

THE CODE OF CIVIL PROCEDURE, 1908

The Code of Civil Procedure (CPC) is an essential legislation that regulates the procedures and practices for civil courts in India.

Summary

The Code of Civil Procedure (CPC) is a comprehensive legislation that governs the procedures and practices followed by civil courts in India. It was enacted in 1908 and has undergone several amendments since then. The act lays down the rules and procedures that must be followed by courts while hearing civil suits, execution of decrees, and appeals. It also lays down the rules of jurisdiction, the powers of courts, and the processes for enforcing judgments. The CPC is considered to be one of the most significant pieces of legislation in India, as it governs the civil justice system in the country.

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ANNEXURE I

THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 1976

PRELIMINARY

Section 1: Short title, commencement and extent.

- (1) This Act may be cited as the Code of Civil Procedure, 1908.
- (2) It shall come into force on the first day of January, 1909.
- (3) It extends to the whole of India except -
 - (a) the State of Jammu and Kashmir;
 - (b) the State of Nagaland and the tribal areas:

Provided that the State Government concerned may, by notification in the Official Gazette, extend the provisions of this Code or any of them to the whole or part of the State of Nagaland or such tribal areas, as the case may be, with such supplemental, incidental or consequential modifications as may be specified in the notification.

Explanation. - In this clause, "tribal areas" means the territories which, immediately before the 21st day of January, 1972, were included in the tribal areas of Assam as referred to in paragraph 20 of the Sixth Schedule to the Constitution.

- (4) In relation to the Amindivi Islands, and the East Godavari, West Godavari and Visakhapatnam Agencies in the State of Andhra Pradesh and the Union Territory of Lakshadweep, the application of this Code shall be without prejudice to the application of any rule or regulation for the time being in force

in such Islands, Agencies or such Union Territory, as the case may be, relating to the application of this Code.

Code of Civil Procedure, 1908

(1) This law is called the Code of Civil Procedure, 1908.

(2) It started being effective on January 1, 1909.

(3) It applies to all of India except for:

(a) The State of Jammu and Kashmir;

(b) The State of Nagaland and certain tribal areas:

However, the State Government can announce in the Official Gazette that this law or parts of it will apply to Nagaland or those tribal areas, with any necessary changes.

Explanation. - "Tribal areas" here means the regions that were considered tribal areas of Assam before January 21, 1972, as mentioned in the Sixth Schedule of the Constitution.

(4) For the Amindivi Islands, East Godavari, West Godavari, and Visakhapatnam Agencies in Andhra Pradesh, and the Union Territory of Lakshadweep, this law applies along with any existing rules or regulations in those areas.

Explanation using Example

Example 1:

Ravi, a resident of Delhi, wants to file a civil lawsuit against his neighbor for encroaching on his property. He consults a lawyer who informs him that the legal procedures for filing such a lawsuit are governed by the Code of Civil Procedure, 1908. The lawyer explains that this Act provides the framework for civil litigation in India, including how to file a lawsuit, the jurisdiction of courts, and the procedures to be followed during the trial. Since Ravi's case is in Delhi, the Code of Civil Procedure, 1908, is fully applicable.

Example 2:

Meena, who lives in a tribal area in Nagaland, wants to file a civil suit regarding a land dispute. She learns that the Code of Civil Procedure, 1908, does not automatically apply to her area. However, the State Government of Nagaland

has issued a notification in the Official Gazette extending the provisions of the Code to her area with some modifications. Meena's lawyer advises her to follow the modified procedures as specified in the notification for her civil suit.

Example 3:

Arjun, a resident of the Union Territory of Lakshadweep, is involved in a civil dispute over a contract. He is informed that while the Code of Civil Procedure, 1908, applies to Lakshadweep, there are also specific local rules and regulations that must be followed. Arjun's lawyer helps him navigate both the Code and the local regulations to ensure that his case is properly filed and heard in the local court.

Example 4:

Sita, who lives in the East Godavari district of Andhra Pradesh, wants to file a civil suit for damages caused by a breach of contract. She learns that the Code of Civil Procedure, 1908, applies to her district. However, there are additional local rules in force that she must comply with. Sita's lawyer explains that while the general procedures of the Code will guide her case, she must also adhere to the specific local rules applicable to her district.

Example 5:

Vikram, a resident of Mumbai, wants to understand the historical context of the Code of Civil Procedure, 1908. His lawyer explains that the Act came into force on January 1, 1909, and was designed to standardize civil court procedures across India. The lawyer also mentions that while the Act extends to the whole of India, it originally excluded Jammu and Kashmir, Nagaland, and certain tribal areas, although these regions could adopt the Code through state notifications with necessary modifications.

Section 2: Definitions.

In this Act, unless there is anything repugnant in the subject or context, -

(1) "Code" includes rules;

(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.

Explanation. - A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;

(3) "decree-holder" means any person in whose favour a decree has been passed or an order capable of execution has been made;

(4) "district" means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a "District Court"), and includes the local limits of the ordinary original civil jurisdiction of a High Court;

(5) "foreign Court" means a Court situate outside India and not established or continued by the authority of the Central Government;

(6) "foreign judgment" means the judgment of a foreign Court;

(7) "Government Pleader" includes any officer appointed by the State Government to perform all or any of the functions expressly imposed by this Code on the Government Pleader and also any pleader acting under the directions of the Government Pleader;

(7A) "High Court" in relation to the Andaman and Nicobar Islands, means the High Court in Calcutta;

(7B) "India", except in sections 1, 29, 43, 44, 44A, 78, 79, 82, 83 and 87A, means the territory of India excluding the State of Jammu and Kashmir;

(8) "Judge" means the presiding officer of a Civil Court;

(9) "judgment" means the statement given by the Judge of the grounds of a decree or order;

(10) "judgment-debtor" means any person against whom a decree has been passed or an order capable of execution has been made;

(11) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of

the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued;

(12) "mesne profits" of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession;

(13) "movable property" includes growing crops;

(14) "order" means the formal expression of any decision of a Civil Court which is not a decree;

(15) "pleader" means any person entitled to appear and plead for another in Court, and includes an advocate, a vakil and an attorney of a High Court;

(16) "prescribed" means prescribed by rules;

(17) "public officer" means a person falling under any of the following descriptions, namely: -

(a) every Judge;

(b) every member of an All-India Service;

(c) every commissioned or gazetted officer in the military naval or air forces of the Union * * * while serving under the Government;

(d) Every officer of a court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order, in the Court, and every person especially authorised by a court of Justice to perform any of such duties;

(e) every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

(f) every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

(g) every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue process, or to investigate, or to report on, any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government; and

(h) every officer in the service or pay of the Government, or remunerated by fees or commission for the performance of any public duty;

(18) "rules" means rules and forms contained in the First Schedule or made under section 122 or section 125;

(19) "share in a corporation" shall be deemed to include stock, debenture stock, debentures or bonds; and

(20) "signed", save in the case of a judgment or decree, includes stamped.

Simplified act

In this Act, unless it clearly means something else, -

(1) "Code" includes rules;

(2) "decree" means the official decision of a court that settles the rights of the parties involved in a case. It can be either preliminary (not final) or final. It includes the rejection of a complaint and decisions under section 144, but does not include:

(a) any decision that can be appealed as an order, or

(b) any order dismissing a case for lack of action.

Explanation. - A decree is preliminary when more steps are needed to finish the case. It is final when it completely resolves the case. It can be partly preliminary and partly final;

(3) "decree-holder" means anyone who has received a decree in their favor or an order that can be enforced;

- (4) "district" means the area covered by the main Civil Court of original jurisdiction (called a "District Court"), and includes areas under the original civil jurisdiction of a High Court;
- (5) "foreign Court" means a court located outside India and not established by the Central Government;
- (6) "foreign judgment" means the judgment given by a foreign Court;
- (7) "Government Pleader" includes any officer appointed by the State Government to perform duties assigned to the Government Pleader and any pleader acting under their direction;
- (7A) "High Court" in relation to the Andaman and Nicobar Islands, means the High Court in Calcutta;
- (7B) "India", except in sections 1, 29, 43, 44, 44A, 78, 79, 82, 83 and 87A, means the territory of India excluding the State of Jammu and Kashmir;
- (8) "Judge" means the person in charge of a Civil Court;
- (9) "judgment" means the statement given by the Judge explaining the reasons for a decree or order;
- (10) "judgment-debtor" means anyone against whom a decree has been passed or an order that can be enforced has been made;
- (11) "legal representative" means a person who legally represents the estate of a deceased person, including anyone who deals with the estate of the deceased and anyone who inherits the estate when a party involved in a case dies;
- (12) "mesne profits" of property means the profits that someone wrongfully possessing the property actually received or could have received with reasonable effort, including interest on those profits, but not including profits from improvements made by the wrongful possessor;
- (13) "movable property" includes growing crops;
- (14) "order" means the official decision of a Civil Court that is not a decree;
- (15) "pleader" means anyone allowed to appear and argue for someone else in Court, including advocates, vakils, and attorneys of a High Court;
- (16) "prescribed" means set by rules;

(17) "public officer" means a person in any of the following roles:

(a) every Judge;

(b) every member of an All-India Service;

(c) every commissioned or gazetted officer in the military, naval, or air forces of the Union while serving under the Government;

(d) Every officer of a court of Justice whose duty it is to investigate or report on any matter of law or fact, make or keep any document, manage any property, execute any judicial process, administer any oath, interpret, or maintain order in the Court, and anyone specially authorized by a court to perform any of these duties;

(e) anyone who holds an office that allows them to place or keep someone in confinement;

(f) every Government officer whose duty it is to prevent crimes, report crimes, bring offenders to justice, or protect public health, safety, or convenience;

(g) every officer whose duty it is to manage, receive, keep, or spend any property on behalf of the Government, make any survey, assessment, or contract on behalf of the Government, execute any revenue process, investigate or report on any matter affecting the Government's financial interests, make or keep any document related to the Government's financial interests, or prevent any law violations that protect the Government's financial interests; and

(h) every officer in the service or pay of the Government, or paid by fees or commission for performing any public duty;

(18) "rules" means rules and forms contained in the First Schedule or made under section 122 or section 125;

(19) "share in a corporation" includes stock, debenture stock, debentures, or bonds; and

(20) "signed", except in the case of a judgment or decree, includes stamped.

Explanation using Example

Example 1:

Scenario: Ramesh files a lawsuit against Suresh for the recovery of a loan amounting to ₹5,00,000.

Application of Definitions:

Decree: The court issues a decree in favor of Ramesh, stating that Suresh must repay the loan amount with interest. This decree conclusively determines the rights of Ramesh and Suresh regarding the loan dispute.

Decree-holder: Ramesh becomes the decree-holder as the decree is in his favor.

Judgment-debtor: Suresh is the judgment-debtor as the decree is against him.

Judgment: The judge provides a detailed statement explaining the reasons for the decree, which is the judgment.

Order: If the court issues an interim order directing Suresh to deposit a part of the loan amount in the court until the final decision, this order is not a decree but a formal expression of the court's decision.

Example 2:

Scenario: Priya, a resident of Mumbai, files a lawsuit in the District Court of Mumbai against a foreign company based in the USA for breach of contract.

Application of Definitions:

District: The District Court of Mumbai has jurisdiction over the local limits of Mumbai.

Foreign Court: If the foreign company had previously obtained a judgment from a court in the USA, that court is considered a foreign court.

Foreign Judgment: The judgment obtained by the foreign company from the USA court is a foreign judgment.

Government Pleader: If the State Government appoints an officer to represent Priya in the lawsuit, that officer is the Government Pleader.

High Court: If the case is appealed, it may go to the High Court of Bombay, which has ordinary original civil jurisdiction over Mumbai.

Example 3:

Scenario: An agricultural land dispute arises between two farmers, Raj and Mohan, over the ownership of a piece of land in Punjab.

Application of Definitions:

Mesne Profits: If Raj is found to be in wrongful possession of the land, the court may order him to pay mesne profits to Mohan. This includes the profits Raj earned or could have earned from the land with ordinary diligence, excluding any improvements made by Raj.

Movable Property: If the dispute involves crops growing on the land, these crops are considered movable property.

Legal Representative: If Raj passes away during the lawsuit, his son, who inherits his estate, becomes his legal representative and continues the lawsuit on his behalf.

Example 4:

Scenario: A public officer, Mr. Sharma, is accused of misusing his position to benefit a private company.

Application of Definitions:

Public Officer: Mr. Sharma, being an officer of the Government whose duty is to prevent offences and protect public interests, falls under the definition of a public officer.

Order: If the court issues an order suspending Mr. Sharma from his duties pending investigation, this order is a formal expression of the court's decision but not a decree.

Prescribed: The procedures followed in the investigation and suspension of Mr. Sharma are prescribed by the rules under the Code of Civil Procedure.

Example 5:

Scenario: A company in Delhi issues debentures to raise capital, and there is a dispute over the ownership of these debentures.

Application of Definitions:

Share in a Corporation: The debentures issued by the company are included in the definition of a share in a corporation.

Signed: If the debentures are stamped instead of being physically signed, they are still considered signed under the Code of Civil Procedure.

Section 3: Subordination of Courts.

For the purposes of this Code, the District Court is subordinate to the High Court, and every Civil Court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court and District Court.

Simplified act

The District Court is under the authority of the High Court.

Any Civil Court that is lower in rank than the District Court is also under the authority of the High Court and the District Court.

Courts that handle minor cases (Courts of Small Causes) are also under the authority of the High Court and the District Court.

Explanation using Example

Example 1:

Ravi files a civil lawsuit in the Small Causes Court in Mumbai for a minor property dispute. The Small Causes Court rules in favor of Ravi. However, the defendant, Suresh, is not satisfied with the judgment and decides to appeal. According to Section 3 of The Code of Civil Procedure 1908, the Small Causes Court is subordinate to the District Court and the High Court. Therefore, Suresh can appeal the decision in the District Court of Mumbai. If he is still not satisfied with the District Court's decision, he can further appeal to the High Court of Bombay.

Example 2:

Priya has a case regarding a contractual dispute that she initially filed in the District Court of Delhi. The District Court ruled against her, and she believes the judgment was incorrect. According to Section 3 of The Code of Civil Procedure 1908, the District Court is subordinate to the High Court. Therefore, Priya can appeal the District Court's decision in the High Court of Delhi. If the High Court also rules against her, she may have the option to take her case to the Supreme Court of India, depending on the specifics of her case and the legal grounds for further appeal.

Section 4: Savings.

(1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.

(2) In particular and without prejudice to the generality of the proposition contained in sub-section (1), nothing in this Code shall be deemed to limit or otherwise affect any remedy which a landholder or landlord may have under any law for the time being in force for the recovery of rent of agricultural land from the produce of such land.

Simplified act

(1) Unless there is a specific rule that says otherwise, this Code does not change or interfere with any special or local laws that are currently in effect. It also does not change any special powers or procedures given by other laws that are currently in effect.

(2) Specifically, and in addition to what is mentioned in section (1), this Code does not change or interfere with any rights that a landowner or landlord has under current laws to collect rent from agricultural land based on the produce from that land.

Explanation using Example

Example 1:

Scenario: A tenant in a rural area of Maharashtra has not paid rent for the agricultural land he is using. The landlord wants to recover the unpaid rent.

Application of Section 4: Under Section 4(2) of the Code of Civil Procedure, 1908, the landlord can use the specific provisions of the Maharashtra Tenancy and Agricultural Lands Act, 1948, which allows landlords to recover rent directly from the produce of the land. This special law takes precedence over the general procedures outlined in the Code of Civil Procedure, ensuring that the landlord's remedy for recovering rent is not limited or affected by the general code.

Example 2:

Scenario: A local municipal corporation in Tamil Nadu has a special procedure for handling disputes related to property taxes, which is different from the general procedures in the Code of Civil Procedure, 1908.

Application of Section 4: According to Section 4(1) of the Code of Civil Procedure, 1908, the special procedure prescribed by the local municipal corporation for resolving property tax disputes will not be overridden by the general procedures in the Code. This means that the municipal corporation can continue to use its special procedures for resolving such disputes, ensuring that local laws and special jurisdictions are respected and maintained.

Section 5: Application of the Code to Revenue Courts.

(1) Where any Revenue Courts are governed by the provisions of this Code in those matters of procedure upon which any special enactment applicable to them is silent, the State Government * * * may, by notification in the Official Gazette, declare that any portions of those provisions which are not expressly made applicable by this Code shall not apply to those Courts, or shall only apply to them with such modifications as the State Government * * * may prescribe.

(2) "Revenue Court" in sub-section (1) means a Court having jurisdiction under any local law to entertain suits or other proceedings relating to the rent, revenue or profits of land used for agricultural purposes, but does not include a Civil Court having original jurisdiction under this Code to try such suits or proceedings as being suits or proceedings of a civil nature.

Simplified act

(1) If Revenue Courts follow the rules in this Code for procedures where no special law applies, the State Government can announce in the Official Gazette that some parts of these rules will not apply to these courts, or will apply with changes as decided by the State Government.

(2) A "Revenue Court" in the first part means a court that handles cases about rent, revenue, or profits from agricultural land under local laws. It does not include a Civil Court that deals with such cases under this Code as civil cases.

Explanation using Example

Example 1:

Scenario: A farmer, Mr. Sharma, has a dispute with his tenant over unpaid rent for agricultural land.

Application of Section 5: Mr. Sharma files a suit in the Revenue Court to recover the unpaid rent. The Revenue Court is governed by a special enactment

that does not specify the procedure for certain aspects of the case, such as the timeline for filing evidence. In this situation, the provisions of the Code of Civil Procedure, 1908, will apply to fill in the procedural gaps. However, the State Government has issued a notification in the Official Gazette stating that certain provisions of the Code will not apply to Revenue Courts or will apply with modifications. For instance, the notification might state that the timeline for filing evidence in Revenue Courts is extended by 15 days compared to Civil Courts. Therefore, the Revenue Court will follow the modified timeline as prescribed by the State Government.

Example 2:

Scenario: Ms. Gupta, a landowner, wants to file a suit against the local government for incorrect revenue assessment on her agricultural land.

Application of Section 5: Ms. Gupta approaches the Revenue Court to challenge the revenue assessment. The special enactment governing the Revenue Court does not provide detailed procedures for filing appeals. In this case, the procedures outlined in the Code of Civil Procedure, 1908, will be applicable. However, the State Government has issued a notification stating that the appeal procedures in the Code will apply with certain modifications to Revenue Courts. For example, the notification might specify that appeals in Revenue Courts must be filed within 45 days instead of the 30 days provided in the Code. Ms. Gupta will need to follow this modified timeline for filing her appeal.

Example 3:

Scenario: A group of farmers files a suit in the Revenue Court for the distribution of profits from a jointly cultivated piece of agricultural land.

Application of Section 5: The Revenue Court is responsible for handling disputes related to the profits of agricultural land. The special enactment governing the Revenue Court does not specify the procedure for summoning witnesses. Therefore, the provisions of the Code of Civil Procedure, 1908, will be used to guide the process. However, the State Government has issued a notification stating that the provisions related to summoning witnesses in the Code will apply with modifications. For instance, the notification might state that witnesses in Revenue Courts can be summoned with a shorter notice period than in Civil Courts. The Revenue Court will follow this modified procedure to summon witnesses for the case.

Example 4:

Scenario: Mr. Verma, a tenant, files a suit in the Revenue Court against his landlord for an unfair increase in rent for agricultural land.

Application of Section 5: Mr. Verma's case is heard in the Revenue Court, which is governed by a special enactment that does not cover the procedure for submitting documentary evidence. In this situation, the Code of Civil Procedure, 1908, will apply to fill in the procedural gaps. However, the State Government has issued a notification stating that the provisions of the Code related to documentary evidence will apply with modifications. For example, the notification might specify that documentary evidence in Revenue Courts must be submitted in a specific format or within a different timeframe than in Civil Courts. Mr. Verma will need to comply with these modified requirements when submitting his evidence.

Section 6: Pecuniary jurisdiction.

Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any Court jurisdiction over suits the amount or value of the subject-matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction.

Simplified act

Except where it is specifically stated otherwise, nothing in this document gives any Court the authority to handle cases where the amount or value involved is more than the financial limits of what the Court usually deals with.

Explanation using Example

Example 1:

Ravi wants to file a lawsuit against his neighbor for property damage worth ₹2,00,000. He approaches the Small Causes Court in his city. However, the Small Causes Court has a pecuniary jurisdiction limit of ₹1,00,000. According to Section 6 of The Code Of Civil Procedure 1908, the Small Causes Court cannot take up Ravi's case because the amount exceeds its pecuniary jurisdiction. Ravi will need to file his lawsuit in a higher court that has the jurisdiction to handle cases involving amounts greater than ₹1,00,000.

Example 2:

Meena is involved in a contractual dispute with a company over a sum of ₹50,000. She decides to file a suit in the District Court. The District Court has

a pecuniary jurisdiction limit of ₹5,00,000. Since the amount in dispute is well within the pecuniary limits of the District Court, Meena can proceed with filing her lawsuit there. Section 6 of The Code Of Civil Procedure 1908 ensures that the court has the appropriate jurisdiction to handle her case based on the amount involved.

Section 7: Provincial Small Cause Courts.

The following provisions shall not extend to Courts constituted under the Provincial Small Cause Courts Act, 1887 (9 of 1887) or under the Berar Small Cause Courts Law, 1905, or to Courts exercising the jurisdiction of a Court of Small Causes under the said Act or Law, or to Courts in any part of India to which the said Act does not extend exercising a corresponding jurisdiction that is to say:

- (a) so much of the body of the Code as relates to -
 - (i) suits excepted from the cognizance of a Court of Small Causes;
 - (ii) the execution of decrees in such suits;
 - (iii) the execution of decrees against immovable property;
- (b) the following sections, that is to say, -
 - section 9,
 - sections 91 and 92,
 - sections 94 and 95 so far as they authorize or relate to -
 - (i) orders for the attachment of immovable property,
 - (ii) injunctions,
 - (iii) the appointment of a receiver of immovable property, or
 - (iv) the interlocutory orders referred to in clause (e) of section 94,
 - and sections 96 to 112 and 115.

Simplified act

The following rules do not apply to Courts set up under the Provincial Small Cause Courts Act, 1887, or the Berar Small Cause Courts Law, 1905, or to

Courts that handle small cause cases under these laws, or to Courts in parts of India where these laws do not apply but have similar functions:

(a) Parts of the main legal code that deal with -

(i) cases that Small Cause Courts are not allowed to handle;

(ii) carrying out court orders in those cases;

(iii) carrying out court orders against property that cannot be moved (like land or buildings);

(b) The following sections of the law -

section 9,

sections 91 and 92,

sections 94 and 95, but only the parts that deal with -

(i) orders to take control of property that cannot be moved,

(ii) court orders to do or not do something (injunctions),

(iii) appointing someone to manage property that cannot be moved,

(iv) temporary court orders mentioned in section 94(e),

and sections 96 to 112 and 115.

Explanation using Example

Example 1:

Scenario: Ramesh, a shop owner in Maharashtra, has a dispute with his supplier over a payment of ₹20,000. He decides to file a case in the Provincial Small Cause Court.

Application of Section 7:

Ramesh's case is a small cause suit because it involves a relatively small amount of money.

The provisions of the Code of Civil Procedure, 1908, that relate to suits excepted from the cognizance of a Court of Small Causes, the execution of decrees in such suits, and the execution of decrees against immovable property will not apply to Ramesh's case.

Sections 9, 91, 92, 94, 95, 96 to 112, and 115 of the Code will also not apply to Ramesh's case as it is being heard in a Provincial Small Cause Court.

Example 2:

Scenario: Sita, a resident of Berar, has a legal dispute with her neighbor over the boundary of their properties. She wants to file a suit for an injunction to prevent her neighbor from encroaching on her land.

Application of Section 7:

Since Sita's case involves immovable property and she is seeking an injunction, it cannot be heard by a Court constituted under the Berar Small Cause Courts Law, 1905.

The provisions of the Code of Civil Procedure, 1908, that authorize orders for the attachment of immovable property, injunctions, the appointment of a receiver of immovable property, or interlocutory orders will not apply to her case in a Small Cause Court.

Sita will need to file her case in a regular civil court that has the jurisdiction to handle such matters, as the Provincial Small Cause Courts do not have the authority to deal with cases involving immovable property or injunctions.

Example 3:

Scenario: Mohan, a tenant in a rented apartment in Gujarat, has a dispute with his landlord over the non-return of his security deposit amounting to ₹15,000. He decides to approach the Small Cause Court for resolution.

Application of Section 7:

Mohan's case is a small cause suit because it involves a relatively small amount of money and pertains to a landlord-tenant dispute.

The provisions of the Code of Civil Procedure, 1908, that relate to suits excepted from the cognizance of a Court of Small Causes, the execution of decrees in such suits, and the execution of decrees against immovable property will not apply to Mohan's case.

Sections 9, 91, 92, 94, 95, 96 to 112, and 115 of the Code will also not apply to Mohan's case as it is being heard in a Provincial Small Cause Court.

Section 8: Presidency Small Cause Courts.

Save as provided in sections 24, 38 to 41, 75, clauses (a), (b) and (c), 76, 77, 157 and 158, and by the Presidency Small Cause Courts Act, 1882 (15 of 1882), the provisions in the body of this Code shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras and Bombay:

Provided that -

(1) The High Courts of Judicature at Fort William, Madras and Bombay, as the case may be, may from time to time, by notification in the Official Gazette, direct that any such provisions not inconsistent with the express provisions of the Presidency Small Cause Courts Act, 1882 (15 of 1882), and with such modifications and adaptations as may be specified in the notification, shall extend to suits or proceedings or any class of suits or proceedings in such Court.

(2) All rules heretofore made by any of the said High Courts under section 9 of the Presidency Small Cause Courts Act, 1882 (15 of 1882) shall be deemed to have been validly made.

Simplified act

Except for the rules mentioned in sections 24, 38 to 41, 75, clauses (a), (b), and (c), 76, 77, 157, and 158, and the Presidency Small Cause Courts Act of 1882, the rules in this Code do not apply to any lawsuit or legal proceeding in the Small Cause Courts in Calcutta, Madras, and Bombay:

However -

(1) The High Courts in Fort William (Calcutta), Madras, and Bombay can, from time to time, announce in the Official Gazette that certain rules, which do not conflict with the Presidency Small Cause Courts Act of 1882, and with any changes specified in the announcement, will apply to certain lawsuits or legal proceedings in these Small Cause Courts.

(2) All rules previously made by these High Courts under section 9 of the Presidency Small Cause Courts Act of 1882 are considered to have been validly made.

Explanation using Example

Example 1:

Scenario: Ramesh, a resident of Mumbai, has a dispute with his landlord over a small amount of unpaid rent. The amount in question is Rs. 10,000.

Application of Section 8: Ramesh decides to file a suit in the Small Causes Court in Mumbai. According to Section 8 of the Code of Civil Procedure, 1908, the general provisions of this Code do not apply to suits or proceedings in the Small Causes Courts of Calcutta, Madras, and Bombay, except as provided by specific sections and the Presidency Small Cause Courts Act, 1882.

Outcome: Ramesh's case will be handled under the specific rules and procedures established by the Presidency Small Cause Courts Act, 1882, and any modifications or adaptations notified by the High Court of Judicature at Bombay. This ensures that the process is streamlined and suited to handle small disputes efficiently.

Example 2:

Scenario: Priya, a shop owner in Chennai, has a legal issue with a supplier who failed to deliver goods worth Rs. 15,000. She wants to resolve this matter quickly and decides to approach the Small Causes Court in Chennai.

Application of Section 8: Priya files her suit in the Small Causes Court in Chennai. As per Section 8 of the Code of Civil Procedure, 1908, the general provisions of the Code do not apply to suits or proceedings in the Small Causes Courts of Calcutta, Madras, and Bombay, except for certain sections and the Presidency Small Cause Courts Act, 1882.

Outcome: Priya's case will be governed by the specific rules and procedures of the Presidency Small Cause Courts Act, 1882, and any relevant notifications issued by the High Court of Judicature at Madras. This allows for a quicker resolution of her dispute, tailored to the nature of small claims.

Example 3:

Scenario: Anil, a resident of Kolkata, has a minor financial dispute with his neighbor over a loan of Rs. 5,000. He decides to take the matter to the Small Causes Court in Kolkata.

Application of Section 8: Anil files his suit in the Small Causes Court in Kolkata. According to Section 8 of the Code of Civil Procedure, 1908, the general provisions of this Code do not apply to suits or proceedings in the Small Causes Courts of Calcutta, Madras, and Bombay, except as provided by specific sections and the Presidency Small Cause Courts Act, 1882.

Outcome: Anil's case will be managed under the specific rules and procedures set forth by the Presidency Small Cause Courts Act, 1882, and any modifications or adaptations notified by the High Court of Judicature at Fort William (Kolkata). This ensures that his small claim is handled efficiently and appropriately.

PART I: SUITS IN GENERAL

JURISDICTION OF THE COURTS AND RES JUDICATA

Section 9: Courts to try all civil suits unless barred.

The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation I

A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation II

For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.

Simplified act

The Courts have the authority to handle all civil cases, except for those cases that are specifically or implicitly excluded by law.

Explanation I

A civil case includes any dispute over property or a job position, even if the decision depends on questions about religious practices or ceremonies.

Explanation II

For this section, it doesn't matter if the job mentioned in Explanation I has any fees or if it is tied to a specific location.

Explanation using Example

Example 1:

Scenario: Property Dispute

Mr. Sharma and Mr. Verma are neighbors in a small town in India. Mr. Sharma claims that a portion of Mr. Verma's garden actually belongs to him according to the property documents. Mr. Verma disagrees and refuses to give up the land. Mr. Sharma decides to file a lawsuit to resolve the dispute.

Application of Section 9: Mr. Sharma can file a civil suit in the appropriate civil court because this is a dispute over the right to property, which is a matter of a civil nature. The court has the jurisdiction to try this suit unless there is a specific law that bars the court from hearing this type of case.

Example 2:

Scenario: Dispute Over Religious Office

Ms. Gupta is a member of a temple committee and believes she has the right to be the head priestess based on her family's long-standing tradition. However, another member, Ms. Rao, contests this claim, arguing that the position should be elected by the committee members. Ms. Gupta decides to take the matter to court.

Application of Section 9: Ms. Gupta can file a civil suit in the civil court to contest her right to the office of head priestess. Even though the dispute involves religious rites and ceremonies, it is still considered a suit of a civil nature because it involves the right to an office. The court has the jurisdiction to try this suit unless there is a specific law that bars it.

Example 3:

Scenario: Employment Dispute

Mr. Khan works for a private company and believes he was wrongfully terminated from his job. He wants to challenge his termination and seek compensation for the loss of employment. He decides to file a lawsuit against his employer.

Application of Section 9: Mr. Khan can file a civil suit in the civil court because this is a dispute over employment, which is a matter of a civil nature. The court has the jurisdiction to try this suit unless there is a specific law that bars the court from hearing employment-related cases.

Example 4:

Scenario: Dispute Over Fees for a Religious Office

Mr. Patel is appointed as the caretaker of a local shrine. He claims that he is entitled to certain fees for his services, but the managing committee of the shrine disagrees and refuses to pay him. Mr. Patel decides to take the matter to court.

Application of Section 9: Mr. Patel can file a civil suit in the civil court to claim his fees. According to Explanation II of Section 9, it does not matter whether or not any fees are attached to the office; the court still has jurisdiction to try the suit as it is a matter of a civil nature.

Section 10: Stay of suit.

No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

Explanation

The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action.

Simplified act

No Court shall proceed with the trial of any case if the same issue is already being directly and substantially addressed in a previously started case between the same parties, or between parties who are claiming under the same title, where such a case is still pending in the same or any other Court in India that has the authority to grant the requested relief, or in any Court outside India established or continued by the Central Government with similar authority, or before the Supreme Court.

Explanation

If a case is ongoing in a foreign Court, it does not stop Courts in India from trying a case based on the same issue.

Explanation using Example

Example 1:

Ravi files a lawsuit in the Delhi High Court against Shyam, claiming ownership of a piece of land. While this case is still pending, Shyam files a similar lawsuit in the Mumbai High Court against Ravi, claiming the same piece of land. According to Section 10 of the Code of Civil Procedure 1908, the Mumbai High Court will stay the proceedings of Shyam's lawsuit because the matter in issue (ownership of the land) is already directly and substantially in issue in the previously instituted suit in the Delhi High Court between the same parties.

Example 2:

Anita files a suit in the Bangalore City Civil Court against her business partner, Raj, for breach of contract. While this case is ongoing, Raj files a suit in the Chennai City Civil Court against Anita for the same breach of contract. Under Section 10 of the Code of Civil Procedure 1908, the Chennai City Civil Court will stay the proceedings of Raj's suit because the matter in issue (breach of contract) is already directly and substantially in issue in the previously instituted suit in the Bangalore City Civil Court between the same parties.

Example 3:

Priya files a lawsuit in the Kolkata High Court against her brother, Arjun, for the partition of their ancestral property. While this case is still pending, Arjun files a similar lawsuit in the Hyderabad High Court against Priya for the same partition of the ancestral property. According to Section 10 of the Code of Civil Procedure 1908, the Hyderabad High Court will stay the proceedings of Arjun's lawsuit because the matter in issue (partition of the ancestral property) is already directly and substantially in issue in the previously instituted suit in the Kolkata High Court between the same parties.

Example 4:

Vikram files a suit in the Ahmedabad City Civil Court against his tenant, Ramesh, for eviction due to non-payment of rent. While this case is ongoing, Ramesh files a suit in the Pune City Civil Court against Vikram for wrongful eviction. Under Section 10 of the Code of Civil Procedure 1908, the Pune City Civil Court will stay the proceedings of Ramesh's suit because the matter in issue (eviction due to non-payment of rent) is already directly and substantially in issue in the previously instituted suit in the Ahmedabad City Civil Court between the same parties.

Section 11: Res judicata.

No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I

The expression "former suit" shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.

Explanation II

For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III

The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV

Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V

Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

Explanation VI

Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Explanation VII

The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII

An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.

Simplified act

No Court will handle a case or issue if the same matter has already been directly and significantly dealt with in a previous case between the same parties, or parties connected to them, in a Court that had the authority to decide on the previous case. This applies if the previous case has been heard and finally decided by that Court.

Explanation I

"Former suit" means a case that was decided before the current case, regardless of when it was started.

Explanation II

For this section, a Court's authority is determined without considering any right to appeal its decision.

Explanation III

The matter in question must have been brought up in the previous case by one party and either denied or accepted, clearly or indirectly, by the other party.

Explanation IV

Any issue that should have been used as a defense or attack in the previous case is considered to have been directly and significantly in issue in that case.

Explanation V

Any relief requested in the complaint that was not explicitly granted by the decision is considered to have been refused for the purposes of this section.

Explanation VI

When people genuinely fight for a public right or a shared private right, all interested parties are considered to be claiming under those who are litigating.

Explanation VII

This section also applies to the enforcement of a Court's decision. References to any case, issue, or former case should be understood as references to the enforcement process, questions arising in that process, and a previous enforcement process.

Explanation VIII

An issue that has been heard and finally decided by a Court with limited authority will still be considered resolved in a later case, even if that Court did not have the authority to handle the later case or the case in which the issue was later raised.

Explanation using Example

Example 1:

Ravi and Suresh are neighbors who have a dispute over a piece of land. Ravi files a suit in the District Court claiming ownership of the land. The District Court hears the case, examines the evidence, and finally decides that the land belongs to Suresh. Ravi does not appeal the decision, and it becomes final.

A year later, Ravi files another suit in the same District Court, again claiming ownership of the same piece of land. Under Section 11 of the Code of Civil Procedure, 1908, the court will not entertain Ravi's new suit because the matter of ownership of the land has already been directly and substantially in issue in the former suit between the same parties and has been finally decided by a competent court. This is an application of the principle of res judicata.

Example 2:

Priya and Anil are involved in a legal dispute over the ownership of a family business. Priya files a suit in the High Court claiming that she is the rightful owner of the business. The High Court hears the case and decides in favor of

Anil, stating that he is the rightful owner. Priya does not appeal the decision, and it becomes final.

Later, Priya files a new suit in a lower court, this time claiming that she is entitled to a share of the profits from the business. The lower court will apply Section 11 of the Code of Civil Procedure, 1908, and dismiss Priya's new suit on the grounds of res judicata. The issue of ownership and entitlement to profits was directly and substantially in issue in the former suit and has been finally decided by a competent court.

Example 3:

Sunita and Rajesh are siblings who have a dispute over their deceased father's will. Sunita files a suit in the Family Court claiming that the will is invalid and that she is entitled to a larger share of the inheritance. The Family Court hears the case and decides that the will is valid and that the distribution of the inheritance should proceed as per the will. Sunita does not appeal the decision, and it becomes final.

A few months later, Sunita files another suit in the Family Court, this time claiming that certain assets were not included in the will and should be distributed differently. The Family Court will apply Section 11 of the Code of Civil Procedure, 1908, and dismiss Sunita's new suit on the grounds of res judicata. The validity of the will and the distribution of assets were directly and substantially in issue in the former suit and have been finally decided by a competent court.

Example 4:

A group of residents in a locality files a public interest litigation (PIL) in the High Court against a factory, claiming that it is causing environmental pollution. The High Court hears the case and decides that the factory is not causing any pollution and dismisses the PIL. The decision becomes final as no appeal is filed.

Later, another group of residents from the same locality files a new PIL in the same High Court, raising the same issue of environmental pollution by the factory. The High Court will apply Section 11 of the Code of Civil Procedure, 1908, and dismiss the new PIL on the grounds of res judicata. The issue of environmental pollution by the factory was directly and substantially in issue in the former PIL and has been finally decided by a competent court.

Section 12: Bar to further suit.

Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any Court to which this Code applies.

Simplified act

If a person (plaintiff) is not allowed by the rules to start another lawsuit for a specific reason, they cannot start a lawsuit for that same reason in any court that follows this Code.

Explanation using Example

Example 1:

Ravi files a lawsuit against his neighbor, Suresh, claiming that Suresh has encroached on his property. The court hears the case and rules in favor of Suresh, stating that there is no encroachment. Dissatisfied with the judgment, Ravi decides to file another lawsuit against Suresh on the same grounds of property encroachment. According to Section 12 of The Code of Civil Procedure 1908, Ravi is barred from instituting a further suit on the same cause of action (property encroachment) in any court to which this Code applies. Therefore, Ravi cannot file another lawsuit against Suresh for the same issue.

Example 2:

Meena sues a construction company for damages, claiming that their construction activities have caused cracks in the walls of her house. The court examines the evidence and dismisses Meena's suit, concluding that the construction activities did not cause the damage. Later, Meena gathers new evidence and wants to file another suit against the same construction company for the same cause of action (damages due to construction activities). Under Section 12 of The Code of Civil Procedure 1908, Meena is precluded from instituting a further suit on the same cause of action in any court to which this Code applies. Hence, Meena cannot file another lawsuit for the same issue, even with new evidence.

Section 13: When foreign judgment not conclusive.

A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except -

- (a) where it has not been pronounced by a Court of competent jurisdiction;
- (b) where it has not been given on the merits of the case;
- (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of India in cases in which such law is applicable;
- (d) where the proceedings in which the judgment was obtained are opposed to natural justice;
- (e) where it has been obtained by fraud;
- (f) where it sustains a claim founded on a breach of any law in force in India.

Simplified act

A foreign judgment (a decision made by a court in another country) is final and binding on the issues it decided between the same parties or their representatives, except in the following situations:

- (a) if the judgment was not made by a court that had the proper authority;
- (b) if the judgment was not based on the actual details and evidence of the case;
- (c) if the judgment is clearly based on a wrong understanding of international law or ignores Indian law when it should apply;
- (d) if the process of getting the judgment was unfair or unjust;
- (e) if the judgment was obtained through deceit or lies;
- (f) if the judgment supports a claim that breaks any law currently in force in India.

Explanation using Example

Example 1:

Scenario: Rajesh, an Indian citizen, was involved in a business dispute with John, a U.S. citizen. John filed a lawsuit in a U.S. court, and the court ruled in favor of John, awarding him a significant amount of money. Rajesh did not participate in the U.S. court proceedings.

Application of Section 13:

Clause (a): Rajesh can argue that the U.S. court was not a court of competent jurisdiction if it did not have the authority to adjudicate the matter involving an Indian citizen.

Clause (b): Rajesh can claim that the judgment was not given on the merits of the case if the U.S. court did not thoroughly examine the evidence and arguments.

Clause (c): If the U.S. court's decision was based on an incorrect understanding of international law or refused to recognize Indian law where applicable, Rajesh can challenge the judgment.

Clause (d): Rajesh can argue that the proceedings were opposed to natural justice if he was not given a fair opportunity to present his case.

Clause (e): If Rajesh can prove that the judgment was obtained by fraud, he can contest its conclusiveness.

Clause (f): If the judgment supports a claim that violates any Indian law, Rajesh can argue that it should not be recognized in India.

Example 2:

Scenario: Priya, an Indian resident, was involved in a divorce case with her husband, Anil, who resides in the UK. Anil obtained a divorce decree from a UK court without Priya's knowledge. Priya later found out and wants to challenge the decree in India.

Application of Section 13:

Clause (a): Priya can argue that the UK court was not a court of competent jurisdiction if it did not have the authority to decide on the divorce of an Indian couple.

Clause (b): Priya can claim that the judgment was not given on the merits of the case if the UK court did not consider her side of the story.

Clause (c): If the UK court's decision was based on an incorrect view of international law or refused to recognize Indian matrimonial laws, Priya can challenge the decree.

Clause (d): Priya can argue that the proceedings were opposed to natural justice if she was not given a fair chance to participate in the case.

Clause (e): If Priya can prove that the divorce decree was obtained by fraud, she can contest its validity.

Clause (f): If the decree supports a claim that breaches any Indian law, Priya can argue that it should not be recognized in India.

Section 14: Presumption as to foreign judgments.

The Court shall presume upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction.

Simplified act

If you show the Court a document that looks like an official copy of a foreign judgment, the Court will assume that the judgment was made by a proper and authorized Court.

This assumption will stand unless there is evidence in the record that suggests otherwise.

However, you can challenge this assumption by proving that the foreign Court did not have the authority to make the judgment.

Explanation using Example

Example 1:

Rajesh, an Indian businessman, was involved in a commercial dispute with a company based in the United States. The U.S. court ruled in favor of the American company and issued a judgment against Rajesh. The American company then sought to enforce this judgment in an Indian court to recover the amount owed by Rajesh.

When the American company presented the certified copy of the U.S. court's judgment to the Indian court, the court presumed that the U.S. court had the proper jurisdiction to issue the judgment. Rajesh, however, argued that the U.S. court did not have jurisdiction over him because he did not have sufficient contacts with the United States.

To challenge the presumption, Rajesh provided evidence showing that he had no business operations, assets, or significant interactions in the United States.

Based on this evidence, the Indian court found that the U.S. court lacked jurisdiction and refused to enforce the foreign judgment.

Example 2:

Anita, an Indian resident, was awarded a significant sum of money in a divorce settlement by a court in the United Kingdom. Her ex-husband, who resides in India, refused to comply with the UK court's judgment. Anita decided to enforce the UK judgment in an Indian court to claim her settlement.

Anita presented a certified copy of the UK court's judgment to the Indian court. The Indian court presumed that the UK court had the proper jurisdiction to issue the judgment. Anita's ex-husband contested this by claiming that the UK court did not have jurisdiction over the matter because both parties were Indian citizens and the marriage was solemnized in India.

However, Anita provided evidence that both she and her ex-husband had lived in the UK for several years, and the divorce proceedings were conducted while they were residents there. The Indian court, satisfied with the evidence, upheld the presumption of the UK court's jurisdiction and enforced the foreign judgment in favor of Anita.

PLACE OF SUING

Section 15: Court in which suits to be instituted.

Every suit shall be instituted in the Court of the lowest grade competent to try it.

Section 16: Suits to be instituted where subject-matter situate.

Subject to the pecuniary or other limitations prescribed by any law, suits -

- (a) for the recovery of immovable property with or without rent or profits,
- (b) for the partition of immovable property,
- (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,
- (d) or the determination of any other right to or interest in immovable property,
- (e) for compensation for wrong to immovable property,
- (f) for the recovery of movable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation. - In this section "property" means property situate in India.

Simplified act

Subject to any money limits or other restrictions set by law, lawsuits -

- (a) to get back real estate (land or buildings) with or without rent or profits,
- (b) to divide real estate among owners,
- (c) to deal with mortgages on real estate, whether to foreclose, sell, or redeem,
- (d) to settle any other rights or interests in real estate,
- (e) to get compensation for damage to real estate,
- (f) to get back personal property that has been seized or attached,

must be filed in the Court that has authority over the area where the property is located:

However, a lawsuit to get relief or compensation for damage to real estate held by or for the defendant can be filed either in the Court where the property is located, or in the Court where the defendant lives, does business, or works, if the relief can be fully obtained by the defendant's personal compliance.

Explanation. - In this section, "property" means property located in India.

Explanation using Example

Example 1:

Scenario: Recovery of Immovable Property

Ravi owns a piece of land in Pune, Maharashtra. However, another person, Suresh, has unlawfully occupied this land and refuses to vacate it. Ravi wants to file a suit to recover his property.

Application of Section 16: Ravi must file the suit in the court that has jurisdiction over the area where the land is located, which in this case would be a court in Pune, Maharashtra.

Example 2:

Scenario: Partition of Immovable Property

Three siblings, Anil, Sunil, and Meena, jointly own a house in Jaipur, Rajasthan. They have decided to partition the property among themselves but cannot agree on the terms. Anil decides to file a suit for partition.

Application of Section 16: Anil must file the suit in the court that has jurisdiction over the area where the house is located, which would be a court in Jaipur, Rajasthan.

Example 3:

Scenario: Foreclosure of Mortgage

Priya has given a loan to Rajesh, and Rajesh has mortgaged his property in Chennai, Tamil Nadu, as security. Rajesh has defaulted on the loan, and Priya wants to foreclose the mortgage and sell the property to recover her money.

Application of Section 16: Priya must file the suit in the court that has jurisdiction over the area where the mortgaged property is located, which would be a court in Chennai, Tamil Nadu.

Example 4:

Scenario: Compensation for Wrong to Immovable Property

A factory in Bengaluru, Karnataka, has caused damage to a neighboring property owned by Vinod due to the release of harmful chemicals. Vinod wants to file a suit for compensation for the damage caused to his property.

Application of Section 16: Vinod must file the suit in the court that has jurisdiction over the area where his damaged property is located, which would be a court in Bengaluru, Karnataka.

Example 5:

Scenario: Recovery of Movable Property under Attachment

Ramesh's car has been wrongfully attached by a creditor in Mumbai, Maharashtra. Ramesh wants to recover his car.

Application of Section 16: Ramesh must file the suit in the court that has jurisdiction over the area where the car is currently located, which would be a court in Mumbai, Maharashtra.

Example 6:

Scenario: Relief Respecting Immovable Property

Amit owns a piece of land in Delhi, but it is held by his tenant, who refuses to vacate despite the lease agreement ending. Amit wants to file a suit for eviction and compensation for the wrongful occupation.

Application of Section 16: Amit can file the suit either in the court that has jurisdiction over the area where the land is located (Delhi) or in the court where the tenant resides or works, provided the relief can be obtained through the tenant's personal obedience.

Section 17: Suits for immovable property situate within jurisdiction of different Courts.

Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate:

Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court.

Simplified act

If you want to file a lawsuit to get help or compensation for damage to real estate (like land or buildings) that is located in different areas covered by different courts, you can file the lawsuit in any court that has authority over any part of the property.

However, the court you choose must be able to handle the total value of the claim you are making.

Explanation using Example

Example 1:

Ravi owns two plots of land, one in Mumbai and another in Pune. Both plots are part of a single property dispute with his neighbor, who claims ownership of both plots. Ravi decides to file a suit for relief and compensation for the wrong done to his immovable property. Since the plots are located in different jurisdictions (Mumbai and Pune), Ravi can choose to file the suit in either the Mumbai Court or the Pune Court, as long as the value of the entire claim is within the jurisdiction of the chosen court.

Example 2:

Meera has inherited agricultural land from her grandfather, with portions of the land located in both Haryana and Punjab. A local developer has encroached on parts of her land in both states, and Meera wants to file a suit for compensation and to reclaim her property. Meera can file the suit in either a court in Haryana or a court in Punjab, depending on her convenience and the jurisdictional limits of the court, provided that the total value of her claim is within the jurisdictional limits of the chosen court.

Section 18: Place of institution of suit where local limits of jurisdiction of Courts are uncertain.

Jurisdiction of Courts in Cases of Uncertainty

(1) Where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts any immovable property is situate, any one of those Courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the local limits of its jurisdiction:

Provided that the suit is one with respect to which the Court is competent as regards the nature and value of the suit to exercise jurisdiction.

(2) Where a statement has not been recorded under sub-section (1), and an objection is taken before an Appellate or Revisional Court that a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the Appellate or Revisional Court shall not allow the objection unless in its opinion there was, at the time of the institution of the suit, no reasonable ground for uncertainty as to the court having

jurisdiction with respect thereto and there has been a consequent failure of justice.

Simplified act

Jurisdiction of Courts in Cases of Uncertainty

(1) If it's unclear which of two or more courts has authority over a piece of real estate, any one of those courts can handle the case if it believes there's a good reason for the confusion. The court will make a note of this uncertainty and then proceed with the case. The court's decision will be treated as if the property was definitely within its area of authority:

However, this only applies if the court is allowed to handle cases of that type and value.

(2) If no note of uncertainty was made as described in (1), and someone argues in an appeal or review that the original court didn't have authority because the property wasn't in its area, the higher court won't accept this argument unless it believes there was no good reason for the confusion at the start of the case and that this caused an unfair outcome.

Explanation using Example

Example 1:

Scenario: Two neighboring villages, Village A and Village B, have a disputed piece of land on their border. The exact boundary between the two villages is unclear, and both Village A and Village B claim the land falls within their jurisdiction.

Application: A farmer from Village A wants to file a suit regarding the ownership of this disputed land. However, it is uncertain whether the land falls under the jurisdiction of the court in Village A or Village B. The farmer can file the suit in either court. If the court in Village A is satisfied that there is genuine uncertainty about the jurisdiction, it can record a statement to that effect and proceed with the case. The court's decision will be valid as if the land were within its jurisdiction.

Example 2:

Scenario: A property dispute arises between two families over a piece of land located near the border of two districts, District X and District Y. The exact

location of the land is ambiguous, and it is unclear which district court has jurisdiction.

Application: One family files a suit in the District X court. The District X court, upon recognizing the uncertainty of the land's location, records a statement acknowledging the jurisdictional ambiguity and proceeds with the case. Later, the opposing family appeals the decision, claiming that the District X court did not have jurisdiction. The appellate court reviews the case and finds that there was a reasonable ground for the initial uncertainty and no failure of justice occurred. Therefore, the appellate court upholds the decision of the District X court.

Example 3:

Scenario: A businessman owns a factory that is situated on the border of two cities, City M and City N. Due to the unclear demarcation of city boundaries, it is uncertain which city's court has jurisdiction over the factory.

Application: The businessman files a suit in the City M court regarding a contractual dispute related to the factory. The City M court, after verifying the uncertainty of the jurisdiction, records a statement and proceeds with the case. The court's decree will be considered valid as if the factory were within its jurisdiction. If the opposing party later challenges the jurisdiction in an appellate court, the appellate court will only overturn the decision if it finds that there was no reasonable ground for the initial uncertainty and that a failure of justice occurred.

Example 4:

Scenario: A family owns a piece of agricultural land that lies on the boundary between two states, State P and State Q. The exact boundary line is disputed, and it is unclear which state's court has jurisdiction over the land.

Application: The family files a suit in the State P court to resolve an inheritance issue related to the land. The State P court, recognizing the jurisdictional uncertainty, records a statement and proceeds with the case. The court's decree will be valid as if the land were within its jurisdiction. If the opposing party appeals the decision, the appellate court will only consider the jurisdictional objection if it finds that there was no reasonable ground for the initial uncertainty and that a failure of justice occurred.

Section 19: Suits for compensation for wrongs to person or movables.

Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.

Illustrations

(a) A, residing in Delhi, beats B in Calcutta. B may sue A either in Calcutta or in Delhi.

(b) A, residing in Delhi, publishes in Calcutta statements defamatory of B. B may sue A either in Calcutta or in Delhi.

Simplified act

If someone wants to file a lawsuit to get compensation for harm done to them or their personal belongings, and the harm happened in one area but the person who caused the harm lives, works, or runs a business in another area, the person filing the lawsuit can choose to file it in either area.

Examples

(a) A lives in Delhi and beats up B in Calcutta. B can choose to sue A either in Calcutta or in Delhi.

(b) A lives in Delhi and writes harmful statements about B in Calcutta. B can choose to sue A either in Calcutta or in Delhi.

Explanation using Example

Example 1:

Rahul, who lives in Mumbai, owns a valuable painting that he lent to his friend, Suresh, who lives in Pune. Suresh accidentally damages the painting while it is in his possession in Pune. Rahul wants to file a suit for compensation for the damage to his painting. According to Section 19 of the Code of Civil Procedure, 1908, Rahul has the option to file the suit either in Mumbai, where he resides, or in Pune, where the damage occurred and where Suresh resides.

Example 2:

Priya, a resident of Bangalore, is physically assaulted by her colleague, Anil, during a business trip in Chennai. Priya suffers injuries and wants to seek compensation for the harm caused. Under Section 19 of the Code of Civil Procedure, 1908, Priya can choose to file the suit for compensation either in Bangalore, where she resides, or in Chennai, where the assault took place and where Anil was present at the time of the incident.

Example 3:

Neha, who lives in Hyderabad, has her laptop stolen by her neighbor, Ramesh, who lives in the same city. Ramesh then travels to Delhi and sells the laptop there. Neha discovers this and wants to file a suit for compensation for the theft and loss of her laptop. According to Section 19 of the Code of Civil Procedure, 1908, Neha can file the suit either in Hyderabad, where she resides and where the theft occurred, or in Delhi, where Ramesh sold the laptop and where he might be found.

Example 4:

Vikram, a resident of Jaipur, is defamed by a series of false statements published by a blogger, Arjun, who lives in Ahmedabad. The defamatory statements are published on a website that is accessible nationwide. Vikram wants to sue Arjun for defamation. Under Section 19 of the Code of Civil Procedure, 1908, Vikram has the option to file the suit either in Jaipur, where he resides, or in Ahmedabad, where Arjun resides and where the defamatory statements were published.

Section 20: Other suits to be instituted where defendants reside or cause of action arises.

Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction -

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally works for gain, as aforesaid, acquiesce in such institution; or

(c) The cause of action, wholly or in part, arises.

Illustrations

(a) A is a tradesman in Calcutta, B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause of action has arisen, or in Delhi, where B carries on business.

(b) A resides at Simla, B at Calcutta and C at Delhi. A, B and C being together at Benaras, B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C at Benaras, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Delhi, where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the Court.

Simplified act

Subject to the above limitations, every lawsuit must be filed in a Court within the area where:

(a) The person being sued (or all the people being sued if there is more than one) lives, does business, or works for a living at the time the lawsuit starts; or

(b) Any one of the people being sued lives, does business, or works for a living at the time the lawsuit starts, as long as the Court gives permission or the other people being sued agree to it; or

(c) The reason for the lawsuit happened, either completely or partially.

Examples

(a) A is a shopkeeper in Calcutta, and B runs a business in Delhi. B, through his agent in Calcutta, buys goods from A and asks A to deliver them to the East Indian Railway Company. A delivers the goods in Calcutta. A can sue B for the price of the goods either in Calcutta, where the transaction happened, or in Delhi, where B runs his business.

(b) A lives in Simla, B in Calcutta, and C in Delhi. A, B, and C are together in Benaras, where B and C make a joint promissory note payable on demand and give it to A. A can sue B and C in Benaras, where the note was made. He can also sue them in Calcutta, where B lives, or in Delhi, where C lives. However, if

the person being sued does not live in the place where the lawsuit is filed and objects, the lawsuit cannot continue without the Court's permission.

Explanation using Example

Example 1:

Scenario: Ramesh, a businessman in Mumbai, sells goods to Suresh, who runs a shop in Bangalore. Suresh places an order through his agent in Mumbai and requests Ramesh to deliver the goods to a transport company in Mumbai. Ramesh delivers the goods as requested but Suresh fails to pay for them.

Application of Section 20:

Ramesh can file a suit against Suresh in Mumbai because the cause of action (delivery of goods) arose in Mumbai.

Alternatively, Ramesh can also file the suit in Bangalore where Suresh carries on his business.

Example 2:

Scenario: Priya, residing in Chennai, lends money to Raj, who lives in Hyderabad, and Kiran, who lives in Pune. They all meet in Goa and Raj and Kiran jointly sign a promissory note promising to repay the loan on demand.

Application of Section 20:

Priya can file a suit against Raj and Kiran in Goa where the promissory note was signed and the cause of action arose.

Priya can also choose to file the suit in Hyderabad where Raj resides or in Pune where Kiran resides.

However, if either Raj or Kiran objects to the suit being filed in a location where they do not reside, the suit cannot proceed without the leave of the Court.

Example 3:

Scenario: Anil, who lives in Jaipur, orders a custom-made piece of furniture from Sunil, who operates a workshop in Ahmedabad. Sunil delivers the furniture to Anil in Jaipur, but Anil refuses to pay the agreed price.

Application of Section 20:

Sunil can file a suit against Anil in Jaipur where Anil resides.

Sunil can also file the suit in Ahmedabad where he carries on his business and where the cause of action (contract for the furniture) partially arose.

Example 4:

Scenario: Meera, residing in Kochi, enters into a contract with Neha, who lives in Kolkata, for the supply of handmade crafts. The contract is signed in Mumbai where both parties were attending a trade fair.

Application of Section 20:

Meera can file a suit against Neha in Mumbai where the contract was signed and the cause of action arose.

Meera can also file the suit in Kochi where she resides or in Kolkata where Neha resides.

If Neha objects to the suit being filed in Kochi, the suit cannot proceed without the leave of the Court.

Example 5:

Scenario: Vikram, who lives in Lucknow, hires a contractor, Arjun, who resides in Chandigarh, to renovate his house. The renovation work is to be carried out in Lucknow. Arjun fails to complete the work as per the contract.

Application of Section 20:

Vikram can file a suit against Arjun in Lucknow where the cause of action (renovation work) arose.

Vikram can also file the suit in Chandigarh where Arjun resides.

Section 21: Objections to jurisdiction.

(1) No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

(2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest

possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice.

Simplified act

(1) You cannot complain about the location where a lawsuit is being heard in an appeal or review court unless you raised this issue in the original court as soon as possible and before any major decisions were made, and only if this mistake caused a serious problem in the case.

(2) You cannot complain about whether a court has the right to hear a case based on the amount of money involved in an appeal or review court unless you raised this issue in the original court as soon as possible and before any major decisions were made, and only if this mistake caused a serious problem in the case.

(3) You cannot complain about whether the court handling the enforcement of a judgment has the right to do so based on its geographic area in an appeal or review court unless you raised this issue in the enforcement court as soon as possible, and only if this mistake caused a serious problem in the case.

Explanation using Example

Example 1:

Ravi files a lawsuit against Shyam in a court located in Mumbai, claiming that Shyam owes him money. Shyam believes that the case should have been filed in Pune, where both parties reside. However, Shyam does not raise this objection at the earliest opportunity in the Mumbai court. The case proceeds, and the Mumbai court issues a judgment in favor of Ravi. Shyam then appeals the decision, arguing that the Mumbai court did not have jurisdiction. According to Section 21 of the Code of Civil Procedure 1908, the appellate court will not entertain Shyam's objection regarding the place of suing because he did not raise it at the earliest possible opportunity in the Mumbai court, and there has been no consequent failure of justice.

Example 2:

Anita files a suit in a court with a pecuniary jurisdiction limit of ₹5 lakhs, claiming damages of ₹10 lakhs from her business partner, Raj. Raj does not object to the court's pecuniary jurisdiction at the earliest opportunity. The court proceeds with the case and issues a judgment. Raj then appeals, arguing that the court did not have the pecuniary jurisdiction to hear the case. According to Section 21(2) of the Code of Civil Procedure 1908, the appellate court will not consider Raj's objection because he did not raise it at the earliest possible opportunity in the trial court, and there has been no consequent failure of justice.

Example 3:

Sunita wins a case in a court in Delhi, and the court issues an execution order to seize property located in Gurgaon. The executing court in Gurgaon proceeds with the execution. The defendant, Ramesh, does not raise any objection regarding the local jurisdiction of the Gurgaon court at the earliest opportunity. After the property is seized, Ramesh appeals, arguing that the Gurgaon court did not have the local jurisdiction to execute the order. According to Section 21(3) of the Code of Civil Procedure 1908, the appellate court will not entertain Ramesh's objection because he did not raise it at the earliest possible opportunity in the executing court, and there has been no consequent failure of justice.

Section 21A: Bar on suit to set aside decree on objection as to place of suing.

No suit shall lie challenging the validity of a decree passed in a former suit between the same parties, or between the parties under whom they or any of them claim, litigating under the same title, on any ground based on an objection as to the place of suing.

Explanation. - The expression "former suit" means a suit which has been decided prior to the decision in the suit in which the validity of the decree is questioned, whether or not the previously decided suit was instituted prior to the suit in which the validity of such decree is questioned.

Simplified act

You cannot file a lawsuit to challenge the validity of a decision made in an earlier lawsuit between the same parties, or between parties who claim under the same title, based on an objection about where the lawsuit was filed.

Explanation. - The term "earlier lawsuit" refers to a lawsuit that was decided before the decision in the current lawsuit where the validity of the earlier decision is being questioned, regardless of whether the earlier lawsuit was started before or after the current lawsuit.

Explanation using Example

Example 1:

Ravi and Suresh are involved in a property dispute. Ravi files a suit in a court in Delhi, and the court passes a decree in favor of Ravi. Suresh, unhappy with the decision, believes that the case should have been filed in a court in Mumbai instead of Delhi. Suresh then files a new suit in Mumbai challenging the validity of the Delhi court's decree on the grounds that the case was filed in the wrong place.

Application of Section 21A: According to Section 21A of The Code of Civil Procedure, 1908, Suresh cannot file a new suit in Mumbai to challenge the Delhi court's decree based on the objection regarding the place of suing. The decree passed by the Delhi court remains valid and cannot be set aside on the ground that the suit should have been filed in Mumbai.

Example 2:

Anita and Priya are business partners who have a falling out and decide to dissolve their partnership. Anita files a suit in a court in Bangalore, and the court issues a decree dissolving the partnership and dividing the assets. Priya later realizes that the partnership agreement had a clause stating that any disputes should be resolved in a court in Chennai. Priya then files a new suit in Chennai challenging the Bangalore court's decree on the basis that the suit should have been filed in Chennai.

Application of Section 21A: Under Section 21A of The Code of Civil Procedure, 1908, Priya cannot challenge the Bangalore court's decree in a Chennai court on the grounds that the suit should have been filed in Chennai. The decree issued by the Bangalore court is valid and cannot be set aside based on the objection regarding the place of suing.

Section 22: Power to transfer suits which may be instituted in more than one Court.

Where a suit may be instituted in any one of two or more Courts and is instituted in one of such Courts, any defendant, after notice to the other

parties, may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to have the suit transferred to another Court, and the Court to which such application is made, after considering the objections of the other parties (if any), shall determine in which of the several Courts having jurisdiction the suit shall proceed.

Simplified act

If a lawsuit can be started in two or more different courts, and it is started in one of those courts, any defendant can ask to move the lawsuit to another court.

The defendant must notify the other parties involved in the lawsuit about this request as soon as possible.

The request to move the lawsuit must be made at the earliest opportunity, and definitely before any issues in the case are settled.

The court that receives the request will listen to any objections from the other parties.

After considering these objections, the court will decide which of the courts that have the authority to hear the case will continue with the lawsuit.

Explanation using Example

Example 1:

Scenario: Rajesh, a businessman in Mumbai, has a legal dispute with his supplier, Suresh, who is based in Delhi. The contract between them states that any legal disputes can be resolved in either Mumbai or Delhi courts. Rajesh decides to file a suit in the Mumbai court.

Application of Section 22: Suresh, the defendant, receives notice of the suit and believes that the case would be more conveniently handled in Delhi, where most of the evidence and witnesses are located. At the earliest possible opportunity, Suresh files an application in the Mumbai court to transfer the suit to the Delhi court. The Mumbai court, after considering Rajesh's objections, decides that the Delhi court is more appropriate for the case and orders the transfer.

Example 2:

Scenario: Priya, a resident of Bangalore, files a suit against her former employer, a company headquartered in Chennai, for wrongful termination. The employment contract allows for disputes to be resolved in either Bangalore or Chennai courts. Priya chooses to file the suit in the Bangalore court.

Application of Section 22: The company, as the defendant, argues that the case should be heard in Chennai, where the company's records and key witnesses are located. They file an application in the Bangalore court to transfer the suit to Chennai. The Bangalore court reviews the objections raised by Priya, who argues that it would be inconvenient for her to travel to Chennai. After considering both sides, the court decides that the Chennai court is better suited to handle the case and orders the transfer.

Example 3:

Scenario: Anil, a property owner in Hyderabad, files a suit against his tenant, Sunita, who has moved to Pune, for non-payment of rent. The rental agreement specifies that disputes can be resolved in either Hyderabad or Pune courts. Anil files the suit in Hyderabad.

Application of Section 22: Sunita, the defendant, argues that it would be more convenient for her to defend the case in Pune, where she now resides and where her witnesses are located. She files an application in the Hyderabad court to transfer the suit to Pune. The Hyderabad court considers Anil's objections, who argues that the property in question is in Hyderabad and it would be easier to handle the case there. After reviewing the arguments, the court decides that the Pune court is more appropriate and orders the transfer.

Example 4:

Scenario: Kavita, a software engineer in Kolkata, files a suit against her former business partner, Ramesh, who lives in Jaipur, for breach of contract. The partnership agreement allows for disputes to be resolved in either Kolkata or Jaipur courts. Kavita chooses to file the suit in Kolkata.

Application of Section 22: Ramesh, the defendant, believes that the case should be heard in Jaipur, where he resides and where the business records are kept. He files an application in the Kolkata court to transfer the suit to Jaipur. The Kolkata court considers Kavita's objections, who argues that it would be inconvenient for her to travel to Jaipur. After evaluating the circumstances, the court decides that the Jaipur court is more suitable for the case and orders the transfer.

Section 23: To what Court application lies.

(1) Where the several Courts having jurisdiction are subordinate to the same Appellate Court, an application under section 22 shall be made to the Appellate Court.

(2) Where such Courts are subordinate to different Appellate Courts but to the same High Court, the application shall be made to the said High Court.

(3) Where such Courts are subordinate to different High Courts, the application shall be made to the High Court within the local limits of whose jurisdiction the Court in which the suit is brought is situate.

Simplified act

(1) If multiple lower courts that can handle a case are under the same higher court, you should apply to that higher court.

(2) If the lower courts are under different higher courts but all those higher courts are under the same High Court, you should apply to that High Court.

(3) If the lower courts are under different High Courts, you should apply to the High Court that has authority over the area where the case was originally filed.

Explanation using Example

Example 1:

Scenario: Ramesh files a civil suit against Suresh in the District Court of Mumbai. Suresh believes that the case should be heard in the District Court of Pune instead, as most of the witnesses and evidence are located there.

Application of Section 23:

Step 1: Determine the appellate court for both District Courts.

Step 2: Both the District Court of Mumbai and the District Court of Pune are subordinate to the Bombay High Court.

Step 3: According to Section 23(2), since both courts are subordinate to the same High Court, Suresh should make an application to the Bombay High Court to transfer the case from Mumbai to Pune.

Example 2:

Scenario: Priya files a civil suit against Anil in the District Court of Delhi. Anil believes that the case should be heard in the District Court of Jaipur instead, as the cause of action arose there and most of the evidence is located in Jaipur.

Application of Section 23:

Step 1: Determine the appellate court for both District Courts.

Step 2: The District Court of Delhi is subordinate to the Delhi High Court, while the District Court of Jaipur is subordinate to the Rajasthan High Court.

Step 3: According to Section 23(3), since the courts are subordinate to different High Courts, Anil should make an application to the Delhi High Court (the High Court within whose jurisdiction the suit was originally brought) to transfer the case from Delhi to Jaipur.

Section 24: General power of transfer and withdrawal.

(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage -

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and -

(i) try or dispose of the same ; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same ; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under subsection (1), the Court which is thereafter to try or dispose of such suit or proceeding may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section, -

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court ;

(b) "proceeding" includes a proceeding for the execution of a decree or order.

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.

.....

(1) The High Court or the District Court can, at any time, do the following things either when one of the parties asks for it and after informing all parties involved, or on its own without informing anyone:

(a) Move any case, appeal, or other legal matter that is currently in front of it to a lower court that has the authority to handle it, or

(b) Take any case, appeal, or other legal matter from a lower court and -

(i) Handle it themselves; or

(ii) Move it to another lower court that can handle it; or

(iii) Send it back to the original lower court from which it was taken.

(2) When a case or legal matter has been moved or taken under the first part, the court that will handle it next can either start the case over or continue from where it was left off, unless there are special instructions.

(3) For this section:

(a) Additional and Assistant Judges are considered to be under the District Court;

(b) "Proceeding" also includes actions to enforce a court's decision or order.

(4) If a case is moved from a Small Causes Court to another court under this section, the new court will be treated as a Small Causes Court for that case.

(5) A case or legal matter can be moved under this section even if the original court did not have the authority to handle it.

Explanation using Example

Example 1:

Scenario: A property dispute case is pending in a District Court in Mumbai. One of the parties, Mr. Sharma, feels that the case is not progressing efficiently and believes that the case would be handled better in a different court.

Application: Mr. Sharma files an application to the High Court of Bombay requesting the transfer of the case to a District Court in Pune. The High Court, after notifying all parties involved and hearing their arguments, decides to transfer the case to the District Court in Pune, which is competent to handle such cases.

Outcome: The District Court in Pune will now take over the case from the point where it was left off in the Mumbai District Court, unless the High Court specifies that the case should be retried from the beginning.

Example 2:

Scenario: A family dispute case is being heard in a Family Court in Delhi. The case involves complex legal issues, and the Family Court feels that it would be more appropriate for the case to be handled by a higher court.

Application: The Family Court in Delhi decides on its own motion to withdraw the case and transfer it to the District Court in Delhi, which has more experience in handling such complex cases.

Outcome: The District Court in Delhi will now try or dispose of the case. The Family Court in Delhi will no longer have jurisdiction over this particular case.

Example 3:

Scenario: A commercial dispute is being heard in a Small Causes Court in Bangalore. The case involves a significant amount of money, and one of the parties, Ms. Rao, believes that the Small Causes Court does not have the jurisdiction to handle such a large claim.

Application: Ms. Rao files an application to the District Court in Bangalore requesting the transfer of the case to a higher court. The District Court, after notifying all parties and hearing their arguments, decides to transfer the case to itself for trial.

Outcome: The District Court in Bangalore will now handle the case as if it were a Small Causes Court for the purposes of this suit. The Small Causes Court in Bangalore will no longer have jurisdiction over this particular case.

Example 4:

Scenario: An appeal against a civil decree is pending in the High Court of Madras. The High Court feels that the appeal can be more efficiently handled by a subordinate court.

Application: The High Court of Madras, on its own motion, decides to transfer the appeal to a District Court in Chennai, which is competent to handle the appeal.

Outcome: The District Court in Chennai will now handle the appeal from the point where it was left off in the High Court, unless the High Court specifies that the appeal should be retried from the beginning.

Example 5:

Scenario: A decree execution proceeding is pending in a District Court in Hyderabad. The District Court feels that the execution can be more efficiently handled by a subordinate court.

Application: The District Court in Hyderabad, on its own motion, decides to transfer the execution proceeding to an Additional Judge's Court in Hyderabad, which is competent to handle the execution.

Outcome: The Additional Judge's Court in Hyderabad will now handle the execution proceeding from the point where it was left off in the District Court, unless the District Court specifies otherwise.

Section 25: Power of Supreme Court to transfer suits, etc.

Transfer of Cases

(1) On the application of a party, and after notice to the parties, and after hearing such of them as desire to be heard, the Supreme Court may, at any stage, if satisfied that an order under this section is expedient for the ends of justice, direct that any suit, appeal or other proceeding be transferred from a High Court or other Civil Court in one State to a High Court or other Civil Court in another State.

(2) Every application under this section shall be made by a motion which shall be supported by an affidavit.

(3) The Court to which such suit, appeal or other proceeding is transferred shall, subject to any special directions in the order of transfer, either retry it or proceed from the stage at which it was transferred to it.

(4) In dismissing any application under this section, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum, not exceeding two thousand rupees, as it considers appropriate in the circumstances of the case.

(5) The law applicable to any suit, appeal or other proceeding transferred under this section shall be the law which the Court in which the suit, appeal or other proceeding was originally instituted ought to have applied to such suit, appeal or proceeding.

Simplified act

Transfer of Cases

(1) If someone involved in a case asks for it, and after informing all parties and hearing those who want to speak, the Supreme Court can decide to move any case, appeal, or other legal matter from a High Court or Civil Court in one State to a High Court or Civil Court in another State if it believes this is necessary for justice.

(2) To request a transfer, you must submit a formal application supported by a sworn statement (affidavit).

(3) The court that receives the transferred case will either start the case over or continue from where the previous court left off, depending on any specific instructions given in the transfer order.

(4) If the Supreme Court rejects a transfer request and thinks the request was made just to cause trouble, it can order the person who made the request to pay up to two thousand rupees to the person who opposed the request as compensation.

(5) The laws that apply to the transferred case will be the same laws that would have applied if the case had stayed in the original court.

Explanation using Example

Example 1:

Scenario: A business dispute between two companies, one based in Maharashtra and the other in Tamil Nadu.

Details: Company A, based in Maharashtra, files a lawsuit against Company B, based in Tamil Nadu, in the Bombay High Court. Company B feels that it would be more convenient and fair for the case to be heard in the Madras High Court due to the location of witnesses and evidence.

Application: Company B applies to the Supreme Court to transfer the case from the Bombay High Court to the Madras High Court. They submit an application supported by an affidavit detailing the reasons for the transfer.

Outcome: The Supreme Court, after notifying both parties and hearing their arguments, decides that transferring the case to the Madras High Court would serve the ends of justice. The case is transferred, and the Madras High Court either retries the case or continues from the stage it was transferred.

Example 2:

Scenario: A family inheritance dispute involving properties located in different states.

Details: A family dispute over inheritance is initially filed in the Delhi High Court. However, most of the properties in question are located in Karnataka, and the majority of the witnesses reside there.

Application: One of the parties applies to the Supreme Court to transfer the case to the Karnataka High Court, arguing that it would be more convenient for all parties involved.

Outcome: The Supreme Court, after considering the application and hearing both parties, agrees that transferring the case to the Karnataka High Court would be more appropriate. The case is transferred, and the Karnataka High Court proceeds with the case from the stage it was transferred.

Example 3:

Scenario: A defamation case involving a journalist and a politician from different states.

Details: A journalist based in West Bengal publishes an article that a politician from Uttar Pradesh claims is defamatory. The politician files a defamation suit in the Allahabad High Court.

Application: The journalist applies to the Supreme Court to transfer the case to the Calcutta High Court, arguing that it would be more convenient for them and their witnesses.

Outcome: The Supreme Court, after notifying both parties and hearing their arguments, decides that transferring the case to the Calcutta High Court would be in the interest of justice. The case is transferred, and the Calcutta High Court either retries the case or continues from the stage it was transferred.

