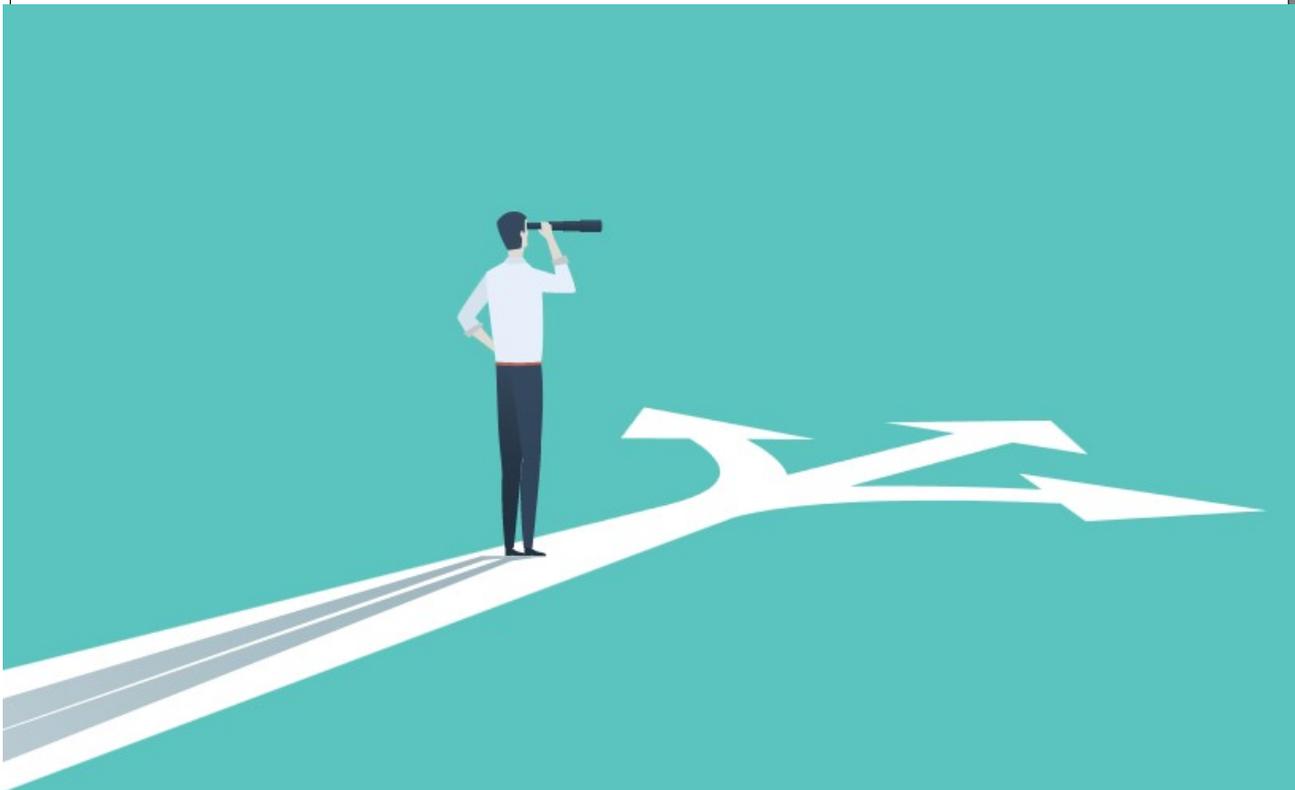


# **EMERGING TRENDS AND RECENT DEVELOPMENTS IN CIVIL LAWS**



**PAPER PRESENTATION BY TEAM**

**DISTRICT COURT BEMETARA**

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## INTRODUCTION

*Civil litigation is a legal process where two parties, usually individuals or organizations, engage in a legal dispute seeking compensation or other forms of relief. Civil litigation is an important aspect of the judicial adjudication as it helps individuals and organizations resolve disputes and receive justice.*

*Staying up-to-date on the latest trends in civil litigation is crucial for Judicial Officers. In recent years, civil litigation has experienced significant changes due to emerging technologies, new laws and regulations, and shifts in societal and cultural values. It is essential for Judicial Officers to stay informed about these changes to provide effective Justice.*

