish such security.
 - In such order, the Court may also direct the conditional attachment of the whole or any portion of such property before judgment. The main object of such an attachment before judgment is to enable the plaintiff to realise the amount of the decree from the defendant's property³⁶.
 - Appointment of Receivers: Court may, by order, (i) appoint a receiver of any property, whether before or after the decree, (ii) remove a person from the possession of the property, (iii) commit the same to the possession or management of the property, (iv) confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management and preservation of the property, the collection of rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself or such other powers as the Court may think fit. Every receiver so appointed shall (i) furnish security (if any) as the Court thinks fit, duly to account for what he shall receive in respect of the property, (ii) submit his accounts in respect of the property, as the Court may direct, and (iii) be responsible for loss occasioned to the property by his wilful default or gross negligence³⁷.

³⁵ Order 38 Rule 1 of the Code

³⁶ Order 38 Rule 5 of the Code

³⁷ Order 40 Rule 1 and 3 of the Code

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8. Enforcement

- Court may, on the application of the decree-holder, order the execution or enforcement of a decree in any of the following five modes:
 - by delivery of any property specifically decreed;
 - by attachment and sale, or by sale without attachment of any property;
 - by arrest and detention in prison for such period not exceeding the period specified in Section 58 of the Code;
 - in such other manner as the nature of the relief granted may require
- Section 51 of the Code (summarised above) merely enumerates the various modes in which the Court may order the execution of a decree, in accordance with the nature of relief granted. It is for the judgment creditor to decide in which of the several modes (summarised above) he will execute the decree, and in general, the Court has no authority to refuse to order execution of the decree in the mode requested on the ground that the decree-holder should proceed by some other mode in the first instance.
- Application for Execution: All proceedings in execution are commenced by an application for execution³⁸ which application is in writing and contains the particulars. The only exception is where the decree is for the payment of money and the judgment debtor is in the precincts of the Court when the decree is passed, in which case the court may order immediate execution on the oral application of the decree holder at the time of passing the decree³⁹.
- Decree for the Payment of Money: Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by (i) detaining the judgment-debtor in civil prison, (ii) attachment and sale of his property, or (iii) both⁴⁰.
- Execution against the person of the judgment-debtor: Illustration – X obtains a decree against Y for the payment of a sum of money and costs (*a money-decree*) in a typical commercial claim (as described in the first question above). If Y fails to pay the amount of the judgment-debt, X will, thereafter, apply for execution of the decree against Y's person⁴¹. The Court shall, instead of issuing a warrant for Y's arrest, issue a notice calling upon him to appear and show cause as to why he should not be committed to civil prison in execution of the decree⁴². If the Court is satisfied that Y has acted with the intent of delaying or defeating the

³⁸ Order 21 Rule 10 of the Code

³⁹ Order 11 Rule 11 (1) of the Code

⁴⁰ Order 21 Rule 30 of the Code

⁴¹ Order 21 Rule 11(2) (j) of the Code

⁴² Order 21 Rule 37 (1) of the Code

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execution of the decree, the Court may pass an order for Y's arrest and detention⁴³. If Y fails to appear before the Court and if the decree-holder makes a specific request in this regard, the Court may issue a warrant for Y's arrest.

During the execution of the warrant, Y may offer to pay the amount of judgment-debt, in which case the Court appointed officer shall receive the payment and the refrain from executing the warrant⁴⁴. If no payment is made, Y will be arrested and brought before the Court as soon as practicable. If after holding an inquiry into the matter, the Court is assured that Y has failed or neglected to satisfy the decree, the Court may pass an order committing Y to civil prison⁴⁵ for a period not exceeding three months⁴⁶.

- Execution against the property of the judgment-debtor: Attachable property belonging to the judgment-debtor may be divided into two classes:
 - Attachment of Movable Property: In case of movable property (other than agricultural produce) in the possession of the judgment-debtor, the attachment shall be made by actual seizure and the attaching officer shall keep the property in his own custody and be responsible for the same. If the property seized is subject to speedy and natural decay, or when the cost of keeping it in custody is likely to exceed its value, the attaching officer may sell the said property at once⁴⁷.
 - Attachment of Immovable Property: In case of immovable property, attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way and prohibiting all third parties from taking any benefit from such transfer or charge. Such an order for attachment must be proclaimed at some place on or adjacent to the property and a copy of the order must be affixed to a conspicuous part of (i) the property and (ii) the court-house⁴⁸.

Where an attachment has been made, any private transfer of the property thus attached, whether movable or immovable, is void as against all claims enforceable under the attachment⁴⁹.

