

**DISTRICT AND SESSIONS COURT
BALRAMPUR AT RAMANUJGANJ (C.G.)**

CROSS APPEAL & CROSS OBJECTION

Submitted to

CHHATTISGARH STATE JUDICIAL ACADEMY, BILASPUR (C.G.)

in

DIVISIONAL JUDICIAL SEMINAR

SURGUJA DIVISION

on

05th November, 2023

Under the guidance of :-

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INTRODUCTION

An appeal serves as a vital avenue for seeking redress and ensuring justice. When parties involved in a court proceeding are discontented with the judgment, they can turn to the higher courts for a fresh evaluation of their case. The expression “appeal” has not been defined anywhere in the Code of Civil Procedure, but it may be defined as the judicial examination of the decision of an inferior court by a higher court . It means removal of a cause from an inferior to a superior court for the purpose of testing the soundness of the decision of the inferior court. The Superior Court, to which the appeal is made, reviews and retrials the case, effectively transferring it from a court of lower jurisdiction to one with greater authority. It is thus a remedy provided by law for getting the decree of the lower court set aside. The Civil procedure Code, 1908 provides for appeals under Section 96 to 112 to be read with Orders 41 to 45 of the Code.

CROSS APPEAL AND CROSS OBJECTION

When two appeals are preferred against the same decree, one by the plaintiff and the other by the defendant, then they are known as "**Cross Appeals**".

The expression "Cross Objection" is not defined anywhere in the Code of Civil Procedure. In simple language, when a party to a decree, does not prefer an

appeal against the decree, but takes an objection against a part of such decree, then it called "**Cross Objection**".

The mere distinction between cross appeal and cross objection is that whereas cross-objections form part of the same record in the proceeding of appeal, cross-appeals are two distinct and independent proceedings.

In cases where the decree passed by the court of first instance is in favor of the respondent in whole, in such circumstance, no remedy exists in favour of the respondent to appeal such decree, since no right to appeal can be vested onto a party, which is successful. In cases where the decree given by the court of first instance, is partly in favour of the respondent, but is also partly against the respondent, two remedies within Order 41 Rule 22 remain with the respondent, which are (i) To file their cross objections and, (ii) To support the decree in whole. A third remedy in law also exists, which is the right to file a cross appeal

In cases where the opposing party files a first appeal against part or whole of the original decree and the respondent in the said first appeal, due to part or whole of the decree being in their favour, abstains from filing an appeal at the first instance, in such cases, to ensure that the respondent is also given a fair chance to be heard, he is given the right to file his cross objections within the appeal already so instituted by the other party, against not only the contentions raised by the other

party, but also against part or whole of the decree passed by the court of first instance. In a similar circumstance, where the other party in the first instance has preferred an appeal, apart from the remedy of cross objections, the respondent can also file a cross appeal within the limitation period so prescribed, which in essence is a separate appeal in itself, challenging part or whole of the original decree, independent of the appeal filed by the other party. The respondent also has the right to fully support the original decree passed by the lower court in full.

Since cross objection is filed in an appeal proceeding, against the same appeal, therefore both appeal as well as cross objections are decided together. Similarly, even though cross appeals against the same decree are filed separately, they are decided together by virtue of them being against each other.

PROCEDURE IN CROSS APPEAL

The provision applicable to appeal is also applied while deciding cross appeal.

SCOPE AND EXTENT OF CROSS OBJECTION

NATURE OF CROSS OBJECTION

Cross objection is nothing but an appeal, in fact a cross-appeal. The expression "cross-objection" expresses the intention of the legislature that it can be

directed by the respondent against the appellant. One cannot treat an objection by a respondent in which the appellant has no interest as a cross-objection.

WHO MAY FILE CROSS-OBJECTIONS?

Cross-objections can be filed by the respondent:

1. if he could have filed an appeal against any part of the decree: or
2. if he is aggrieved by a finding in the judgement, even though the decree is in his favour.

The right to file cross-objections is substantive in nature and not merely procedural.