*In this present paper, we will explore the latest trends in civil litigation without relying on lists. We will delve into each trend in-depth, discussing its impact on the judiciary and providing examples of how it has affected civil litigation cases. By the end of this paper, we will have a better understanding of the current landscape of civil litigation and be better equipped to navigate these changes.*

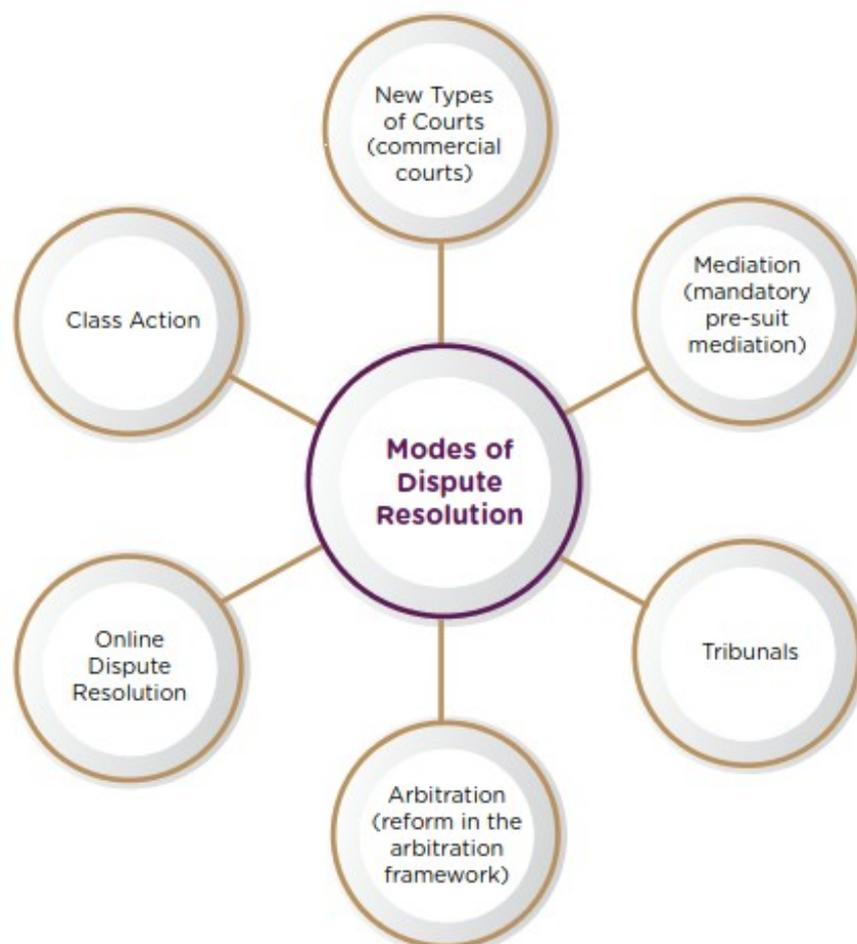
## **BRIEF BACKGROUND**

*With the maturing of the economy and our society and the speed of modernization in all spheres contractual obligations have expanded accordingly. Dispute resolution mechanisms have to evolve over time to take into account these changes. It has been a process of gradual evolution in all aspects covering the mode of dispute resolution, the laws affecting it and the nature of cases.*

*One of the strengths of democracy is that it can take a fresh look at itself in order to keep pace with changing times. The Indian legal system has always been able to adapt to the changing society. The law has changed because of globalization, development of technology and the evolving society. This paper will focus on some selected emerging areas and the impact these changes will have on the traditional areas while dealing with new avenues for dispute resolution. We will look at some of the principal trends likely to be shaped by new influences as they emerge and mature.*

## MODE OF DISPUTE RESOLUTION (INSTITUTIONAL STRUCTURE, NEW FORUMS - NEW TOOLS)

The traditional method i.e. court proceedings has seen a gradual change. Some changes have been made even to ease the pressure on courts (back log of cases) by the setting up of new forums (specialized courts and tribunals). Under this head we will look at some of the changes that have taken place in the mode of dispute resolution like litigation (commercial courts act, class action), arbitration (amendments to arbitration act) and new tools like mandatory pre-suit mediation and online dispute resolution.