Example 4:

Scenario: A frivolous application for transfer of a case.

Details: A party involved in a property dispute in the Gujarat High Court applies to the Supreme Court to transfer the case to the Kerala High Court without any substantial reason, merely to delay the proceedings.

Application: The Supreme Court, after considering the application and hearing both parties, finds the application to be frivolous and vexatious.

Outcome: The Supreme Court dismisses the application and orders the applicant to pay compensation of Rs. 2,000 to the opposing party for causing unnecessary delay and inconvenience.

Section 26: Institution of suits.

(1) Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.

Provided that such an affidavit shall be in the form and manner as prescribed under Order VI of Rule 15A.

Simplified act

(1) To start a lawsuit, you need to file a written complaint or follow any other method that the rules specify.

Provided that the affidavit must follow the format and method described in Order VI, Rule 15A.

Explanation using Example

Example 1:

Ravi has a dispute with his neighbor, Suresh, over the boundary of their properties. Ravi believes that Suresh has encroached on his land by building a wall. To resolve this issue, Ravi decides to file a civil suit in the local court. According to Section 26 of The Code of Civil Procedure 1908, Ravi must start the suit by presenting a plaint, which is a written statement of his claim. Ravi's lawyer drafts the plaint, detailing the facts of the case, the relief sought, and the legal grounds for the claim. Additionally, Ravi's lawyer attaches an affidavit as required under Order VI of Rule 15A, affirming that the contents of the plaint are true to the best of Ravi's knowledge. Ravi then submits the plaint and the affidavit to the court, officially instituting the suit.

Example 2:

Meera lent Rs. 50,000 to her friend, Anjali, with the agreement that Anjali would repay the amount within six months. However, even after a year, Anjali has not repaid the loan despite multiple reminders. Frustrated, Meera decides to take legal action to recover her money. Meera approaches a civil court and, following Section 26 of The Code of Civil Procedure 1908, she files a suit by presenting a plaint. The plaint includes details such as the amount lent, the agreed repayment period, and the fact that Anjali has failed to repay the loan. Meera's lawyer also prepares an affidavit as per Order VI of Rule 15A, confirming the truthfulness of the plaint's contents. Meera submits the plaint and the affidavit to the court, thereby initiating the legal process to recover her money.

SUMMONS AND DISCOVERY

Section 27: Summons to defendants.

Where a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and may be served in manner prescribed on such day not beyond thirty days from date of the institution of the suit.

Simplified act

When a lawsuit has been properly started, a notice (called a summons) can be sent to the person being sued (the defendant).

This notice tells the defendant to come to court and respond to the lawsuit.

The notice must be delivered in the way the law says it should be.

The notice must be given to the defendant within 30 days from the day the lawsuit was started.

Explanation using Example

Example 1:

Rajesh files a civil suit against his neighbor, Suresh, for encroaching on his property. The suit is duly instituted on January 1st. According to Section 27 of The Code of Civil Procedure 1908, the court issues a summons to Suresh, requiring him to appear and respond to Rajesh's claim. The summons is served to Suresh on January 5th, and it specifies that he must appear in court by January 30th, which is within the 30-day limit from the date the suit was instituted.

Example 2:

Meena files a lawsuit against a local contractor, Ramesh, for failing to complete the construction of her house as per the contract. The suit is duly instituted on March 10th. The court issues a summons to Ramesh, instructing him to appear and answer Meena's claim. The summons is served to Ramesh on March 15th, and it states that he must appear in court by April 8th, ensuring that the appearance date is within the 30-day period from the date the suit was filed.

Section 28: Service of summons where defendant resides in another State.

Summons for Service in Another State

(1) A summons may be sent for service in another State to such Court and in such manner as may be prescribed by rules in force in that State.

(2) The Court to which such summons is sent shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue together with the record (if any) of its proceedings with regard thereto.

(3) Where the language of the summons sent for service in another State is different from the language of the record referred to in sub-section (2), a translation of the record, -

(a) in Hindi, where the language of the Court issuing the summons is Hindi, or

(b) in Hindi or English where the language of such record is other than Hindi or English,

shall also be sent together with the record sent under that sub-section.

Simplified act

Summons for Service in Another State

(1) If you need to send a court summons to someone in another state, you can send it to the appropriate court in that state following the rules they have there.

(2) The court in the other state will treat the summons as if it was issued by them. After handling it, they will send it back to the original court along with any records of what they did.

(3) If the summons is in a different language than the records mentioned in point (2), a translation must be included:

(a) in Hindi, if the original court's language is Hindi, or

(b) in Hindi or English, if the original court's language is not Hindi or English.

This translation should be sent along with the records.

Explanation using Example

Example 1:

Scenario: Rajesh, a businessman based in Mumbai, files a civil suit against Anil, who resides in Bangalore, for breach of contract.

Application of Section 28:

Issuance of Summons: The court in Mumbai issues a summons to Anil in Bangalore.

Sending Summons to Another State: The Mumbai court sends the summons to the appropriate court in Bangalore as per the rules in force in Karnataka.

Receipt and Action by Bangalore Court: Upon receiving the summons, the Bangalore court treats it as if it was issued by itself. The Bangalore court then serves the summons to Anil.

Return of Summons: After serving the summons, the Bangalore court returns it to the Mumbai court along with the record of its proceedings.

Language Translation: If the summons issued by the Mumbai court is in Marathi and the Bangalore court's records are in Kannada, a translation in Hindi or English is sent along with the record.

Example 2:

Scenario: Priya, residing in Delhi, files a civil suit for recovery of money against Suresh, who lives in Chennai.

Application of Section 28:

Issuance of Summons: The court in Delhi issues a summons to Suresh in Chennai.

Sending Summons to Another State: The Delhi court sends the summons to the appropriate court in Chennai as per the rules in force in Tamil Nadu.

Receipt and Action by Chennai Court: Upon receiving the summons, the Chennai court treats it as if it was issued by itself. The Chennai court then serves the summons to Suresh.

Return of Summons: After serving the summons, the Chennai court returns it to the Delhi court along with the record of its proceedings.

Language Translation: If the summons issued by the Delhi court is in Hindi and the Chennai court's records are in Tamil, a translation in Hindi or English is sent along with the record.

Section 29: Service of foreign summonses.

Summonses and other processes issued by

(a) any Civil or Revenue Court established in any part of India to which the provisions of this Code do not extend, or

(b) any Civil or Revenue Court established or continued by the authority of the Central Government outside India, or

(c) any other Civil or Revenue Court outside India to which the Central Government has, by notification in the Official Gazette, declared the provisions of this section to apply,

may be sent to the Courts in the territories to which this Code extends, and served as if they were summonses issued by such Courts.

Simplified act

Summonses and other processes issued by

(a) any Civil or Revenue Court in any part of India where this Code does not apply, or

(b) any Civil or Revenue Court set up or maintained by the Central Government outside India, or

(c) any other Civil or Revenue Court outside India that the Central Government has specified in the Official Gazette,

can be sent to the Courts in the areas where this Code applies, and treated as if they were summonses issued by those Courts.

Explanation using Example

Example 1:

Rajesh, an Indian businessman, is involved in a civil lawsuit in a court in Dubai. The Dubai court needs to summon Rajesh's business partner, who resides in Mumbai, India, to testify in the case. According to Section 29 of The Code of Civil Procedure 1908, the Dubai court can send the summons to a court in Mumbai. The Mumbai court will then serve the summons to Rajesh's business partner as if it were issued by the Mumbai court itself.

Example 2:

An Indian citizen, Priya, owns property in a region of India where the provisions of The Code of Civil Procedure 1908 do not extend, such as certain tribal areas. A civil court in that region needs to summon Priya, who currently lives in Delhi, for a property dispute case. The court in the tribal area can send the summons to a court in Delhi. The Delhi court will serve the summons to Priya as if it were issued by the Delhi court.

Example 3:

A revenue court in the United Kingdom needs to summon an Indian citizen, Arjun, who resides in Bangalore, for a tax-related case. The UK court sends the summons to a court in Bangalore. According to Section 29, the Bangalore court

will serve the summons to Arjun as if it were issued by the Bangalore court itself, provided the Central Government of India has declared the provisions of this section to apply to the UK court by notification in the Official Gazette.

Section 30: Power to order discovery and the like.

Subject to such conditions and limitations as may be prescribed, the Court may, at any time, either of its own motion or on the application of any party, -

(a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;

(b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;

(c) order any fact to be proved by affidavit.

Simplified act

Subject to certain rules and limits, the Court can, at any time, either on its own or if someone asks, do the following:

(a) Make necessary or reasonable orders about:

Asking and answering questions (interrogatories)

Admitting documents and facts

Finding, looking at, producing, holding, and returning documents or other items that can be used as evidence

(b) Send out orders (summonses) for people to come to court to:

Give evidence

Bring documents or other items needed as evidence

(c) Require any fact to be proven by a written statement (affidavit).

Explanation using Example

Example 1:

Scenario: A property dispute case in a civil court in Mumbai.

Details: Rajesh and Suresh are involved in a property dispute. Rajesh claims that Suresh has forged documents to claim ownership of a piece of land. Rajesh's lawyer files an application under Section 30 of the Code of Civil Procedure, 1908, requesting the court to order the discovery and inspection of the original property documents that Suresh claims to possess.

Application of Section 30:

The court, considering the application, orders Suresh to produce the original property documents for inspection.

The court also issues summons to the registrar of properties to attend the court and bring the official records related to the disputed property.

Additionally, the court allows Rajesh to submit interrogatories (a set of formal questions) to Suresh regarding the authenticity and origin of the documents.

Example 2:

Scenario: A breach of contract case in a civil court in Delhi.

Details: Meera has filed a lawsuit against a construction company for not completing a building project on time. Meera's lawyer believes that the construction company has internal documents that prove they were aware of the delays but did not inform Meera. The lawyer files an application under Section 30 of the Code of Civil Procedure, 1908, to obtain these documents.

Application of Section 30:

The court orders the construction company to produce all internal communications and documents related to the project timeline and delays.

The court issues summons to the project manager and other key personnel of the construction company to attend the court and provide testimony.

The court also allows Meera to submit an affidavit from an independent construction expert to prove the standard timelines for such projects and how the delays were unreasonable.

Example 3:

Scenario: A defamation case in a civil court in Bangalore.

Details: Priya has filed a defamation suit against a local newspaper for publishing false information about her. Priya's lawyer wants to prove that the

newspaper did not verify the information before publishing it. The lawyer files an application under Section 30 of the Code of Civil Procedure, 1908, to obtain the editorial notes and communications related to the article.

Application of Section 30:

The court orders the newspaper to produce all editorial notes, emails, and communications related to the article in question.

The court issues summons to the editor and the journalist who wrote the article to attend the court and provide testimony.

The court allows Priya to submit an affidavit from a media expert to explain the standard practices for verifying information before publication and how the newspaper failed to follow these practices.

Section 31: Summons to witness.

The provisions in sections 27, 28 and 29 shall apply to summonses to give evidence or to produce documents or other material objects.

Simplified act

The rules in sections 27, 28, and 29 apply to orders that require someone to come to court to give evidence or to bring documents or other items.

Explanation using Example

Example 1:

Scenario: Ramesh is involved in a civil lawsuit regarding a property dispute with his neighbor, Suresh. Ramesh believes that a local shopkeeper, Mr. Sharma, witnessed a crucial conversation between him and Suresh about the property boundaries.

Application of Section 31: Ramesh's lawyer requests the court to issue a summons to Mr. Sharma to appear as a witness and provide testimony about the conversation. The court issues the summons under Section 31 of the Code of Civil Procedure, 1908, requiring Mr. Sharma to attend the court on a specified date and give evidence.

Example 2:

Scenario: Priya is suing a construction company for poor workmanship in building her house. She claims that the construction company used

substandard materials, which led to structural issues. Priya knows that the supplier, Mr. Verma, provided the materials and has records of the transactions.

Application of Section 31: Priya's lawyer requests the court to issue a summons to Mr. Verma to produce the invoices and delivery receipts of the materials supplied to the construction company. The court issues the summons under Section 31 of the Code of Civil Procedure, 1908, requiring Mr. Verma to bring the relevant documents to court on a specified date.

Section 32: Penalty for default.

The Court may compel the attendance of any person to whom a summons has been issued under section 30 and for that purpose may -

- (a) issue a warrant for his arrest;
- (b) attach and sell his property;
- (c) impose a fine upon him not exceeding five thousand rupees;
- (d) order him to furnish security for his appearance and in default commit him to the civil prison.

Simplified act

The Court can make sure that anyone who has been given a summons under section 30 shows up. To do this, the Court can:

- (a) issue a warrant to arrest the person;
- (b) take and sell the person's property;
- (c) fine the person up to five thousand rupees;
- (d) order the person to provide a guarantee that they will appear in court, and if they don't, send them to civil prison.

Explanation using Example

Example 1:

Rajesh, a businessman in Mumbai, receives a summons from the court under Section 30 of the Code of Civil Procedure, 1908, to appear as a witness in a civil case. However, Rajesh ignores the summons and fails to appear in court on the designated date. The court, under Section 32, decides to take action to

ensure Rajesh's attendance. The judge issues a warrant for Rajesh's arrest (subsection a). Rajesh is subsequently arrested by the police and brought before the court.

Example 2:

Priya, a resident of Delhi, is summoned by the court to provide documents related to a property dispute. Despite receiving the summons, Priya does not comply and fails to appear in court. The court, exercising its powers under Section 32, imposes a fine of Rs. 5,000 on Priya (subsection c). Additionally, the court orders the attachment and sale of Priya's property to recover the fine (subsection b). Priya is then compelled to comply with the court's order to avoid further penalties.

Example 3:

Anil, a software engineer in Bangalore, is summoned to court as a defendant in a civil suit. Anil disregards the summons and does not show up in court. The judge, under Section 32, orders Anil to furnish security for his appearance (subsection d). Anil fails to provide the required security, leading the court to commit him to civil prison until he agrees to comply with the court's orders.

Example 4:

Sunita, a shop owner in Chennai, is issued a summons to appear in court regarding a commercial dispute. Sunita ignores the summons and does not attend the court hearing. The court, under Section 32, decides to attach and sell Sunita's property to ensure her compliance (subsection b). The court also imposes a fine of Rs. 5,000 on Sunita (subsection c). Faced with these penalties, Sunita finally appears in court and participates in the proceedings.

JUDGMENT AND DECREE

Section 33: Judgment and decree.

The Court, after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow.

Simplified act

After the court listens to the case, it will make a decision.

Based on that decision, an official order will be issued.

Explanation using Example

Example 1:

Ravi filed a civil suit against his neighbor, Suresh, for encroaching on his property. After several hearings and the presentation of evidence by both parties, the court concluded that Suresh had indeed encroached on Ravi's property. The judge then pronounced the judgment in favor of Ravi, stating that Suresh must remove the encroachment and compensate Ravi for the inconvenience caused. Following this judgment, a decree was issued by the court, detailing the specific actions Suresh must take to comply with the judgment, including the timeline for removing the encroachment and the amount of compensation to be paid.

Example 2:

Meera filed a lawsuit against a construction company for not completing her house as per the agreed contract. After hearing both sides and examining the evidence, the court found that the construction company had breached the contract by using substandard materials and delaying the project. The judge pronounced the judgment in favor of Meera, ordering the construction company to either complete the house as per the original specifications or pay Meera a sum of money to cover the cost of hiring another contractor. Following this judgment, a decree was issued, specifying the exact amount to be paid to Meera and the deadline for the construction company to comply with the court's order.

INTEREST

Section 34: Interest.

Section on Payment of Money

(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent. per annum as the Court deems reasonable on such principal sum, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:

Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent. per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

Explanation I

In this Sub-section, "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).

Explanation II

For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.

(2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie.

Simplified act

Section on Payment of Money

(1) If a court orders someone to pay money, the court can also order that interest be paid on the main amount owed. This interest can be from the date the lawsuit started to the date the court made its decision. The court can also order additional interest from the date of the decision until the money is fully paid, but this extra interest cannot be more than 6% per year unless it's a commercial transaction.

For commercial transactions, the extra interest can be higher than 6% per year but cannot be more than the interest rate agreed upon in the contract. If there is no contract, the interest rate cannot be higher than the rate charged by nationalized banks for commercial loans.

Explanation I

A "nationalized bank" refers to a bank that was taken over by the government as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970.

Explanation II

A transaction is considered a commercial transaction if it is related to the business, trade, or industry of the person who owes the money.

(2) If the court's decision does not mention any additional interest from the date of the decision to the date of payment, it means the court has decided not to allow any extra interest. You cannot file a separate lawsuit to claim this interest.

Explanation using Example

Example 1:

Scenario: Rajesh lent Rs. 1,00,000 to his friend Suresh for personal use. Suresh promised to repay the amount within a year but failed to do so. Rajesh then filed a suit in the court to recover the money.

Application of Section 34:

The court decrees that Suresh must pay Rajesh the principal sum of Rs. 1,00,000.

The court orders interest at a rate of 8% per annum on the principal sum from the date Rajesh filed the suit to the date of the decree.

Additionally, the court orders further interest at a rate of 6% per annum on the principal sum from the date of the decree until the date of payment.

Outcome:

If Rajesh filed the suit on 1st January 2022 and the court passed the decree on 1st January 2023, Suresh would owe Rajesh Rs. 1,08,000 (principal + interest for one year).

If Suresh pays the amount on 1st July 2023, he would also owe further interest for six months at 6% per annum, which is Rs. 3,000.

Total amount payable by Suresh would be Rs. 1,11,000.

Example 2:

Scenario: A textile company, ABC Textiles, supplied goods worth Rs. 5,00,000 to XYZ Garments, a retailer. XYZ Garments failed to pay the amount within the agreed period. ABC Textiles filed a suit to recover the amount.

Application of Section 34:

The court decrees that XYZ Garments must pay ABC Textiles the principal sum of Rs. 5,00,000.

The court orders interest at a rate of 10% per annum on the principal sum from the date ABC Textiles filed the suit to the date of the decree, considering it a commercial transaction.

Additionally, the court orders further interest at a rate of 12% per annum (as per the contractual rate) on the principal sum from the date of the decree until the date of payment.

Outcome:

If ABC Textiles filed the suit on 1st January 2022 and the court passed the decree on 1st January 2023, XYZ Garments would owe ABC Textiles Rs. 5,50,000 (principal + interest for one year).

If XYZ Garments pays the amount on 1st July 2023, they would also owe further interest for six months at 12% per annum, which is Rs. 30,000.

Total amount payable by XYZ Garments would be Rs. 5,80,000.

COSTS

Section 35: Costs.

(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of an incident to all suits shall be in the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the Court has no jurisdiction to try the suit shall be no bar to the exercise of such powers.

(2) Where the Court directs that any costs shall not follow the event, the Court shall state its reasons in writing.

35. Costs

(1) In relation to any commercial dispute, the Court, notwithstanding anything contained in any other law for the time being in force or Rule, has the discretion to determine:

- (a) whether costs are payable by one party to another;
- (b) the quantum of those costs; and
- (c) when they are to be paid.

Explanation. - For the purpose of clause (a), the expression "costs" shall mean reasonable costs relating to:

- (i) the fees and expenses of the witnesses incurred;
- (ii) legal fees and expenses incurred;
- (iii) any other expenses incurred in connection with the proceedings.

(2) If the Court decides to make an order for payment of costs, the general rule is that the unsuccessful party shall be ordered to pay the costs of the successful party:

Provided that the Court may make an order deviating from the general rule for reasons to be recorded in writing.

Illustration

The Plaintiff, in his suit, seeks a money decree for breach of contract, and damages. The Court holds that the Plaintiff is entitled to the money decree. However, it returns a finding that the claim for damages is frivolous and vexatious.

In such circumstances the Court may impose costs on the Plaintiff, despite the Plaintiff being the successful party, for having raised frivolous claims for damages.

(3) In making an order for the payment of costs, the Court shall have regard to the following circumstances, including:

- (a) the conduct of the parties;
- (b) whether a party has succeeded on part of its case, even if that party has not been wholly successful;
- (c) whether the party had made a frivolous counterclaim leading to delay in the disposal of the case;
- (d) whether any reasonable offer to settle is made by a party and unreasonably refused by the other party; and

(e) whether the party had made a frivolous claim and instituted a vexatious proceeding wasting the time of the Court.

(4) The orders which the Court may make under this provision include an order that a party must pay:

- (a) a proportion of another party's costs;
- (b) a stated amount in respect of another party's costs;
- (c) costs from or until a certain date;
- (d) costs incurred before proceedings have begun;
- (e) costs relating to particular steps taken in the proceedings;
- (f) costs relating to a distinct part of the proceedings; and
- (g) interest on costs from or until a certain date.

Simplified act

35. Costs

(1) Subject to certain rules and existing laws, the Court has the power to decide who should pay the costs related to a lawsuit, from which property the costs should be paid, and how much should be paid. The Court can give all necessary instructions for this. Even if the Court doesn't have the authority to try the case, it can still decide on the costs.

(2) If the Court decides that the losing party doesn't have to pay the costs, it must explain why in writing.

35. Costs

(1) For any business-related dispute, the Court has the power to decide:

- (a) if one party should pay the costs of the other party;
- (b) how much those costs should be; and
- (c) when the costs should be paid.

Explanation: For clause (a), "costs" means reasonable expenses like:

- (i) fees and expenses for witnesses;

- (ii) legal fees and expenses;
- (iii) any other expenses related to the case.

(2) If the Court orders someone to pay costs, usually the losing party has to pay the winning party's costs. However, the Court can decide differently if it writes down the reasons.

Example

If a person sues for money due to a broken contract and also asks for damages, and the Court agrees they should get the money but finds the damages claim to be silly and annoying, the Court can make the person pay costs for the silly claim, even though they won the main part of the case.

(3) When deciding on costs, the Court will consider things like:

- (a) how the parties behaved;
- (b) if a party won part of the case, even if they didn't win everything;
- (c) if a party made a silly counterclaim that delayed the case;
- (d) if a party made a reasonable offer to settle and the other party refused it without good reason; and
- (e) if a party made a silly claim and wasted the Court's time.

(4) The Court can order a party to pay:

- (a) a part of the other party's costs;
- (b) a specific amount for the other party's costs;
- (c) costs from or until a certain date;
- (d) costs incurred before the case started;
- (e) costs for specific steps in the case;
- (f) costs for a specific part of the case; and
- (g) interest on costs from or until a certain date.

Explanation using Example

Example 1:

Scenario: Rajesh files a lawsuit against his neighbor, Suresh, for damaging his property. Rajesh claims Rs. 1,00,000 for the repairs and an additional Rs. 50,000 for mental distress.

Court Decision: The court finds that Suresh is responsible for the property damage and awards Rajesh Rs. 1,00,000 for repairs. However, the court finds the claim for mental distress to be frivolous and without merit.

Application of Section 35:

The court exercises its discretion under Section 35(1) and decides that Suresh should pay the costs related to the property damage claim.

The court also decides that Rajesh should bear the costs related to the frivolous claim for mental distress, despite being the successful party in the property damage claim.

The court records its reasons in writing for not following the general rule that the unsuccessful party pays the costs.

Example 2:

Scenario: Meena sues a company for breach of contract, seeking Rs. 5,00,000 in damages. The company countersues Meena, claiming that she breached the contract first and seeks Rs. 2,00,000 in damages.

Court Decision: The court finds that both parties are partially at fault. Meena is awarded Rs. 3,00,000, and the company's counterclaim is dismissed as frivolous.

Application of Section 35:

The court uses its discretion under Section 35(3) to consider the conduct of both parties.

The court orders the company to pay a proportion of Meena's legal costs, considering she was not wholly successful.

The court also orders the company to pay the costs incurred by Meena in defending the frivolous counterclaim.

The court specifies that the company must pay these costs within 30 days and records its reasons for the decision in writing.

Example 3:

Scenario: Anil files a lawsuit against his business partner, Sunil, for misappropriation of funds. During the proceedings, Sunil makes a reasonable offer to settle the dispute out of court, but Anil unreasonably refuses the offer.

Court Decision: The court finds in favor of Anil but notes that the refusal to settle led to unnecessary prolongation of the case.

Application of Section 35:

The court considers the unreasonable refusal to settle under Section 35(3)(d).

The court orders Anil to bear a portion of the legal costs incurred after the settlement offer was made, despite being the successful party.

The court records its reasons for deviating from the general rule in writing.

Example 4:

Scenario: Priya files a lawsuit against a contractor for poor construction work. The contractor admits fault and offers to pay for the repairs before the trial begins, but Priya insists on going to court.

Court Decision: The court finds in favor of Priya but notes that the contractor had already admitted fault and offered to pay for the repairs.

Application of Section 35:

The court considers the contractor's early admission of fault and offer to settle under Section 35(3)(d).

The court orders Priya to pay the costs incurred by the contractor after the admission of fault, as continuing the lawsuit was unnecessary.

The court records its reasons for this decision in writing.

Section 35A: Compensatory costs in respect of false or vexatious claims or defences.

Legal Provisions

(1) If in any suit or other proceedings including an execution proceeding but excluding an appeal or a revision any party objects to the claim or defence on the ground that the claim or defence or any part of it is, as against the objector, false or vexatious to the knowledge of the party by whom it has been put

forward, and if thereafter, as against the objector, such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the Court, if it so thinks fit, may, after recording its reasons for holding such claim or defence to be false or vexatious, make an order for the payment to the objector by the party by whom such claim or defence has been put forward, of cost by way of compensation.

(2) No Court shall make any such order for the payment of an amount exceeding three thousand rupees or exceeding the limits of its pecuniary jurisdiction, whichever amount is less:

Provided that where the pecuniary limits of the jurisdiction of any Court exercising the jurisdiction of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887 (9 of 1887), or under a corresponding law in force in any part of India to which the said Act does not extend and not being a Court constituted under such Act or law, are less than two hundred and fifty rupees, the High Court may empower such Court to award as costs under this section any amount not exceeding two hundred and fifty rupees and not exceeding those limits by more than one hundred rupees:

Provided, further, that the High Court may limit the amount which any Court or class of Courts is empowered to award as costs under this section.

(3) No person against whom an order has been made under this section shall, by reason thereof, be exempted from any criminal liability in respect of any claim or defence made by him.

(4) The amount of any compensation awarded under this section in respect of a false or vexatious claim or defence shall be taken into account in any subsequent suit for damages or compensation in respect of such claim or defence.

Simplified act

Legal Provisions

(1) If during a lawsuit or other legal proceedings (except appeals or revisions), someone objects to a claim or defense saying it is false or meant to harass them, and if the court agrees and dismisses, abandons, or withdraws that claim or defense, the court can order the person who made the false claim or defense to pay compensation to the objector. The court must explain why it thinks the claim or defense was false or meant to harass.

(2) The court cannot order compensation of more than three thousand rupees or more than what it is allowed to handle financially, whichever is less:

If a small claims court (under the Provincial Small Cause Courts Act, 1887 or similar laws) has a financial limit of less than two hundred and fifty rupees, the High Court can allow it to award up to two hundred and fifty rupees plus an extra one hundred rupees as compensation.

The High Court can also set limits on how much any court or type of court can award as compensation.

(3) If someone is ordered to pay compensation under this section, it does not protect them from being charged with a crime for making a false or harassing claim or defense.

(4) Any compensation awarded for a false or harassing claim or defense will be considered in any future lawsuit for damages or compensation related to that claim or defense.

Explanation using Example

Example 1:

Rajesh files a lawsuit against his neighbor, Suresh, claiming that Suresh has encroached on his property by building a wall. Suresh objects to Rajesh's claim, stating that Rajesh's claim is false and vexatious, and that Rajesh knows it to be untrue. The court investigates the matter and finds that Rajesh's claim is indeed false and was made with the intention of harassing Suresh. The court then orders Rajesh to pay Suresh compensatory costs of Rs. 3,000 for making a false claim.

Example 2:

Meena files a suit against her former business partner, Anil, alleging that Anil owes her Rs. 50,000 from their business dealings. Anil objects, stating that Meena's claim is false and vexatious, and that she is aware that no such debt exists. During the proceedings, Meena realizes that she cannot substantiate her claim and decides to withdraw the suit. The court, after recording its reasons, finds that Meena's claim was indeed false and vexatious. The court orders Meena to pay Anil compensatory costs of Rs. 2,500.

Example 3:

In an execution proceeding, Ramesh claims that his debtor, Sunil, has hidden assets to avoid repayment. Sunil objects, stating that Ramesh's claim is false and vexatious. The court investigates and finds that Ramesh's claim is baseless and was made to harass Sunil. The court orders Ramesh to pay Sunil compensatory costs of Rs. 1,500.

Example 4:

Priya files a suit against her tenant, Ravi, claiming that Ravi has damaged her property and owes her Rs. 10,000 for repairs. Ravi objects, stating that Priya's claim is false and vexatious. The court finds that Priya's claim is indeed false and was made with the intention of evicting Ravi without proper grounds. The court orders Priya to pay Ravi compensatory costs of Rs. 3,000.

Example 5:

During a property dispute, Kiran claims that her brother, Arjun, has forged documents to claim ownership of their ancestral property. Arjun objects, stating that Kiran's claim is false and vexatious. The court finds that Kiran's claim is false and was made to delay the proceedings. The court orders Kiran to pay Arjun compensatory costs of Rs. 2,000.

Section 35B: Costs for causing delay.

Section (1)

If, on any date fixed for the hearing of a suit or for taking any step therein, a party to the suit -

(a) fails to take the step which he was required by or under this Code to take on that date, or

(b) obtains an adjournment for taking such step or for producing evidence or on any other ground, the Court may, for reasons to be recorded, make an order requiring such party to pay to the other party such costs as would, in the opinion of the Court, be reasonably sufficient to reimburse the other party in respect of the expenses incurred by him in attending the Court on that date, and payment of such costs, on the date next following the date of such order, shall be a condition precedent to the further prosecution of -

(a) the suit by the plaintiff, where the plaintiff was ordered to pay such costs,

(b) the defence by the defendant, where the defendant was ordered to pay such costs.

Explanation. - Where separate defences have been raised by the defendant or groups of defendants, payment of such costs shall be a condition precedent to the further prosecution of the defence by such defendants or groups of defendants as have been ordered by the Court to pay such costs.

Section (2)

The costs, ordered to be paid under sub-section (1), shall not, if paid, be included in the costs awarded in the decree passed in the suit; but, if such costs are not paid, a separate order shall be drawn up indicating the amount of such costs and the names and addresses of the persons by whom such costs are payable and the order so drawn up shall be executable against such persons.

Simplified act

Section (1)

If, on any date set for a court hearing or for taking any action in a lawsuit, a party involved in the lawsuit -

(a) does not take the required action on that date, or

(b) asks for a delay to take the action, present evidence, or for any other reason, the Court can order that party to pay the other party for the expenses they incurred by attending court on that date. The Court will record the reasons for this order. The payment must be made by the next court date, and if not paid:

(a) the plaintiff (the person who brought the lawsuit) cannot continue with the lawsuit if they were ordered to pay,

(b) the defendant (the person being sued) cannot continue with their defense if they were ordered to pay.

Explanation. - If there are multiple defendants with separate defenses, only those defendants who were ordered to pay must do so before they can continue with their defense.

Section (2)

The costs ordered to be paid under Section (1) will not be included in the final costs awarded in the court's decision if they are paid. However, if these costs are not paid, a separate order will be made listing the amount owed and the

names and addresses of the people who must pay. This order can be enforced against those people.

Explanation using Example

Example 1:

Rajesh files a civil suit against Suresh for breach of contract. The court schedules a hearing for the case on the 15th of March. Rajesh is required to submit certain documents by this date. However, Rajesh fails to submit the documents and requests an adjournment. The court grants the adjournment but orders Rajesh to pay Suresh Rs. 5,000 as costs for causing the delay. The court records the reasons for this order. Rajesh must pay this amount to Suresh before the next hearing date, otherwise, he will not be allowed to continue prosecuting the suit.

Example 2:

Meena is defending a property dispute case filed by her neighbor, Anil. The court sets a date for Meena to present her evidence. On the scheduled date, Meena requests an adjournment because her lawyer is unavailable. The court grants the adjournment but orders Meena to pay Anil Rs. 3,000 as costs for the delay. The court specifies that Meena must pay this amount before the next hearing date. If Meena fails to pay, she will not be allowed to continue her defense in the case.

Example 3:

In a family dispute case, Ramesh and his siblings are defendants. The court schedules a date for the defendants to submit their written statements. Ramesh and his siblings fail to submit the statements and request an adjournment. The court grants the adjournment but orders Ramesh and his siblings to pay Rs. 2,000 each to the plaintiff as costs for the delay. The court records the reasons for this order. Ramesh and his siblings must pay these amounts before the next hearing date, otherwise, they will not be allowed to continue their defense.

Example 4:

A company, XYZ Ltd., files a suit against another company, ABC Pvt. Ltd., for non-payment of dues. The court schedules a hearing for XYZ Ltd. to present its evidence. On the hearing date, XYZ Ltd. requests an adjournment because their key witness is unavailable. The court grants the adjournment but orders

XYZ Ltd. to pay ABC Pvt. Ltd. Rs. 10,000 as costs for the delay. The court specifies that XYZ Ltd. must pay this amount before the next hearing date. If XYZ Ltd. fails to pay, it will not be allowed to continue prosecuting the suit.

Example 5:

In a tenant-landlord dispute, the landlord, Mr. Sharma, files a suit against the tenant, Mr. Verma, for non-payment of rent. The court schedules a date for Mr. Verma to submit his defense. Mr. Verma fails to submit his defense and requests an adjournment. The court grants the adjournment but orders Mr. Verma to pay Mr. Sharma Rs. 1,500 as costs for the delay. The court records the reasons for this order. Mr. Verma must pay this amount before the next hearing date, otherwise, he will not be allowed to continue his defense.

PART II: EXECUTION

GENERAL

Section 36: Application to orders.

The provisions of this Code relating to the execution of decrees (including provisions relating to payment under a decree) shall, so far as they are applicable, be deemed to apply to the execution of orders (including payment under an order).

Simplified act

The rules in this Code about carrying out court decisions (including rules about making payments ordered by the court) will also apply to carrying out court orders (including making payments ordered by the court), as long as they are relevant.

Explanation using Example

Example 1:

Rajesh filed a lawsuit against his tenant, Suresh, for non-payment of rent. The court issued a decree in favor of Rajesh, ordering Suresh to pay the overdue rent amounting to ₹50,000. Suresh failed to comply with the decree, so Rajesh sought the court's help to execute the decree. Under Section 36 of the Code of Civil Procedure 1908, the court's provisions for executing decrees, such as attaching Suresh's bank account or property, apply to ensure Rajesh receives the ₹50,000.

Example 2:

Meena obtained a court order against her business partner, Ravi, for misappropriation of funds. The court ordered Ravi to pay Meena ₹1,00,000 as compensation. Ravi did not make the payment within the stipulated time. Meena approached the court to execute the order. According to Section 36 of the Code of Civil Procedure 1908, the same procedures used for executing decrees, like garnishing Ravi's wages or seizing his assets, are applicable to enforce the court's order and ensure Meena receives the ₹1,00,000.

Section 37: Definition of Court which passed a decree.

The expression "Court which passed a decree," or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include, -

- (a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and
- (b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

Explanation. - The Court of first instance does not cease to have jurisdiction to execute a decree merely on the ground that after the institution of the suit wherein the decree was passed or after the passing of the decree, any area has been transferred from the jurisdiction of that Court to the jurisdiction of any other Court; but, in every such case, such other Court shall also have jurisdiction to execute the decree, if at the time of making the application for execution of the decree it would have jurisdiction to try the said suit.

Simplified act

The term "Court which passed a decree," or similar words, will, when it comes to carrying out decrees, include the following, unless it doesn't fit the situation:

- (a) If the decree was made by an appellate court (a higher court reviewing a lower court's decision), it means the original court where the case started.
- (b) If the original court no longer exists or can't handle the decree, it means the court that would have the authority to handle the case if it were started at the time the decree is being carried out.

Explanation. - The original court doesn't lose its power to carry out a decree just because the area it covers has been moved to another court's area. However, the new court will also have the power to carry out the decree if it would have had the authority to handle the case at the time the decree is being carried out.

Explanation using Example

Example 1:

Scenario: Rajesh filed a civil suit in the District Court of Mumbai against his business partner, Suresh, for breach of contract. The District Court ruled in favor of Rajesh and passed a decree ordering Suresh to pay Rs. 10 lakhs as compensation. Suresh appealed the decision in the High Court of Bombay, but the High Court upheld the District Court's decree.

Application of Section 37:

Court which passed the decree: For the purpose of executing the decree, the "Court which passed the decree" would be the District Court of Mumbai, even though the final decision was made by the High Court of Bombay in its appellate jurisdiction.

Execution: Rajesh can approach the District Court of Mumbai to execute the decree and recover the Rs. 10 lakhs from Suresh.

Example 2:

Scenario: Priya filed a civil suit in the Civil Court of Pune against her tenant, Anil, for non-payment of rent. The Civil Court of Pune passed a decree in favor of Priya, ordering Anil to vacate the premises and pay the outstanding rent. However, before Priya could execute the decree, the jurisdiction of the Civil Court of Pune was restructured, and the area where the property is located was transferred to the jurisdiction of the Civil Court of Pimpri-Chinchwad.

Application of Section 37:

Court which passed the decree: The Civil Court of Pune, which originally passed the decree, still retains the jurisdiction to execute the decree.

Additional jurisdiction: The Civil Court of Pimpri-Chinchwad, which now has jurisdiction over the area where the property is located, also has the jurisdiction to execute the decree.

Execution: Priya can choose to approach either the Civil Court of Pune or the Civil Court of Pimpri-Chinchwad to execute the decree and ensure that Anil vacates the premises and pays the outstanding rent.

COURTS BY WHICH DECREES MAY BE EXECUTED

Section 38: Court by which decree may be executed.

A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.

Simplified act

A court order can be carried out either by the court that issued it or by another court that it is sent to for carrying out.

Explanation using Example

Example 1:

Rajesh filed a civil suit against Suresh in the District Court of Mumbai and won the case. The court passed a decree ordering Suresh to pay Rajesh Rs. 5 lakhs. Suresh, however, moved to Delhi and has assets there. Rajesh can request the District Court of Mumbai to send the decree to the appropriate court in Delhi for execution. The Delhi court can then take steps to enforce the decree and ensure Suresh pays the amount.

Example 2:

Meena obtained a decree from the Civil Court in Chennai against her tenant, Ravi, for eviction and unpaid rent amounting to Rs. 2 lakhs. Ravi, who owns property in Bangalore, has not complied with the decree. Meena can apply to the Civil Court in Chennai to transfer the decree to the Civil Court in Bangalore. The Bangalore court will then have the authority to execute the decree, ensuring Ravi vacates the property and pays the due amount.

Section 39: Transfer of decree.

Execution of Decrees

(1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court of competent jurisdiction, -

- (a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or
 - (b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or
 - (c) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it, or
 - (d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.
- (2) The Court which passed a decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.
- (3) For the purposes of this section, a Court shall be deemed to be a Court of competent jurisdiction if, at the time of making the application for the transfer of decree to it, such Court would have jurisdiction to try the suit in which such decree was passed.
- (4) Nothing in this section shall be deemed to authorise the Court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction.

Simplified act

Execution of Decrees

- (1) The Court that issued a decree can, if the person who won the case (decree-holder) requests, send it to another Court that has the authority to enforce it, if:
- (a) the person who lost the case lives, does business, or works within the area covered by the other Court, or
 - (b) the person who lost the case doesn't have enough property in the area of the original Court to pay the decree but has property in the area of the other Court, or
 - (c) the decree involves selling or delivering property located outside the area of the original Court, or

(d) the original Court believes, for any other reason (which it must write down), that the other Court should enforce the decree.

(2) The Court that issued the decree can also decide on its own to send it to a lower Court that has the authority to enforce it.

(3) For this section, a Court is considered to have the authority to enforce the decree if, at the time of requesting the transfer, it would have had the authority to handle the original case.

(4) This section does not allow the original Court to enforce the decree against any person or property outside its area of authority.

Explanation using Example

Example 1:

Scenario: Rajesh wins a lawsuit against Suresh in the Delhi High Court, and the court issues a decree ordering Suresh to pay Rajesh ₹10 lakhs. However, Suresh has moved to Mumbai and has no property in Delhi.

Application of Section 39: Rajesh can apply to the Delhi High Court to transfer the decree to a competent court in Mumbai for execution. This is because Suresh now resides and works in Mumbai, and the Mumbai court has jurisdiction over him.

Example 2:

Scenario: Meena wins a lawsuit in the Bangalore City Civil Court, and the court issues a decree ordering the sale of a piece of land owned by the defendant, Ravi, located in Mysore.

Application of Section 39: Meena can request the Bangalore City Civil Court to transfer the decree to a competent court in Mysore for execution. This is because the land to be sold is situated outside the jurisdiction of the Bangalore court, and the Mysore court has jurisdiction over the property.

Example 3:

Scenario: Anil wins a lawsuit in the Chennai District Court, and the court issues a decree ordering the defendant, Sunil, to pay ₹5 lakhs. Sunil has no property in Chennai but owns a house in Coimbatore.

Application of Section 39: Anil can apply to the Chennai District Court to transfer the decree to a competent court in Coimbatore for execution. This is

because Sunil has no property in Chennai to satisfy the decree, but he has property in Coimbatore.

Example 4:

Scenario: Priya wins a lawsuit in the Kolkata High Court, and the court issues a decree ordering the defendant, Arjun, to deliver a specific piece of machinery located in Hyderabad.

Application of Section 39: Priya can request the Kolkata High Court to transfer the decree to a competent court in Hyderabad for execution. This is because the machinery to be delivered is situated outside the jurisdiction of the Kolkata court, and the Hyderabad court has jurisdiction over the property.

Example 5:

Scenario: The Madurai District Court issues a decree in favor of Ramesh, ordering the defendant, Vinod, to pay ₹2 lakhs. Vinod has no property in Madurai but has a bank account with sufficient funds in Trichy.

Application of Section 39: Ramesh can apply to the Madurai District Court to transfer the decree to a competent court in Trichy for execution. This is because Vinod has no property in Madurai to satisfy the decree, but he has sufficient funds in a bank account in Trichy.

Section 40: Transfer of decree to Court in another State.

Where a decree is sent for execution in another State, it shall be sent to such Court and executed in such manner as may be prescribed by rules in force in that State.

Simplified act

If a court order needs to be carried out in a different State, it should be sent to the appropriate court in that State.

The court in the other State will follow its own rules to carry out the order.

Explanation using Example

Example 1:

Rajesh, a businessman in Maharashtra, wins a civil lawsuit against Suresh, who resides in Karnataka. The court in Maharashtra issues a decree ordering Suresh to pay Rajesh a sum of ₹5,00,000. However, since Suresh's assets are

located in Karnataka, Rajesh needs to execute the decree in Karnataka. Rajesh's lawyer files an application to transfer the decree from the Maharashtra court to a court in Karnataka. The Karnataka court, upon receiving the decree, will follow the local rules and procedures to enforce the decree and ensure that Suresh pays the amount owed to Rajesh.

Example 2:

Meena, a resident of Tamil Nadu, wins a property dispute case against her cousin, Ravi, who lives in Kerala. The Tamil Nadu court issues a decree granting Meena ownership of a piece of land located in Kerala. To enforce this decree, Meena's lawyer requests the Tamil Nadu court to transfer the decree to a court in Kerala. The Kerala court, upon receiving the decree, will follow the state's rules and procedures to transfer the property title from Ravi to Meena, ensuring that the decree is executed as per the local laws.

Section 41: Result of execution proceedings to be certified.

The Court to which a decree is sent for execution shall certify to the Court which passed it the fact of such execution, or where the former Court fails to execute the same the circumstances attending such failure.

Simplified act

The Court that receives a decree to carry out must inform the Court that issued it about the completion of the execution.

If the Court that received the decree cannot carry it out, it must explain why it failed to do so.

Explanation using Example

Example 1:

Rajesh wins a civil lawsuit in the Delhi High Court and is awarded a decree stating that he is entitled to receive ₹5,00,000 from Suresh. However, Suresh resides in Mumbai, and his assets are located there. Rajesh requests the Delhi High Court to send the decree to the Mumbai City Civil Court for execution. The Mumbai City Civil Court successfully executes the decree by attaching Suresh's bank account and transferring ₹5,00,000 to Rajesh. After completing the execution, the Mumbai City Civil Court certifies to the Delhi High Court that the decree has been executed and the amount has been transferred to Rajesh.

Example 2:

Meena wins a property dispute case in the Chennai District Court, and the decree orders that she should be given possession of a piece of land located in Coimbatore. The Chennai District Court sends the decree to the Coimbatore District Court for execution. However, the Coimbatore District Court faces resistance from the current occupants of the land and is unable to execute the decree. The Coimbatore District Court then certifies to the Chennai District Court that it failed to execute the decree and provides details about the resistance and circumstances that led to the failure.

Section 42: Powers of Court in executing transferred decree.

(1) The Court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had passed by itself.

(2) Without prejudice to the generality of the provisions of sub-section (1), the powers of the Court under that sub-section shall include the following powers of the Court which passed the decree, namely:

- (a) power to send the decree for execution to another Court under section 39;
- (b) power to execute the decree against the legal representative of the deceased judgment-debtor under section 50;
- (c) power to order attachment of a decree.

(3) A Court passing an order in exercise of the powers specified in sub-section (2) shall send a copy thereof to the Court which passed the decree.

(4) Nothing in this section shall be deemed to confer on the Court to which a decree is sent for execution any of the following powers, namely:

- (a) power to order execution at the instance of the transferee of the decree;
- (b) in the case of a decree passed against a firm, power to grant leave to execute such decree against any person, other than such a person as is referred to in clause (b), or clause (c), of sub-rule (1) of rule 50 of Order XXI.

Simplified act

(1) When a court is asked to enforce a decision (decree) made by another court, it has the same authority to enforce it as if it had made the decision itself. Anyone who disobeys or interferes with this enforcement can be punished by this court just as if it had made the decision. The court's orders during this enforcement can be appealed in the same way as if it had made the original decision.

(2) In addition to the general powers mentioned in section (1), the court also has the following specific powers that the original court had:

(a) The power to send the decision to another court for enforcement under section 39;

(b) The power to enforce the decision against the legal representative of a deceased person who owes money under section 50;

(c) The power to order the seizure of another court's decision.

(3) When a court uses the powers listed in section (2), it must send a copy of its order to the court that made the original decision.

(4) This section does not give the enforcing court the following powers:

(a) The power to enforce the decision at the request of someone who has bought the decision;

(b) In the case of a decision made against a business partnership, the power to allow enforcement against anyone other than those specifically mentioned in clauses (b) or (c) of sub-rule (1) of rule 50 of Order XXI.

Explanation using Example

Example 1:

Scenario: Rajesh wins a civil lawsuit against Suresh in the Delhi High Court, and the court issues a decree ordering Suresh to pay Rajesh ₹10 lakhs. However, Suresh has moved to Mumbai and has assets there.

Application of Section 42:

Transfer of Decree: Rajesh requests the Delhi High Court to transfer the decree to the Mumbai Civil Court for execution since Suresh's assets are in Mumbai.

Execution by Mumbai Court: The Mumbai Civil Court, upon receiving the transferred decree, has the same powers to execute the decree as if it had been

passed by itself. This means the Mumbai Court can take actions such as attaching Suresh's assets in Mumbai to recover the ₹10 lakhs.

Punishment for Obstruction: If Suresh tries to obstruct the execution process, the Mumbai Court can punish him just as the Delhi High Court could have.

Appeal Rights: Any orders made by the Mumbai Court in executing the decree can be appealed in the same manner as if the decree had been originally passed by the Mumbai Court.

Example 2:

Scenario: Priya wins a lawsuit against a company, XYZ Pvt. Ltd., in the Bangalore Civil Court. The court issues a decree ordering XYZ Pvt. Ltd. to pay Priya ₹15 lakhs. The company has since dissolved, and its legal representative is now in Chennai.

Application of Section 42:

Transfer of Decree: Priya requests the Bangalore Civil Court to transfer the decree to the Chennai Civil Court for execution against the legal representative of XYZ Pvt. Ltd.

Execution by Chennai Court: The Chennai Civil Court, upon receiving the transferred decree, has the same powers to execute the decree as if it had been passed by itself. This includes the power to execute the decree against the legal representative of the dissolved company under Section 50.

Attachment of Decree: If necessary, the Chennai Court can order the attachment of any other decrees that the legal representative might have in their favor to satisfy Priya's claim.

Communication of Orders: The Chennai Court must send a copy of any orders it passes in executing the decree back to the Bangalore Civil Court.

Limitations: The Chennai Court cannot order execution at the instance of a transferee of the decree or grant leave to execute the decree against any person not specified in the original decree against the firm.

Section 43: Execution of decrees passed by Civil Courts in places to which this Code does not extend.

Any decree passed by any Civil Court established in any part of India to which the provisions of this Code do not extend, or by any Court established or

continued by the authority of the Central Government outside India, may, if it can not be executed within the jurisdiction of the Court by which it was passed, be executed in the manner herein provided within the jurisdiction of any Court in the territories to which this Code extends.

Simplified act

If a Civil Court in any part of India where this Code does not apply, or a Court set up by the Central Government outside India, issues a decree that cannot be carried out within its own area, then that decree can be carried out in the way described here within the area where this Code does apply.

Explanation using Example

Example 1:

Rajesh, a businessman in India, wins a civil lawsuit in a court located in a remote area of Arunachal Pradesh, where the Code of Civil Procedure, 1908, does not extend. The court orders the defendant, Suresh, to pay Rajesh a sum of ₹10 lakhs. However, Suresh has moved to Mumbai and has no assets in Arunachal Pradesh. Rajesh can request the court in Mumbai to execute the decree passed by the Arunachal Pradesh court, allowing him to recover the ₹10 lakhs from Suresh's assets in Mumbai.

Example 2:

An Indian company, ABC Ltd., wins a lawsuit in a civil court established by the Central Government in Dubai against a former employee, Mr. Sharma, who has now returned to India and resides in Delhi. The Dubai court orders Mr. Sharma to pay ₹5 lakhs to ABC Ltd. Since the decree cannot be executed in Dubai due to Mr. Sharma's relocation, ABC Ltd. can approach a civil court in Delhi to execute the decree and recover the ₹5 lakhs from Mr. Sharma's assets in Delhi.

Section 44: Execution of decrees passed by Revenue Courts in places to which this Code does not extend.

The State Government may, by notification in the Official Gazette, declare that the decrees of any Revenue Court in any part of India to which the provisions

of this Code do not extend, or any class of such decrees, may be executed in the State as if they had been passed by Courts in that State.

44A. Execution of decrees passed by Courts in reciprocating territory

(1) Where a certified copy of a decree of any of the superior Courts of any reciprocating territory has been filed in a District Court, the decree may be executed in India as if it had been passed by the District Court.

(2) Together with the certified copy of the decree shall be filed a certificate from such superior Court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.

(3) The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13.

Explanation 1

"Reciprocating territory" means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of this section; and "superior Courts", with reference to any such territory, means such Courts as may be specified in the said notification.

Explanation 2

"Decree" with reference to a superior Court means any decree or judgment of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, but shall in no case include an arbitration award, even if such an award is enforceable as a decree or judgment.

Simplified act

The State Government can announce in the Official Gazette that decisions made by any Revenue Court in parts of India where this Code doesn't apply, or certain types of these decisions, can be enforced in the State as if they were made by Courts in that State.

44A. Enforcing decisions made by Courts in reciprocating territories

(1) If a certified copy of a decision from a superior Court in a reciprocating territory is filed in a District Court, the decision can be enforced in India as if it was made by the District Court.

(2) Along with the certified copy of the decision, a certificate from the superior Court must be filed. This certificate should state how much of the decision has been fulfilled or adjusted, if at all. This certificate will be considered final proof of how much has been fulfilled or adjusted.

(3) The rules in section 47 will apply once the certified copy of the decision is filed. The District Court must refuse to enforce the decision if it falls under any of the exceptions listed in clauses (a) to (f) of section 13.

Explanation 1

"Reciprocating territory" means any country or area outside India that the Central Government declares as such in the Official Gazette for this section. "Superior Courts" in these territories are the Courts specified in the notification.

Explanation 2

A "Decree" from a superior Court means any decision or judgment where a sum of money is owed, but it does not include money owed for taxes, fines, or penalties. It also does not include arbitration awards, even if they can be enforced like a decision or judgment.

Explanation using Example

Example 1:

Scenario: A farmer in Maharashtra owes money to a lender in Gujarat. The lender takes the farmer to a Revenue Court in Gujarat, which issues a decree ordering the farmer to pay the debt. However, the Code of Civil Procedure, 1908, does not extend to the area where the Revenue Court in Gujarat is located.

Application of Section 44: The State Government of Maharashtra issues a notification in the Official Gazette declaring that decrees from the Revenue Court in Gujarat can be executed in Maharashtra. The lender can now approach a court in Maharashtra to execute the decree as if it had been passed

by a court in Maharashtra. This allows the lender to recover the debt from the farmer's assets located in Maharashtra.

Example 2:

Scenario: An Indian company wins a lawsuit in a superior court in the United Kingdom (a reciprocating territory) against an individual residing in India. The UK court issues a decree ordering the individual to pay a sum of money to the company.

Application of Section 44A:

The Indian company obtains a certified copy of the UK court's decree and a certificate from the UK court stating the extent to which the decree has been satisfied or adjusted.

The company files these documents in a District Court in India.

The District Court in India treats the UK court's decree as if it were passed by an Indian court and proceeds to execute it.

The individual in India is required to pay the sum of money as ordered by the UK court, unless the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13 (e.g., the decree was obtained by fraud, or it is contrary to public policy).

These examples illustrate how Section 44 and Section 44A of the Code of Civil Procedure, 1908, facilitate the execution of decrees from Revenue Courts in non-extended areas and from superior courts in reciprocating territories, respectively.

Section 45: Execution of decrees outside India.

So much of the foregoing sections of this Part as empowers a Court to send a decree for execution to another Court shall be construed as empowering a Court in any State to send a decree for execution to any Court established by the authority of the Central Government outside India to which the State Government has by notification in the Official Gazette declared this section to apply.

Simplified act

The sections in this part that allow a Court to send a decree (a formal order) to another Court for execution should be understood as follows:

A Court in any State can send a decree for execution to any Court outside India.

This applies to Courts established by the Central Government outside India.

The State Government must declare, through a notification in the Official Gazette, that this section applies to those Courts.

Explanation using Example

Example 1:

Rajesh, an Indian businessman based in Mumbai, wins a civil lawsuit against a company in Dubai. The Mumbai court issues a decree ordering the Dubai company to pay Rajesh a sum of money. Since the decree needs to be executed in Dubai, the Mumbai court, under Section 45 of the Code of Civil Procedure 1908, sends the decree to a court in Dubai that has been established by the authority of the Central Government of India. The State Government of Maharashtra has declared this section applicable to the Dubai court through a notification in the Official Gazette. Consequently, the Dubai court proceeds with the execution of the decree, ensuring Rajesh receives the awarded amount.

Example 2:

An Indian software engineer, Priya, working in Bangalore, wins a legal case against her former employer, a multinational company headquartered in Singapore. The Bangalore court issues a decree for compensation to be paid to Priya. To enforce this decree in Singapore, the Bangalore court utilizes Section 45 of the Code of Civil Procedure 1908. The decree is sent to a court in Singapore that has been recognized by the Central Government of India. The Karnataka State Government has issued a notification in the Official Gazette applying this section to the Singapore court. As a result, the Singapore court enforces the decree, ensuring Priya receives her compensation.

Section 46: Precepts.

Execution of Decrees

Precept to Attach Property

(1) Upon the application of the decree-holder, the Court which passed the decree may, whenever it thinks fit, issue a precept to any other Court which would be competent to execute such decree to attach any property belonging to the judgment-debtor and specified in the precept.

(2) The Court to which a precept is sent shall proceed to attach the property in the manner prescribed in regard to the attachment of property in execution of a decree:

Provided that no attachment under a precept shall continue for more than two months unless the period of attachment is extended by an order of the Court which passed the decree or unless before the determination of such attachment the decree has been transferred to the Court by which the attachment has been made and the decree-holder has applied for an order for the sale of such property.

Simplified act

Execution of Decrees

Order to Attach Property

(1) If the person who won the case (decree-holder) asks, the Court that made the decision can ask another Court to take (attach) any property belonging to the person who lost the case (judgment-debtor) as described in the order.

(2) The Court that receives this request must attach the property in the same way it would for any other case:

However, this attachment cannot last for more than two months unless the original Court extends the time or the case is transferred to the Court that made the attachment and the decree-holder asks for the property to be sold.

Explanation using Example

Example 1:

Scenario: Rajesh, a businessman in Mumbai, wins a lawsuit against his former business partner, Suresh, and the court orders Suresh to pay Rajesh ₹10 lakhs. Suresh, however, has moved to Delhi and has not paid the amount.

Application of Section 46:

Rajesh (the decree-holder) applies to the Mumbai court (which passed the decree) to issue a precept to the Delhi court.

The Mumbai court issues a precept to the Delhi court to attach Suresh's property in Delhi.

The Delhi court receives the precept and proceeds to attach Suresh's property in Delhi as per the prescribed manner.

The attachment of Suresh's property in Delhi will continue for up to two months unless extended by the Mumbai court or unless the decree is transferred to the Delhi court and Rajesh applies for the sale of the attached property.

Example 2:

Scenario: Meena wins a civil case in Chennai against her tenant, Ravi, who owes her ₹5 lakhs in unpaid rent. Ravi owns a piece of land in Bangalore.

Application of Section 46:

Meena (the decree-holder) requests the Chennai court (which passed the decree) to issue a precept to the Bangalore court.

The Chennai court issues a precept to the Bangalore court to attach Ravi's land in Bangalore.

The Bangalore court receives the precept and attaches Ravi's land in Bangalore following the prescribed legal procedures.

The attachment will last for a maximum of two months unless the Chennai court extends the period or the decree is transferred to the Bangalore court and Meena applies for the sale of the attached land.

QUESTIONS TO BE DETERMINED BY COURT EXECUTING DECREE

Section 47: Questions to be determined by the Court executing decree.

(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or

satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

[Explanation I.—For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II

(a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) All questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.

Simplified act

(1) Any issues that come up between the people involved in a court case where a decision (decree) has been made, or their representatives, and that are about carrying out, ending, or fulfilling the decision, must be handled by the same court that made the decision. These issues cannot be taken to a different court in a new case.

Explanation II

(a) For this section, if someone buys property that was sold because of a court decision, they are considered to be part of the original court case where the decision was made; and

(b) Any issues about giving the property to the buyer or their representative are considered to be about carrying out, ending, or fulfilling the decision, according to this section.

Explanation using Example

Example 1:

Scenario: Rajesh wins a civil lawsuit against Suresh, and the court issues a decree ordering Suresh to pay Rajesh ₹5,00,000. Suresh fails to pay the amount, so Rajesh files for execution of the decree.

Application of Section 47: Rajesh and Suresh have a dispute regarding the execution of the decree. Suresh claims he has already paid ₹2,00,000 to Rajesh, but Rajesh denies receiving any payment. According to Section 47, this dispute about the execution of the decree (whether the payment was made or not) must be resolved by the court that issued the decree, not by filing a new lawsuit.

Example 2:

Scenario: Meena wins a lawsuit against Ramesh, and the court orders Ramesh to transfer ownership of a piece of land to Meena. Ramesh does not comply, so Meena seeks execution of the decree. During the execution process, the land is auctioned, and Sunil purchases it.

Application of Section 47: Sunil, as the purchaser of the property at the execution sale, is considered a party to the original suit. If there is a dispute about the delivery of possession of the land to Sunil, such as Ramesh refusing to vacate the land, this issue must be resolved by the court executing the decree. Sunil does not need to file a separate lawsuit to gain possession of the land; the executing court will handle it.

STATE AMENDMENT

Uttar Pradesh

Amendment of section 47.— In section 47 of the principal Act, Explanation II inserted by the U. P. Civil Laws (Reforms and Amendment) Act, 1954, shall be omitted.

[Vide Uttar Pradesh Act 57 of 1976, s. 3]

LIMIT OF TIME FOR EXECUTION

Section 48: Execution barred in certain cases.Repealed.

Repealed by the Limitation Act, 1963 (36 of 1963), s. with effect from 1-1-1964.

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STATE AMENDMENT

Rajasthan

Insertion of new section 48 A.- After section 48 of the Code of Civil Procedure, 1908 (Central Act V of 1908), in its application thereof to the State of Rajasthan, the following new section shall be, and be deemed always to have been inserted, namely:--

"48-A- Varied application of section 48.- For the purposes of the application of section 48 to the State of Rajasthan;-

(i) a decree, made before the twenty-fifth day of January, 1950, in those parts of Rajasthan where a corresponding provision did not then exist, shall, unless it shall have become time-barred or otherwise infructuous before the said day in accordance with any law then prevailing in those parts, be deemed to have been made on the said day, and

(ii) Where a decree might have been made before the twenty-fifth day of January, 1950 in those parts of Rajasthan where a corresponding provision then existed, with a period longer than twelve years provided therein such longer period or the period of twelve years from the said day whichever expires first shall be the period after which, according to section 48, no order for execution shall be made".

[Vide Rajasthan Act XX of 1952, s. 2]

TRANSFEREES AND LEGAL REPRESENTATIVES

Section 49: Transferee.

Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder.

Simplified act

If someone receives a court order (decree) from another person, they must respect any rights or claims that the person who owes money (judgment-debtor) could have used against the original person who had the court order (decree-holder).

Explanation using Example

Example 1:

Ravi obtained a decree from the court stating that Suresh owes him ₹1,00,000. Ravi then transfers this decree to his friend, Amit, for some personal reasons. According to Section 49 of The Code of Civil Procedure 1908, Amit, as the transferee, will now have the right to collect the ₹1,00,000 from Suresh. However, if Suresh had any valid defenses or claims (equities) against Ravi, such as a counterclaim that Ravi owes him ₹50,000, Suresh can still enforce these defenses against Amit. Amit cannot ignore these defenses just because he is the new holder of the decree.

Example 2:

Meena won a court case against her tenant, Raj, and the court ordered Raj to pay Meena ₹50,000 in overdue rent. Meena decides to sell this decree to her cousin, Priya, for ₹45,000. Priya, as the transferee, now has the right to collect the ₹50,000 from Raj. However, if Raj had a legitimate claim that Meena did not repair the house as per the rental agreement, and this claim could reduce the amount he owes, Raj can still use this claim against Priya. Priya must accept the decree with all the existing rights and defenses that Raj had against Meena.

TRANSFEREES AND LEGAL REPRESENTATIVES

Section 50: Legal representative.

(1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.

(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.

Simplified act

(1) If a person who owes money (judgment-debtor) dies before paying off the debt as ordered by the court (decree), the person who is owed the money (decree-holder) can ask the court to make the deceased person's legal representative (like an executor or heir) pay the debt.

(2) When the court orders the legal representative to pay the debt, they are only responsible for paying it with the property or money they received from the deceased person that hasn't already been used up or given away properly. To figure out how much the legal representative should pay, the court can ask them to show financial records or accounts, either on its own or if the person owed the money requests it.

Explanation using Example

Example 1:

Scenario: Rajesh, a businessman, borrowed ₹10 lakhs from Suresh and failed to repay the amount. Suresh filed a lawsuit and obtained a decree from the court ordering Rajesh to repay the ₹10 lakhs. However, before Rajesh could repay the amount, he passed away.

Application of Section 50: Suresh can apply to the court to execute the decree against Rajesh's legal representative, his son, Amit. The court will then direct Amit to repay the ₹10 lakhs, but only to the extent of the property that Amit inherited from Rajesh. If Amit inherited property worth ₹5 lakhs from Rajesh, he would be liable to pay only ₹5 lakhs to Suresh.

Example 2:

Scenario: Meena obtained a court decree against her tenant, Ravi, for unpaid rent amounting to ₹2 lakhs. Before the decree could be executed, Ravi died. Ravi's legal representative is his wife, Priya.

Application of Section 50: Meena can approach the court to execute the decree against Priya. The court will assess the property that Priya inherited from Ravi. If Priya inherited ₹3 lakhs worth of property from Ravi, she would be liable to pay the full ₹2 lakhs to Meena. However, if Priya inherited only ₹1 lakh worth of property, she would be liable to pay only ₹1 lakh to Meena.

Example 3:

Scenario: Anil secured a court decree against his contractor, Vinod, for ₹15 lakhs due to breach of contract. Vinod passed away before the decree was satisfied. Vinod's legal representative is his daughter, Neha.

Application of Section 50: Anil can request the court to execute the decree against Neha. The court will determine the value of the property Neha inherited from Vinod. If Neha inherited ₹20 lakhs worth of property, she would be liable

to pay the full ₹15 lakhs to Anil. If Neha inherited only ₹10 lakhs worth of property, she would be liable to pay only ₹10 lakhs to Anil. The court may also require Neha to produce accounts to ascertain the exact value of the inherited property.

PROCEDURE IN EXECUTION

Section 51: Powers of Court to enforce execution.

Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree -

- (a) by delivery of any property specifically decreed;
- (b) by attachment and sale or by the sale without attachment of any property;
- (c) by arrest and detention in prison for such period not exceeding the period specified in section 58, where arrest and detention is permissible under that section;
- (d) by appointing a receiver; or
- (e) in such other manner as the nature of the relief granted may require:

Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied -

(a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree, -

(i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or

(ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or

(b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or

(c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

Explanation. - In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree.

Simplified act

Subject to certain conditions and limitations, the Court can, upon the request of the person who won the case (decree-holder), enforce the court's decision in the following ways:

- (a) by handing over any specific property mentioned in the decision;
- (b) by seizing and selling, or just selling without seizing, any property;
- (c) by arresting and putting the person who lost the case (judgment-debtor) in prison for a period not longer than what is allowed under section 58, if arrest and detention are allowed under that section;
- (d) by appointing a receiver to manage the property; or
- (e) in any other way that fits the type of relief granted by the court:

However, if the decision involves the payment of money, the Court will not order imprisonment unless, after giving the person who lost the case a chance to explain why they should not be imprisoned, the Court writes down its reasons and is convinced that:

- (a) the person who lost the case, with the intention of obstructing or delaying the enforcement of the decision, -
 - (i) is likely to run away or leave the area under the Court's authority, or
 - (ii) has, after the case started, dishonestly transferred, hidden, or removed any part of their property, or done any other act of bad faith regarding their property, or
- (b) the person who lost the case has, or has had since the date of the decision, the means to pay the amount decided by the court or a significant part of it and refuses or neglects or has refused or neglected to pay it, or
- (c) the decision is for an amount that the person who lost the case was responsible for in a trusted capacity.

Explanation. - When calculating the means of the person who lost the case for the purposes of clause (b), any property that is protected by law or custom from being seized to enforce the decision will not be considered.

Explanation using Example

Example 1:

Scenario: Ramesh wins a civil lawsuit against Suresh, and the court orders Suresh to pay Ramesh ₹5,00,000 as compensation.

Application of Section 51:

(a) Delivery of Property: If the court specifically decrees that Suresh must hand over a particular piece of property (e.g., a car or a piece of land) to Ramesh, the court can enforce this by ordering the delivery of that property to Ramesh.

(b) Attachment and Sale: If Suresh fails to pay the ₹5,00,000, Ramesh can apply to the court to attach and sell Suresh's property (e.g., his house or car) to recover the amount.

(c) Arrest and Detention: If Suresh is found to be deliberately avoiding payment and has the means to pay, the court can order his arrest and detention in prison for a period not exceeding what is specified in Section 58.

(d) Appointing a Receiver: The court can appoint a receiver to manage Suresh's property or business to ensure that the decree is satisfied.

(e) Other Manner: The court can use any other method deemed appropriate to enforce the decree, such as garnishing Suresh's wages.

Proviso Application:

Before ordering Suresh's detention, the court must give him an opportunity to explain why he should not be imprisoned. If the court finds that Suresh is likely to abscond, has dishonestly transferred property, or has the means to pay but refuses to do so, it can order his detention.

Example 2:

Scenario: Meena wins a lawsuit against her former business partner, Anil, and the court orders Anil to pay Meena ₹10,00,000.

Application of Section 51:

(a) **Delivery of Property:** If the court decrees that Anil must transfer ownership of a specific business asset to Meena, the court can enforce this by ordering the delivery of that asset.

(b) **Attachment and Sale:** If Anil does not pay the ₹10,00,000, Meena can request the court to attach and sell Anil's property, such as his office or machinery, to recover the amount.

(c) **Arrest and Detention:** If Anil is found to be obstructing the execution of the decree by hiding assets or planning to leave the jurisdiction, the court can order his arrest and detention.

(d) **Appointing a Receiver:** The court can appoint a receiver to take control of Anil's business operations to ensure that the decree is satisfied.

(e) **Other Manner:** The court can use other methods, such as freezing Anil's bank accounts, to enforce the decree.

Proviso Application:

Before ordering Anil's detention, the court must give him a chance to show why he should not be imprisoned. If the court is convinced that Anil is likely to abscond, has transferred property dishonestly, or has the means to pay but refuses, it can order his detention.

Explanation Application:

In calculating Anil's means to pay, the court will exclude any property that is legally exempt from attachment, such as certain personal belongings or tools of trade.

Section 52: Enforcement of decree against legal representative.

Execution of Decree Against Legal Representatives

(1) Where a decree is passed against a party as the legal representative of a deceased person, and the decree is for the payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property.

(2) Where no such property remains in the possession of the judgment-debtor and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property in respect of

which he has failed so to satisfy the Court in the same manner as if the decree had been against him personally.

Simplified act

Execution of Decree Against Legal Representatives

(1) If a court order (decree) is made against someone who is representing a deceased person, and the order requires payment from the deceased person's property, the payment can be collected by taking and selling that property.

(2) If the representative no longer has any of the deceased person's property and cannot prove to the court that they used the property correctly, the court can enforce the order against the representative personally, as if the order was originally against them.

Explanation using Example

Example 1:

Ramesh passed away, leaving behind a significant amount of property and assets. He had an outstanding debt of ₹10 lakhs to a bank. The bank obtained a decree from the court to recover the debt from Ramesh's estate. Ramesh's son, Suresh, is the legal representative and inherits the property. According to Section 52 of The Code of Civil Procedure 1908, the bank can enforce the decree by attaching and selling Ramesh's property that Suresh inherited to recover the ₹10 lakhs.

Example 2:

Anita inherited her late father's property, which included a house and some land. Her father had a pending loan of ₹5 lakhs. The lender obtained a court decree to recover the loan amount from the deceased's estate. Anita sold part of the land and used the proceeds for personal expenses instead of paying off the loan. The lender approached the court again. Since Anita failed to apply the inherited property to satisfy the debt, the court can now enforce the decree against Anita personally, to the extent of the property she misused, as if the decree was originally against her.

Section 53: Liability of ancestral property.

For the purposes of section 50 and section 52, property in the hands of a son or other descendant which is liable under Hindu law for the payment of the debt of a deceased ancestor, in respect of which a decree has been passed,

shall be deemed to be property of the deceased which has come to the hands of the son or other descendant as his legal representative.

Simplified act

For the purposes of section 50 and section 52:

If a son or other descendant inherits property from a deceased ancestor,

And if that property is liable under Hindu law to pay off the ancestor's debt,

And if a court has issued a decree regarding this debt,

Then, this property will be considered as the property of the deceased ancestor that has come into the hands of the son or other descendant as their legal representative.

Explanation using Example

Example 1:

Ramesh, a resident of Mumbai, had taken a loan from a bank and passed away without repaying it. The bank obtained a decree from the court to recover the debt. Ramesh's son, Suresh, inherited Ramesh's ancestral property in Pune. According to Section 53 of The Code of Civil Procedure 1908, the bank can claim the debt from the ancestral property now in Suresh's possession, as it is considered the property of the deceased Ramesh that has come into Suresh's hands as his legal representative.

Example 2:

Vikram, a businessman in Delhi, had borrowed money from a friend and died before repaying the debt. The friend went to court and obtained a decree to recover the money. Vikram's grandson, Arjun, inherited Vikram's ancestral property in Jaipur. Under Section 53 of The Code of Civil Procedure 1908, Arjun is liable to pay off Vikram's debt using the ancestral property he inherited, as it is deemed to be the property of the deceased Vikram that has come into Arjun's hands as his legal representative.

Section 54: Partition of estate or separation of share.

Where the decree is for the partition of an undivided estate assessed to the payment of revenue to the Government, or for the separate possession of a share of such an estate, the partition of the estate or the separation of the

share shall be made by the Collector or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition, or the separate possession of shares, of such estates.

Simplified act

If a court order requires dividing a property that is not yet divided and is taxed by the Government, or if it requires giving a separate part of such a property to someone:

The division of the property or the separation of the part will be done by the Collector (a government official) or a qualified assistant chosen by the Collector.

This process will follow the current laws related to dividing or separating parts of such properties.

Explanation using Example

Example 1:

Ramesh and Suresh are brothers who inherited a large piece of agricultural land from their father. This land is assessed to the payment of revenue to the Government. Over time, Ramesh and Suresh decide that they want to divide the land between themselves. They approach the court, and the court issues a decree for the partition of the estate. According to Section 54 of The Code Of Civil Procedure 1908, the actual partition of the land will be carried out by the Collector or a designated subordinate officer. The Collector will ensure that the land is divided according to the relevant laws and that each brother receives their rightful share.

Example 2:

Anita and her cousins jointly own a tea estate in Assam, which is assessed to the payment of revenue to the Government. Anita wants to have her share of the estate separated so she can manage it independently. She files a suit in court, and the court issues a decree for the separation of her share. As per Section 54 of The Code Of Civil Procedure 1908, the Collector or a gazetted subordinate officer will be responsible for carrying out the separation. The officer will follow the existing laws to ensure that Anita's share is properly demarcated and handed over to her, ensuring that the process is fair and legal.

ARREST AND DETENTION

Section 55: Arrest and detention.

(1) A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall, as soon as practicable, be brought before the Court, and his detention may be in the civil prison of the district in which the Court ordering the detention is situate, or, where such civil prison does not afford suitable accommodation, in any other place which the State Government may appoint for the detention of persons ordered by the Courts of such district to be detained:

Provided, firstly that, for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset and before sunrise:

Provided, secondly, that no outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the officer authorized to make the arrest has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe the judgment-debtor is to be found:

Provided, thirdly that, if the room is in the actual occupancy of a woman who is not the judgment-debtor and who according to the customs of the country does not appear in public, the officer authorized to make the arrest shall give notice to her that she is at liberty to withdraw, and, after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, may enter the room for the purpose of making the arrest:

Provided, fourthly, that, where the decree in execution of which a judgment-debtor is arrested, is a decree for the payment of money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

(2) The State Government may, by notification in the Official Gazette, declare that any person or class of persons whose arrest might be attended with danger or inconvenience to the public shall not be liable to arrest in execution of a decree otherwise than in accordance with such procedure as may be prescribed by the State Government in this behalf.

(3) Where a judgment-debtor is arrested in execution of a decree for the payment of money and brought before the Court, the Court shall inform him that he may apply to be declared an insolvent, and that he may be discharged if he has not committed any act of bad faith regarding the subject of the

application and if he complies with the provisions of the law of insolvency for the time being in force.

(4) Where a judgment-debtor expresses his intention to apply to be declared an insolvent and furnishes security, to the satisfaction of the Court, that he will within one month so apply, and that he will appear, when called upon, in any proceeding upon the application or upon the decree in execution of which he was arrested, the Court may release him from arrest, and, if he fails so to apply and to appear, the Court may either direct the security to be realized or commit him to the civil prison in execution of the decree.

