



CIVIL APPEALS: Admission and Adjudication

**Presentation by:-
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Joint effort of:—

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CIVIL APPEALS : Admission and Adjudication

Lets firstly we started from “what is meant by appeal”. The expression appeal has not been defined in C.P.C. 1908. It is an application or petition to appeal higher court for consideration of the decision of lower court.

A. Right to Appeal :

A Statutory and Substantive Right-

1. Right to appeal is substantive right which has given by statute. It is not merely a matter of procedure, it is a matter of substantive right.

2. The pre-existing right of appeal is not destroyed by the amendment if the amendment is not made retrospective by express words or necessary intendment. However, unless a right of appeal is clearly given by a Statute, it does not exist.

(i) Gujarat Agro Industries Vs. Municipal Corporation of Ahmedabad, AIR 1999 SC 1818

(ii) Hoosein Kasam Dada (India) Ltd Vs. State of M.P., AIR 1953 SC 221

3. 'First appeal' a valuable right of the parties and unless restricted by law the whole case is open for rehearing both on questions of fact and law.

(i) Parimal Vs. Veena, AIR 2011 SC 1150

(ii) Santosh Hazari Vs. Purushottam Tiwari, AIR 2001 SC 965

B. Laws governing the civil appeals are as under :

(i) Sections 96 to 99-A CPC & Order 41 CPC
(appeals from original decrees)

(ii) Sections 100 to 103 CPC & Order 41 CPC
(appeals from appellate decrees)

(iii) Sections 104 to 112 CPC & Order 43 CPC
(appeals from orders)

(iv) Provisions in Special Acts regarding appeals

**C. A first appeal filed u/s 96 CPC is continuation of the
original suit:**

(i) *Triloki Nath singh Vs. Anirudh Singh, (2020) 6
SCC 629*

(ii) *Dilip Vs. Mohd. Azizul Haq, AIR 2000 SC 1976*

**D. An appeal lies only against a decree and not against
judgment or any findings:**

(i) *Banarasi Vs Ram Phal, (2003) 9 SCC 606*

(ii) *Hari Shanker Vs. Jag Dayee, (2000) 39 ALR 120
(All)*

1. Tests for determination whether order passed is a decree? : The court with a view to determine whether an order passed by it is a decree or not must take into consideration the pleadings of the parties and the proceedings leading upto the passing of an order. The circumstances under which an order had been made would also be relevant. An order to qualify as decree must satisfy the following tests:

(i) There must be adjudication

- (ii) Such adjudication must have been given in a suit
- (iii) It must have determined the rights of the parties with regard to all or any of the matters in controversy in the suit
- (iv) Such determination must be of a conclusive nature
- (v) There must be a formal expression of such adjudication.

S. Satnam Singh & others Vs. Surender Kaur & another, AIR 2009 SC 1089.

2. Preliminary decree is appealable (Sec 97 CPC) :
As per Section 97 CPC, failure to appeal against a preliminary decree precludes the aggrieved party from challenging the final decree. See :

(i) Mool Chand Vs. Dy. Director of Consolidation, AIR 1995 SC 2493.

(ii) Phool Chand Vs. Gopal Lal, AIR 1967 SC 1470

3. Appeal has to be filed under Order 41, rule 1 CPC in the court in which it is maintainable. All that Order 41, rule 1 CPC requires is that a copy of the memorandum of appeal should also be presented before the trial court which passed the decree.

Salem Advocates Bar Association Vs Union of India, AIR 2003 SC 189 (Three-Judge Bench)

4. No condition to be imposed while admitting appeal: No condition should be imposed while admitting appeal for hearing on merits. G.L.Vijain Vs K. Shankar, AIR 2007 SC 1103.(Also see UP amendment in Order 41, rule 5(5) CPC.

E. Who can file appeal u/s 96 CPC ?:

1. Unless a person is prejudicially or adversely affected by the decree, he is not entitled to file an appeal u/s 96 or u/s 100 CPC.

Banarasi & Others Vs. Ram Phal, (2003) 9 SCC 606.

2. Anyone out of several parties to suit aggrieved by decree can file appeal (Order 41, Rule 33 CPC) ? : Where there are several defendants, who are equally aggrieved by a decree on a ground common to all of them, and only one of them challenges the decree by an appeal his own right.