This aspect has seen a gradual change. The traditional method of dispute resolution like litigation and alternative dispute resolution mechanism have remained the same, however the apex court has introduced urgent reforms in these areas to ensure speedy and new ways of resolving disputes.

**Setting up of Commercial Courts:** Litigation is time consuming and has placed pressure on the court system. In order to address the issue of pendency of cases, the government introduced the commercial courts act, which contemplates time-bound resolution of commercial disputes by judges with specialized commercial expertise.

**Arbitration** : is an efficient method of dispute resolution, however there has been interference by Indian courts in arbitration matters on a variety of issues. This has been coupled with the fact that most domestic arbitrations were ad-hoc arbitration. With the uncertainty in the law relating to arbitration and the constantly changing legal regime the law commission suggested major reforms to the Indian arbitration act. The amendments to the arbitration act include strict timelines for completion of arbitration proceedings, reduced judicial interference in the process and making enforcement of the arbitral award easier.

**Mediation** : has emerged as an important tool to resolve commercial disputes in an amicable manner. The government has introduced an amendment in the commercial courts act which mandates a pre-suit mediation in commercial disputes. However, this amendment does not apply in cases where a party is seeking urgent interim relief. The government has also sought to make the mediation process more meaningful by making the settlement agreement arrived at between the mediating parties enforceable in the same manner as an arbitral award.

**Tribunals** : have emerged as an important parallel structure to the court system for quick and technical resolution of disputes in certain areas of law. The government set up tribunals in different sectors like telecom, environment, anti-trust, electricity because of globalization and the development of technology.

**Online Dispute Resolution** : is an alternative dispute resolution technique that uses the internet as an interface to resolve disputes. The use of online techniques in the dispute resolution process such as submission of pleadings through email, videoconferencing for case hearings etc. facilitates convenient, cost-effective and expeditious resolution of disputes. Even though online dispute resolution may include the mechanisms of institutional alternative dispute resolution it is a step further for fast-track dispute resolution. This has in some way been introduced in matrimonial and mediation matters.

**Class Action suits** : may be initiated in case of a mismanagement of a company and may be filed by a class of shareholders. Though class action has been introduced in the companies act a few years back but it has not taken off as in other jurisdictions.

The courts have generally been pro-reform. While the modes of dispute resolution have changed gradually, however due to the emergence of new technology and new areas requiring regulation, the government has introduced reforms in the modes of dispute resolution to address the growing needs of the economy. While the specialized tribunals, mandatory pre-suit mediation, reform in the arbitration framework and the commercial courts have reduced the burden on the court system, however more needs to be done.

### **RISE OF ALTERNATIVE DISPUTE RESOLUTION (ADR)**

Alternative Dispute Resolution (ADR) has become an increasingly popular trend in civil litigation. ADR refers to a range of processes that offer alternatives to traditional litigation, such as mediation, arbitration, and negotiation.

One of the primary benefits of ADR is that it can be faster and less expensive than traditional litigation. ADR can also offer more privacy and confidentiality, as proceedings are not public record, and parties can agree to keep the details of the case confidential. Furthermore, ADR can help preserve relationships between parties by allowing them to work together to reach a mutually beneficial resolution.

However, ADR is not without its drawbacks. One of the main concerns is that it can lead to outcomes that are less predictable and less legally binding than traditional litigation. Additionally, some critics argue that ADR can be biased in favor of the stronger party or the party with more resources.

Examples of ADR in civil litigation include court-annexed mediation, private mediation, and arbitration. Court-annexed mediation is where the court orders parties to participate in mediation to try and reach a settlement. Private mediation involves parties agreeing to hire a neutral third-party mediator to help them reach a settlement. Arbitration is similar to a trial but takes place outside the courtroom and involves a neutral third-party arbitrator who makes a final, binding decision.

The future of ADR looks promising, as many legal professionals and clients continue to look for more cost-effective and efficient ways to resolve disputes. Additionally, the COVID-19 pandemic has highlighted the benefits of ADR, as remote mediation and arbitration have become increasingly common.