Simplified act

(1) A person who owes money (judgment-debtor) can be arrested to enforce a court order at any time of day. They must be brought to court as soon as possible. They can be kept in the local civil prison or another place chosen by the State Government if the local prison is not suitable:

However, first, no one can enter a house to make an arrest after sunset and before sunrise.

Second, the front door of a house cannot be broken open unless the person who owes money lives there and refuses to let the officer in. Once inside, the officer can break open any room door if they believe the person is inside.

Third, if a woman who does not appear in public according to local customs is in the room, the officer must give her a chance to leave before entering to make the arrest.

Fourth, if the person pays the owed money and the arrest costs to the officer, they must be released immediately.

(2) The State Government can announce that certain people or groups who might cause danger or inconvenience if arrested cannot be arrested without following special procedures set by the government.

(3) If a person is arrested for owing money and brought to court, the court must tell them they can apply to be declared bankrupt. They can be released if they haven't acted dishonestly and follow the current bankruptcy laws.

(4) If the person says they want to apply for bankruptcy and provides a guarantee to the court that they will apply within a month and show up when

required, the court can release them. If they fail to apply or show up, the court can either take the guarantee money or send them to prison.

Explanation using Example

Example 1:

Scenario: Ramesh, a businessman, owes Rs. 5 lakhs to Suresh as per a court decree. Ramesh has failed to pay the amount despite multiple reminders.

Application of Section 55:

Arrest: Suresh approaches the court to execute the decree. The court issues an order for Ramesh's arrest. The court officer arrives at Ramesh's house at 8 PM to arrest him.

Provisions Applied:

The officer cannot enter Ramesh's house after sunset, so he waits until the next morning.

The next day, the officer arrives at 7 AM and knocks on the door. Ramesh refuses to open the door.

The officer, having gained access to the house, breaks open the door of the room where Ramesh is hiding.

Ramesh's wife, who follows customs that prevent her from appearing in public, is in another room. The officer gives her notice and allows her time to withdraw before entering the room to arrest Ramesh.

Detention: Ramesh is taken to the civil prison of the district. However, if the local civil prison is overcrowded, he may be detained in another facility appointed by the State Government.

Payment and Release: On the way to the prison, Ramesh decides to pay the Rs. 5 lakhs and the costs of the arrest to the officer. The officer immediately releases Ramesh upon receiving the payment.

Example 2:

Scenario: Priya, a shop owner, owes Rs. 2 lakhs to her supplier, Anil, as per a court decree. Priya has not paid the amount and is arrested in execution of the decree.

Application of Section 55:

Arrest and Court Appearance: Priya is arrested and brought before the court. The court informs her that she can apply to be declared insolvent.

Insolvency Application:

Priya expresses her intention to apply for insolvency and provides security to the court that she will file the application within one month.

The court releases Priya from arrest based on the security provided.

Failure to Apply: If Priya fails to apply for insolvency within the stipulated time or does not appear in subsequent proceedings, the court may:

Realize the security provided by Priya.

Commit Priya to the civil prison in execution of the decree.

Example 3:

Scenario: The State Government issues a notification that high-ranking government officials cannot be arrested in execution of a decree due to potential public inconvenience.

Application of Section 55:

Notification: The State Government publishes a notification in the Official Gazette declaring that high-ranking government officials are exempt from arrest in execution of a decree.

Special Procedure: If a decree is to be executed against such an official, it must follow a special procedure prescribed by the State Government to ensure public safety and convenience.

Section 56: Prohibition of arrest or detention of women in execution of decree for money.

Notwithstanding anything in this Part, the Court shall not order the arrest or detention in the civil prison of a woman in execution of a decree for the payment of money.

Simplified act

No matter what is said in this section, the Court cannot order the arrest or imprisonment of a woman to make her pay money she owes according to a court decision.

Explanation using Example

Example 1:

Scenario: Rita, a small business owner in Mumbai, took a loan from a local bank to expand her business. Unfortunately, due to unforeseen circumstances, her business did not perform well, and she was unable to repay the loan. The bank filed a civil suit against her and obtained a decree from the court for the repayment of the loan amount.

Application of Section 56: Despite the court's decree, the bank cannot request the court to arrest or detain Rita in a civil prison for failing to repay the loan. Section 56 of the Code of Civil Procedure, 1908, protects Rita from being arrested or detained in such a situation.

Example 2:

Scenario: Meera, a resident of Delhi, borrowed money from a friend to cover medical expenses. She promised to repay the amount within a year but was unable to do so due to financial difficulties. Her friend filed a civil suit and obtained a decree for the repayment of the borrowed amount.

Application of Section 56: Even though Meera's friend has a court decree for the repayment, the court cannot order Meera's arrest or detention in a civil prison for not being able to pay back the money. Section 56 ensures that Meera cannot be imprisoned for her inability to fulfill the monetary decree.

Section 57: Subsistence-allowance.

The State Government may fix scales, graduated according to rank, race and nationality, of monthly allowances payable for the subsistence of judgment-debtors.

Simplified act

Allowance.

The State Government can set different levels of monthly payments to support people who owe money and are unable to pay, based on their rank, race, and nationality.

Explanation using Example

Example 1:

Rajesh, a businessman in Mumbai, loses a civil lawsuit and is ordered by the court to pay a significant sum of money to the plaintiff. However, Rajesh is unable to pay the amount immediately. The court orders his arrest and detention until he can pay the debt. According to Section 57 of The Code of Civil Procedure 1908, the State Government has set a subsistence allowance of Rs. 5000 per month for someone of Rajesh's rank and nationality. This allowance is meant to cover his basic living expenses while he is detained. The plaintiff, who won the lawsuit, is required to pay this subsistence allowance to ensure Rajesh's basic needs are met during his detention.

Example 2:

Meena, a school teacher in Delhi, is unable to repay a loan she took from a private lender. The lender takes her to court, and the court rules in favor of the lender, ordering Meena to repay the loan amount. Since Meena cannot pay the amount immediately, the court orders her detention. The State Government has fixed a subsistence allowance of Rs. 3000 per month for someone of Meena's rank and nationality. This allowance is to be paid by the lender to cover Meena's basic living expenses while she is detained, ensuring that her basic needs are met during this period.

Section 58: Detention and release.

Detention in Civil Prison

(1) Every person detained in the civil prison in execution of a decree shall be so detained, -

(a) where the decree is for the payment of a sum of money exceeding five thousand rupees, for a period not exceeding three months, and,

(b) where the decree is for the payment of a sum of money exceeding two thousand rupees, but not exceeding five thousand rupees, for a period not exceeding six weeks.

(1A) For the removal of doubts, it is hereby declared that no order for detention of the judgment-debtor in civil prison in execution of a decree for the payment of money shall be made, where the total amount of the decree does not exceed two thousand rupees.

(2) A judgment-debtor released from detention under this section shall not merely by reason of his release be discharged from his debt, but he shall not be liable to be re-arrested under the decree in execution of which he was detained in the civil prison.

Simplified act

Detention in Civil Prison

(1) If someone is put in civil prison because of a court order to pay money, they will be detained as follows:

(a) If the amount to be paid is more than five thousand rupees, they can be detained for up to three months.

(b) If the amount to be paid is more than two thousand rupees but not more than five thousand rupees, they can be detained for up to six weeks.

(1A) To make things clear, no one will be put in civil prison for not paying money if the total amount they owe is two thousand rupees or less.

(2) If someone is released from civil prison, it does not mean their debt is forgiven. However, they cannot be put back in prison for the same debt under the same court order.

Explanation using Example

Example 1:

Scenario: Rajesh owes Ramesh Rs. 10,000 as per a court decree. Rajesh fails to pay the amount within the stipulated time.

Application of Section 58:

Since the amount exceeds Rs. 5,000, Rajesh can be detained in civil prison for a period not exceeding three months.

Rajesh is detained for three months as per the court's order.

After three months, Rajesh is released from civil prison. However, his release does not mean that his debt of Rs. 10,000 is cleared. He still owes Ramesh the money but cannot be re-arrested for the same decree.

Example 2:

Scenario: Sunita owes Priya Rs. 3,500 as per a court decree. Sunita fails to pay the amount within the stipulated time.

Application of Section 58:

Since the amount exceeds Rs. 2,000 but does not exceed Rs. 5,000, Sunita can be detained in civil prison for a period not exceeding six weeks.

Sunita is detained for six weeks as per the court's order.

After six weeks, Sunita is released from civil prison. However, her release does not mean that her debt of Rs. 3,500 is cleared. She still owes Priya the money but cannot be re-arrested for the same decree.

Example 3:

Scenario: Anil owes Vijay Rs. 1,500 as per a court decree. Anil fails to pay the amount within the stipulated time.

Application of Section 58:

Since the amount does not exceed Rs. 2,000, Anil cannot be detained in civil prison for failing to pay the amount.

The court cannot issue an order for Anil's detention in civil prison for the decree amount of Rs. 1,500.

Vijay will need to explore other legal avenues to recover the amount from Anil, but detention is not an option in this case.

Section 59: Release on ground of illness.

Provisions for Release of Judgment-Debtor

(1) At any time after a warrant for the arrest of a judgment-debtor has been issued, the Court may cancel it on the ground of his serious illness.

(2) Where a judgment-debtor has been arrested, the Court may release him if, in its opinion, he is not in a fit state of health to be detained in the civil prison.

(3) Where a judgment-debtor has been committed to the civil prison, he may be released therefrom -

(a) by the State Government, on the ground of the existence of any infectious or contagious disease, or

(b) by the committing Court, or any Court to which that Court is subordinate, on the ground of his suffering from any serious illness.

(4) A judgment-debtor released under this section may be re-arrested, but the period of his detention in civil prison shall not in the aggregate exceed that prescribed by section 58.

Simplified act

Rules for Releasing Someone Who Owes Money (Judgment-Debtor)

(1) If the court has issued an arrest warrant for someone who owes money, the court can cancel the warrant if the person is seriously ill.

(2) If the person who owes money has been arrested, the court can let them go if the court thinks they are too sick to stay in jail.

(3) If the person who owes money has been put in jail, they can be released:

(a) by the State Government if there is an outbreak of a contagious disease, or

(b) by the court that sent them to jail, or any higher court, if they are seriously ill.

(4) A person who is released because of illness can be arrested again, but the total time they spend in jail cannot be more than what is allowed by section 58.

Explanation using Example

Example 1:

Scenario: Ramesh, a businessman, has been ordered by the court to pay a significant sum of money to his creditor, Suresh. Ramesh fails to comply with the court's order, and a warrant for his arrest is issued.

Application of Section 59:

Serious Illness Before Arrest:

Before the police can execute the warrant, Ramesh falls seriously ill and is admitted to the hospital.

Ramesh's lawyer presents medical certificates to the court, proving his serious illness.

The court, considering the medical evidence, cancels the arrest warrant on the ground of Ramesh's serious illness.

Serious Illness After Arrest:

After recovering, Ramesh is arrested and taken to the civil prison.

While in prison, Ramesh's health deteriorates significantly.

The court reviews his medical condition and determines that he is not in a fit state of health to be detained.

The court orders Ramesh's release from the civil prison due to his serious illness.

Infectious Disease:

While in prison, an outbreak of a contagious disease occurs.

The State Government, concerned about the spread of the disease, orders the release of all prisoners, including Ramesh, to prevent further infection.

Re-arrest:

After recovering from his illness, Ramesh is re-arrested.

The total period of his detention, including the time before his release, does not exceed the maximum period prescribed by Section 58 of the Code of Civil Procedure, 1908.

Example 2:

Scenario: Priya, a shop owner, owes a large debt to her supplier, Anil. Despite multiple court orders, Priya fails to repay the debt, leading to the issuance of an arrest warrant.

Application of Section 59:

Serious Illness Before Arrest:

Priya is diagnosed with a severe heart condition and is advised complete bed rest by her doctor.

Priya's lawyer submits her medical reports to the court.

The court, acknowledging her serious illness, cancels the arrest warrant.

Serious Illness After Arrest:

Priya is eventually arrested after her condition stabilizes.

While in civil prison, Priya suffers a severe relapse of her heart condition.

The court, upon reviewing her medical condition, decides that she is not fit to be detained and orders her release.

Infectious Disease:

During her time in prison, there is an outbreak of tuberculosis.

The State Government, to control the spread of the disease, orders the release of prisoners, including Priya.

Re-arrest:

Once Priya's health improves, she is re-arrested.

The total duration of her detention, including the time before her release, is monitored to ensure it does not exceed the limit set by Section 58 of the Code of Civil Procedure, 1908.

ATTACHMENT

Section 60: Property liable to attachment and sale in execution of decree.

Attachment and Sale in Execution of a Decree

(1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale, namely:

(a) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman;

(b) tools of artisans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section;

(c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist or a labourer or a domestic servant and occupied by him;

(d) books of account;

(e) a mere right to sue for damages;

(f) any right of personal service;

(g) stipends and gratuities allowed to pensioners of the Government or of a local authority or of any other employer, or payable out of any service family pension fund notified in the Official Gazette by the Central Government or the State Government in this behalf, and political pensions;

(h) the wages of labourers and domestic servants, whether payable in money or in kind;

(i) salary to the extent of the first one thousand rupees and two-thirds of the remainder in execution of any decree other than a decree for maintenance:

Provided that where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months, and, where such attachment has been made in execution of one and the same decree, shall, after the attachment has continued for a total period of twenty-four months, be finally exempt from attachment in execution of that decree.

- (ia) one-third of the salary in execution of any decree for maintenance;
- (j) the pay and allowances of persons to whom the Air Force Act, 1950 (45 of 1950) or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957), applies;
- (k) all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, 1925, (19 of 1925), for the time being applies in so far as they are declared by the said Act not to be liable to attachment;
- (ka) all deposits and other sums in or derived from any fund to which the Public Provident Fund Act, 1968 (23 of 1968), for the time being applies, in so far as they are declared by the said Act as not to be liable to attachment;
- (kb) all moneys payable under a policy of insurance on the life of the judgment debtor;
- (kc) the interest of a lessee of a residential building to which the provisions of law for the time being in force relating to control of rents and accommodation apply;
- (l) any allowance forming part of the emoluments of any servant of the Government or of any servant of a railway company or local authority which the appropriate Government may by notification in the Official Gazette declare to be exempt from attachment, and any subsistence grant or allowance made to any such servant while under suspension;
- (m) an expectancy of succession by survivorship or other merely contingent or possible right or interest;
- (n) a right to future maintenance;
- (o) any allowance declared by any Indian law to be exempt from liability to attachment or sale in execution of a decree; and
- (p) where the judgment-debtor is a person liable for the payment of land-revenue, any movable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue.

Explanation 1. - The moneys payable in relation to the matters mentioned in clauses (g), (h), (i), (ia), (j), (l) and (o) are exempt from attachment or sale, whether before or after they are actually payable, and, in the case of salary, the

attachable portion thereof is liable to attachment whether before or after it is actually payable.

Explanation II. - In clauses (i) and (ia), "salary" means the total monthly emoluments, excluding any allowance declared exempt from attachment under the provisions of clause (l), derived by a person from his employment whether on duty or on leave.

Explanation III. - In clause (l) "appropriate Government" means:

(i) as respects any person in the service of the Central Government, or any servant of a Railway Administration or of a cantonment authority or of the port authority of a major port, the Central Government;

(iii) as respects any other servant of the Government or a servant of any other local authority, the State Government.

Explanation IV. - For the purposes of this proviso, "wages" includes bonus, and "labourer" includes a skilled, unskilled or semi-skilled labourer.

Explanation V. - For the purposes of this proviso, the expression "agriculturist" means a person who cultivates land personally and who depends for his livelihood mainly on the income from agricultural land, whether as owner, tenant, partner or agricultural labourer.

Explanation VI. - For the purposes of Explanation V an agriculturist shall be deemed to cultivate land personally, if he cultivates land:

(a) by his own labour, or

(b) by the labour of any member of his family, or

(c) by servants or labourers on wages payable in cash or in kind (not being as a share of the produce), or both.

(IA) Notwithstanding anything contained in any other law for the time being in force, an agreement by which a person agrees to waive the benefit of any exemption under this section shall be void.

(2) Nothing in this section shall be deemed to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building, site or land.

Simplified act

Attachment and Sale in Execution of a Decree

(1) The following types of property can be taken and sold to pay off a court order (decree):

Land, houses, or other buildings

Goods, money, bank-notes, cheques, bills of exchange, promissory notes, Government securities, bonds, or other money-related securities

Debts, shares in a corporation, and any other property that can be sold, whether movable or immovable, that belongs to the person who owes money (judgment-debtor) or that they can control for their own benefit, even if it is held by someone else for them.

However, the following items cannot be taken or sold:

(a) Necessary clothing, cooking vessels, beds, and bedding of the judgment-debtor, their spouse, and children, and personal ornaments that women cannot part with due to religious customs.

(b) Tools of artisans, and for farmers, their farming tools, cattle, and seed-grain necessary for their livelihood, and certain agricultural produce declared exempt by the court.

(c) Houses and buildings (including materials and land necessary for their use) belonging to a farmer, laborer, or domestic servant and occupied by them.

(d) Account books.

(e) The right to sue for damages.

(f) Any personal service rights.

(g) Pensions and gratuities allowed to government or local authority pensioners, or from any notified family pension fund, and political pensions.

(h) Wages of laborers and domestic servants, whether paid in money or kind.

(i) Salary up to the first one thousand rupees and two-thirds of the remainder, except for maintenance decrees:

If part of the salary has been under attachment for 24 months, it becomes exempt for the next 12 months, and if it's for the same decree, it becomes permanently exempt after 24 months.

(ia) One-third of the salary for maintenance decrees.

(j) Pay and allowances of people under the Air Force Act, Army Act, or Navy Act.

(k) Compulsory deposits and sums from any fund under the Provident Funds Act, 1925, declared exempt from attachment.

(ka) Deposits and sums from any fund under the Public Provident Fund Act, 1968, declared exempt from attachment.

(kb) Money payable under a life insurance policy of the judgment-debtor.

(kc) The interest of a lessee in a residential building under rent control laws.

(l) Allowances of government or railway/local authority servants declared exempt by the government, and subsistence grants during suspension.

(m) Future inheritance or contingent rights.

(n) Right to future maintenance.

(o) Any allowance declared exempt by Indian law.

(p) Movable property exempt from sale for land-revenue arrears.

Explanation 1: The money related to clauses (g), (h), (i), (ia), (j), (l), and (o) is exempt from attachment or sale, whether before or after it is payable. For salary, the attachable portion can be taken whether before or after it is payable.

Explanation II: In clauses (i) and (ia), "salary" means total monthly earnings, excluding exempt allowances under clause (l).

Explanation III: In clause (l), "appropriate Government" means:

(i) For Central Government employees, railway, cantonment, or major port authority servants, the Central Government.

(iii) For other government or local authority servants, the State Government.

Explanation IV: "Wages" includes bonus, and "labourer" includes skilled, unskilled, or semi-skilled workers.

Explanation V: "Agriculturist" means a person who personally cultivates land and mainly depends on agricultural income for livelihood, whether as owner, tenant, partner, or laborer.

Explanation VI: An agriculturist is deemed to cultivate land personally if they do so:

(a) By their own labor.

(b) By the labor of family members.

(c) By hired laborers paid in cash or kind (not as a share of produce).

(IA) Any agreement to waive the benefit of any exemption under this section is void.

(2) This section does not exempt houses and buildings (including materials and necessary land) from attachment or sale for rent decrees of such properties.

Explanation using Example

Example 1:

Scenario: Ramesh, a businessman, has defaulted on a loan he took from a bank. The bank has obtained a court decree to recover the loan amount.

Application of Section 60:

The bank can attach and sell Ramesh's properties such as his commercial building, car, and shares in a company to recover the loan amount.

However, Ramesh's necessary wearing apparel, cooking vessels, beds, and bedding used by his family cannot be attached or sold.

If Ramesh is an agriculturist, his farming tools, cattle, and seed-grain necessary for his livelihood are also exempt from attachment.

Example 2:

Scenario: Sita, a salaried employee, has a court decree against her for failing to repay a personal loan.

Application of Section 60:

The court can order the attachment of Sita's salary. However, only the amount exceeding the first ₹1,000 and two-thirds of the remainder can be attached.

If Sita's salary has already been under attachment for 24 months, the attached portion will be exempt from further attachment for the next 12 months.

Sita's provident fund, life insurance policy proceeds, and any government pension she receives are exempt from attachment.

Example 3:

Scenario: Mohan, an artisan, owes money to a supplier who has obtained a court decree to recover the debt.

Application of Section 60:

The supplier can attach and sell Mohan's movable and immovable properties, such as his workshop and any finished goods.

However, Mohan's tools of trade, which are essential for his work as an artisan, cannot be attached or sold.

If Mohan is also an agriculturist, his farming implements and necessary cattle are protected from attachment.

Example 4:

Scenario: Priya, a domestic servant, has a court decree against her for unpaid rent.

Application of Section 60:

The landlord can attach Priya's movable properties like her savings in the bank.

However, Priya's wages, whether paid in money or kind, are exempt from attachment.

The house she occupies, if it belongs to her and is necessary for her residence, is also protected from attachment.

Example 5:

Scenario: Ajay, a retired government employee, has a court decree against him for a business debt.

Application of Section 60:

The creditor can attach Ajay's properties such as his car and any investments he has made.

Ajay's government pension and any gratuities he receives are exempt from attachment.

If Ajay has a life insurance policy, the money payable under that policy is also protected from attachment.

Section 61: Partial exemption of agricultural produce.

The State Government may, by general or special order published in the Official Gazette, declare that such portion of agricultural produce, or of any class of agricultural produce, as may appear to the State Government to be necessary for the purpose of providing until the next harvest for the due cultivation of the land and for the support of the judgment-debtor and his family, shall, in the case of all agriculturists or of any class of agriculturists, be exempted from liability to attachment or sale in execution of a decree.

Simplified act

The State Government can make a general or special order, which will be published in the Official Gazette.

This order can declare that a certain amount or type of agricultural produce is necessary for: a. Proper cultivation of the land until the next harvest. b. Supporting the judgment-debtor (the person who owes money) and their family.

The declared agricultural produce will be protected from being taken or sold to pay off a debt.

This protection applies to all farmers or specific groups of farmers, as decided by the State Government.

Explanation using Example

Example 1:

Ramesh is a farmer in Maharashtra who has taken a loan from a local bank to buy seeds and fertilizers for his farm. Unfortunately, due to a poor monsoon season, his crop yield is significantly lower than expected, and he is unable to repay the loan. The bank obtains a court decree to recover the loan amount by attaching and selling Ramesh's agricultural produce. However, the State Government of Maharashtra has issued a special order under Section 61 of the

Code of Civil Procedure, 1908, declaring that a certain portion of agricultural produce necessary for the next harvest and for the support of Ramesh and his family is exempt from attachment or sale. As a result, Ramesh is allowed to keep enough produce to sustain his family and prepare for the next planting season, ensuring that he can continue farming and eventually repay his debts.

Example 2:

Sita is a small-scale farmer in Punjab who grows wheat on her land. She has an outstanding debt to a local moneylender, who has obtained a court decree to recover the debt by attaching Sita's wheat produce. The Punjab State Government, recognizing the importance of supporting small farmers, issues a general order under Section 61 of the Code of Civil Procedure, 1908, stating that a portion of wheat produce necessary for the next harvest and for the sustenance of the farmer's family is exempt from attachment. Consequently, Sita is allowed to retain enough wheat to feed her family and save seeds for the next planting season, thereby protecting her livelihood and ensuring that she can continue farming.

Example 3:

Vikram, a sugarcane farmer in Uttar Pradesh, faces financial difficulties and is unable to repay a loan taken from a cooperative society. The cooperative society obtains a court decree to recover the loan by attaching Vikram's sugarcane produce. However, the Uttar Pradesh State Government has issued a special order under Section 61 of the Code of Civil Procedure, 1908, exempting a portion of sugarcane produce necessary for the next harvest and for the support of Vikram and his family from attachment. This exemption allows Vikram to keep enough sugarcane to sustain his family and prepare for the next planting season, ensuring that he can continue his agricultural activities and eventually repay the loan.

Example 4:

Anita, a rice farmer in West Bengal, has an outstanding debt to a microfinance institution. Due to unforeseen circumstances, she is unable to repay the loan, and the institution obtains a court decree to recover the debt by attaching Anita's rice produce. The West Bengal State Government, understanding the critical role of rice farmers in the state's economy, issues a general order under Section 61 of the Code of Civil Procedure, 1908, exempting a portion of rice produce necessary for the next harvest and for the support of the farmer's family from attachment. As a result, Anita is allowed to retain enough rice to

feed her family and save seeds for the next planting season, ensuring her continued ability to farm and repay her debts in the future.

Section 62: Seizure of property in dwelling house.

(1) No person executing any process under this Code directing or authorizing seizure of movable property shall enter any dwelling-house after sunset and before sunrise.

(2) No outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the person executing any such process has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe any such property to be.

(3) Where a room in a dwelling-house is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the person executing the process shall give notice to such woman that she is at liberty to withdraw; and, after allowing reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

Simplified act

(1) If someone is carrying out an order to take movable property, they cannot enter a house after sunset and before sunrise.

(2) The outer door of a house cannot be broken open unless the person who owes money lives there and refuses to let the person carrying out the order in. Once inside, the person carrying out the order can break open the door of any room where they believe the property is kept.

(3) If a room is occupied by a woman who, according to local customs, does not appear in public, the person carrying out the order must inform her that she can leave. They must give her enough time and help her to leave before entering the room to take the property, while taking care to prevent the property from being secretly removed.

Explanation using Example

Example 1:

Mr. Sharma, a businessman, has defaulted on a loan, and the court has issued an order to seize his movable property to recover the debt. The court-appointed officer arrives at Mr. Sharma's house at 8 PM to execute the order. However, according to Section 62 of The Code of Civil Procedure 1908, the officer cannot enter the dwelling-house after sunset. Therefore, the officer must wait until the next morning to enter the house and seize the property.

Example 2:

Ms. Gupta has a court order against her for failing to pay a debt. The court officer arrives at her house during the day to seize her movable property. Ms. Gupta refuses to open the door. According to Section 62, the officer can break open the outer door only if Ms. Gupta is the occupant and is preventing access. Once inside, if the officer believes that the property is in a specific room, he can break open the door of that room to seize the property.

Example 3:

Mr. Khan has a court order against him, and the officer arrives at his house to seize his property. One of the rooms in the house is occupied by Mrs. Khan, who follows the custom of not appearing in public. The officer must first give notice to Mrs. Khan, allowing her reasonable time and facility to withdraw from the room. Only after she has withdrawn can the officer enter the room to seize the property, ensuring that he takes every precaution to prevent the property from being secretly removed.

Section 63: Property attached in execution of decrees of several Courts.

(1) Where property not in the custody of any Court is under attachment in execution of decrees of more Courts than one, the Court which shall receive or realize such property and shall determine any claim thereto and any objection to the attachment thereof shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached.

(2) Nothing in this section shall be deemed to invalidate any proceeding taken by a Court executing one of such decrees.

Explanation. - For the purposes of sub-section (2), "proceeding taken by a Court" does not include an order allowing, to a decree-holder who has purchased property at a sale held in execution of a decree, set off to the extent of the purchase price payable by him.

Simplified act

(1) If a property that is not held by any Court is being claimed by multiple Courts because of different decrees, the Court that will handle the property and decide on any claims or objections will be the highest-ranking Court. If the Courts are of the same rank, the Court that first attached the property will handle it.

(2) This section does not cancel any actions already taken by a Court that is enforcing one of these decrees.

Explanation. - For the purposes of sub-section (2), "actions taken by a Court" do not include an order that allows a person who has bought property at a Court-ordered sale to use the purchase price to offset what they owe.

Explanation using Example

Example 1:

Scenario: Mr. Sharma has a piece of land in Delhi. This land is not currently under the custody of any court. However, it has been attached in execution of decrees from two different courts: the Delhi District Court and the Gurgaon District Court.

Application of Section 63:

The Delhi District Court is a higher-grade court compared to the Gurgaon District Court.

According to Section 63(1), the Delhi District Court will have the authority to receive or realize the property, determine any claims to it, and address any objections to the attachment.

Even if the Gurgaon District Court had initiated some proceedings regarding the attachment, those proceedings would not be invalidated as per Section 63(2).

Example 2:

Scenario: Ms. Gupta has a commercial property in Mumbai. This property is not in the custody of any court but has been attached in execution of decrees from two courts of the same grade: the Mumbai Civil Court and the Thane Civil Court. The Mumbai Civil Court attached the property first.

Application of Section 63:

Since both courts are of the same grade, the court under whose decree the property was first attached will have the authority.

Therefore, the Mumbai Civil Court will receive or realize the property, determine any claims to it, and address any objections to the attachment.

Any proceedings taken by the Thane Civil Court in executing its decree will not be invalidated, but the Mumbai Civil Court will have the primary authority as per Section 63(1) and (2).

Example 3:

Scenario: Mr. Khan owns a factory in Bangalore. This factory is not in the custody of any court but has been attached in execution of decrees from the Bangalore City Civil Court and the Mysore District Court. The Bangalore City Civil Court attached the property first.

Application of Section 63:

The Bangalore City Civil Court and the Mysore District Court are of different grades, with the Bangalore City Civil Court being of a higher grade.

According to Section 63(1), the Bangalore City Civil Court will have the authority to receive or realize the property, determine any claims to it, and address any objections to the attachment.

Any proceedings taken by the Mysore District Court in executing its decree will not be invalidated as per Section 63(2).

Example 4:

Scenario: Mrs. Patel has a residential property in Ahmedabad. This property is not in the custody of any court but has been attached in execution of decrees from the Ahmedabad District Court and the Surat District Court. The Surat District Court attached the property first.

Application of Section 63:

Both the Ahmedabad District Court and the Surat District Court are of the same grade.

Since the Surat District Court attached the property first, it will have the authority to receive or realize the property, determine any claims to it, and address any objections to the attachment as per Section 63(1).

Any proceedings taken by the Ahmedabad District Court in executing its decree will not be invalidated as per Section 63(2).

Section 64: Private alienation of property after attachment to be void.

(1) Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment.

(2) Nothing in this section shall apply to any private transfer or delivery of the property attached or of any interest therein, made in pursuance of any contract for such transfer or delivery entered into and registered before the attachment.

Explanation. - For the purpose of this section, claims enforceable under an attachment include claims for the rateable distribution of assets.

Simplified act

(1) If a property has been legally seized (attached) because someone owes money, any private sale, transfer, or delivery of that property, or any payment made to the person who owes money, will be considered invalid if it goes against the seizure. This means that the property or money must be used to pay off the debts as required by the seizure.

(2) This rule does not apply if the property was sold, transferred, or delivered as part of a contract that was made and officially recorded before the property was seized.

Explanation. - For this section, claims that can be enforced under a seizure include claims for fair distribution of the debtor's assets.

Explanation using Example

Example 1:

Scenario: Ramesh owes Rs. 5 lakhs to Suresh and fails to repay the debt. Suresh files a lawsuit, and the court orders the attachment of Ramesh's house as part of the execution process.

Situation: After the court's attachment order, Ramesh tries to sell his house to his friend, Rajesh, for Rs. 4 lakhs.

Application of Section 64:

The sale of the house by Ramesh to Rajesh is considered a private transfer of the attached property.

According to Section 64(1) of the Code of Civil Procedure, 1908, this transfer is void because it was made after the attachment order.

Therefore, Rajesh cannot claim ownership of the house, and the house remains attached to satisfy Suresh's claim.

Example 2:

Scenario: Priya owes Rs. 3 lakhs to Anil and fails to repay the debt. Anil files a lawsuit, and the court orders the attachment of Priya's car as part of the execution process.

Situation: Before the court's attachment order, Priya had entered into a registered contract with her cousin, Meena, to sell the car for Rs. 2.5 lakhs. The contract was registered a month before the attachment order.

Application of Section 64:

The sale of the car by Priya to Meena is a private transfer of the attached property.

According to Section 64(2) of the Code of Civil Procedure, 1908, this transfer is valid because it was made in pursuance of a contract that was entered into and registered before the attachment order.

Therefore, Meena can claim ownership of the car, and the attachment order does not affect her rights.

Example 3:

Scenario: Vijay owes Rs. 10 lakhs to Rohan and fails to repay the debt. Rohan files a lawsuit, and the court orders the attachment of Vijay's bank account as part of the execution process.

Situation: After the court's attachment order, Vijay's employer deposits his monthly salary of Rs. 50,000 into the attached bank account.

Application of Section 64:

The deposit of the salary into the attached bank account is considered a payment to the judgment-debtor (Vijay) contrary to the attachment.

According to Section 64(1) of the Code of Civil Procedure, 1908, this payment is void as against all claims enforceable under the attachment.

Therefore, the Rs. 50,000 deposited into the bank account can be used to satisfy Rohan's claim.

Example 4:

Scenario: Sunita owes Rs. 2 lakhs to Neha and fails to repay the debt. Neha files a lawsuit, and the court orders the attachment of Sunita's shares in a company as part of the execution process.

Situation: After the court's attachment order, Sunita receives a dividend of Rs. 10,000 from the company for her shares.

Application of Section 64:

The receipt of the dividend by Sunita is considered a payment to the judgment-debtor contrary to the attachment.

According to Section 64(1) of the Code of Civil Procedure, 1908, this payment is void as against all claims enforceable under the attachment.

Therefore, the Rs. 10,000 dividend can be used to satisfy Neha's claim.

SALE

Section 65: Purchaser's title.

Where immovable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute.

Simplified act

When a piece of real estate (like land or a building) is sold because of a court order, and the sale is finalized, the property is considered to belong to the buyer from the moment it was sold, not from the moment the sale was finalized.

Explanation using Example

Example 1:

Ravi had a court decree against Shyam for an unpaid debt. The court ordered the sale of Shyam's house to satisfy the debt. The house was auctioned, and Priya won the bid. Once Priya paid the full amount, the sale became absolute. According to Section 65 of The Code of Civil Procedure 1908, Priya's ownership of the house is considered to have started from the date of the auction, not from the date when the sale was confirmed by the court. This means that any benefits or liabilities associated with the house from the auction date onwards belong to Priya.

Example 2:

A bank had a decree to recover a loan from Rajesh, who had defaulted on his payments. The bank decided to sell Rajesh's commercial property through a court-ordered auction. Sunil purchased the property at the auction. Even though the court took some time to confirm the sale, under Section 65 of The Code of Civil Procedure 1908, Sunil's ownership is considered effective from the auction date. Therefore, if there were any rental income or property taxes due from the auction date, Sunil would be responsible for them, not Rajesh.

Section 66: Repealed.

Suit against purchaser not maintainable on ground of purchase being on behalf of plaintiff

Repealed by Act, 1988 (45 of 1988), s. 7 (with effect from 19-5-1988).

Simplified act

Lawsuit against buyer not allowed if claim is that buyer bought for someone else

This rule was removed by the Act of 1988 (Act No. 45 of 1988), section 7, effective from May 19, 1988.

Explanation using Example

Example 1:

Ravi, a resident of Mumbai, had a property dispute with his neighbor, Suresh. The court ordered the property to be sold in an auction to settle the dispute.

During the auction, a third party, Anil, purchased the property. Ravi later claimed that Anil had purchased the property on his behalf and filed a suit against Anil to reclaim the property. However, under the repealed Section 66 of The Code of Civil Procedure 1908, such a suit would not be maintainable. The court would dismiss Ravi's claim, stating that he cannot challenge the sale on the grounds that the purchase was made on his behalf.

Example 2:

Meena had a legal battle with her business partner, Rajesh, over a commercial property in Delhi. The court decided to auction the property to resolve the financial dispute between them. During the auction, a company named XYZ Ltd. bought the property. Meena later argued that XYZ Ltd. had bought the property on her behalf and filed a lawsuit to get the property back. According to the repealed Section 66 of The Code of Civil Procedure 1908, Meena's lawsuit would not be valid. The court would reject her claim, emphasizing that she cannot contest the sale on the basis that the purchase was made for her benefit.

Section 67: Power for State Government to make rules as to sales of land in execution of decrees for payment of money.

(1) The State Government * * * may, by notification in the Official Gazette, make rules for any local area imposing conditions in respect of the sale of any class of interests in land in execution of decrees for the payment of money, where such interests are so uncertain or undetermined as, in the opinion of the State Government, to make it impossible to fix their value.

(2) When on the date on which this Code came into operation in any local area, any special rules as to sale of land in execution of decrees were in force therein, the State Government may, by notification in the Official Gazette declare such rules to be in force, or may * * * by a like notification, modify the same.

Every notification issued in the exercise of the powers conferred by this sub-section shall set out the rules so continued or modified.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before the State Legislature.

Simplified act

(1) The State Government can make rules for any local area about selling certain types of land interests when it's hard to determine their value. These rules will be announced in the Official Gazette.

(2) If there were already special rules about selling land to pay off debts in a local area when this Code started, the State Government can either keep those rules or change them. This will also be announced in the Official Gazette. Any changes or continuations of these rules will be clearly stated in the notification.

(3) Any new rule made under this section must be presented to the State Legislature as soon as possible after it is made.

Explanation using Example

Example 1:

Scenario: A farmer in Maharashtra has taken a loan from a local bank to purchase seeds and equipment for his farm. Unfortunately, due to a poor harvest, he is unable to repay the loan. The bank obtains a decree from the court to recover the money by selling the farmer's land.

Application of Section 67: The State Government of Maharashtra, recognizing that the value of agricultural land can be uncertain due to factors like soil fertility, water availability, and market conditions, issues a notification in the Official Gazette. This notification imposes specific conditions on the sale of agricultural land in execution of decrees for payment of money. For instance, the rules may require a detailed assessment of the land's value by an agricultural expert before the sale, ensuring that the land is not undervalued and the farmer's interests are protected.

Example 2:

Scenario: A small business owner in Tamil Nadu has borrowed money from a private lender to expand his shop. Due to unforeseen circumstances, the business fails, and the owner cannot repay the loan. The lender obtains a court decree to recover the money by selling the business owner's land.

Application of Section 67: The State Government of Tamil Nadu, aware that commercial land values can fluctuate based on market trends and location, issues a notification in the Official Gazette. This notification sets out rules for the sale of commercial land in execution of decrees. The rules might include provisions for an independent valuation of the property by a certified real estate appraiser and a public auction to ensure transparency and fair market value.

Additionally, the rules may stipulate that the sale proceeds first cover the outstanding loan amount, with any surplus returned to the business owner.

Example 3:

Scenario: In West Bengal, a family has inherited a piece of land that is currently under dispute among the heirs. One of the heirs takes a loan using their share of the land as collateral but fails to repay it. The lender obtains a decree to sell the land to recover the loan amount.

Application of Section 67: The State Government of West Bengal, recognizing the complexities involved in valuing disputed or undivided land, issues a notification in the Official Gazette. This notification includes rules that require a thorough legal and valuation process before the sale. The rules might mandate a court-appointed mediator to resolve the dispute among the heirs and a professional surveyor to determine the exact value of each heir's share. This ensures that the sale is conducted fairly and that the interests of all parties involved are considered.

Example 4:

Scenario: A real estate developer in Karnataka has taken a loan from a financial institution to develop a residential project. Due to financial mismanagement, the developer defaults on the loan. The financial institution obtains a decree to sell the undeveloped land to recover the loan amount.

Application of Section 67: The State Government of Karnataka, understanding that undeveloped land can have speculative value, issues a notification in the Official Gazette. This notification sets out rules for the sale of undeveloped land in execution of decrees. The rules may require a comprehensive market analysis to determine the potential future value of the land and a public auction to attract competitive bids. Additionally, the rules might include provisions to ensure that the sale process is transparent and that the financial institution recovers the maximum possible amount while protecting the developer's remaining interests.

DELEGATION TO COLLECTOR OF POWER TO EXECUTE DECREES
AGAINST IMMOVABLE PROPERTY

Section 68: Power to prescribe rules for transferring to collector execution of certain decrees. Repealed.

Repealed by the Code of Civil Procedure (Amendment) Act, 1956 (66 of 1956), s.7.

Section 69: Provisions of Third Schedule to apply. Repealed.

- Repealed by s. 7 ibid.

Section 70: Rules of Procedure. Repealed.

- Repealed by s. 7 ibid.

Section 71: Jurisdiction of Civil Courts barred. Repealed.

- Repealed by s. 7 ibid.

Section 72: Collector to deemed to be acting judicially. Repealed.

- Repealed by s. 7 ibid.

DISTRIBUTION OF ASSETS

Section 73: Proceeds of execution-sale to be rateably distributed among decree-holders.

Distribution of Assets by Court

(1) Where assets are held by a Court and more persons than one have, before the receipt of such assets, made application to the Court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realization, shall be rateably distributed among all such persons:

Provided as follows:

(a) where any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not be entitled to share in any surplus arising from such sale;

(b) where any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the consent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same interest in the proceeds of the sale as he had in the property sold;

(c) where any immovable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied:

First, in defraying the expenses of the sale;

Secondly, in discharging the amount due under the decree;

Thirdly, in discharging the interest and principal monies due on subsequent incumbrances (if any); and

Fourthly, rateably among the holders of decrees for the payment of money against the judgment-debtor, who have, prior to the sale of the property, applied to the Court which passed the decree ordering such sale for execution of such decrees, and have not obtained satisfaction thereof.

(2) Where all or any of the assets liable to be rateably distributed under this section are paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

(3) Nothing in this section affects any right of the Government.

Simplified act

Distribution of Assets by Court

(1) When a Court holds assets and multiple people have asked the Court to use those assets to pay off money judgments against the same person, but haven't been paid yet, the Court will share the assets fairly among all those people after deducting the costs of getting the assets:

Provided as follows:

(a) If any property is sold that has a mortgage or charge on it, the mortgage holder or person with the charge won't get a share of any extra money from the sale;

(b) If any property that can be sold to pay off a debt has a mortgage or charge on it, the Court can, with the mortgage holder's or charge holder's consent, order the property to be sold free of the mortgage or charge, giving the mortgage holder or charge holder the same interest in the sale money as they had in the property;

(c) If any immovable property (like land or a building) is sold to pay off a debt, the sale money will be used in this order:

First, to cover the costs of the sale;

Second, to pay off the amount due under the judgment;

Third, to pay off any interest and principal money due on later charges (if any); and

Fourth, to be shared fairly among the people who have money judgments against the debtor, who asked the Court to enforce those judgments before the property was sold, and haven't been paid yet.

(2) If any of the assets that should be shared fairly are given to someone who shouldn't receive them, anyone who should have received them can sue that person to get the assets back.

(3) This section does not affect any rights of the Government.

Explanation using Example

Example 1:

Rajesh, Suresh, and Meena each have a court decree against a businessman named Arjun, who owes them money. Rajesh is owed ₹1,00,000, Suresh is owed ₹50,000, and Meena is owed ₹1,50,000. Arjun's property is auctioned by the court, and the sale proceeds amount to ₹2,00,000 after deducting the costs of realization.

Since all three creditors have applied to the court for execution of their decrees before the receipt of the sale proceeds, the ₹2,00,000 will be distributed rateably among them. The distribution will be as follows:

Total amount owed by Arjun: ₹3,00,000 (₹1,00,000 + ₹50,000 + ₹1,50,000)

Rajesh's share: $(₹1,00,000 / ₹3,00,000) * ₹2,00,000 = ₹66,666.67$

Suresh's share: $(₹50,000 / ₹3,00,000) * ₹2,00,000 = ₹33,333.33$

Meena's share: $(₹1,50,000 / ₹3,00,000) * ₹2,00,000 = ₹1,00,000$

Example 2:

A bank has a mortgage on a property owned by Ravi, who also owes money to three other creditors: Anil, Sunil, and Pooja. The court orders the sale of Ravi's

property to satisfy the debts. The property is sold for ₹10,00,000. The court deducts ₹50,000 as the cost of realization, leaving ₹9,50,000.

The property was sold free from the mortgage with the bank's consent. The bank had a mortgage of ₹4,00,000 on the property. The remaining ₹5,50,000 will be distributed among Anil, Sunil, and Pooja, who have applied for execution of their decrees before the sale proceeds were received.

Bank's share: ₹4,00,000

Remaining amount: ₹5,50,000

Anil is owed ₹2,00,000, Sunil is owed ₹1,00,000, and Pooja is owed ₹3,00,000. The distribution will be as follows:

Total amount owed by Ravi to Anil, Sunil, and Pooja: ₹6,00,000 (₹2,00,000 + ₹1,00,000 + ₹3,00,000)

Anil's share: $(₹2,00,000 / ₹6,00,000) * ₹5,50,000 = ₹1,83,333.33$

Sunil's share: $(₹1,00,000 / ₹6,00,000) * ₹5,50,000 = ₹91,666.67$

Pooja's share: $(₹3,00,000 / ₹6,00,000) * ₹5,50,000 = ₹2,75,000$

RESISTANCE TO EXECUTION

Section 74: Resistance to execution.

Where the Court is satisfied that the holder of a decree for the possession of immovable property or that the purchaser of immovable property sold in execution of a decree has been resisted or obstructed in obtaining possession of the property by the judgment-debtor or some person on his behalf and that such resistance or obstruction was without any just cause, the Court may, at the instance of the decree-holder or purchaser, order the judgment-debtor or such other person to be detained in the civil prison for a term which may extend to thirty days and may further direct that the decree-holder or purchaser be put into possession of the property.

Simplified act

If the Court finds that the person who has won a legal case to take possession of a property, or the person who bought a property through a court order, is being stopped or blocked from taking possession of the property by the person

who lost the case or someone acting for them, and this blocking is without a good reason, the Court can take action.

The Court can order that the person who lost the case or the person blocking the possession be put in jail for up to thirty days.

The Court can also order that the person who won the case or bought the property be given possession of the property.

Explanation using Example

Example 1:

Mr. Sharma won a court case against Mr. Verma, and the court issued a decree stating that Mr. Sharma is entitled to take possession of a piece of land currently occupied by Mr. Verma. When Mr. Sharma went to take possession of the land, Mr. Verma and his family members physically blocked him from entering the property. Mr. Sharma then approached the court, showing that he was being resisted without any just cause. The court, satisfied with Mr. Sharma's claim, ordered Mr. Verma to be detained in civil prison for 15 days and directed that Mr. Sharma be put into possession of the land.

Example 2:

Ms. Gupta purchased a house in an auction conducted by the court to settle a debt owed by Mr. Singh. Despite the court's decree, when Ms. Gupta tried to take possession of the house, Mr. Singh's relatives obstructed her entry. Ms. Gupta filed a petition in the court, demonstrating that the resistance was without any valid reason. The court, upon verifying the facts, ordered Mr. Singh's relatives to be detained in civil prison for 20 days and instructed that Ms. Gupta be given possession of the house.

PART III: INCIDENTAL PROCEEDINGS

COMMISSIONS

Section 75: Power of Court to issue commissions.

Subject to such conditions and limitations as may be prescribed, the Court may issue a commission -

- (a) to examine any person;
- (b) to make a local investigation;

- (c) to examine or adjust accounts; or
- (d) to make a partition;
- (e) to hold a scientific, technical, or expert investigation;
- (f) 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;
- (g) to perform any ministerial act.

Simplified act

The Court can assign someone to do the following tasks, but there may be certain rules and limits:

- (a) talk to any person to get information;
- (b) check out a specific location;
- (c) review or settle financial records;
- (d) divide property among people;
- (e) carry out a scientific, technical, or expert investigation;
- (f) sell property that can spoil quickly and is being held by the Court while a case is being decided;
- (g) do any routine administrative task.

Explanation using Example

Example 1:

Scenario: Property Dispute

Ravi and Suresh are involved in a property dispute over a piece of land in a village. Ravi claims that the land belongs to him, while Suresh argues that it is his ancestral property. The court decides to issue a commission to make a local investigation.

Application of Section 75: The court appoints a local commissioner, who visits the disputed land, examines the boundaries, and gathers evidence from local witnesses. The commissioner prepares a detailed report and submits it to the

court. Based on this report, the court is better equipped to make a fair decision regarding the ownership of the land.

Example 2:

Scenario: Examination of a Witness

In a civil suit involving a breach of contract, one of the key witnesses, Mr. Sharma, is bedridden and unable to attend the court due to severe illness. His testimony is crucial for the case.

Application of Section 75: The court issues a commission to examine Mr. Sharma at his residence. A commissioner, usually an advocate or a retired judge, visits Mr. Sharma's home, records his testimony, and submits it to the court. This ensures that Mr. Sharma's evidence is considered without causing him undue hardship.

Example 3:

Scenario: Partition of Joint Family Property

A joint family decides to partition their ancestral property among the family members. However, there is a disagreement on how the property should be divided.

Application of Section 75: The court issues a commission to make a partition. A commissioner is appointed to survey the property, evaluate its value, and suggest a fair division among the family members. The commissioner's report helps the court in making an equitable partition order.

Example 4:

Scenario: Examination of Accounts

A partnership firm is dissolved, and the partners are in dispute over the settlement of accounts. Each partner accuses the other of financial mismanagement.

Application of Section 75: The court issues a commission to examine and adjust the accounts of the partnership firm. A chartered accountant is appointed as the commissioner to audit the firm's books, verify transactions, and prepare a report. This report assists the court in resolving the financial disputes between the partners.

Example 5:

Scenario: Sale of Perishable Goods

A consignment of fresh fruits is involved in a legal dispute, and the fruits are perishable and likely to decay soon.

Application of Section 75: The court issues a commission to conduct the sale of the perishable goods. A commissioner is appointed to oversee the sale process, ensuring that the fruits are sold quickly to prevent loss. The proceeds from the sale are held by the court until the dispute is resolved.

Example 6:

Scenario: Scientific Investigation

In a patent infringement case, there is a need to determine whether the defendant's product uses the patented technology of the plaintiff.

Application of Section 75: The court issues a commission to hold a scientific investigation. An expert in the relevant field is appointed as the commissioner to examine the defendant's product and compare it with the patented technology. The expert's report provides the court with the necessary technical insights to make an informed decision.

COMMISSIONS

Section 76: Commission to another Court.

(1) A commission for the examination of any person may be issued to any Court (not being a High Court) situate in a State other than the State in which the Court of issue is situate and having jurisdiction in the place in which the person to be examined resides.

(2) Every Court receiving a commission for the examination of any person under sub-section (1) shall examine him or cause him to be examined pursuant thereto, and the commission, when it has been duly executed, shall be returned together with the evidence taken under it to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order.

Simplified act

(1) A court (not a High Court) in one state can be asked to examine a person who lives in another state. The court that is asked to do this must have the authority to do so in the place where the person lives.

(2) When a court receives such a request to examine a person, it must either examine the person itself or arrange for the examination to be done. After the examination is completed, the court must send back the completed examination and any evidence collected to the court that made the request, unless the original request specified a different procedure for returning the documents.

Explanation using Example

Example 1:

Scenario: A civil case is ongoing in a court in Maharashtra, and a key witness resides in Tamil Nadu.

Application of Section 76: The court in Maharashtra issues a commission to a court in Tamil Nadu to examine the witness. The Tamil Nadu court, upon receiving the commission, schedules a date to examine the witness. After the examination, the Tamil Nadu court sends the recorded testimony back to the Maharashtra court. This allows the Maharashtra court to consider the witness's testimony without requiring the witness to travel to Maharashtra.

Example 2:

Scenario: A property dispute case is being heard in a court in Delhi, and an important document custodian resides in Karnataka.

Application of Section 76: The Delhi court issues a commission to a court in Karnataka to examine the custodian of the document. The Karnataka court, upon receiving the commission, arranges for the custodian to be examined. The examination is conducted, and the testimony along with any relevant documents are sent back to the Delhi court. This ensures that the evidence is collected efficiently without causing inconvenience to the custodian.

Section 77: Letter of request.

- In lieu of issuing a commission the Court may issue a letter of request to examine a witness residing at any place not within India

Simplified act

Instead of sending a formal document to appoint someone to gather evidence, the Court can send a request letter to question a witness who lives outside of India.

Explanation using Example

Example 1:

Rajesh is involved in a civil lawsuit in India regarding a property dispute. A key witness, his cousin Suresh, who has crucial information about the property, resides in the United States. Instead of sending a commission to the U.S. to examine Suresh, the Indian court decides to issue a letter of request to the appropriate judicial authority in the U.S. to examine Suresh and record his testimony. This testimony will then be sent back to the Indian court to be used in the ongoing case.

Example 2:

Meera is fighting a civil case in India over a breach of contract. Her former business partner, Anil, who now lives in Canada, has important evidence that can support her case. The Indian court, recognizing the importance of Anil's testimony, issues a letter of request to the Canadian judicial authorities to arrange for Anil's examination. The Canadian authorities conduct the examination and send the recorded testimony back to the Indian court, which then uses it to make a decision in Meera's case.

Section 78: Commissions issued by foreign Courts.

Subject to such conditions and limitations as may be prescribed, the provisions as to the execution and return of commissions for the examination of witnesses shall apply to commissions issued by or at the instance of:

- (a) Courts situate in any part of India to which the provisions of this Code do not extend; or
- (b) Courts established or continued by the authority of the Central Government outside India; or
- (c) Courts of any State or country outside India.

Simplified act

Under certain conditions and rules, the rules for carrying out and returning commissions to examine witnesses will apply to commissions issued by or requested by:

- (a) Courts located in any part of India where this Code does not apply; or
- (b) Courts set up or maintained by the Central Government outside India; or
- (c) Courts in any other State or country outside India.

Explanation using Example

Example 1:

Scenario: A business dispute case is ongoing in a court in Mumbai, India. One of the key witnesses, Mr. Sharma, has moved to a remote area in the Andaman and Nicobar Islands, where the provisions of the Code of Civil Procedure, 1908, do not extend.

Application of Section 78: The Mumbai court can issue a commission to examine Mr. Sharma as a witness. The commission will be executed and returned in accordance with the provisions of the Code of Civil Procedure, 1908, even though the Andaman and Nicobar Islands are not covered by this Code.

Outcome: The testimony of Mr. Sharma can be recorded and used in the Mumbai court proceedings, ensuring that the case can proceed without undue delay due to the witness's location.

Example 2:

Scenario: A divorce case is being heard in a court in Delhi, India. One of the parties, Mrs. Gupta, has relocated to London, UK, and is unable to travel back to India for the court proceedings.

Application of Section 78: The Delhi court can issue a commission to a court in London to examine Mrs. Gupta as a witness. The commission will be executed and returned in accordance with the provisions of the Code of Civil Procedure, 1908, as applied to commissions issued by courts outside India.

Outcome: Mrs. Gupta's testimony can be recorded in London and sent back to the Delhi court, allowing the divorce proceedings to continue without requiring her physical presence in India.

Example 3:

Scenario: A property dispute case is being heard in a court in Chennai, India. A crucial witness, Mr. Khan, has moved to Dubai, UAE, for work and cannot return to India for the court hearings.

Application of Section 78: The Chennai court can issue a commission to a court in Dubai to examine Mr. Khan as a witness. The commission will be executed and returned in accordance with the provisions of the Code of Civil Procedure, 1908, as applied to commissions issued by courts outside India.

Outcome: Mr. Khan's testimony can be recorded in Dubai and sent back to the Chennai court, ensuring that the property dispute case can proceed without his physical presence in India.

PART IV: SUITS IN PARTICULAR CASES

SUITS BY OR AGAINST THE GOVERNMENT OR PUBLIC OFFICERS IN THEIR OFFICIAL CAPACITY

Section 79: Suits by or against Government.

In a suit by or against the Government, the authority to be named as plaintiff or defendant, as the case may be, shall be -

- (a) in the case of a suit by or against the Central Government, the Union of India, and
- (b) in the case of a suit by or against a State Government, the State.

Simplified act

When you are suing the Government or the Government is suing you, the name you should use for the Government in the lawsuit depends on which part of the Government you are dealing with:

- (a) If it is a lawsuit involving the Central Government, use "the Union of India."
- (b) If it is a lawsuit involving a State Government, use "the State."

Explanation using Example

Example 1:

Scenario: A citizen files a lawsuit against the Central Government for not providing compensation for land acquired for a public project.

Application of Section 79: In this case, the citizen must name "Union of India" as the defendant in the lawsuit. The suit will be titled as "Citizen X vs. Union of India."

Example 2:

Scenario: A contractor sues the State Government of Maharashtra for non-payment of dues for a completed construction project.

Application of Section 79: In this case, the contractor must name "State of Maharashtra" as the defendant in the lawsuit. The suit will be titled as "Contractor Y vs. State of Maharashtra."

Section 80: Notice.

Legal Provisions

Notice Requirements for Suits Against Government and Public Officers

(1) Save as otherwise provided in sub-section (2), no suits shall be instituted against the Government (including the Government of the State of Jammu and Kashmir) or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of:

(a) in the case of a suit against the Central Government, except where it relates to a railway, a Secretary to that Government;

(b) in the case of a suit against the Central Government where it relates to railway, the General Manager of that railway;

(bb) in the case of a suit against the Government of the State of Jammu and Kashmir, the Chief Secretary to that Government or any other officer authorized by that Government in this behalf;

(c) in the case of a suit against any other State Government, a Secretary to that Government or the Collector of the district; and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public

officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1).

(3) No suit instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity shall be dismissed merely by reason of any error or defect in the notice referred to in sub-section (1), if in such notice:

(a) the name, description and the residence of the plaintiff had been so given as to enable the appropriate authority or the public officer to identify the person serving the notice and such notice had been delivered or left at the office of the appropriate authority specified in sub-section (1), and

(b) the cause of action and the relief claimed by the plaintiff had been substantially indicated.

Simplified act

Legal Provisions

Notice Requirements for Suits Against Government and Public Officers

(1) Except as mentioned in part (2), you cannot file a lawsuit against the Government (including the Government of Jammu and Kashmir) or a public officer for something they did in their official role until you have given a written notice two months in advance. This notice should be delivered to or left at the office of:

(a) For a lawsuit against the Central Government (except for railways), a Secretary to that Government;

(b) For a lawsuit against the Central Government related to railways, the General Manager of that railway;

(bb) For a lawsuit against the Government of Jammu and Kashmir, the Chief Secretary to that Government or any other authorized officer;

(c) For a lawsuit against any other State Government, a Secretary to that Government or the district Collector;

and, for a public officer, the notice should be delivered to them or left at their office. The notice must state the reason for the lawsuit, the name, description, and address of the person filing the lawsuit, and what they want from the lawsuit. The lawsuit document must also state that this notice has been given.

(2) If you need urgent or immediate relief from the Government (including the Government of Jammu and Kashmir) or a public officer for something they did in their official role, you can file a lawsuit without giving the notice mentioned in part (1), but only with the Court's permission. However, the Court will not grant any relief without first giving the Government or public officer a chance to respond to the lawsuit:

Provided that if the Court, after hearing both sides, decides that no urgent or immediate relief is needed, it will return the lawsuit for you to refile it after following the notice requirements in part (1).

(3) A lawsuit against the Government or a public officer for something they did in their official role will not be dismissed just because there was a mistake or defect in the notice mentioned in part (1), as long as:

(a) The name, description, and address of the person filing the lawsuit were clear enough for the appropriate authority or public officer to identify them, and the notice was delivered to or left at the correct office as specified in part (1), and

(b) The reason for the lawsuit and the relief being sought were clearly indicated.

Explanation using Example

Example 1:

Scenario: Ramesh, a resident of Delhi, wants to file a lawsuit against the Central Government for damages caused by a government construction project that allegedly damaged his property.

Application of Section 80:

Notice Requirement: Ramesh must first send a written notice to the Secretary to the Central Government detailing the cause of action, his name, description, place of residence, and the relief he seeks.

Waiting Period: Ramesh must wait for two months after delivering the notice before he can file the lawsuit.

Plaint Statement: When filing the lawsuit, Ramesh must include a statement in his plaint confirming that he has delivered the required notice and waited for the stipulated period.

Example 2:

Scenario: Priya, a resident of Mumbai, wants to file a lawsuit against a public officer for wrongful seizure of her property during an official operation.

Application of Section 80:

Notice Requirement: Priya must send a written notice to the public officer involved, detailing the cause of action, her name, description, place of residence, and the relief she seeks.

Waiting Period: Priya must wait for two months after delivering the notice before she can file the lawsuit.

Urgent Relief: If Priya needs urgent relief, she can seek the court's permission to file the lawsuit without waiting for two months. The court will then give the public officer a reasonable opportunity to respond before granting any relief.

Plaint Statement: When filing the lawsuit, Priya must include a statement in her plaint confirming that she has delivered the required notice and waited for the stipulated period, or that she has obtained the court's permission for urgent relief.

Example 3:

Scenario: Anil, a resident of Chennai, wants to file a lawsuit against the Tamil Nadu State Government for not compensating him for land acquired for a public project.

Application of Section 80:

Notice Requirement: Anil must send a written notice to the Secretary to the Tamil Nadu State Government or the Collector of the district, detailing the cause of action, his name, description, place of residence, and the relief he seeks.

Waiting Period: Anil must wait for two months after delivering the notice before he can file the lawsuit.

Plaint Statement: When filing the lawsuit, Anil must include a statement in his plaint confirming that he has delivered the required notice and waited for the stipulated period.

Example 4:

Scenario: Sunita, a resident of Srinagar, wants to file a lawsuit against the Government of Jammu and Kashmir for not providing adequate relief after a natural disaster.

Application of Section 80:

Notice Requirement: Sunita must send a written notice to the Chief Secretary to the Government of Jammu and Kashmir or any other officer authorized by that Government, detailing the cause of action, her name, description, place of residence, and the relief she seeks.

Waiting Period: Sunita must wait for two months after delivering the notice before she can file the lawsuit.

Urgent Relief: If Sunita needs urgent relief, she can seek the court's permission to file the lawsuit without waiting for two months. The court will then give the Government a reasonable opportunity to respond before granting any relief.

Plaint Statement: When filing the lawsuit, Sunita must include a statement in her plaint confirming that she has delivered the required notice and waited for the stipulated period, or that she has obtained the court's permission for urgent relief.

Section 81: Exemption from arrest and personal appearance.

In a suit instituted against a public officer in respect of any act purporting to be done by him in his official capacity -

(a) the defendant shall not be liable to arrest nor his property to attachment otherwise than in execution of a decree, and,

(b) where the Court is satisfied that the defendant cannot absent himself from his duty without detriment to the public service, it shall exempt him from appearing in person.

Simplified act

If someone files a lawsuit against a public officer for something he did as part of his job -

(a) the officer cannot be arrested, and his property cannot be taken away, except if it is to enforce a court's decision, and,

(b) if the Court believes that the officer's absence from work would harm public services, it will allow him not to appear in person.

Explanation using Example

Example 1:

Mr. Sharma, a government officer working in the Public Works Department, is sued by a contractor for allegedly not approving a construction project on time. The contractor claims that Mr. Sharma's delay caused financial losses. Since Mr. Sharma is being sued for actions taken in his official capacity, he cannot be arrested or have his property attached unless there is a court decree against him. Additionally, if the court finds that Mr. Sharma's presence at work is crucial for public service, it can exempt him from appearing in person for court hearings.

Example 2:

Ms. Gupta, a senior police officer, is sued by a citizen for wrongful detention during a public protest. The citizen claims that Ms. Gupta's actions were unlawful and caused personal harm. As Ms. Gupta was performing her duties as a public officer, she is protected under Section 81 of the Code of Civil Procedure, 1908. This means she cannot be arrested or have her property seized unless a court decree is issued. Furthermore, if the court determines that her absence from duty would negatively impact public safety, it can excuse her from attending court in person.

Section 82: Execution of decree.

(1) Where, in a suit by or against the Government or by or against a public officer in respect of any act purporting to be done by him in his official capacity, a decree is passed against the Union of India or a State or, as the case may be, the public officer, such decree shall not be executed except in accordance with the provisions of sub-section (2).

(2) Execution shall not be issued on any such decree unless it remains unsatisfied for the period of three months computed from the date of such decree.

(3) The provisions of sub-sections (1) and (2) shall apply in relation to an order or award as they apply in relation to a decree, if the order or award -

(a) is passed or made against the Union of India or a State or a public officer in respect of any such act as aforesaid, whether by a Court or by any other authority; and

(b) is capable of being executed under the provisions of this Code or of any other law for the time being in force as if it were a decree.

Simplified act

(1) If a court case is filed by or against the Government or a public officer for something they did in their official role, and the court decides against the Government or the officer, the decision cannot be enforced right away. It must follow the rules in section (2).

(2) The court's decision cannot be enforced until three months have passed from the date of the decision.

(3) The rules in sections (1) and (2) also apply to any order or award, not just court decisions, if:

(a) The order or award is against the Government, a State, or a public officer for something they did in their official role, whether it was decided by a court or another authority; and

(b) The order or award can be enforced under this law or any other current law, just like a court decision.

Explanation using Example

Example 1:

Scenario: A contractor, Mr. Sharma, completes a construction project for the Government of Maharashtra. However, the government fails to pay the agreed amount. Mr. Sharma files a suit against the Government of Maharashtra.

Application of Section 82:

Decree Passed: The court passes a decree in favor of Mr. Sharma, ordering the Government of Maharashtra to pay the outstanding amount.

Waiting Period: According to Section 82(2), Mr. Sharma cannot immediately execute the decree. He must wait for a period of three months from the date of the decree.

Execution: If the Government of Maharashtra does not satisfy the decree within these three months, Mr. Sharma can then proceed to execute the decree and take steps to recover the amount through legal means.

Example 2:

Scenario: An IAS officer, Ms. Verma, is sued by a citizen, Mr. Kumar, for wrongful seizure of property during her official duties. The court finds Ms. Verma's actions unlawful and passes a decree against her in her official capacity.

Application of Section 82:

Decree Passed: The court issues a decree against Ms. Verma, ordering her to compensate Mr. Kumar for the wrongful seizure.

Waiting Period: As per Section 82(2), Mr. Kumar must wait for three months before he can execute the decree against Ms. Verma.

Execution: If Ms. Verma does not comply with the decree within the three-month period, Mr. Kumar can then initiate execution proceedings to enforce the decree and obtain the compensation.

Example 3:

Scenario: A public officer, Mr. Singh, is involved in a dispute over land acquisition for a government project. The court passes an award in favor of the landowner, Mr. Patel, ordering the government to pay compensation.

Application of Section 82:

Award Passed: The court or relevant authority issues an award in favor of Mr. Patel, directing the government to pay the compensation.

Waiting Period: Under Section 82(3), the provisions applicable to decrees also apply to awards. Therefore, Mr. Patel must wait for three months before executing the award.

Execution: If the government does not pay the compensation within the three-month period, Mr. Patel can proceed to execute the award and recover the compensation through legal channels.

**SUITS BY ALIENS AND BY OR AGAINST FOREIGN RULERS,
AMBASSADORS AND ENVOYS**

Section 83: When aliens may sue.

- Alien enemies residing in India with the permission of the Central Government, and alien friends, may sue in any Court otherwise competent to try the suit, as if they were citizens of India, but alien enemies residing in India without such permission, or residing in a foreign country, shall not sue in any such Court.

Explanation. - Every person residing in a foreign country, the Government of which is at war with India and carrying on business in that country without a licence in that behalf granted by the Central Government, shall, for the purpose of this section, be deemed to be an alien enemy residing in a foreign country.

Simplified act

Foreigners from enemy countries who are living in India with permission from the Central Government, and foreigners from friendly countries, can file lawsuits in any court that has the authority to hear the case, just like Indian citizens can. However, foreigners from enemy countries who are living in India without such permission, or who are living in a foreign country, cannot file lawsuits in any such court.

Explanation: Anyone living in a foreign country that is at war with India and doing business there without a license from the Central Government will be considered an enemy foreigner living in a foreign country for the purposes of this section.

Explanation using Example

Example 1:

Scenario: John, a British citizen, is residing in India with the permission of the Central Government. He entered into a contract with an Indian company for the supply of goods. The Indian company failed to deliver the goods as per the contract terms.

Application of Section 83: John, being an alien friend residing in India with the necessary permission, can file a lawsuit in an Indian court against the Indian company for breach of contract. The court will treat John as if he were a citizen of India for the purposes of this lawsuit.

Example 2:

Scenario: Ahmed, a citizen of a country that is currently at war with India, is residing in India without the permission of the Central Government. He wants to sue an Indian business partner for a financial dispute.

Application of Section 83: Ahmed, being an alien enemy residing in India without the required permission, is not allowed to file a lawsuit in any Indian court. His status as an alien enemy without permission bars him from seeking legal recourse in India.

Example 3:

Scenario: Maria, a citizen of a country that is at peace with India, is residing in her home country. She has a business dispute with an Indian company and wants to sue them in an Indian court.

Application of Section 83: Maria, being an alien friend residing in a foreign country, can file a lawsuit in an Indian court against the Indian company. The court will treat her as if she were a citizen of India for the purposes of this lawsuit.

Example 4:

Scenario: Li Wei, a citizen of a country that is at war with India, is residing in his home country and conducting business there without a license from the Central Government of India. He wants to sue an Indian company for breach of contract.

Application of Section 83: Li Wei, being an alien enemy residing in a foreign country and conducting business without the necessary license, is not allowed to file a lawsuit in any Indian court. His status as an alien enemy conducting unauthorized business bars him from seeking legal recourse in India.

Section 84: When foreign States may sue.

A foreign State may sue in any competent Court:

Provided that the object of the suit is to enforce a private right vested in the Ruler of such State or in any officer of such State in his public capacity.

Simplified act

A foreign country can file a lawsuit in any appropriate court:

However, this is only allowed if the lawsuit is to protect a personal right that belongs to the leader of that country or to any official of that country in their official role.

Explanation using Example

Example 1:

The government of Country X owns a piece of land in India, which is used as a consulate. The land is encroached upon by a local business that starts constructing a building on it. The government of Country X, through its consulate, files a lawsuit in an Indian court to reclaim the encroached land. Here, the object of the suit is to enforce the private right of the government of Country X to its property.

Example 2:

An officer of the government of Country Y, while on an official visit to India, enters into a contract with an Indian company for the supply of certain goods. The Indian company fails to deliver the goods as per the contract terms. The government of Country Y, represented by the officer in his public capacity, files a lawsuit in an Indian court to enforce the contract and seek damages for the breach. In this case, the object of the suit is to enforce the private right vested in the officer of Country Y in his public capacity.

Section 85: Persons specially appointed by Government to prosecute or defend on behalf of foreign Rulers.

(2) An appointment under this section may be made for the purpose of a specified suit or of several specified suits, or for the purpose of all such suits as it may from time to time be necessary to prosecute or defend on behalf of such Ruler.

(3) A person appointed under this section may authorise or appoint any other persons to make appearances and applications and do acts in any such suit or suits as if he were himself a party thereto.

Simplified act

(2) An appointment under this section can be made for a specific lawsuit, several specific lawsuits, or for any lawsuits that may need to be started or defended on behalf of the Ruler in the future.

(3) A person appointed under this section can give permission to other people to appear in court, file applications, and take actions in any of these lawsuits as if they were the original party involved.

Explanation using Example

Example 1:

Scenario: The Government of India has appointed Advocate Rajesh to represent the interests of the King of Bhutan in a civil lawsuit filed in the Delhi High Court.

Application of Section 85:

Appointment: The Government of India officially appoints Advocate Rajesh to prosecute or defend on behalf of the King of Bhutan for a specific lawsuit concerning a property dispute in Delhi.

Scope: The appointment is specifically for this property dispute case.

Delegation: Advocate Rajesh, under the authority given by Section 85, appoints Advocate Priya to appear in court on certain dates when he is unavailable.

Example 2:

Scenario: The Government of India has appointed Advocate Meera to handle all legal matters for the President of France in India.

Application of Section 85:

Appointment: The Government of India officially appoints Advocate Meera to prosecute or defend on behalf of the President of France for any legal matters that arise in India.

Scope: The appointment covers all current and future lawsuits involving the President of France in India.

Delegation: Advocate Meera, under the authority given by Section 85, appoints Advocate Arjun to file applications and make court appearances in a commercial dispute case in Mumbai on her behalf.

Section 86: Suits against foreign Rulers, Ambassadors and Envoys.

Legal Provisions Regarding Suits Against Foreign States

(1) No foreign State may be sued in any Court otherwise competent to try the suit except with the consent of the Central Government certified in writing by a Secretary to that Government:

Provided that a person may, as a tenant of immovable property, sue without such consent as aforesaid a foreign State from whom he holds or claims to hold the property.

(2) Such consent may be given with respect to a specified suit or to several specified suits or with respect to all suits of any specified class or classes, and may specify, in the case of any suit or class of suits, the Court in which the foreign State may be sued, but it shall not be given, unless it appears to the Central Government that the foreign State -

(a) has instituted a suit in the Court against the person desiring to sue it, or

(b) by itself or another, trades within the local limits of the jurisdiction of the Court, or

(c) is in possession of immovable property situate within those limits and is to be sued with reference to such property or for money charged thereon, or

(d) has expressly or impliedly waived the privilege accorded to it by this section.

(3) Except with the consent of the Central Government, certified in writing by a Secretary to that Government, no decree shall be executed against the property of any foreign State.

(4) The preceding provisions of this section shall apply in relation to -

(a) any ruler of a foreign State;

(aa) any Ambassador or Envoy of a foreign State;

(b) any High Commissioner of a Commonwealth country; and

(c) any such member of the staff of the foreign State or the staff or retinue of the Ambassador or Envoy of a foreign State or of the High Commissioner of a Commonwealth country as the Central Government may, by general or special order, specify in this behalf,

as they apply in relation to a foreign State.

(5) The following persons shall not be arrested under this Code, namely:

(a) any Ruler of a foreign State;

(b) any Ambassador or Envoy of a foreign State;

(c) any High Commissioner of a Commonwealth country;

(d) any such member of the staff of the foreign State or the staff or retinue of the Ruler, Ambassador or Envoy of a foreign State or of the High Commissioner of a Commonwealth country, as the Central Government may, by general or special order, specify in this behalf.

(6) Where a request is made to the Central Government for the grant of any consent referred to in sub-section (1), the Central Government shall, before refusing to accede to the request in whole or in part, give to the person making the request a reasonable opportunity of being heard.

Simplified act

Legal Provisions Regarding Suits Against Foreign States

(1) You cannot sue a foreign country in any court unless you have written permission from the Central Government, given by a Secretary of that Government.

However, if you are renting property from a foreign country, you can sue them without needing this permission.

(2) The Central Government can give permission for a specific lawsuit, several specific lawsuits, or all lawsuits of a certain type. They can also decide which court the foreign country can be sued in. Permission will only be given if the Central Government believes that the foreign country:

(a) has already sued the person wanting to sue them in that court, or

(b) does business within the area covered by that court, or

(c) owns property within that area and the lawsuit is about that property or money related to it, or

(d) has given up its special legal protections, either directly or indirectly.

(3) You cannot enforce a court decision against the property of a foreign country without written permission from the Central Government, given by a Secretary of that Government.

(4) The rules above also apply to:

(a) any ruler of a foreign country;

(aa) any Ambassador or Envoy of a foreign country;

(b) any High Commissioner of a Commonwealth country; and

(c) any staff member of the foreign country, or the staff or entourage of the Ambassador, Envoy, or High Commissioner, as specified by the Central Government.

(5) The following people cannot be arrested under this law:

(a) any ruler of a foreign country;

(b) any Ambassador or Envoy of a foreign country;

(c) any High Commissioner of a Commonwealth country;

(d) any staff member of the foreign country, or the staff or entourage of the ruler, Ambassador, Envoy, or High Commissioner, as specified by the Central Government.

(6) If you ask the Central Government for permission to sue a foreign country, they must give you a chance to explain your case before they can refuse your request, either fully or partially.

Explanation using Example

Example 1:

Scenario: A tenant dispute involving a foreign embassy.

