

A STUDY ON ANALYSE FIRST APPEAL UNDER C.P.C

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ABSTRACT

Sometimes First Appeal is provided to the District Judge or the High Court under other Acts like appeal under Section 22 of U.P. Rent Control Act (U.P. Act no. 13 of 1972), before the District Judge against order passed under Section 21 of the Act on the application of landlord for eviction / release of the tenanted building on the ground of bonafideneed. Section 30 Workmen's Compensation Act provides appeal to the High Court against certain orders of Commissioner but only on question of law. First appeal to the High Court is provided under Section 173 of Motor Vehicles Act against orders passed by District Judge/Additional District Judge for compensation in case of death or injury under the same Act. Against ex-parte decree in a suit restoration application may be filed under Order 9 Rule 13 and appeal may also be preferred. Both the remedies may be pursued simultaneously. Even if restoration application is rejected, regular appeal will have to be decided or merit but the point that suit. Appeal against Preliminary and Final Decrees:

In certain suits, two decrees are passed, one is preliminary and the other is final, like partition suit, in which, in the preliminary decree shares of the parties are determined and in final decree actual partition is done by metes and bounds. Appeal is provided against both the decrees i.e. preliminary as well as final. However, if against the preliminary decree appeal is

not filed then its correctness cannot be questioned in an appeal which is preferred against final decree as provided under Section 97 C.P.C.

KEY WORDS - FIRST APPEAL, JURISDICTION, APPEAL, DECREE, EVIDENCE

INTRODUCTION

Against decree, as defined under Section 2(2), regular First Appeal is provided under Section 96, C.P.C. Normally suit concludes by pronouncement of (final) judgment under Order 20 Rule 1. (Such judgment in view of its definition given under Section 2(10) means the statement given by the Judge on the grounds of the decree.) Thereafter, by virtue of Order 20 Rules 6 and 7 the decree shall be drawn which shall agree and be in accordance with the judgment and shall be signed by the judge on being satisfied about its correctness as such. The decree shall bear date, the day on which the judgment was pronounced (even though its preparation and drawing up may take some time, within 15 days as per Order 20 Rule 6-A). The main ingredient of the decree is operative portion of the judgment. According to Order 20 Rule 6 decree shall contain particulars of the claim and shall specify clearly the relief granted or other determination of the suit. Amount of costs are also to be stated therein. (Rules 6, 6-A and 7 of order 20 quoted at the end) Section 2(2), 2(9) and Section 96 C.P.C. are quoted below: "2 (2) "Decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include-

- a) any adjudication from which an appeal lies as an appeal from an order, or
- (b) any order of dismissal for default.

2 (9) "Judgment" means the statement given by the Judge on the grounds of a decree or order."

96. Appeal from original decree. - (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed ex parte.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties. (4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Court of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed (ten) thousand rupees. The aim is to know the procedure of First appeal in CPC. To Recommend the suggestion to control the black holes in First appeal

METHODS AND MATERIALS

THIS ARTICLE IS ENTIRELY BASED ON SECONDARY SOURCES OF DATA.

1. ARTICLES
2. BOOKS
3. NEWSPAPER
4. JOURNALS

Adjudication against which regular first appeal does not lie:

- a. Dismissal of suit in default
- b. Determination of any question within Section 47 [prior to the amendment of 1976-77 against such determination regular first appeal was maintainable as it was included in the definition of decree under Section 2(2)]
- c. Decree passed by the Court with the consent of the parties.
- d. From a decree in any suit of the nature cognizable by JSCC when the amount or valuation of the subject matter of the suit does not exceed Rs. 10,000/- except on a question of law.
- e. Against decree passed by the JSCC in view of Section 7, through which Section 96 relating to appeal is not extended to courts constituted under Provincial Small Causes Courts Act, 1887. Section 25 of the PSCC Act provides revision against decree passed by the JSCCs on a question of law.

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- e. Against decree passed by the JSCC in view of Section 7, through which Section 96 relating

to appeal is not extended to courts constituted under Provincial Small Causes Courts Act, 1887. Section 25 of the PSCC Act provides revision against decree passed by the JSCCs on a question of law. Against certain orders passed in a suit before its final decision also appeal is provided under Section 104 read with Order 43, Rule 1 C.P.C. These appeals in the District Courts are called Miscellaneous Appeals and in Allahabad High Court as First Appeals from Orders (F AFO). Section 104 specifically provides Miscellaneous Appeals against orders granting compensatory costs in respect of false or vexatious claims or defences (Section 35-A), an order under Section 91 or 92 of C.P.C. refusing leave to institute a suit in respect of public nuisance and other wrongful acts affecting public; and public charities, an order under Section 95 C.P.C regarding compensation for obtaining arrest, attachment or injunction on insufficient grounds or against certain orders imposing fine or directing the arrest or detention in civil prison. Thereafter, under Section 104 (1)(i) C.P.C. it is provided that miscellaneous appeals may also be filed against those order which under the rules are made appealable. This refers to Order 43, Rule 1 C.P.C. under which 18 types of orders are made appealable (some orders which were earlier appealable, were deleted from Order 43 Rule C.P.C. through amendment by Act No. 104 of 1976 w.e.f. 1.2.1977, hereinafter referred to as amendment of 1976-77).

Under C.P.C. third type of appeal is provided under Order 21, Rule 103 by virtue of which orders passed on the applications for dispossession of third party in execution of decree have been conferred the status of decree and made appealable. The rule is quoted below:-

R0.21., 103

“Where any application has been adjudicated upon under Rule 98 or Rule 100, the order made thereon shall have the same force and be subject to the same condition as to an appeal or otherwise as if it were a decree”.

Rules 98 to 103 were substituted through amendment of 1976- 77, prior to that such types of orders were not appealable but subject to the result of the suit.