The rise of ADR has had a significant impact on civil litigation, offering parties an alternative to traditional litigation. While there are benefits and drawbacks to ADR, legal practitioners must consider this trend when representing their clients and stay abreast of the latest developments in this area of the law.

### **USE OF TECHNOLOGY IN CIVIL LITIGATION**

The use of technology has revolutionized the legal profession, and civil litigation is no exception. With advancements in technology, legal professionals have access to a wide range of tools and resources to streamline litigation processes, increase efficiency, and improve outcomes for clients.

Technology has had a significant impact on civil litigation, making it easier to collect and analyze evidence, conduct research, and communicate with clients and other legal professionals. Moreover, technology has made it possible for legal practitioners to work remotely, which has become increasingly important during the COVID-19 pandemic.

Some examples of technology used in civil litigation include e-filing systems, electronic discovery (e-discovery) tools,

case management software, video conferencing platforms, and legal research databases.

The benefits of technology in civil litigation are numerous. For instance, it has made it easier to store, manage, and share large volumes of data and documents, reducing the time and costs associated with paper-based processes. Additionally, technology has improved the accuracy and speed of legal research, enabling legal practitioners to stay up-to-date on the latest laws and regulations.

However, the use of technology in civil litigation also poses challenges. One of the main challenges is ensuring the security and confidentiality of data and documents. Cybersecurity risks are a significant concern, especially when dealing with sensitive information such as client data or trade secrets. Another challenge is ensuring that all parties have access to the technology and resources needed to participate in the litigation process fully.

Technology has become an integral part of civil litigation, and its impact will continue to grow in the coming years. Legal professionals must stay abreast of technological advancements and consider the benefits and challenges of technology when representing clients in civil litigation cases.

## SUPREME COURT LATEST JUDGMENTS ON CIVIL MATTERS

The Supreme Court does not work in isolation. As the country has developed certain issues have been thrown up from time to time. The courts have responded to the issues of each time. We will see some of the highlights of this journey and show how the court is responding to the new challenges today and some future trends that the court may be faced with as the economy develops rapidly.

**Question-** How to Execute a decree of suit ?

➔ Section 47 and Order 21 CPC.

In *Rahul S Shah vs Jinendra kumar Gandhi*, (2021) 6 Supreme Court Cases 418.

Head Note:-

*Due to urgent need to reduce delays in execution proceedings, mandatory directions issued to all courts dealing with suits and execution proceedings, as to measures to be restored to for timely and expeditious execution of decrees.*

Decision- The Supreme Court, while disposing of the appeal, issued a slew of directions to be followed by all courts dealing with suits and execution proceedings, aimed at speeding up the execution of decrees. The Court observed that delay in execution of decrees adversely affects the interests of the decree-holder and results in unnecessary expenditure of time and resources.

The Court provided specific directions to address the issue of delay in execution proceedings. The directions included the following:

1. The court where the execution petition is filed shall ensure that no unnecessary adjournments are granted.
2. A summons shall be issued to the judgment-debtor within seven days of the receipt of the execution petition.
3. The judgment-debtor shall be given a maximum of thirty days to file objections to the execution petition.
4. The court shall ensure that the execution is completed within six months from the date of filing of the execution petition.

5. In case of non-compliance with the above directions, the court shall record reasons for the same and report to the High Court.

➤ With a view to reduce delays in execution proceedings and do complete justice, the Court issued the following directions in detail:-

1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order X in relation to third.

2. party interest and further exercise the power under Order XI Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third party interest in such properties.

3. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the Court, the Court may appoint Commissioner to assess the accurate description and status of the property.

4. After examination of parties under Order X or production of documents under Order XI or receipt of commission report, the Court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.

5. Under Order XL Rule 1 of CPC, a Court Receiver can be appointed to monitor the status of the property in question as custodia legis for proper adjudication of the matter.

6. The Court must, before passing the decree, pertaining to

7. delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.

8. In a money suit, the Court must invariably resort to Order XXI Rule 11, ensuring immediate execution of decree for payment of money on oral application.

9. In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The Court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.