Situation: Mr. Sharma is a tenant in a property owned by the Embassy of Country X in New Delhi. The embassy decides to evict Mr. Sharma without following the due process of law.

Application of the Act:

Mr. Sharma can file a suit against the Embassy of Country X without needing the consent of the Central Government because he is a tenant of immovable property held by the foreign state.

The court will hear the case and decide whether the eviction was lawful.

Example 2:

Scenario: A business dispute involving a foreign company.

Situation: ABC Pvt. Ltd., an Indian company, enters into a contract with a state-owned enterprise from Country Y. The foreign enterprise fails to deliver the goods as per the contract, causing significant financial loss to ABC Pvt. Ltd.

Application of the Act:

ABC Pvt. Ltd. wants to sue the state-owned enterprise of Country Y in an Indian court.

ABC Pvt. Ltd. must first obtain written consent from the Central Government, certified by a Secretary to the Government.

The Central Government will consider whether Country Y has waived its immunity, trades within the local jurisdiction, or has any other relevant connection before granting consent.

If consent is granted, ABC Pvt. Ltd. can proceed with the lawsuit in the specified court.

Example 3:

Scenario: Execution of a decree against a foreign state.

Situation: An Indian court has passed a decree in favor of Mr. Verma against the Government of Country Z for a contractual dispute. Mr. Verma now wants to execute the decree and recover the awarded amount.

Application of the Act:

Mr. Verma cannot execute the decree against the property of the Government of Country Z without the written consent of the Central Government.

Mr. Verma must apply to the Central Government for consent to execute the decree.

The Central Government will review the case and decide whether to grant consent based on the circumstances.

If consent is granted, Mr. Verma can proceed with the execution of the decree.

Example 4:

Scenario: Immunity of a foreign ambassador.

Situation: An Ambassador of Country W is involved in a car accident in India, causing injury to a pedestrian. The pedestrian wants to file a lawsuit for damages.

Application of the Act:

The pedestrian cannot sue the Ambassador of Country W without the written consent of the Central Government.

The Central Government will consider whether the Ambassador has waived immunity or if there are other grounds to grant consent.

If consent is not granted, the lawsuit cannot proceed against the Ambassador.

Additionally, the Ambassador cannot be arrested under this Code.

Example 5:

Scenario: A foreign state trading within local jurisdiction.

Situation: The Government of Country V operates a chain of retail stores in India. One of the stores breaches a contract with an Indian supplier, causing financial loss.

Application of the Act:

The Indian supplier wants to sue the Government of Country V for breach of contract.

The supplier must obtain written consent from the Central Government to sue the foreign state.

The Central Government will consider that the Government of Country V is trading within the local jurisdiction and may grant consent for the lawsuit.

If consent is granted, the supplier can proceed with the lawsuit in the specified court.

Section 87: Style of foreign Rulers as parties to suits.

The Ruler of a foreign State may sue, and shall be sued, in the name of his State:

Provided that in giving the consent referred to in section 86, the Central Government may direct that the Ruler may be sued in the name of an agent or in any other name.

Simplified act

A leader of a foreign country can start a lawsuit or be sued using the name of their country:

However, if the Central Government gives permission as mentioned in section 86, they can decide that the leader can be sued using the name of a representative or any other name.

Explanation using Example

Example 1:

Scenario: A foreign company based in France enters into a contract with an Indian company for the supply of machinery. The Indian company fails to deliver the machinery on time, causing significant financial loss to the French company.

Application of Section 87: The French company, representing the interests of the French government, decides to sue the Indian company for breach of contract. According to Section 87, the French government can file the lawsuit in the name of the State of France. The Central Government of India, while giving consent under Section 86, may also direct that the lawsuit be filed in the name of an agent representing the French government.

Example 2:

Scenario: An Indian citizen is involved in a property dispute with the government of a foreign country, say Japan, over a piece of land in India. The Indian citizen claims that the land was wrongfully taken by the Japanese government.

Application of Section 87: The Indian citizen decides to file a lawsuit against the Japanese government. According to Section 87, the lawsuit must be filed in the name of the State of Japan. However, the Central Government of India,

while giving consent under Section 86, may direct that the lawsuit be filed in the name of an agent or any other name representing the Japanese government.

Section 87A: Definitions of "foreign State" and "Ruler"

Definitions

(1) In this Part, -

(a) "foreign State" means any State outside India which has been recognised by the Central Government; and

(b) "Ruler", in relation to a foreign State, means the person who is for the time being recognized by the Central Government to be the head of that State.

(2) Every Court shall take judicial notice of the fact -

(a) that a State has or has not been recognized by the Central Government;

(b) that a person has or has not been recognized by the Central Government to be the head of a State.

Simplified act

Definitions

(1) In this Part, -

(a) "foreign State" means any country outside India that the Central Government has officially recognized; and

(b) "Ruler", in relation to a foreign State, means the person who is currently recognized by the Central Government as the leader of that country.

(2) Every Court must acknowledge the fact -

(a) whether a country has or has not been officially recognized by the Central Government;

(b) whether a person has or has not been officially recognized by the Central Government as the leader of a country.

Explanation using Example

Example 1:

Scenario: A lawsuit is filed in an Indian court by an Indian company against a company based in Country X, which is recognized by the Indian Central Government as a foreign State.

Application of Section 87A:

The Indian court will take judicial notice that Country X is a recognized foreign State.

The head of Country X, as recognized by the Central Government, will be considered the "Ruler" of that State.

The lawsuit will proceed under the special provisions applicable to suits involving foreign States and their rulers.

Example 2:

Scenario: An Indian citizen files a lawsuit against the President of Country Y, alleging breach of contract. Country Y is recognized by the Indian Central Government as a foreign State.

Application of Section 87A:

The Indian court will take judicial notice that Country Y is a recognized foreign State.

The President of Country Y, as recognized by the Central Government, will be considered the "Ruler" of that State.

The court will follow the specific procedures and immunities applicable to suits involving foreign rulers, ensuring that the President of Country Y is treated according to international diplomatic norms.

Example 3:

Scenario: A foreign ambassador from Country Z, which is recognized by the Indian Central Government, is sued in an Indian court for a civil matter.

Application of Section 87A:

The Indian court will take judicial notice that Country Z is a recognized foreign State.

The head of Country Z, as recognized by the Central Government, will be considered the "Ruler" of that State.

The court will also recognize the diplomatic immunity of the ambassador, as per international law and the specific provisions of the Code of Civil Procedure, 1908, regarding suits involving foreign envoys.

Example 4:

Scenario: An Indian NGO files a public interest litigation (PIL) against the government of Country W, alleging environmental damage caused by a project funded by Country W in India. Country W is recognized by the Indian Central Government as a foreign State.

Application of Section 87A:

The Indian court will take judicial notice that Country W is a recognized foreign State.

The head of Country W, as recognized by the Central Government, will be considered the "Ruler" of that State.

The court will handle the case under the special provisions for suits involving foreign States, ensuring that the legal process respects the sovereignty and diplomatic status of Country W.

Example 5:

Scenario: A dispute arises between an Indian citizen and a foreign diplomat from Country V, which is recognized by the Indian Central Government, over a property lease in India.

Application of Section 87A:

The Indian court will take judicial notice that Country V is a recognized foreign State.

The head of Country V, as recognized by the Central Government, will be considered the "Ruler" of that State.

The court will consider the diplomatic immunity of the foreign diplomat and may refer to the Vienna Convention on Diplomatic Relations, along with the provisions of the Code of Civil Procedure, 1908, to resolve the dispute.

SUITS AGAINST RULERS OF FORMER INDIAN STATES

Section 87B: Application of Sections 85 and 86 to Rulers of former Indian States.

Provisions Relating to Rulers of Former Indian States

(1) In the case of any suit by or against the Ruler of any former Indian State which is based wholly or in part upon a cause of action which arose before the commencement of the Constitution or any proceeding arising out of such suit, the provisions of section 85 and sub-sections (1) and (3) of section 86 shall apply in relation to such Ruler as they apply in relation to the Ruler of a foreign State.

(2) In this section -

(a) "former Indian State" means any such Indian State as the Central Government may, by notification in the Official Gazette, specify for the purposes of this section; * * *

(b) "Commencement of the Constitution" means the 26th day of January, 1950; and

(c) "Ruler", in relation to a former Indian State, has the same meaning as in article 363 of the Constitution.

Simplified act

Rules About Rulers of Former Indian States

(1) If there is a lawsuit involving the Ruler of a former Indian State, and the reason for the lawsuit happened before January 26, 1950 (when the Constitution started), the same rules that apply to Rulers of foreign countries will apply to these Rulers.

(2) In this section -

(a) "former Indian State" means any Indian State that the Central Government lists in the Official Gazette for this purpose;

(b) "Commencement of the Constitution" means January 26, 1950; and

(c) "Ruler" means the same thing as it does in article 363 of the Constitution.

Explanation using Example

Example 1:

Scenario: A dispute over a piece of land in Rajasthan.

Background: Maharaja Singh, the ruler of a former princely state in Rajasthan, had a dispute over a piece of land with a local farmer, Mr. Sharma. The dispute began in 1948, before the Constitution of India came into effect.

Application of Section 87B:

Since the cause of action (the land dispute) arose before January 26, 1950, the provisions of Section 85 and sub-sections (1) and (3) of Section 86 of the Code of Civil Procedure, 1908, will apply.

Maharaja Singh, being the ruler of a former Indian state, will be treated similarly to a ruler of a foreign state for the purposes of this suit.

This means that Mr. Sharma will need to obtain the consent of the Central Government before proceeding with the lawsuit against Maharaja Singh, as per the requirements of Section 86.

Example 2:

Scenario: A contractual dispute involving the Nawab of a former princely state in Hyderabad.

Background: In 1947, Nawab Ali, the ruler of a former princely state in Hyderabad, entered into a contract with a businessman, Mr. Khan, for the supply of goods. The contract was breached, and Mr. Khan sought to sue Nawab Ali for damages.

Application of Section 87B:

The cause of action (breach of contract) arose before January 26, 1950.

As per Section 87B, the provisions of Section 85 and sub-sections (1) and (3) of Section 86 will apply to Nawab Ali.

Mr. Khan will need to obtain the consent of the Central Government to initiate legal proceedings against Nawab Ali, treating him as a ruler of a foreign state.

This ensures that the legal protections afforded to rulers of former Indian states are upheld, similar to those provided to foreign state rulers.

Example 3:

Scenario: A legal proceeding involving the Maharani of a former princely state in Gujarat.

Background: In 1949, Maharani Devi, the ruler of a former princely state in Gujarat, was involved in a legal dispute over the ownership of a palace with a local resident, Ms. Patel. The dispute continued after the Constitution came into effect.

Application of Section 87B:

The cause of action (ownership dispute) arose before January 26, 1950.

According to Section 87B, the provisions of Section 85 and sub-sections (1) and (3) of Section 86 will apply to Maharani Devi.

Ms. Patel will need to seek the consent of the Central Government before proceeding with the lawsuit against Maharani Devi, as she is treated similarly to a ruler of a foreign state.

This ensures that the legal framework respects the historical context and provides appropriate legal protections to the rulers of former Indian states.

INTERPLEADER

Section 88: Where interpleader-suit may be instituted.

Where two or more persons claim adversely to one another the same debts, sum of money or other property, movable or immovable, from another person, who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made and of obtaining indemnity for himself:

Provided that where any suit is pending in which the rights of all parties can properly be decided, no such suit of interpleader shall be instituted.

Simplified act

If two or more people are arguing over who should get the same debt, money, or property (whether it's something you can move or not), and the person who currently has it doesn't care who gets it and just wants to give it to the right person, that person can start a legal case called an "interpleader."

The purpose of this interpleader case is to have the court decide who should get the money or property and to protect the person who currently has it from any further claims.

However, if there is already another ongoing case that can decide who should get the money or property, then the interpleader case cannot be started.

Explanation using Example

Example 1:

Rajesh is a jeweler in Mumbai. He has a diamond necklace worth ₹5 lakhs in his possession. Two customers, Priya and Anjali, both claim that the necklace belongs to them. Priya says she bought the necklace and left it with Rajesh for safekeeping, while Anjali claims she inherited it from her grandmother and had given it to Rajesh for cleaning. Rajesh has no personal interest in the necklace other than the safekeeping charges he is owed. To resolve this dispute without getting involved in the conflict, Rajesh files an interpleader suit in the civil court. The court will then decide who the rightful owner of the necklace is, and Rajesh will be indemnified from any further claims once the decision is made.

Example 2:

Suresh is a landlord in Delhi who rented out a commercial property to a company. The company has since dissolved, and two former directors, Ramesh and Mahesh, are both claiming the security deposit of ₹2 lakhs that was paid at the beginning of the lease. Suresh has no interest in the security deposit other than ensuring it goes to the rightful claimant. To avoid the risk of paying the wrong person and facing legal consequences, Suresh files an interpleader suit in the civil court. The court will determine whether Ramesh or Mahesh is entitled to the security deposit, and Suresh will be protected from any further liability once the court makes its decision.

PART V: SPECIAL PROCEEDINGS

ARBITRATION

Section 89: Settlement of disputes outside the Court.

(1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after

receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for:

- (a) arbitration;
- (b) conciliation;
- (c) judicial settlement including settlement through LokAdalat; or
- (d) mediation.

(2) Where a dispute has been referred:

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;

(b) to LokAdalat, the Court shall refer the same to the LokAdalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute so referred to the LokAdalat;

(c) for judicial settlement, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a LokAdalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a LokAdalat under the provisions of that Act;

(d) for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

Simplified act

(1) If the Court thinks there might be a way for the parties to agree and settle their dispute, the Court will create a draft of the settlement terms and give it to the parties to review. After getting their feedback, the Court may revise the settlement terms and suggest one of the following methods to resolve the dispute:

- (a) arbitration;
- (b) conciliation;
- (c) judicial settlement, including through LokAdalat; or

(d) mediation.

(2) If the dispute is referred to:

(a) arbitration or conciliation, the rules of the Arbitration and Conciliation Act, 1996 will apply as if the dispute was referred under that Act;

(b) LokAdalat, the Court will send the dispute to LokAdalat according to the Legal Services Authority Act, 1987, and all rules of that Act will apply;

(c) judicial settlement, the Court will send the dispute to a suitable institution or person, who will be treated as a LokAdalat, and all rules of the Legal Services Authority Act, 1987 will apply as if the dispute was referred to a LokAdalat;

(d) mediation, the Court will help the parties reach a compromise and will follow the prescribed procedure.

Explanation using Example

Example 1:

Mr. Sharma and Mr. Verma are neighbors in Delhi who have a long-standing dispute over the boundary of their properties. Mr. Sharma claims that Mr. Verma has encroached on his land by building a wall. Mr. Verma, on the other hand, argues that the wall is within his property limits. Both parties file a case in the civil court.

During the initial hearings, the judge observes that both parties are open to negotiation and suggests that the matter could be settled outside the court. The judge formulates a possible settlement where Mr. Verma agrees to demolish the wall and rebuild it on the correct boundary line, and Mr. Sharma agrees to bear half the cost of reconstruction.

The judge then refers the case for mediation. A mediator is appointed, and after several sessions, both parties agree to the terms. The mediator drafts a settlement agreement, which is then submitted to the court. The court approves the settlement, and the case is resolved without a prolonged trial.

Example 2:

A small business owner, Ms. Gupta, in Mumbai, has a contractual dispute with a supplier, Mr. Khan. Ms. Gupta claims that Mr. Khan delivered defective goods and demands a refund, while Mr. Khan insists that the goods were of

acceptable quality and refuses to issue a refund. Ms. Gupta files a lawsuit against Mr. Khan.

The court, after reviewing the initial pleadings, believes that the dispute can be settled amicably. The judge formulates a settlement proposal where Mr. Khan agrees to replace the defective goods, and Ms. Gupta agrees to pay the remaining balance for the new delivery.

The judge refers the case to LokAdalat for judicial settlement. At the LokAdalat, both parties discuss the terms and agree to the proposed settlement. The LokAdalat records the settlement, and the court dismisses the case based on the agreed terms.

Example 3:

A housing society in Bangalore has a dispute with a construction company over the delay in completing a residential project. The society members file a case against the construction company, seeking compensation for the delay.

The court, during the preliminary hearings, identifies that both parties are willing to negotiate. The judge formulates a settlement where the construction company agrees to complete the project within six months and offers a discount on the final payment as compensation for the delay.

The judge refers the case for arbitration. An arbitrator is appointed, and after reviewing the case, the arbitrator facilitates a settlement agreement based on the court's proposal. The arbitration award is then submitted to the court, which approves it, and the dispute is resolved without further litigation.

SPECIAL CASE

Section 90: Power to state case for opinion of Court.

Where any persons agree in writing to state a case for the opinion of the Court, then the Court shall try and determine the same in the manner prescribed.

Simplified act

If two or more people agree in writing to ask the Court for its opinion on a matter,

then the Court will look into the matter and make a decision according to the rules.

Explanation using Example

Example 1:

Scenario: Two business partners, Raj and Simran, have a disagreement over the interpretation of a clause in their partnership agreement. They want to resolve this issue without going through a lengthy litigation process.

Action: Raj and Simran agree in writing to state their case for the opinion of the Court. They draft a document outlining the specific clause in question and their respective interpretations.

Outcome: The Court reviews the written agreement and the stated case, then provides an opinion on the correct interpretation of the clause. This helps Raj and Simran resolve their disagreement efficiently and continue their business partnership without further conflict.

Example 2:

Scenario: A housing society in Mumbai is facing a dispute between its members regarding the allocation of parking spaces. The society's bylaws are ambiguous, leading to different interpretations by different members.

Action: The members of the housing society agree in writing to state their case for the opinion of the Court. They prepare a document that includes the relevant bylaws and the differing interpretations of the parking space allocation.

Outcome: The Court examines the written agreement and the stated case, then provides an opinion on the proper interpretation of the bylaws. This opinion helps the housing society resolve the parking space dispute and ensures that all members are clear on the rules moving forward.

PUBLIC NUISANCES AND OTHER WRONGFUL ACTS AFFECTING THE PUBLIC

Section 91: Public nuisances and other wrongful acts affecting the public.

(1) In the case of a public nuisance or other wrongful act affecting, or likely to affect, the public, a suit for a declaration and injunction or for such other relief as may be appropriate in the circumstances of the case, may be instituted, -

(a) by the Advocate-General, or

(b) with the leave of the Court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.

(2) Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.

92.

Simplified act

(1) If there is a public nuisance or any other wrongful act that affects or is likely to affect the public, a lawsuit can be filed to get a court order to stop it or for any other suitable remedy. This lawsuit can be started by:

(a) the Advocate-General, or

(b) with the Court's permission, by two or more people, even if these people have not suffered any special damage because of the public nuisance or wrongful act.

(2) This section does not limit or change any other legal rights to file a lawsuit that might exist outside of this section.

92.

Explanation using Example

Example 1:

Scenario: A factory in a residential area is emitting harmful smoke and pollutants, causing health issues for the residents.

Application of Section 91:

Who can file the suit: The Advocate-General or two or more residents of the area with the permission of the court.

Type of suit: The residents can file a suit for a declaration that the factory's emissions are a public nuisance and seek an injunction to stop the factory from emitting pollutants.

Relief sought: The residents may ask the court to order the factory to install pollution control devices or relocate to a non-residential area.

Example 2:

Scenario: A local government body decides to build a waste dump near a school, which poses a health risk to the students and staff.

Application of Section 91:

Who can file the suit: The Advocate-General or two or more concerned parents or teachers with the permission of the court.

Type of suit: The parents or teachers can file a suit for a declaration that the waste dump is a public nuisance and seek an injunction to prevent its construction.

Relief sought: The plaintiffs may request the court to order the local government to find an alternative location for the waste dump that does not pose a risk to public health.

Example 3:

Scenario: A popular public park is being used by a group of people for unauthorized commercial activities, causing inconvenience and safety concerns for regular visitors.

Application of Section 91:

Who can file the suit: The Advocate-General or two or more regular visitors of the park with the permission of the court.

Type of suit: The visitors can file a suit for a declaration that the unauthorized commercial activities are a public nuisance and seek an injunction to stop these activities.

Relief sought: The plaintiffs may ask the court to order the removal of unauthorized vendors and ensure the park is used only for recreational purposes as intended.

Example 4:

Scenario: A construction company is blocking a public road with debris and construction materials, causing traffic congestion and inconvenience to the public.

Application of Section 91:

Who can file the suit: The Advocate-General or two or more affected commuters with the permission of the court.

Type of suit: The commuters can file a suit for a declaration that the blockage is a public nuisance and seek an injunction to clear the road.

Relief sought: The plaintiffs may request the court to order the construction company to remove the debris and ensure the road is kept clear for public use.

Example 5:

Scenario: A chemical plant is discharging toxic waste into a river, contaminating the water supply for several villages downstream.

Application of Section 91:

Who can file the suit: The Advocate-General or two or more affected villagers with the permission of the court.

Type of suit: The villagers can file a suit for a declaration that the discharge is a public nuisance and seek an injunction to stop the chemical plant from polluting the river.

Relief sought: The plaintiffs may ask the court to order the chemical plant to treat its waste before discharge and compensate the affected villagers for any harm caused.

Section 92: Public charities.

Legal Provisions for Trusts

(1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the leave of the Court, may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree:

- (a) removing any trustee;
- (b) appointing a new trustee;
- (c) vesting any property in a trustee;

(cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;

(d) directing accounts and inquiries;

(e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;

(g) settling a scheme; or

(h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863 (XX of 1863), or by any corresponding law in force in the territories which, immediately before the 1st November, 1956, were comprised in Part B States, no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

(3) The Court may alter the original purposes of an express or constructive trust created for public purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied cy pres in one or more of the following circumstances, namely:

(a) where the original purposes of the trust, in whole or in part, -

(i) have been, as far as may be, fulfilled; or

(ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust; or

(b) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or

(c) where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or

(d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or

(e) where the original purposes, in whole or in part, have, since they were laid down, -

(i) been adequately provided for by other means, or

(ii) ceased, as being useless or harmful to the community, or

(iii) ceased to be, in law, charitable, or

(iv) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust.

Simplified act

Legal Provisions for Trusts

(1) If there is a suspected violation of a trust set up for public charitable or religious purposes, or if the Court's guidance is needed to manage such a trust, the Advocate-General or two or more interested people (with the Court's permission) can file a lawsuit. This can be done in the main Civil Court or any other Court authorized by the State Government where the trust is located. The lawsuit can seek to:

(a) remove a trustee;

(b) appoint a new trustee;

(c) transfer property to a trustee;

(cc) order a removed trustee or someone who is no longer a trustee to hand over trust property to the rightful person;

(d) request financial accounts and investigations;

(e) decide how much of the trust property or interest should go to a specific purpose of the trust;

(f) allow the trust property to be rented, sold, mortgaged, or exchanged;

(g) create a management plan for the trust; or

(h) provide any other necessary relief based on the situation.

(2) Except as provided by the Religious Endowments Act, 1863, or any similar law in former Part B States as of November 1, 1956, no lawsuit seeking the above reliefs can be filed for such trusts unless it follows the rules mentioned in section (1).

(3) The Court can change the original purposes of a trust set up for public charitable or religious purposes and allow the trust's property or income to be used differently in the following situations:

(a) When the original purposes of the trust, in whole or in part, -

(i) have been mostly fulfilled; or

(ii) cannot be carried out at all, or cannot be carried out as directed by the trust document or, if there is no document, according to the trust's intent; or

(b) When the original purposes of the trust only use part of the available property; or

(c) When the trust property and other similar property can be used more effectively together for a common purpose, considering the trust's intent; or

(d) When the original purposes were based on an area that is no longer suitable for those purposes; or

(e) When the original purposes, in whole or in part, have since -

(i) been adequately provided for by other means, or

(ii) become useless or harmful to the community, or

(iii) are no longer considered charitable by law, or

(iv) no longer provide a suitable and effective way to use the trust property, considering the trust's intent.

Explanation using Example

Example 1:

A public charitable trust was established in Mumbai to provide free education to underprivileged children. Over the years, the trustees have been accused of mismanaging the funds and not fulfilling the trust's objectives. Concerned

citizens, who have an interest in the trust, approach the Advocate-General and obtain permission from the Court to file a suit. They seek the following reliefs:

- (a) Removing the current trustees due to mismanagement.
- (b) Appointing new trustees who are committed to the trust's objectives.
- (d) Directing an inquiry into the accounts to ensure transparency.
- (f) Authorizing the sale of a dilapidated building owned by the trust to fund new educational programs.

Example 2:

A religious trust in Varanasi was created to maintain a temple and provide free meals to pilgrims. Over time, the area around the temple has become commercialized, and the original purposes of the trust can no longer be fulfilled as intended. The trustees approach the Court to seek permission to alter the trust's purposes. They propose:

- (a) Using part of the trust's property to build a community center that can serve the pilgrims more effectively.
- (c) Combining the trust's resources with another charitable organization to provide better services.
- (e) Redirecting funds that were originally meant for free meals, which are now adequately provided by other means, to healthcare services for pilgrims.

Example 3:

A trust was established in Chennai to provide scholarships to students from a specific village. Over the years, the village has developed, and the need for scholarships has diminished. The trustees find that the original purpose of the trust is no longer relevant. They approach the Court to apply the cy pres doctrine and seek permission to:

- (a) Redirect the funds to support educational programs in underdeveloped areas where the need is greater.
- (d) Expand the trust's scope to include neighboring regions that were not originally part of the trust's mandate.

(e) Use the trust's property to establish a vocational training center, as the original purpose of providing scholarships has been adequately met by other means.

Example 4:

A public charitable trust in Delhi was created to provide medical aid to the poor. The trust owns a large piece of land that is underutilized. The trustees believe that selling part of the land and using the proceeds to build a modern healthcare facility would better serve the community. They file a suit in the principal Civil Court seeking:

(f) Authorization to sell a portion of the trust's land.

(g) Approval of a new scheme to use the proceeds from the sale to construct a healthcare facility.

(h) Any other relief that the Court deems necessary to fulfill the trust's objectives more effectively.

Section 93: Exercise of powers of Advocate-General outside presidency-towns.

The powers conferred by sections 91 and 92 on the Advocate-General may, outside the presidency-towns, be, with the previous sanction of the State Government, exercised also by the Collector or by such officer as the State Government may appoint in this behalf.

Simplified act

The powers given to the Advocate-General by sections 91 and 92 can also be used by the Collector or any other officer chosen by the State Government, but only outside the main cities and with the State Government's prior approval.

Explanation using Example

Example 1:

Scenario: A village in rural Maharashtra is facing a severe issue with a factory that is releasing toxic waste into a nearby river, causing health problems for the villagers and damaging the local ecosystem.

Application of Section 93:

The villagers want to take legal action against the factory for causing a public nuisance.

Normally, the Advocate-General would have the power to initiate such proceedings under Sections 91 and 92 of the Code of Civil Procedure, 1908.

However, since this issue is outside a presidency-town, the State Government of Maharashtra, with prior sanction, appoints the local Collector to exercise these powers.

The Collector, acting with the authority of the Advocate-General, files a suit against the factory to stop the pollution and seek damages for the affected villagers.

Example 2:

Scenario: In a small town in Uttar Pradesh, a large construction company is blocking a public road with its equipment, causing significant inconvenience to the residents and disrupting daily activities.

Application of Section 93:

The residents want to address this wrongful act affecting the public.

Typically, the Advocate-General would have the authority to take action under Sections 91 and 92.

Since the town is not a presidency-town, the State Government of Uttar Pradesh, with prior approval, designates a senior officer from the local administration to exercise these powers.

The appointed officer, acting with the powers of the Advocate-General, files a legal suit to remove the construction equipment and ensure the road is cleared for public use.

PART VI: SUPPLEMENTAL PROCEEDINGS

Section 94: Supplemental proceedings.

In order to prevent the ends of justice from being defeated the Court may, if it is so prescribed,

(a) issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to the civil prison;

- (b) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the Court or order the attachment of any property;
- (c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold;
- (d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;
- (e) make such other interlocutory orders as may appear to the Court to be just and convenient.

Simplified act

To make sure justice is served, the Court can do the following if the rules allow:

- (a) Issue a warrant to arrest the defendant and bring them to Court to explain why they shouldn't have to provide a guarantee to show up in Court. If they don't follow the order, they can be sent to civil prison.
- (b) Order the defendant to provide a guarantee to produce any of their property and make it available to the Court, or order that any of their property be taken.
- (c) Grant a temporary order to stop someone from doing something, and if they don't follow it, send them to civil prison and order their property to be taken and sold.
- (d) Appoint someone to manage any property and make sure they do their job by taking and selling their property if necessary.
- (e) Make any other temporary orders that the Court thinks are fair and convenient.

Explanation using Example

Example 1:

Scenario: Rajesh files a lawsuit against Suresh for failing to repay a loan of ₹5,00,000. Rajesh fears that Suresh might flee the city to avoid the court proceedings.

Application of Section 94:

Clause (a): The court issues a warrant to arrest Suresh and bring him before the court to show cause why he should not give security for his appearance. Suresh fails to provide the required security, and the court commits him to civil prison to ensure he does not abscond.

Clause (b): The court directs Suresh to furnish security to produce his car, which is worth ₹5,00,000, and place it at the disposal of the court. If Suresh fails to do so, the court orders the attachment of his car.

Example 2:

Scenario: Priya files a lawsuit against her business partner, Anil, for misappropriating company funds. Priya is concerned that Anil might sell off the company's assets to avoid returning the funds.

Application of Section 94:

Clause (c): The court grants a temporary injunction preventing Anil from selling any company assets. Anil disobeys the court order and attempts to sell a company vehicle. The court commits Anil to civil prison and orders that the vehicle be attached and sold.

Clause (d): The court appoints a receiver to take control of the company's assets and ensure they are managed properly. If the receiver fails to perform his duties, the court enforces the performance by attaching and selling the receiver's personal property.

Clause (e): The court makes an interlocutory order to freeze Anil's bank accounts to prevent further misappropriation of funds, as it appears just and convenient to do so.

Example 3:

Scenario: Meera files a lawsuit against her tenant, Ravi, for not paying rent for several months and suspects that Ravi might damage the property out of spite.

Application of Section 94:

Clause (a): The court issues a warrant to arrest Ravi and bring him before the court to show cause why he should not give security for his appearance. Ravi fails to comply, and the court commits him to civil prison.

Clause (b): The court directs Ravi to furnish security to ensure the property is not damaged and to place the same at the disposal of the court. If Ravi fails to comply, the court orders the attachment of his personal belongings.

Clause (c): The court grants a temporary injunction preventing Ravi from causing any damage to the property. If Ravi disobeys, the court commits him to civil prison and orders that his personal property be attached and sold.

Clause (e): The court makes an interlocutory order to appoint a property manager to oversee the property and ensure it is maintained properly, as it appears just and convenient to do so.

Section 95: Compensation for obtaining arrest, attachment or injunction on insufficient ground.

(1) Where, in any suit in which an arrest or attachment has been effected or a temporary injunction granted under the last preceding section, -

(a) it appears to the Court that such arrest, attachment or injunction was applied for on insufficient grounds, or

(b) the suit of the plaintiff fails and it appears to the Court that there was no reasonable or probable grounds for instituting the same,

the defendant may apply to the Court, and the Court may, upon such application, award against the plaintiff by its order such amount not exceeding fifty thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury (including injury to reputation) caused to him :

Provided that a Court shall not award, under this section, an amount exceeding the limits of its pecuniary jurisdiction.

(2) An order determining any such application shall bar any suit for compensation in respect of such arrest, attachment or injunction.

Simplified act

(1) If, in a lawsuit where someone has been arrested, their property has been taken, or a temporary court order has been given:

(a) the court finds out that the arrest, property taking, or court order was requested without good reason, or

(b) the person who started the lawsuit loses, and the court finds out that there was no good reason to start the lawsuit,

the person who was arrested or had their property taken can ask the court for compensation. The court can then order the person who started the lawsuit to pay up to fifty thousand rupees to cover the expenses or harm (including damage to reputation) caused to the defendant:

However, the court cannot order an amount that is more than what it is allowed to handle based on its financial limits.

(2) Once the court makes a decision on this request for compensation, the defendant cannot file another lawsuit for compensation related to the same arrest, property taking, or court order.

Explanation using Example

Example 1:

Scenario: Ramesh files a lawsuit against Suresh, claiming that Suresh owes him Rs. 1,00,000. Ramesh also requests the court to temporarily freeze Suresh's bank account (attachment) to ensure that Suresh does not withdraw the money before the case is decided. The court grants the attachment order.

Outcome: After a thorough examination, the court finds that Ramesh's claim was baseless and that there were no reasonable grounds for the lawsuit. Suresh applies to the court for compensation, arguing that the attachment of his bank account caused him financial difficulties and damaged his reputation.

Court's Decision: The court agrees with Suresh and orders Ramesh to pay Suresh Rs. 30,000 as compensation for the trouble and injury caused by the wrongful attachment.

Example 2:

Scenario: Priya files a lawsuit against her business partner, Anil, alleging that Anil has been embezzling funds from their joint venture. Priya also requests a temporary injunction to prevent Anil from accessing the company's accounts. The court grants the temporary injunction.

Outcome: During the trial, it becomes evident that Priya's allegations were unfounded and that she had no reasonable basis for filing the lawsuit. The court dismisses Priya's suit. Anil then applies for compensation, claiming that

the injunction caused significant harm to his business operations and reputation.

Court's Decision: The court finds Priya's actions to be without reasonable grounds and orders her to pay Anil Rs. 40,000 as compensation for the injury caused by the wrongful injunction.

PART VII: APPEALS

APPEALS FROM ORIGINAL DECREES

Section 96: Appeal from original decree.

Appeals from Decrees

(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 cognisable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed ten thousand rupees.

Simplified act

Appeals from Decrees

(1) Unless specifically stated otherwise in this Code or any other current law, you can appeal any decision (decree) made by a Court that first heard the case to a higher Court that is allowed to hear appeals from that Court.

(2) You can appeal a decision made by a Court even if the decision was made without the other party being present (ex parte).

(3) You cannot appeal a decision if both parties agreed to the decision made by the Court.

(4) You can only appeal a decision on a legal question if the case was one that could be heard by Small Causes Courts and the amount or value involved in the original case is ten thousand rupees or less.

Explanation using Example

Example 1:

Rajesh files a lawsuit against his neighbor, Suresh, in a District Court (a court of original jurisdiction) for encroaching on his property. The District Court rules in favor of Suresh, dismissing Rajesh's claims. Rajesh believes the decision is incorrect and decides to appeal the decree. According to Section 96 of the Code of Civil Procedure, 1908, Rajesh can appeal this original decree to the High Court, which is authorized to hear appeals from the District Court's decisions.

Example 2:

Meena files a lawsuit against a local shopkeeper for selling her defective goods worth Rs. 8,000. The Small Causes Court rules in favor of the shopkeeper. Meena wants to appeal the decision. However, since the value of the subject matter is less than Rs. 10,000 and the case falls under the jurisdiction of the Small Causes Court, Section 96(4) states that Meena can only appeal on a question of law, not on the facts of the case.

Example 3:

Anita sues her business partner, Ramesh, for breach of contract in a Civil Court. Ramesh does not appear in court, and the court passes an ex parte decree in favor of Anita. Ramesh later learns about the decree and wants to challenge it. According to Section 96(2), Ramesh can appeal the ex parte decree to a higher court.

Example 4:

Vikram and Priya are involved in a property dispute. They reach a mutual agreement and request the court to pass a decree based on their consent terms. The court passes a consent decree. Later, Vikram wants to appeal the decree, believing he made a mistake in the agreement. However, Section 96(3) states that no appeal shall lie from a decree passed by the court with the consent of parties, so Vikram cannot appeal the consent decree.

Section 97: Appeal from final decree where no appeal from preliminary decree.

Where any party aggrieved by a preliminary decree passed after the commencement of this Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree.

Simplified act

If someone is unhappy with a preliminary decision made after this Code started and they do not appeal against it, they cannot argue that the decision was wrong when they appeal against the final decision.

Explanation using Example

Example 1:

Rajesh files a lawsuit against Suresh for partition of family property. The court issues a preliminary decree determining the shares of each party in the property. Rajesh is not satisfied with the shares allocated to him but decides not to appeal against the preliminary decree. Later, the court issues a final decree that implements the partition based on the shares determined in the preliminary decree. Rajesh now wants to challenge the final decree on the grounds that the shares were incorrectly determined. According to Section 97 of The Code Of Civil Procedure 1908, Rajesh cannot dispute the correctness of the shares in the final decree because he did not appeal against the preliminary decree when it was issued.

Example 2:

Meena sues her business partner, Anil, for dissolution of their partnership and settlement of accounts. The court issues a preliminary decree that outlines how the accounts should be settled and the assets divided. Meena believes the court made an error in calculating her share but does not file an appeal against the preliminary decree. When the final decree is issued, which follows the terms of the preliminary decree, Meena tries to contest the final decree by arguing that the initial calculations were wrong. Under Section 97 of The Code Of Civil Procedure 1908, Meena is barred from challenging the final decree on these grounds because she did not appeal the preliminary decree.

Section 98: Decision where appeal heard by two or more Judges.

Section on Appeals

(1) Where an appeal is heard by a Bench of two or more Judges, the appeal shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges.

(2) Where there is no such majority which concurs in a judgment varying or reversing the decree appealed from, such decree shall be confirmed:

Provided that where the Bench hearing the appeal is composed of two or other even number of Judges belonging to a Court consisting of more Judges than those constituting the Bench and the Judges composing the Bench differ in opinion on a point of law, they may state the point of law upon which they differ and the appeal shall then be heard upon that point only by one or more of the other Judges, and such point shall be decided according to the opinion of the majority (if any) of the Judges who have heard the appeal, including those who first heard it.

(3) Nothing in this section shall be deemed to alter or otherwise affect any provision of the letters patent of any High Court.

Simplified act

Section on Appeals

(1) If an appeal is heard by a group of two or more judges, the decision will be based on the opinion of the majority of those judges.

(2) If the judges do not have a majority opinion to change or reverse the decision being appealed, the original decision will stay the same:

However, if the group of judges hearing the appeal has an even number of judges and they disagree on a legal point, they can state the point they disagree on. Then, other judges from the same court will hear the appeal on that specific point and decide based on the majority opinion of all the judges who heard the appeal, including the original judges.

(3) This section does not change or affect any rules set by the founding documents of any High Court.

Explanation using Example

Example 1:

Case: A property dispute case is appealed in the High Court of Delhi.

Scenario:

The appeal is heard by a Bench of three Judges.

Two Judges believe that the lower court's decision should be reversed, while the third Judge believes it should be upheld.

Application of Section 98:

According to Section 98(1), the decision of the appeal will be in accordance with the opinion of the majority.

Since the majority (two out of three Judges) agree on reversing the lower court's decision, the appeal will be decided in favor of reversing the decree.

Example 2:

Case: A commercial contract dispute is appealed in the High Court of Mumbai.

Scenario:

The appeal is heard by a Bench of four Judges.

Two Judges believe that the lower court's decision should be upheld, while the other two Judges believe it should be reversed.

Application of Section 98:

According to Section 98(2), since there is no majority opinion to vary or reverse the decree, the original decree will be confirmed.

However, if the Judges differ on a point of law, they may state the point of law upon which they differ.

The appeal will then be heard on that specific point of law by one or more of the other Judges of the Court.

The final decision on that point of law will be according to the majority opinion of all the Judges who have heard the appeal, including those who first heard it.

Example 3:

Case: A family inheritance dispute is appealed in the High Court of Karnataka.

Scenario:

The appeal is heard by a Bench of two Judges.

One Judge believes that the lower court's decision should be varied, while the other Judge believes it should be upheld.

Application of Section 98:

According to Section 98(2), since there is no majority opinion to vary or reverse the decree, the original decree will be confirmed.

If the Judges differ on a point of law, they may state the point of law upon which they differ.

The appeal will then be heard on that specific point of law by one or more of the other Judges of the Court.

The final decision on that point of law will be according to the majority opinion of all the Judges who have heard the appeal, including those who first heard it.

Example 4:

Case: A labor dispute is appealed in the High Court of Madras.

Scenario:

The appeal is heard by a Bench of five Judges.

Three Judges believe that the lower court's decision should be varied, while two Judges believe it should be upheld.

Application of Section 98:

According to Section 98(1), the decision of the appeal will be in accordance with the opinion of the majority.

Since the majority (three out of five Judges) agree on varying the lower court's decision, the appeal will be decided in favor of varying the decree.

Section 99: No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction.

Provided that nothing in this section shall apply to non-joinder of a necessary party.

Section 99A: No order under section 47 to be reversed or modified unless decision of the case is prejudicially affected.

Without prejudice to the generality of the provisions of section 99, no order under section 47 shall be reversed or substantially varied, on account of any error, defect or irregularity in any proceeding relating to such order, unless such error, defect or irregularity has prejudicially affected the decision of the case.

Simplified act

Even though section 99 covers a lot of things, an order made under section 47 cannot be changed or canceled just because there was a mistake, error, or something done wrong in the process, unless that mistake or error actually affected the outcome of the case.

Explanation using Example

Example 1:

Ravi filed a suit against Shyam for the recovery of a loan amounting to ₹5,00,000. The court passed a decree in favor of Ravi. Shyam, dissatisfied with the decree, filed an application under Section 47 of the Code of Civil Procedure, 1908, claiming that the execution of the decree was not in accordance with the law. The court, however, found a minor procedural error in the execution process but determined that this error did not affect the overall decision of the case. Therefore, under Section 99A, the court decided not to reverse or modify the order as the error did not prejudicially affect the decision of the case.

Example 2:

Meena obtained a decree against her tenant, Raj, for eviction and recovery of rent arrears. Raj challenged the execution of the decree under Section 47, arguing that the notice of execution was served incorrectly. The court reviewed the case and found that although there was a defect in the service of notice, it did not impact the fairness or outcome of the original decision. As per Section 99A, the court ruled that the order would not be reversed or modified because the defect did not prejudicially affect the decision of the case.

Section 100: Second appeal.

(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed ex parte.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.

Simplified act

(1) Unless stated otherwise in this Code or any other current law, you can appeal to the High Court if you believe a lower court's decision involves an important legal question.

(2) You can also appeal if the lower court made its decision without you being present.

(3) When you appeal, you must clearly state the important legal question your appeal is based on.

(4) If the High Court agrees that there is an important legal question, it will identify what that question is.

(5) The appeal will focus on the identified question, but the other side can argue that there is no such important question:

However, the Court can still consider other important legal questions not initially identified if it believes they are relevant and records the reasons for doing so.

Explanation using Example

Example 1:

Ravi owns a piece of land in Maharashtra. He files a civil suit against his neighbor, Suresh, claiming that Suresh has encroached on his land. The trial court rules in favor of Suresh. Dissatisfied with the decision, Ravi appeals to the District Court, which also rules in favor of Suresh. Ravi then decides to file a second appeal to the High Court of Bombay.

In his memorandum of appeal, Ravi states that the case involves a substantial question of law regarding the interpretation of property boundaries under the Indian Property Law. The High Court reviews the case and agrees that there is a substantial question of law involved. The High Court formulates the question and allows the appeal to be heard on this specific legal issue. During the hearing, Suresh is given the opportunity to argue that the case does not involve a substantial question of law. However, the High Court, after hearing both parties, decides to proceed with the appeal based on the formulated question.

Example 2:

Priya and Anil are involved in a dispute over the ownership of a family business in Delhi. The trial court rules in favor of Priya, and Anil appeals to the District Court, which also rules in favor of Priya. Anil then files a second appeal to the High Court of Delhi, claiming that the lower courts failed to consider a crucial legal principle regarding the division of family businesses under Hindu Succession Law.

Anil's memorandum of appeal clearly states the substantial question of law involved. The High Court examines the case and determines that the question of law is indeed substantial. The High Court formulates the question and schedules a hearing. During the hearing, Priya argues that the case does not involve a substantial question of law. However, the High Court, after considering the arguments, decides to hear the appeal on the formulated question. Additionally, the High Court identifies another substantial question of law during the proceedings and records its reasons for including this new question in the appeal.

Example 3:

Sunita files a civil suit against a construction company in Karnataka, alleging that the company has not fulfilled its contractual obligations. The trial court rules in favor of the construction company. Sunita appeals to the District

Court, which also rules against her. Sunita then decides to file a second appeal to the High Court of Karnataka.

In her memorandum of appeal, Sunita states that the case involves a substantial question of law regarding the interpretation of certain clauses in the contract under the Indian Contract Act. The High Court reviews the case and agrees that there is a substantial question of law involved. The High Court formulates the question and allows the appeal to be heard on this specific legal issue. During the hearing, the construction company is given the opportunity to argue that the case does not involve a substantial question of law. However, the High Court, after hearing both parties, decides to proceed with the appeal based on the formulated question.

Example 4:

Rajesh and Meena are involved in a dispute over the custody of their child in Tamil Nadu. The trial court rules in favor of Meena, and Rajesh appeals to the District Court, which also rules in favor of Meena. Rajesh then files a second appeal to the High Court of Madras, claiming that the lower courts failed to consider a crucial legal principle regarding the best interests of the child under the Guardians and Wards Act.

Rajesh's memorandum of appeal clearly states the substantial question of law involved. The High Court examines the case and determines that the question of law is indeed substantial. The High Court formulates the question and schedules a hearing. During the hearing, Meena argues that the case does not involve a substantial question of law. However, the High Court, after considering the arguments, decides to hear the appeal on the formulated question. Additionally, the High Court identifies another substantial question of law during the proceedings and records its reasons for including this new question in the appeal.

Section 100A: No further appeal in certain cases.

Notwithstanding anything contained in any Letters Patent for any High Court or in any instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a High Court, no further appeal shall lie from the judgment and decree of such Single Judge.

Simplified act

No matter what any previous rules or laws say, if a Single Judge in a High Court hears and decides an appeal from an original or appellate decision or order, you cannot appeal that Single Judge's decision any further.

Explanation using Example

Example 1:

Ravi filed a civil suit in the District Court of Delhi against his neighbor, Suresh, for encroaching on his property. The District Court ruled in favor of Ravi. Suresh then appealed to the Delhi High Court. The appeal was heard and decided by a Single Judge of the High Court, who upheld the decision of the District Court. Suresh, dissatisfied with the judgment, wanted to appeal further. However, under Section 100A of the Code of Civil Procedure, 1908, no further appeal is allowed from the judgment and decree of the Single Judge of the High Court. Therefore, Suresh cannot take the case to a higher bench or the Supreme Court.

Example 2:

Meera filed a lawsuit in the Madras High Court seeking damages for breach of contract against a company. The Single Judge of the High Court ruled in favor of Meera and awarded her compensation. The company, unhappy with the decision, sought to file another appeal within the High Court. However, as per Section 100A of the Code of Civil Procedure, 1908, since the appeal was already heard and decided by a Single Judge, no further appeal is permissible. The company must comply with the judgment and cannot pursue further appeals within the High Court or any other court.

Section 101: Second appeal on no other grounds.

No second appeal shall lie except on the ground mentioned in section 100.

Section 102: No second appeal in certain cases.

No second appeal shall lie from any decree, when the subject matter of the original suit is for recovery of money not exceeding twenty-five thousand rupees.

Simplified act

You cannot file a second appeal if the original lawsuit was about recovering money that is twenty-five thousand rupees or less.

Explanation using Example

Example 1:

Ravi filed a lawsuit against Shyam in a civil court to recover a loan amount of ₹20,000. The court ruled in favor of Ravi, and Shyam was ordered to pay the ₹20,000. Shyam, dissatisfied with the decision, appealed to the higher court. The appellate court also ruled in favor of Ravi. Shyam now wants to file a second appeal to a higher court. However, under Section 102 of The Code Of Civil Procedure 1908, Shyam cannot file a second appeal because the original suit was for an amount not exceeding ₹25,000.

Example 2:

Meera sued her neighbor, Anil, for damages amounting to ₹15,000 due to a property dispute. The trial court decided in favor of Meera, and Anil was ordered to pay the damages. Anil appealed the decision, but the appellate court upheld the trial court's decision. Anil is considering filing another appeal to a higher court. According to Section 102 of The Code Of Civil Procedure 1908, Anil is not permitted to file a second appeal since the original suit involved an amount less than ₹25,000.

Section 103: Power of High Court to determine issues of fact.

In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal, -

- (a) which has not been determined by the lower Appellate Court or both by the Court of first instance and the lower Appellate Court, or
- (b) which has been wrongly determined by such Court or Courts by reason of a decision on such question of law as is referred to in section 100.

Simplified act

In any second appeal, the High Court can decide on any important issue needed to settle the appeal if there is enough evidence available. This includes:

- (a) Issues that were not decided by the lower Appellate Court or by both the original trial court and the lower Appellate Court, or
- (b) Issues that were wrongly decided by these courts because of a mistake in understanding the law as mentioned in section 100.

Explanation using Example

Example 1:

Scenario: Rajesh filed a civil suit in the District Court claiming ownership of a piece of land. The District Court ruled in favor of Rajesh. The defendant, Suresh, appealed to the High Court, which also ruled in favor of Rajesh. Suresh then filed a second appeal to the High Court, arguing that the lower courts did not consider a crucial piece of evidence that could prove his ownership.

Application of Section 103: In this second appeal, the High Court reviews the case and finds that the evidence on record is sufficient to determine the issue of ownership. The High Court notices that the lower courts did not consider the crucial piece of evidence presented by Suresh. Under Section 103, the High Court has the power to determine this issue of fact, even though it was not determined by the lower courts. The High Court examines the evidence and concludes that Suresh is the rightful owner of the land, thereby reversing the decisions of the lower courts.

Example 2:

Scenario: Meena filed a lawsuit in the District Court seeking compensation for breach of contract. The District Court ruled against Meena, stating that there was no breach of contract. Meena appealed to the High Court, which upheld the District Court's decision. Meena then filed a second appeal to the High Court, arguing that the lower courts wrongly interpreted the contract terms.

Application of Section 103: In this second appeal, the High Court reviews the case and finds that the lower courts made an error in interpreting the contract terms due to a misapplication of the law. The High Court determines that the evidence on record is sufficient to resolve the issue. Under Section 103, the High Court has the authority to correct the wrongly determined issue of fact. The High Court reinterprets the contract terms correctly and finds that there was indeed a breach of contract. Consequently, the High Court rules in favor of Meena and awards her the compensation she sought.

Section 104: Orders from which appeal lies.

Appeals from Orders

(1) An appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force, from no other orders:

(ff) an order under section 35A;

(ffa) an order under section 91 or section 92 refusing leave to institute a suit of the nature referred to in section 91 or section 92, as the case may be;

(g) an order under section 95;

(h) an order under any of the provisions of this Code imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution of a decree;

(i) any order made under rules from which an appeal is expressly allowed by rules:

Provided that no appeal shall lie against any order specified in clause (ff) save on the ground that no order, or an order for the payment of a less amount, ought to have been made.

(2) No appeal shall lie from any order passed in appeal under this section.

Simplified act

Appeals from Orders

(1) You can appeal (challenge) the following types of orders, and unless specifically mentioned in this Code or any current law, you cannot appeal any other orders:

(ff) an order under section 35A;

(ffa) an order under section 91 or section 92 that refuses permission to start a lawsuit as described in section 91 or section 92;

(g) an order under section 95;

(h) an order under any part of this Code that imposes a fine or orders someone's arrest or detention in a civil prison, except when the arrest or detention is to enforce a court decision;

(i) any order made under rules that specifically allow an appeal by those rules:

However, you cannot appeal an order specified in clause (ff) unless you believe that no order should have been made, or that a smaller amount should have been ordered.

(2) You cannot appeal any order that was made in an appeal under this section.

Explanation using Example

Example 1:

Scenario: Ramesh files a frivolous lawsuit against Suresh, claiming damages for a minor issue. The court finds Ramesh's claim to be vexatious and orders him to pay compensatory costs to Suresh under Section 35A of the Code of Civil Procedure, 1908.

Application of Section 104: Ramesh believes the order to pay compensatory costs is unfair and decides to appeal the order. Under Section 104(1)(ff), Ramesh has the right to appeal against the order made under Section 35A.

Example 2:

Scenario: A local NGO wants to file a public interest lawsuit under Section 92 of the Code of Civil Procedure, 1908, to address the mismanagement of a public charitable trust. The court, however, refuses to grant them leave to institute the suit.

Application of Section 104: The NGO believes the court's refusal is unjust and decides to appeal the order. Under Section 104(1)(ffa), the NGO has the right to appeal against the order refusing leave to institute a suit under Section 92.

Example 3:

Scenario: Priya is ordered by the court to pay a fine for contempt of court during a civil proceeding. She believes the fine is excessive and wants to challenge the order.

Application of Section 104: Priya can appeal the order imposing the fine under Section 104(1)(h), which allows appeals from orders imposing fines or directing arrest or detention in civil prison, except where such arrest or detention is in execution of a decree.

Example 4:

Scenario: A tenant, Anil, is ordered by the court to vacate a rented property and is directed to be detained in civil prison for non-compliance with the court's order. Anil believes the detention order is unjust.

Application of Section 104: Anil can appeal the order directing his detention in civil prison under Section 104(1)(h), as it allows appeals from orders directing arrest or detention in civil prison, except where such arrest or detention is in execution of a decree.

Example 5:

Scenario: A court imposes a fine on a company for failing to comply with a court order. The company believes the fine is unwarranted and decides to appeal the order.

Application of Section 104: The company can appeal the order imposing the fine under Section 104(1)(h), which allows appeals from orders imposing fines or directing arrest or detention in civil prison, except where such arrest or detention is in execution of a decree.

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.

(2) Notwithstanding anything contained in sub-section (1), where any party aggrieved by an order of remand * * * from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.

Simplified act

(1) Unless specifically stated otherwise, you cannot appeal a court's decision made in its original or appellate jurisdiction. However, if you are appealing a final decision (decree), you can mention any mistakes or issues in the court's order that affected the decision as reasons for your appeal.

(2) Despite what is mentioned in section (1), if you are unhappy with a court's order to send a case back for further action (remand) and you do not appeal this order when you have the right to, you cannot later argue that the order was wrong.

Explanation using Example

Example 1:

Ravi filed a civil suit against Shyam in a district court, claiming that Shyam had encroached on his land. The district court issued an order dismissing Ravi's application for an interim injunction to stop Shyam from constructing a building on the disputed land. Ravi wanted to appeal this order. However, under Section 105(1) of the Code of Civil Procedure, 1908, Ravi cannot directly appeal the order dismissing the interim injunction. Instead, if Ravi appeals the final decree of the case, he can include the error or defect in the interim order as a ground of objection in his memorandum of appeal.

Example 2:

Meena and Priya were involved in a property dispute, and the trial court issued an order remanding the case back to the lower court for further evidence collection. Meena believed that the remand order was incorrect but chose not to appeal it. Later, when the case was decided against her, Meena tried to challenge the correctness of the remand order. According to Section 105(2) of the Code of Civil Procedure, 1908, since Meena did not appeal the remand order when it was issued, she is now precluded from disputing its correctness in the subsequent stages of the case.

Section 106: What Courts to hear appeals.

Where an appeal from any order is allowed it shall lie to the Court to which an appeal would lie from the decree in the suit in which such order was made, or where such order is made by a Court (not being a High Court) in the exercise of appellate jurisdiction, then to the High Court.

Simplified act

If you are allowed to appeal a decision, you should take your appeal to the same court that would handle an appeal from the final decision in the case where the order was made.

If the order was made by a lower court (not a High Court) while it was reviewing another case, you should take your appeal to the High Court.

Explanation using Example

Example 1:

Rajesh filed a civil suit in the District Court against his neighbor for encroaching on his property. The District Court issued an order in favor of Rajesh, directing the neighbor to remove the encroachment. The neighbor, dissatisfied with the order, wants to appeal against it. According to Section 106 of The Code Of Civil Procedure 1908, the neighbor should file the appeal in the High Court, as the appeal from the District Court's decree would lie to the High Court.

Example 2:

Meena filed a civil suit in the Subordinate Court against a company for breach of contract. The Subordinate Court issued an order dismissing her suit. Meena wants to appeal this order. According to Section 106 of The Code Of Civil Procedure 1908, Meena should file her appeal in the District Court, as the appeal from the Subordinate Court's decree would lie to the District Court.

Example 3:

Anil filed a civil suit in the District Court against a contractor for poor construction work. The District Court issued an order for the contractor to pay damages to Anil. The contractor appealed this order in the High Court. The High Court, in its appellate jurisdiction, issued an order modifying the damages amount. Anil, dissatisfied with the High Court's order, wants to appeal further. According to Section 106 of The Code Of Civil Procedure 1908, Anil should file his appeal in the Supreme Court, as the appeal from the High Court's decree would lie to the Supreme Court.

Section 107: Powers of Appellate Court.

Appellate Court Powers

(1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power -

- (a) to determine a case finally;
- (b) to remand a case;
- (c) to frame issues and refer them for trial;
- (d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and

imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.

Simplified act

Powers of the Appellate Court

(1) Under certain conditions and limitations, an Appellate Court has the power to:

- (a) make a final decision on a case;
- (b) send a case back to a lower court;
- (c) identify specific issues and send them for trial;
- (d) gather more evidence or ask for more evidence to be gathered.

(2) With the above conditions, the Appellate Court has the same powers and duties as the original trial courts for cases started in those courts.

Explanation using Example

Example 1:

Scenario: Ramesh filed a civil suit against Suresh for breach of contract in the District Court. The District Court ruled in favor of Suresh. Ramesh, dissatisfied with the judgment, decided to appeal to the High Court.

Application of Section 107:

Determine a case finally: The High Court, after reviewing the case, may decide to uphold the District Court's decision, thereby determining the case finally.

Remand a case: If the High Court finds that the District Court did not consider certain crucial evidence, it may remand the case back to the District Court for reconsideration with instructions to review the overlooked evidence.

Frame issues and refer them for trial: The High Court may identify that certain legal issues were not addressed by the District Court. It can frame these issues and refer them back to the District Court for a fresh trial on those specific points.

Take additional evidence: The High Court may find that new evidence has come to light which was not available during the original trial. It can either take this additional evidence itself or instruct the District Court to do so.

Example 2:

Scenario: Priya filed a lawsuit against a construction company for poor quality work in the Small Causes Court. The court ruled in favor of the construction company. Priya appealed to the High Court.

Application of Section 107:

Determine a case finally: The High Court, after examining the records and hearing both parties, may decide to reverse the Small Causes Court's decision and rule in favor of Priya, thus determining the case finally.

Remand a case: If the High Court finds procedural errors in the Small Causes Court's handling of the case, it may remand the case back to the Small Causes Court with directions to correct the procedural errors and re-evaluate the case.

Frame issues and refer them for trial: The High Court may notice that the Small Causes Court did not address certain legal questions. It can frame these issues and send them back to the Small Causes Court for a new trial focused on these specific questions.

Take additional evidence: If Priya presents new evidence that was not available during the original trial, the High Court can decide to take this evidence into account or ask the Small Causes Court to consider this new evidence in its re-evaluation.

GENERAL PROVISIONS RELATING TO APPEALS

Section 108: Procedure in appeals from appellate decrees and orders.

The provisions of this Part relating to appeals from original decrees shall, so far as may be, apply to appeals -

(a) from appellate decrees, and

(b) from orders made under this Code or under any special or local law in which a different procedure is not provided.

Simplified act

The rules in this section about appealing original decisions also apply to appeals -

(a) from decisions made by an appellate court, and

(b) from orders made under this Code or any special or local law, as long as those laws don't have a different procedure for appeals.

Explanation using Example

Example 1:

Scenario: Ramesh filed a civil suit against Suresh in a District Court for breach of contract. The District Court ruled in favor of Ramesh. Suresh, dissatisfied with the decision, appealed to the High Court. The High Court upheld the District Court's decision. Suresh now wants to appeal to the Supreme Court.

Application of Section 108: According to Section 108 of the Code of Civil Procedure, 1908, the same procedures that apply to appeals from original decrees (like the one from the District Court) will also apply to appeals from appellate decrees (like the one from the High Court). Therefore, Suresh must follow the same procedural rules for filing his appeal to the Supreme Court as he would have if he were appealing an original decree.

Example 2:

Scenario: Priya filed a petition in the Family Court for custody of her child. The Family Court issued an order granting her custody. Her ex-husband, Raj, appealed the order in the High Court. The High Court modified the Family Court's order, granting joint custody. Priya is not satisfied with this decision and wants to appeal to the Supreme Court.

Application of Section 108: Under Section 108 of the Code of Civil Procedure, 1908, the procedures that apply to appeals from original decrees also apply to appeals from orders made under this Code or any special or local law, provided no different procedure is specified. Since the Family Court's order falls under this category, Priya must follow the same procedural rules for her appeal to the Supreme Court as she would for an appeal from an original decree.

Section 109: When appeals lie to the Supreme Court.

Subject to the provisions in Chapter IV of Part V of the Constitution and such rules as may, from time to time, be made by the Supreme Court regarding appeals from the Courts of India, and to the provisions hereinafter contained, an appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court, if the High Court certifies -

(i) that the case involves a substantial question of law of general importance;
and

(ii) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.

Simplified act

Subject to the rules in Chapter IV of Part V of the Constitution and any rules made by the Supreme Court about appeals from Indian Courts, and the following conditions, you can appeal to the Supreme Court from any judgment, decree, or final order in a civil case from a High Court if the High Court certifies -

(i) that the case involves an important legal question that affects many people;
and

(ii) that the High Court believes this question should be decided by the Supreme Court.

Explanation using Example

Example 1:

Scenario: Property Dispute

Mr. Sharma and Mr. Verma are involved in a property dispute over a piece of land in Delhi. The case has been ongoing for several years, and the Delhi High Court finally delivers a judgment in favor of Mr. Sharma. However, Mr. Verma believes that the judgment involves a substantial question of law regarding the interpretation of property rights under the Transfer of Property Act, 1882.

Application of Section 109: Mr. Verma can appeal to the Supreme Court if the Delhi High Court certifies that:

The case involves a substantial question of law of general importance (e.g., interpretation of property rights under the Transfer of Property Act).

In the opinion of the High Court, this question needs to be decided by the Supreme Court.

If the Delhi High Court provides such certification, Mr. Verma can then file an appeal to the Supreme Court for a final decision on the matter.

Example 2:

Scenario: Employment Dispute

Ms. Rao, an employee of a multinational company, files a lawsuit against her employer for wrongful termination. The case is heard in the Karnataka High Court, which rules in favor of the employer. Ms. Rao believes that the judgment involves a substantial question of law regarding the interpretation of labor laws and employee rights under the Industrial Disputes Act, 1947.

Application of Section 109: Ms. Rao can appeal to the Supreme Court if the Karnataka High Court certifies that:

The case involves a substantial question of law of general importance (e.g., interpretation of labor laws and employee rights).

In the opinion of the High Court, this question needs to be decided by the Supreme Court.

If the Karnataka High Court provides such certification, Ms. Rao can then file an appeal to the Supreme Court for a final decision on the matter.

APPEALS TO THE SUPREME COURT

Section 111: Bar of certain appeals. Repealed.

omitted by the A.O. 1950.

Section 111A: Appeals to Federal Court. Repealed.

Repealed by the Federal Court Act, 1941 (21 of 1941), s. 2.

Section 112: Savings.

Section (1)

Nothing contained in this Code shall be deemed -

(a) to affect the powers of the Supreme Court under article 136 or any other provision of the Constitution; or

(b) to interfere with any rules made by the Supreme Court, and for the time being in force for the presentation of appeals to that Court, or their conduct before that Court.

Section (2)

Nothing herein contained applies to any matter of criminal or admiralty or vice-admiralty jurisdiction or to appeals from orders and decrees of Prize Courts.

Simplified act

Section (1)

This Code does not:

(a) change the powers of the Supreme Court under article 136 or any other part of the Constitution; or

(b) interfere with any rules made by the Supreme Court that are currently in place for handling appeals to the Court or how they are conducted in the Court.

Section (2)

This Code does not apply to any criminal matters, maritime law matters, or appeals from decisions made by Prize Courts.

Explanation using Example

Example 1:

Rajesh, a businessman from Mumbai, loses a civil case in the High Court regarding a property dispute. He believes that the High Court's decision is unjust and wants to appeal to the Supreme Court. Rajesh's lawyer informs him that Section 112 of the Code of Civil Procedure, 1908, ensures that the procedures and powers of the Supreme Court, as outlined in Article 136 of the Constitution, remain unaffected by the Code. This means Rajesh can file a Special Leave Petition (SLP) to the Supreme Court under Article 136, seeking permission to appeal against the High Court's decision.

Example 2:

Meera, a resident of Delhi, is involved in a civil case concerning a contract dispute. The case is decided against her in the High Court, and she wishes to appeal to the Supreme Court. Her lawyer explains that Section 112(b) of the Code of Civil Procedure, 1908, ensures that the rules made by the Supreme Court for presenting and conducting appeals are not interfered with by the Code. This means Meera must follow the specific rules and procedures set by the Supreme Court for filing her appeal, ensuring that her case is presented correctly and efficiently.

Example 3:

A shipping company based in Chennai is involved in a dispute over the ownership of a vessel, which is being adjudicated by a Prize Court. The company loses the case and considers appealing the decision. However, their legal advisor points out that Section 112(2) of the Code of Civil Procedure, 1908, clarifies that the Code does not apply to matters of admiralty or vice-admiralty jurisdiction or to appeals from orders and decrees of Prize Courts. Therefore, the company must follow the specific legal provisions and procedures applicable to admiralty law for their appeal.

PART VIII: REFERENCE, REVIEW AND REVISION

Section 113: Reference to High Court.

Subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit:

Provided that where the Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefor, and refer the same for the opinion of the High Court.

Explanation. - In this section, "Regulation" means any Regulation of the Bengal, Bombay or Madras Code or Regulation as defined in the General Clauses Act, 1897, (10 of 1897) or in the General Clauses Act of a State.

Simplified act

Any Court can ask the High Court for its opinion on a case, as long as it follows certain rules and limitations. The High Court can then give any order it thinks is appropriate.

If a Court believes that a case it is handling involves a question about whether a law, ordinance, or regulation (or any part of them) is valid or not, and this

question needs to be answered to resolve the case, the Court must do the following:

If the Court thinks the law, ordinance, or regulation is invalid or not working, but this has not been officially declared by the High Court or the Supreme Court, the Court must write down its opinion and reasons.

The Court must then send this written opinion to the High Court for its opinion.

Explanation:

In this section, "Regulation" refers to any regulation from the Bengal, Bombay, or Madras Code, or as defined in the General Clauses Act, 1897, or in the General Clauses Act of a State.

Explanation using Example

Example 1:

Scenario: A dispute arises between two parties, A and B, over the ownership of a piece of land. During the trial, Party A argues that a specific state regulation that affects land ownership is invalid and should not be applied to their case.

Application of Section 113: The trial court, after hearing the arguments, believes that the regulation in question might indeed be invalid but has not been declared so by the High Court or the Supreme Court. The trial court decides to refer the matter to the High Court for its opinion on the validity of the regulation. The trial court states the case, sets out its opinion and reasons, and sends it to the High Court. The High Court will then review the matter and provide its opinion, which will guide the trial court in resolving the dispute.

Example 2:

Scenario: A company, XYZ Ltd., is involved in a lawsuit regarding the interpretation of a central government ordinance related to environmental regulations. The company argues that the ordinance is unconstitutional and should not be enforced.

Application of Section 113: The court handling the lawsuit finds that the question of the ordinance's validity is crucial for deciding the case. However, the ordinance has not been declared invalid by the High Court or the Supreme Court. The court decides to refer the question to the High Court for its opinion. The court drafts a statement of the case, including its opinion and reasons for

questioning the ordinance's validity, and sends it to the High Court. The High Court will then examine the issue and provide its opinion, which will help the lower court in making a final decision on the lawsuit.

Example 3:

Scenario: An individual, Mr. Sharma, files a lawsuit challenging a municipal regulation that imposes a new tax on property owners. Mr. Sharma claims that the regulation is beyond the powers of the municipal authority and is therefore invalid.

Application of Section 113: The court hearing Mr. Sharma's case finds that the validity of the municipal regulation is a key issue that needs to be resolved to decide the case. The court is of the opinion that the regulation may be invalid but has not been declared so by the High Court or the Supreme Court. The court decides to refer the matter to the High Court for its opinion. The court prepares a statement of the case, outlining its opinion and reasons, and refers it to the High Court. The High Court will review the matter and provide its opinion, which will assist the lower court in resolving Mr. Sharma's lawsuit.

Section 114: Review.

Subject as aforesaid, any person considering himself aggrieved -

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed by this code, or

(c) by a decision on a reference from a Court of Small Causes,

may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.

Simplified act

If someone feels wronged by a court decision -

(a) by a decision or order that can be appealed according to this Code, but no appeal has been made.

(b) by a decision or order that cannot be appealed according to this Code, or

(c) by a decision on a case referred from a Court of Small Causes,

they can ask the same court that made the decision to review it. The court can then decide what to do next.

Explanation using Example

Example 1:

Ravi filed a civil suit against his neighbor, Suresh, for encroaching on his property. The court issued a decree in favor of Suresh, stating that there was no encroachment. Ravi believes that the court overlooked some crucial evidence that could have changed the outcome. Since Ravi did not file an appeal against the decree, he decides to apply for a review of the judgment under Section 114 of the Code of Civil Procedure, 1908. The court, upon reviewing the new evidence, finds merit in Ravi's application and decides to modify the original decree.

Example 2:

Meena was involved in a property dispute with her brother, Rajesh. The court issued an order that Meena felt was unjust, but the order was of a nature that no appeal was allowed under the Code of Civil Procedure, 1908. Feeling aggrieved, Meena applies for a review of the judgment to the same court that issued the order. The court, after considering Meena's application and the reasons she provided, decides to review the order and subsequently issues a revised order that addresses Meena's concerns.

Section 115: Revision.

(1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears -

- (a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have failed to exercise a jurisdiction so vested, or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit:

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party

applying for revision would have finally disposed of the suit or other proceedings.

(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.

Explanation. - In this section, the expression "any case which has been decided" includes any order made, or any order deciding an issue in the course of a suit or other proceeding.

Simplified act

(1) The High Court can review the records of any case decided by a lower court if no appeal can be made to the High Court for that case. The High Court can do this if the lower court:

(a) used powers it doesn't legally have, or

(b) didn't use powers it does have, or

(c) used its powers in an illegal or seriously incorrect way, the High Court can then make any order it thinks is appropriate for the case:

However, the High Court cannot change or reverse any order made during a lawsuit or other proceeding unless that order would have ended the lawsuit or proceeding if it had been made in favor of the person asking for the review.

(2) The High Court cannot change or reverse any final decision or order if an appeal can be made against it to the High Court or any lower court.

(3) Asking for a review does not stop the lawsuit or other proceeding from continuing in the lower court unless the High Court specifically orders it to be paused.

Explanation. - In this section, "any case which has been decided" includes any order made or any decision on an issue during a lawsuit or other proceeding.

Explanation using Example

Example 1:

Scenario: A property dispute case was decided by a District Court in Maharashtra. The plaintiff, Mr. Sharma, believes that the District Court did not have the jurisdiction to decide the case because the property in question is located in a different district.

Application of Section 115: Mr. Sharma can approach the High Court of Maharashtra and request a revision of the District Court's decision. He can argue that the District Court exercised a jurisdiction not vested in it by law (Section 115(1)(a)). If the High Court finds merit in Mr. Sharma's argument, it may call for the record of the case and make an appropriate order, such as transferring the case to the correct jurisdiction.

Example 2:

Scenario: Ms. Gupta filed a suit for recovery of money in a Subordinate Court in Delhi. The Subordinate Court dismissed her suit without considering crucial evidence that was submitted. Ms. Gupta believes that the court failed to exercise its jurisdiction properly.

Application of Section 115: Ms. Gupta can file a revision petition in the Delhi High Court, arguing that the Subordinate Court failed to exercise its jurisdiction by not considering the crucial evidence (Section 115(1)(b)). If the High Court agrees, it may call for the record of the case and make an order to ensure that the evidence is considered, potentially leading to a different outcome.

Example 3:

Scenario: A family court in Karnataka issued an interim order in a divorce proceeding, granting temporary custody of the child to the father. The mother, Mrs. Rao, believes that the family court acted with material irregularity by not considering the child's best interests.

Application of Section 115: Mrs. Rao can approach the Karnataka High Court for a revision of the interim order, arguing that the family court acted with material irregularity (Section 115(1)(c)). The High Court may review the case records and, if it finds that the family court's decision was indeed irregular, it may issue an order to rectify the situation, such as reconsidering the custody arrangement.

Example 4:

Scenario: A civil court in Tamil Nadu issued an order during the course of a suit that significantly affects the final outcome of the case. The defendant, Mr. Kumar, believes that the order was made without proper jurisdiction.

Application of Section 115: Mr. Kumar can file a revision petition in the Madras High Court, arguing that the civil court exercised jurisdiction not vested in it by law (Section 115(1)(a)). The High Court will review the case and, if it finds that the civil court acted without proper jurisdiction, it may reverse or vary the order, provided that doing so would finally dispose of the suit or other proceedings (as per the proviso to Section 115(1)).

Example 5:

Scenario: A Subordinate Court in West Bengal issued a decree in a commercial dispute. The losing party, Mr. Banerjee, believes that the court acted with material irregularity but also knows that an appeal against the decree lies to the High Court.

Application of Section 115: Mr. Banerjee cannot seek a revision under Section 115 because the High Court shall not vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto (Section 115(2)). Instead, Mr. Banerjee should file an appeal against the decree.

Example 6:

Scenario: During a civil suit in a Subordinate Court in Gujarat, an interim order was issued that Mr. Patel believes was made with material irregularity. He files a revision petition in the Gujarat High Court.

Application of Section 115: While the revision petition is pending, the Subordinate Court continues with the proceedings. Mr. Patel requests the High Court to stay the proceedings. According to Section 115(3), a revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court. The High Court may decide to stay the proceedings if it finds it appropriate.

PART IX: SPECIAL PROVISIONS RELATING TO THE HIGH COURTS NOT BEING THE COURT OF A JUDICIAL COMMISSIONER

Section 116: Part to apply only to certain High Courts.

This Part applies only to High Courts not being the court of a Judicial Commissioner.

Section 117: Application of Code to High Courts.

Save as provided in this Part or in Part X or in rules, the provisions of this Court shall apply to such High Courts.

Simplified act

Unless stated otherwise in this section, in Part X, or in the rules, the rules of this Court will apply to these High Courts.

Explanation using Example

Example 1:

Scenario: A dispute arises between two business partners in Mumbai, and one partner files a civil suit in the Bombay High Court.

Application of Section 117: The provisions of the Code of Civil Procedure, 1908, will apply to the proceedings in the Bombay High Court, unless there are specific provisions in Part IX, Part X, or the rules of the High Court that state otherwise. This means that the general procedures for filing, hearing, and deciding civil cases as outlined in the Code will be followed.

Example 2:

Scenario: A property dispute case is filed in the Calcutta High Court, and the plaintiff seeks an interim injunction to prevent the defendant from selling the property during the pendency of the suit.

Application of Section 117: The Calcutta High Court will follow the procedures laid out in the Code of Civil Procedure, 1908, for granting interim injunctions, unless there are specific rules or provisions in Part IX, Part X, or the High Court's own rules that provide a different procedure. This ensures that the process is consistent with the general civil procedure laws unless explicitly modified.

Section 118: Execution of decree before ascertainment of costs.

Where any such High Court considers it necessary that a decree passed in the exercise of its original civil jurisdiction should be executed before the amount of the costs incurred in the suit can be ascertained by taxation, the Court may

order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs;

and, as to so much thereof as relates to the costs, that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation.