Bajranglal Shivchandrai Ruia Vs. Shashikant N. Ruia, AIR 2004 SC 2546(Three-Judge Bench).

3. Only aggrieved person with the decree or order competent to file appeal. Unless a person is prejudicially or adversely affected by the decree is not entitled to file an appeal.

Banarsi Vs. Ram Phal, (2003) 9 SCC 606

4. Appeal by only one of several defendants (Order 41, rule 4, 33 & 11CPC) : Appeal by one of the several defendants- another appeal subsequently filed by co-defendant dismissed for default – effect of on the earlier appeal- would not result in defeating the other defendants of the appeal.

Bajranglal Shiv Chandra Rai(2004)5 SCC 272.

F. Right to appeal can be exercised in the manner prescribed by law :

1. Right to appeal has to be exercised within the limits and according to the procedure provided by law. It is filed for invoking the powers of superior court to redress the error of court below, if any.

State of Haryana Vs. Maruti Udyog Ltd., AIR 2000 SC 2941

2. Second appeal after withdrawal of first appeal is maintainable?: Right to file a proper appeal is not affected by withdrawal of an earlier incompetent appeal. An incompetent appeal will indeed be no appeal in the eye of law and cannot in any way prejudice the right of any appellant to file a proper appeal, if the right of appeal is not otherwise lost by lapse of time or any other valid reason. Order 23 Rule 1 CPC does not stand in the way of maintainability of the subsequent appeal.

M. Ramnarain (P) Ltd. Vs. State Trading Corpn. Of India Ltd., AIR 1983 SC 786.

G. Admission of appeal and duty of appellate court :

1. It is the duty of appellate court to examine the appeal at the stage of order 41, Rule 11 CPC and to dismiss the same, if it lacks merit and does not deserve admission. No alleged convention or practice can be allowed to override the mandatory provision u/o 41 Rule 11 CPC.

Shyam Prasad Mishra vs Vijay Pratap Singh, AIR 2006 All 56.

2. Admission or rejection of appeal in part permissible : Appellate Court has power u/s 96 & 100 CPC read with Order 41, rule 3 CPC to admit an appeal in part if parts thereof are severable.

Bolin Chetia Vs. Jogadish Bhuyan, (2005) 6 SCC 81.

3. Ordering deposit of money as condition precedent for admission of appeal not proper : It is open for the appellate court to impose any condition as it may think fit and proper in the facts and circumstances of the case. Otherwise imposing a condition of deposit of money subject to which an appeal may be admitted for hearing on merits is not legally justified and such order cannot be sustained.

Management of Devi Theatre Vs Vishwanath Raju, AIR 2004 SC 3325.

4. Summary dismissal of appeal when possible u/s 96 CPC ? : Court hearing first appeal against finding of facts must record its reasons, especially if it is the final court on finding of facts. One word order 'Dismissed' not permissible. While affirming judgment of lower court detailed discussion is not required.

Kerala Transport Co. Vs. Shah Manilal Mulchand, 1991 Supp. (2) SCC 461

H. Extent of powers of first appellate court :

1. An appellate court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a

valuable right of the parties and unless restricted by law, the whole case is open for re-hearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons on all issues arising alongwith the contentions put forth and pressed by the parties for decision of the appellate court. 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.

(i) State Bank of India & another Vs. M/s. Emmsons International Ltd. and another, AIR 2011 SC 2906

(ii) Santosh Hazari Vs. Purushottam Tiwari, AIR 2001 SC 965.

2. First appellate court can go into the questions of facts and appraise the evidence on record.

Madanlal Vs. Yoga Bai, AIR 2003 SC 1880.

3. Jurisdiction of first appellate court u/o 41, Rule 11 CPC : The jurisdiction of the court in first appeal extends to examine the question of facts as well as that of law.

Devi Theatre Vs. Vishwanath Raju,(2004) 7 SCC 337.

4. Powers of first appellate court under Order 41, rules 33 & 22 CPC are in three parts : The first part confers on the appellate court very wide power to pass such order

in appeal as the case may require. The second part contemplates that this power will be exercised by the appellate court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents. The third part is where there have been decrees in cross suits, this power is exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees.

Biahr Supply Syndicate Vs. Asiatic Navigation, AIR 1993 SC 2054.