10. The Court exercising jurisdiction under Section 47 or under Order XXI of CPC, must not issue notice on an application of third-party claiming rights in a mechanical manner. Further, the Court should refrain from entertaining any such application(s) that has already been considered by the Court while adjudicating the suit or which raises any such issue

which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.

11. The Court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.

12. The Court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to Sub-rule (2) of Rule 98 of Order XXI as well as grant compensatory costs in accordance with Section 35A.

13. Under section 60 of CPC the term "...in name of the judgment- debtor or by another person in trust for him or on his behalf" should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.

14. The Executing Court must dispose of the Execution Proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.

15. The Executing Court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the concerned Police Station to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the Court, the same must be dealt stringently in accordance with law.

**Question-** Whether amendment of pleadings can be allowed after the commencement of trial ?

→ Order 6 Rule 17 CPC

In *J.Samuel & Ors vs Gattu Mahesh & Ors*, 2012 (2) SCC 300.

RATIO DECIDENDI:

*I. No application for amendment of pleadings can be allowed under Order 6, Rule 17 of the Code of Civil Procedure, 1908 after the commencement of trial, except when the Court comes to a conclusion that the party could not have raised the matter before commencement of trial inspite of due diligence as per proviso to Rule 17.*

*II. When the omission is with reference to a specific plea which is a mandatory requirement, it cannot come within the purview of typographical error and such plea of typographical error cannot be entertained for allowing the amendment as there is a clear lack of 'due diligence'.*

The Supreme Court states that- The primary aim of the court is to try the case on its merits and ensure that the rule of justice prevails. For this the need is for the true facts of the case to be placed before the court so that the court has access to all the relevant information in coming to its decision. Therefore, at times it is required to permit parties to amend their complaints. The Court's discretion to grant permission for a party to amend his pleading lies on two conditions, firstly, no injustice must be done to the other side and secondly, the amendment must be necessary for the purpose of determining the real question in controversy between the parties. However to balance the interests of the parties in pursuit of doing justice, the proviso has been added which clearly states that: no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. (para 12)

**Question-** Whether it is mandatory for party to give reasons for examination of particular witness?

→ Order 16 Rule 1(1) and 2 CPC

In ***Kokkanda B. Poondacha And Ors vs K.D. Ganapathi And Anr, 2011 (12) SCC 600.***

Head Note-

*Code of Civil Procedure, 1908 (5 of 1908), Order 16, Rule 1(1) & (2) and Section 151 – List of Witnesses – Advocate representing Appellant was cited as Witness in List filed under Order 16, Rule 1(1) & (2) for purpose of summoning him in future – Propriety – Parties should not be allowed to file List of Witnesses without indicating purpose for summoning particular person as witness – Litigant bound to indicate relevance of Witness to subject matter of Suit – Party to proceedings cannot cite Advocate representing other side as Witness and thereby deprive services of Advocate without disclosing as to how his testimony is relevant.*

The Supreme Court held that- if the parties to the litigation are allowed to file list of witnesses without indicating the purpose for summoning the particular person(s) as witness(es), the unscrupulous litigants may create a situation where the cases may be prolonged for years together. Such litigants may include the name of the advocate representing the other side as a witness and if the Court casually accepts the list of witnesses, the other side will be deprived of the services of the advocate. Therefore, it would be a prudent exercise of discretion by the Court to insist that the party filing the list of witnesses should briefly indicate the purpose of summoning the particular person as a witness.

**Question-** When consideration in grant of *ex parte* injunction ?

→ Order 39 Rule 3 CPC

In *Morgan Stanley Mutual Fund vs Kartick Das*, 1994 SCC (4) 225.

Analysis-

*In this case, the Supreme Court addressed the issue of ex-parte orders in the context of mutual funds. The Court emphasized the importance of ensuring that ex-parte orders are not granted lightly and that the principles of natural justice are upheld. The case underscored the need for a strong prima facie case and the potential for irreparable harm as key factors in granting such orders. The decision in this case further solidified the Court's stance on the careful consideration required before issuing ex-parte orders, ensuring fairness and due process for all parties involved. The Supreme Court indicated the following factors which should weigh with a court in the grant of an ex-parte Injunction.*

The Supreme Court guidelines- as a principle, ex parte injunction could be granted only under exceptional circumstances. The factors which should weigh with the court in the grant of ex parte injunction are-

(a) whether irreparable or serious mischief will ensue to the plaintiff

(b) whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve

(c) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented.