AGAINST WHOM CROSS-OBJECTIONS MAY BE FILED?

Ordinarily, cross-objections may be filed only against the appellant. In exceptional cases, however, one respondent may file cross-objections against other respondents; for example, when the appeal by some of the parties cannot effectively be disposed of without opening the matter as between the respondents inter se; or in a case where the objections are common as against the appellant and co-respondent It has been reiterated by the Hon'ble Apex Court in the case of **Panna Lal v. State of Bombay [1964] 1 SCR 980** that where the relief sought

against the appellant in cross-objections is intermixed with the relief granted to the other respondents in such a way that the relief against the appellant cannot be granted without the question being reopened between the objecting respondent and other respondents, cross-objections by one respondent against the other respondents may be allowed.

WHEN CROSS-OBJECTIONS CAN BE FILED?

The provisions of Order 41 Rule 22 contemplates right to file cross-objections only when an appeal is filed and also when such appeal is admitted by the appellate court and notice is issued on the respondent. A stage of filing cross-objections arises only when an appeal is admitted and the court directs notice to be issued to the respondent. No cross-objections, hence, can be filed if no appeal is filed by the appellant or an appeal is filed but has not been admitted.

CROSS-APPEAL WHETHER MAY BE TREATED AS CROSS-OBJECTIONS

An appeal filed beyond the period of limitation may be treated as cross-objections under Order 41 Rule 22. A cross-appeal may be treated as cross-objection only if such appeal is filed after the other appeal and not if it is before that appeal.

FORM

Cross-objections shall be in the form of a memorandum of appeal.

LIMITATION

Cross-objections can be filed within one month from the date of service on the respondent or his pleader of the notice of the date fixed for hearing of the appeal. The appellate court may, at its discretion, extend the period within which cross-objections can be filed. The discretion, however, must be exercised judicially and so sufficient cause for delay being shown.

WITHDRAWAL OR DISMISSAL OF APPEAL

Once the respondent files cross-objections, even if the appeal is withdrawn or dismissed for default, cross-objections will be heard and decided on merits.

PROCEDURE AT HEARING

The appeal and the cross-objections should be heard together and they should be disposed of by a common judgement incorporating the decisions on both; the appeal as well as the cross-objections.

COURT-FEE

Cross-objection is like an appeal. Court fee is, therefore, payable on cross-objection like that on memorandum of appeal.

CROSS-OBJECTION BY INDIGENT RESPONDENT

Provisions relating to appeal by indigent persons also apply to cross-objections. An indigent respondent, hence, may file cross-objections as an indigent person.

OMISSION TO FILE CROSS-OBJECTIONS

A party in whose favour a decree has been passed has a substantive and valuable right which should not be lightly interfered with. As an ordinary rule, therefore, in the absence of a cross-appeal or cross-objection by a respondent, the appellate court has no power to disturb the decree of the lower court so far as it is in favour of the appellant. This is. However, subject to the provisions of Order 41 Rule 33 of the Code.

DISPOSAL OF APPEAL AND CROSS-OBJECTIONS

When cross appeals are filed, then they should be decided & disposed of together by a common judgment. Similarly, the court should decide and dispose of appeal and cross-objections together by one judgment and such decision should be incorporated in one decree. This approach seeks to avoid contradictory and inconsistent decisions on the same questions in one and the same suit.

RIGHT TO FILE CROSS-OBJECTION IS SUBSTANTIVE

The cross-objection is in fact a cross appeal. Right to file cross-objection is a substantive right. Court fee is payable on cross-objection. Even where the appeal is withdrawn or is dismissed for default, cross-objection may be heard and determined. The statute gives the respondent a second chance to file an appeal by way of cross\objection if he still feels aggrieved by the judgment and decree or order.

FILING OF CROSS-OBJECTIONS IS OPTIONAL

When a party having right to appeal, does not prefer the same and waits for the adversary to file appeal and then to take a cross-objection, it runs the risk of availing the qualified alternative remedy on the adversary preferring a maintainable appeal. Therefore, the mere filing of cross-objections does not ipso facto invest in the respondent an independent right of being heard on cross-objections.