5. First appellate court can re-appreciate the entire evidence and come to a different conclusion from a trial court. When a High Court either without advert to a certain findings of a trial court or without reversing other findings, allowed first appeal, it was held improper because points involved required deeper consideration of the trial court's findings. Matter remitted for decision afresh.

Jagannath Vs. Arulappa, (2005) 12 SCC 303.

I. Duty of first appellate court:

1. first appellate court, being the last court of appeal on facts, it is a duty of the first appellate court to go into all the questions raised in the appeal and also the challenge of the evidence led in the case. If this not having being done the matter must be remitted for decision afresh.

Rama Pulp & Paper Ltd Vs. Maruti N. Dhotre, (2005) 12 SCC 186.

2. First appellate court, in exercise of its powers u/s 96 CPC read with Order 41, rule 31 CPC is obliged to decide all issues arising in the case both on facts and law after appreciating the entire evidence.

UPSRTC, Uttar Pradesh Vs. Kumari Mamta, 2016 (2) ALJ 645 (SC)

3. First appellate court u/s 96 CPC must record its findings only after dealing with all the issues of law as well as of facts and with the evidence, oral as well as documentary, led by the parties. The appellate court must give reasons in support of its findings. If the court does not fulfill its obligations, the parties would not get the true benefit of the first appeal which is a valuable right on the basis of which parties have a right to be heard on questions of law as well as of facts.

Madhukar Vs. Sangram, (2001) 4 SCC 756 (Three-Judge Bench)

5. All questions of fact and law decided by the Trial Court remain open for re-consideration by the first appellate court : Section 96 of the CPC provides for filing of an appeal from the decree passed by a court of original jurisdiction. Order 41, Rule 31 CPC provides the guidelines to the appellate court for deciding the appeal. This rule mandates that the judgment of the appellate court shall state:

- (a) points for determination;
- (b) the decision thereon;
- (c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

(e) Thus, the appellate court has the jurisdiction to reverse or affirm the findings of the Trial Court. It is settled law that an appeal is a continuation of the original proceedings. The judgment of the appellate court must, therefore, reflect conscious application of mind and must record the court's findings, supported by reasons for its decision in respect of all the issues.

Somakka (Dead) by LRs Versus K.P. Basavaraj (Dead) by LRs, 2022 SCC OnLine SC 736.

6. Cryptic and non-speaking appellate order not justifiable: Dismissal of regular first appeal passing cryptic order on facts is not proper. If a first appeal deserved to be dismissed at the admission stage itself some reasons however brief, must be recorded therefor.

Delhi, U.P., M.P. Transport Co. Vs. New India Assurance Co. (2006) 9 SCC 213

7. Appellate court has discretion to pass a decree in favour of a non-appealing party if he is entitled to such a decree.

(i) Chandramohan Vs Bapu, AIR 2003 SC 1754

(ii) K. Muthuswami Gounder Vs. N. Palaniappa Gounder, AIR 1998 SC 3118.

(iii) Azgar Barid Verus Mazambi Alias Pyaremabi, (2022) 5 SCC 334.

8. Appellate Court can pass interim order : The power to make interim order is, except where it is

specifically taken away by the statute, implicit in the power to make a final order.

L. V. Ashok Kumar Lingala vs. State of Karnataka, AIR 2012 SC 53.

9. Stay order when and how to be passed?: The Supreme Court has issued following directions regarding the manner of passing of the stay orders and durations thereof in revisions and appeals filed against the orders of the trial courts:

(i) There must be a speaking order while granting stay of the proceedings

(ii) Once an stay order is passed, the challenge should be decided within two to three months and the matter should be taken up on a day today basis

(iii) Stay order should not be passed unconditionally or for indefinite period. Conditions may be imposed.

(iv) Stay order shall automatically lapse after six months if not extended further and the proceeding before the trial court shall automatically commence

(v) Extension of stay order can be passed only by an speaking order showin extra-ordinary situation

(vi) The above directions shall apply to both the civil as well as criminal matters

(vii) The above directions shall apply to both civil and criminal appellate and revisional jurisdictions.

Asian Resurfacing of Road Agency (P) Ltd. Vs. CBI, (2018)16 SCC 299 (Three- Judge Bench)

10. Discretionary power of appellate court u/o 41, Rule 33 CPC: When circumstances exist which necessitate the exercise of discretion conferred on the appellate court by Order, 41 Rule 33 CPC, the appellate court cannot be found wanting when it comes to exercise its powers.