(d) the court will consider whether the plaintiff had acquiesced for sometime and in such circumstances it will not grant ex parte injunction;

(e) the court would expect a party applying for ex parte injunction to show utmost good faith in making the application.

(f) even if granted, the ex parte injunction would be for a limited period of time.

(g) General principles like prima facie case balance of convenience and irreparable loss would also be considered by the court. (para 36)

**Question-** When Rejection of Plaintiff under Order VII rule 11 of the CPC be done ?

➔ Order 7 Rule 11 CPC

In ***P.V. Guru Raj Reddy REP. BY GPA Laxmi Narayan Reddy & ANR. Versus P. Neeradha Reddy & Ors. 2015 LawSuit(SC) 116, CIVIL APPEAL NO.5254 OF 2006.***

The Supreme Court said- Rejection of the plaintiff under Order VII rule 11 of the CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order VII rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaintiff that has to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order VII rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaintiff is wholly immaterial. It is only if the averments in the plaintiff ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaintiff can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial. (para 5)

**Question-** Whether Counter-claim filed after framing of issues ?

➔ Order 8 Rule 6-a CPC

**In *Vijay Prakash Jarath vs. Tej Prakash Jarath*, 2016 (11) SCC 800.**

Head Note-

Code of Civil Procedure, 1908 (5 of 1908), Order 8, Rule 6-A – Counter-claim filed after framing of issues – Whether acceptable – Counter-claim filed by Defendant after framing of issues accepted by Trial Court – High Court holding that said Counter-claim was not acceptable by relying upon decision in Rohit Singh’s case, 2006 (12) SCC 734 – Held, decision in Rohit Singh’s case distinguishable from instant case – Evidence and arguments from both sides were completed and case was reserved for Judgment on one occasion in Right Singh’s case, whereas, in instant case, Plaintiff’s evidence had only commenced and was not concluded and Defendant’s evidence was yet to commence – Cause of action for filing of Counter-claim arose much before filing of Written Statement by Defendant as contemplated in Rule 6-A(1) of Order 8 – Held, no serious prejudice or irreparable loss to be caused by Plaintiff by adjudication of Counter-claim – Consequently, Order of Trial Court restored and Order of High Court, set aside – Appeal allowed.

Exceptions and Considerations :-

- The courts have recognized that there may be exceptions where a counter claim can be filed even after the written statement, such as if the cause of action for the counter claim arose after the written statement was filed but before the time limit for filing the defense expired. [[Sugesan and Co. Pvt. Ltd. , Madras VS Hindustan Machine Tools Ltd. , lamp Division, Hyderabad - Andhra Pradesh](#), AIR 2004 AP 428.

- The courts will also consider the specific facts and circumstances of each case, such as the reason for delay, prejudice to the opposing party, and whether allowing the counter claim would promote the interests of justice [[Ashok Kumar Kalra VS Wing CDR Surendra Agnihotri - Supreme Court](#)], 2020 (2) SCC 394.

**Question-** Whether validity of a will if one portion of the bequeathed property gifted later on ?

→ Will

In *Madhuri Ghosh & Anr vs Debobroto Dutta & Anr*, 2016 (10) SCC 805.

In this case Supreme Court laid down the legal principle that- if there is a clear conflict between different parts of a will regarding the same property, the earlier disposition of

absolute title should prevail over later directions of disposition. This means that if the testator has given an absolute interest in the property to one person in an earlier part of the will, any subsequent bequest that conflicts with this earlier disposition would be considered invalid. Additionally, if a testator has given a restricted or limited right in his property to his widow, it is possible for the testator to bequeath the property after the death of his wife in the same will. This implies that if the testator has given a restricted right to his widow and later bequeaths the property to someone else, it would be considered valid. (para 13)

**Question-** Determining the validity and absolute nature of a sale ?

→ Article 134 Limitation Act, 1963.

In *United Finance Corporation v. M.S.M. Haneefa (Dead) through Legal Representatives*, (2017) 3 SCC 123.