SOME IMPORTANT POINTS REGARDING CROSS APPEAL &

CROSS OBJECTION

1. While dismissing a defendant's appeal, the appellate Court cannot modify the decree in favour of the respondent in the absence of cross-appeal or

cross-objection, even in the exercise of powers under O. 41, R. 33. [**Banarsi v. Ram Phal, (2003) 9 SCC 606 (623)**]

2. The memorandum of cross-objections is needed only if respondent claims any relief, negated to him by the trial court and in addition to what he has already been given by decree under challenge. [**S Nazeer Ahmed v. State Bank of Mysore, (2007) 11 SCC 75 (80)**].
3. Point not taken in memo of objection cannot be raised at the hearing of appeal [**Union v. Radharani, AIR 1972 Cal 343**].
4. If an appeal is incompetent no cross-objection can be entertained [**Malhati Tea &c v. Rev Officer, AIR 1973 Cal 78**].
5. A time-barred appeal can be treated as cross-objection [**Nirpat v. Satinder, AIR 1955 PH 190**]
6. It is a settled principle of law that before the first appellate Court, the party cannot challenge the findings of trial court without filing cross objections, [**Laxman Tatyaba Kankati v. Taramati H. Dhattrak, AIR 2010 SC 3025**].
7. The filing of cross-objection is purely optional and not mandatory. The respondent can question adverse finding without filing cross-objection in an appeal. [**Ravinder Kumar Sharma v. State of Assam. AIR 1999 SC 3571**].

8. In the plaintiff's appeal against the order returning the plaint, the defendant has no right to prefer cross-objections. [**T. Shivalal v. Balaram, AIR 1976 AP 78**].
9. Cross-objection is to be only on those grounds which could have been available by way of an appeal.
10. Vakalatnama filed in suit or appeal will hold good for cross-objection also.
11. If after filing of cross-objection after admission of appeal it was found that the appeal was not maintainable it would not render the appeal and the cross-objection not maintainable .
12. Filing of cross-objection before service of notice of admission of appeal is maintainable .
13. First appellate Court is bound to consider each and every material on all issues of facts even if no cross-objection is filed.
14. When appeal goes out, e.g. by abatement, the cross-objection goes out with it. The only exceptions are in Or. 41 r. 22(4).
15. Where portion of relief is negatived and adverse finding recorded, the party can file cross objections in appeal irrespective of fact that pecuniary limits of

cross objection may be for below pecuniary limits of High Court to entertain regular appeal.

16. Respondent in second appeal can support decree appealed against on any legal ground.
17. Respondent having appealed cannot file cross-objections.
18. Where a respondent had already filed an appeal and it has been dismissed summarily it is not open to him to raise the same grounds as in that appeal by way of cross-objections in an appeal by the other party.
19. Cross-objection which tends to obtain a distinct relief which could have been granted by lower Court if asked for, or by appellate Court if a claim was raised in appeal, should not be allowed.
20. Cross-objection which tends to obtain a distinct relief which could have been granted by lower Court if asked for, or by appellate Court if a claim was raised in appeal, should not be allowed.
21. Cross-objections cannot be filed after withdrawal of appeal. Pendency of appeal is a condition precedent to the filing of cross-objections.
22. Cross-objections can be entertained against a party to the suit not impleaded as a party in the appeal.

23. When an appeal is disposed of without deciding the cross-objections by inadvertence, the cross-objections cannot survive. If there is inconsistency between the two decrees it should be curable under Or. 41 r 33

CONCLUSION

Thus cross appeal and cross objections are two different remedies for obtaining relief in respect of the judgment and decree passed by the lower court against a person, but they are both related to a common purpose and are available at different stages, i.e, after the passing of the judgment and decree by the lower court and when an appeal against such judgment and decree is preferred. Briefly stated, they are both two different remedies and opportunity in order to obtain the same relief.