Similar is the position under O. 21 R. 58 (4) in respect of attachment.

Appeals under, other Acts

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need. Section 30 Workmen's Compensation Act provides appeal to the High Court against certain orders of Commissioner but only on question of law. First appeal to the High Court is provided under Section 173 of Motor Vehicles Act against orders passed by District Judge/Additional District Judge for compensation in case of death or injury under the same Act.

2. Right of Appeal vested right Right of appeal is vested right and accrues on the date on which first proceedings (suit, application, objection etc.) are initiated. If the right of appeal is taken away or restricted thereafter, it does not affect right of appeal in respect of pending proceedings, unless expressly so expressed vide *Videocon v. SEBI* AIR 2015 SC 1042. However this principle does not apply to revision.

3. Appeal, statutory right, can be made conditional by Statute: In *Ganga Bai v. Vijay Kumar*, AIR 1974 SC 1126 it has been held that suit is inherent, general or common law right and it need not be provided by any statute, however, appeal is a statutory right and is maintainable only when some statute provides the remedy of appeal. Following this authority it has been held in *Gujarat Agro Industry v. Municipal Corporation Ahmadabad* AIR 1999 SC 1818 that statute providing right of appeal can make the right conditional like deposit of tax or its part in case of appeal against assessment/ imposition of tax. Right of appeal under Section 96 C.P.C. is not conditional. Accordingly admission of such appeal cannot be conditional e.g. it cannot be ordered along with admission of appeal that in case certain amount is not deposited within certain time order of admission of appeal shall stand withdrawn or recalled vide *Management of M/s Devi Theatre v. Vishwanath Raju* AIR 2004SC332 and *G.L. Vijain v. K. Shankar* AIR 2007 SC 1103 (Such condition may be attached with stay order.)

4. Appeal against Preliminary and Final Decrees: In certain suits, two decrees are passed, one is preliminary and the other is final, like partition suit, in which, in the preliminary decree shares of the parties are determined and in final decree actual partition is done by metes and bounds. Appeal is provided against both the decrees i.e. preliminary as well as final. However, if against the preliminary decree appeal is not filed then its correctness cannot be questioned in an appeal which is preferred against final decree as provided under Section 97 C.P.C.

Against ex-prate decree in a suit restoration application may be filed under Order 9 Rule 13 and appeal may also be preferred. Both the remedies may be pursued simultaneously. Even if restoration application is rejected, regular appeal will have to be decided on merit but the

point that suit was wrongly decided *ex parte* as defendant had sufficient cause for non appearance would no more be open in appeal vide *Bhanu Kumar Jain v. Archana Kumar* AIR 2005 SC 626 (3 judges) However, if restoration is allowed then appeal becomes infructuous as the decree against which it was passed having been set aside does not remain in existence. If appeal is disposed of first the restoration application becomes infructuous as the *ex-parte* decree sought to be set aside decree of appeal. Explanation to Order 9 Rule 13 provides as under:

“Explanation.-Where there has been an appeal against a decree passed *ex parte* under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside that *ex parte* decree.”

It has been held by the Supreme Court in *Shyam Sunder Sharma v. Pannalal Jaiswal* AIR 2005 SC 226 (3 judges) that even if the appeal is dismissed in default or as barred by time, restoration application in suit becomes infructuous and it is only and only withdrawal of appeal which keeps the restoration application alive and maintainable.

Appeal against decree, challenge to other orders:

"Section. 105. Other orders .-(1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

RECOMMENDATIONS

The discretion given to the appellate Court by Order 41, Rule 27 to receive & admit additional evidence is not an arbitrary one, but is a judicial one circumscribed by the limitations specified in that rule. If the additional evidence is allowed to be adduced contrary to the principles governing the reception of such evidence, it will be a case of improper exercise of discretion, & the additional evidence so brought on the record will have to be ignored & the case decided as if it is non-existent. The legitimate occasion for the application of Order 41, Rule 27 is when, on examining the evidence as it stands, some inherent lacuna or defect becomes apparent, not where a discovery is made, outside the Court, of fresh evidence & the application, is made to import it. The true test, therefore, is 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. Where the first appellate Court,

admitted additional evidence before examination of the evidence on the record & consequently before reaching a decision that the evidence as it stood disclosed a lacuna which the Court required to be filled up for pronouncing its judgment:

CONCLUSION

Order 41 Rule 31 is quoted below:

"31. Contents, date and signature of judgment. - The judgment of the Appellate Court shall be in writing and shall state-

(a) the 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) and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein." This is an area which requires special care and attention.

Sometimes judges, even High Court judges, ignore the requisite requirements. In the following cases Supreme Court set aside the judgments of different High Courts passed in appeals U/s 96 CPC on the grounds that evidence had not been reassessed and points for determination were not framed. The matters were Supreme Court in *Madina Begam v. Shiv Murti Prasad Pandey* AIR 2016 SC 3554 (paras 24 to 26) after placing reliance upon *Vinod Kumar v. Gangadhar* 2015 (1) SCC 391 wherein reference had been made to large number of decisions, held that what the High Court had done was impermissible and it ought to have decided all the issues/ points involved. The Supreme Court after reversing the judgment of the High Court on question of limitation had to remand the matter to the High Court for decision of appeal on other points, which would not have been required if High Court had decided all the points.

An appeal may be preferred against the decree without filing a copy of the decree and in such a case the copy made available to the party by the Court shall for the purposes of rule 1 of Order XLI be treated as the decree. But as soon as the decree is drawn, the judgment shall cease to have the effect of a decree for the purposes of execution or for any other purpose. 7.

Date of decree. - The decree shall bear the day on which the judgment was pronounced, and when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree."

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