The Supreme Court said- an application for delivery of possession by a purchaser of immovable property at a sale in execution of a decree has to be filed within a period of one year from the date when the sale becomes absolute. In Article 134 of the Limitation Act, the legislature has consciously adopted the expression “when the sale becomes absolute” and not when the sale was confirmed. (para 16, 17)

**Question-** Disposal of suit on preliminary issues ?

→ Order 14 Rule 2 CPC.

In *Kuldeep Singh Pathania vs. Bikram Singh Jaryal*, AIR 2017 SUPREME COURT 593.

Head Note:-

→ *Representation of the People Act, 1951 – Section 81, Section 82, Section 86(1), Section 100, Section 100(1)(d)(iii), Section 117 – Code of Civil Procedure, 1908 – Order VII Rule 11(a), Order XIV Rule 2(2) – Non-disclosure of cause of action – Dismissal of petition - High Court dismissed petition filed by Petitioner/Appellant under Section 100(1)(d)(iii) of Act based on findings on preliminary issues that election petition lacked*

*in material facts as required under Section 83(1)(a) of Act and as such, did not disclose any cause of action - Court Held – High Court committed mistake, as four out of six issues settled are taken as preliminary issues – Merely because it is trial on preliminary issues at stage of Order XIV of CPC, scope does not change or expand – Issue relates to enquiry under Order VII Rule 11(a) of CPC and hence, there is no question of preliminary issue being tried under Order XIV Rule 2(2) of CPC – Scope of enquiry at that stage has to be limited only to pleadings of Plaintiff, neither written statement nor averments, if any, filed by opposite party for rejection under Order VII Rule 11(a) of CPC or any other pleadings of Respondents can be considered for that purpose – Order passed by High Court is set aside and election petition is remitted to High Court to try it on merits expeditiously – Appeal allowed.*

The Supreme Court said- Order XIV Rule 2 provides for disposal of a suit on a preliminary issue and under sub-Rule (2) of Rule 2, if the court is of opinion that a case or part thereof can be disposed of on an issue of law only, it may try that issue first, in case it relates to jurisdiction of the court or bar to entertaining the suit. After the 1976 amendment, the scope of a preliminary issue under Order XIV Rule 2(2) is limited only to two areas, one is jurisdiction of the court, and the other, bar to the suit as created by any law for the time being in force.

The High Court committed a mistake in the present case, since four out of the six issues settled were taken as the preliminary issues. Two such issues actually are relatable only to Order VII Rule 11 of the Code, in the sense those issues pertained to the rejection at the institution stage for lack of material facts and for not disclosing a cause of action. Merely because it is a trial on preliminary issues at the stage of Order XIV, the scope does not change or expand. The stage at which such an enquiry is undertaken by the court makes no difference since an enquiry under Order VII Rule 11(a) of the Code can be taken up at any stage.

Thus, for an enquiry under Order VII Rule 11 (a), only the pleadings of the plaintiff-petitioner can be looked into even if it is at the stage of trial of preliminary issues under Order XIV Rule 2(2). But the entire pleadings on both sides can be looked into under Order XIV Rule 2(2) to see whether the court has jurisdiction and whether there is a bar for entertaining the suit. (para 6, 7, 8 respectively)

## CONCLUSION

There are a variety of latest trends in civil litigation that judicial officers need to be aware of. From the rise of alternative dispute resolution to the increased attention on environmental litigation, these trends are shaping the landscape of civil litigation today and will continue to do so in the future. It is crucial for judicial officers to stay up-to-date on these trends in order to effectively navigate the complexities of modern civil litigation.

It is also important to note the evolution of the role of the judges in civil litigation, as technology and other trends continue to impact the field. As the legal framework changes, judicial officers will need to adapt and develop new skills to remain effective.

Overall, it is clear that the world of civil litigation is constantly evolving, and staying informed about the latest trends is essential for success. As may be seen from the foregoing review there has been change in the legal system but it has been slow and a gradual process, however pace of change in technology, pace of social change and maturity of the Indian economy are pushing the system to respond faster. We need to consider what major changes in the near future can be made that will help us to deal with these major trends.