Simplified act

If a High Court thinks it's necessary to carry out a decision (decree) it made in a civil case before figuring out the exact costs involved in the case, it can order the decision to be carried out immediately, except for the part about the costs.

The part of the decision that deals with costs can be carried out once the exact costs have been determined.

Explanation using Example

Example 1:

Scenario: Rajesh files a lawsuit against his business partner, Suresh, in the High Court of Delhi, seeking the return of Rs. 10 lakhs that he had invested in their joint venture. The court, after hearing the case, passes a decree in favor of Rajesh, ordering Suresh to pay Rs. 10 lakhs to Rajesh. However, the exact amount of legal costs incurred by Rajesh during the lawsuit has not yet been determined.

Application of Section 118: The High Court of Delhi considers it necessary for Rajesh to receive the Rs. 10 lakhs immediately, even though the costs have not been ascertained. Therefore, the court orders that the decree be executed immediately, allowing Rajesh to recover the Rs. 10 lakhs from Suresh. The part of the decree relating to the costs will be executed once the exact amount of costs is determined through taxation.

Example 2:

Scenario: Priya sues a construction company in the High Court of Bombay for failing to complete her house as per the contract. The court rules in favor of Priya and decrees that the construction company must pay her Rs. 25 lakhs in damages. However, the court has not yet calculated the legal costs Priya incurred during the litigation.

Application of Section 118: The High Court of Bombay decides that it is in Priya's best interest to receive the damages immediately. The court orders the immediate execution of the decree for the Rs. 25 lakhs, allowing Priya to

recover the damages from the construction company. The portion of the decree related to the legal costs will be executed once the costs are ascertained by taxation.

Section 119: Unauthorized persons not to address Court.

Nothing in this Code shall be deemed to authorize any person on behalf of another to address the Court in the exercise of its original civil jurisdiction, or to examine witnesses, except where the Court shall have in the exercise of the power conferred by its charter authorized him so to do, or to interfere with the power of the High Court to make rules concerning advocates, vakils and attorneys.

120.

Simplified act

This Code does not give anyone the right to speak in court for someone else or to question witnesses unless the court has specifically given them permission to do so. It also does not affect the High Court's authority to make rules about lawyers, vakils (a type of lawyer), and attorneys.

120.

Explanation using Example

Example 1:

Ravi, a businessman, is involved in a civil dispute over a property matter. He decides to bring his friend, Suresh, who is not a lawyer, to court to speak on his behalf. During the hearing, Suresh attempts to address the court and question the witnesses. The judge immediately stops Suresh and informs him that, according to Section 119 of The Code of Civil Procedure 1908, only authorized legal representatives such as advocates, vakils, or attorneys can address the court or examine witnesses. Since Suresh is not authorized by the court's charter, he is not allowed to speak on Ravi's behalf.

Example 2:

Priya is involved in a civil lawsuit regarding a contract dispute. She wants her brother, who is a law student but not yet a licensed advocate, to represent her in court. Priya's brother tries to address the court during the proceedings. The judge intervenes and explains that under Section 119 of The Code of Civil Procedure 1908, only individuals authorized by the court's charter, such as

licensed advocates, can address the court or examine witnesses. Since Priya's brother is not a licensed advocate, he is not permitted to represent her in court.

Section 120: Provisions not applicable to High Court in original civil jurisdiction.

1. The following provisions shall not apply to the High Court in the exercise of its original civil jurisdiction, namely, sections 16, 17 and 20.

Simplified act

The rules mentioned in sections 16, 17, and 20 do not apply when the High Court is handling cases for the first time in its civil jurisdiction.

Explanation using Example

Example 1:

Scenario: A property dispute case is filed in the High Court of Bombay.

Explanation: Normally, under sections 16, 17, and 20 of the Code of Civil Procedure, 1908, the place where a lawsuit can be filed is determined by the location of the property, the residence of the defendant, or where the cause of action arises. However, Section 120 states that these provisions do not apply to the High Court when it is exercising its original civil jurisdiction.

Application: In this case, even if the property in dispute is located in Pune, the High Court of Bombay can still hear the case under its original civil jurisdiction without being restricted by the location rules specified in sections 16, 17, and 20.

Example 2:

Scenario: A business contract dispute arises between two companies, one based in Delhi and the other in Mumbai. The contract was signed in Chennai.

Explanation: Under normal circumstances, sections 16, 17, and 20 would dictate that the lawsuit could be filed in Delhi, Mumbai, or Chennai based on the location of the parties and where the contract was signed. However, Section 120 exempts the High Court from these provisions when it is exercising its original civil jurisdiction.

Application: If the case is brought before the High Court of Delhi under its original civil jurisdiction, the court can hear the case regardless of the fact that the contract was signed in Chennai and one of the companies is based in Mumbai. The High Court of Delhi is not bound by the location rules of sections 16, 17, and 20 in this scenario.

PART X: RULES

Section 121: Effect of rules in First Schedule.

The rules in a First Schedule

The rules in a First Schedule shall have effect as if enacted in the body of this Code until annulled or altered in accordance with the provisions of this Part.

Simplified act

The rules in a First Schedule

The rules listed in the First Schedule are treated as if they are part of this Code. These rules will stay in effect until they are cancelled or changed according to the rules in this section.

Explanation using Example

Example 1:

Scenario: A civil lawsuit is filed by Mr. Sharma against Mr. Verma for breach of contract.

Application of Section 121: The rules outlined in the First Schedule of the Code of Civil Procedure, 1908, will govern the proceedings of this lawsuit. For instance, the rules regarding the filing of pleadings, the conduct of trials, and the procedures for appeals are all detailed in the First Schedule. These rules will be applied as if they are part of the main body of the Code, ensuring that the lawsuit follows a standardized process.

Outcome: Mr. Sharma and Mr. Verma will both need to adhere to these rules throughout the litigation process. If any party wishes to challenge or change these rules, they must do so in accordance with the provisions set out in Part X of the Code.

Example 2:

Scenario: Mrs. Gupta is involved in a property dispute with her neighbor, Mr. Khan.

Application of Section 121: The First Schedule of the Code of Civil Procedure, 1908, contains specific rules on how property disputes should be handled in court. These rules include the manner of filing a suit, the issuance of summons, and the presentation of evidence. According to Section 121, these rules will be applied as if they are part of the main Code, ensuring consistency and fairness in the legal process.

Outcome: Mrs. Gupta and Mr. Khan will follow the procedures laid out in the First Schedule for their property dispute. If there is a need to annul or alter any of these rules, it must be done following the guidelines provided in Part X of the Code. This ensures that both parties have a clear understanding of the legal framework governing their case.

Section 122: Power of certain High Courts to make rules.

High Courts not being the Court of a Judicial Commissioner may, from time to time after previous publication, make rules regulating their own procedure and the procedure of the Civil Courts subjects to their superintendence, and may by such rules annul, alter or add to all or any of the rules in the First Schedule.

Simplified act

High Courts (except those of a Judicial Commissioner) can make rules about how they and the Civil Courts they oversee should operate.

They can change, cancel, or add to the rules listed in the First Schedule after announcing these changes in advance.

Explanation using Example

Example 1:

The High Court of Karnataka decides to streamline the process for filing civil suits to reduce delays. After publishing a draft of the new rules and inviting feedback from the public and legal community, the High Court finalizes and implements these rules. The new rules include provisions for electronic filing of documents, mandatory pre-trial mediation, and stricter timelines for various

stages of the trial. These changes are now binding on all civil courts under the jurisdiction of the Karnataka High Court.

Example 2:

The High Court of Delhi notices that the existing rules for handling small claims (claims involving amounts less than ₹1 lakh) are cumbersome and lead to unnecessary delays. To address this, the High Court drafts new rules that simplify the procedure for small claims, such as allowing for summary judgments and reducing the number of required court appearances. After publishing these draft rules and considering public feedback, the High Court adopts the new rules. These rules now apply to all civil courts under the Delhi High Court's supervision, making the process faster and more efficient for litigants with small claims.

Section 123: Constitution of Rule Committees in certain States.

Rule Committee Constitution

(1) A Committee, to be called the Rule Committee, shall be constituted at the town which is the usual place of sitting of each of the High Courts referred to in section 122.

(2) Each such Committee shall consist of the following persons, namely:

(a) three Judges of the High Court established at the town at which such Committee is constituted, one of whom at least has served as a District Judge or a Divisional Judge for three years,

(b) two legal practitioners enrolled in that Court,

(c) a Judge of a Civil Court subordinate to the High Court,

(3) The members of each Committee shall be appointed by the High Court, which shall also nominate one of their number to be President:

(4) Each member of any such Committee shall hold office for such period as may be prescribed by the High Court in this behalf; and whenever any member retires, resigns, dies or ceases to reside in the State in which the Committee was constituted, or becomes incapable of acting as a member of the Committee, the said High Court may appoint another person to be a member in his stead.

(5) There shall be a secretary to each such Committee, who shall be appointed by the High Court and shall receive such remuneration as may be provided in this behalf by the State Government.

Simplified act

Rule Committee Constitution

(1) A group called the Rule Committee will be set up in the town where each High Court usually meets, as mentioned in section 122.

(2) Each Rule Committee will have the following members:

(a) Three Judges from the High Court in that town, and at least one of them must have been a District Judge or a Divisional Judge for three years,

(b) Two lawyers who are registered to practice in that Court,

(c) A Judge from a lower Civil Court under the High Court,

(3) The High Court will appoint the members of each Committee and will also choose one of them to be the President:

(4) Each member will serve for a period decided by the High Court. If a member retires, resigns, dies, moves out of the State, or becomes unable to serve, the High Court can appoint someone else to take their place.

(5) Each Committee will have a secretary, who will be appointed by the High Court and will be paid a salary decided by the State Government.

Explanation using Example

Example 1:

Scenario: The High Court of Delhi is looking to revise its civil procedure rules to make the legal process more efficient.

Application of Section 123:

Constitution of Rule Committee: The High Court of Delhi constitutes a Rule Committee at its usual place of sitting in New Delhi.

Composition of the Committee:

Three Judges from the Delhi High Court are appointed to the Committee. One of these Judges, Justice Sharma, has previously served as a District Judge for five years.

Two senior legal practitioners, Advocate Mehta and Advocate Rao, who are enrolled in the Delhi High Court, are also appointed to the Committee.

A Judge from a subordinate Civil Court in Delhi, Judge Verma, is included in the Committee.

Appointment and Roles:

The High Court appoints all the members and nominates Justice Sharma as the President of the Committee.

The High Court prescribes a term of three years for each member.

The High Court appoints Mr. Singh as the Secretary of the Committee, with remuneration provided by the Delhi State Government.

Outcome: The Rule Committee, under the leadership of Justice Sharma, reviews and proposes amendments to the civil procedure rules, aiming to streamline court processes and reduce case backlog.

Example 2:

Scenario: The High Court of Karnataka needs to address inconsistencies in the application of civil procedure rules across different districts.

Application of Section 123:

Constitution of Rule Committee: The High Court of Karnataka constitutes a Rule Committee at its usual place of sitting in Bengaluru.

Composition of the Committee:

Three Judges from the Karnataka High Court are appointed to the Committee. Justice Rao, who has served as a Divisional Judge for four years, is one of the members.

Two experienced legal practitioners, Advocate Nair and Advocate Patel, who are enrolled in the Karnataka High Court, are appointed to the Committee.

A Judge from a subordinate Civil Court in Mysuru, Judge Reddy, is included in the Committee.

Appointment and Roles:

The High Court appoints all the members and nominates Justice Rao as the President of the Committee.

The High Court prescribes a term of two years for each member.

The High Court appoints Ms. Kumar as the Secretary of the Committee, with remuneration provided by the Karnataka State Government.

Outcome: The Rule Committee, led by Justice Rao, conducts a thorough review of the civil procedure rules and identifies areas of inconsistency. They propose uniform rules to ensure consistent application across all districts in Karnataka, thereby enhancing the efficiency and fairness of the judicial process.

Section 124: Committee to report to High Court.

Every Rule Committee shall make a report to the High Court established at the town at which it is constituted on any proposal to annul, alter or add to the rules in the First Schedule or to make new rules, and before making any rules under section 122 the High Court shall take such report into consideration.

Simplified act

Every Rule Committee must report to the High Court in the town where it is based about any plans to cancel, change, or add to the rules in the First Schedule, or to create new rules. Before making any new rules under section 122, the High Court must review this report.

Explanation using Example

Example 1:

Scenario: The Rule Committee in Mumbai is considering a proposal to change the rules regarding the filing of civil suits to make the process more efficient.

Process:

The Rule Committee drafts a proposal to alter the existing rules in the First Schedule of the Code of Civil Procedure, 1908.

The Committee prepares a detailed report explaining the proposed changes and the reasons behind them.

This report is then submitted to the High Court of Bombay.

The High Court of Bombay reviews the report and considers the proposed changes.

Before making any final decision or implementing the new rules under Section 122, the High Court takes the Committee's report into consideration to ensure that the changes are well-founded and beneficial.

Example 2:

Scenario: The Rule Committee in Chennai wants to introduce new rules to address the increasing number of electronic filings in civil cases.

Process:

The Rule Committee drafts a proposal to add new rules to the First Schedule to accommodate electronic filings.

The Committee compiles a report detailing the necessity for these new rules, including statistics on the rise of electronic filings and potential benefits.

This report is submitted to the High Court of Madras.

The High Court of Madras examines the report and the proposed new rules.

Before enacting any new rules under Section 122, the High Court considers the Committee's report to ensure that the new rules are appropriate and will effectively address the issue of electronic filings.

Section 125: Power of other High Courts to make rules.

High Courts, other than the Courts specified in section 122, may exercise the powers conferred by that section in such manner and subject to such conditions as the State Government may determine:

Provided that any such High Court may, after previous publication, make a rule extending within the local limits of its jurisdiction any rules which have been made by any other High Court.

Simplified act

High Courts, except for the ones mentioned in section 122, can use the powers given by that section in the way and under the conditions that the State Government decides:

However, any High Court can, after announcing it beforehand, make a rule to apply within its area any rules that have been made by another High Court.

Explanation using Example

Example 1:

The High Court of Karnataka wants to implement a new rule regarding the filing of electronic documents in civil cases. This rule has already been successfully implemented by the High Court of Delhi. The Karnataka High Court, after obtaining approval from the State Government and following the procedure of previous publication, decides to adopt the same rule within its jurisdiction. This ensures uniformity and efficiency in handling electronic documents across different High Courts.

Example 2:

The High Court of Kerala notices that the High Court of Bombay has a very effective rule for the expedited handling of commercial disputes. Kerala High Court, aiming to improve its own efficiency in dealing with similar cases, decides to adopt this rule. After making the rule public and obtaining the necessary approvals from the State Government, the Kerala High Court extends this rule within its jurisdiction. This helps in faster resolution of commercial disputes in Kerala, benefiting businesses and litigants.

Section 126: Rules to be subject to approval.

Rules made under the foregoing provisions shall be subject to the previous approval of the Government of the State in which the Court whose procedure the rules regulate is situate or, if that Court is not situate in any State, to the previous approval of Central Government.

Simplified act

Any rules created under the above guidelines need to be approved by the government of the state where the court is located.

If the court is not located in any state, the rules need to be approved by the Central Government.

Explanation using Example

Example 1:

Scenario: A High Court in Maharashtra wants to implement new procedural rules for handling civil cases to expedite the process.

Application of Section 126: Before these new rules can be enforced, the High Court must seek and obtain the approval of the Maharashtra State Government. Without this approval, the rules cannot be legally applied.

Example 2:

Scenario: A special tribunal set up by the Central Government to handle inter-state water disputes wants to introduce new procedural rules.

Application of Section 126: Since the tribunal is not situated in any particular state but operates under the jurisdiction of the Central Government, it must obtain the previous approval of the Central Government before implementing these new rules. Without this approval, the rules will not be valid.

Section 127: Publication of rules.

Rules so made and approved shall be published in the Official Gazette, and shall from the date of publication or from such other date as may be specified have the same force and effect, within the local limits of the jurisdiction of the High Court which made them, as if they had been contained in the First Schedule.

Simplified act

The rules that are created and approved will be published in the Official Gazette.

These rules will become effective from the date they are published or from another specified date.

The rules will have the same power and effect within the area covered by the High Court that made them, just like they were included in the First Schedule.

Explanation using Example

Example 1:

The High Court of Delhi drafts a new rule regarding the procedure for electronic filing of documents in civil cases. Once the rule is drafted and approved by the relevant authorities, it is published in the Official Gazette on March 1, 2023. From that date, the rule becomes effective and has the same

legal force as if it were part of the original Code of Civil Procedure, 1908. Lawyers and litigants in Delhi must now follow this new rule for electronic filing.

Example 2:

The High Court of Karnataka creates a new rule to streamline the process for obtaining interim orders in civil suits. After the rule is approved, it is published in the Official Gazette on April 15, 2023, with a specified effective date of May 1, 2023. From May 1, 2023, this rule is legally binding within the jurisdiction of the Karnataka High Court. All parties involved in civil litigation in Karnataka must adhere to this new procedure for interim orders.

Section 128: Matters for which rules may provide.

(1) Such rules shall be not inconsistent with the provisions in the body of this code, but, subject thereto, may provide for any matters relating to the procedure of Civil Courts.

(2) In particular, and without prejudice to the generality of the powers conferred by sub-section (1), such rules may provide for all or any of the following matters, namely:

(a) the service of summonses, notices and other processes by post or in any other manner either generally or in any specified areas, and the proof of such service;

(b) the maintenance and custody, while under attachment, of live-stock and other movable property, the fees payable for such maintenance and custody, the sale of such live-stock and property, and the proceeds of such sale;

(c) procedure in suits by way of counterclaim, and the valuation of such suits for the purposes of jurisdiction;

(d) procedure in garnishee and charging orders either in addition to, or in substitution for, the attachment and sale of debts;

(e) procedure where the defendant claims to be entitled to contribution or indemnity over against any person whether a party to the suit or not;

(f) summary procedure -

(i) in suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising -

on a contract express or implied; or

on an enactment where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or

on a guarantee, where the claim against the principal is in respect of a debt or a liquidated demand only; or

on a trust;

(ii) in suits for the recovery of immovable property, with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired or has been duly determined by notice to quit, or has become liable to forfeiture for non-payment of rent, or against persons claiming under such tenant;

(g) procedure by way of originating summons;

(h) consolidation of suits, appeals and other proceedings;

(i) delegation to any Registrar, Prothonotary or Master or other official of the Court of any judicial, quasi-judicial and non-judicial duties; and

(j) all forms, registers, books, entries and accounts which may be necessary or desirable for the transaction of the business of Civil Courts.

Simplified act

(1) The rules made should not go against the main parts of this code. However, they can cover any topics related to how Civil Courts operate.

(2) Specifically, and without limiting the general powers given by section (1), these rules can include the following:

(a) How to send summonses, notices, and other legal documents by mail or other methods, either generally or in specific areas, and how to prove they were sent.

(b) How to take care of and keep animals and other movable property when they are seized, the fees for this care, how to sell these items, and what to do with the money from the sale.

(c) The process for counterclaims in lawsuits and how to value these claims for deciding which court has the authority to hear them.

(d) The process for garnishee and charging orders, which can be used instead of seizing and selling debts.

(e) The process when the defendant says they have the right to get a contribution or compensation from someone else, whether that person is part of the lawsuit or not.

(f) A simplified process for:

(i) Lawsuits where the plaintiff only wants to recover a debt or a fixed amount of money from the defendant, with or without interest, arising from:

a contract, whether written or implied; or

a law where the amount to be recovered is a fixed sum or a debt, not a penalty; or

a guarantee, where the main claim is for a debt or fixed amount; or

a trust;

(ii) Lawsuits to recover property, with or without a claim for rent or profits, by a landlord against a tenant whose lease has ended, been properly terminated, or who has not paid rent, or against people claiming under such a tenant.

(g) The process for starting a lawsuit with an originating summons.

(h) Combining multiple lawsuits, appeals, and other legal proceedings.

(i) Allowing court officials like Registrars, Prothonotaries, or Masters to handle certain judicial, quasi-judicial, and non-judicial duties.

(j) All forms, registers, books, entries, and accounts needed or useful for the business of Civil Courts.

Explanation using Example

Example 1:

Scenario: Service of Summonses and Notices

Situation: Ramesh files a civil suit against Suresh for breach of contract. The court needs to serve a summons to Suresh to appear in court.

Application of Section 128(2)(a): The court can use various methods to serve the summons to Suresh, such as sending it by post, delivering it in person, or

using electronic means if allowed in the specified area. The court will also need proof that Suresh received the summons, which could be a signed acknowledgment or a delivery receipt.

Outcome: Suresh receives the summons via registered post and signs the acknowledgment, which is then submitted to the court as proof of service.

Example 2:

Scenario: Maintenance and Custody of Attached Property

Situation: Priya wins a civil case against Raj and the court orders the attachment of Raj's livestock and other movable property to recover the judgment amount.

Application of Section 128(2)(b): The court appoints an official to take custody of Raj's livestock and movable property. The official is responsible for maintaining the property and ensuring its well-being. The court also sets a fee for this maintenance. If Raj fails to pay the judgment amount, the court can order the sale of the attached property, and the proceeds from the sale will be used to satisfy the judgment.

Outcome: The livestock is sold at a public auction, and the proceeds are used to pay Priya the amount awarded by the court.

Example 3:

Scenario: Counterclaim Procedure

Situation: Anjali sues Vijay for damages due to a car accident. Vijay believes Anjali is also at fault and wants to file a counterclaim for his damages.

Application of Section 128(2)(c): Vijay files a counterclaim in the same suit, and the court follows the procedure for handling counterclaims. The court also determines the value of Vijay's counterclaim to establish jurisdiction.

Outcome: The court hears both Anjali's claim and Vijay's counterclaim in the same proceeding and makes a judgment based on the evidence presented.

Example 4:

Scenario: Garnishee Orders

Situation: Meera wins a lawsuit against Arjun and is awarded a sum of money. Arjun has a bank account with sufficient funds to satisfy the judgment.

Application of Section 128(2)(d): Meera applies for a garnishee order, directing the bank to pay the judgment amount from Arjun's account to her. The court follows the procedure for issuing garnishee orders, which may include notifying Arjun and the bank.

Outcome: The bank complies with the garnishee order and transfers the specified amount from Arjun's account to Meera.

Example 5:

Scenario: Summary Procedure for Debt Recovery

Situation: A bank files a suit against a borrower, Ravi, to recover an unpaid loan amount.

Application of Section 128(2)(f)(i): The bank seeks to use the summary procedure, as the suit is for recovering a fixed sum of money arising from a loan contract. The court follows the summary procedure, which is quicker and involves fewer formalities than a regular suit.

Outcome: The court expedites the case and issues a judgment in favor of the bank, ordering Ravi to pay the outstanding loan amount.

Example 6:

Scenario: Consolidation of Suits

Situation: Multiple tenants file separate suits against the same landlord for failing to return their security deposits.

Application of Section 128(2)(h): The court decides to consolidate the suits into a single proceeding to save time and resources, as the issues and parties involved are similar.

Outcome: The consolidated suit is heard together, and the court issues a single judgment addressing all the tenants' claims.

Example 7:

Scenario: Delegation of Duties

Situation: The High Court is overwhelmed with a large number of cases and needs to delegate some duties to manage the workload.

Application of Section 128(2)(i): The court delegates certain judicial and non-judicial duties to the Registrar and other court officials, such as handling preliminary hearings and administrative tasks.

Outcome: The delegation helps streamline court operations and allows judges to focus on more complex cases.

Example 8:

Scenario: Forms and Registers

Situation: A civil court needs to maintain accurate records of all cases and proceedings.

Application of Section 128(2)(j): The court adopts standardized forms, registers, and books for recording case details, judgments, and other relevant information. These records are essential for the efficient transaction of court business.

Outcome: The use of standardized forms and registers ensures that all case information is systematically recorded and easily accessible for reference.

Section 129: Power of High Courts to make rules as to their original civil procedure.

Notwithstanding anything in this Code, any High Court not being the Court of a Judicial Commissioner may make such rules not inconsistent with the Letters Patent or order or other law establishing it to regulate its own procedure in the exercise of its original civil jurisdiction as it shall think fit, and nothing herein contained shall affect the validity of any such rules in force at the commencement of this Code.

Simplified act

Despite anything else in this Code, any High Court (except the Court of a Judicial Commissioner) can make its own rules to manage how it handles cases in its original civil jurisdiction.

These rules must not go against the Letters Patent, orders, or other laws that created the High Court.

The High Court can decide what rules it thinks are appropriate.

The validity of any such rules that were already in place when this Code started will not be affected by this Code.

Explanation using Example

Example 1:

Scenario: A business dispute arises between two companies in Mumbai, and the case is filed in the Bombay High Court.

Application of Section 129: The Bombay High Court, exercising its original civil jurisdiction, decides to implement a new rule that requires all parties in business disputes to submit electronic copies of all documents in addition to physical copies. This rule is designed to streamline the court's procedures and make document management more efficient.

Explanation: Under Section 129 of the Code of Civil Procedure, 1908, the Bombay High Court has the power to make such a rule, provided it is not inconsistent with the Letters Patent or any other law establishing the court. This new rule will be valid and enforceable as long as it complies with these conditions.

Example 2:

Scenario: A property dispute is brought before the Madras High Court, and the court decides to introduce a new rule regarding the submission of expert witness testimonies.

Application of Section 129: The Madras High Court, using its original civil jurisdiction, creates a rule that mandates all expert witnesses in property disputes to submit their testimonies in written form at least two weeks before the trial date. This rule aims to give both parties ample time to review the expert opinions and prepare their cases accordingly.

Explanation: According to Section 129 of the Code of Civil Procedure, 1908, the Madras High Court has the authority to establish such a procedural rule. As long as this rule does not conflict with the Letters Patent or any other law that established the court, it will be considered valid and enforceable.

Section 130: Power of other High Courts to make rules as to matters other than procedure.

A High Court not being a High Court to which section 129 applies may, with the previous approval of the State Government, make with respect to any matter other than procedure any rule which a High Court for a

State might under article 227 of the Constitution make with respect to any such matter for any part of the territories under its jurisdiction which is not included within the limits of a presidency town.

Simplified act

A High Court that is not covered by section 129 can, with the prior approval of the State Government, make rules about any matter (except procedure) that a High Court in a State could make under article 227 of the Constitution. These rules can apply to any area under its control that is not part of a presidency town.

Explanation using Example

Example 1:

The High Court of Kerala wants to establish a new rule regarding the maintenance of court records. This rule is not related to the procedure of how cases are handled but rather to the administrative aspect of record-keeping. Since Section 130 of the Code of Civil Procedure, 1908 allows High Courts (other than those to which Section 129 applies) to make rules on matters other than procedure, the High Court of Kerala drafts the new rule. Before implementing it, the High Court seeks and obtains the approval of the Kerala State Government. Once approved, the new rule is enforced across all courts under the jurisdiction of the High Court of Kerala, excluding any presidency towns.

Example 2:

The High Court of Rajasthan decides to create a rule regarding the use of digital signatures for court documents to enhance security and efficiency. This rule does not pertain to the procedural aspects of court cases but rather to the administrative handling of documents. Under Section 130 of the Code of Civil Procedure, 1908, the High Court of Rajasthan has the authority to make such a rule, provided it gets the prior approval of the Rajasthan State Government. After receiving the necessary approval, the rule is implemented across all courts within the jurisdiction of the High Court of Rajasthan, except for any presidency towns.

Section 131: Publication of rules.

Rules made in accordance with section 129 or section 130 shall be published in the Official Gazette and shall from the date of publication or from such other date as may be specified have the force of law.

Simplified act

Rules created under section 129 or section 130 must be published in the Official Gazette. These rules will become law either on the date they are published or on another date that is specified.

Explanation using Example

Example 1:

The High Court of Delhi decides to create a new rule under Section 129 of the Code of Civil Procedure, 1908, to streamline the process of electronic filing of documents in civil cases. Once the rule is drafted, it is published in the Official Gazette on January 1, 2023. According to Section 131, this rule will have the force of law from the date of publication, i.e., January 1, 2023, unless a different date is specified in the publication. Therefore, from January 1, 2023, all civil cases in the Delhi High Court must follow the new electronic filing procedure.

Example 2:

The High Court of Karnataka formulates a new rule under Section 130 of the Code of Civil Procedure, 1908, to introduce mandatory mediation for certain types of civil disputes before they can proceed to trial. This rule is published in the Official Gazette on March 15, 2023, with a specified effective date of April 1, 2023. According to Section 131, this rule will have the force of law starting from April 1, 2023. Consequently, from April 1, 2023, parties involved in specified civil disputes in Karnataka must undergo mandatory mediation before their cases can be heard in court.

PART XI: MISCELLANEOUS

Section 132: Exemption of certain women from personal appearance.

(1) Women who, according to the customs and manners of the country, ought not to be compelled to appear in public shall be exempt from personal appearance in Court.

(2) Nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process in any case in which the arrest of women is not prohibited by this Code.

Simplified act

(1) Women who, based on the traditions and customs of the country, should not be forced to appear in public, do not have to show up in person in Court.

(2) However, this rule does not mean that these women cannot be arrested if the law allows for the arrest of women in civil cases.

Explanation using Example

Example 1:

Mrs. Ayesha is a 65-year-old woman from a traditional family in Rajasthan, where it is customary for women of her age and status not to appear in public. She is involved in a civil dispute over property inheritance. According to Section 132 of The Code of Civil Procedure 1908, Mrs. Ayesha is exempt from appearing in court personally due to her customary and traditional background. Instead, her lawyer can represent her in court, and any necessary statements can be taken at her residence.

Example 2:

Mrs. Lakshmi, a 50-year-old woman from a conservative community in Tamil Nadu, is involved in a civil case regarding a financial dispute. Given her community's customs, she is not required to appear in public. Under Section 132 of The Code of Civil Procedure 1908, Mrs. Lakshmi is exempt from personal appearance in court. However, if there is a civil process that requires her arrest (and if the arrest of women is not prohibited by the Code), she would not be exempt from such an arrest. For instance, if she fails to comply with a court order to pay a debt and the court issues an arrest warrant, she can still be arrested despite her exemption from personal appearance.

Section 133: Exemption of other persons.

(1) The following persons shall be entitled to exemption from personal appearance in Court, namely:

(i) the President of India;

(ii) the Vice-President of India;

- (iii) the Speaker of the House of the People;
- (iv) the Ministers of the Union;
- (v) the Judges of the Supreme Court;
- (vi) the Governors of States and the administrators of Union territories;
- (vii) the Speakers of the State Legislative Assemblies;
- (viii) the Chairman of the State Legislative Councils;
- (ix) the Ministers of States;
- (x) the Judges of the High Courts; and
- (xi) the persons to whom section 87B applies.

(3) Where any person claims the privilege of such exemption, and it is consequently necessary to examine him by commission, he shall pay the costs of that commission, unless the party requiring his evidence pays such costs.

Simplified act

(1) The following people do not have to appear in person in Court:

- (i) The President of India;
- (ii) The Vice-President of India;
- (iii) The Speaker of the House of the People (Lok Sabha);
- (iv) Union Ministers (Central Government Ministers);
- (v) Judges of the Supreme Court;
- (vi) Governors of States and administrators of Union territories;
- (vii) Speakers of State Legislative Assemblies;
- (viii) Chairmen of State Legislative Councils;
- (ix) State Ministers;
- (x) Judges of the High Courts; and
- (xi) People covered under section 87B.

(3) If someone claims this privilege and needs to be examined by a commission (a group of people appointed to do this), they must pay for the costs of the commission, unless the person who needs their evidence pays for it.

Explanation using Example

Example 1:

Mr. Sharma, a resident of Delhi, files a civil lawsuit against a company for breach of contract. During the proceedings, Mr. Sharma's lawyer requests the court to summon the President of India to testify, as he believes the President has relevant information. However, under Section 133 of the Code of Civil Procedure 1908, the President of India is exempt from personal appearance in court. Therefore, the court denies the request, citing the exemption provided by the law.

Example 2:

Ms. Gupta is involved in a property dispute case in Mumbai. She believes that the Governor of Maharashtra has crucial information that could support her case. Ms. Gupta's lawyer asks the court to summon the Governor. The court informs Ms. Gupta that the Governor is exempt from personal appearance under Section 133 of the Code of Civil Procedure 1908. If Ms. Gupta still wants the Governor's testimony, she must request the court to examine the Governor by commission, and she will have to bear the costs of that commission unless the opposing party agrees to pay.

Example 3:

In a high-profile corruption case, the prosecution wants to call a Union Minister to testify. The defense objects, stating that the Union Minister is exempt from personal appearance in court under Section 133 of the Code of Civil Procedure 1908. The court agrees with the defense and exempts the Union Minister from appearing in person. However, the prosecution can still request the court to examine the Minister by commission, but they will need to cover the costs associated with this process.

Example 4:

A civil case in Chennai involves a dispute over the construction of a public road. The plaintiff believes that a Judge of the High Court has relevant

information about the case. The plaintiff's lawyer requests the court to summon the Judge. The court denies the request, citing Section 133 of the Code of Civil Procedure 1908, which exempts High Court Judges from personal appearance in court. The plaintiff can still request the Judge's testimony through a commission, but must be prepared to pay the associated costs unless the defendant agrees to cover them.

Section 134: Arrest other than in execution of decree.

The provisions of sections 55, 57 and 59 shall apply, so far as may be, to all persons arrested under this Code.

Simplified act

The rules in sections 55, 57, and 59 will apply, as much as possible, to everyone who is arrested under this law.

Explanation using Example

Example 1:

Ravi, a businessman, has a pending civil case against him for failing to repay a loan. The court has not yet issued a decree (final judgment) in the case. However, Ravi is suspected of planning to leave the country to avoid the legal proceedings. The plaintiff (the person who filed the case) requests the court to arrest Ravi to ensure he remains available for the trial. Under Section 134 of the Code of Civil Procedure 1908, the court can order Ravi's arrest to prevent him from evading the legal process, even though the decree has not been executed yet. The provisions of sections 55, 57, and 59 will apply to Ravi's arrest, ensuring his rights and the legal procedures are followed.

Example 2:

Meera has filed a civil suit against her tenant, Raj, for not paying rent for several months. The court proceedings are ongoing, and no final decree has been issued. Meera learns that Raj is planning to sell off his assets and move to another city to avoid paying the dues. Meera approaches the court, requesting Raj's arrest to prevent him from absconding. The court, under Section 134 of the Code of Civil Procedure 1908, can order Raj's arrest to ensure he remains within the jurisdiction until the case is resolved. The arrest will be conducted in accordance with the provisions of sections 55, 57, and 59, ensuring Raj's legal rights are protected.

Section 135: Exemption from arrest under civil process.

135A

(1) No Judge, Magistrate or other judicial officer shall be liable to arrest under civil process while going to, presiding in, or returning from, his Court.

(2) Where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtars, revenue-agents and recognized agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under civil process other than process issued by such tribunal for contempt of Court while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal.

(3) Nothing in sub-section (2) shall enable a judgment-debtor to claim exemption from arrest under an order for immediate execution or where such judgment-debtor attends to show cause why he should not be committed to prison in execution of a decree.

Simplified act

135A

(1) Judges, Magistrates, and other judicial officers cannot be arrested for civil matters while they are on their way to court, in court, or returning from court.

(2) If a case is being heard by a tribunal (a type of court) that has the authority to do so, or believes it has the authority, the people involved in the case (including their lawyers, agents, and witnesses) cannot be arrested for civil matters while they are going to, attending, or returning from the tribunal. However, this does not apply if the tribunal itself issues an arrest for contempt of court.

(3) The rule in (2) does not protect someone who owes money (a judgment-debtor) from being arrested if there is an order for immediate execution (enforcement) of the judgment, or if they are attending court to explain why they should not be sent to prison for not following a court order.

Explanation using Example

Example 1:

Scenario: Judge Sharma is on his way to the district court to preside over a case.

Application of Section 135A(1): While Judge Sharma is traveling to the court, he cannot be arrested under any civil process. This means that if there is a civil lawsuit against him, the authorities cannot arrest him while he is on his way to the court, while he is presiding over cases, or while he is returning home from the court.

Example 2:

Scenario: Ramesh, a lawyer, is representing his client in a property dispute case at a tribunal. He has been summoned to appear before the tribunal on a specific date.

Application of Section 135A(2): Ramesh, as a pleader, is exempt from arrest under any civil process while he is going to the tribunal, attending the tribunal for the property dispute case, and returning from the tribunal. This exemption ensures that Ramesh can perform his duties without the fear of being arrested for any civil matter unrelated to the case he is handling at the tribunal.

Example 3:

Scenario: Sita, a witness in a fraud case, has been summoned to testify before a tribunal.

Application of Section 135A(2): Sita is exempt from arrest under any civil process while she is traveling to the tribunal, attending the tribunal to give her testimony, and returning from the tribunal. This exemption allows Sita to fulfill her duty as a witness without the risk of being arrested for any unrelated civil matter.

Example 4:

Scenario: Raj, a judgment-debtor, has been ordered by the court to appear and show cause why he should not be committed to prison for failing to pay a debt.

Application of Section 135A(3): Raj cannot claim exemption from arrest under civil process in this situation. Since he is a judgment-debtor attending the court to show cause why he should not be committed to prison, he is not protected by the exemptions provided in sub-section (2). The court can proceed with his arrest if necessary.

Section 135A: Exemption of members of legislative bodies from arrest and detention under civil process.

Section: Arrest or Detention under Civil Process

-(1) No person shall be liable to arrest or detention in prison under civil process

-

(a) if he is a member of -

(i) either House of Parliament, or

(ii) the Legislative Assembly or Legislative Council of a State, or

(iii) a Legislative Assembly of a Union territory, during the continuance of any meeting of such House of Parliament or, as the case may be, of the Legislative Assembly or the Legislative Council;

(b) if he is a member of any committee of -

(i) either House of Parliament, or

(ii) the Legislative Assembly of a State or Union territory, or

(iii) the Legislative Council of a State, during the continuance of any meeting of such committee;

(c) if he is a member of -

(i) either House of Parliament, or

(ii) a Legislative Assembly or Legislative Council of a State having both such Houses, during the continuance of a joint sitting, meeting, conference or joint committee of the Houses of Parliament or, Houses of the State Legislature, as the case may be, and during the forty days before and after such meeting, sitting or conference.

(2) A person released from detention under sub-section (1) shall, subject to the provisions of the said sub-section, be liable to re-arrest and to the further detention to which he would have been liable if he had not been released under the provisions of sub-section (1).

Simplified act

Section: Arrest or Detention under Civil Process

-(1) A person cannot be arrested or put in prison for civil matters if:

(a) They are a member of:

(i) Either House of Parliament, or

(ii) The Legislative Assembly or Legislative Council of a State, or

(iii) A Legislative Assembly of a Union territory, while any meeting of these bodies is happening.

(b) They are a member of any committee of:

(i) Either House of Parliament, or

(ii) The Legislative Assembly of a State or Union territory, or

(iii) The Legislative Council of a State, while any meeting of these committees is happening.

(c) They are a member of:

(i) Either House of Parliament, or

(ii) A Legislative Assembly or Legislative Council of a State with both Houses, while a joint session, meeting, conference, or joint committee of these Houses is happening, and for forty days before and after such events.

(2) If a person is released from detention under the above rules, they can be re-arrested and detained again as if they were never released, according to the same rules.

Explanation using Example

Example 1:

Rajesh is a Member of Parliament (MP) in the Lok Sabha. He has a civil case pending against him regarding a property dispute. The court issues an arrest warrant for Rajesh under civil process. However, the Parliament is currently in session. According to Section 135A of the Code of Civil Procedure 1908, Rajesh cannot be arrested or detained under civil process while the Parliament is in session. Therefore, the arrest warrant cannot be executed until the session ends.

Example 2:

Sunita is a member of the Legislative Assembly (MLA) of Maharashtra. She is also part of a committee that is currently holding meetings to discuss new state policies. Sunita has a civil case related to a financial dispute, and the court has ordered her detention. Since Sunita is attending committee meetings, she is exempt from arrest or detention under civil process during the continuance of these meetings as per Section 135A. The authorities must wait until the committee meetings are over before they can detain her.

Example 3:

Amit is a member of the Legislative Council of Karnataka. The Legislative Council is scheduled to have a joint sitting with the Legislative Assembly to discuss a new bill. Amit has a civil case against him, and the court has issued an order for his detention. According to Section 135A, Amit cannot be detained during the joint sitting and for forty days before and after the meeting. Therefore, the authorities must wait until this period is over before they can proceed with his detention.

Example 4:

Priya is a member of the Legislative Assembly of Delhi. She has been detained under civil process due to a breach of contract case. However, the Legislative Assembly is about to start its session. Under Section 135A, Priya must be released from detention to attend the Assembly session. Once the session is over, she can be re-arrested and detained as per the original court order.

Section 136: Procedure where person to be arrested or property to be attached is outside district.

Section (1)

Where an application is made that any person shall be arrested or that any property shall be attached under any provision of this Code not relating to the execution of decrees, and such person resides or such property is situate outside the local limits of the jurisdiction of the Court to which the application is made, the Court may, in its discretion, issue, a warrant of arrest or make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

Section (2)

The District Court shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by a Court subordinate to itself, and shall inform the Court which issued or made such warrant or order of the arrest or attachment.

Section (3)

The Court making an arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he shows cause to the satisfaction of the former Court why he should not be sent to the later Court, or unless he furnishes sufficient security for his appearance before the later Court or for satisfying any decree that may be passed against him by that Court, in either of which cases the Court making the arrest shall release him.

Section (4)

Where a person to be arrested or movable property to be attached under this section is within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal or at Madras or at Bombay, the copy of the warrant of arrest or of the order of attachment, and the probable amount of the costs of the arrest or attachment, shall be sent to the Court of Small-Causes of Calcutta, Madras or Bombay, as the case may be, and that Court, on receipt of the copy and amount, shall proceed as if it were the District Court.

Simplified act

Section (1)

If someone asks the court to arrest a person or take their property, and that person or property is outside the court's area, the court can decide to issue an arrest warrant or an order to take the property. The court will then send this warrant or order, along with an estimate of the costs, to the District Court where the person or property is located.

Section (2)

When the District Court gets the warrant or order and the estimated costs, it will arrange for the arrest or property seizure using its own officers or a lower court. The District Court will then inform the original court that the arrest or property seizure has been done.

Section (3)

The court that arrests the person must send them to the court that issued the warrant, unless the person can convince the arresting court that they shouldn't be sent, or if they provide enough security to ensure they will appear in the issuing court or pay any judgment against them. If either of these conditions is met, the arresting court will release the person.

Section (4)

If the person to be arrested or the property to be taken is within the main civil jurisdiction of the High Courts in Kolkata, Chennai, or Mumbai, the warrant or order and the estimated costs should be sent to the Court of Small Causes in those cities. That court will then handle the arrest or property seizure as if it were the District Court.

Explanation using Example

Example 1:

Scenario: Rajesh, a businessman in Delhi, files a lawsuit against Suresh, who resides in Mumbai, for breach of contract. Rajesh believes that Suresh might flee the country to avoid legal proceedings.

Application: Rajesh's lawyer files an application in the Delhi Court to arrest Suresh to ensure he attends the court hearings. Since Suresh resides outside the jurisdiction of the Delhi Court, the Delhi Court issues a warrant of arrest and sends it to the District Court in Mumbai along with the probable costs of the arrest.

Procedure: The District Court in Mumbai receives the warrant and the costs, and instructs its officers to arrest Suresh. Once arrested, Suresh is informed about the warrant and is given the option to either be sent to the Delhi Court or provide sufficient security for his appearance in the Delhi Court. Suresh decides to furnish security, and the Mumbai Court releases him on the condition that he will appear before the Delhi Court as required.

Example 2:

Scenario: Priya, a resident of Chennai, files a lawsuit against a company based in Kolkata for non-payment of dues. Priya believes that the company might dispose of its assets to avoid paying the dues.

Application: Priya's lawyer files an application in the Chennai Court to attach the company's movable property located in Kolkata. Since the property is

outside the jurisdiction of the Chennai Court, the Chennai Court issues an order of attachment and sends it to the District Court in Kolkata along with the probable costs of the attachment.

Procedure: The District Court in Kolkata receives the order and the costs, and instructs its officers to attach the company's movable property. The officers attach the property and inform the Chennai Court about the attachment. The company is then given the option to either contest the attachment in the Kolkata Court or provide sufficient security to satisfy any decree that may be passed by the Chennai Court. The company decides to contest the attachment, and the matter proceeds accordingly.

Example 3:

Scenario: An individual, Anil, residing in Bangalore, has a pending lawsuit against him in the High Court of Judicature at Bombay. The plaintiff believes that Anil might sell his car, which is currently in Bangalore, to avoid paying any potential judgment.

Application: The plaintiff's lawyer files an application in the High Court of Judicature at Bombay to attach Anil's car. Since the car is located outside the jurisdiction of the Bombay High Court, the court issues an order of attachment and sends it to the Court of Small-Causes in Bangalore along with the probable costs of the attachment.

Procedure: The Court of Small-Causes in Bangalore receives the order and the costs, and instructs its officers to attach Anil's car. The officers attach the car and inform the High Court of Judicature at Bombay about the attachment. Anil is then given the option to either contest the attachment in the Bangalore Court or provide sufficient security to satisfy any decree that may be passed by the Bombay High Court. Anil decides to provide security, and the Bangalore Court releases the car on the condition that Anil will comply with the Bombay High Court's orders.

Section 137: Language of subordinate Courts.

Language of Courts

(1) The language which, on the commencement of this Code, is the language of any Court subordinate to a High Court shall continue to be the language of such subordinate Court until the State Government otherwise directs.

(2) The State Government may declare what shall be the language of any such Court and in what character applications to and proceedings in such Courts shall be written.

(3) Where this Court requires or allows anything other than the recording of evidence to be done in writing in any such Court, such writing may be in English; but if any party or his pleader is unacquainted with English, a translation into the language of the Court shall, at his request, be supplied to him; and the Court shall make such order as it thinks fit in respect of the payment of the costs of such translation.

Simplified act

Language of Courts

(1) The language that a Court under a High Court uses when this Code starts will keep using that language until the State Government decides to change it.

(2) The State Government can decide what language any Court should use and how applications and proceedings should be written.

(3) If the Court needs or allows anything other than recording evidence to be written, it can be in English. But if someone involved in the case or their lawyer doesn't understand English, they can ask for a translation into the Court's language. The Court will decide who pays for the translation.

Explanation using Example

Example 1:

Rajesh files a civil suit in a subordinate court in Maharashtra. At the time of the commencement of the Code of Civil Procedure in 1908, Marathi was the language used in the subordinate courts of Maharashtra. Therefore, Rajesh's case will be conducted in Marathi unless the State Government issues a directive to change the language of the court.

Example 2:

Priya, who is not fluent in English, files an application in a subordinate court in Tamil Nadu. The State Government has declared Tamil as the language of the court. However, the court requires certain documents to be submitted in English. Priya requests a Tamil translation of these documents. The court orders that the translation be provided and decides who will bear the cost of the translation, ensuring that Priya can understand the proceedings.

Example 3:

Amit, a businessman, files a lawsuit in a subordinate court in Gujarat. The court proceedings are conducted in Gujarati as per the State Government's directive. However, Amit's lawyer submits a written argument in English. Since Amit is not familiar with English, he requests a Gujarati translation. The court arranges for the translation and decides that Amit will bear the cost of the translation.

Example 4:

Sunita, a resident of West Bengal, files a petition in a subordinate court where Bengali is the official language. The court requires certain procedural documents to be submitted in English. Sunita's lawyer, who is not proficient in English, requests a Bengali translation of these documents. The court provides the translation and orders that the cost be shared between Sunita and the opposing party.

Section 138: Power of High Court to require evidence to be recorded in English.

(1) The High Court may, by notification in the Official Gazette, direct with respect to any Judge specified in the notification, or falling under a description set forth therein, that evidence in cases in which an appeal is allowed shall be taken down by him in the English language and in manner prescribed.

Simplified act

(1) The High Court can announce in the Official Gazette that certain Judges, mentioned in the announcement, or described in it, must record evidence in cases where an appeal is allowed. This evidence must be written in English and follow the prescribed method.

(2)

Explanation using Example

Example 1:

Scenario: A civil case involving a property dispute is being heard in the High Court of Delhi. The case is complex, involving multiple parties and extensive documentation in Hindi.

Application of Section 138: The High Court of Delhi issues a notification in the Official Gazette stating that all evidence in cases where an appeal is allowed must be recorded in English. This means that during the trial, the judge will ensure that all testimonies, documents, and other pieces of evidence are translated and recorded in English. This helps in maintaining uniformity and ease of reference for higher courts during appeals.

Outcome: The parties involved in the property dispute must ensure that their evidence is presented in English. If any evidence is originally in Hindi or any other language, it must be translated into English before submission. This ensures that the appellate court can easily review the evidence without language barriers.

Example 2:

Scenario: A business contract dispute is being heard in the High Court of Mumbai. The original contract and related documents are in Marathi, and the case is eligible for appeal.

Application of Section 138: The High Court of Mumbai issues a notification in the Official Gazette specifying that evidence in cases eligible for appeal must be recorded in English. The judge presiding over the case is required to ensure that all evidence, including the contract and related documents, is translated and recorded in English.

Outcome: The parties involved in the business contract dispute must provide English translations of all Marathi documents. Witnesses giving testimony in Marathi will have their statements translated and recorded in English. This ensures that if the case goes to an appellate court, the judges can review the evidence without needing additional translations, thereby streamlining the appeal process.

Section 139: Oath on affidavit by whom to be administered.

In the case of any affidavit under this Code -

(a) any Court or Magistrate, or

(aa) any notary appointed under the Notaries Act, 1952 (53 of 1952); or

(b) any officer or other person whom a High Court may appoint in this behalf,
or

(c) any officer appointed by any other Court which the State Government has generally or specially empowered in this behalf,

Where a Judge is prevented by any sufficient reason from complying with a direction under sub-section (1), he shall record the reason and cause the evidence to be taken down in writing from his dictation in open Court.

may administer the oath to the deponent.

Simplified act

If you need to make a sworn statement (affidavit) under this law, it can be done by:

(a) any Court or Judge, or

(aa) any notary who is officially appointed under the Notaries Act, 1952; or

(b) any officer or person appointed by a High Court for this purpose, or

(c) any officer appointed by another Court that the State Government has given the power to do this,

If a Judge cannot follow a direction for a good reason, they must write down the reason and have the evidence written down as they say it in open Court.

These people can administer the oath to the person making the affidavit.

Explanation using Example

Example 1:

Scenario: Ramesh wants to submit an affidavit in a civil case regarding a property dispute in a District Court in Mumbai.

Application of Section 139: Ramesh can have his affidavit sworn in before:

The District Court Judge or Magistrate in Mumbai.

A notary public appointed under the Notaries Act, 1952.

An officer appointed by the High Court of Bombay for this purpose.

An officer appointed by any other court which the Maharashtra State Government has empowered to administer oaths.

Ramesh decides to go to a notary public near his residence. The notary administers the oath, and Ramesh signs the affidavit. The notary then certifies the affidavit, making it valid for submission in the District Court.

Example 2:

Scenario: Priya needs to submit an affidavit in a civil case concerning a family dispute in the High Court of Delhi.

Application of Section 139: Priya can have her affidavit sworn in before:

A Judge or Magistrate of the High Court of Delhi.

A notary public appointed under the Notaries Act, 1952.

An officer appointed by the High Court of Delhi for this purpose.

An officer appointed by any other court which the Delhi State Government has empowered to administer oaths.

Priya chooses to go to the High Court of Delhi, where an officer appointed by the High Court administers the oath. Priya signs the affidavit, and the officer certifies it, making it valid for submission in her case.

Example 3:

Scenario: Sunil, who lives in a remote village in Karnataka, needs to submit an affidavit in a civil case regarding agricultural land in the local Taluk Court.

Application of Section 139: Sunil can have his affidavit sworn in before:

The Taluk Court Judge or Magistrate.

A notary public appointed under the Notaries Act, 1952.

An officer appointed by the High Court of Karnataka for this purpose.

An officer appointed by any other court which the Karnataka State Government has empowered to administer oaths.

Since the Taluk Court is far from his village, Sunil visits a nearby notary public. The notary administers the oath, and Sunil signs the affidavit. The notary then certifies the affidavit, making it valid for submission in the Taluk Court.

Example 4:

Scenario: Anjali needs to submit an affidavit in a civil case related to a business contract in the High Court of Madras.

Application of Section 139: Anjali can have her affidavit sworn in before:

A Judge or Magistrate of the High Court of Madras.

A notary public appointed under the Notaries Act, 1952.

An officer appointed by the High Court of Madras for this purpose.

An officer appointed by any other court which the Tamil Nadu State Government has empowered to administer oaths.

Anjali decides to go to the High Court of Madras, where an officer appointed by the High Court administers the oath. Anjali signs the affidavit, and the officer certifies it, making it valid for submission in her case.

Section 140: Assessors in causes of salvage, etc.

(1) In any admiralty or vice-admiralty cause of salvage to wage or collision the Court, whether it be exercising its original or its appellate jurisdiction, may, if it thinks fit, and shall upon request of either party to such cause, summon to its assistance, in such manner as it may direct or as may be prescribed, two competent assessors; and such assessors shall attend and assist accordingly.

(2) Every such assessor shall receive such fees for his attendance, to be paid by such of the parties as the Court may direct or as may be prescribed.

Simplified act

(1) In any legal case related to ships, such as rescuing a ship in trouble or a ship collision, the Court (whether it's the first court to hear the case or an appeals court) can, if it wants to, and must if either party in the case asks for it, call in two experts to help. The Court will decide how to call these experts or follow the rules set for this. These experts will then help the Court with the case.

(2) Each of these experts will get paid for their help. The Court will decide which party in the case has to pay the experts, or it will follow the set rules for payment.

Explanation using Example

Example 1:

Scenario: A cargo ship, MV Bharat, is involved in a collision with a fishing boat, FV Kerala, off the coast of Mumbai. The owners of FV Kerala file a case in the Bombay High Court seeking compensation for the damages caused by the collision.

Application of Section 140:

The Bombay High Court, while hearing the case, decides to summon two competent assessors with expertise in maritime collisions to assist in understanding the technical aspects of the incident.

The owners of FV Kerala request the court to appoint these assessors to ensure a fair evaluation of the collision.

The court appoints two maritime experts as assessors who attend the court sessions and provide their insights on the collision.

The court directs that the fees for the assessors' attendance be shared equally by both parties involved in the case.

Example 2:

Scenario: A tugboat, MV Ganga, successfully salvages a stranded oil tanker, MT Yamuna, near the port of Chennai. The owners of MV Ganga file a case in the Madras High Court to claim a salvage reward for their efforts.

Application of Section 140:

The Madras High Court, while hearing the salvage claim, decides to summon two competent assessors with expertise in salvage operations to assist in determining the appropriate reward.

The owners of MT Yamuna request the court to appoint these assessors to ensure an accurate assessment of the salvage operation.

The court appoints two salvage experts as assessors who attend the court sessions and provide their insights on the salvage operation.

The court directs that the fees for the assessors' attendance be paid by the owners of MT Yamuna, as they are the party benefiting from the salvage operation.

Section 141: Miscellaneous proceedings.

The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.

Explanation. - In this section, the expression "proceedings" includes proceedings under Order IX, but does not include any proceedings under article 226 of the Constitution.

Simplified act

The steps and rules described in this Code for handling lawsuits should be used in all cases in any civil court, as long as they can be applied.

Explanation. - In this section, the term "proceedings" includes actions taken under Order IX, but does not include any actions taken under article 226 of the Constitution.

Explanation using Example

Example 1:

Scenario: Ravi files a civil suit against his neighbor, Suresh, for encroaching on his property. During the proceedings, Ravi fails to appear in court on the scheduled date.

Application of Section 141: The court follows the procedure outlined in the Code of Civil Procedure, 1908, specifically Order IX, which deals with the appearance of parties and consequences of non-appearance. Since Ravi did not appear, the court may dismiss the suit for non-prosecution under Order IX, Rule 8.

Example 2:

Scenario: Priya files a suit for recovery of money against her business partner, Anil. During the trial, Anil submits an application for the court to dismiss the suit on the grounds that Priya has already settled the matter out of court.

Application of Section 141: The court will follow the procedures provided in the Code of Civil Procedure, 1908, to handle this application. The court may conduct an inquiry to verify the settlement claim and, if satisfied, may dismiss the suit under the relevant provisions of the Code.

Example 3:

Scenario: A company, XYZ Ltd., files a suit for breach of contract against another company, ABC Pvt. Ltd. During the proceedings, XYZ Ltd. requests the court to grant an interim injunction to prevent ABC Pvt. Ltd. from selling certain assets.

Application of Section 141: The court will follow the procedures outlined in the Code of Civil Procedure, 1908, for granting interim relief. The court may consider the application for an interim injunction under Order XXXIX, which deals with temporary injunctions and interlocutory orders, and decide based on the merits of the case.

Example 4:

Scenario: Meera files a suit for partition of ancestral property against her siblings. During the proceedings, one of her siblings, Raj, files an application for setting aside an ex-parte decree that was passed against him.

Application of Section 141: The court will follow the procedures provided in the Code of Civil Procedure, 1908, specifically Order IX, Rule 13, which deals with setting aside ex-parte decrees. The court will consider Raj's application and may set aside the decree if it finds sufficient cause for his non-appearance.

Example 5:

Scenario: A tenant, Arjun, files a suit against his landlord, claiming that the landlord is unlawfully trying to evict him. During the proceedings, the landlord files a counterclaim for unpaid rent.

Application of Section 141: The court will follow the procedures outlined in the Code of Civil Procedure, 1908, for handling counterclaims. The court will treat the counterclaim as a separate suit and proceed accordingly, ensuring that both the original suit and the counterclaim are adjudicated based on the procedures provided in the Code.

Section 142: Orders and notices to be in writing.

All orders and notices served on or given to any person under the provisions of this Code shall be in writing.

Simplified act

All orders and notices given to anyone under this Code must be in writing.

Explanation using Example

Example 1:

Ravi filed a civil suit against his neighbor, Suresh, for encroaching on his property. The court issued an order for Suresh to stop any construction activities on the disputed land until the case is resolved. According to Section 142 of The Code Of Civil Procedure 1908, this order must be in writing. Therefore, the court clerk prepared a written document detailing the order and served it to Suresh. Suresh received the written order and understood that he must halt construction immediately.

Example 2:

Meena filed a petition for divorce against her husband, Rajesh, citing irreconcilable differences. The court scheduled a hearing and issued a notice to Rajesh to appear in court on a specified date. As per Section 142 of The Code Of Civil Procedure 1908, this notice had to be in writing. The court sent a written notice to Rajesh's residential address, informing him of the date and time of the hearing. Rajesh received the written notice and made arrangements to attend the court hearing as instructed.

Section 143: Postage.

Postage, where chargeable on a notice, summons or letter issued under this Code and forwarded by post, and the fee for registering the same, shall be paid within a time to be fixed before the communication is made:

Provided that the State Government * * * may remit such postage, or fee, or both, or may prescribe a scale of court-fees to be levied in lieu thereof.

Simplified act

If you need to send a notice, summons, or letter by mail under this Code, you must pay for the postage and any registration fees before sending it.

However, the State Government has the power to:

Waive the postage or registration fee, or both.

Set a different fee scale to be charged instead of the postage or registration fee.

Explanation using Example

Example 1:

Ravi files a civil suit against his neighbor for encroaching on his property. The court issues a summons to the neighbor to appear in court. According to Section 143 of the Code of Civil Procedure 1908, Ravi is required to pay the postage charges for sending the summons by post. The court informs Ravi that he must pay the postage fee within a specified time before the summons can be sent. If Ravi fails to pay the fee within the given time, the summons will not be forwarded to his neighbor.

Example 2:

Meena is involved in a civil dispute over a contract breach and receives a notice from the court. The notice is sent by registered post, and Meena is required to pay the registration fee. The court sets a deadline for Meena to pay this fee. However, the State Government has issued a notification remitting the postage and registration fees for certain types of civil cases to reduce the financial burden on litigants. As a result, Meena does not have to pay the postage or registration fee for the notice she received.

Section 144: Application for restitution.

Restitution

(1) Where and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or order or such part thereof as has been varied, reversed, set aside or modified; and for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation, reversal, setting aside or modification of the decree or order.

Explanation

For the purposes of sub-section (1), the expression "Court which passed the decree or order" shall be deemed to include:

(a) where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdiction, the Court of first instance;

(b) where the decree or order has been set aside by a separate suit, the court of first instance which passed such decree or order;

(c) where the Court of first instance has ceased to exist or has ceased to have jurisdiction to execute it, the Court which, if the suit wherein the decree or order was passed were instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit.

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1).

Simplified act

Restitution

(1) If a court decision or order is changed or canceled in an appeal, review, or other legal process, or is changed or canceled in a separate lawsuit, the court that made the original decision or order must, if requested by any party who benefits from it, make things right. This means the court should try to put the parties back in the position they would have been in if the original decision or order had not been made or had been different. To do this, the court can issue orders for things like refunding costs, paying interest, damages, compensation, and profits made during the dispute.

Explanation

For the purposes of section (1), the term "court that made the decision or order" includes:

(a) If the decision or order was changed or canceled by an appeal or review, it means the original court that made the decision.

(b) If the decision or order was canceled by a separate lawsuit, it means the original court that made the decision.

(c) If the original court no longer exists or cannot enforce the decision, it means the court that would have the authority to handle the case if it were started at the time of the request for restitution.

(2) You cannot start a new lawsuit to get restitution or other relief if you can get it by applying under section (1).

Explanation using Example

Example 1:

Rajesh filed a lawsuit against Suresh for the recovery of Rs. 5 lakhs, claiming that Suresh had borrowed the money and failed to repay it. The trial court ruled in favor of Rajesh and passed a decree ordering Suresh to pay the amount. Suresh, however, appealed the decision in the High Court. The High Court, after reviewing the case, found that Rajesh had no substantial evidence to prove the loan and reversed the trial court's decree.

Suresh then applied to the trial court for restitution under Section 144 of the Code of Civil Procedure, 1908. The trial court, upon receiving the application, ordered Rajesh to return the Rs. 5 lakhs that Suresh had paid under the initial decree. Additionally, the court ordered Rajesh to pay interest on the amount from the date of payment until the date of restitution, ensuring that Suresh was placed in the position he would have been in if the original decree had not been passed.

Example 2:

Meena obtained a decree from the trial court against her tenant, Ravi, for eviction and recovery of rent arrears amounting to Rs. 1 lakh. Ravi appealed the decision, and the appellate court modified the decree, reducing the rent arrears to Rs. 50,000 and allowing Ravi to stay in the property for an additional six months.

Ravi then applied to the trial court for restitution under Section 144 of the Code of Civil Procedure, 1908. The trial court, upon receiving the application, ordered Meena to refund the excess Rs. 50,000 that Ravi had paid under the initial decree. The court also ordered Meena to pay interest on the excess amount and compensate Ravi for any damages incurred due to the premature eviction order. This ensured that Ravi was placed in the position he would have been in if the original decree had not been passed.

Example 3:

Anita filed a suit against her business partner, Sunil, for breach of contract and claimed damages of Rs. 10 lakhs. The trial court ruled in favor of Anita and passed a decree awarding her the claimed amount. Sunil appealed the decision, and the appellate court found that the breach was not entirely Sunil's fault and reduced the damages to Rs. 4 lakhs.

Sunil then applied to the trial court for restitution under Section 144 of the Code of Civil Procedure, 1908. The trial court, upon receiving the application,

ordered Anita to refund the excess Rs. 6 lakhs that Sunil had paid under the initial decree. The court also ordered Anita to pay interest on the excess amount and compensate Sunil for any legal costs incurred due to the initial decree. This ensured that Sunil was placed in the position he would have been in if the original decree had not been passed.

Section 145: Enforcement of liability of surety.

Where any person has furnished security or given a guarantee -

- (a) for the performance of any decree or any part thereof, or
- (b) for the restitution of any property taken in execution of a decree, or
- (c) for the payment of any money, or for the fulfilment of any condition imposed on any person, under an order of the Court in any suit or in any proceeding consequent thereon,

the decree or order may be executed in the manner therein provided for the execution of decrees, namely:

- (i) if he has rendered himself personally liable, against him to that extent;
- (ii) if he has furnished any property as security, by sale of such property to the extent of the security;
- (iii) if the case falls both under clauses (i) and (ii) then to the extent specified in those clauses, and such person shall, be deemed to be a party within the meaning of section 47:

Provided that such notice as the Court in each case thinks sufficient has been given to the surety.

Simplified act

If someone has provided a guarantee or security for:

- (a) carrying out any part of a court order, or
- (b) returning any property taken because of a court order, or
- (c) paying any money or meeting any condition set by the court in any case or related proceeding,

the court order can be enforced in the following ways:

- (i) If the person is personally responsible, the court can take action against them to that extent;
- (ii) If the person has given property as security, the court can sell that property to cover the security;
- (iii) If both (i) and (ii) apply, the court can take action as described in both clauses.

The person who provided the guarantee or security will be treated as a party involved in the case under section 47:

Provided that the court has given enough notice to the person who provided the guarantee or security.

Explanation using Example

Example 1:

Scenario: Rajesh is a surety for his friend Suresh, who has taken a loan from a bank. Suresh fails to repay the loan, and the bank obtains a decree from the court for the repayment of the loan amount.

Application of Section 145:

Clause (a): Rajesh had given a guarantee for the performance of the decree (repayment of the loan).

Execution: The court can enforce the decree against Rajesh. If Rajesh had rendered himself personally liable, the court can order Rajesh to pay the loan amount. If Rajesh had provided property as security, the court can order the sale of that property to recover the loan amount.

Example 2:

Scenario: Meena is a surety for her brother Ramesh, who is involved in a property dispute. The court orders Ramesh to return a piece of land to the rightful owner, but Ramesh fails to comply.

Application of Section 145:

Clause (b): Meena had given a guarantee for the restitution of the property taken in execution of the decree.

Execution: The court can enforce the decree against Meena. If Meena had rendered herself personally liable, the court can order her to ensure the return of the property or compensate the rightful owner. If Meena had provided property as security, the court can order the sale of that property to compensate the rightful owner.

Example 3:

Scenario: Anil is a surety for his business partner Sunil, who is required to pay a fine imposed by the court for violating a contract condition. Sunil fails to pay the fine.

Application of Section 145:

Clause (c): Anil had given a guarantee for the payment of the fine imposed by the court.

Execution: The court can enforce the decree against Anil. If Anil had rendered himself personally liable, the court can order Anil to pay the fine. If Anil had provided property as security, the court can order the sale of that property to recover the fine amount.

Example 4:

Scenario: Priya is a surety for her cousin Ravi, who is required to fulfill certain conditions imposed by the court in a civil suit. Ravi fails to fulfill these conditions.

Application of Section 145:

Clause (c): Priya had given a guarantee for the fulfillment of the conditions imposed by the court.

Execution: The court can enforce the decree against Priya. If Priya had rendered herself personally liable, the court can order Priya to fulfill the conditions or compensate for the failure. If Priya had provided property as security, the court can order the sale of that property to compensate for the failure to fulfill the conditions.

Section 146: Proceedings by or against representatives.

Save as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be taken or application made by or against

any person then the proceeding may be taken or the application may be made by or against any person claiming under him.

Simplified act

Unless this Code or any current law says otherwise, if a legal action or application can be started by or against someone, then it can also be started by or against anyone who has taken over their rights or responsibilities.

Explanation using Example

Example 1:

Scenario: Ramesh, a businessman, files a lawsuit against Suresh for breach of contract. During the course of the lawsuit, Ramesh passes away.

Application of Section 146: Ramesh's son, Rajesh, who is the legal heir, can continue the lawsuit against Suresh. Rajesh can step into Ramesh's shoes and pursue the case as if he were the original plaintiff.

Example 2:

Scenario: Meena, a property owner, files an application for eviction against her tenant, Ravi, for non-payment of rent. Before the court can decide on the application, Meena passes away.

Application of Section 146: Meena's daughter, Priya, who inherits the property, can continue the eviction proceedings against Ravi. Priya can make the application to the court to be substituted in place of her mother and proceed with the eviction case.

Section 147: Consent or agreement by persons under disability.

In all suits to which any person under disability is a party, any consent or agreement, as to any proceeding shall, if given or made with the express leave of the Court by the next friend or guardian for the suit, have the same force and effect as if such person were under no disability and had given such consent or made such agreement.

Simplified act

In all legal cases where a person who cannot make decisions for themselves (like a minor or someone with a mental disability) is involved, any consent or agreement about the case must be approved by the Court. This consent or

agreement can be given by a person who is acting on behalf of the disabled person, like a next friend or guardian. Once the Court approves it, this consent or agreement will be treated as if the disabled person themselves had given it.

Explanation using Example

Example 1:

Ravi, a 15-year-old minor, is involved in a property dispute case. His father, who is his legal guardian, wants to settle the case out of court. According to Section 147 of The Code of Civil Procedure 1908, Ravi's father can give consent for the settlement on Ravi's behalf. However, this consent must be given with the express permission of the court. Once the court grants permission, the settlement agreement will have the same legal effect as if Ravi, despite being a minor, had agreed to it himself.

Example 2:

Meera, a 30-year-old woman with a severe mental disability, is a party in a lawsuit regarding her inheritance. Her brother, who is her court-appointed guardian, decides to agree to a mediation process to resolve the dispute. Under Section 147 of The Code of Civil Procedure 1908, Meera's brother can consent to the mediation on her behalf, provided he obtains the court's express leave. Once the court approves, the mediation agreement will be legally binding on Meera as if she had personally agreed to it, despite her disability.

Section 148: Enlargement of time.

Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, not exceeding thirty days in total, even though the period originally fixed or granted may have expired.

Simplified act

If the Court sets a deadline for doing something required or allowed by this Code, the Court can extend that deadline.

The Court can extend the deadline multiple times, but the total extension cannot be more than thirty days.

The Court can extend the deadline even if the original deadline has already passed.

Explanation using Example

Example 1:

Rajesh filed a civil suit against his neighbor for encroaching on his property. The court initially granted Rajesh 15 days to submit additional evidence supporting his claim. However, due to unforeseen circumstances, Rajesh was unable to gather all the necessary documents within the given timeframe. Rajesh's lawyer requested an extension from the court. Under Section 148 of The Code of Civil Procedure 1908, the court, using its discretion, granted Rajesh an additional 10 days to submit the evidence, ensuring that the total extension did not exceed 30 days.

Example 2:

Meena was involved in a civil litigation case regarding a contractual dispute with a business partner. The court ordered Meena to file her written statement within 20 days. Unfortunately, Meena fell ill and was hospitalized, making it impossible for her to meet the deadline. Her lawyer filed an application for an extension of time. The court, considering the circumstances and under the provisions of Section 148 of The Code of Civil Procedure 1908, granted Meena an additional 15 days to file her written statement, ensuring that the total extension period did not exceed 30 days.

Section 148A: Right to lodge a caveat.

(1) Where an application is expected to be made, or has been made, in a suit or proceeding instituted, or about to be instituted, in a Court, any person claiming a right to appear before the Court on the hearing of such application may lodge a caveat in respect thereof.

(2) Where a caveat has been lodged under sub-section (1), the person by whom the caveat has been lodged (hereinafter referred to as the caveator) shall serve a notice of the caveat by registered post, acknowledgement due, on the person by whom the application has been, or is expected to be, made, under sub-section (1).

(3) Where, after a caveat has been lodged under sub-section (1), any application is filed in any suit or proceeding, the Court, shall serve a notice of the application on the caveator.

(4) Where a notice of any caveat has been served on the applicant, he shall forthwith furnish the caveator at the caveator's expense, with a copy of the

application made by him and also with copies of any paper or document which has been, or may be, filed by him in support of the application.

(5) Where a caveat has been lodged under sub-section (1), such caveat shall not remain in force after the expiry of ninety days from the date on which it was lodged unless the application referred to in sub-section (1) has been made before the expiry of the said period.

Simplified act

(1) If someone plans to make, or has already made, an application in a court case, anyone who wants to be heard in that case can file a notice called a caveat.

(2) If you file a caveat, you (the person who filed it, called the caveator) must send a notice of the caveat by registered mail to the person who made, or is expected to make, the application.

(3) If an application is made in the case after you have filed a caveat, the court will send you (the caveator) a notice about the application.

(4) If the person who made the application gets a notice of your caveat, they must immediately give you (at your expense) a copy of their application and any other documents they filed or will file to support their application.

(5) A caveat you file will only be valid for 90 days from the date you filed it, unless the application you mentioned is made within those 90 days.

Explanation using Example

Example 1:

Scenario: Property Dispute

Ravi and Suresh are brothers who are in a dispute over their ancestral property. Ravi plans to file an application in the court to get an injunction against Suresh to prevent him from selling the property. Suresh, anticipating this move, decides to lodge a caveat in the court.

Application of Section 148A:

Lodging the Caveat: Suresh, expecting Ravi to file an application for an injunction, lodges a caveat in the court under Section 148A(1).

Serving Notice: After lodging the caveat, Suresh serves a notice of the caveat to Ravi by registered post, as required by Section 148A(2).

Court's Notice: When Ravi files the application for an injunction, the court serves a notice of this application to Suresh, the caveator, as per Section 148A(3).

Providing Documents: Upon receiving the notice of the caveat, Ravi is required to provide Suresh with a copy of his application and any supporting documents, at Suresh's expense, according to Section 148A(4).

Validity of Caveat: The caveat lodged by Suresh remains in force for 90 days from the date of lodging unless Ravi files the application within this period, as stated in Section 148A(5).

Example 2:

Scenario: Tenant Eviction

Meera is a tenant in a property owned by Rajesh. Rajesh plans to file an eviction suit against Meera, claiming she has violated the terms of the lease. Meera, anticipating this action, decides to lodge a caveat in the court.

Application of Section 148A:

Lodging the Caveat: Meera, expecting Rajesh to file an eviction suit, lodges a caveat in the court under Section 148A(1).

Serving Notice: After lodging the caveat, Meera serves a notice of the caveat to Rajesh by registered post, as required by Section 148A(2).

Court's Notice: When Rajesh files the eviction suit, the court serves a notice of this application to Meera, the caveator, as per Section 148A(3).

Providing Documents: Upon receiving the notice of the caveat, Rajesh is required to provide Meera with a copy of his application and any supporting documents, at Meera's expense, according to Section 148A(4).

Validity of Caveat: The caveat lodged by Meera remains in force for 90 days from the date of lodging unless Rajesh files the application within this period, as stated in Section 148A(5).

Section 149: Power to make up deficiency of court-fees.

Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court-fee; and upon such payment the document, in respect of which fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.

Simplified act

If you haven't paid the full fee required for a document by the current court-fee laws, the Court can let you pay it later.

The Court can decide at any time to allow you to pay the whole fee or just part of it.

Once you pay the fee, the document will be treated as if you had paid the fee from the beginning.

Explanation using Example

Example 1:

Ravi files a civil suit in a district court in India seeking compensation for damages caused by a neighbor's construction work. However, Ravi mistakenly pays only half of the required court fee due to a misunderstanding of the fee structure. The court clerk informs Ravi about the deficiency. The judge, using the discretion provided under Section 149 of the Code of Civil Procedure, 1908, allows Ravi to pay the remaining court fee within a specified period. Ravi pays the remaining amount, and the court accepts his suit as if the full fee had been paid initially.

Example 2:

Meena files a petition for divorce in a family court but realizes later that she has not paid the full court fee required for the petition. The court notices the shortfall during the preliminary hearing. The judge, exercising the power under Section 149, grants Meena additional time to pay the deficient court fee. Meena promptly pays the remaining fee, and her petition is processed without any further issues, as if the full fee had been paid at the time of filing.