Delhi Electric Supply Undertaking vs Basanti Devi, AIR 2000 SC 43.

11. Deficiency in court fee occurred in trial court can be directed to be made good even at appellate stage.

Sardar Tajendra Singh Gambhir Vs. Sardar Gurpreet Singh, 2015 (1) ARC 616 (SC).

12. Findings of facts recorded by lower court not to be ordinarily disturbed.

Choudhary Sahu Vs.State of Bihar, AIR SC 98.

13. When can appellate court interfere u/s 96 CPC with the finding of facts recorded by the trial court? : The appellate court may not interfere with the finding of the trial court unless the finding recorded by the trial court is erroneous or the trial court ignored the evidence on record.

Venkatesh Construction Co. Vs. Karnataka Vidyuth Karkhane Limited, (2016) 4 SCC 119 (para 20) (Three-Judge Bench).

14. Reversal of findings of trial court and duty of appellate court : 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.

(i) *V. Prabhakara Versus Basavaraj K., (2022) 1 SCC 115.*

(ii) *State Bank of India & another Vs. M/s. Emmsons International Ltd. and another, AIR 2011 SC 2906*

(iii) *Santosh Hazari Vs. Purushottam Tiwari, AIR 2001 SC 965.*

15. When can appellate court not interfere with the findings of fact recorded by the trial court? : Yes.

(i) *Parimal Vs. Veena, AIR 2011 SC 1150*

(ii) *B.V. Nagesh Vs. H.V. Srinivassa Murthy, JT (2010) 10 SC 551*

16. Plea of jurisdiction can be raised at appellate stage : Yes.

Chief Engineer, Hydel Project Vs. Rabinder Nath, (2008) 2 SCC 350.

J. Procedure to decide first appeal :

Order 41, rule 31 CPC provides for procedure for deciding the appeal.

1. The law requires substantial compliance of the said provisions. The first appellate court being the final court of facts has to formulate the points for its consideration and independently weigh the evidence on the

issues which arise for adjudication and record reasons for its decision on the said points. The first appeal is a valuable right and the parties have a right to be heard both on question of law and on facts.

(i) *H. Siddiqui Vs. A. Ramalingam, AIR 2011 SC 1492*

(ii) *Parimal Vs. Veena, AIR 2011 SC 1150*

2. Considering arguments of the parties must for appellate court.

(i) *State Bank of India & another Vs. M/s. Emmsons International Ltd. & Another, AIR 2011 SC 2906*

(ii) *Santosh Hazari Vs. Purushottam Tiwari, AIR 2001 SC 965*

3. Issues of facts and law both to be decided by the first appellate court.

(i) *State Bank of India & another Vs. M/s. Emmsons International Ltd. and another, AIR 2011 SC 2906*

(ii) *Parimal Vs. Veena, AIR 2011 SC 1150*

(iii) *Santosh Hazari Vs. Purushottam Tiwari, AIR 2001 SC 965*

4. Appellate court to decide all issues in its judgment.

State Bank of India & another Vs. M/s. Emmsons International Ltd. and another, AIR 2011 SC 2906

5. Formulating points for determination by appellate court necessary.

(i) *United Engineers and Contractors Vs Secretary to Govt. of AP, AIR 2013 SC 2239*

(ii) *Parimal Vs Veena, AIR 2011 SC1150*

6. Non-framing of points for determination not to vitiate appellate judgment:

Rattan Dev Vs. Pasam Devi, (2002) 7 SCC 441

7. Appeal cannot be dismissed on merits in default of appearance of appellant.

Harbans Pershad Jaiswal Vs. Urmila Devi Jaiswal, (2014) 5 SCC 723

8. Appeal not to be dismissed in default on merits: Once an appeal is admitted and is placed for hearing on merits, it can be dismissed for default of the appellant or his advocate but cannot be decided on merits in their absence.

Secretary, Dept. of Horticulture, Chandigarh vs. Raghu Raj AIR 2009 SC 514.

K. Production of additional evidence by parties at appellate stage and relevant considerations for permitting it :

1. If an application is filed by the party under Order 41, rule 27 CPC to produce additional evidence at appellate stage, the duty of the court is to decide the same on merit and consider as to whether the document or other evidence sought to be adduced has any relevance or bearing on the issues involved.