⁴³ Order 21 Rule 40(3) of the Code

⁴⁴ Order 21 Rule 38 of the Code

⁴⁵ Order 21 Rule 40 of the Code

⁴⁶ Where the amount of the decree exceeds INR 1,000 as in the present case

⁴⁷ Order 21 Rule 43 of the Code

⁴⁸ Order 21 Rule 54 of the Code

⁴⁹ Order 21 Rule 64 of the Code

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9. Appeal

Appeals from Original Decrees

- Section 96 of the Code provides that an appeal from a decree passed by a Court exercising original jurisdiction or an *original decree* shall lie to the Court authorised to hear appeals from such Court. An appeal may be preferred against an ex-parte decree (i.e. without hearing of the parties). However, no appeal lies from a consent decree.
- The powers of the first appellate court are reasonably co-extensive with those of the civil court of original jurisdiction subject to certain restrictions. Unlike revision or review where limited grounds of judicial interference are available, appellate proceedings offer a much wider scope in determining the correctness of the judgments passed by lower courts. In general, a first appeal is not limited to any particular ground. First appeal may be filed on a question of fact or on a question of law or on a mixed question of fact and law⁵⁰. It is incumbent upon the first appellate court and particularly when the judgment and decree of the trial court is reversed, to meet the reasoning of the trial court and indicate its own reasons for arriving at a contrary decision.
- In order to constitute a valid ground for first appeal, a defect or irregularity of procedure must be a material one and should have either (i) affected the merits of the case, or (ii) affected the jurisdiction of the Court.

Appeals from Appellate Decrees

- Section 100 of the Code provides that a second appeal shall lie to the High Court from an appellate decree of a Court subordinate to the High Court to the extent that the case involves *a substantial question of law*. The principle underlying the limited grounds for second appeal is that there should be *an end to litigation*.
- A second appeal shall also lie from an appellate decree passed ex-parte.
- In any second appeal, High Court may determine any issue necessary for the disposal of the appeal –
 - which has not been determined by the lower Appellate Court or both the Court of first instance and the lower Appellate Court;
 - which has been wrongly determined by such Court or Courts and involves a question of law

Appeals to the Supreme Court

⁵⁰ Mani Chandra Nancy v. Dedans Nancy & Éthers AIR 1986 SC 446

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An appeal lies to the Supreme Court in the following two cases:

- Appeals from High Courts: Constitutional Cases (Articles 132-133): An appeal can be filed against any judgment, decree or final order of a High Court of India, whether in a civil, criminal or other proceeding, if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution.
- Appeals from High Court: Civil Cases (Article 133): An appeal lies to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in India if the High Court certifies:
 - that the case involves a substantial question of law of general importance;
 - that, in the opinion of the High Court, the said question needs to be decided by the Supreme Court

Letters Patent Appeal

- Appeal to the High Court: Clause 15 of the Letters Patent for the High Court of Judicature at Bombay, dated 28th December, 1865 (the “**Letters Patent**”), provides that an appeal from a judgment (other than (i) a judgment passed in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, (ii) an order made in the exercise of revisional jurisdiction, (iii) a sentence or order passed or made in the exercise of the power of superintendence under Section 107 of the Government of India Act, 1915 or (iv) in exercise of criminal jurisdiction) of a single Judge of the High Court or a single Judge of any Divisional Court pursuant to Section 108 the Government of India Act, 1915, shall lie to the said High Court of Judicature at Bombay. Clause 15 of the Letters Patent, therefore, confers a right of appeal against a '*judgment*'. Accordingly, an appeal against an order, which satisfies the requirements of '*judgment*', will lie under Clause 15 of the Letters Patent. What kind of order will constitute a '*judgment*' within the meaning of this clause and become appealable depends on the facts and circumstances of each case as also on the nature and character of the order passed.

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10. Costs

- The Court has complete power to determine *by which party, out of what property and to what extent*, costs arising out of and incidental to lawsuits are to be paid and to issue necessary directions for this purpose.
- Generally, the successful party is entitled to costs on the basis of the general rule 'costs shall follow the event' unless the Court, in its judicial discretion, orders otherwise (e.g. if the party is guilty of misconduct) for reasons to be recorded in writing⁵¹.
- Court may award costs in respect of expenses and charges incurred by a party, *inter alia*, in respect of⁵²:
 - service of notice(s), whether or not required to be given under law;
 - filing of pleadings;
 - inspection of records of the Court;
 - issue of summons and production of witness; and
 - obtaining copies of judgments and decrees⁵³

⁵¹ Section 35 of the Code

⁵² Order 20A of the Code

⁵³ Particularly in case of appeals