Example 3:

A small business owner, Arjun, files a lawsuit against a supplier for breach of contract. Due to financial constraints, Arjun is unable to pay the full court fee at the time of filing the suit. The court, recognizing Arjun's situation, uses its discretion under Section 149 to allow him to pay the remaining court fee in installments. Arjun complies with the court's order and pays the fee in the given time frame. The court then proceeds with the case as if the full fee had been paid initially.

Example 4:

Priya files an appeal in the High Court against a lower court's decision but inadvertently pays less than the required court fee. The High Court, upon reviewing the appeal, identifies the deficiency. The judge, under the authority of Section 149, permits Priya to pay the remaining court fee within a stipulated period. Priya makes the payment, and her appeal is considered valid and is heard by the court as if the full fee had been paid at the outset.

Section 150: Transfer of business.

Save as otherwise provided, where the business of any Court is transferred to any other Court, the Court to which the business is so transferred shall have the same powers and shall perform the same duties as those respectively conferred and imposed by or under this Code upon the Court from which the business was so transferred.

Simplified act

Unless stated otherwise, when a Court's work is moved to another Court, the new Court will have the same powers and responsibilities as the original Court had under this Code.

Explanation using Example

Example 1:

Rajesh has filed a civil suit in the District Court of Mumbai regarding a property dispute. Due to administrative reasons, the case is transferred to the District Court of Thane. According to Section 150 of the Code of Civil Procedure 1908, the District Court of Thane will have the same powers and responsibilities to handle Rajesh's case as the District Court of Mumbai had. This means that all the procedures, hearings, and decisions will continue seamlessly in the Thane court without any need for re-filing or starting the process anew.

Example 2:

Meena has a pending divorce case in the Family Court of Delhi. Due to a reorganization of court jurisdictions, her case is transferred to the Family Court of Gurgaon. Under Section 150 of the Code of Civil Procedure 1908, the Family Court of Gurgaon will take over the case with the same authority and obligations as the Family Court of Delhi. Meena does not need to worry about any changes in the legal process or the validity of previous court orders; the Gurgaon court will continue from where the Delhi court left off.

Section 151: Saving of inherent powers of Court.

Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

Simplified act

This Code does not restrict or change the Court's natural authority to issue orders that are needed to achieve justice or to stop misuse of the Court's procedures.

Explanation using Example

Example 1:

Scenario: A plaintiff files a lawsuit against a defendant for breach of contract. During the trial, it becomes evident that the defendant has been tampering with evidence to mislead the court.

Application of Section 151: The judge, using the inherent powers granted by Section 151, orders an independent forensic examination of the evidence to ensure that justice is served and to prevent the abuse of the court's process.

Example 2:

Scenario: A tenant files a suit against a landlord for illegal eviction. The landlord, in retaliation, files multiple frivolous lawsuits against the tenant to harass them and drain their resources.

Application of Section 151: The court, recognizing the landlord's actions as an abuse of the judicial process, uses its inherent powers under Section 151 to dismiss the frivolous lawsuits and impose a fine on the landlord to deter such behavior in the future.

Section 152: Amendment of judgments, decrees or orders.

Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.

Simplified act

If there are any clerical or math mistakes in judgments, decrees, or orders, or if there are errors because of accidental slips or omissions, the Court can correct them at any time.

The Court can make these corrections on its own or if any of the parties involved ask for it.

Explanation using Example

Example 1:

Rajesh filed a civil suit against his neighbor, Suresh, for encroaching on his property. The court ruled in favor of Rajesh and issued a decree stating that Suresh must vacate the encroached land. However, the decree mistakenly mentioned the area of the land as "200 square feet" instead of "300 square feet" due to a clerical error. Rajesh noticed this mistake and filed an application to the court to correct the error. The court, upon reviewing the application, corrected the decree to reflect the accurate area of "300 square feet."

Example 2:

Meena won a lawsuit against a company for breach of contract, and the court ordered the company to pay her Rs. 5,00,000 as compensation. However, the judgment document erroneously mentioned the compensation amount as Rs. 50,000 due to an arithmetical mistake. Meena brought this error to the court's attention by filing an application. The court acknowledged the mistake and amended the judgment to state the correct compensation amount of Rs. 5,00,000.

Section 153: General power to amend.

The Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.

Simplified act

The Court can fix any mistake or error in a legal case at any time.

The Court can decide who pays the costs or any other conditions for fixing the mistake.

All necessary changes should be made to figure out the main question or issue in the case.

Explanation using Example

Example 1:

Scenario: Rajesh files a civil suit against his neighbor, Suresh, for encroaching on his property. During the proceedings, Rajesh realizes that he has mistakenly mentioned the wrong plot number in his complaint.

Application of Section 153: Rajesh's lawyer requests the court to amend the complaint to correct the plot number. The court, under Section 153, allows the amendment, ensuring that the real issue of property encroachment is addressed without dismissing the case due to a clerical error.

Example 2:

Scenario: Meena files a suit for recovery of money against her business partner, Anil. During the trial, it is discovered that the amount mentioned in the suit is incorrect due to a typographical error.

Application of Section 153: Meena's lawyer applies to the court to amend the amount claimed in the suit. The court, considering the importance of resolving the actual dispute, permits the amendment. This allows the case to proceed with the correct amount, ensuring that justice is served without unnecessary delays.

Section 153A: Power to amend decree or order where appeal is summarily dismissed.

Where an Appellate Court dismisses an appeal under rule 11 of Order XLI, the power of the Court to amend, under section 152, the decree or order appealed against may be exercised by the Court which had passed the decree or order in the first instance, notwithstanding that the dismissal of the appeal has the effect of confirming the decree or order, as the case may be, passed by the Court of first instance.

Simplified act

If a higher court (Appellate Court) rejects an appeal under rule 11 of Order XLI, The original court that made the decision (decree or order) can still make changes to it under section 152.

This is true even if rejecting the appeal means the original decision stays the same.

Explanation using Example

Example 1:

Rajesh filed a civil suit against Suresh in the District Court, seeking recovery of a loan amount. The District Court passed a decree in favor of Rajesh, ordering Suresh to repay the loan. Suresh, dissatisfied with the decision, appealed to the High Court. However, the High Court summarily dismissed the appeal under rule 11 of Order XLI, without going into the merits of the case.

Later, Rajesh realized that there was a clerical error in the original decree regarding the amount to be repaid. He approached the District Court to amend the decree under Section 152 of the Code of Civil Procedure, 1908. Despite the High Court's dismissal of the appeal, the District Court had the power to amend the decree to correct the clerical error, as per Section 153A.

Example 2:

Anita won a property dispute case against her neighbor, Sunita, in the Civil Court. The court issued a decree in favor of Anita, granting her the ownership of the disputed property. Sunita appealed the decision in the Appellate Court, but the appeal was summarily dismissed under rule 11 of Order XLI.

After the dismissal, Anita discovered that the decree contained a mistake in the description of the property boundaries. She filed an application in the Civil Court to amend the decree under Section 152. According to Section 153A, the Civil Court retained the authority to amend the decree, even though the Appellate Court's dismissal of the appeal had confirmed the original decree.

Section 153B: Place of trial to be deemed to be open Court.

The place in which any Civil Court is held for the purpose of trying any suit shall be deemed to be an open Court, to which the public generally may have access so far as the same can conveniently contain them:

Provided that the presiding Judge may, if he thinks fit, order at any stage of any inquiry into or trial of any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

Simplified act

Any Civil Court where a case is being heard is considered an open Court. This means that the general public can attend, as long as there is enough space for them.

However, the Judge in charge can decide at any point during the investigation or trial of a specific case that the public, or any specific person, cannot enter or stay in the courtroom.

Explanation using Example

Example 1:

Ravi has filed a civil suit against his neighbor, Suresh, over a property boundary dispute. The case is being heard in the District Civil Court. According to Section 153B of the Code of Civil Procedure 1908, the courtroom where Ravi and Suresh's case is being tried is considered an open court. This means that any member of the public can attend the trial and observe the proceedings, as long as there is enough space to accommodate them.

However, during the trial, sensitive information about Ravi's family is discussed. The presiding judge decides that this information should not be made public. Therefore, the judge orders that the courtroom be cleared of all spectators for that part of the trial. Only the parties involved, their lawyers, and essential court staff are allowed to remain in the room. This ensures that Ravi's privacy is protected while still adhering to the principle of an open court.

Example 2:

Meena is involved in a civil lawsuit against a large corporation for breach of contract. The case is being heard in the High Court. As per Section 153B, the courtroom is open to the public, and several journalists and members of the public attend the trial to observe the proceedings.

During the trial, the corporation's lawyer presents confidential business documents that contain trade secrets. To protect the corporation's sensitive information, the presiding judge decides to temporarily close the courtroom to

the public while these documents are being discussed. The judge orders that only the parties involved in the case, their legal representatives, and necessary court personnel can stay in the courtroom during this part of the trial. Once the discussion of the confidential documents is over, the courtroom is reopened to the public.

These examples illustrate how Section 153B ensures transparency in the judicial process by allowing public access to court proceedings while also providing the judge with the discretion to restrict access when necessary to protect privacy or sensitive information.

Section 154: Saving of present right of appeal. Repealed.

Repealed by the Repealing and Amending Act, 1952 (48 of 1952), s. 2 and the First Schedule

Section 155: Amendment of certain Acts. Repealed.

Repealed by s. 2 and the First Schedule, *ibid*.

Section 156: Repeals. Repealed.

Repealed by the Second Repealing and Amending Act, 1914 (17 of 1914)

s. 3 and the Second Schedule

Simplified act

Cancelled by the Second Repealing and Amending Act, 1914 (17 of 1914)

Section 3 and the Second Schedule

Explanation using Example

Example 1:

Ravi, a resident of Mumbai, is involved in a civil dispute with his neighbor over a property boundary. He decides to refer to the Code of Civil Procedure, 1908, to understand the legal framework for resolving such disputes. While going through the sections, he comes across Section 156, which mentions "Repeals. Repealed." Ravi is initially confused about what this means. Upon further research, he learns that Section 156 was repealed by the Second Repealing and Amending Act, 1914. This means that any provisions or rules that were originally under Section 156 are no longer in effect and have been removed

from the legal framework. Therefore, Ravi does not need to consider this section for his case.

Example 2:

Priya, a law student in Delhi, is preparing for her exams and is studying the Code of Civil Procedure, 1908. She notices that Section 156 is marked as "Repeals. Repealed." Curious about the implications, she investigates further and discovers that this section was repealed by the Second Repealing and Amending Act, 1914. This act was part of a legislative effort to clean up and streamline the legal code by removing outdated or redundant sections. Priya understands that this means Section 156 no longer has any legal standing or application, and she can focus her studies on the other active sections of the Code.

Section 157: Continuance of orders under repealed enactments.

Notifications published, declarations and rules made, places appointed, agreements filed, scales prescribed, forms framed, appointments made and powers conferred under Act VIII of 1859 or under any Code of Civil Procedure or any Act amending the same or under any other enactment hereby repealed shall, so far as they are consistent with this Code, have the same force and effect as if they had been respectively published, made, appointed, filed, prescribed, framed and conferred under this Code and by the authority empowered thereby in such behalf.

Simplified act

Notifications, declarations, rules, places, agreements, scales, forms, appointments, and powers that were made or given under the Act VIII of 1859, any Code of Civil Procedure, or any other law that is now repealed, will still be valid.

As long as these notifications, declarations, rules, places, agreements, scales, forms, appointments, and powers are consistent with this new Code, they will continue to have the same effect as if they were made under this new Code.

This means that anything done under the old laws will still be recognized and have the same authority under the new Code.

Explanation using Example

Example 1:

Scenario: A local court in Mumbai had issued a notification under the Code of Civil Procedure, 1859, regarding the procedure for filing civil suits.

Application: After the enactment of the Code of Civil Procedure, 1908, a lawyer is unsure whether the notification issued under the old code is still valid.

Explanation: According to Section 157 of the Code of Civil Procedure, 1908, the notification issued under the old code (Act VIII of 1859) will continue to have the same force and effect as if it were issued under the new code, provided it is consistent with the new code. Therefore, the notification remains valid.

Example 2:

Scenario: A district court in Delhi had prescribed a specific scale of fees for filing certain types of civil cases under an amendment to the Code of Civil Procedure, 1859.

Application: After the Code of Civil Procedure, 1908, came into effect, a litigant questions whether the prescribed scale of fees is still applicable.

Explanation: Section 157 of the Code of Civil Procedure, 1908, states that scales prescribed under any previous enactment, such as the Code of Civil Procedure, 1859, will continue to be effective as long as they are consistent with the new code. Therefore, the prescribed scale of fees remains applicable.

Example 3:

Scenario: An agreement was filed in a court in Chennai under the Code of Civil Procedure, 1859, regarding the arbitration process for a commercial dispute.

Application: After the Code of Civil Procedure, 1908, came into force, one of the parties to the agreement is concerned about its validity.

Explanation: According to Section 157 of the Code of Civil Procedure, 1908, agreements filed under the old code will continue to have the same force and effect as if they were filed under the new code, provided they are consistent with the new code. Therefore, the agreement remains valid.

Example 4:

Scenario: A judge in a Kolkata court was appointed under the Code of Civil Procedure, 1859, and conferred certain powers to adjudicate specific types of civil cases.

Application: After the Code of Civil Procedure, 1908, came into effect, there is a question about whether the judge still holds those powers.

Explanation: Section 157 of the Code of Civil Procedure, 1908, ensures that appointments made and powers conferred under the old code will continue to have the same force and effect as if they were made under the new code, provided they are consistent with the new code. Therefore, the judge retains those powers.

Section 158: Reference to Code of Civil Procedure and other repealed enactments.

In every enactment or notification passed or issued before the commencement of this Code in which reference is made to or to any Chapter or section of Act VIII of 1859 or any Code of Civil Procedure or any Act amending the same or any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding Part, Order, section or rule.

Simplified act

In every law or official announcement made before this Code started, if it mentions Act VIII of 1859, any Civil Procedure Code, or any law that changes those, or any other law that is now canceled by this Code, those mentions should, as much as possible, be understood as referring to this Code or its matching Part, Order, section, or rule.

Explanation using Example

Example 1:

Scenario: A property dispute case was filed in 1905 under the Code of Civil Procedure, 1859 (Act VIII of 1859). The case is still pending in 1909, after the Code of Civil Procedure, 1908 has come into effect.

Application: The court will now refer to the relevant sections of the Code of Civil Procedure, 1908 instead of the Code of Civil Procedure, 1859. For instance, if the original case referred to Section 10 of the 1859 Code, the court will now look at the corresponding section in the 1908 Code.

Explanation: This ensures that the legal proceedings are updated to reflect the current law, even if the case was initiated under an older law.

Example 2:

Scenario: A notification issued in 1906 under the Code of Civil Procedure, 1882 (an amendment to the 1859 Code) mandates a specific procedure for serving summons to defendants in civil cases.

Application: After the Code of Civil Procedure, 1908 comes into effect, any reference to the 1882 Code in the notification will be interpreted as a reference to the corresponding provisions in the 1908 Code. For example, if the notification referred to Section 20 of the 1882 Code, the corresponding section in the 1908 Code will be used.

Explanation: This ensures continuity and consistency in legal procedures, even when the underlying legal framework has been updated or replaced.

THE FIRST SCHEDULE

ORDER I: PARTIES TO SUITS

Rule 1: Who may be joined as plaintiffs.

Rule 2: Power of Court to order separate trials.

Rule 3: Who may be joined as defendants.

Rule 3A: Power to order separate trials where joinder of defendants may embarrass or delay trial.

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Rule 11: Conduct of suit.

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Rule 13: Objections as to non-joinder or misjoinder.

ORDER I: PARTIES TO SUITS

Rule 1: Who may be joined as plaintiffs.

All persons may be joined in one suit as plaintiffs where -

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and

(b) if such persons brought separate suits, any common question of law or fact would arise.

Simplified act

All people can join together in one lawsuit as plaintiffs if -

(a) they all claim to have a right to some relief (like compensation or remedy) because of the same act, event, or series of events, whether they are claiming together, separately, or as an alternative; and

(b) if they each filed separate lawsuits, there would be common legal or factual questions in all those cases.

Explanation using Example

Example 1:

Ravi, Suresh, and Priya are tenants in an apartment building owned by Mr. Sharma. They all face the same issue: Mr. Sharma has failed to provide basic amenities like water and electricity, despite repeated requests. Ravi, Suresh, and Priya decide to file a lawsuit against Mr. Sharma for breach of contract and negligence. Since their grievances arise from the same act (Mr. Sharma's failure to provide amenities) and involve common questions of law and fact, they can

be joined as plaintiffs in a single suit under Rule 1 of the Code of Civil Procedure, 1908.

Example 2:

A group of farmers, including Ram, Shyam, and Mohan, have been affected by the pollution caused by a nearby factory owned by XYZ Industries. The pollution has led to the contamination of their water supply and has damaged their crops. Each farmer has suffered losses due to the same series of acts (pollution by XYZ Industries). If Ram, Shyam, and Mohan were to file separate lawsuits, the court would have to address the same legal and factual questions regarding the factory's liability and the extent of the damage. Therefore, under Rule 1 of the Code of Civil Procedure, 1908, they can be joined as plaintiffs in a single suit against XYZ Industries.

Rule 2: Power of Court to order separate trials.

Where it appears to the Court that any joinder of plaintiffs may embarrass or delay the trial of the suit, the Court may put the plaintiffs to the election or order separate trials or make such other order as may be expedient.

Simplified act

If the Court thinks that having multiple plaintiffs (people bringing the case) together might cause confusion or slow down the trial, the Court can: a. Ask the plaintiffs to choose who will continue with the case, b. Order separate trials for each plaintiff, or c. Make any other decision that seems appropriate to speed things up or make them clearer.

Explanation using Example

Example 1:

Scenario: Ravi and Suresh jointly file a lawsuit against a construction company for breach of contract. Ravi's claim is based on a delay in the construction of his house, while Suresh's claim is about poor quality of materials used in his house.

Application of Rule 2: The court observes that the issues raised by Ravi and Suresh are different and combining them in a single trial could cause confusion and delay. Therefore, the court orders separate trials for Ravi and Suresh's claims to ensure a more efficient and clear resolution of each issue.

Example 2:

Scenario: Anita and Priya file a lawsuit against a car manufacturer for selling defective cars. Anita's car had engine problems, while Priya's car had brake issues. Both claims are against the same manufacturer but involve different defects.

Application of Rule 2: The court determines that trying both claims together might complicate the proceedings and delay the trial. To avoid this, the court orders separate trials for Anita and Priya's claims, allowing each case to be addressed on its specific merits without causing unnecessary delays.

Rule 3: Who may be joined as defendants.

All persons may be joined in one suit as defendants where -

- (a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and
- (b) if separate suits were brought against such persons, any common question of law or fact would arise.

Simplified act

All people can be included in one lawsuit as defendants if -

- (a) the right to get relief (like compensation or remedy) is claimed to come from the same act, event, or series of acts or events, whether the claim is against them together, individually, or as an alternative; and
- (b) if separate lawsuits were filed against these people, there would be a common legal or factual question in all those cases.

Explanation using Example

Example 1:

Ravi owns a piece of land in Bangalore. He enters into a contract with a construction company, BuildWell Ltd., to construct a house on his land. BuildWell Ltd. subcontracts the electrical work to SparkElectro Pvt. Ltd. During the construction, a fire breaks out due to faulty electrical wiring, causing significant damage to Ravi's property. Ravi decides to file a lawsuit for damages.

Defendants: BuildWell Ltd. and SparkElectro Pvt. Ltd.

Reason for Joining as Defendants: The right to relief (compensation for damages) arises out of the same transaction (construction of the house) and involves both companies. If Ravi were to file separate suits against BuildWell Ltd. and SparkElectro Pvt. Ltd., common questions of fact (cause of the fire) and law (liability for damages) would arise.

Example 2:

Meera purchases a car from AutoWorld Showroom in Mumbai. The car comes with a warranty from the manufacturer, SpeedCars Ltd. Within a month, the car starts showing serious engine problems. Meera takes the car to the showroom for repairs, but the issue persists. Frustrated, Meera decides to file a lawsuit for breach of warranty and seeks a refund or replacement.

Defendants: AutoWorld Showroom and SpeedCars Ltd.

Reason for Joining as Defendants: The right to relief (refund or replacement) arises out of the same transaction (purchase of the car) and involves both the showroom and the manufacturer. If Meera were to file separate suits against AutoWorld Showroom and SpeedCars Ltd., common questions of fact (engine problems) and law (breach of warranty) would arise.

Rule 3A: Power to order separate trials where joinder of defendants may embarrass or delay trial.

Where it appears to the Court that any joinder of defendants may embarrass or delay the trial of the suit, the Court may order separate trials or make such other order as may be expedient in the interests of justice.

Simplified act

If the Court thinks that having multiple defendants together in one trial might cause confusion or slow down the trial,

The Court can decide to have separate trials for each defendant or make any other decision that helps ensure a fair trial.

Explanation using Example

Example 1:

Scenario: A property dispute case involves three defendants: A, B, and C. Defendant A claims ownership of the entire property, Defendant B claims

ownership of a portion of the property, and Defendant C claims that the property belongs to a trust.

Application of Rule 3A: The court realizes that having all three defendants in a single trial could lead to confusion and delays because each defendant has different claims and evidence. To ensure a fair and efficient trial, the court orders separate trials for each defendant. This way, the court can address each claim individually without causing embarrassment or unnecessary delays.

Example 2:

Scenario: In a business contract dispute, the plaintiff sues four defendants: X, Y, Z, and W. Defendant X is accused of breaching the contract, Defendant Y is accused of fraud, Defendant Z is accused of negligence, and Defendant W is accused of conspiracy.

Application of Rule 3A: The court determines that trying all four defendants together would complicate the proceedings and delay the trial because the nature of the accusations against each defendant is different. To streamline the process and ensure justice, the court orders separate trials for each defendant. This allows the court to focus on the specific issues related to each defendant without causing confusion or delay.

Rule 4: Court may give judgment for or against one or more of joint parties.

Judgment may be given without any amendment -

(a) for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to;

(b) against such one or more of the defendants as may be found to be liable, according to their respective liabilities.

Simplified act

Judgment can be made without any changes -

(a) for any of the plaintiffs (the people who brought the case) who are found to deserve relief, they will get the relief they are entitled to;

(b) against any of the defendants (the people being sued) who are found to be responsible, based on how much each one is liable.

Explanation using Example

Example 1:

Scenario: A group of three friends, A, B, and C, jointly file a lawsuit against a construction company for poor quality work on their jointly owned property. They claim damages for the substandard construction.

Application of Rule 4:

The court finds that only A and B have sufficient evidence to prove their claims, while C does not.

According to Rule 4, the court can give a judgment in favor of A and B, awarding them compensation for the damages, without needing to amend the lawsuit to exclude C.

The court can also rule against the construction company, holding it liable to pay damages to A and B, but not to C.

Example 2:

Scenario: Two business partners, X and Y, sue their supplier for breach of contract, claiming that the supplier failed to deliver goods as per the agreement. They seek compensation for the losses incurred.

Application of Rule 4:

The court finds that X has a valid claim and is entitled to relief, but Y's claim is not substantiated with enough evidence.

Under Rule 4, the court can issue a judgment in favor of X, granting him the relief he is entitled to, without needing to amend the lawsuit to remove Y.

The court can also rule against the supplier, holding it liable to compensate X for the breach of contract, but not Y.

Rule 5: Defendant need not be interested in all the relief claimed.

It shall not be necessary that every defendant shall be interested as to all the relief claimed in any suit against him.

Simplified act

In a lawsuit, it is not required that every person being sued must have an interest in all the things being asked for in the case.

Explanation using Example

Example 1:

Ravi files a lawsuit against three people: Suresh, Meena, and Arjun, claiming that they collectively owe him Rs. 1,00,000. Ravi's claim is based on different transactions with each defendant. Suresh owes him Rs. 40,000 for a loan, Meena owes him Rs. 30,000 for unpaid rent, and Arjun owes him Rs. 30,000 for goods delivered. According to Rule 5 of the Code of Civil Procedure 1908, it is not necessary for Suresh to be interested in the relief claimed against Meena or Arjun. Each defendant is only concerned with the specific relief claimed against them.

Example 2:

Priya files a suit against a construction company and its three subcontractors for poor construction work on her house. She claims Rs. 5,00,000 in damages. The construction company is responsible for the overall project, while each subcontractor is responsible for different parts of the work: plumbing, electrical, and painting. According to Rule 5, the plumbing subcontractor does not need to be interested in the relief claimed for the electrical or painting work. Each defendant is only concerned with the specific relief related to their part of the work.

Rule 6: Joinder of parties liable on same contract.

The plaintiff may, at his option, join as parties to the same suit all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange, hundis and promissory notes.

Simplified act

The person who is suing (the plaintiff) can choose to include in the same lawsuit any or all of the people who are responsible for a contract, whether they are responsible individually or together.

This includes people involved in financial documents like bills of exchange, hundis, and promissory notes.

Explanation using Example

Example 1:

Ravi lent Rs. 1,00,000 to three friends, Suresh, Mahesh, and Ramesh, under a single promissory note. According to the terms of the note, all three friends are jointly and severally liable to repay the amount. When the repayment date arrives, none of the friends repay the loan. Ravi decides to file a lawsuit to recover his money. Under Rule 6 of the Code of Civil Procedure 1908, Ravi can choose to sue Suresh, Mahesh, and Ramesh together in one suit, as they are all liable under the same contract.

Example 2:

Anita, a businesswoman, entered into a contract with a partnership firm consisting of three partners: Ajay, Vijay, and Sanjay. The contract was for the supply of goods worth Rs. 5,00,000. The contract stipulated that all partners are jointly and severally liable for the payment. The firm failed to make the payment on the due date. Anita can file a single lawsuit against Ajay, Vijay, and Sanjay under Rule 6 of the Code of Civil Procedure 1908, as they are all liable under the same contract.

Rule 7: When plaintiff in doubt from whom redress is to be sought.

Where the plaintiff is in doubt as to the persons from whom he is entitled to obtain redress, he may join two or more defendants in order that the question as to which of the defendants is liable, and to what extent, may be determined as between all parties.

Simplified act

If the person who is suing (the plaintiff) is unsure about who exactly is responsible for the harm or loss they suffered, they can include two or more people (defendants) in the lawsuit.

This way, the court can figure out which of the defendants is actually responsible and to what degree each one is liable.

Explanation using Example

Example 1:

Ravi owns a small shop in Delhi. One day, a fire breaks out in the shop, causing significant damage. Ravi is unsure whether the fire was caused by a faulty electrical installation done by Electrician A or by a defective fire extinguisher supplied by Company B. To seek compensation for his losses, Ravi

files a lawsuit but is uncertain who is responsible for the fire. Under Rule 7 of the Code of Civil Procedure 1908, Ravi can join both Electrician A and Company B as defendants in the same lawsuit. The court will then determine which of the defendants is liable for the damages and to what extent.

Example 2:

Meena purchased a new car from Dealer X, but after a few months, she started experiencing serious mechanical issues. Meena is unsure whether the problems are due to manufacturing defects by the Car Manufacturer Y or due to poor servicing by the Dealer X. To resolve this, Meena files a lawsuit and includes both the Car Manufacturer Y and Dealer X as defendants. According to Rule 7 of the Code of Civil Procedure 1908, the court will decide which party is responsible for the mechanical issues and to what extent each party is liable for the damages Meena has suffered.

Rule 8: One person may sue or defend on behalf of all in same interest.

- (1) Where there are numerous persons having the same interest in one suit, -
 - (a) one or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested;
 - (b) the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.
- (2) The Court shall, in every case where a permission or direction is given under sub-rule (1), at the plaintiff's expense, give notice of the institution of the suit to all persons so interested, either by personal service, or, where, by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.
- (3) Any person on whose behalf, or for whose benefit, a suit is instituted, or defended, under sub-rule (1), may apply to the Court to be made a party to such suit.
- (4) No part of the claim in any such suit shall be abandoned under sub-rule (1), and no such suit shall be withdrawn under sub-rule (3), of rule 1 of Order XXIII, and no agreement, compromise or satisfaction shall be recorded in any such suit under rule 3 of that Order, unless the Court has given, at the

plaintiff's expense, notice to all persons so interested in the manner specified in sub-rule (2).

(5) Where any person suing or defending in any such suit does not proceed with due diligence in the suit or defence, the Court may substitute in his place any other person having the same interest in the suit.

(6) A decree passed in a suit under this rule shall be binding on all persons on whose behalf, or for whose benefit, the suit is instituted, or defended, as the case may be.

Explanation. - For the purpose of determining whether the persons who sue or are sued, or defend, have the same interest in one suit, it is not necessary to establish that such persons have the same cause of action as the persons on whose behalf, or for whose benefit, they sue or are sued, or defend the suit, as the case may be.

Simplified act

Order XXIII - Rule 1

(1) When many people have the same interest in a lawsuit:

(a) One or more of these people can, with the Court's permission, start or defend the lawsuit on behalf of everyone with the same interest.

(b) The Court can also decide that one or more of these people should start or defend the lawsuit for the benefit of everyone with the same interest.

(2) If the Court gives permission or direction as mentioned in (1), the plaintiff must pay to notify all interested people about the lawsuit. This can be done either personally or, if that's not practical due to the number of people or other reasons, through a public advertisement as directed by the Court.

(3) Anyone who is represented in the lawsuit can ask the Court to be made a party to the lawsuit.

(4) No part of the claim in such a lawsuit can be dropped, and the lawsuit cannot be withdrawn, nor can any agreement, compromise, or settlement be recorded, unless the Court has notified all interested people as described in (2), at the plaintiff's expense.

(5) If the person suing or defending the lawsuit is not handling it properly, the Court can replace them with another person who has the same interest in the lawsuit.

(6) Any decision made in the lawsuit will apply to all the people on whose behalf the lawsuit was started or defended.

Explanation. - To decide if people have the same interest in a lawsuit, it is not necessary to prove that they have the same reason for suing or being sued as the people they represent.

Explanation using Example

Example 1:

A group of 50 residents in a housing society in Mumbai discovers that the builder has not provided the promised amenities such as a swimming pool, gym, and proper sewage system. Instead of each resident filing a separate lawsuit, one resident, Mr. Sharma, with the permission of the court, files a lawsuit on behalf of all 50 residents. The court directs that Mr. Sharma can represent all the residents in the lawsuit. Notices are sent to all residents about the lawsuit through public advertisement in a local newspaper. The court's decision in this case will be binding on all 50 residents.

Example 2:

In a village in Tamil Nadu, a large number of farmers are affected by pollution caused by a nearby factory. The pollution has led to significant crop damage and health issues. Instead of each farmer filing a separate lawsuit, one farmer, Mr. Ramesh, with the court's permission, files a lawsuit against the factory on behalf of all affected farmers. The court directs that Mr. Ramesh can represent all the farmers in the lawsuit. Notices are sent to all farmers through personal service where possible, and by public advertisement in the village's common areas. The court's decision in this case will be binding on all the farmers represented by Mr. Ramesh.

Rule 8A: Power of Court to permit a person or body of persons to present opinion or to take part in the proceedings.

While trying a suit, the Court may, if satisfied that a person or body of persons is interested in any question of law which is directly and substantially in issue in the suit and that it is necessary in the public interest to allow that person or body of persons to present his or its opinion on that question of law, permit

that person or body of persons to present such opinion and to take such part in the proceedings of the suit as the Court may specify.

Simplified act

When handling a lawsuit, the Court can allow a person or group of people to share their opinion on a legal question that is important to the case if the Court believes:

The person or group has a significant interest in the legal question.

It is in the public's best interest to hear their opinion.

The Court will decide how this person or group can participate in the case.

Explanation using Example

Example 1:

Scenario: A Public Interest Litigation (PIL) is filed challenging the constitutionality of a new environmental regulation that affects the rights of tribal communities in a particular region.

Application of Rule 8A: The court recognizes that a well-known environmental NGO has extensive expertise and interest in the matter. The NGO has conducted significant research on the impact of the regulation on the tribal communities and has valuable insights that could assist the court in making an informed decision.

Court's Action: The court permits the NGO to present its opinion on the legal question of the regulation's constitutionality and allows the NGO to participate in the proceedings to the extent necessary to provide their expert insights.

Example 2:

Scenario: A lawsuit is filed by a group of consumers against a pharmaceutical company alleging that a particular drug has severe side effects that were not disclosed.

Application of Rule 8A: A medical association, which has conducted independent studies on the drug in question, expresses its interest in the case. The association believes that its findings are crucial for understanding the broader implications of the drug's side effects.

Court's Action: The court, satisfied that the medical association's input is in the public interest and directly relevant to the legal issues at hand, allows the association to present its opinion and participate in the proceedings to provide expert testimony and evidence.

Example 3:

Scenario: A case is brought before the court regarding the interpretation of a complex tax law that affects a large number of businesses.

Application of Rule 8A: A prominent trade association, representing a significant portion of the affected businesses, requests to present its opinion. The association has conducted thorough analyses and has a deep understanding of the practical implications of the tax law.

Court's Action: The court permits the trade association to present its opinion on the interpretation of the tax law and allows it to participate in the proceedings to help clarify the legal issues and provide a broader perspective on the impact of the law.

Example 4:

Scenario: A legal dispute arises over the implementation of a new educational policy that impacts the curriculum of schools across the state.

Application of Rule 8A: A teachers' union, which has been actively involved in discussions about the policy and has gathered substantial feedback from educators, seeks to present its views on the matter.

Court's Action: The court, recognizing the union's vested interest and the importance of its perspective, permits the teachers' union to present its opinion and participate in the proceedings to ensure that the educators' concerns are adequately represented.

Example 5:

Scenario: A case is filed challenging the legality of a government order affecting the rights of street vendors in a metropolitan city.

Application of Rule 8A: A street vendors' association, which has been advocating for the rights of street vendors and has detailed knowledge of the ground realities, requests to be heard in the case.

Court's Action: The court allows the street vendors' association to present its opinion on the legal issues involved and to participate in the proceedings to provide a comprehensive view of the impact of the government order on street vendors.

Rule 9: Misjoinder and nonjoinder.

No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it:

Provided that nothing in this rule shall apply to non-joinder of a necessary party.

Simplified act

A lawsuit will not be dismissed just because the wrong people were included or some people were left out.

The Court can still handle the case and make decisions about the issues between the people who are actually involved in the lawsuit.

However, this rule does not apply if an essential person who should be part of the lawsuit is missing.

Explanation using Example

Example 1:

Ravi files a lawsuit against Shyam for breach of contract. During the proceedings, it is discovered that Suresh, who was also a party to the contract, was not included in the lawsuit. According to Rule 9 of the Code of Civil Procedure 1908, the court will not dismiss Ravi's lawsuit just because Suresh was not initially included. The court will proceed with the case and address the issues between Ravi and Shyam. However, if Suresh is deemed a necessary party for a fair decision, the court may direct Ravi to include Suresh in the lawsuit.

Example 2:

Meena files a property dispute case against her brother, Rajesh, claiming sole ownership of their ancestral property. Later, it is found that their sister, Priya, who also has a stake in the property, was not made a party to the suit. Under Rule 9, the court will not dismiss Meena's case solely because Priya was not

included. The court will continue to address the dispute between Meena and Rajesh. However, if Priya's involvement is essential for a just resolution, the court may order Meena to add Priya as a party to the suit.

Rule 10: Suit in name of wrong plaintiff.

(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2)

Simplified act

(1) If a lawsuit has been started with the wrong person named as the plaintiff (the person bringing the lawsuit) or if there is uncertainty about whether the right person is named as the plaintiff, the Court can, at any point during the lawsuit, decide to replace or add the correct person as the plaintiff. This can happen if the Court believes that the mistake was made honestly and that changing the plaintiff is necessary to resolve the real issue in the case. The Court will do this under conditions it considers fair.

(2)

Explanation using Example

Example 1:

Ravi owns a piece of land in Bangalore. Due to a clerical error, a lawsuit to resolve a boundary dispute with his neighbor is filed in the name of his brother, Rajesh, instead of Ravi. During the proceedings, it becomes clear that Ravi is the rightful owner and should be the plaintiff. The court, recognizing the bona fide mistake, orders that Ravi be substituted as the plaintiff to ensure the dispute is resolved correctly.

Example 2:

Meena, a businesswoman, has a legal dispute over a contract with a supplier. Her assistant mistakenly files the lawsuit in the name of Meena's company, "Meena Enterprises," instead of Meena herself, who signed the contract

personally. The court, upon realizing the error and understanding that it was a genuine mistake, allows Meena to be added as the plaintiff to properly address the contract dispute.

2 Court may strike out or add parties.

The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4)

Simplified act

The Court can, at any point during the case, decide to remove or add people involved in the case. This can happen whether someone asks for it or not, and the Court will do what seems fair. If someone was wrongly included in the case, either as the person suing (plaintiff) or the person being sued (defendant), the Court can remove their name. If someone should have been included in the case, either as the person suing or the person being sued, or if their presence is necessary to resolve all the issues in the case, the Court can add their name.

(3) No one can be added as a person suing (plaintiff) without a guardian (next friend) if they need one, or as the guardian of a plaintiff who cannot sue on their own, without their agreement.

(4)

Explanation using Example

Example 1:

Scenario: A property dispute case in Delhi.

Details: Ravi files a lawsuit against his neighbor, Suresh, claiming that Suresh has encroached on his land. During the proceedings, it is discovered that the

land in question is actually co-owned by Ravi and his brother, Rajesh, who was not initially included in the lawsuit.

Application of the Act: The court, upon realizing that Rajesh is a co-owner and his presence is necessary to resolve the dispute completely, orders that Rajesh be added as a co-plaintiff in the case. This ensures that all parties with a legal interest in the property are present and the court can make a comprehensive decision.

Example 2:

Scenario: A breach of contract case in Mumbai.

Details: Meera sues a construction company, BuildWell Ltd., for not completing her house on time. During the trial, it is revealed that the contract was actually signed between Meera and a subcontractor, QuickBuild Pvt. Ltd., which was not initially named in the lawsuit.

Application of the Act: The court determines that QuickBuild Pvt. Ltd. is a necessary party to the case because they are the ones who directly breached the contract. The court orders that QuickBuild Pvt. Ltd. be added as a defendant to ensure that all responsible parties are present and the matter can be fully adjudicated.

Example 3:

Scenario: A family inheritance dispute in Bangalore.

Details: Anita files a suit against her siblings, claiming that she was unfairly excluded from her late father's will. During the proceedings, it is found that another sibling, Ramesh, who lives abroad, was not included in the lawsuit.

Application of the Act: The court decides that Ramesh's presence is necessary to settle the inheritance dispute completely. Therefore, the court orders that Ramesh be added as a defendant to ensure that all potential heirs are represented and the inheritance can be fairly distributed.

Example 4:

Scenario: A consumer protection case in Chennai.

Details: Vikram files a lawsuit against a car manufacturer, AutoMakers Ltd., for selling him a defective car. Later, it is discovered that the defect was

actually due to a faulty part supplied by a third-party vendor, PartsCo Pvt. Ltd., which was not initially named in the lawsuit.

Application of the Act: The court finds that PartsCo Pvt. Ltd. is a necessary party to the case because they supplied the defective part. The court orders that PartsCo Pvt. Ltd. be added as a defendant to ensure that all responsible parties are present and the issue can be fully resolved.

Example 5:

Scenario: A partnership dispute in Hyderabad.

Details: Sunil and Arjun, partners in a business, file a lawsuit against their third partner, Kiran, for misappropriation of funds. During the proceedings, it is revealed that the business accountant, who was responsible for the financial records, was not included in the lawsuit.

Application of the Act: The court determines that the accountant's presence is necessary to resolve the financial discrepancies. The court orders that the accountant be added as a defendant to ensure that all relevant parties are present and the financial issues can be thoroughly examined.

Where defendant added, plaint to be amended.

Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

(5) Subject to the provisions of the Indian Limitation Act, 1877 (XV of 1877), section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.

Simplified act

If a new defendant is added to a case, the complaint must be changed as needed, unless the Court says otherwise. The updated complaint and summons must be given to the new defendant and, if the Court decides, also to the original defendant.

According to the Indian Limitation Act, 1877, section 22, the legal process against the new defendant is considered to start only when they receive the summons.

Explanation using Example

Example 1:

Scenario: Ramesh files a lawsuit against Suresh for breach of contract in a civil court in Mumbai. During the proceedings, Ramesh realizes that another party, Mahesh, is also responsible for the breach and should be added as a defendant.

Application of the Act:

Adding Mahesh as a Defendant: Ramesh requests the court to add Mahesh as a defendant in the case.

Amending the Complaint: The court agrees and directs Ramesh to amend the complaint to include Mahesh's details and allegations against him.

Serving Amended Documents: Ramesh amends the complaint and serves the amended copies of the summons and the complaint to Mahesh. The court may also direct that the amended documents be served on Suresh (the original defendant).

Proceedings Against Mahesh: According to the act, the legal proceedings against Mahesh are considered to have started only when he is served with the summons.

Example 2:

Scenario: Priya files a property dispute case against her neighbor, Anil, in a civil court in Delhi. During the trial, it is discovered that Anil's brother, Sunil, also has a significant interest in the disputed property and should be included as a defendant.

Application of the Act:

Adding Sunil as a Defendant: Priya petitions the court to add Sunil as a defendant in the property dispute case.

Amending the Complaint: The court grants the petition and instructs Priya to amend the complaint to include Sunil's involvement and claims regarding the property.

Serving Amended Documents: Priya amends the complaint and serves the amended copies of the summons and the complaint to Sunil. The court may also decide that the amended documents should be served on Anil (the original defendant).

Proceedings Against Sunil: As per the act, the legal proceedings against Sunil are considered to have commenced only when he receives the summons.

Example 3:

Scenario: A company, XYZ Ltd., files a lawsuit against a contractor, ABC Constructions, for poor quality work in a civil court in Bangalore. During the case, XYZ Ltd. discovers that a subcontractor, DEF Services, was also involved in the poor quality work and should be added as a defendant.

Application of the Act:

Adding DEF Services as a Defendant: XYZ Ltd. requests the court to add DEF Services as a defendant in the lawsuit.

Amending the Complaint: The court agrees and directs XYZ Ltd. to amend the complaint to include DEF Services' role and allegations against them.

Serving Amended Documents: XYZ Ltd. amends the complaint and serves the amended copies of the summons and the complaint to DEF Services. The court may also direct that the amended documents be served on ABC Constructions (the original defendant).

Proceedings Against DEF Services: According to the act, the legal proceedings against DEF Services are considered to have started only when they are served with the summons.

Rule 10A: Power of Court to request any pleader to address it.

The Court may, in its discretion, request any pleader to address it as to any interest which is likely to be affected by its decision on any matter in issue in any suit or proceeding, if the party having the interest which is likely to be so affected is not represented by any pleader.

Simplified act

The Court can ask any lawyer to speak about any interest that might be affected by its decision in a case, if the person with that interest does not have a lawyer.

Explanation using Example

Example 1:

Rajesh files a civil suit against Suresh for a property dispute. During the proceedings, the court realizes that the decision might also affect the interests of a third party, Meena, who is not represented by any lawyer in the case. The court, using its power under Rule 10A, requests a senior pleader, Mr. Sharma, to address the court on behalf of Meena's interests to ensure that her rights are considered before making a final decision.

Example 2:

In a case involving a dispute over the management of a family business, Anil sues his brother Sunil. The court notices that the outcome of the case could significantly impact the interests of their elderly mother, who is not represented by any pleader. To protect her interests, the court requests Ms. Gupta, an experienced pleader, to address the court regarding the potential effects of the decision on the mother's financial and personal well-being.

Rule 11: Conduct of suit.

The Court may give the conduct of a suit to such persons as it deems proper.

Rule 12: Appearance of one of several plaintiffs or defendants for others.

(1) Where there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding; and in like manner, where there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding.

(2) The authority shall be in writing signed by the party giving it and shall be filed in Court.

Simplified act

(1) If there are multiple plaintiffs (people bringing the case), any one or more of them can be given permission by the others to represent them in court. Similarly, if there are multiple defendants (people being sued), any one or more of them can be given permission by the others to represent them in court.

(2) This permission must be written down, signed by the person giving it, and filed with the court.

Explanation using Example

Example 1:

Ravi, Suresh, and Meena jointly own a piece of land in Delhi. They decide to file a lawsuit against a construction company that has encroached on their land. Instead of all three appearing in court, Ravi is authorized by Suresh and Meena to represent them in all court proceedings. Suresh and Meena provide a written and signed authorization, which Ravi files in the court. This allows Ravi to appear, plead, and act on behalf of Suresh and Meena throughout the case.

Example 2:

A group of five tenants, including Anil, Sunita, Raj, Priya, and Mohan, are being sued by their landlord for allegedly violating the terms of their lease agreement. To simplify the legal process, Anil is authorized by the other four tenants to represent them in court. Each tenant signs a written authorization, which Anil submits to the court. This enables Anil to appear, plead, and act on behalf of Sunita, Raj, Priya, and Mohan in all legal proceedings related to the case.

Rule 13: Objections as to non-joinder or misjoinder.

All objections on the ground of nonjoinder or misjoinder of parties shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

Simplified act

Any objections about not including the right people (nonjoinder) or including the wrong people (misjoinder) in a case must be raised as soon as possible. This should be done before or at the time when the main issues of the case are decided, unless the reason for the objection comes up later. If you don't raise these objections in time, it will be assumed that you have given up the right to object.

Explanation using Example

Example 1:

Ravi files a lawsuit against Suresh for breach of contract. During the initial stages of the case, Suresh realizes that Ravi should have also included another party, Rajesh, who was a co-signer of the contract. Suresh raises an objection regarding the non-joinder of Rajesh at the first hearing. The court acknowledges this objection and orders Ravi to amend the plaint to include

Rajesh as a defendant. If Suresh had waited until later in the trial to raise this objection, the court might have deemed it waived, and the case would proceed without Rajesh.

Example 2:

Meena files a property dispute case against her neighbor, Anil, claiming that he has encroached on her land. Anil, in his defense, argues that Meena should have also included the local municipal authority as a party to the suit because they are responsible for demarcating property boundaries. Anil raises this objection during the initial case management conference. The court considers this objection valid and instructs Meena to amend her plaint to include the municipal authority. If Anil had failed to raise this objection at the earliest opportunity, he would have lost the right to object on these grounds later in the proceedings.

ORDER II: Frame of Suit

Rule 1: Frame of suit.

Every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them.

2.

Simplified act

Every lawsuit should be set up in a way that aims to resolve all the issues in dispute as much as possible and to avoid any future legal battles about the same issues.

2.

Explanation using Example

Example 1:

Ravi and Suresh are neighbors in a small town in India. Ravi claims that Suresh has encroached upon a part of his land by building a wall. Ravi decides to file a suit against Suresh. According to Rule 1 of Order II of The Code of Civil Procedure 1908, Ravi's suit should be framed in such a way that the court can make a final decision on the land dispute. This means Ravi should include all relevant facts, evidence, and legal grounds in his suit to ensure that the court

can resolve the issue completely and prevent any future litigation on the same matter.

Example 2:

Meena runs a small business and supplies goods to various clients. One of her clients, Rajesh, has not paid for the last three deliveries. Meena decides to file a suit to recover the unpaid amount. According to Rule 1 of Order II of The Code of Civil Procedure 1908, Meena's suit should be framed to cover all aspects of the dispute, including the details of the deliveries, the amount due, and any communication between her and Rajesh regarding the payment. This comprehensive framing will help the court make a final decision on the payment issue and prevent Meena from having to file multiple suits for the same dispute.

Rule 2: Suit to include the whole claim.

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2)

Simplified act

(1) When someone files a lawsuit, they must include all the claims they have related to the issue. However, they can choose to give up part of their claim if it helps them file the case in a court that has the authority to hear it.

(2)

Explanation using Example

Example 1:

Ravi lent Rs. 1,00,000 to his friend Suresh. Suresh promised to repay the amount within six months but failed to do so. Ravi decided to file a suit against Suresh for the recovery of the loan amount. According to Rule 2 of Order II of the Code of Civil Procedure 1908, Ravi must include the entire claim of Rs. 1,00,000 in his suit. He cannot file multiple suits for different portions of the loan amount. However, if Ravi wants to bring the suit in a court that has a jurisdictional limit of Rs. 50,000, he may choose to relinquish Rs. 50,000 of his claim and file the suit for Rs. 50,000 only.

Example 2:

Priya owns a piece of land and discovers that her neighbor, Anil, has encroached upon a portion of her property. Priya wants to file a suit for the recovery of the encroached land and also for damages caused by Anil's actions. According to Rule 2 of Order II of the Code of Civil Procedure 1908, Priya must include both the claim for the recovery of the land and the claim for damages in the same suit, as they arise from the same cause of action. She cannot file separate suits for the recovery of the land and for the damages.

Relinquishment of part of claim.

Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3)

Simplified act

If a person (plaintiff) decides not to include part of their claim in a lawsuit or gives up part of their claim on purpose, they cannot later sue for the part they left out or gave up.

(3)

Explanation using Example

Example 1:

Ravi owns a piece of land and has a dispute with his neighbor, Suresh, over a boundary wall. Ravi files a lawsuit against Suresh claiming ownership of the disputed boundary wall and also mentions that Suresh has encroached on an additional 5 feet of his land. However, Ravi decides to only pursue the claim regarding the boundary wall in the lawsuit and intentionally relinquishes the claim about the 5 feet of encroached land. According to the act, once Ravi has relinquished the claim about the 5 feet of encroached land, he cannot file another lawsuit in the future to claim that portion of the land.

Example 2:

Meena lends Rs. 1,00,000 to her friend Priya. Priya repays Rs. 50,000 but fails to repay the remaining Rs. 50,000. Meena decides to file a lawsuit to recover the remaining Rs. 50,000. However, during the lawsuit, Meena omits to include

a claim for Rs. 10,000 which was an additional amount lent to Priya for a different purpose. If Meena intentionally omits this Rs. 10,000 from her claim, she cannot later file another lawsuit to recover this Rs. 10,000. The act prevents her from suing for the omitted portion once she has chosen not to include it in her initial claim.

Omission to sue for one of several reliefs.

A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation

For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

Illustration

A lets a house to B at a yearly rent of Rs. 1,200. The rent for the whole of the years 1905, 1906, and 1907 is due and unpaid. A sues B in 1908 only for the rent due for 1906. A shall not afterwards sue B for the rent due for 1905 or 1907.

Simplified act

If someone has the right to ask for more than one type of help or remedy for the same problem, they can ask for all or just some of those remedies in one lawsuit. However, if they choose not to ask for all the remedies without the Court's permission, they cannot ask for the ones they left out in a future lawsuit.

Explanation

For this rule, an obligation (something you are required to do) and any additional security for making sure it gets done, as well as any repeated claims under the same obligation, are considered to be one single problem.

Example

A rents a house to B for a yearly rent of Rs. 1,200. The rent for the years 1905, 1906, and 1907 is due and hasn't been paid. A sues B in 1908 only for the rent due for 1906. A cannot later sue B for the rent due for 1905 or 1907.

Explanation using Example

Example 1:

Ravi lends Rs. 50,000 to Suresh and also takes Suresh's car as collateral. Suresh fails to repay the loan. Ravi decides to sue Suresh for the repayment of the loan but does not include a claim for the car in the lawsuit. The court rules in favor of Ravi and orders Suresh to repay the loan. Later, Ravi realizes that Suresh still hasn't repaid the loan and wants to sue for the car. According to this section, since Ravi did not include the claim for the car in the initial lawsuit and did not get the court's permission to omit it, he cannot sue for the car later.

Example 2:

Priya rents her apartment to Anil for Rs. 10,000 per month. Anil fails to pay rent for the months of January, February, and March. In April, Priya decides to sue Anil but only includes the rent for February in her lawsuit. The court orders Anil to pay the rent for February. Later, Priya wants to sue Anil for the rent of January and March. According to this section, since Priya did not include the claims for January and March in her initial lawsuit and did not get the court's permission to omit them, she cannot sue for the rent of January and March later.

Rule 3: Joinder of causes of action.

(1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit.

Simplified act

(1) Unless stated otherwise, a person who is suing (plaintiff) can include multiple reasons for suing (causes of action) in one lawsuit against the same person or group of people (defendant or defendants). Also, if multiple people are suing together (plaintiffs) and they have shared reasons for suing the same person or group of people, they can combine their reasons into one lawsuit.

(2) When multiple reasons for suing are combined in one lawsuit, the court's authority to handle the case will be based on the total value or amount of all the combined reasons at the time the lawsuit is started.

Explanation using Example

Example 1:

Scenario: Ramesh owns a small business and supplies goods to various clients. He has two clients, Client A and Client B, who have not paid their dues for the goods supplied. Client A owes him ₹50,000, and Client B owes him ₹70,000. Both clients are located in the same city.

Application of Rule 3: Ramesh can file a single lawsuit against both Client A and Client B for the recovery of the total amount of ₹1,20,000. Since the causes of action (non-payment of dues) are against the same defendants (clients) and are related to the same type of transaction (supply of goods), he can unite these causes of action in one suit.

Example 2:

Scenario: Sita and Geeta are co-owners of a piece of land. They have leased this land to a company, XYZ Ltd., which has defaulted on the lease payments and has also caused damage to the property. Sita and Geeta want to take legal action against XYZ Ltd. for both the unpaid lease payments and the damages.

Application of Rule 3: Sita and Geeta can jointly file a single lawsuit against XYZ Ltd. for both the unpaid lease payments and the damages caused to the property. Since they are jointly interested in the causes of action (lease payments and property damage) against the same defendant (XYZ Ltd.), they can unite these causes of action in one suit.

Example 3:

Scenario: Mohan has a contract with a construction company to build his house. The construction company has not only delayed the project but also used substandard materials, resulting in poor construction quality. Mohan

wants to sue the construction company for both the delay and the use of substandard materials.

Application of Rule 3: Mohan can file a single lawsuit against the construction company for both the delay in construction and the use of substandard materials. Since the causes of action (delay and substandard materials) are against the same defendant (construction company) and are related to the same contract, he can unite these causes of action in one suit.

Rule 4: Only certain claims to be joined for recovery of immovable property.

No cause of action shall, unless with the leave of the Court, be joined with a suit for the recovery of immovable property, except -

(a) claims for mesne profits or arrears of rent in respect of the property claimed or any part thereof;

(b) claims for damages for breach of any contract under which the property or any part thereof is held;

(c) claims in which the relief sought is based on the same cause of action:

Provided that nothing in this rule shall be deemed to prevent any party in a suit for foreclosure or redemption from asking to be put into possession of the mortgaged property.

Simplified act

You cannot combine other legal claims with a lawsuit to get back real estate property unless the Court allows it, except for:

(a) claims for profits made from the property or unpaid rent related to the property;

(b) claims for damages if someone broke a contract related to the property;

(c) claims where the requested relief is based on the same reason for the lawsuit:

However, this rule does not stop anyone in a lawsuit about foreclosure or redemption from asking to take possession of the mortgaged property.

Explanation using Example

Example 1:

Ravi owns a piece of land in Bangalore, but it has been occupied by his tenant, Suresh, who has stopped paying rent for the past year. Ravi decides to file a suit for the recovery of the immovable property (the land). Under Rule 4 of the Code of Civil Procedure 1908, Ravi can also join claims for the arrears of rent (mesne profits) that Suresh owes him for the past year. This is permissible because the claim for arrears of rent is directly related to the property in question.

Example 2:

Priya leased her commercial property in Mumbai to a company for five years. The company breached the lease agreement by subletting the property without Priya's consent, which was explicitly prohibited in the contract. Priya decides to file a suit for the recovery of her immovable property. According to Rule 4 of the Code of Civil Procedure 1908, Priya can also include a claim for damages due to the breach of the lease agreement. This is allowed because the claim for damages is based on the same cause of action related to the property.

Example 3:

Anita has a mortgaged property in Delhi and the mortgagee, Raj, has defaulted on the mortgage terms. Anita files a suit for foreclosure to recover the property. Under the proviso of Rule 4, Anita can also ask the court to put her into possession of the mortgaged property as part of the foreclosure suit. This is an exception to the general rule that no other cause of action can be joined with a suit for the recovery of immovable property without the court's permission.

Rule 5: Claims by or against executor, administrator or heir.

No claim by or against an executor, administrator or heir, as such, shall be joined with claims by or against him personally, unless the last mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor, administrator or heir, or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents.

Simplified act

You cannot combine a legal claim involving an executor, administrator, or heir in their official role with a personal claim against them, unless:

The personal claim is related to the estate they are managing.

The personal claim is something they are responsible for together with the deceased person they represent.

Explanation using Example

Example 1:

Ravi's father, Mr. Sharma, passed away, leaving behind a substantial estate. Ravi is appointed as the executor of his father's will. A creditor, Mr. Verma, files a lawsuit against Ravi, claiming that Mr. Sharma owed him Rs. 5 lakhs. In the same lawsuit, Mr. Verma also tries to claim Rs. 1 lakh from Ravi personally for a separate loan Ravi took from him. According to Rule 5 of the Code of Civil Procedure 1908, Mr. Verma cannot join the personal claim against Ravi with the claim against Ravi as the executor of his father's estate unless the personal claim is related to the estate or was a joint liability with Mr. Sharma.

Example 2:

Priya is the administrator of her late mother Mrs. Gupta's estate. Mrs. Gupta had a pending contract dispute with a business partner, Mr. Singh. Mr. Singh sues Priya in her capacity as the administrator of Mrs. Gupta's estate to resolve the contract dispute. In the same lawsuit, Mr. Singh also tries to sue Priya personally for a separate business deal they had. Under Rule 5 of the Code of Civil Procedure 1908, Mr. Singh cannot combine the personal claim against Priya with the claim against her as the administrator unless the personal claim is connected to the estate or was a joint obligation with Mrs. Gupta.

Rule 6: Power of Court to order separate trials.

Where it appears to the Court that the joinder of causes of action in one suit may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient in the interests of justice.

7

Simplified act

If the Court thinks that combining different issues in one lawsuit might cause confusion, delay the trial, or be inconvenient, the Court can decide to have separate trials or make any other decision that helps ensure fairness and justice.

7

Explanation using Example

Example 1:

Scenario: Ramesh files a lawsuit against Suresh for two different issues: (1) a property dispute over a piece of land, and (2) a breach of contract related to a business deal.

Application of Rule 6: The court observes that handling both the property dispute and the breach of contract in a single trial could complicate the proceedings and delay the resolution. Therefore, the court decides to order separate trials for each issue to ensure a more efficient and focused adjudication process.

Example 2:

Scenario: Priya sues her former employer for wrongful termination and also includes a claim for unpaid wages in the same lawsuit.

Application of Rule 6: The court finds that combining the wrongful termination claim with the unpaid wages claim might lead to confusion and prolong the trial. To avoid any embarrassment or delay, the court orders separate trials for the wrongful termination and the unpaid wages claims, allowing each issue to be addressed independently and expediently.

Rule 7: Objections as to misjoinder.

All objections on the ground of misjoinder of causes of action shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

Simplified act

If you have any objections because different issues are combined in one case, you must raise these objections as soon as possible.

You must raise these objections before or at the time when the issues in the case are being decided.

If the reason for your objection comes up later, you can raise it then.

If you don't raise your objection at the right time, it will be considered that you have given up your right to object.

Explanation using Example

Example 1:

Ravi files a lawsuit against his neighbor, Suresh, for trespassing on his property and also includes a claim for defamation in the same suit. Suresh believes that these two claims should not be combined in one lawsuit because they are unrelated. According to Rule 7 of the Code of Civil Procedure 1908, Suresh must raise this objection at the earliest possible opportunity, ideally before the court settles the issues for trial. If Suresh fails to raise this objection early on, he will lose the right to object later, and the court will proceed with both claims in the same lawsuit.

Example 2:

Priya sues her former employer for wrongful termination and also includes a claim for unpaid wages in the same lawsuit. The employer believes that these two claims should not be combined because they involve different legal issues. According to Rule 7 of the Code of Civil Procedure 1908, the employer must raise this objection as soon as possible, preferably before the court settles the issues for trial. If the employer does not raise the objection early, the court will consider the objection waived, and both claims will be heard together in the same lawsuit.

STATE AMENDMENT

Uttar Pradesh

Amendment of the First Schedule Order II. — In the First Schedule to the principal Act (hereinafter in this Chapter referred to as the First Schedule), in Order II, in rule 2 —

(a) the existing explanation shall be numbered as Explanation I, and after Explanation I, as so numbered the following explanation II, shall be inserted, namely :—

“Explanation II— For the purpose of this rule a claim for ejectment of the defendant from immovable property let out to him and a claim for money due from him on account of rent or compensation for use and occupation of that property, shall be deemed to be claims in respect of distinct causes of action.”;

(b) for the illustration, the following illustration shall be substituted, namely :—

“Illustration— A lets immovable property to B at a yearly rent. The rent for the whole of the years 1905, 1906 and 1907 is due and unpaid, and the tenancy is determined before A sues B in 1908, only for the rent due for 1906. A may afterwards sue B for ejectment but not for the rent due for 1905 or 1907.”

[Vide Uttar Pradesh Act 57 of 1976, s. 4]

ORDER III: Recognized Agents and Pleadings

Rule 1: Appearances, etc., may be in person, by recognised agent or by pleader.

Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader appearing, applying or acting, as the case may be, on his behalf:

Provided that any such appearance shall, if the Court so directs, be made by the party in person.

Simplified act

If you need to appear, apply, or do something in court because the law requires it, you can do it yourself, have an authorized agent do it, or have a lawyer do it for you, unless a specific law says otherwise.

However, if the court orders it, you must appear in person.

Explanation using Example

Example 1:

Ravi has a property dispute with his neighbor, Suresh, and decides to file a civil suit in the local court. Ravi is a busy businessman and cannot attend every court hearing. According to Rule 1 of Order III of The Code of Civil Procedure, 1908, Ravi has three options:

Ravi can appear in court personally to present his case.

Ravi can appoint his brother, who is a recognized agent, to appear on his behalf.

Ravi can hire a pleader (lawyer) to represent him in court.

Ravi chooses to hire a pleader to handle the case. However, the court later directs that Ravi must appear in person for a specific hearing to provide some crucial testimony. Ravi complies with the court's direction and attends that particular hearing.

Example 2:

Meena is involved in a civil litigation case regarding a breach of contract. She lives in a different city from where the court proceedings are taking place. Meena decides to appoint her trusted friend, Anil, as her recognized agent to handle the court appearances and filings. Anil is not a lawyer but is well-versed in legal procedures.

During the proceedings, Meena's lawyer, Advocate Sharma, handles most of the legal arguments and filings. However, the court requires Meena to appear in person for a mediation session to attempt a settlement. Meena travels to the court for this session as directed by the court.

In this scenario, Meena utilizes the provision of Rule 1 of Order III by having her recognized agent and pleader act on her behalf, while also complying with the court's direction to appear in person when necessary.

Rule 2: Recognised agents.

The recognized agents of parties by whom such appearances, applications and acts may be made or done are -

(a) persons holding powers-of-attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties;

(b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which

limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts.

Simplified act

The people who can officially represent others in court or handle legal matters for them are:

(a) People who have been given a power-of-attorney, which is a legal document that allows them to act on behalf of someone else.

(b) People who run a business or trade for someone who does not live within the area covered by the court. These representatives can only handle matters related to that business or trade, and only if no one else has been specifically authorized to do so.

Explanation using Example

Example 1:

Ravi, a businessman residing in Mumbai, has a legal dispute in a court located in Delhi. Since Ravi cannot frequently travel to Delhi for court appearances, he grants a power-of-attorney to his trusted friend, Suresh, who lives in Delhi. Suresh, now holding the power-of-attorney, is recognized as Ravi's agent and can make court appearances, file applications, and perform other legal acts on Ravi's behalf in the Delhi court.

Example 2:

Meena runs a textile business in Chennai but has a branch office in Kolkata. She has a legal matter related to her business in a Kolkata court. Meena authorizes her branch manager, Anil, to handle the court proceedings in Kolkata. Since Anil is carrying on trade for Meena's business and Meena is not a resident within the local limits of the Kolkata court, Anil is recognized as Meena's agent and can make appearances, file applications, and perform other legal acts related to the business matter in the Kolkata court.

Rule 3: Service of process on recognised agent.

(1) Processes served on the recognized agent of a party shall be as effectual as if the same had been served on the party in person, unless the Court otherwise directs.

(2) The provisions for the service of process on a party to a suit shall apply to the service of process on his recognized agent.

Simplified act

(1) If legal documents are given to a person's official representative, it is just as effective as giving them directly to the person, unless the Court says otherwise.

(2) The rules for giving legal documents to someone in a lawsuit also apply to giving those documents to their official representative.

Explanation using Example

Example 1:

Scenario: Ramesh files a civil suit against Suresh for breach of contract in a Delhi court. Suresh lives in Mumbai and has appointed a recognized agent, Mr. Sharma, who is a lawyer based in Delhi, to handle his legal matters.

Application of Rule 3:

The court issues a summons to Suresh to appear for the hearing.

Instead of sending the summons directly to Suresh in Mumbai, the court serves the summons to Mr. Sharma, Suresh's recognized agent in Delhi.

According to Rule 3(1), the service of the summons on Mr. Sharma is as effective as if it had been served directly on Suresh.

Suresh is now legally required to respond to the summons as if he had received it in person.

Example 2:

Scenario: Priya is involved in a property dispute case in a Chennai court. She resides in Bangalore and has appointed her brother, Raj, as her recognized agent to handle the case on her behalf.

Application of Rule 3:

The court needs to serve a notice to Priya regarding a hearing date.

The court serves the notice to Raj, Priya's recognized agent, in Chennai.

According to Rule 3(2), the same rules that apply to serving process on Priya directly also apply to serving process on Raj.

Priya is considered to have received the notice once it is served to Raj, and she must act accordingly, even though she is in Bangalore.

Rule 4: Appointment of pleader.

(1) No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorised by or under a power-of-attorney to make such appointment.

(2) Every such appointment shall be filed in Court and shall, for the purposes of sub-rule (1), be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.

Explanation. - For the purposes of this sub-rule, the following shall be deemed to be proceedings in the suit, -

(a) an application for the review of decree or order in the suit,

(b) an application under section 144 or under section 152 of this Code, in relation to any decree or order made in the suit,

(c) an appeal from any decree or order in the suit, and

(d) any application or act for the purpose of obtaining copies of documents or return of documents produced or filed in the suit or of obtaining refund of moneys paid into the Court in connection with the suit.

(3) Nothing in sub-rule (2) shall be construed -

(a) as extending, as between the pleader and his client, the duration for which the pleader is engaged, or

(b) as authorising service on the pleader of any notice or document issued by any Court other than the Court for which the pleader was engaged, except where such service was expressly agreed to by the client in the document referred to in sub-rule (1).

(4) The High Court may, by general order, direct that, where the person by whom a pleader is appointed is unable to write his name, his mark upon the document appointing the pleader shall be attested by such person and in such manner as may be specified by the order.

(5) No pleader who has been engaged for the purpose of pleading only shall plead on behalf of any party, unless he has filed in court a memorandum of appearance signed by himself and stating -

(a) the names of the parties to the suit,

(b) the name of the party for whom he appears, and

(c) the name of the person by whom he is authorised to appear :

Provided that nothing in this sub-rule shall apply to any pleader engaged to plead on behalf of any party by any other pleader who has been duly appointed to act in Court on behalf of such party.

Simplified act

(1) A lawyer cannot represent someone in court unless that person has given the lawyer written permission. This permission must be signed by the person, their recognized agent, or someone else who has the legal authority to do so.

(2) This written permission must be filed in court. It will remain valid until:

The court allows it to be canceled through a written document signed by either the client or the lawyer and filed in court.

The client or the lawyer dies.

The case is completely finished for the client.

Explanation: For this rule, the following are considered part of the case:

(a) A request to review the court's decision or order in the case.

(b) A request under sections 144 or 152 of this Code related to any decision or order in the case.

(c) An appeal against any decision or order in the case.

(d) Any request or action to get copies of documents, return documents filed in the case, or get a refund of money paid to the court for the case.

(3) This rule does not mean:

(a) That the lawyer's engagement with the client lasts longer than agreed.

(b) That the lawyer can be served with any notice or document from a different court unless the client specifically agreed to this in the written permission.

(4) The High Court can make a general rule that if the person appointing the lawyer cannot write their name, their mark on the document must be witnessed by someone in a specified manner.

(5) A lawyer hired only to argue in court cannot do so unless they file a signed document in court stating:

(a) The names of the parties involved in the case.

(b) The name of the party they are representing.

(c) The name of the person who authorized them to appear.

However, this rule does not apply if the lawyer is hired by another lawyer who has already been properly appointed to act in court for the party.

Explanation using Example

Example 1:

Scenario: Mr. Sharma wants to file a civil suit against his neighbor for encroaching on his property. He decides to hire a lawyer, Mr. Gupta, to represent him in court.

Appointment of Pleader: Mr. Sharma signs a document appointing Mr. Gupta as his pleader. This document is also signed by Mr. Sharma's recognized agent, his son, who has a power-of-attorney.

Filing in Court: Mr. Gupta files this appointment document in the court where the suit is to be heard.

Validity of Appointment: The appointment remains valid until the case is concluded, Mr. Sharma or Mr. Gupta dies, or Mr. Sharma decides to terminate Mr. Gupta's services with the court's permission.

Additional Proceedings: If Mr. Sharma wants to file an appeal or a review of the court's decision, Mr. Gupta's appointment remains valid for these proceedings as well.

Example 2:

Scenario: Mrs. Verma, who is illiterate, wants to hire a lawyer, Ms. Rao, to handle her divorce case.

Appointment of Pleader: Mrs. Verma cannot write her name, so she places her thumb impression on the document appointing Ms. Rao as her pleader. This document is attested by a local official as per the High Court's general order.

Filing in Court: Ms. Rao files the attested appointment document in the family court.

Memorandum of Appearance: Since Ms. Rao is engaged only for pleading, she files a memorandum of appearance in the court, stating the names of the parties (Mrs. Verma and her husband), the name of the party she represents (Mrs. Verma), and the name of the person who authorized her (Mrs. Verma).

Termination of Services: If Mrs. Verma decides to change her lawyer, she must file a written document in the court, signed by her or her recognized agent, to terminate Ms. Rao's services.

Example 3:

Scenario: Mr. Khan hires a lawyer, Mr. Singh, to represent him in a property dispute case. Mr. Khan later decides to handle the case himself.

Appointment of Pleader: Mr. Khan signs a document appointing Mr. Singh as his pleader, and this document is filed in the court.

Termination of Appointment: Mr. Khan decides to terminate Mr. Singh's services. He files a written document in the court, signed by himself, stating that Mr. Singh's appointment is terminated.

Court's Permission: The court grants permission for the termination, and Mr. Singh's appointment is no longer in force.

Self-Representation: Mr. Khan now represents himself in the ongoing property dispute case.

Example 4:

Scenario: Ms. Patel hires a lawyer, Mr. Desai, to represent her in a civil suit. During the case, Ms. Patel passes away.

Appointment of Pleader: Ms. Patel signs a document appointing Mr. Desai as her pleader, and this document is filed in the court.

Death of Client: Unfortunately, Ms. Patel passes away during the proceedings.

Termination of Appointment: Mr. Desai's appointment as pleader is automatically terminated upon Ms. Patel's death.

Legal Heirs: Ms. Patel's legal heirs must now decide whether to continue the case and, if so, appoint a new pleader to represent them in court.

Rule 5: Service of process on pleader.

- Any process served on the pleader who has been duly appointed to act in Court for any party or left at the office or ordinary residence of such pleader, and whether the same is for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents, and, unless the Court otherwise directs, shall be as effectual for all purposes as if the same had been given to or served on the party in person.

Simplified act

If a legal notice or document is given to the lawyer who has been officially appointed to represent someone in court, or if it is left at the lawyer's office or home, it will be assumed that the person the lawyer represents has received and understood it. This applies whether the notice requires the person to appear in court or not. Unless the court says otherwise, this notice will be considered just as effective as if it had been given directly to the person.

Explanation using Example

Example 1:

Ravi has filed a civil suit against his neighbor, Suresh, for encroaching on his property. Ravi appoints Advocate Mehta as his pleader to represent him in court. During the proceedings, the court issues a notice requiring Ravi to submit additional documents. The notice is served to Advocate Mehta at his office. According to Rule 5 of the Code of Civil Procedure 1908, this notice is considered to be duly communicated to Ravi, even though it was not directly handed to him. Ravi is expected to comply with the notice as if he had received it personally.

Example 2:

Priya is involved in a legal dispute over a contract with a business partner. She appoints Advocate Sharma to handle her case. The court schedules a hearing and issues a summons for Priya's personal appearance. The summons is delivered to Advocate Sharma's residence. Under Rule 5, this summons is presumed to be effectively communicated to Priya. If Priya fails to appear in court, she cannot claim that she was unaware of the summons because it was served to her pleader, Advocate Sharma.

Rule 6: Agent to accept service.

(1) Besides the recognized agents described in rule 2, any person residing within the jurisdiction of the Court may be appointed an agent to accept service of process.

(2)

Simplified act

(1) In addition to the official agents mentioned in rule 2, anyone who lives within the area covered by the Court can be chosen to receive legal documents on someone else's behalf.

(2)

Explanation using Example

Example 1:

Ravi, a businessman residing in Mumbai, has a legal dispute with another company. Ravi frequently travels for work and is often out of town. To ensure that he does not miss any important court documents or notices, he appoints his trusted friend, Suresh, who resides in Mumbai, as his agent to accept service of process. This means that any legal documents or court notices related to Ravi's case can be served to Suresh, and it will be considered as if Ravi himself has received them.

Example 2:

Priya, a software engineer living in Bangalore, is involved in a civil lawsuit. She is planning to go abroad for a few months for a work assignment. To make sure she stays updated with her case proceedings, Priya appoints her neighbor, Anjali, who lives in the same apartment complex, as her agent to accept service of process. This way, any court summons or legal notices delivered to Anjali

will be legally binding on Priya, ensuring that she does not miss any critical information while she is away.

Appointment to be in writing and to be filed in Court.

Such appointment may be special or general and shall be made by an instrument in writing signed by the principal, and such instrument or, if the appointment is general, a certified copy thereof shall be filed in Court.

(3) The Court may, at any stage of the suit, order any party to the suit not having a recognised agent residing within the jurisdiction of the Court, or a pleader who has been duly appointed to act in the Court on his behalf, to appoint, within a specified time, an agent residing within the jurisdiction of the Court to accept service of the process on his behalf.

Simplified act

The appointment can be either specific to a task or general for all tasks. It must be done in writing and signed by the person making the appointment. This written document, or a certified copy if the appointment is general, must be filed in Court.

The Court can, at any point during the case, order any party who does not have a recognized agent living within the Court's area, or a lawyer officially appointed to act on their behalf, to appoint an agent who lives within the Court's area to receive legal documents on their behalf within a specified time.

Explanation using Example

Example 1:

Scenario: Ramesh, a businessman residing in Mumbai, files a civil suit in the Delhi High Court against a company based in Delhi for breach of contract.

Application of the Act:

Appointment of Pleader: Ramesh decides to appoint a lawyer (pleader) to represent him in the Delhi High Court. According to the act, Ramesh must provide a written document (instrument) signed by him, authorizing the lawyer to act on his behalf.

Filing in Court: This written authorization must be filed in the Delhi High Court. If Ramesh appoints the lawyer for multiple cases (general appointment), a certified copy of the authorization must be filed.

Court's Order: If Ramesh does not have a recognized agent or pleader within the jurisdiction of the Delhi High Court, the court may order him to appoint an agent residing within its jurisdiction to accept service of process on his behalf within a specified time.