(i) *Malyalam Plantations Limited Vs. State of Kerala, AIR 2011 SC 559*

(ii) *Shyam Gopal Bindal Vs. Land Acquisition Officer, AIR 2010 SC 690*

2. Production of additional evidence when to be allowed u/o 41, rule 27 CPC : Additional evidence/ documents which were in existence at time of filing of appeal, can be admitted as additional evidence u/o 41, rule 27 CPC. See :

(i) *Louis Paiva Vs. Nagar Palika Parishad, Saharanpur, 2007 (69) ALR 794 (All)*

(ii) *Shri Durga Bhagwati Industries Vs. Om Prakash Lohiya, 2006 (64) ALR 492 (All)*

3. An application filed u/o 41, rule 27 CPC for production of additional evidence during the pendency of appeal to be heard and decided at the time of final hearing of the appeal. when after appreciating the evidence on record, the court reaches the conclusion that additional evidence was required to be taken on record in order to pronounce the judgment or for any other substantial cause. In case, the application for taking additional evidence on record has been considered and allowed prior to the hearing of the appeal.

Union of India Vs. Ibrahim Uddin, (2012) 8 SCC 148 (para 52).

4. Power of appellate court under order 41, rule 27 CPC discretionary and to be used sparingly : The general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41

Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. The parties are not entitled, as of right, to the admission of such evidence.

Union of India Vs. Ibrahim Uddin, (2012) 8 SCC 148 (para 36).

5. Appellate court should not ordinarily allow new evidence to be adduced under Order 41, Rule 27 CPC. The appellate court should not ordinarily allow new evidence to be adduced in order to enable a party to raise a new point in appeal. the appellate court has the power to allow a document to be produced and a witness to be examined But the requirement of the said court must be limited to those cases where it found it necessary to obtain such evidence for enabling it to pronounce judgment.

Union of India Vs. Ibrahim Uddin, (2012) 8 SCC 148 (paras 37, 38, 39, 40 & 41).

6. Relevant considerations for permitting production of additional evidence u/o 41, rule 27 CPC: whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced.

Natha Singh Vs. The Financial Commissioner, AIR 1976 SC 1053.

7. Vigilance or negligence of party not relevant for invoking power u/o 41, rule 27 CPC to permit production of additional evidence :

Wadi Vs. Amilal, (2015) 1 SCC 677.

8. Inadvertence or lack of proper legal advice not a ground to admit additional evidence u/o 41, rule 27 CPC :

Haryana State Industrial Development Corporation Vs. M/s Cork Manufacturing Company, AIR 2008 SC 56

9. Rejection of application u/o 41, rule 27 CPC when justified? after a period of 10 years from the date of filing of the appeal cannot be termed to be erroneous or an illegal exercise of discretion.

N. Kamalam Vs. Ayya Samy, AIR 2001 SC 2802

10. Rejection of application u/o 41, rule 27 CPC when proper ? The documents sought to be produced were not documents which came into existence after filing of the suit, Application u/o 41, rule 27 CPC therefore rightly rejected.

State of Gujarat Vs. Mahendra Kumar Parshottambhai Desai, 2006 (63) ALR 806 (SC).

11. Documentary evidence when to be admitted u/o 41, rule 27 CPC?

Two of the documents came into existence after the passing of the decree by the trial court. Appellate court may allow documentary evidence to be produced if the party establishes that such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed.

Adil Jamshed Frenchman Vs. Sardar Dastur Schools Trusts & Others, 2005 (2)SCJ 236.

12. Lacuna to fill up in evidence not to be allowed u/o 41, rule 27 CPC:

Shri Kishore Vs. Roop Kishore, 2006 (62) ALR 414 (All)

L. Remand of appeal an ‘interlocutory order’:

1. Remand of appeal u/o 41, rule 23-A CPC is an interlocutory order which does not terminate the proceedings and hence it could be challenged from the final order.

(i) Mangal Prasad Tamoli Vs. Narvedshwar Misra, 2005 (2) SCJ 515

(ii) Chatrughan Vs. Dhanpati Rai, 2007 (69) ALR 861 (All)

2. Appeal must be remanded to the trial court for deciding as to who is the LR of the deceased party.

Karedla Parthasaradhi Vs. Gangula Ramanamma, AIR 2015 SC 891.