Example 2:

Scenario: Priya, an NRI residing in the USA, files a property dispute case in the Chennai High Court against her relatives in Chennai.

Application of the Act:

Appointment of Agent: Since Priya is not residing in India, she decides to appoint her cousin, who lives in Chennai, as her recognized agent to handle the case. Priya signs a written document authorizing her cousin to act on her behalf.

Filing in Court: This written authorization is then filed in the Chennai High Court. If Priya's cousin is appointed for multiple cases (general appointment), a certified copy of the authorization must be filed.

Court's Order: If Priya had not appointed her cousin or any other agent within the jurisdiction of the Chennai High Court, the court could order her to appoint an agent residing within its jurisdiction to accept service of process on her behalf within a specified time.

Example 3:

Scenario: An NGO based in Bangalore files a public interest litigation (PIL) in the Supreme Court of India regarding environmental issues affecting multiple states.

Application of the Act:

Appointment of Pleader: The NGO appoints a prominent environmental lawyer based in Delhi to represent them in the Supreme Court. The NGO's director signs a written document authorizing the lawyer to act on behalf of the NGO.

Filing in Court: This written authorization is filed in the Supreme Court. Since the appointment is for this specific case (special appointment), the original document is filed.

Court's Order: If the NGO had not appointed a recognized agent or pleader within the jurisdiction of the Supreme Court, the court could order the NGO to

appoint an agent residing within its jurisdiction to accept service of process on its behalf within a specified time.

ORDER IV: INSTITUTION OF SUITS

Rule 1: Suit to be commenced by plaintiff.

Institution of Suits

- (1) Every suit shall be instituted by presenting a plaint in duplicate to the Court or such officer as it appoints in this behalf.
- (2) Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable.
- (3) The plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub-rules (1) and (2).

Simplified act

Starting a Lawsuit

- (1) To start a lawsuit, you need to submit a written complaint (called a "plaint") in two copies to the Court or to an officer designated by the Court.
- (2) Your written complaint must follow the rules mentioned in Orders VI and VII, as long as those rules apply to your case.
- (3) Your lawsuit will not be considered properly started unless your written complaint meets the requirements mentioned in points (1) and (2).

Explanation using Example

Example 1:

Ravi has a dispute with his neighbor, Suresh, over the boundary of their properties in Mumbai. Ravi believes that Suresh has encroached on his land by building a wall that extends into Ravi's property. Ravi decides to take legal action to resolve the issue.

Ravi approaches a civil court in Mumbai to file a suit against Suresh.

He prepares a plaint, which is a written statement of his claim, detailing the facts of the case, the relief he seeks, and the legal grounds for his claim.

Ravi ensures that the plaint is in duplicate, as required by Rule 1 of Order IV of the Code of Civil Procedure, 1908.

He submits the plaint to the court or the designated officer appointed by the court.

The court checks if the plaint complies with the rules specified in Orders VI and VII, which include requirements such as the format of the plaint, verification, and necessary documents.

Since Ravi's plaint meets all the necessary requirements, it is deemed to be duly instituted, and the court proceeds with the case.

Example 2:

Priya, a resident of Delhi, has not been paid her salary for the last three months by her employer, XYZ Pvt. Ltd. Despite repeated requests, the company has not cleared her dues. Priya decides to file a suit to recover her unpaid salary.

Priya drafts a plaint, clearly stating the amount of salary due, the period for which it is unpaid, and the legal basis for her claim.

She makes two copies of the plaint, as required by Rule 1 of Order IV of the Code of Civil Procedure, 1908.

Priya submits the plaint to the appropriate civil court in Delhi or to the officer appointed by the court to receive such documents.

The court examines the plaint to ensure it adheres to the rules laid out in Orders VI and VII, which include proper verification, necessary annexures, and the correct format.

Priya's plaint fulfills all the stipulated requirements, so the court accepts it as duly instituted.

The court then issues a notice to XYZ Pvt. Ltd. to respond to the suit, and the legal proceedings commence.

Rule 2: Register of suits.

The Court shall cause the particulars of every suit to be entered in a book to be kept for the purpose and called the register of civil suits. Such entries shall be numbered in every year according to the order in which the plaints are admitted.

Simplified act

The Court will keep a record of every lawsuit in a special book called the register of civil suits.

Each lawsuit will be given a number based on the order it was accepted, starting fresh each year.

Explanation using Example

Example 1:

Ravi files a civil suit against his neighbor, Suresh, for encroaching on his property. When Ravi submits his plaint (formal written complaint) to the court, the court clerk enters the details of Ravi's suit into a special book called the "register of civil suits." This entry includes information such as the names of the parties involved, the nature of the complaint, and the date of filing. Ravi's suit is given a unique number for the year, say "2023/001," indicating it is the first suit filed in the year 2023.

Example 2:

Meera files a civil suit against a construction company for not completing her house on time. She submits her plaint to the court on January 15, 2023. The court clerk records the details of Meera's suit in the register of civil suits, assigning it the number "2023/002," as it is the second suit filed that year. Later, on February 10, 2023, another person, Arjun, files a suit against a car dealer for selling him a defective vehicle. Arjun's suit is entered into the register and given the number "2023/003," indicating it is the third suit filed in 2023.

“ORDER IV-A

CONSOLIDATION OF CASES

1. Consolidation of suits and proceedings— When two or more suits or proceedings are pending in the same court, and the court is of opinion that it is expedient in the interest of justice, it may by order direct their joint trial, whereupon all such suits and proceedings may be decided upon the evidence in all or any such suits or proceedings. ”

[Vide Uttar Pradesh Act 57 of 1976, s. 5]

Amendment of Order VI.— In the First Schedule, in Order VI, in rule 15, in sub-rule (1), for the words “at the foot”, the following words shall be substituted, namely :—

“on oath administered by an officer empowered under section 139 of the Code,”.

ORDER V: ISSUE AND SERVICE OF SUMMONS

ISSUE OF SUMMONS

Rule 1: Summons.

Summons to Defendant

(1) When a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, within thirty days from the date of service of summons on that defendant:

Provided that no such summons shall be issued when a defendant has appeared at the presentation of plaint and admitted the plaintiff's claim:

Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.

Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.

(2) A defendant to whom a summons has been issued under sub-rule (1) may appear -

(a) in person, or

(b) by a pleader duly instructed and able to answer all material questions relating to the suit, or

(c) by a pleader accompanied by some person able to answer all such questions.

(3) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court.

Simplified act

Summons to Defendant

(1) When a lawsuit has been properly started, a notice (summons) can be sent to the defendant (the person being sued) to show up and respond to the claim. The defendant must also submit a written defense within thirty days from the day they receive the summons:

However, if the defendant shows up when the lawsuit is first presented and agrees with the plaintiff's (the person suing) claim, no summons will be sent.

If the defendant doesn't submit the written defense within thirty days, the Court can allow more time, but this must be written down and cannot be more than ninety days from the day the summons was received.

If the defendant still doesn't submit the written defense within thirty days, the Court can give another extension, but this must be written down and may include a cost penalty. This extension cannot be more than one hundred twenty days from the day the summons was received. After one hundred twenty days, the defendant loses the right to submit the written defense, and the Court will not accept it.

(2) A defendant who receives a summons under rule (1) can show up:

(a) in person, or

(b) with a lawyer who is fully informed and can answer all important questions about the case, or

(c) with a lawyer and another person who can answer all important questions.

(3) Every summons must be signed by the Judge or an appointed officer and must have the Court's seal.

Explanation using Example

Example 1:

Scenario: Rajesh files a civil suit against Suresh for non-payment of a loan amounting to ₹5,00,000.

Application of the Act:

Institution of Suit: Rajesh files the suit in the appropriate civil court.

Issuance of Summons: The court issues a summons to Suresh, asking him to appear and respond to the claim within thirty days from the date he receives the summons.

Response Time: Suresh receives the summons on January 1st. He has until January 31st to file his written statement (defense).

Failure to Respond in 30 Days: If Suresh does not file his written statement by January 31st, the court may allow him additional time, but not beyond ninety days from the date of service (i.e., not beyond April 1st), provided the court records the reasons for the extension.

Further Extension: If Suresh still fails to file his written statement by April 1st, the court may grant a final extension up to 120 days from the date of service (i.e., not beyond May 1st), but Suresh must pay costs as deemed fit by the court.

Forfeiture of Right: If Suresh does not file his written statement by May 1st, he loses the right to file it, and the court will not accept it thereafter.

Example 2:

Scenario: Priya files a civil suit against her neighbor, Anil, for encroaching on her property.

Application of the Act:

Institution of Suit: Priya files the suit in the appropriate civil court.

Issuance of Summons: The court issues a summons to Anil, asking him to appear and respond to the claim within thirty days from the date he receives the summons.

Appearance in Court: Anil receives the summons on February 10th. He decides to appear in court in person on February 20th and admits to the encroachment.

No Need for Written Statement: Since Anil has appeared and admitted Priya's claim, no written statement is required, and the court proceeds to pass an appropriate order based on Anil's admission.

Court's Decision: The court may order Anil to remove the encroachment and restore Priya's property to its original state.

Example 3:

Scenario: Meera files a civil suit against a company for breach of contract.

Application of the Act:

Institution of Suit: Meera files the suit in the appropriate civil court.

Issuance of Summons: The court issues a summons to the company, asking it to appear and respond to the claim within thirty days from the date it receives the summons.

Company's Response: The company receives the summons on March 5th. The company decides to send its legal representative (pleader) to court.

Appearance by Pleader: The pleader appears in court on March 15th, accompanied by the company's manager who is able to answer all material questions related to the suit.

Filing of Written Statement: The pleader files the written statement on behalf of the company within the thirty-day period, i.e., by April 4th.

Court Proceedings: The court proceeds with the case based on the written statement and other evidence presented by both parties.

Example 4:

Scenario: Arjun files a civil suit against his tenant, Ravi, for non-payment of rent.

Application of the Act:

Institution of Suit: Arjun files the suit in the appropriate civil court.

Issuance of Summons: The court issues a summons to Ravi, asking him to appear and respond to the claim within thirty days from the date he receives the summons.

Failure to Appear: Ravi receives the summons on April 1st but does not appear in court or file a written statement by April 30th.

Court's Extension: The court, for recorded reasons, allows Ravi an additional sixty days to file the written statement, extending the deadline to June 30th.

Final Extension: Ravi still fails to file the written statement by June 30th. The court grants a final extension up to 120 days from the date of service, i.e., until July 30th, with an order to pay costs.

Forfeiture of Right: Ravi does not file the written statement by July 30th. He forfeits the right to file it, and the court proceeds with the case based on the available evidence.

Rule 2: Copy of plaint annexed to summons.

Every summon shall be accompanied by a copy of the plaint.

Rule 3: Court may order defendant or plaintiff to appear in person.

(1) Where the court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in Court on the day therein specified.

(2) Where the Court sees reason to require the personal appearance of the plaintiff on the same day, it shall make an order for such appearance.

Simplified act

(1) If the court thinks it's necessary for the defendant to show up in person, the court will send a notice telling the defendant to come to court on a specific day.

(2) If the court thinks it's necessary for the plaintiff to show up in person on the same day, the court will also send a notice telling the plaintiff to come to court.

Explanation using Example

Example 1:

Scenario: A property dispute case in Mumbai.

Details: Rajesh has filed a lawsuit against his neighbor, Sunil, claiming that Sunil has encroached on his property by building a wall that extends into Rajesh's land. Rajesh has provided documents and photographs as evidence.

Application of Rule 3:

The court reviews the evidence and decides that it needs to hear Sunil's explanation in person to understand his side of the story.

The court issues a summons ordering Sunil to appear in person on a specified date to provide his testimony and any evidence he may have.

Additionally, the court finds it necessary to hear Rajesh's detailed account and cross-examine him regarding the evidence he submitted.

Therefore, the court also issues an order for Rajesh to appear in person on the same date.

Example 2:

Scenario: A breach of contract case in Delhi.

Details: Priya has sued a construction company, ABC Builders, for not completing the construction of her house as per the agreed timeline and specifications. Priya claims that the delay has caused her financial losses and mental stress.

Application of Rule 3:

The court examines the initial documents and correspondence between Priya and ABC Builders.

The court determines that it is crucial to hear the personal account of the managing director of ABC Builders to understand the reasons for the delay and any mitigating circumstances.

The court issues a summons ordering the managing director of ABC Builders to appear in person on a specified date.

Similarly, the court decides that Priya's personal appearance is necessary to elaborate on the impact of the delay and to answer any questions from the defense.

Consequently, the court issues an order for Priya to appear in person on the same date.

Rule 4: No party to be ordered to appear in person unless resident within certain limits.

No party shall be ordered to appear in person unless he resides -

- (a) within the local limits of the Court's ordinary original jurisdiction, or
- (b) without such limits but at a place less than fifty or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than two hundred miles distance from the court-house.

Simplified act

No one will be required to show up in person unless they live -

- (a) within the area where the Court normally has authority, or
- (b) outside that area but less than fifty miles away, or (if there is a train, boat, or other public transport for most of the distance) less than two hundred miles from the courthouse.

Explanation using Example

Example 1:

Ravi lives in Mumbai, and he is involved in a civil lawsuit filed in the Mumbai High Court. The court wants to order Ravi to appear in person for a hearing. Since Ravi resides within the local limits of the Mumbai High Court's ordinary original jurisdiction, the court can legally order Ravi to appear in person.

Example 2:

Sita lives in Pune, which is approximately 150 kilometers away from Mumbai. She is involved in a civil case in the Mumbai High Court. Since Pune is less than 200 miles away from Mumbai and there is established public conveyance (train and bus services) covering the distance, the court can order Sita to appear in person for the hearing.

Example 3:

Arjun lives in Delhi and is involved in a civil case in the Mumbai High Court. Delhi is more than 200 miles away from Mumbai, and even though there are flights and trains connecting the two cities, the distance exceeds the limit specified in the rule. Therefore, the Mumbai High Court cannot order Arjun to appear in person for the hearing.

Example 4:

Meera lives in a small village in Gujarat, which is 300 kilometers away from Ahmedabad. She is involved in a civil case in the Ahmedabad District Court. Since her village is more than 200 miles away from Ahmedabad and there is no established public conveyance covering five-sixths of the distance, the court cannot order Meera to appear in person for the hearing.

Rule 5: Summons to be either to settle issues or for final disposal.

The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly:

Provided that, in every suit heard by a Court of Small Causes, the summons shall be for the final disposal of the suit.

Simplified act

When the Court sends out a summons (a notice to appear in court), it will decide if the summons is just to settle specific issues or to completely resolve the case. The summons will clearly state this decision.

However, if the case is being heard by a Court of Small Causes (a court that handles minor cases), the summons will always be for the complete resolution of the case.

Explanation using Example

Example 1:

Scenario: A property dispute between two neighbors, Mr. Sharma and Mr. Verma.

Details: Mr. Sharma files a civil suit against Mr. Verma, claiming that Mr. Verma has encroached on his property. The court, upon receiving the suit, needs to decide the type of summons to issue.

Application of Rule 5:

The court determines that the case involves complex property boundaries and requires detailed examination of evidence and witness testimonies.

Therefore, the court issues a summons to both parties to settle the issues first. This means that the initial hearings will focus on identifying the specific points of dispute and the evidence each party will present.

Summons Content: The summons sent to Mr. Verma states that the purpose of the initial hearing is to settle the issues related to the property boundaries and encroachment claims.

Example 2:

Scenario: A small cause suit for recovery of a loan amount.

Details: Ms. Gupta lends Rs. 50,000 to Mr. Singh, who fails to repay the amount. Ms. Gupta files a suit in a Court of Small Causes to recover the loan.

Application of Rule 5:

Since the suit is heard by a Court of Small Causes, the rule mandates that the summons shall be for the final disposal of the suit.

The court issues a summons to Mr. Singh for the final hearing, where both parties will present their evidence and arguments, and the court will make a final decision.

Summons Content: The summons sent to Mr. Singh clearly states that the hearing is for the final disposal of the suit, meaning that the court intends to resolve the matter in that hearing itself.

Rule 6: Fixing day for appearance of defendant.

The day under sub-rule (1) of rule 1 shall be fixed with reference to the current business of the Court, the place of residence of the defendant and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

Simplified act

The date mentioned in sub-rule (1) of rule 1 should be chosen based on:

The current workload of the Court,

Where the defendant lives,

The time needed to deliver the summons.

The date should be set in a way that gives the defendant enough time to show up and respond on that day.

Explanation using Example

Example 1:

Ravi, a resident of Mumbai, files a civil suit against Shyam, who lives in Delhi, for breach of contract. The court in Mumbai issues a summons to Shyam to appear in court. According to Rule 6 of Order V of The Code of Civil Procedure, 1908, the court must consider its current workload, Shyam's residence in Delhi, and the time required to serve the summons to Shyam. The court decides to fix the appearance date 30 days from the date of issuing the summons, ensuring Shyam has enough time to receive the summons and make arrangements to appear in court.

Example 2:

Anita, residing in Bangalore, files a lawsuit against her former business partner, Raj, who lives in Chennai, for financial mismanagement. The Bangalore court issues a summons to Raj. In compliance with Rule 6 of Order V of The Code of Civil Procedure, 1908, the court takes into account its ongoing cases, Raj's location in Chennai, and the time needed to serve the summons. The court sets the appearance date 25 days from the issuance of the summons, providing Raj with adequate time to receive the summons and prepare his defense.

Rule 7: Summons to order defendant to produce documents relied on by him.

The summons to appear and answer shall order the defendant to produce all documents or copies thereof specified in rule 1A of Order VIII in his possession or power upon which he intends to rely in support of his case.

Simplified act

The summons to appear and answer shall order the defendant to bring all documents or copies mentioned in rule 1A of Order VIII that he has and plans to use to support his case.

Explanation using Example

Example 1:

Scenario: A property dispute between two neighbors, Mr. Sharma and Mr. Verma.

Details: Mr. Sharma files a civil suit against Mr. Verma, claiming that Mr. Verma has encroached on his land. The court issues a summons to Mr. Verma

to appear and answer the allegations. Along with the summons, the court orders Mr. Verma to produce all documents related to the property boundaries, including the sale deed, property tax receipts, and any previous court orders or agreements that he intends to rely on to support his defense.

Application of Rule 7: The summons explicitly instructs Mr. Verma to bring these documents to the court on the specified date. Failure to produce these documents could weaken Mr. Verma's defense and potentially lead to an unfavorable judgment.

Example 2:

Scenario: A breach of contract case between a contractor, Ms. Gupta, and a client, Mr. Rao.

Details: Mr. Rao files a lawsuit against Ms. Gupta, alleging that she did not complete the construction work as per the agreed terms. The court issues a summons to Ms. Gupta to appear and respond to the allegations. The summons also orders Ms. Gupta to produce all documents related to the contract, including the signed agreement, payment receipts, and any correspondence (emails, letters) that she intends to use to support her case.

Application of Rule 7: The summons requires Ms. Gupta to bring these documents to the court on the specified date. These documents are crucial for Ms. Gupta to demonstrate that she fulfilled her contractual obligations or to show any reasons for the delay or incomplete work. Not producing these documents could result in a judgment in favor of Mr. Rao.

Rule 8: On issue of summons for final disposal, defendant to be directed to produce his witnesses.

Where the summons is for the final disposal of the suit, it shall also direct the defendant to produce, on the day fixed for his appearance, all witnesses upon whose evidence he intends to rely in support of his case.

Simplified act

If the summons is for the final decision of the case, it will also instruct the defendant to bring all the witnesses he plans to use to support his case on the day he is supposed to appear in court.

Explanation using Example

Example 1:

Rajesh files a civil suit against his neighbor, Suresh, for encroaching on his property. The court issues a summons to Suresh for the final disposal of the suit. The summons explicitly instructs Suresh to appear in court on the specified date and to bring all witnesses who can testify in his favor regarding the property boundaries. Suresh, therefore, arranges for his surveyor and two other neighbors who have knowledge of the property lines to be present in court on the given date.

Example 2:

Meena sues a local contractor, Ramesh, for failing to complete the construction of her house as per the agreed contract. The court issues a summons to Ramesh for the final hearing of the case. The summons directs Ramesh to appear in court on the scheduled date and to bring all witnesses who can support his defense, such as his subcontractors and suppliers who can testify about the delays caused by unforeseen circumstances. Ramesh ensures that these witnesses are available to testify on the day of the hearing.

SERVICE OF SUMMONS

Rule 9: Delivery of summons by Court.

(1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent either to the proper officer to be served by him or one of his subordinates or to such courier services as are approved by the Court.

(2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him in such manner as the Court may direct.

(3) The services of summons may be made by delivering or transmitting a copy thereof by registered post acknowledgment due, addressed to the defendant or his agent empowered to accept the service or by speed post or by such courier services as are approved by the High Court or by the Court referred to in sub-rule (1) or by any other means of transmission of documents (including fax message or electronic mail service) provided by the rules made by the High Court:

Provided that the service of summons under this sub-rule shall be made at the expenses of the plaintiff.

(4) Notwithstanding anything contained in sub-rule (1), where a defendant resides outside the jurisdiction of the Court in which the suit is instituted, and the Court directs that the service of summons on that defendant may be made by such mode of service of summons as is referred to in sub-rule (3) (except by registered post acknowledgment due), the provisions of rule 21 shall not apply.

(5) When an acknowledgment or any other receipt purporting to be signed by the defendant or his agent is received by the Court or postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee or by any person authorised by the courier service to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons or had refused to accept the summons by any other means specified in sub-rule (3) when tendered or transmitted to him, the Court issuing the summons shall declare that the summons had been duly served on the defendant:

Provided that where the summons was properly addressed, pre-paid and duly sent by registered post acknowledgment due, the declaration referred to in this sub-rule shall be made notwithstanding the fact that the acknowledgment having been lost or mislaid, or for any other reason, has not been received by the Court within thirty days from the date of issue of summons.

(6) The High Court or the District Judge, as the case may be, shall prepare a panel of courier agencies for the purposes of sub-rule (1).

Simplified act

(1) If the person being sued lives within the area covered by the Court where the case is filed, or has an agent in that area who can accept the court papers, the court papers should be given to the right court officer or sent through a court-approved courier service, unless the Court says otherwise.

(2) The right court officer can be from a different Court than the one where the case is filed. If so, the court papers can be sent to him as directed by the Court.

(3) The court papers can be delivered by registered mail that requires a signature, addressed to the person being sued or their agent, or by speed post, or by a court-approved courier service, or by any other method like fax or email as allowed by the High Court rules:

Note: The person who filed the case has to pay for delivering the court papers.

(4) If the person being sued lives outside the area covered by the Court where the case is filed, and the Court allows using any method mentioned in point (3) (except registered mail with acknowledgment), then rule 21 does not apply.

(5) If the Court gets a signed receipt from the person being sued or their agent, or if the postal service or courier says that the person being sued refused to accept the court papers, the Court will consider the papers as properly delivered:

Note: If the papers were correctly addressed, prepaid, and sent by registered mail with acknowledgment, the Court will consider them delivered even if the acknowledgment is lost or not received within 30 days.

(6) The High Court or the District Judge will create a list of approved courier services for delivering court papers as mentioned in point (1).

Explanation using Example

Example 1:

Rajesh files a civil suit against Suresh in the District Court of Mumbai. Suresh resides in Mumbai, within the jurisdiction of the court. The court decides to issue a summons to Suresh. According to Rule 9(1), the court can either send the summons to a proper officer of the court or use an approved courier service to deliver the summons to Suresh. The court opts to use an approved courier service. The courier service delivers the summons to Suresh's residence, and Suresh acknowledges receipt by signing the delivery receipt. The court receives the acknowledgment and records that the summons has been duly served.

Example 2:

Priya files a civil suit against Anil in the District Court of Delhi. Anil resides in Gurgaon, which is outside the jurisdiction of the Delhi court. The court decides to issue a summons to Anil using speed post, as per Rule 9(3). The speed post is sent to Anil's address in Gurgaon. However, Anil refuses to accept the delivery. The postal employee makes an endorsement on the postal article stating that Anil refused to take delivery. The postal article is returned to the court with this endorsement. According to Rule 9(5), the court declares that the summons has been duly served on Anil, despite his refusal to accept it.

Example 3:

Sunita files a civil suit against her former business partner, Ravi, in the High Court of Chennai. Ravi resides in Bangalore, outside the jurisdiction of the Chennai court. The court decides to issue a summons to Ravi via electronic mail, as per Rule 9(3). The summons is sent to Ravi's official email address. Ravi receives the email and sends an acknowledgment of receipt back to the court. The court records the acknowledgment and declares that the summons has been duly served on Ravi.

Example 4:

Manoj files a civil suit against his tenant, Arjun, in the District Court of Pune. Arjun resides in Pune, within the jurisdiction of the court. The court decides to issue a summons to Arjun using a courier service approved by the High Court. The courier service attempts to deliver the summons to Arjun, but Arjun is not at home. The courier service leaves a notice at Arjun's residence, asking him to collect the summons from their office. Arjun does not collect the summons within the specified time. The courier service returns the summons to the court with an endorsement stating that Arjun did not collect the summons. According to Rule 9(5), the court declares that the summons has been duly served on Arjun.

Example 5:

Kavita files a civil suit against her neighbor, Meera, in the District Court of Hyderabad. Meera resides in Hyderabad, within the jurisdiction of the court. The court decides to issue a summons to Meera using registered post acknowledgment due, as per Rule 9(3). The registered post is sent to Meera's address, but the acknowledgment receipt is lost in transit. The court does not receive the acknowledgment within thirty days. However, since the summons was properly addressed, pre-paid, and duly sent, the court declares that the summons has been duly served on Meera, as per the proviso to Rule 9(5).

Rule 9A: Summons given to the plaintiff for service.

(1) The Court may, in addition to the service of summons under rule 9, on the application of the plaintiff for the issue of a summons for the appearance of the defendant, permit such plaintiff to effect service of such summons on such defendant and shall, in such a case, deliver the summons to such plaintiff for service.

(2) The service of such summons shall be effected by or on behalf of such plaintiff by delivering or tendering to the defendant personally a copy thereof

signed by the Judge or such officer of the Court as he may appoint in this behalf and sealed with the seal of the Court or by such mode of service as is referred to in sub-rule (3) of rule 9.

(3) The provisions of rules 16 and 18 shall apply to a summons personally served under this rule as if the person effecting service were a serving officer.

(4) If such summons, when tendered, is refused or if the person served refuses to sign an acknowledgment of service or for any reason such summons cannot be served personally, the Court shall, on the application of the party, re-issue such summons to be served by the Court in the same manner as a summons to a defendant.

Simplified act

(1) Besides the usual way of sending a court summons, the Court can allow the person who filed the lawsuit (the plaintiff) to personally deliver the summons to the person being sued (the defendant). The Court will give the summons to the plaintiff for this purpose.

(2) The plaintiff must deliver the summons to the defendant in person. The summons must be signed by the Judge or an authorized court officer and sealed with the court's seal. Alternatively, it can be delivered using other approved methods mentioned in rule 9.

(3) The rules that apply to court officers delivering summonses also apply to the plaintiff when they deliver the summons personally.

(4) If the defendant refuses to accept the summons or sign a receipt, or if the summons cannot be delivered in person for any reason, the Court will, upon request, issue a new summons to be delivered by the Court in the usual way.

Explanation using Example

Example 1:

Scenario: Ramesh files a civil suit against Suresh for breach of contract.

Application of Rule 9A:

Ramesh's Application: Ramesh applies to the court for the issuance of a summons for Suresh's appearance.

Court's Permission: The court permits Ramesh to serve the summons to Suresh personally.

Delivery of Summons: The court delivers the summons to Ramesh, which is signed by the judge and sealed with the court's seal.

Service of Summons: Ramesh personally delivers the summons to Suresh at his residence.

Acknowledgment: Suresh accepts the summons and signs an acknowledgment of service.

Outcome: The summons is successfully served, and Suresh is now required to appear in court on the specified date.

Example 2:

Scenario: Priya files a civil suit against her tenant, Raj, for non-payment of rent.

Application of Rule 9A:

Priya's Application: Priya applies to the court for the issuance of a summons for Raj's appearance.

Court's Permission: The court permits Priya to serve the summons to Raj personally.

Delivery of Summons: The court delivers the summons to Priya, which is signed by the judge and sealed with the court's seal.

Service of Summons: Priya goes to Raj's residence to deliver the summons, but Raj refuses to accept it and does not sign the acknowledgment.

Re-issuance of Summons: Priya informs the court about Raj's refusal. The court re-issues the summons to be served by a court officer.

Outcome: The court officer successfully serves the summons to Raj, ensuring that he is aware of the court proceedings and required to appear in court.

Example 3:

Scenario: Anil files a civil suit against his business partner, Sunil, for misappropriation of funds.

Application of Rule 9A:

Anil's Application: Anil applies to the court for the issuance of a summons for Sunil's appearance.

Court's Permission: The court permits Anil to serve the summons to Sunil personally.

Delivery of Summons: The court delivers the summons to Anil, which is signed by the judge and sealed with the court's seal.

Service of Summons: Anil attempts to deliver the summons to Sunil at his office, but Sunil is out of town and cannot be reached.

Re-issuance of Summons: Anil informs the court about the inability to serve the summons. The court re-issues the summons to be served by a court officer.

Outcome: The court officer serves the summons to Sunil upon his return, ensuring that Sunil is aware of the court proceedings and required to appear in court.

Rule 10: Mode of service.

Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the Court.

Simplified act

The summons must be served by giving or offering a copy that is signed by the Judge or an officer appointed by the Judge, and it must have the Court's seal on it.

Explanation using Example

Example 1:

Ravi has filed a civil suit against his neighbor, Suresh, for encroaching on his property. The court issues a summons to Suresh to appear before the court. According to Rule 10 of the Code of Civil Procedure 1908, the court clerk, appointed by the judge, personally delivers a copy of the summons to Suresh at his residence. The summons is signed by the judge and sealed with the court's seal. Suresh receives the summons and acknowledges it, ensuring he is aware of the court date and the nature of the case against him.

Example 2:

Meera has a pending civil case against a company for breach of contract. The court needs to serve a summons to the company's registered office. Following Rule 10 of the Code of Civil Procedure 1908, the court appoints an officer to deliver the summons. The officer goes to the company's registered office and hands over a copy of the summons to the company's legal representative. The summons is duly signed by the judge and bears the court's seal. The legal representative accepts the summons on behalf of the company, ensuring that the company is informed about the court proceedings and the requirement to appear in court.

Rule 11: Service on several defendants.

Save as otherwise prescribed, where there are more defendants than one, service of the summons shall be made on each defendant.

Simplified act

Unless stated otherwise, if there is more than one defendant, each defendant must be given a copy of the summons.

Explanation using Example

Example 1:

Ravi files a civil lawsuit against three individuals, Suresh, Meena, and Raj, claiming that they collectively owe him money for a business deal gone wrong. According to Rule 11 of the Code of Civil Procedure 1908, the court must ensure that a separate summons is served to each of the defendants—Suresh, Meena, and Raj. This means that all three individuals will receive their own copy of the summons, informing them about the lawsuit and requiring their presence in court.

Example 2:

Anita files a property dispute case against her three siblings, Arjun, Priya, and Karan, alleging that they are unlawfully occupying a piece of ancestral land. Under Rule 11 of the Code of Civil Procedure 1908, the court is required to serve a summons to each sibling individually. Therefore, Arjun, Priya, and Karan will each receive a separate summons, ensuring that they are all properly notified about the legal proceedings and have the opportunity to respond to the allegations.

Rule 12: Service to be on defendant in person when practicable, or on his agent.

Wherever it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.

Simplified act

Whenever possible, the legal documents should be given directly to the defendant. If the defendant has an authorized agent who can accept the documents, then giving the documents to the agent is enough.

Explanation using Example

Example 1:

Ravi filed a civil suit against Shyam for recovery of a loan amount. The court issued a summons to Shyam to appear before the court. The court's process server went to Shyam's residence to deliver the summons. Shyam was present at home, so the process server handed the summons directly to Shyam. This is an example of service being made on the defendant in person, as it was practicable to do so.

Example 2:

Meera filed a civil suit against a company, XYZ Pvt. Ltd., for breach of contract. The court issued a summons to the company. The process server went to the registered office of XYZ Pvt. Ltd. to deliver the summons. The managing director, who is authorized to accept legal documents on behalf of the company, was present at the office. The process server handed the summons to the managing director. This is an example of service being made on the defendant's agent, as the agent was empowered to accept service on behalf of the company.

Rule 13: Service on agent by whom defendant carries on business.

(1) In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons is issued, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

(2) For the purpose of this rule the master of a ship shall be deemed to be the agent of the owner or charterer.

Simplified act

(1) If you are suing someone about their business or work, and that person does not live within the area covered by the court, you can serve the court papers to any manager or agent who is currently running that business or work within the court's area. This will be considered proper service.

(2) For this rule, the captain of a ship is considered to be the agent of the ship's owner or the person who has rented the ship.

Explanation using Example

Example 1:

Scenario: Ravi, a businessman based in Mumbai, has a legal dispute with a supplier, Shyam, who is based in Delhi. Ravi files a lawsuit in a Mumbai court. Shyam does not have a residence or office in Mumbai, but he has a regional manager, Anil, who oversees his business operations in Mumbai.

Application of Rule 13: The Mumbai court issues a summons for Shyam. Since Shyam does not reside within the local limits of the Mumbai court, the summons is served to Anil, the regional manager who personally carries on Shyam's business in Mumbai. According to Rule 13, this service of summons on Anil is considered valid and legally binding on Shyam.

Example 2:

Scenario: Meera, a garment manufacturer in Chennai, has a contractual dispute with a shipping company, Oceanic Shipping Ltd., which is headquartered in Kolkata. Meera files a lawsuit in a Chennai court. Oceanic Shipping Ltd. does not have an office in Chennai, but their ship, "MV Seafarer," is docked at Chennai port, and the ship's master, Captain Raj, is in charge.

Application of Rule 13: The Chennai court issues a summons for Oceanic Shipping Ltd. Since the company does not have an office within the local limits of the Chennai court, the summons is served to Captain Raj, the master of the ship. According to Rule 13(2), Captain Raj is deemed to be the agent of the owner or charterer of the ship, making this service of summons valid and legally binding on Oceanic Shipping Ltd.

Rule 14: Service on agent in charge in suits for immovable property.

Where in a suit to obtain relief respecting, or compensation for wrong to, immovable property, service can not be made on the defendant in person, and the defendant has no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.

Simplified act

If you are suing someone to get help or compensation for damage to property that can't be moved (like land or a building), and you can't deliver the legal papers to the person directly, and they don't have an agent who can accept the papers, you can give the papers to any agent who is in charge of the property.

Explanation using Example

Example 1:

Ravi owns a piece of agricultural land in Maharashtra but currently resides in the United States for work. A dispute arises over the boundary of Ravi's land, and his neighbor, Suresh, files a suit seeking relief and compensation for the alleged encroachment. The court needs to serve a summons to Ravi, but since he is abroad, personal service is not possible. Ravi has not appointed any specific agent to accept legal documents on his behalf. However, Ravi's cousin, Anil, manages the agricultural activities on the land. According to Rule 14 of the Code of Civil Procedure 1908, the court can serve the summons to Anil, as he is an agent in charge of the property.

Example 2:

Meera owns a commercial building in Bengaluru but lives in Delhi. A tenant in the building, Rajesh, files a suit against Meera for failing to repair the property, seeking compensation for damages caused by the neglect. The court attempts to serve the summons to Meera in Delhi, but she is frequently traveling and cannot be reached. Meera has not designated any agent to accept service of legal documents. However, the building is managed by a property management company, and the manager, Priya, oversees the day-to-day operations. Under Rule 14 of the Code of Civil Procedure 1908, the court can serve the summons to Priya, as she is an agent in charge of the property.

Rule 15: Where service may be on an adult member of defendant's family.

Where in any suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable

time and he has no agent empowered to accept service of the summons on his behalf, service may be made on any adult member of the family, whether male or female, who is residing with him.

Explanation. - A servant is not a member of the family within the meaning of this rule.

Simplified act

If someone is being sued and they are not at home when the court tries to deliver the legal notice (summons), and it seems unlikely that they will be home soon, and they don't have an authorized agent to accept the notice for them, the notice can be given to any adult family member who lives with them. This can be either a man or a woman.

Explanation. - A servant is not considered a family member for the purposes of this rule.

Explanation using Example

Example 1:

Rajesh, a businessman, is being sued by a supplier for non-payment of dues. The court issues a summons for Rajesh to appear. When the court officer goes to Rajesh's house to deliver the summons, Rajesh is out of town on a business trip. The officer learns that Rajesh will not be back for another two weeks. Since Rajesh has no agent authorized to accept the summons on his behalf, the officer serves the summons to Rajesh's wife, Priya, who is an adult member of the family and resides with him. This service is considered valid under Rule 15 of the Code of Civil Procedure 1908.

Example 2:

Meena files a lawsuit against her neighbor, Suresh, for encroaching on her property. The court issues a summons for Suresh to appear. When the court officer arrives at Suresh's residence, Suresh is not at home and is expected to be away for a few days. Suresh does not have an agent to accept the summons. The officer then serves the summons to Suresh's adult son, Rohan, who lives with him. This service is valid as per Rule 15 of the Code of Civil Procedure 1908.

Example 3:

Anita is suing her former business partner, Vikram, for breach of contract. The court issues a summons for Vikram to appear. When the court officer goes to Vikram's house, Vikram is not present and is not expected to return for a week. Vikram has no agent to accept the summons. The officer serves the summons to Vikram's adult daughter, Neha, who resides with him. This is a valid service under Rule 15 of the Code of Civil Procedure 1908.

Example 4:

Sunil is being sued by his landlord for unpaid rent. The court issues a summons for Sunil to appear. When the court officer arrives at Sunil's residence, Sunil is away on a vacation and will not return for ten days. Sunil has no agent to accept the summons. The officer serves the summons to Sunil's adult brother, Amit, who lives with him. This service is valid under Rule 15 of the Code of Civil Procedure 1908.

Example 5:

Ravi is involved in a legal dispute with his employer and is being summoned to court. When the court officer goes to Ravi's house, Ravi is not at home and is not expected to return for several days. Ravi has no agent to accept the summons. The officer serves the summons to Ravi's adult sister, Kavita, who resides with him. This service is valid according to Rule 15 of the Code of Civil Procedure 1908.

Rule 16: Person served to sign acknowledgement.

Where the serving officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original summons.

Simplified act

If the officer gives the summons directly to the defendant, or to someone acting for the defendant, he must ask that person to sign the original summons to confirm they received it.

Explanation using Example

Example 1:

Ravi, a resident of Mumbai, is being sued in a civil case. The court issues a summons to inform Ravi about the case and the date he needs to appear in

court. A court-appointed serving officer visits Ravi's home to deliver the summons. Ravi is at home and personally receives the summons. The serving officer then asks Ravi to sign an acknowledgment on the original summons to confirm that he has received it. Ravi signs the acknowledgment, and the serving officer leaves.

Example 2:

Priya, who lives in Delhi, is involved in a civil dispute. The court issues a summons for her to appear in court. When the serving officer arrives at Priya's house, she is not at home. However, her husband, Raj, is present. The serving officer hands the summons to Raj and asks him to sign an acknowledgment on the original summons to confirm receipt on behalf of Priya. Raj signs the acknowledgment, and the serving officer leaves, having fulfilled his duty as per Rule 16 of the Code of Civil Procedure, 1908.

Rule 17: Procedure when defendant refuses to accept service, or can not be found.

Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, who is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.

Simplified act

If the defendant (the person being sued) or their representative refuses to sign the receipt for the court summons, or if the serving officer (the person delivering the summons) cannot find the defendant after trying hard, the following steps should be taken:

If the defendant is not at home when the officer tries to deliver the summons and is not expected to return soon, and there is no one else authorized to accept the summons on the defendant's behalf, the officer should:

a. Attach a copy of the summons to the front door or another noticeable part of the house where the defendant usually lives, works, or runs a business.

After doing this, the officer must return the original summons to the court with a report. This report should explain:

a. That the copy was attached to the house.

b. The reasons why this was done.

c. The name and address of the person who identified the house and witnessed the attachment of the summons.

Explanation using Example

Example 1:

Rajesh, a businessman in Mumbai, is being sued by a supplier for non-payment of dues. The court issues a summons for Rajesh to appear. The court's serving officer goes to Rajesh's registered business address to deliver the summons. However, Rajesh is not present, and his office staff refuses to accept the summons on his behalf. The serving officer tries multiple times over several days but is unable to find Rajesh at his office or home. Following Rule 17 of the Code of Civil Procedure 1908, the serving officer then affixes a copy of the summons on the outer door of Rajesh's office. He also notes down the details of the person who identified the office and the circumstances under which the summons was affixed. The original summons, along with the officer's report, is returned to the court.

Example 2:

Meena, a resident of Delhi, is involved in a property dispute with her neighbor. The court issues a summons for Meena to appear. The serving officer visits Meena's residence to deliver the summons, but Meena is out of town and her family members refuse to accept the summons on her behalf. The serving officer makes several attempts to serve the summons but is unable to find Meena at her residence. As per Rule 17 of the Code of Civil Procedure 1908, the serving officer affixes a copy of the summons on the main gate of Meena's house. He records the details of the person who identified the house and the

circumstances of the service. The original summons, along with the officer's report, is then returned to the court.

Rule 18: Endorsement of time and manner of service.

The serving officer shall, in all cases in which the summons has been served under rule 16, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, a return stating the time when and the manner in which the summons was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the summons.

Simplified act

The officer who delivers the summons must always do the following when the summons has been served according to rule 16:

Write down or attach a note to the original summons.

This note should state the time and method of how the summons was delivered.

Include the name and address of the person (if there is one) who identified the person receiving the summons and who saw the summons being delivered or offered.

Explanation using Example

Example 1:

Ravi filed a civil suit against Shyam for recovery of money. The court issued a summons to Shyam to appear before the court. The serving officer, Mr. Kumar, went to Shyam's residence to deliver the summons. Shyam's neighbor, Mr. Gupta, identified Shyam and witnessed the delivery of the summons. Mr. Kumar then endorsed on the original summons the following details:

Time of service: 10:30 AM on 15th October 2023

Manner of service: Delivered in person

Name and address of the witness: Mr. Gupta, 123, ABC Street, Delhi

Example 2:

Meena filed a civil suit for partition of property against her siblings. The court issued summons to her brother, Rajesh, to appear in court. The serving officer, Ms. Sharma, went to Rajesh's office to serve the summons. Rajesh's colleague, Mr. Verma, identified Rajesh and witnessed the delivery of the summons. Ms. Sharma then endorsed on the original summons the following details:

Time of service: 2:00 PM on 20th October 2023

Manner of service: Delivered in person at the office

Name and address of the witness: Mr. Verma, XYZ Corporation, 456, DEF Road, Mumbai

Rule 19: Examination of serving officer.

Where a summons is returned under rule 17, the Court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further enquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

Simplified act

If a summons (a legal document ordering someone to appear in court) is returned to the court under rule 17, the court must take certain actions.

If the return of the summons has not been confirmed by a sworn statement (affidavit) from the person who delivered it, the court must examine that person under oath.

If the return has been confirmed by a sworn statement, the court may still choose to examine the person who delivered it under oath, or have another court do so.

The court can also conduct any other investigation it thinks is necessary.

After these steps, the court will either declare that the summons was properly delivered or order a different method of delivery as it sees fit.

Explanation using Example

Example 1:

Scenario: A civil court in Mumbai issues a summons to Mr. Sharma, who is a defendant in a property dispute case. The serving officer, Mr. Kumar, attempts to deliver the summons to Mr. Sharma's residence but finds the house locked and no one available to receive the summons. Mr. Kumar returns the summons to the court under Rule 17, stating that the house was locked.

Application of Rule 19:

The court notices that Mr. Kumar has not provided an affidavit verifying his attempt to serve the summons.

The court decides to examine Mr. Kumar on oath to understand the exact circumstances of his attempt to serve the summons.

Mr. Kumar appears before the court and explains under oath that he visited Mr. Sharma's residence twice, both times finding it locked.

Based on Mr. Kumar's testimony, the court decides to make further inquiries, such as checking with neighbors or attempting service at Mr. Sharma's workplace.

After the inquiry, the court declares that the summons has not been duly served and orders another attempt at service, possibly through an alternative method like affixing the summons to the door or publishing a notice in a local newspaper.

Example 2:

Scenario: A civil court in Delhi issues a summons to Ms. Gupta, who is a defendant in a contract dispute case. The serving officer, Ms. Rani, delivers the summons to Ms. Gupta's residence, but Ms. Gupta refuses to accept it. Ms. Rani returns the summons to the court under Rule 17, with an affidavit verifying her attempt and Ms. Gupta's refusal to accept the summons.

Application of Rule 19:

The court receives the summons along with Ms. Rani's affidavit.

Although the affidavit is provided, the court decides to examine Ms. Rani on oath to ensure the accuracy of her report.

Ms. Rani appears before the court and confirms under oath that Ms. Gupta refused to accept the summons despite being informed of its contents.

The court, satisfied with Ms. Rani's testimony, declares that the summons has been duly served as per the procedure.

The case proceeds with the court acknowledging that Ms. Gupta has been properly notified of the summons, despite her refusal to accept it.

Example 3:

Scenario: A civil court in Bangalore issues a summons to Mr. Rao, who is a defendant in a family dispute case. The serving officer, Mr. Patel, attempts to deliver the summons but finds that Mr. Rao has moved to a different city. Mr. Patel returns the summons to the court under Rule 17, stating that Mr. Rao no longer resides at the given address.

Application of Rule 19:

The court receives the returned summons without an affidavit from Mr. Patel.

The court decides to examine Mr. Patel on oath to gather more details about his attempt to serve the summons.

Mr. Patel appears before the court and explains under oath that he visited the address twice and spoke to the current occupants, who informed him that Mr. Rao had moved to Chennai.

The court decides to make further inquiries, such as obtaining Mr. Rao's new address or attempting service through electronic means if permissible.

After the inquiry, the court orders a new attempt to serve the summons at Mr. Rao's new address in Chennai.

Rule 20: Substituted service.

(1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.

(1A) Where the Court acting under sub-rule (1) orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper

circulating in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain.

(2) Effect of substituted service.- Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

(3) Where service substituted, time for appearance to be fixed.- Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

Simplified act

(1) If the Court believes that the defendant is avoiding being served with a summons, or if the summons cannot be delivered in the usual way for any other reason, the Court will order that the summons be posted in a visible place at the courthouse and at the defendant's last known residence or business location, or in any other way the Court thinks is appropriate.

(1A) If the Court decides to serve the summons through a newspaper advertisement, the advertisement must be in a daily newspaper that is circulated in the area where the defendant was last known to live, work, or do business voluntarily.

(2) The effect of substituted service.- If the Court orders an alternative way to serve the summons, it will be considered just as valid as if the summons had been delivered to the defendant in person.

(3) When service is substituted, time for appearance to be fixed.- If the Court orders an alternative way to serve the summons, the Court will set a deadline for the defendant to appear in court, based on what the situation requires.

Explanation using Example

Example 1:

Scenario: Rajesh has filed a civil suit against his former business partner, Suresh, for breach of contract. The court issues a summons for Suresh to appear in court. However, the process server is unable to locate Suresh at his residence or place of business. It appears that Suresh is deliberately avoiding the summons.

Application of Rule 20:

Court's Satisfaction: The court is convinced that Suresh is avoiding the summons.

Substituted Service Order: The court orders that the summons be served by:

Affixing a copy of the summons on the notice board of the courthouse.

Affixing a copy of the summons on the front door of Suresh's last known residence.

Publishing an advertisement in a daily newspaper that circulates in the locality where Suresh was last known to reside.

Outcome: The substituted service is considered as effective as if Suresh had been personally served. The court also sets a new date for Suresh to appear in court.

Example 2:

Scenario: Priya has filed a lawsuit against a tenant, Anil, for non-payment of rent. The court issues a summons for Anil to appear in court. Despite multiple attempts, the process server is unable to serve the summons to Anil because he has moved to an unknown location without leaving a forwarding address.

Application of Rule 20:

Court's Satisfaction: The court determines that the summons cannot be served in the ordinary way because Anil's whereabouts are unknown.

Substituted Service Order: The court orders that the summons be served by:

Affixing a copy of the summons on the notice board of the courthouse.

Affixing a copy of the summons on the door of the rental property where Anil last resided.

Publishing an advertisement in a daily newspaper that circulates in the locality where Anil was last known to reside.

Outcome: The substituted service is deemed as effective as personal service. The court fixes a new date for Anil to appear in court.

Example 3:

Scenario: Meera has filed a defamation suit against a blogger, Ravi, who has been posting defamatory content about her. The court issues a summons for

Ravi to appear in court. However, Ravi is a digital nomad and frequently changes his location, making it impossible to serve the summons in the ordinary way.

Application of Rule 20:

Court's Satisfaction: The court is satisfied that the summons cannot be served in the ordinary way due to Ravi's constantly changing location.

Substituted Service Order: The court orders that the summons be served by:

Affixing a copy of the summons on the notice board of the courthouse.

Publishing an advertisement in a daily newspaper that circulates in the locality where Ravi was last known to reside.

Sending a copy of the summons to Ravi's last known email address.

Outcome: The substituted service is considered as effective as personal service. The court sets a new date for Ravi to appear in court.

Rule 20A: Service of summons by post. Repealed.

Repealed by the Code of Civil Procedure (Amendment) Act, 1976 (104 of 1976), s. 55 (with effect from 1-2-1977).

Simplified act

This law was canceled by the Code of Civil Procedure (Amendment) Act, 1976 (Act No. 104 of 1976), section 55, starting from February 1, 1977.

Explanation using Example

Example 1:

Scenario: Rajesh files a civil lawsuit against his neighbor, Suresh, for encroaching on his property. The court needs to serve a summons to Suresh to notify him about the lawsuit and the date of the hearing.

Before Repeal: Prior to the repeal of Rule 20A, the court could have sent the summons to Suresh via postal service. Suresh would receive the summons at his home address through registered post, and he would be required to appear in court on the specified date.

After Repeal: After the repeal of Rule 20A by the Code of Civil Procedure (Amendment) Act, 1976, the court can no longer serve summons by post.

Instead, the court must use other methods such as personal delivery by a process server, or other methods prescribed under the current rules, to ensure Suresh receives the summons.

Example 2:

Scenario: Priya is involved in a civil dispute with a contractor over the quality of construction work done on her house. She decides to take legal action and files a case in the civil court. The court needs to serve a summons to the contractor to inform him about the case and the hearing date.

Before Repeal: If this case had occurred before 1977, the court could have sent the summons to the contractor via registered post. The contractor would receive the summons at his business address, and he would be required to attend the court hearing.

After Repeal: Since Rule 20A has been repealed, the court must now use alternative methods to serve the summons. This could include having a court-appointed process server deliver the summons directly to the contractor, or using other legally accepted methods to ensure the contractor is properly notified about the court proceedings.

Rule 21: Service of summons where defendant resides within jurisdiction of another Court.

- A summons may be sent by the Court by which it is issued, whether within or without the State, either by one of its officers or by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court, to any Court (not being the High Court) having jurisdiction in the place where the defendant resides.

Simplified act

A court can send a summons (a legal notice to appear in court) in different ways. It can be sent by one of the court's officers, by mail, by an approved courier service, by fax, by email, or by any other method allowed by the High Court's rules. This can be done whether the court is inside or outside the state. The summons can be sent to any court (except the High Court) that has authority in the area where the person being summoned lives.

Explanation using Example

Example 1:

Ravi, a resident of Mumbai, files a civil suit in the Mumbai City Civil Court against Shyam, who resides in Pune. Since Shyam lives outside the jurisdiction of the Mumbai City Civil Court, the court needs to serve a summons to Shyam. According to Rule 21 of the Code of Civil Procedure, 1908, the Mumbai City Civil Court can send the summons to the Pune District Court, which has jurisdiction over Shyam's residence. The Pune District Court will then ensure that Shyam receives the summons, either through one of its officers, by post, or by an approved courier service.

Example 2:

Meera, who lives in Delhi, files a lawsuit in the Delhi District Court against Anil, who resides in Bangalore. The Delhi District Court needs to serve a summons to Anil. Under Rule 21 of the Code of Civil Procedure, 1908, the Delhi District Court can send the summons to the Bangalore City Civil Court, which has jurisdiction over Anil's residence. The Bangalore City Civil Court will then serve the summons to Anil using one of its officers, by post, by an approved courier service, or even by electronic means such as email or fax, as permitted by the High Court rules.

Rule 22: Service within presidency-towns of summons issued by Courts outside.

Where a summons issued by any Court established beyond the limits of the towns of Calcutta, Madras and Bombay is to be served within any such limits, it shall be sent to the Court of Small Causes within whose jurisdiction it is to be served.

Simplified act

If a court outside the cities of Calcutta, Madras, and Bombay issues a summons that needs to be delivered within any of these cities, it should be sent to the Court of Small Causes that has authority in the area where it needs to be delivered.

Explanation using Example

Example 1:

Rajesh, a resident of Pune, files a civil lawsuit against Suresh, who resides in Mumbai. The Pune court issues a summons for Suresh to appear in court.

Since Suresh lives in Mumbai, which is within the limits of the presidency town of Bombay, the Pune court sends the summons to the Court of Small Causes in Mumbai. The Court of Small Causes in Mumbai then serves the summons to Suresh.

Example 2:

Meena, living in Chennai, has a property dispute with her cousin, Ravi, who lives in Kolkata. Meena files a case in the Chennai court, and the court issues a summons for Ravi to appear. Because Ravi resides in Kolkata, which is within the limits of the presidency town of Calcutta, the Chennai court sends the summons to the Court of Small Causes in Kolkata. The Court of Small Causes in Kolkata is responsible for serving the summons to Ravi.

Rule 23: Duty of Court to which summons is sent.

The Court to which a summons is sent under rule 21 or rule 22 shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue, together with the record (if any) of its proceedings with regard thereto.

Simplified act

When a court receives a summons sent under rule 21 or rule 22, it should treat the summons as if it had been issued by that court. After dealing with the summons, the court should send it back to the original court along with any records of what it did.

Explanation using Example

Example 1:

Scenario: Rajesh, a resident of Mumbai, files a civil suit against Suresh, who resides in Delhi, for breach of contract. The Mumbai court issues a summons to Suresh to appear in court.

Application of Rule 23:

The Mumbai court sends the summons to the Delhi court under Rule 21 or Rule 22.

Upon receiving the summons, the Delhi court treats it as if it had been issued by the Delhi court itself.

The Delhi court serves the summons to Suresh and records the proceedings related to the service.

After completing the service, the Delhi court returns the summons along with the record of its proceedings to the Mumbai court.

Example 2:

Scenario: Priya, living in Chennai, files a lawsuit against her former business partner, Anil, who now resides in Kolkata, for misappropriation of funds. The Chennai court needs to serve a summons to Anil.

Application of Rule 23:

The Chennai court sends the summons to the Kolkata court under Rule 21 or Rule 22.

The Kolkata court, upon receiving the summons, acts as if it had issued the summons itself.

The Kolkata court serves the summons to Anil and documents the steps taken during the service.

Once the service is completed, the Kolkata court sends the summons back to the Chennai court along with the records of its proceedings.

Rule 24: Service on defendant in prison.

Where the defendant is confined in a prison, the summons shall be delivered or sent or by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court to the officer in charge of the prison for service on the defendant.

Simplified act

If the person being sued (the defendant) is in jail, the court papers (summons) can be delivered to the prison in several ways. These include sending it by mail, using a courier service approved by the High Court, sending a fax, or using email. The High Court may also have other approved methods for delivering the

summons. The papers should be given to the officer in charge of the prison, who will then give them to the defendant.

Explanation using Example

Example 1:

Rajesh, a businessman, is involved in a civil dispute over a property matter. Unfortunately, Rajesh is currently serving a sentence in Tihar Jail. The plaintiff, Suresh, files a lawsuit against Rajesh and needs to serve him a summons to appear in court. According to Rule 24 of The Code Of Civil Procedure 1908, the court clerk sends the summons via an approved courier service to the officer in charge of Tihar Jail. The officer in charge then ensures that Rajesh receives the summons, allowing him to be informed about the court proceedings despite being in prison.

Example 2:

Meena, a software engineer, has a pending civil case against her former employer for wrongful termination. However, Meena is currently imprisoned in Bangalore Central Jail due to a separate criminal case. Her lawyer needs to serve her a summons for the upcoming court hearing. Following Rule 24 of The Code Of Civil Procedure 1908, the lawyer sends the summons through an approved electronic mail service to the officer in charge of Bangalore Central Jail. The officer in charge receives the email, prints the summons, and delivers it to Meena, ensuring she is aware of the court date and can make necessary arrangements to attend.

Rule 25: Service where defendant resides out of India and has no agent.

Where the defendant resides out of India and has no agent in India empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him or by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court, if there is postal communication between such place and the place where the Court is situate:

Provided that where any such defendant resides in Bangladesh or Pakistan, the summons, together with a copy thereof, may be sent for service on the defendant, to any Court in that country (not being the High Court) having jurisdiction in the place where the defendant resides:

Provided further that where any such defendant is a public officer in Bangladesh or Pakistan (not belonging to the Bangladesh or, as the case may be, Pakistan military, naval or air forces) or is a servant of a railway company or local authority in that country, the summons, together with a copy thereof, may be sent for service on the defendant, to such officer or authority in that country as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Simplified act

If the person being sued lives outside of India and doesn't have someone in India who can accept legal documents for them, the court papers should be sent directly to the person at their address. This can be done by mail, courier service approved by the High Court, fax, email, or any other method allowed by the High Court's rules, as long as there is a way to send mail between the two places.

If the person being sued lives in Bangladesh or Pakistan, the court papers, along with a copy, can be sent to a local court in that country (not the High Court) that has authority in the area where the person lives.

If the person being sued is a public officer in Bangladesh or Pakistan (not part of the military, navy, or air force) or works for a railway company or local government in that country, the court papers, along with a copy, can be sent to the officer or authority specified by the Central Government in an official notice.

Explanation using Example

Example 1:

Rajesh, an Indian businessman, files a civil lawsuit in a court in Mumbai against John, who resides in the United States and has no agent in India to accept legal documents on his behalf. According to Rule 25 of the Code of Civil Procedure 1908, the court in Mumbai will send the summons directly to John's address in the United States. The summons can be sent via approved courier service, fax, or email, as permitted by the High Court rules. If there is postal communication between Mumbai and the United States, the court ensures that the summons reaches John through one of these methods.

Example 2:

Meera, an Indian citizen, files a civil case in a Delhi court against Ahmed, who resides in Bangladesh and has no agent in India. According to Rule 25, the court in Delhi will send the summons, along with a copy, to a court in Bangladesh that has jurisdiction over the area where Ahmed resides. This court in Bangladesh will then serve the summons to Ahmed. If Ahmed is a public officer in Bangladesh, the summons may be sent to the specified officer or authority in Bangladesh as notified by the Central Government of India.

Rule 26: Service in foreign territory through Political Agent or Court.

Where-

(a) in the exercise of any foreign jurisdiction vested in the Central Government, a Political Agent has been appointed, or a Court has been established or continued, with power to serve a summons, issued by a Court under this Code, in any foreign territory in which the defendant actually and voluntarily resides, carries on business or personally works for gain, or

(b) the Central Government has, by notification in the Official Gazette, declared in respect of any Court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid, that service by such Court of any summons issued by a Court under this Code shall be deemed to be valid service,

the summons may be sent to such Political Agent or Court, by post, or otherwise, or if so directed by the Central Government, through the Ministry of that Government dealing with foreign affairs, or in such other manner as may be specified by the Central Government for the purpose of being served upon the defendant; and, if the Political Agent or Court returns the summons with an endorsement purporting to have been made by such Political Agent or by the Judge or other officer of the Court to the effect that the summons has been served on the defendant in the manner hereinbefore directed, such endorsement shall be deemed to be evidence of service.

Simplified act

Where-

(a) The Central Government has appointed a Political Agent or set up a Court in a foreign country. This agent or court has the power to deliver a court summons to someone who lives, works, or does business in that foreign country, or

(b) The Central Government has announced in the Official Gazette that a court in a foreign country (which is not set up by the Central Government) can deliver a court summons, and this will be considered valid,

the summons can be sent to the Political Agent or Court by mail or other means. If the Central Government directs, it can also be sent through the Ministry of Foreign Affairs or any other specified method. If the Political Agent or Court sends back the summons with a note saying it has been delivered to the person, this note will be accepted as proof that the summons was served.

Explanation using Example

Example 1:

Scenario: Rajesh, an Indian businessman, has a legal dispute with another businessman, Ahmed, who resides in Dubai. Rajesh files a lawsuit in an Indian court, and the court needs to serve a summons to Ahmed in Dubai.

Application of Rule 26:

The Indian court issues a summons for Ahmed.

Since Dubai is a foreign territory, the Indian court sends the summons to the Political Agent appointed by the Central Government in Dubai.

The Political Agent in Dubai receives the summons and serves it to Ahmed at his business address.

The Political Agent then endorses the summons, confirming that it has been served to Ahmed, and sends it back to the Indian court.

The Indian court accepts the endorsement as valid evidence that Ahmed has been served with the summons.

Example 2:

Scenario: Priya, an Indian citizen, files a civil case against her former employer, a multinational company headquartered in London. The company has a branch office in India, but the main office and key executives are in London.

Application of Rule 26:

The Indian court issues a summons for the multinational company, specifically addressing the key executives in London.

The Central Government has issued a notification in the Official Gazette declaring that the service of summons by the courts in London is valid.

The Indian court sends the summons to the designated court in London via post or through the Ministry of External Affairs.

The court in London serves the summons to the key executives of the multinational company.

The London court returns the summons with an endorsement stating that it has been served to the executives.

The Indian court accepts this endorsement as valid evidence of service.

Example 3:

Scenario: Sunita, an Indian resident, has a property dispute with her cousin, Ravi, who has moved to Canada. Sunita files a case in an Indian court, and the court needs to serve a summons to Ravi in Canada.

Application of Rule 26:

The Indian court issues a summons for Ravi.

The Central Government has not appointed a Political Agent in Canada, but it has declared that service by Canadian courts is valid.

The Indian court sends the summons to a designated court in Canada through the Ministry of External Affairs.

The Canadian court serves the summons to Ravi at his residential address.

The Canadian court returns the summons with an endorsement confirming that it has been served to Ravi.

The Indian court accepts this endorsement as valid evidence of service.

Example 4:

Scenario: An Indian software company files a lawsuit against a former employee, Anil, who has moved to Australia and started a competing business. The Indian court needs to serve a summons to Anil in Australia.

Application of Rule 26:

The Indian court issues a summons for Anil.

The Central Government has appointed a Political Agent in Australia with the power to serve summons.

The Indian court sends the summons to the Political Agent in Australia by post.

The Political Agent in Australia serves the summons to Anil at his business address.

The Political Agent returns the summons with an endorsement confirming that it has been served to Anil.

The Indian court accepts this endorsement as valid evidence of service.

Rule 26A: Summonses to be sent to officers of foreign countries.

Where the Central Government has, by notification in the Official Gazette, declared in respect of any foreign territory that summonses to be served on defendants actually and voluntarily residing or carrying on business or personally working for gain in that foreign territory may be sent to an officer of the Government of the foreign territory specified by the Central Government, the summonses may be sent to such officer, through the Ministry of the Government of India dealing with foreign affairs or in such other manner as may be specified by the Central Government; and if such officer returns any such summons with an endorsement purporting to have been made by him that the summons has been served on the defendant, such endorsement shall be deemed to be evidence of service.

Simplified act

If the Central Government announces in the Official Gazette that summonses (official court notices) for people living, working, or doing business in a foreign country can be sent to a specific officer in that foreign country, then those summonses can be sent to that officer.

These summonses should be sent through the Ministry of External Affairs of the Government of India or in another way specified by the Central Government.

If the officer in the foreign country sends back the summons with a note saying it has been delivered to the person, that note will be considered proof that the summons was served.

Explanation using Example

Example 1:

Scenario: Rajesh, an Indian businessman, files a civil lawsuit in an Indian court against John, an American citizen who resides and runs a business in New York.

Application of Rule 26A:

The Indian court issues a summons for John to appear in court.

The Central Government of India has previously declared that summonses to be served in the United States can be sent to a designated officer of the U.S. Government.

The summons is sent to the specified U.S. officer through the Ministry of External Affairs of India.

The U.S. officer receives the summons and serves it to John.

The U.S. officer returns the summons with an endorsement stating that John has been served.

The Indian court accepts this endorsement as evidence that John has been properly served with the summons.

Example 2:

Scenario: Priya, an Indian software engineer, files a civil lawsuit in an Indian court against her former employer, a multinational company headquartered in Germany, for wrongful termination.

Application of Rule 26A:

The Indian court issues a summons for the multinational company to appear in court.

The Central Government of India has previously declared that summonses to be served in Germany can be sent to a designated officer of the German Government.

The summons is sent to the specified German officer through the Ministry of External Affairs of India.

The German officer receives the summons and serves it to the multinational company.

The German officer returns the summons with an endorsement stating that the company has been served.

The Indian court accepts this endorsement as evidence that the multinational company has been properly served with the summons.

Rule 27: Service on civil public officer or on servant of railway company or local authority.

Where the defendant is a public officer (not belonging to the Indian military, naval, or air forces), or is the servant of a railway company or local authority, the Court may, if it appears to it that the summons may be most conveniently so served, send it for service on the defendant to the head of the office in which he is employed, together with a copy to be retained by the defendant.

Simplified act

If the person being sued (the defendant) is a public officer (but not part of the Indian military, navy, or air force), or works for a railway company or local government, the Court can decide to send the legal notice (summons) to the head of the office where the defendant works.

The head of the office will then give the summons to the defendant and keep a copy for their records.

Explanation using Example

Example 1:

Rajesh is a senior engineer working for the Indian Railways. He is involved in a civil lawsuit where he is the defendant. The court needs to serve a summons to Rajesh. Instead of sending the summons directly to Rajesh's home address, the court decides that it would be more convenient to send the summons to the head office of the Indian Railways where Rajesh is employed. The head office then ensures that Rajesh receives the summons and retains a copy for his records.

Example 2:

Meena is a municipal officer working for the local municipal corporation. She is named as a defendant in a civil case regarding a property dispute. The court determines that the most efficient way to serve the summons to Meena is by sending it to the head of the municipal corporation office where she works. The

head of the office receives the summons and ensures that Meena gets it, while also keeping a copy for the office records.

Rule 28: Service on soldiers, sailors or airmen.

Where the defendant is a soldier, sailor or airman, the Court shall send the summons for service to his commanding officer together with a copy to be retained by the defendant.

Simplified act

If the person being sued is a soldier, sailor, or airman, the Court will send the legal notice to their commanding officer.

The Court will also send a copy of the notice to the person being sued for their own records.

Explanation using Example

Example 1:

Scenario: Rajesh is a soldier stationed at an army base in Jammu. He is being sued in a civil case regarding a property dispute in Delhi.

Application of Rule 28: The court in Delhi issues a summons for Rajesh to appear in court. Instead of sending the summons directly to Rajesh, the court sends it to Rajesh's commanding officer at the army base in Jammu. The commanding officer then ensures that Rajesh receives the summons and retains a copy for his records.

Example 2:

Scenario: Anjali, a sailor serving on a naval ship docked in Mumbai, is involved in a civil lawsuit over a breach of contract in Chennai.

Application of Rule 28: The court in Chennai issues a summons for Anjali to appear in court. The court sends the summons to the commanding officer of the naval ship in Mumbai. The commanding officer then delivers the summons to Anjali and keeps a copy for the ship's records.

Example 3:

Scenario: Vikram, an airman stationed at an air force base in Bengaluru, is named as a defendant in a civil case concerning a loan default in Hyderabad.

Application of Rule 28: The court in Hyderabad issues a summons for Vikram. The court sends the summons to Vikram's commanding officer at the air force base in Bengaluru. The commanding officer ensures that Vikram receives the summons and retains a copy for the base's records.

Rule 29: Duty of person to whom summons is delivered or sent for service.

(1) Where a summons is delivered or sent to any person for service under rule 24, rule 27 or rule 28, such person shall be bound to serve it if possible, and to return it under his signature, with the written acknowledgement of the defendant, and such signature shall be deemed to be evidence of service.

(2) Where from any cause service is impossible, the summons shall be returned to the Court with a full statement of such cause and of the steps taken to procure service, and such statement shall be deemed to be evidence of non-service.

Simplified act

(1) If someone is given or sent a summons (a legal document telling someone to appear in court) to deliver under rule 24, rule 27, or rule 28, they must try to deliver it if they can. After delivering it, they need to sign it and get a written confirmation from the person who received it (the defendant). This signed document will be considered proof that the summons was delivered.

(2) If it is not possible to deliver the summons for any reason, it must be sent back to the Court with a detailed explanation of why it couldn't be delivered and what efforts were made to try to deliver it. This explanation will be considered proof that the summons was not delivered.

Explanation using Example

Example 1:

Scenario: Ramesh, a court-appointed process server, receives a summons to be delivered to Suresh, who lives in a remote village.

Action: Ramesh travels to the village and successfully finds Suresh.

Service: Ramesh hands over the summons to Suresh, who acknowledges receipt by signing the document.

Return: Ramesh returns the summons to the court with Suresh's signature as evidence of service.

Outcome: The court accepts the signed summons as proof that Suresh has been properly served.

Example 2:

Scenario: Priya, a court-appointed process server, is tasked with delivering a summons to Anil, who has recently moved to an unknown location.

Action: Priya visits Anil's last known address but finds that he no longer resides there.

Investigation: Priya inquires with neighbors and local authorities but is unable to determine Anil's new address.

Return: Priya returns the summons to the court with a detailed report explaining that Anil's current location is unknown and describing the steps she took to try to serve the summons.

Outcome: The court accepts Priya's report as evidence of non-service and may take further steps to locate Anil or consider alternative methods of service.

Rule 30: Substitution of letter for summons.

(1) The Court may, notwithstanding anything hereinbefore contained, substitute for a summons a letter signed by the Judge or such officer as he may appoint in this behalf, where the defendant is, in the opinion of the Court, of a rank entitling him to such mark of consideration.

(2) A letter substituted under sub-rule (1) shall contain all the particulars required to be stated in a summons, and, subject to the provisions of sub-rule (3), shall be treated in all respects as a summons.

(3) A letter so substituted may be sent to the defendant by post or by a special messenger selected by the Court, or in any other manner which the Court thinks fit; and, where the defendant has an agent empowered to accept service, the letter may be delivered or sent to such agent.

Simplified act

(1) The Court can replace a formal summons with a letter signed by the Judge or an appointed officer if the Court believes the defendant holds a high rank deserving special consideration.

(2) This letter must include all the details that a summons would have, and, except for the specific rules in (3), it will be treated just like a summons.

(3) The letter can be sent to the defendant by mail, a special messenger chosen by the Court, or any other method the Court decides. If the defendant has an agent authorized to receive it, the letter can be given or sent to that agent.

Explanation using Example

Example 1:

Scenario: A high-ranking government official, Mr. Sharma, is being sued in a civil case for breach of contract.

Application of Rule 30:

Court's Decision: The court decides that Mr. Sharma, due to his high rank and position, deserves a mark of consideration.

Substitution of Summons: Instead of issuing a standard summons, the court substitutes it with a letter signed by the Judge.

Content of the Letter: The letter contains all the necessary details that a summons would typically include, such as the nature of the case, the date of the hearing, and instructions for Mr. Sharma to appear in court.

Delivery Method: The court chooses to send the letter via a special messenger to ensure it reaches Mr. Sharma promptly and securely.

Example 2:

Scenario: A prominent business tycoon, Ms. Kapoor, is involved in a civil litigation regarding a property dispute.

Application of Rule 30:

Court's Decision: Considering Ms. Kapoor's status and reputation, the court decides to show her a mark of consideration.

Substitution of Summons: The court substitutes the standard summons with a letter signed by an appointed officer.

Content of the Letter: The letter includes all the details required in a summons, such as the case number, the parties involved, the nature of the dispute, and the date and time of the court appearance.

Delivery Method: The court opts to send the letter by post to Ms. Kapoor's registered address. Additionally, since Ms. Kapoor has an authorized agent to accept legal documents, a copy of the letter is also sent to her agent.

Example 3:

Scenario: A retired Supreme Court judge, Justice Rao, is named as a defendant in a civil lawsuit concerning a defamation claim.

Application of Rule 30:

Court's Decision: Given Justice Rao's esteemed position and past service, the court decides to extend a mark of consideration.

Substitution of Summons: The court substitutes the usual summons with a letter signed by the Judge.

Content of the Letter: The letter contains all the necessary particulars, including the nature of the defamation claim, the date of the hearing, and instructions for Justice Rao to appear in court.

Delivery Method: The court decides to send the letter via a special messenger to ensure it is delivered personally to Justice Rao. Additionally, since Justice Rao has a legal representative authorized to accept service, a copy of the letter is also sent to his legal representative.

Example 4:

Scenario: A renowned scientist, Dr. Mehta, is involved in a civil case regarding intellectual property rights.

Application of Rule 30:

Court's Decision: The court acknowledges Dr. Mehta's significant contributions to science and decides to show him a mark of consideration.

Substitution of Summons: The court substitutes the standard summons with a letter signed by an appointed officer.

Content of the Letter: The letter includes all the necessary details that a summons would typically contain, such as the nature of the intellectual

property dispute, the date of the hearing, and instructions for Dr. Mehta to appear in court.

Delivery Method: The court opts to send the letter by post to Dr. Mehta's residential address. Additionally, since Dr. Mehta has an agent authorized to accept service, a copy of the letter is also sent to his agent.

ORDER VI: PLEADINGS GENERALLY

Rule 1: Pleading.

shall mean plaint or written statement.

Rule 2: Pleading to state material facts and not evidence.

(1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

(2) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph.

(3) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.

Simplified act

(1) Every legal document (pleading) should include only a clear and brief statement of the important facts that the person making the document is using to support their claim or defense. It should not include the evidence that will be used to prove those facts.

(2) When needed, every legal document should be divided into paragraphs that are numbered one after the other. Each statement or claim should be in its own separate paragraph as much as possible.

(3) Dates, amounts of money, and numbers should be written in both figures (like 1, 2, 3) and words (like one, two, three) in a legal document.

Explanation using Example

Example 1:

Scenario: A tenant files a lawsuit against the landlord for wrongful eviction.

Tenant's Pleading:

The tenant, Mr. Rajesh Kumar, entered into a rental agreement with the landlord, Mr. Suresh Gupta, on 1st January 2022.

The rental agreement was for a period of 11 months, ending on 30th November 2022.

The tenant paid a monthly rent of ₹15,000 (Rupees Fifteen Thousand) as per the agreement.

On 15th August 2022, the landlord forcibly evicted the tenant without any prior notice or legal grounds.

The tenant seeks compensation for wrongful eviction and damages amounting to ₹2,00,000 (Rupees Two Lakhs).

Explanation: The tenant's pleading contains only the material facts (rental agreement, eviction date, and compensation sought) and not the evidence (such as the rental agreement document or witness statements).

Example 2:

Scenario: A company files a lawsuit against a supplier for breach of contract.

Company's Pleading:

The plaintiff, XYZ Pvt. Ltd., entered into a supply contract with the defendant, ABC Suppliers, on 1st March 2022.

The contract stipulated that ABC Suppliers would deliver 100 units of machinery by 30th June 2022.

The agreed price for the machinery was ₹50,00,000 (Rupees Fifty Lakhs).

As of 30th June 2022, ABC Suppliers failed to deliver the machinery as per the contract terms.