3. Remanding case to trial court to frame fresh issue and decide the suit afresh.

(i) M/s. Divya Exports Vs. M/s. Shalimar Video Company and others, AIR 2011 SC 3063.

(ii) Nicholas V. Menezes Vs. Joseph M. Menezes, (2009) 4 SCC 791

(iii) Remco Industrial Workers House Building Co-operative Society Vs. Lakshmeesha M. & Others, 2003 SAR (Civil) 804 (SC)

4. Remand order directing retrial/de novo trial of suit when permissible? If the trial court had disposed of the matter on merits and not on any preliminary issue, the order of the appellate court directing re-trial of the case is valid in terms of its powers under order 41, rule 23-25A CPC.

Jegannathan Vs. Raju Sigamani & another, (2012) 5 SCC 540.

5. Unnecessarily remanding case deprecated by the Supreme Court :

Smt. Dr. D. Kaur Vs. Smt. Kanti Khare, 1981 ARC 664 (SC)

Dr. Neeraj Bhasin Vs. Ashok Bhasin, 2006 (63) ALR 56 (All)(LB).

6. Appellate Court cannot order a fresh trial under Order 41, rule 27 CPC :

The Municipal Corporation of Greater Bombay Vs. Lala Pancham, AIR 1965 SC 1008 (Five-Judge Bench)

M. Fresh issue u/o 41, rule 25 CPC when not to be framed?

Non framing of issues not fatal where parties went to trial fully knowing the rival cases and led all evidence.

(i) Sachchidanand Pandey Vs. Dr. Ram Pher Singh, (2004) 22 LCD 350 (All) (LB)

(ii) Parasnath Vs. Rameshwar Ram, 1999 SCD 422 (Allahabad)

(iii) Nedu Nuri Kame Swaramma Vs. Sampati Subba Rao, AIR 1963 SC 884

N. Ex-parte decree is appealable :

1. When an application u/o 9, rule 13 CPC for setting aside an ex-parte decree is dismissed, the defendant cannot prefer an appeal u/o 43, rule 1 CPC. The appellant cannot raise same contention in the first appeal. Principles of res judicata applies in different stages of the same proceedings. Once ex-parte judgment is reserved u/o 20, rule 1 & 2 CPC, application by defendant u/o 9, rule 7 CPC does not lie. Remedy of the defendant is by way of order 9, rule 13 CPC or appeal.

Bhanu Kumar Jain Vs. Archana Kumar, 2005 (1) SCJ 243 (Three-Judge Bench).

2. An application u/o 9, rule 13 CPC not to be entertained after disposal of the appeal on the ground of limitation :

(i) P. Kiran Kumar Vs. A.S. Khadar, (2002) 5 SCC 161

(ii) Rani Chowdhary Vs. Lt. Col. Suraj Jit Chowdhary, (1982) 2 SCC 596

3. Appeal u/o 43, Rule 1 CPC maintainable after dismissal of application u/o 9, Rule 13 CPC :

Bhanu Kumar Jain Vs. Archana Kumar, AIR 2005 SC 626 (Three-Judge Bench)

4. Application to set aside ex parte decree u/o 9 , Rule 13 CPC not maintainable after dismissal of appeal against such ex parte decree.

Shyam Sundar Sarma Vs. Pannalal Jaiswal, 2005 (1) SCJ 180

O. Amendment at appeal is permissible-

New plea can be allowed at the appellate stage and appellate court not always bound to refuse such amendment merely because of absence of necessary material before it.

There is no impediment or bar against an appellate court permitting amendment of reading so as to enable a party to raise new plea. There should be a reasonable explanation for delay at appellate stage.

Ishwar Das Vs State of MP(1979) 4 SCC 163

Q. Infructuous appeal :

For finality of judgment where appeal therefrom is rendered infructuous.

Dharam Dutt Vs. UOI, AIR 2004 SC 1295.

R. Order returning plaint for presentation to proper court not appealable u/o 43, Rule 1 CPC.

Nilgiri Estate Pvt. Ltd. Vs. Khaniva Housing (India) Pvt. Ltd., AIR 2012 Calcutta 60 (DB).

S. Compromise should be challenged before the judge recording the compromise and not in appeal.

Y. Sleebachen & Others Vs. State of Tamil Nadu through Superintending Engineer Water Recourses Organization/Public works Department and Another, (2015) 5 SCC 747.

Appeal from orders Sections 104 to 112 CPC & Order 43 CPC

Ex parte ad interim injunction order is appealable u/o 43, rule 1(r) CPC :

1. Order granting temporary injunction under Order 39, rule 1 CPC is appealable u/o 43, rule 1(r) CPC. All orders under Order 39, rule 1 CPC are interim orders and cannot be bifurcated as final orders and interim orders.

Cosmopolitan Club Vs. Vinayak Kripa Inframart Co. Ltd, 2010 (5) ALJ (NOC) 601 (Allahabad) (DB).

2. Appeal under Order 43, rule 1 CPC maintainable against an ex parte order of injunction passed u/o 39, rule 1 & 2 CPC. The choice is of the party affected by the order either to move the appellate court or to approach the same court which passed the ex parte order for any relief.

(i) *A. Venkatasubbiah Naidu vs. S. Chellappan, AIR 2002 SC 3032.*

(ii) *New Kenilworth Hotel Pvt. Ltd vs. Orissa State Finance Corporation, (1997) 3 SCC 462*

(iii) *Moradabad Development Authority vs. Sai Sidhi Developers, AIR 2019 All 196 (Paras 11, 33)*

3. Appeal u/o 43, rule 1 (r) CPC not maintainable against mere issue of notice u/o 39, rule 3 CPC :

Amrik Singh Vs M/s. Bala Ji Rice Mills, 2013 (119) RD 844 (All)

4. Under Order 43, Rule 1 CPC, appellate court should normally not interfere with the discretion of the trial court in granting interim Inction : It is now well-entrenched

in our jurisprudence that the appellate court should not flimsily, whimsically or lightly interfere in the exercise of discretion by a sub-ordinate court unless such exercise is palpably perverse, arbitrary, capricious or against the settled principles of law.

(i) *Neon Laboratories Ltd. Vs. Medical Technologies Ltd.*, (2016) 2 SCC 672 (para 5)

(ii) *Wander Ltd vs. Antox India Pvt. Ltd.*, (1990) Suppl SCC 727

5. Appellate court should not interfere u/o 43, rule 1 CPC with the order of grant or refusal of interim injunction: Once the court of first instance exercises its discretion to grant or refuse to grant relief of temporary injunction and the said exercise of discretion based upon objective consideration of the material based before court and is supported by cogent reasons, the appellate court will be loath to interfere simply because on a de novo consideration of the matter.

Skyline Education Institute (Pvt.) Ltd. v. S.L. Vaswani & another, AIR 2010 SC 3221(Three-Judge Bench).

6. Interim injunction in appeal u/o 43, rule 1(r) CPC not to be granted beyond the scope/prayer in the main appeal. *Meena Chaudhary Vs. Commissioner of Delhi Police*, (2015) 2 SCC 156.

7. Relief not claimed in plaint not to be granted:

(i) *Meena Chaudhary Vs. Commissioner of Delhi Police*, (2015) 2 SCC 156.

(ii) Srinivas Ram Kumar Vs. Mahabir Prasad, AIR 1951 SC 177 (Three- Judge Bench)

(iii) M. Siddiq (Ram Janmabhumi Temple Vs. Suresh Das, (2020) 1 SCC 1 at pages 737 & 738 (Para 1228) (Five-Judge Bench).

8. Appeal u/o 43, rule 1 r/w Section 104 and order 1 rule 10 & order 41, rule 33 CPC against order of temporary injunction by an appellant not party in suit maintainable.

Ghanshyam Sharda Vs. Shiv Shankar Trading Company, (2015) 1 SCC 298.

9. Temporary Injunction cannot be passed against a third party or stranger.

West Bengal Housing Board vs. Pramila Sanfui, (2016) 1 SCC 743.

10. Appeal not maintainable against an interlocutory order of injunction passed by appellate court u/o 43, rule 1(r) of CPC. But petition under Article 227 of the Constitution would be obviously maintainable.

Sabyasachi Chatterjee Vs Prasad Chatterjee, AIR 2013 Calcutta 231 (Full Bench).

Conclusion-

The first appellate court is the last court to decide both fact and law so it needs much care, conciseness and responsibility.

THANKS

Presented by District Korea