XYZ Pvt. Ltd. seeks damages for breach of contract amounting to ₹10,00,000 (Rupees Ten Lakhs).

Explanation: The company's pleading includes the essential facts (contract details, delivery failure, and damages sought) without providing the evidence (such as the contract document or correspondence between the parties).

Example 3:

Scenario: An individual files a lawsuit for personal injury due to a road accident.

Plaintiff's Pleading:

The plaintiff, Ms. Priya Sharma, was involved in a road accident on 10th July 2022.

The accident occurred at the intersection of MG Road and Brigade Road in Bangalore.

The defendant, Mr. Anil Mehta, was driving a car bearing registration number KA-05-1234 and collided with the plaintiff's scooter.

As a result of the accident, the plaintiff sustained severe injuries and incurred medical expenses amounting to ₹1,50,000 (Rupees One Lakh Fifty Thousand).

The plaintiff seeks compensation for medical expenses and damages amounting to ₹5,00,000 (Rupees Five Lakhs).

Explanation: The plaintiff's pleading outlines the key facts (accident details, injuries, and compensation sought) without including the evidence (such as medical reports or eyewitness testimonies).

Rule 3: Forms of pleading.

The forms in Appendix A when applicable, and where they are not applicable forms of the like character, as nearly as may be, shall be used for all pleadings.

3A. Forms of pleading in Commercial Courts

In a commercial dispute, where forms of pleadings have been prescribed under the High Court Rules or Practice Directions made for the purposes of such commercial disputes, pleadings shall be in such forms.

Simplified act

The forms in Appendix A should be used for all legal documents when they apply. If they don't apply, use similar forms as closely as possible.

3A. Forms of pleading in Commercial Courts

In a commercial dispute, if the High Court has set specific forms for legal documents, those forms must be used.

Explanation using Example

Example 1:

Scenario: Rajesh wants to file a civil suit against his neighbor for encroaching on his property.

Application: Rajesh's lawyer will refer to Appendix A of The Code of Civil Procedure, 1908, to draft the plaint (the written statement of his claim). If Appendix A does not have a specific form for property encroachment, the lawyer will use a form that is similar in nature to ensure it meets the legal requirements.

Example 2:

Scenario: A large corporation, XYZ Ltd., is involved in a commercial dispute with another company, ABC Pvt. Ltd., over a breach of contract.

Application: Since this is a commercial dispute, XYZ Ltd.'s legal team will follow the forms of pleadings prescribed under the High Court Rules or Practice Directions specific to commercial disputes. This ensures that the pleadings are in the correct format as required by the Commercial Courts.

Rule 4: Particulars to be given where necessary.

In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.

Simplified act

If you are making a legal claim and you are saying that the other person lied, cheated, broke a promise, did something wrong on purpose, or pressured you unfairly, you need to give specific details in your claim.

In any other situation where extra details are needed, you must also include those details (with dates and specific items if needed) in your claim.

Explanation using Example

Example 1:

Scenario: Ramesh files a lawsuit against Suresh, claiming that Suresh fraudulently sold him a piece of land by misrepresenting its ownership status.

Application of Rule 4: In his pleading, Ramesh must provide specific details about the alleged fraud. This includes:

The exact statements made by Suresh that were allegedly false.

The dates on which these statements were made.

Any documents or evidence that support Ramesh's claim of misrepresentation.

How Ramesh relied on these false statements to his detriment.

Example Pleading: "On 15th March 2022, Suresh represented to Ramesh that he was the sole owner of the land located at 123 Green Street, Delhi. Suresh provided a forged ownership document dated 10th January 2022. Ramesh, relying on this misrepresentation, paid Rs. 10,00,000 to Suresh on 20th March 2022. It was later discovered on 1st April 2022 that Suresh was not the owner of the land, and the document was forged."

Example 2:

Scenario: Priya sues her business partner, Anil, for breach of trust, alleging that Anil diverted company funds for personal use.

Application of Rule 4: Priya must include detailed particulars in her pleading to substantiate her claim of breach of trust. This includes:

Specific instances where Anil allegedly diverted funds.

Dates and amounts of the transactions in question.

Evidence showing that the funds were used for Anil's personal expenses.

Example Pleading: "Between 1st January 2021 and 31st December 2021, Anil diverted company funds amounting to Rs. 5,00,000 for personal use. On 15th February 2021, Anil transferred Rs. 1,00,000 from the company account to his personal account. On 10th June 2021, Anil used Rs. 2,00,000 of company funds to purchase a personal vehicle. These transactions were unauthorized and constitute a breach of trust."

Rule 5: [Further and better statement, or particulars.] Omitted by the Code of Civil Procedure (Amendment) Act, 1999 (46 of 1999), s. 16 (w.e.f. 1-7-2002).

Rule 6: Condition precedent.

Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading.

Simplified act

If there is a specific condition that must happen before something else can occur, and either the plaintiff (the person bringing the case) or the defendant (the person being sued) wants to argue about it, they must clearly state this condition in their legal documents.

Apart from that, it will be assumed that all necessary conditions that need to happen before the case can proceed have been met, unless specifically mentioned otherwise in the legal documents.

Explanation using Example

Example 1:

Ravi files a lawsuit against Shyam for breach of contract. According to the contract, Shyam was supposed to deliver 100 bags of rice to Ravi by the 1st of June. Ravi claims that Shyam did not deliver the rice on time. In his pleading, Ravi must specifically mention that the delivery of rice by the 1st of June was a condition precedent to the contract. If Shyam intends to contest this, he must clearly state in his defense that the delivery date was not a condition precedent or that it was met.

Example 2:

Meera sues a construction company for not completing her house by the agreed deadline. The contract stated that the house must be completed by December 31st. Meera's pleading should distinctly specify that the completion of the house by December 31st was a condition precedent. If the construction company wants to argue that the delay was due to unforeseen circumstances like a natural disaster, they must explicitly mention this in their defense. Otherwise, it will be implied that all conditions precedent, including the timely completion of the house, were met.

Rule 7: Departure.

No pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

Simplified act

You cannot introduce a new reason for your claim or make a statement that contradicts your earlier statements, unless you are making an official change to your previous statements.

Explanation using Example

Example 1:

Ravi files a lawsuit against Shyam for breach of contract, claiming that Shyam did not deliver goods as agreed. In his initial pleading, Ravi states that the contract was signed on January 1st, 2023, and the delivery was supposed to happen by February 1st, 2023. Later, during the trial, Ravi tries to introduce a new claim that Shyam also failed to provide quality assurance documents, which was not mentioned in the original pleading. According to Rule 7 of The Code Of Civil Procedure 1908, Ravi cannot introduce this new ground of claim unless he amends his original pleading to include this new allegation.

Example 2:

Priya sues her landlord, Mr. Kumar, for not returning her security deposit after she vacated the rented apartment. In her initial pleading, Priya states that she vacated the apartment on March 31st, 2023, and had given a one-month notice as required by the rental agreement. Later, Priya tries to add a new allegation that Mr. Kumar also failed to repair the leaking roof during her tenancy, which was not mentioned in her original pleading. According to Rule 7 of The Code Of Civil Procedure 1908, Priya cannot introduce this new allegation unless she amends her original pleading to include this new fact.

Rule 8: Denial of contract.

Where a contract is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract alleged or of the matters of fact from which the same may be implied, and not as a denial of the legality or sufficiency in law of such contract.

Simplified act

If someone claims there is a contract in their legal documents, and the other side simply denies it, this denial only means they are saying the contract or the facts that suggest there is a contract are not true.

This denial does not mean they are arguing about whether the contract is legal or valid under the law.

Explanation using Example

Example 1:

Scenario: Ramesh files a lawsuit against Suresh, claiming that Suresh agreed to sell him a piece of land for ₹10 lakhs and later refused to complete the sale.

Pleading by Ramesh: Ramesh alleges in his pleading that there was a contract between him and Suresh for the sale of the land.

Response by Suresh: Suresh files a written statement denying the existence of any such contract.

Application of Rule 8: According to Rule 8, Suresh's denial will be interpreted as a denial of the fact that the contract was made or the facts from which the contract could be implied. It will not be taken as a denial of the legality or sufficiency of the contract itself.

Outcome: The court will focus on whether the contract was actually made or whether the facts support the existence of such a contract, rather than questioning the legal validity of the contract at this stage.

Example 2:

Scenario: Priya sues her business partner, Anil, claiming that they had an oral agreement to share profits equally from their joint venture, but Anil has not honored this agreement.

Pleading by Priya: Priya alleges in her pleading that there was an oral contract between her and Anil to share profits equally.

Response by Anil: Anil files a written statement simply denying that any such oral agreement existed.

Application of Rule 8: Under Rule 8, Anil's denial will be taken as a denial of the fact that the oral agreement was made or the facts from which such an agreement could be implied. It will not be considered a denial of whether such an oral agreement is legally enforceable or sufficient under the law.

Outcome: The court will examine whether there was indeed an oral agreement or whether the circumstances imply such an agreement, without delving into the legal enforceability of the agreement at this point.

Rule 9: Effect of document to be stated.

Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material.

Simplified act

If the details of a document are important, you only need to briefly describe what it says in any legal statement.

You don't have to include the entire document or any part of it unless the exact words are important.

Explanation using Example

Example 1:

Ravi files a lawsuit against his former business partner, Suresh, claiming that Suresh breached their partnership agreement. In his complaint, Ravi states that the partnership agreement included a clause that required both partners to equally share profits and losses. Ravi does not include the entire text of the partnership agreement in his complaint but summarizes the effect of the relevant clause. According to Rule 9 of the Code of Civil Procedure 1908, this summary is sufficient unless the exact wording of the clause is crucial to the case.

Example 2:

Meera is suing a construction company for not completing her house on time. In her legal pleading, she mentions that the contract stipulated the house would be completed within six months. Meera does not provide the full contract text but states the effect of the completion clause. Under Rule 9 of the Code of Civil Procedure 1908, this is adequate unless the specific language of the contract is essential to her claim.

Rule 10: Malice, knowledge, etc.

Wherever it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.

Simplified act

Whenever it is important to claim that someone acted with malice, had a fraudulent intention, knew something, or had any other state of mind, it is enough to state this as a fact without needing to explain the details or circumstances that led to this conclusion.

Explanation using Example

Example 1:

Case: Defamation Suit

Scenario: Ramesh files a defamation suit against Suresh, alleging that Suresh made false and malicious statements about him in public, damaging his reputation.

Application of Rule 10: In his complaint, Ramesh alleges that Suresh acted with malice and fraudulent intention. According to Rule 10, Ramesh does not need to provide detailed circumstances or evidence showing how he inferred Suresh's malice or fraudulent intention at this stage. It is sufficient for Ramesh to state that Suresh acted with malice as a fact in his pleadings.

Example 2:

Case: Fraudulent Contract

Scenario: Priya enters into a contract with Anil for the purchase of a property. Later, Priya discovers that Anil had no intention of selling the property and had fraudulently induced her to sign the contract to extract an advance payment.

Application of Rule 10: Priya files a lawsuit against Anil, alleging that Anil acted with fraudulent intention. Under Rule 10, Priya can simply state in her pleadings that Anil had a fraudulent intention when entering into the contract. She does not need to detail the specific circumstances or evidence from which she inferred Anil's fraudulent intention at this stage of the proceedings.

Rule 11: Notice.

Wherever it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice, or the circumstances from which such notice is to be inferred, are material.

Simplified act

If it's important to say that someone was informed about something, you only need to state that they were informed, unless the exact details of how they were informed are important.

Explanation using Example

Example 1:

Rajesh files a civil suit against his neighbor, Suresh, for constructing a wall that encroaches on his property. In his complaint, Rajesh mentions that he had previously notified Suresh about the encroachment through a letter. According to Rule 11 of The Code of Civil Procedure 1908, Rajesh does not need to provide the exact wording of the letter or the specific circumstances under which the notice was given. It is sufficient for Rajesh to allege that Suresh was notified about the encroachment.

Example 2:

Meera is suing a local construction company for causing damage to her house during their construction activities. In her pleadings, Meera states that she had informed the construction company about the potential risk to her property through an email. Under Rule 11 of The Code of Civil Procedure 1908, Meera does not need to include the exact content of the email or the detailed circumstances of how the email was sent. It is enough for her to allege that the construction company was notified about the risk.

Rule 12: Implied contract, or relation.

Whenever any contract or any relation between any persons is to be implied from a series of letters or conversations or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations or circumstances without setting them out in detail.

And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.

Simplified act

If a contract or relationship between people is understood from a series of letters, conversations, or various situations, it is enough to state that the contract or relationship exists without describing all the details.

If the person making the claim wants to rely on more than one possible contract or relationship from these situations, they can mention all the possible options.

Explanation using Example

Example 1:

Scenario: Ramesh and Suresh have been exchanging emails and text messages over several months discussing the terms of a business partnership to open a new restaurant. They have not signed any formal agreement, but their communications indicate a mutual understanding and agreement on key terms such as investment amounts, profit-sharing, and roles in the business.

Application of Rule 12: Ramesh decides to file a lawsuit against Suresh, claiming that Suresh has breached their agreement by backing out at the last minute. Under Rule 12 of the Code of Civil Procedure 1908, Ramesh can allege the existence of an implied contract based on their series of emails and text messages. He does not need to provide each email or message in detail in his initial pleadings; he can refer generally to their communications to establish the implied contract.

Example 2:

Scenario: Priya and Anil have been in a long-term relationship and have lived together for several years. They have shared finances, made joint purchases, and have been referred to as a couple by friends and family. They have not formally married or entered into a written agreement regarding their relationship.

Application of Rule 12: Priya decides to file a case for financial support from Anil after their relationship ends. She can allege that an implied relationship existed based on their cohabitation and shared financial responsibilities. Under

Rule 12, Priya can refer generally to their living arrangements, joint purchases, and the way they were perceived by others to establish the implied relationship, without needing to detail every instance of their shared life in her initial pleadings.

Rule 13: Presumptions of law.

Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side unless the same has first been specifically denied (e.g., consideration for a bill of exchange where the plaintiff sues only on the bill and not for the consideration as a substantive ground of claim).

Simplified act

In any legal document, neither side needs to mention facts that the law already assumes to be true for them.

Also, they don't need to mention facts that the other side has to prove, unless those facts have been specifically denied first.

For example, if someone is suing over a bill of exchange (a type of financial document), they don't need to mention the reason behind the bill unless it's being used as a main reason for the claim.

Explanation using Example

Example 1:

Scenario: Rajesh files a lawsuit against Suresh for non-payment of a bill of exchange.

Application of Rule 13: Rajesh does not need to allege in his initial pleading that there was consideration (something of value exchanged) for the bill of exchange. The law presumes that there was consideration unless Suresh specifically denies it in his response. If Suresh does not deny the consideration, the court will assume it exists, and Rajesh does not need to provide additional proof of it.

Example 2:

Scenario: Priya sues her tenant, Anil, for unpaid rent under a lease agreement.

Application of Rule 13: Priya does not need to allege in her initial pleading that the lease agreement was valid and legally binding. The law presumes that the lease agreement is valid unless Anil specifically denies its validity in his defense. If Anil does not deny the validity of the lease, the court will assume it is valid, and Priya does not need to provide further evidence to prove its validity.

Rule 14: Pleading to be signed.

Every pleading shall be signed by the party and his pleader (if any):

Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf.

Simplified act

Every legal document (pleading) must be signed by the person involved in the case and their lawyer (if they have one).

If the person involved in the case cannot sign the document because they are not present or for some other valid reason, someone else who has been given permission by that person can sign the document or handle the case for them.

Explanation using Example

Example 1:

Ravi, a businessman in Mumbai, files a civil suit against his supplier for breach of contract. Ravi hires Advocate Sharma to represent him in court. According to Rule 14 of the Code of Civil Procedure 1908, the plaint (the written statement of Ravi's claim) must be signed by both Ravi and Advocate Sharma. This ensures that both the party and the legal representative are accountable for the contents of the pleading.

Example 2:

Priya, who lives in Delhi, is involved in a property dispute but is currently working in the United States. She wants to file a suit against her neighbor for encroaching on her land. Due to her absence, Priya cannot sign the pleading herself. However, she authorizes her brother, Raj, through a power of attorney, to sign the pleading on her behalf. Raj, along with Priya's lawyer, Advocate Mehta, signs the pleading. This is permissible under Rule 14, as Priya has

provided a valid reason for her inability to sign and has duly authorized Raj to act on her behalf.

Rule 14A: Address for service of notice.

Rule on Pleadings and Addresses

(1) Every pleading, when filed by a party, shall be accompanied by a statement in the prescribed form, signed as provided in rule 14, regarding the address of the party.

(2) Such address may, from time to time, be changed by lodging in Court a form duly filled up and stating the new address of the party and accompanied by a verified petition.

(3) The address furnished in the statement made under sub-rule (1) shall be called the "registered address" of the party, and shall, until duly changed as aforesaid, be deemed to be the address of the party for the purpose of service of all processes in the suit or in any appeal from any decree or order therein made and for the purpose of execution, and shall hold good, subject as aforesaid, for a period of two years after the final determination of the cause or matter.

(4) Service of any process may be effected upon a party at his registered address in all respects as though such party resided thereat.

(5) Where the registered address of a party is discovered by the Court to be incomplete, false or fictitious, the Court may, either on its own motion, or on the application of any party, order:

(a) in the case where such registered address was furnished by a plaintiff, stay of the suit, or

(b) in the case where such registered address was furnished by a defendant, his defence be struck out and he be placed in the same position as if he had not put up any defence.

(6) Where a suit is stayed or a defence is struck out under sub-rule (5), the plaintiff or, as the case may be, the defendant may, after furnishing his true address, apply to the Court for an order to set aside the order of stay or, as the case may be, the order striking out the defence.

(7) The Court, if satisfied that the party was prevented by any sufficient cause from filing the true address at the proper time, shall set aside the order of stay or order striking out the defence, on such terms as to costs or otherwise as it

thinks fit and shall appoint a day for proceeding with the suit or defence, as the case may be.

(8) Nothing in this rule shall prevent the Court from directing the service of a process at any other address, if, for any reason, it thinks fit to do so.

Simplified act

Rule on Pleadings and Addresses

(1) When you file a legal document (pleading), you must include a form with your address, signed as required by rule 14.

(2) You can change your address by submitting a new form to the Court with your new address and a verified petition.

(3) The address you provide will be called your "registered address." This address will be used for sending all legal documents related to your case, including any appeals or orders, and will remain valid for two years after the case is finished unless you change it.

(4) Any legal documents can be sent to you at your registered address as if you live there.

(5) If the Court finds out that your registered address is incomplete, false, or fake, it can:

(a) Pause the case if you are the one who provided the address, or

(b) Remove your defense if you are the defendant and put you in the same position as if you never defended yourself.

(6) If your case is paused or your defense is removed because of a false address, you can provide your correct address and ask the Court to cancel the pause or the removal of your defense.

(7) If the Court believes you had a good reason for not providing the correct address on time, it will cancel the pause or the removal of your defense and set a new date to continue the case, with any conditions it thinks are fair.

(8) The Court can also decide to send legal documents to a different address if it thinks it's necessary.

Explanation using Example

Example 1:

Scenario: Ramesh files a civil suit against Suresh for breach of contract.

Application of Rule 14A:

Filing the Pleading: When Ramesh files his complaint (pleading) in the court, he must include a statement with his address in the prescribed form, signed as required.

Registered Address: Ramesh's address provided in the statement becomes his "registered address" for the case.

Service of Notice: The court sends all notices and documents related to the case to Ramesh's registered address.

Change of Address: If Ramesh moves to a new house, he must submit a duly filled form to the court with his new address and a verified petition.

Validity of Address: Ramesh's registered address remains valid for two years after the final judgment of the case.

Incomplete Address: If the court finds that Ramesh's address is incomplete or false, it may stay the suit until Ramesh provides a correct address.

Correction of Address: Ramesh can apply to the court to lift the stay order by providing his true address and explaining why he couldn't provide it earlier.

Example 2:

Scenario: Priya is defending a civil suit filed by Anil for property dispute.

Application of Rule 14A:

Filing the Defence: When Priya files her defence, she must include a statement with her address in the prescribed form, signed as required.

Registered Address: Priya's address provided in the statement becomes her "registered address" for the case.

Service of Notice: The court sends all notices and documents related to the case to Priya's registered address.

Change of Address: If Priya changes her residence, she must submit a duly filled form to the court with her new address and a verified petition.

Validity of Address: Priya's registered address remains valid for two years after the final judgment of the case.

False Address: If the court finds that Priya's address is false or fictitious, it may strike out her defence, putting her in the same position as if she had not defended the case.

Correction of Address: Priya can apply to the court to reinstate her defence by providing her true address and explaining why she couldn't provide it earlier.

Court's Discretion: The court may direct the service of notice to any other address if it deems fit.

Example 3:

Scenario: A company, XYZ Pvt. Ltd., is involved in a civil litigation with another company, ABC Ltd.

Application of Rule 14A:

Filing the Pleading: XYZ Pvt. Ltd. files a complaint against ABC Ltd. and includes a statement with its registered office address in the prescribed form, signed by an authorized representative.

Registered Address: The registered office address of XYZ Pvt. Ltd. becomes the "registered address" for the case.

Service of Notice: The court sends all notices and documents related to the case to XYZ Pvt. Ltd.'s registered office address.

Change of Address: If XYZ Pvt. Ltd. changes its registered office, it must submit a duly filled form to the court with the new address and a verified petition.

Validity of Address: The registered office address remains valid for two years after the final judgment of the case.

Incomplete Address: If the court finds that XYZ Pvt. Ltd.'s address is incomplete or false, it may stay the suit until XYZ Pvt. Ltd. provides a correct address.

Correction of Address: XYZ Pvt. Ltd. can apply to the court to lift the stay order by providing the true address and explaining why it couldn't provide it earlier.

Court's Discretion: The court may direct the service of notice to any other address if it deems fit.

Rule 15: Verification of pleadings.

Verification of Pleadings

- (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.
- (2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.
- (3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.
- (4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings.

15A. Verification of pleadings in a commercial dispute

- (1) Notwithstanding anything contained in Rule 15, every pleading in a commercial dispute shall be verified by an affidavit in the manner and form prescribed in the Appendix to this Schedule.
- (2) An affidavit under sub-rule (1) above shall be signed by the party or by one of the parties to the proceedings, or by any other person on behalf of such party or parties who is proved to the satisfaction of the Court to be acquainted with the facts of the case and who is duly authorised by such party or parties.
- (3) Where a pleading is amended, the amendments must be verified in the form and manner referred to in sub-rule (1) unless the Court orders otherwise.
- (4) Where a pleading is not verified in the manner provided under sub-rule (1), the party shall not be permitted to rely on such pleading as evidence or any of the matters set out therein.
- (5) The Court may strike out a pleading which is not verified by a Statement of Truth, namely, the affidavit set out in the Appendix to this Schedule.

Simplified act

Verification of Pleadings

- (1) Unless another law says otherwise, every legal document (pleading) must be verified at the bottom by the person who wrote it, one of the people involved in the case, or someone else who knows the facts and is approved by the Court.
- (2) The person verifying the document must clearly state, using the numbered paragraphs of the document, what they know personally and what they believe to be true based on information they received.
- (3) The verification must be signed by the person making it and must include the date and place where it was signed.
- (4) The person verifying the document must also provide a sworn statement (affidavit) to support their claims.

15A. Verification of pleadings in a commercial dispute

- (1) Regardless of what Rule 15 says, every legal document in a business-related dispute must be verified by a sworn statement (affidavit) in the specific way described in the Appendix to this Schedule.
- (2) The affidavit must be signed by the person involved in the case, one of the people involved, or someone else who knows the facts, is approved by the Court, and is authorized by the involved person or people.
- (3) If the legal document is changed, the changes must be verified in the same way as described in sub-rule (1), unless the Court says otherwise.
- (4) If the legal document is not verified as described in sub-rule (1), the person cannot use that document as evidence or rely on any information in it.
- (5) The Court can remove a legal document that is not verified by a sworn statement (affidavit) as described in the Appendix to this Schedule.

Explanation using Example

Example 1:

Scenario: Ramesh files a civil suit against Suresh for breach of contract.

Application of Rule 15:

Verification by Ramesh: Ramesh, the plaintiff, must verify the pleading (the written statement of his case) at the end of the document. He can do this himself or have someone else who knows the facts of the case verify it.

Specificity in Verification: Ramesh must specify which parts of the pleading he verifies based on his own knowledge and which parts he verifies based on information he received and believes to be true. For example, he might state, "Paragraphs 1-5 are verified by me based on my own knowledge, and paragraphs 6-10 are verified based on information received and believed to be true."

Signature and Date: Ramesh must sign the verification and include the date and place where he signed it.

Affidavit: Ramesh must also provide an affidavit supporting his pleadings, affirming that the statements made in the pleading are true to the best of his knowledge and belief.

Example 2:

Scenario: Priya is involved in a commercial dispute with a company over a business contract.

Application of Rule 15A:

Verification by Affidavit: Priya must verify her pleading by an affidavit in the manner and form prescribed in the Appendix to the Schedule. This is mandatory for commercial disputes.

Authorized Person: If Priya cannot verify the pleading herself, she can have someone else who is familiar with the facts of the case and authorized by her to do so. For instance, her business manager, who is well-acquainted with the contract details, can verify the pleading.

Amendments: If Priya needs to amend her pleading, the amendments must also be verified in the same manner unless the court orders otherwise.

Consequences of Non-Verification: If Priya's pleading is not verified as required, she will not be allowed to use it as evidence in court. The court may also strike out her pleading if it is not verified by a Statement of Truth (the affidavit set out in the Appendix).

Example 3:

Scenario: An NGO files a public interest litigation (PIL) against a factory for causing environmental pollution.

Application of Rule 15:

Verification by NGO Representative: The NGO's representative, who is familiar with the facts of the case, must verify the pleading. This could be the NGO's president or any other authorized member.

Detailed Verification: The representative must specify which parts of the pleading are verified based on their own knowledge and which parts are based on information received and believed to be true. For example, "Paragraphs 1-3 are verified by me based on my own knowledge, and paragraphs 4-7 are verified based on information received from environmental reports."

Signature and Date: The representative must sign the verification and include the date and place of signing.

Affidavit: The representative must also provide an affidavit supporting the pleadings, affirming the truthfulness of the statements made.

Example 4:

Scenario: A tenant, Anil, files a suit against his landlord, Raj, for illegal eviction.

Application of Rule 15:

Verification by Anil: Anil must verify his pleading at the end of the document. He can do this himself or have someone else who knows the facts of the case verify it.

Specificity in Verification: Anil must specify which parts of the pleading he verifies based on his own knowledge and which parts he verifies based on information received and believed to be true. For example, "Paragraphs 1-4 are verified by me based on my own knowledge, and paragraphs 5-8 are verified based on information received from my neighbors."

Signature and Date: Anil must sign the verification and include the date and place where he signed it.

Affidavit: Anil must also provide an affidavit supporting his pleadings, affirming that the statements made in the pleading are true to the best of his knowledge and belief.

Rule 16: Striking out pleadings.

The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading:

- (a) which may be unnecessary, scandalous, frivolous or vexatious, or
- (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or
- (c) which is otherwise an abuse of the process of the Court.

Simplified act

The Court can, at any point during the case, decide to remove or change any part of the legal documents if:

- (a) it is unnecessary, offensive, silly, or meant to annoy, or
- (b) it might unfairly affect, embarrass, or slow down the fair trial of the case, or
- (c) it misuses the Court's procedures in any other way.

Explanation using Example

Example 1:

Ravi files a lawsuit against his neighbor, Suresh, claiming that Suresh's dog has been causing a nuisance. In his pleading, Ravi includes a paragraph alleging that Suresh is involved in illegal activities unrelated to the dog nuisance issue. Suresh's lawyer files a motion under Rule 16 of the Code of Civil Procedure, 1908, requesting the court to strike out the irrelevant and scandalous allegations about illegal activities. The court agrees that these allegations are unnecessary and scandalous, and orders them to be struck out from the pleading.

Example 2:

Meena sues a construction company for damages caused to her property due to negligent construction work. In her pleading, she includes detailed and repetitive accusations that the construction company has a history of poor workmanship in other unrelated projects. The construction company's lawyer argues that these details are frivolous and only serve to embarrass the company, delaying the fair trial of the suit. The court, upon reviewing the motion, decides that these allegations are frivolous and orders them to be struck out to ensure a fair and timely trial.

Rule 17: Amendment of pleadings.

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and

all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided 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.

Simplified act

The Court can let either side change or update their legal documents at any time during the case. These changes should be fair and help to figure out the main issues between the parties.

However, no changes can be made after the trial has started, unless the Court decides that the party couldn't have brought up the issue earlier, even if they tried hard.

Explanation using Example

Example 1:

Scenario: Rajesh files a lawsuit against his neighbor, Suresh, for encroaching on his property. In his initial pleading, Rajesh claims that Suresh has built a wall that extends 2 feet into his property. During the discovery phase, Rajesh's surveyor finds that the encroachment is actually 3 feet, not 2 feet.

Application of Rule 17: Rajesh can file an application to amend his pleading to correct the encroachment measurement from 2 feet to 3 feet. The court, considering that this amendment is necessary to determine the real question in controversy (the extent of encroachment), allows the amendment. This helps in ensuring that the case is decided based on accurate facts.

Example 2:

Scenario: Priya sues a company for breach of contract, claiming damages of ₹5 lakhs. During the trial preparation, Priya discovers additional evidence showing that the actual damages amount to ₹10 lakhs.

Application of Rule 17: Priya can apply to the court to amend her pleadings to increase the claim amount from ₹5 lakhs to ₹10 lakhs. The court, finding that this amendment is essential for addressing the real issue of the extent of damages, permits the amendment. This ensures that Priya's claim reflects the true extent of her losses.

Example 3:

Scenario: During a property dispute case, Anil initially claims that he has a right to a piece of land based on a will. However, after the trial has commenced, Anil finds a registered sale deed that provides a stronger basis for his claim.

Application of Rule 17: Anil applies to amend his pleadings to include the sale deed as the basis of his claim. The court examines whether Anil could have discovered the sale deed with due diligence before the trial started. If the court concludes that Anil could not have found the sale deed earlier despite due diligence, it may allow the amendment even though the trial has already commenced. This ensures that the case is decided on the most relevant and accurate information.

Rule 18: Failure to amend after order.

If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court.

Simplified act

If a person gets permission from the court to make changes to their legal documents but does not make those changes within the time given by the court, or if no specific time is given, within fourteen days from the date of the court's order:

They will not be allowed to make the changes after the given time or after the fourteen days, unless the court gives them more time.

Explanation using Example

Example 1:

Rajesh filed a civil suit against his neighbor, Suresh, for encroaching on his property. During the proceedings, Rajesh realized that he needed to amend his original complaint to include additional evidence and arguments. The court granted Rajesh permission to amend his complaint and set a deadline of 10 days for the amendment. However, Rajesh failed to submit the amended complaint within the 10-day period. As a result, Rajesh was not allowed to

make any amendments after the deadline expired, unless he could convince the court to extend the time for amendment.

Example 2:

Priya filed a lawsuit against a construction company for damages caused to her house due to negligent construction work. During the trial, Priya's lawyer discovered new evidence that could strengthen her case. The court granted Priya permission to amend her pleadings and did not specify a deadline for the amendment. According to the rule, Priya had 14 days from the date of the court order to file the amended pleadings. Priya's lawyer missed the 14-day deadline. Consequently, Priya was not allowed to amend her pleadings after the 14-day period unless the court granted an extension of time.

ORDER VII: PLAINT

Rule 1: Particulars to be contained in plaint.

The plaint shall contain the following particulars:

- (a) the name of the Court in which the suit is brought;
- (b) the name, description and place of residence of the plaintiff;
- (c) the name, description and place of residence of the defendant, so far as they can be ascertained;
- (d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;
- (e) the facts constituting the cause of action and when it arose;
- (f) the facts showing that the Court has jurisdiction;
- (g) the relief which the plaintiff claims;
- (h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and
- (i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fees, so far as the case admits.

Simplified act

The complaint must include the following details:

- (a) The name of the Court where the case is being filed;
- (b) The name, description, and address of the person filing the complaint (plaintiff);
- (c) The name, description, and address of the person being sued (defendant), as much as can be found out;
- (d) If the plaintiff or defendant is a minor (under 18) or mentally unfit, a statement saying so;
- (e) The facts that make up the reason for the lawsuit and when these facts happened;
- (f) The facts that show the Court has the authority to hear the case;
- (g) What the plaintiff is asking for (the relief);
- (h) If the plaintiff has agreed to reduce or give up part of their claim, the amount reduced or given up;
- (i) A statement of the value of what the lawsuit is about, for deciding the Court's authority and the court fees, as much as the case allows.

Explanation using Example

Example 1:

Case: Property Dispute

Plaint Details:

- (a) The name of the Court in which the suit is brought: District Court of Mumbai
- (b) The name, description and place of residence of the plaintiff: Rajesh Kumar, a businessman residing at 123, Marine Drive, Mumbai.
- (c) The name, description and place of residence of the defendant, so far as they can be ascertained: Suresh Gupta, a software engineer residing at 456, Andheri West, Mumbai.
- (d) Where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect: Not applicable.

(e) The facts constituting the cause of action and when it arose: The cause of action arose on 1st January 2023 when the defendant unlawfully encroached upon the plaintiff's property located at 789, Bandra East, Mumbai.

(f) The facts showing that the Court has jurisdiction: The property in dispute is located within the jurisdiction of the District Court of Mumbai.

(g) The relief which the plaintiff claims: The plaintiff claims possession of the encroached property and compensation for damages amounting to ₹5,00,000.

(h) Where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished: The plaintiff has not relinquished any portion of his claim.

(i) A statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fees, so far as the case admits: The value of the subject-matter of the suit is ₹50,00,000 for the purposes of jurisdiction and court-fees.

Example 2:

Case: Breach of Contract

Plaint Details:

(a) The name of the Court in which the suit is brought: Civil Court of Delhi

(b) The name, description and place of residence of the plaintiff: Anjali Sharma, a freelance graphic designer residing at 789, Connaught Place, New Delhi.

(c) The name, description and place of residence of the defendant, so far as they can be ascertained: Ramesh Verma, owner of Verma Enterprises, residing at 321, Karol Bagh, New Delhi.

(d) Where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect: Not applicable.

(e) The facts constituting the cause of action and when it arose: The cause of action arose on 15th February 2023 when the defendant failed to make the agreed payment of ₹1,00,000 for the graphic design services provided by the plaintiff.

(f) The facts showing that the Court has jurisdiction: The contract was executed and the services were provided within the jurisdiction of the Civil Court of Delhi.

(g) The relief which the plaintiff claims: The plaintiff claims the outstanding payment of ₹1,00,000 along with interest at the rate of 12% per annum from the date of default.

(h) Where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished: The plaintiff has not relinquished any portion of her claim.

(i) A statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fees, so far as the case admits: The value of the subject-matter of the suit is ₹1,00,000 for the purposes of jurisdiction and court-fees.

Rule 2: In money suits.

Where the plaintiff seeks the recovery of money, the plaint shall state the precise amount claimed:

But where the plaintiff sues for mesne profits, or for an amount which will be found due to him on taking unsettled accounts between him and the defendant, or for movables in the possession of the defendant, or for debts of which the value he cannot, after the exercise of reasonable diligence, estimate, the plaint shall state approximately the amount or value sued for.

2A. Where interest is sought in the suit

(1) Where the plaintiff seeks interest, the plaint shall contain a statement to that effect along with the details set out under sub-rules (2) and (3).

(2) Where the plaintiff seeks interest, the plaint shall state whether the plaintiff is seeking interest in relation to a commercial transaction within the meaning of section 34 of the Code of Civil Procedure, 1908 (5 of 1908) and, furthermore, if the plaintiff is doing so under the terms of a contract or under an Act, in which case the Act is to be specified in the plaint; or on some other basis and shall state the basis of that.

(3) Pleadings shall also state:

(a) the rate at which interest is claimed;

(b) the date from which it is claimed;

(c) the date to which it is calculated;

(d) the total amount of interest claimed to the date of calculation; and

(e) the daily rate at which interest accrues after that date.

Simplified act

- If the person filing the lawsuit (plaintiff) wants to get money back, they must clearly state the exact amount they are asking for:

But if the plaintiff is asking for profits they missed out on, or for an amount that will be determined after checking unsettled accounts between them and the defendant, or for items the defendant has, or for debts they can't accurately estimate even after trying hard, they should give an approximate amount or value they are suing for.

2A. When interest is being asked for in the lawsuit

(1) If the plaintiff wants interest, they must say so in their complaint and provide details as described in sub-rules (2) and (3).

(2) If the plaintiff wants interest, they must state if it is related to a business deal as defined in section 34 of the Code of Civil Procedure, 1908 (5 of 1908). They must also say if they are asking for interest based on a contract or a law (and specify which law), or on some other basis, and explain that basis.

(3) The complaint must also include:

- (a) the interest rate they are asking for;
- (b) the date from which they are asking for interest;
- (c) the date up to which the interest is calculated;
- (d) the total amount of interest up to the calculation date; and
- (e) the daily interest rate after that date.

Explanation using Example

Example 1:

Scenario: Recovery of Loan Amount

Ravi lent Rs. 1,00,000 to his friend Suresh, who promised to repay the amount within six months. However, Suresh failed to repay the loan even after multiple reminders. Ravi decides to file a suit for the recovery of the loan amount.

Application of Rule 2:

Ravi, as the plaintiff, must state the precise amount claimed in the plaint, which is Rs. 1,00,000.

Plaint Example:

Rule 3: Where the subject-matter of the suits immovable property.

Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.

Simplified act

If the lawsuit is about property that cannot be moved (like land or a building), the complaint must include a description of the property that is detailed enough to identify it. If the property can be identified by its boundaries or by numbers in official records, the complaint must include those boundaries or numbers.

Explanation using Example

Example 1:

Ravi owns a piece of agricultural land in Maharashtra. He discovers that his neighbor, Suresh, has encroached upon a portion of his land and built a shed. Ravi decides to file a suit against Suresh to reclaim his property. According to Rule 3 of Order VII under The Code of Civil Procedure 1908, Ravi's plaint must include a detailed description of the land. Ravi includes the survey number, boundaries, and other identifying details from the land records to ensure the court can accurately identify the disputed property.

Example 2:

Meena inherits a house in Chennai from her grandmother. However, her cousin, Priya, claims that the house belongs to her. Meena decides to file a suit to establish her ownership. In her plaint, Meena includes a detailed description of the house, including its municipal number, street address, and boundaries as recorded in the local municipal records. This detailed description helps the court to clearly identify the property in question and proceed with the case.

Rule 4: When plaintiff sues as representative.

Where the plaintiff sues in a representative character, the plaintiff shall show not only that he has an actual existing interest in the subject-matter, but that he has taken the steps (if any) necessary to enable him to institute a suit concerning it.

Simplified act

If someone is suing on behalf of a group or another person, their complaint must show two things: a. They have a real and current interest in the issue they are suing about. b. They have done everything required to be allowed to start the lawsuit.

Explanation using Example

Example 1:

Scenario: A group of farmers in a village is facing issues due to the pollution caused by a nearby factory. They decide to file a lawsuit against the factory for causing environmental damage and affecting their crops.

Application of Rule 4: Ramesh, one of the farmers, is chosen to represent the entire group in the lawsuit. According to Rule 4, Ramesh must show in the plaintiff (the written statement of the case) that he has a direct interest in the matter, i.e., his crops are also affected by the pollution. Additionally, he must demonstrate that he has taken the necessary steps to represent the group, such as obtaining written consent from the other farmers or following any specific legal procedures required for filing a representative suit.

Example 2:

Scenario: A housing society in Mumbai is facing issues with the builder who has failed to provide the promised amenities and has not completed the construction as per the agreement. The residents decide to file a lawsuit against the builder.

Application of Rule 4: Mrs. Sharma, a resident of the society, is selected to file the lawsuit on behalf of all the residents. In her plaintiff, Mrs. Sharma must show that she has an actual existing interest in the subject-matter, meaning she is also affected by the builder's failure to provide the amenities. Furthermore, she must prove that she has taken the necessary steps to represent the entire housing society, such as holding a meeting with the residents and obtaining their consent to act on their behalf in the legal proceedings.

Rule 5: Defendant's interest and liability to be shown.

The plaint shall show that the defendant is or claims to be interested in the subject-matter, and that he is liable to be called upon to answer the plaintiff's demand.

Simplified act

The complaint must show that the defendant has an interest in the issue being discussed.

It must also show that the defendant can be required to respond to the plaintiff's request.

Explanation using Example

Example 1:

Ravi owns a piece of agricultural land in Maharashtra. He enters into an agreement to sell this land to Suresh. However, before the sale is completed, Ravi sells the same land to another person, Anil. Suresh files a lawsuit against Ravi for breach of contract and includes Anil as a defendant in the case. In his plaint, Suresh must show that Anil is interested in the subject-matter (the land) because he has purchased it from Ravi, and that Anil is liable to be called upon to answer Suresh's demand for either the land or compensation.

Example 2:

Meera lends Rs. 5 lakhs to her friend Priya, who promises to repay the amount within a year. Priya, in turn, lends the same amount to her cousin, Rohan, with the understanding that Rohan will repay her within six months. When Priya fails to repay Meera after a year, Meera files a lawsuit against Priya and includes Rohan as a defendant. In her plaint, Meera must show that Rohan is interested in the subject-matter (the Rs. 5 lakhs) because he borrowed it from Priya, and that Rohan is liable to be called upon to answer Meera's demand for repayment, either directly or through Priya.

Rule 6: Grounds of exemption from limitation law.

Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the ground upon which exemption from such law is claimed:

Provided that the Court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint.

Simplified act

If you file a lawsuit after the deadline set by the law, you must explain why you should be allowed to file late in your complaint.

However, the Court can allow you to add new reasons for filing late, even if you didn't mention them in your complaint, as long as these new reasons don't contradict the ones you already provided.

Explanation using Example

Example 1:

Rajesh wants to file a lawsuit against his former business partner for breach of contract. The law of limitation for such cases is three years. However, Rajesh is filing the suit four years after the breach occurred. In his plaint, Rajesh mentions that he was suffering from a severe illness for the past year, which prevented him from taking any legal action. He provides medical records as evidence. The court considers this a valid ground for exemption from the limitation law and allows the suit to proceed.

Example 2:

Meena is filing a suit to reclaim her ancestral property, which was illegally occupied by her cousin. The limitation period for such property disputes is twelve years. Meena files the suit fifteen years after the illegal occupation began. In her plaint, she states that she was unaware of the illegal occupation until recently because she was living abroad and had no contact with her family. She provides proof of her residence abroad and lack of communication. The court permits her to claim exemption from the limitation law based on this ground, allowing her case to be heard.

Rule 7: Relief to be specifically stated.

Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement.

Simplified act

Every lawsuit must clearly state what the person filing the lawsuit (the plaintiff) wants from the court. This can be a specific request or an alternative option.

It is not necessary for the plaintiff to ask for general or additional relief, as the court can decide to give such relief if it thinks it is fair, even if it wasn't specifically requested.

This rule also applies to any requests made by the person being sued (the defendant) in their written response.

Explanation using Example

Example 1:

Scenario: Ramesh files a lawsuit against his neighbor, Suresh, for encroaching on his property.

Plaint: Ramesh specifically states in his plaint that he is seeking the following reliefs:

A court order directing Suresh to remove the encroachment from his property.

Compensation for the damages caused due to the encroachment.

Outcome: The court reviews the specific reliefs requested by Ramesh. Even if Ramesh did not ask for any additional general relief, the court has the discretion to grant any other relief it deems just, such as an injunction to prevent future encroachments.

Example 2:

Scenario: Priya files a lawsuit against her employer for wrongful termination.

Plaint: Priya specifically states in her plaint that she is seeking the following reliefs:

Reinstatement to her previous position.

Back pay for the period she was unemployed due to the wrongful termination.

Outcome: The court examines the specific reliefs requested by Priya. If the court finds in her favor, it may order her reinstatement and back pay. Additionally, even if Priya did not ask for it, the court might also award her

compensation for mental anguish or other related damages if it finds it just and appropriate.

Rule 8: Relief founded on separate grounds.

Where the plaintiff seeks relief in respect of several distinct claims or causes of action founded upon separate and distinct grounds, they shall be stated as far as may be separately and distinctly.

Simplified act

If the person bringing the lawsuit (plaintiff) wants to get help for different issues or reasons that are based on separate and different facts, they must list each issue or reason clearly and separately.

Explanation using Example

Example 1:

Ravi owns a piece of land in Bangalore and has leased it to Suresh for agricultural purposes. Over time, Suresh stops paying the agreed rent and also starts constructing a building on the land without Ravi's permission. Ravi decides to file a lawsuit against Suresh. In his plaint, Ravi seeks two distinct reliefs:

Recovery of the unpaid rent.

An injunction to stop the unauthorized construction and to demolish any structures already built.

According to Rule 8 of the Code of Civil Procedure 1908, Ravi must clearly state these two claims separately in his plaint, as they are founded on separate and distinct grounds.

Example 2:

Priya runs a small business in Mumbai and has a contract with a supplier, Anil, to deliver raw materials every month. Anil fails to deliver the materials for three consecutive months, causing Priya significant financial loss. Additionally, Priya discovers that Anil has been spreading false rumors about her business, damaging her reputation. Priya decides to take legal action against Anil. In her plaint, she seeks:

Compensation for the financial losses due to the non-delivery of materials.

Damages for defamation caused by the false rumors.

Under Rule 8 of the Code of Civil Procedure 1908, Priya must list these claims separately in her plaint, as they are based on different grounds—one on breach of contract and the other on defamation.

Rule 9: Procedure on admitting plaint.

Where the Court orders that the summons be served on the defendants in the manner provided in rule 9 of Order V, it will direct the plaintiff to present as many copies of the plaint on plain paper as there are defendants within seven days from the date of such order along with requisite fee for service of summons on the defendants.

Simplified act

If the Court decides that the defendants should be notified according to rule 9 of Order V, it will instruct the plaintiff to do the following: a. Provide a copy of the complaint on plain paper for each defendant. b. Do this within seven days from the date of the Court's order. c. Pay the necessary fee for serving the summons to the defendants.

Explanation using Example

Example 1:

Scenario: Ramesh files a civil suit against three individuals, alleging that they have encroached on his property.

Application of Rule 9:

The court reviews Ramesh's plaint and decides to proceed with the case.

The court orders that summons be served to the three defendants as per Rule 9 of Order V.

The court directs Ramesh to submit three copies of the plaint (one for each defendant) on plain paper within seven days.

Ramesh must also pay the requisite fee for the service of summons to the defendants.

Ramesh complies with the court's order, submits the copies, and pays the fee.

The court then arranges for the summons to be served to the three defendants, informing them of the lawsuit and requiring their response.

Example 2:

Scenario: Priya files a lawsuit against a construction company and its two directors for breach of contract.

Application of Rule 9:

The court examines Priya's complaint and decides to admit it for further proceedings.

The court orders that summons be served to the construction company and its two directors as per Rule 9 of Order V.

The court instructs Priya to provide three copies of the complaint (one for the company and one for each director) on plain paper within seven days.

Priya is also required to pay the necessary fee for the service of summons.

Priya follows the court's instructions, submits the copies, and pays the fee.

The court then ensures that the summons are served to the construction company and its directors, notifying them of the lawsuit and requiring their response.

Rule 10: Return of complaint.

(1) Subject to the provisions of rule 10A, the complaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

Explanation. - For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct after setting aside the decree passed in a suit, the return of the complaint under this sub-rule.

(2)

Simplified act

(1) According to rule 10A, at any point during the lawsuit, the complaint (complaint) can be sent back to be filed in the correct court where the lawsuit should have started.

Explanation. - To clear up any confusion, it is stated that an appeal or review court can order the complaint to be sent back under this rule after canceling the decision made in the lawsuit.

(2)

Explanation using Example

Example 1:

Ravi files a lawsuit in the District Court of Mumbai, seeking to resolve a property dispute. However, during the proceedings, it is discovered that the property in question is actually located in Pune, and the appropriate jurisdiction for this case is the District Court of Pune. According to Rule 10 of the Code of Civil Procedure 1908, the Mumbai court returns the plaint to Ravi, instructing him to present it to the Pune court, where the suit should have been originally instituted.

Example 2:

Meena files a suit in the Civil Court of Delhi against a company for breach of contract. The court proceeds with the case and even passes a decree in Meena's favor. However, the company appeals the decision, and the appellate court finds that the original suit should have been filed in the Civil Court of Gurgaon, as the contract was executed there. The appellate court sets aside the decree and directs the return of the plaint to Meena, so she can file it in the appropriate court in Gurgaon.

Procedure on returning plaint.

On returning a plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.

Simplified act

When a judge sends back a complaint, they must write on it the date it was given to the court and the date it was sent back. They also need to write the name of the person who brought the complaint and a short explanation of why it was sent back.

Explanation using Example

Example 1:

Scenario: Ramesh files a civil suit in the District Court of Mumbai against his neighbor for encroaching on his property. However, the court finds that the property in question is actually located in Pune, and thus, the Mumbai court does not have jurisdiction over the matter.

Application of the Act:

The Judge examines the plaint and determines that it should be returned to Ramesh because the court lacks jurisdiction.

The Judge endorses the plaint with the date it was originally presented (e.g., 1st September 2023) and the date it is being returned (e.g., 10th September 2023).

The Judge also notes Ramesh's name as the party who presented the plaint.

A brief statement is added, explaining that the plaint is being returned due to lack of jurisdiction, advising Ramesh to file the suit in the appropriate court in Pune.

Example 2:

Scenario: Priya files a civil suit in the Civil Court of Delhi against a company for breach of contract. However, the court finds that the plaint does not comply with the required format and lacks essential details such as the specific relief sought and the proper verification.

Application of the Act:

The Judge reviews the plaint and decides it should be returned to Priya for correction and resubmission.

The Judge endorses the plaint with the date it was initially presented (e.g., 5th October 2023) and the date it is being returned (e.g., 12th October 2023).

The Judge notes Priya's name as the party who presented the plaint.

A brief statement is included, explaining that the plaint is being returned due to non-compliance with the required format and missing essential details, advising Priya to correct these issues and refile the plaint.

Rule 10A: Power of Court to fix a date of appearance in the Court where plaint is to be filed after its return.

Procedure for Returning a Plaint

(1) Where, in any suit, after the defendant has appeared, the Court is of opinion that the plaint should be returned, it shall, before doing so, intimate its decision to the plaintiff.

(2) Where an intimation is given to the plaintiff under sub-rule (1), the plaintiff may make an application to the Court -

(a) specifying the Court in which he proposes to present the plaint after its return,

(b) praying that the Court may fix a date for the appearance of the parties in the said Court, and

(c) requesting that the notice of the date so fixed may be given to him and to the defendant.

(3) Where an application is made by the plaintiff under sub-rule (2), the Court shall, before returning the plaint and notwithstanding that the order for return of plaint was made by it on the ground that it has no jurisdiction to try the suit, -

(a) fix a date for the appearance of the parties in the Court in which the plaint is proposed to be presented, and

(b) give to the plaintiff and to the defendant notice of such date for appearance.

(4) Where the notice of the date for appearance is given under sub-rule (3), -

(a) it shall not be necessary for the Court in which the plaint is presented after its return, to serve the defendant with a summons for appearance in the suit, unless that Court, for reasons to be recorded, otherwise directs, and

(b) the said notice shall be deemed to be a summons for the appearance of the defendant in the Court in which the plaint is presented on the date so fixed by the Court by which the plaint was returned.

(5) Where the application made by the plaintiff under sub-rule (2) is allowed by the Court, the plaintiff shall not be entitled to appeal against the order returning the plaint.

Simplified act

Procedure for Returning a Complaint

(1) If, during a lawsuit, the court decides that the complaint should be sent back after the defendant has shown up, the court must first inform the person who filed the complaint (the plaintiff).

(2) Once the plaintiff is informed, they can ask the court to do the following:

(a) Specify which court they plan to send the complaint to next,

(b) Set a date for both parties (plaintiff and defendant) to appear in the new court, and

(c) Notify both the plaintiff and the defendant of this new date.

(3) If the plaintiff makes this request, the court must, before sending back the complaint and even if it decided it can't handle the case:

(a) Set a date for both parties to appear in the new court, and

(b) Inform both the plaintiff and the defendant of this new date.

(4) When the new date is set and both parties are informed:

(a) The new court does not need to send another notice to the defendant to appear, unless it decides otherwise for specific reasons, and

(b) The notice given by the first court will count as a summons for the defendant to appear in the new court on the set date.

(5) If the court agrees to the plaintiff's request, the plaintiff cannot appeal the decision to send back the complaint.

Explanation using Example

Example 1:

Scenario: Rajesh files a civil suit in the District Court of Mumbai against his neighbor, Suresh, for encroachment on his property. After Suresh appears in court, the judge realizes that the case should have been filed in the District Court of Thane, as the property in question is located there.

Application of Rule 10A:

The judge informs Rajesh that the plaint (the written statement of his case) will be returned because the Mumbai court does not have jurisdiction.

Rajesh then submits an application to the Mumbai court specifying that he will present the plaint in the Thane court and requests the Mumbai court to fix a date for the appearance of both parties in the Thane court.

The Mumbai court fixes a date for the appearance of Rajesh and Suresh in the Thane court and notifies both parties of this date.

On the fixed date, Rajesh presents the plaint in the Thane court. Since the Thane court has already been notified of the appearance date, it does not need to issue a new summons to Suresh unless it decides otherwise for specific reasons.

Example 2:

Scenario: Priya files a lawsuit in the Civil Court of Delhi against a company for breach of contract. The company appears in court, but the judge determines that the case should be heard in the Civil Court of Gurgaon, as the contract was executed there.

Application of Rule 10A:

The judge informs Priya that the plaint will be returned because the Delhi court lacks jurisdiction.

Priya submits an application to the Delhi court indicating that she will present the plaint in the Gurgaon court and requests the Delhi court to set a date for the appearance of both parties in the Gurgaon court.

The Delhi court sets a date for the appearance of Priya and the company in the Gurgaon court and notifies both parties of this date.

On the specified date, Priya presents the plaint in the Gurgaon court. Since the Gurgaon court has already been notified of the appearance date, it does not need to issue a new summons to the company unless it decides otherwise for specific reasons.

Example 3:

Scenario: Anil files a suit in the Family Court of Bangalore against his spouse for divorce. After the spouse appears in court, the judge realizes that the case should have been filed in the Family Court of Mysore, as the couple last resided there together.

Application of Rule 10A:

The judge informs Anil that the plaint will be returned because the Bangalore court does not have jurisdiction.

Anil submits an application to the Bangalore court specifying that he will present the plaint in the Mysore court and requests the Bangalore court to fix a date for the appearance of both parties in the Mysore court.

The Bangalore court fixes a date for the appearance of Anil and his spouse in the Mysore court and notifies both parties of this date.

On the fixed date, Anil presents the plaint in the Mysore court. Since the Mysore court has already been notified of the appearance date, it does not need to issue a new summons to Anil's spouse unless it decides otherwise for specific reasons.

Rule 10B: Power of appellate Court to transfer suit to the proper Court.

(1) Where, on an appeal against an order for the return of plaint, the Court hearing the appeal confirms such order, the Court of appeal may, if the plaintiff by an application so desires, while returning the plaint, direct plaintiff to file the plaint, subject to the provisions of the Limitation Act, 1963 (36 of 1963), in the Court in which the suit should have been instituted, (whether such Court is within or without the State in which the Court hearing the appeal is situated), and fix a date for the appearance of the parties in the Court in which the plaint is directed to be filed and when the date is so fixed it shall not be necessary for the Court in which the plaint is filed to serve the defendant with the summons for appearance in the suit, unless that Court in which the plaint is filed, for reasons to be recorded, otherwise directs.

(2) The direction made by the Court under sub-rule (1) shall be without any prejudice to the rights of the parties to question the jurisdiction of the Court, in which the plaint is filed, to try the suit.

Simplified act

(1) If you appeal a decision to return your lawsuit and the appeal court agrees with the original decision, the appeal court can, if you ask, tell you to file your lawsuit in the correct court. This could be a court in a different state. The appeal court will also set a date for everyone involved to appear in the new court. If a date is set, the new court does not need to send a notice to the defendant to appear, unless the new court decides otherwise and explains why.

(2) This direction from the appeal court does not affect anyone's right to question whether the new court has the authority to handle the case.

Explanation using Example

Example 1:

Ravi, a resident of Maharashtra, files a civil suit in a local court in Pune against Shyam, who resides in Karnataka, for breach of contract. The Pune court returns the plaint, stating that it does not have jurisdiction to hear the case and that the suit should be filed in a court in Karnataka. Ravi appeals this order in the Bombay High Court. The High Court confirms the Pune court's order but, upon Ravi's request, directs him to file the plaint in the appropriate court in Karnataka. The High Court also sets a date for both parties to appear in the Karnataka court. When Ravi files the plaint in Karnataka, the court there does not need to issue a new summons to Shyam unless it finds a specific reason to do so.

Example 2:

Priya, a businesswoman from Delhi, files a lawsuit in a Delhi court against a company based in Gujarat for non-payment of dues. The Delhi court returns the plaint, indicating that the proper jurisdiction for the case is in Gujarat. Priya appeals this decision in the Delhi High Court. The High Court upholds the lower court's decision but, at Priya's request, directs her to file the plaint in the appropriate court in Gujarat. The High Court also sets a date for both parties to appear in the Gujarat court. When Priya files the plaint in Gujarat, the court there does not need to issue a new summons to the company unless it finds a specific reason to do so.

Rule 11: Rejection of plaint.

The plaint shall be rejected in the following cases:

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court

to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

Simplified act

The complaint will be rejected in the following cases:

(a) if it does not show a valid reason for the lawsuit;

(b) if the amount of money or relief requested is too low, and the person filing the complaint (plaintiff) does not correct it within the time given by the Court;

(c) if the amount of money or relief requested is correct, but the complaint is submitted on paper that does not have the required stamp, and the plaintiff does not provide the correct stamped paper within the time given by the Court;

(d) if the lawsuit is not allowed by any law, based on the information in the complaint;

(e) if the complaint is not filed in duplicate (two copies);

(f) if the plaintiff does not follow the rules mentioned in rule 9:

However, the time given by the Court to correct the amount of money or relief requested or to provide the correct stamped paper will not be extended unless the Court records reasons and is convinced that the plaintiff was prevented by an exceptional cause from doing so within the given time, and that not extending the time would cause serious unfairness to the plaintiff.

Explanation using Example

Example 1:

Scenario: Ramesh files a lawsuit against his neighbor, Suresh, claiming that Suresh's tree is encroaching on his property and causing damage to his house. However, Ramesh's plaint does not specify how the tree is causing damage or what specific relief he is seeking from the court.

Application of Rule 11(a): The court examines the plaint and finds that it does not disclose a clear cause of action because it lacks specific details about the damage and the relief sought. As a result, the court rejects Ramesh's plaint under Rule 11(a).

Example 2:

Scenario: Priya files a lawsuit seeking Rs. 50,000 as compensation for breach of contract. However, she undervalues the relief claimed and only pays the court fee for a claim of Rs. 10,000. The court asks Priya to correct the valuation and pay the additional court fee within 15 days.

Application of Rule 11(b): Priya fails to correct the valuation and pay the additional court fee within the given time. Consequently, the court rejects her plaint under Rule 11(b).

Example 3:

Scenario: Anil files a lawsuit for recovery of Rs. 1,00,000 but submits the plaint on a paper that is insufficiently stamped. The court instructs Anil to provide the requisite stamp-paper within 10 days.

Application of Rule 11(c): Anil does not supply the requisite stamp-paper within the specified time. Therefore, the court rejects his plaint under Rule 11(c).

Example 4:

Scenario: Sunita files a lawsuit to claim ownership of a piece of land. However, the plaint reveals that the suit is barred by the Limitation Act, as the claim is being made after the statutory period for filing such suits has expired.

Application of Rule 11(d): The court finds that the suit is barred by law based on the statements in the plaint and rejects Sunita's plaint under Rule 11(d).

Example 5:

Scenario: Rajesh files a lawsuit against a company for breach of contract but submits only one copy of the plaint instead of the required duplicate copies.

Application of Rule 11(e): The court rejects Rajesh's complaint under Rule 11(e) because it was not filed in duplicate.

Example 6:

Scenario: Meera files a lawsuit but fails to comply with the provisions of Rule 9, which requires her to provide certain documents and information along with the complaint.

Application of Rule 11(f): The court rejects Meera's complaint under Rule 11(f) due to her failure to comply with the provisions of Rule 9.

Example 7:

Scenario: Ravi files a lawsuit and is required by the court to correct the valuation of the relief claimed within 10 days. However, Ravi is hospitalized due to a severe illness and is unable to comply within the given time.

Application of Proviso: The court, upon recording the reasons, extends the time for Ravi to correct the valuation, as it is satisfied that Ravi was prevented by an exceptional cause (his illness) and that refusing to extend the time would cause grave injustice to him.

Rule 12: Procedure on rejecting complaint.

Where a complaint is rejected, the Judge shall record an order to that effect with the reasons for such order.

Simplified act

If a lawsuit is not accepted, the Judge must write an order explaining why it was rejected.

Explanation using Example

Example 1:

Ravi files a lawsuit in a civil court in Mumbai, claiming that his neighbor, Suresh, has encroached on his property. However, Ravi fails to provide any substantial evidence or documents to support his claim. The judge reviews the complaint and finds it lacking in necessary details and evidence. Consequently, the judge issues an order rejecting the complaint and records the reasons for this decision, stating that the complaint does not provide sufficient grounds for the lawsuit.

Example 2:

Meena files a plaint in a civil court in Delhi, seeking compensation from a company for breach of contract. However, the plaint is filed after the expiration of the statutory limitation period for such claims. The judge examines the plaint and determines that it is time-barred. As a result, the judge rejects the plaint and records an order explaining that the claim is not maintainable due to the lapse of the limitation period.

Rule 13: Where rejection of plaint does not preclude presentation of fresh plaint.

The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

Simplified act

If a lawsuit is rejected for any of the reasons mentioned earlier, it does not automatically stop the person who filed it from filing a new lawsuit about the same issue.

Explanation using Example

Example 1:

Ravi files a lawsuit against his neighbor, Suresh, claiming that Suresh has encroached on his land. However, Ravi's plaint (the written statement of his claim) is rejected by the court because it lacks sufficient details about the property boundaries. According to Rule 13 of the Code of Civil Procedure 1908, this rejection does not prevent Ravi from filing a new plaint. Ravi can gather the necessary details and documents about the property boundaries and file a fresh plaint against Suresh for the same cause of action.

Example 2:

Meena files a plaint in the court seeking damages from a company for breach of contract. The court rejects her plaint because it was not properly stamped as required by law. Under Rule 13 of the Code of Civil Procedure 1908, this rejection does not bar Meena from presenting a new plaint. Meena can ensure that the new plaint is properly stamped and then refile it in the court for the same breach of contract claim against the company.

Rule 14: Production of document on which plaintiff sues or relies.

Document Production in Court

- (1) Where a plaintiff sues upon a document or relies upon a document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the plaint.
- (2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.
- (3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.
- (4) Nothing in this rule shall apply to documents produced for the cross-examination of the plaintiff's witnesses, or handed over to a witness merely to refresh his memory.

Simplified act

Document Production in Court

- (1) If you are suing someone and you have a document that supports your case, you need to list that document and bring it to court when you file your lawsuit. You also need to give the court a copy of the document.
- (2) If you don't have the document but know who does, you should say who has it if you can.
- (3) If you don't bring the document to court or list it when you file your lawsuit, you won't be able to use it as evidence later unless the court gives you special permission.
- (4) This rule doesn't apply to documents used to question the other side's witnesses or to help a witness remember something.

Explanation using Example

Example 1:

Scenario: Ramesh files a lawsuit against Suresh for breach of contract.

Details:

Ramesh claims that Suresh did not fulfill the terms of a written contract they both signed.

Ramesh has the original contract document in his possession.

Application of Rule 14:

Ramesh must list the contract document in a list of documents he relies on.

When Ramesh files the plaint (formal written statement of his claim) in court, he must produce the original contract document and a copy of it.

If Ramesh fails to produce the contract document or list it, the court may not allow him to use it as evidence during the hearing unless he gets special permission from the court.

Example 2:

Scenario: Priya sues her landlord for not returning her security deposit.

Details:

Priya claims that she has a receipt showing the payment of the security deposit, but she has lost the original receipt.

Priya knows that the landlord has a copy of the receipt.

Application of Rule 14:

Priya must state in her plaint that the receipt is not in her possession and that the landlord has it.

If Priya does not mention this in her plaint, she may not be able to use the receipt as evidence unless she gets special permission from the court.

Priya can still use other documents or evidence to support her claim, such as bank statements showing the payment.

Example 3:

Scenario: Anil files a lawsuit against a company for non-payment of services rendered.

Details:

Anil has several invoices and email correspondences that support his claim.

Some of these documents are in his possession, while others are with his accountant.

Application of Rule 14:

Anil must list all the invoices and email correspondences in a document list.

When filing the complaint, Anil must produce the documents he has and provide copies to the court.

For the documents with his accountant, Anil must state in the complaint that these documents are in the possession of his accountant.

If Anil fails to list or produce these documents, he may not be able to use them as evidence unless he gets special permission from the court.

Example 4:

Scenario: Meera sues a builder for not completing the construction of her house on time.

Details:

Meera has a construction agreement and several progress reports.

She also has photographs showing the incomplete construction.

Application of Rule 14:

Meera must list the construction agreement, progress reports, and photographs in a document list.

When filing the complaint, Meera must produce these documents and provide copies to the court.

If Meera fails to produce or list these documents, she may not be able to use them as evidence unless she gets special permission from the court.

Meera can still use these documents during cross-examination or to refresh a witness's memory without listing them initially.

Rule 15: Statement in case of documents not in plaintiff possession or powers. Omitted.

Omitted by Act 46 of 1999 s. 17 (with effect from 1-7-2002)

Rule 16: Suits on lost negotiable instruments.

Where the suit is founded upon a negotiable instrument, and it is proved that the instrument is lost, and an indemnity is given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may pass such decree as it would have passed if the plaintiff had produced the instrument in Court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint.

Simplified act

If a lawsuit is based on a negotiable instrument (like a check or promissory note) and the instrument is lost:

The plaintiff (the person who started the lawsuit) must provide a guarantee to the Court.

This guarantee should protect against any claims from other people who might have had rights to the lost instrument.

If the Court is satisfied with the guarantee:

The Court can make a decision as if the plaintiff had shown the original instrument in Court and provided a copy of it when they filed the lawsuit.

Explanation using Example

Example 1:

Scenario: Rajesh had a promissory note from his friend Suresh, who promised to pay him ₹50,000 on a specific date. Unfortunately, Rajesh lost the promissory note.

Application of Rule 16: Rajesh decides to file a suit against Suresh to recover the ₹50,000. In his plaint, Rajesh mentions that the promissory note is lost. He provides evidence of the loss and offers an indemnity bond to the court, ensuring that he will compensate any other person who might claim the amount based on the lost promissory note. The court, satisfied with the indemnity and the evidence provided, proceeds to pass a decree in favor of Rajesh, just as it would have if the original promissory note had been presented.

Example 2:

Scenario: Meena had a cheque from her business partner, Anil, for ₹1,00,000. The cheque was misplaced during a move to a new office.

Application of Rule 16: Meena files a suit against Anil to recover the ₹1,00,000. She informs the court that the cheque is lost and provides an indemnity bond to cover any potential claims from other parties who might find and attempt to use the cheque. The court, after verifying the indemnity and the circumstances of the loss, issues a decree in Meena's favor, allowing her to recover the ₹1,00,000 from Anil, as if the original cheque had been presented in court.

Rule 17: Production of shop-book.

1. Save in so far as is otherwise provided by the Bankers' Books Evidence Act, 1891 (XVIII of 1891), where the document on which the plaintiff sues is an entry in a shop-book or other account in his possession or power, the plaintiff shall produce the book or account at the time of filing the plaint, together with a copy of the entry on which he relies.

2. Original entry to be marked and returned. - The Court or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification; and, after examining and comparing the copy with the original, shall, if it is found correct, certify it to be so and return the book to the plaintiff and cause the copy to be filed.

Simplified act

Except as otherwise provided by the Bankers' Books Evidence Act, 1891, if the plaintiff's case is based on an entry in a shop-book or other account that he owns or controls, the plaintiff must produce the book or account when filing the lawsuit, along with a copy of the entry he is relying on.

Original entry to be marked and returned. - The Court or an appointed officer will immediately mark the document for identification purposes. After checking and comparing the copy with the original, if the copy is correct, they will certify it and return the book to the plaintiff, and the copy will be filed.

Explanation using Example

Example 1:

Scenario: Ramesh owns a small grocery store in Mumbai. He sells goods on credit to his customers and maintains a shop-book where he records all transactions. One of his regular customers, Suresh, has an outstanding

balance of ₹10,000 according to Ramesh's shop-book. Despite multiple reminders, Suresh refuses to pay the amount.

Application of Rule 17: Ramesh decides to file a lawsuit against Suresh to recover the outstanding amount. According to Rule 17 of the Code of Civil Procedure, 1908, Ramesh must produce the shop-book entry that shows Suresh's debt at the time of filing the plaint. Ramesh submits the shop-book along with a copy of the relevant entry to the court.

The court officer marks the original shop-book entry for identification, examines the copy, and compares it with the original. Once the court officer verifies that the copy is accurate, they certify it and return the original shop-book to Ramesh. The certified copy is then filed with the court as evidence in the case.

Example 2:

Scenario: Priya runs a boutique in Delhi and maintains an account book for all her transactions. She provided designer dresses worth ₹50,000 to a client, Anjali, who promised to pay within a month. However, Anjali fails to make the payment even after several months.

Application of Rule 17: Priya decides to take legal action against Anjali to recover the ₹50,000. When filing the plaint, Priya includes the account book entry that records the transaction with Anjali. She also provides a copy of this entry to the court.

The court or its appointed officer marks the original account book entry for identification purposes. They then examine and compare the copy with the original entry. After confirming that the copy is accurate, the court officer certifies it and returns the original account book to Priya. The certified copy is filed with the court as part of the evidence in Priya's lawsuit against Anjali.

Rule 18: Inadmissibility of document not produced when plaint filed. Omitted.

Omitted by Act 22 of 2002, s. 8 (w. e. f. 1-7-2002).

ORDER VIII: WRITTEN STATEMENT, SET-OFF AND COUNTER-CLAIM

Rule 1: Written statement.

The Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.

Simplified act

The Defendant must submit a written statement of their defense within thirty days from the day they receive the summons.

If the Defendant cannot submit the written statement within thirty days, the Court may allow more time, but this extension must be recorded in writing and cannot exceed ninety days from the day the summons was received.

If the Defendant still fails to submit the written statement within ninety days, the Court may allow an additional extension, but this must also be recorded in writing and may involve a cost. However, this final extension cannot go beyond one hundred twenty days from the day the summons was received. After one hundred twenty days, the Defendant loses the right to submit the written statement, and the Court will not accept it.

Explanation using Example

Example 1:

Rajesh receives a summons on January 1st, 2023, informing him that he is being sued by his neighbor, Suresh, over a property dispute. According to Rule 1 of Order VIII of The Code of Civil Procedure 1908, Rajesh has 30 days to file a written statement of his defense. Therefore, Rajesh must submit his written statement by January 31st, 2023.

However, Rajesh is unable to gather all necessary documents and evidence within the 30-day period. He requests an extension from the court. The court,

after recording the reasons in writing, grants him an additional 60 days, making the new deadline March 31st, 2023. Rajesh submits his written statement on March 25th, 2023.

If Rajesh had failed to submit his written statement by March 31st, 2023, he could request another extension. The court, considering the reasons and imposing a cost penalty, might grant him a final extension up to April 30th, 2023. If Rajesh still fails to submit his written statement by April 30th, 2023, he forfeits his right to file the written statement, and the court will not accept it thereafter.

Example 2:

Anita is sued by her former business partner, Meera, for breach of contract. Anita receives the summons on February 10th, 2023. According to the law, Anita has until March 12th, 2023, to file her written statement.

Anita's lawyer falls ill, and she is unable to prepare the written statement in time. Anita requests an extension from the court, explaining the situation. The court grants her an additional 30 days, extending the deadline to April 11th, 2023.

Despite the extension, Anita's lawyer is still recovering, and she requests another extension. The court, after recording the reasons and imposing a cost penalty, grants a final extension until May 10th, 2023. Anita submits her written statement on May 5th, 2023.

If Anita had failed to submit her written statement by May 10th, 2023, she would lose the right to file it, and the court would not accept any written statement from her after this date.

Rule 1A: Duty of defendant to produce documents upon which relief is claimed or relief upon by him.

(1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set-off or counter-claim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

(2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to documents -

(a) produced for the cross-examination of the plaintiff's witnesses, or

(b) handed over to a witness merely to refresh his memory.

Simplified act

(1) If the defendant (the person being sued) wants to use a document to support his defense or counter-claim, he must list that document and bring it to court when he submits his written statement. He also needs to give the court a copy of the document.

(2) If the defendant doesn't have the document, he should say who does have it, if he knows.

(3) If the defendant should have brought a document to court but didn't, he can't use that document as evidence in the trial unless the court allows it.

(4) This rule does not apply to documents that are:

(a) used to question the plaintiff's (the person suing) witnesses, or

(b) given to a witness just to help them remember something.

Explanation using Example

Example 1:

Scenario: Rajesh is being sued by his neighbor, Suresh, for allegedly encroaching on Suresh's property. Rajesh claims that he has a property deed that proves his ownership of the disputed land.

Application of Rule 1A:

Rajesh must list the property deed in a document list.

He must produce the original property deed in court when he submits his written statement.

Rajesh must also provide a copy of the property deed to be filed with his written statement.

Outcome: If Rajesh fails to produce the property deed as required, he may not be allowed to use it as evidence in his defense without the court's permission.

Example 2:

Scenario: Priya is being sued by a supplier, Anil, for non-payment of goods delivered. Priya claims that she has already paid for the goods and has bank statements to prove the payments.

Application of Rule 1A:

Priya must list the bank statements in a document list.

She must produce the original bank statements in court when she submits her written statement.

Priya must also provide copies of the bank statements to be filed with her written statement.

Outcome: If Priya does not produce the bank statements as required, she may not be allowed to use them as evidence in her defense without the court's permission.

Example 3:

Scenario: Ramesh is being sued by his former business partner, Vinod, for breach of contract. Ramesh claims that Vinod had agreed to a different set of terms, which are documented in emails exchanged between them.

Application of Rule 1A:

Ramesh must list the emails in a document list.

He must produce the original emails in court when he submits his written statement.

Ramesh must also provide copies of the emails to be filed with his written statement.

Outcome: If Ramesh fails to produce the emails as required, he may not be allowed to use them as evidence in his defense without the court's permission.

Example 4:

Scenario: Sunita is being sued by her tenant, Ravi, for not returning the security deposit. Sunita claims that Ravi caused damage to the property, and she has photographs and repair bills to prove it.

Application of Rule 1A:

Sunita must list the photographs and repair bills in a document list.

She must produce the original photographs and repair bills in court when she submits her written statement.

Sunita must also provide copies of the photographs and repair bills to be filed with her written statement.

Outcome: If Sunita does not produce the photographs and repair bills as required, she may not be allowed to use them as evidence in her defense without the court's permission.

Rule 2: New facts must be specially pleaded.

The defendant must raise by his pleading all matters which show the suit not be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance:

fraud

limitation

release

payment

performance

facts showing illegality

Simplified act

The person being sued (the defendant) must include in their written response (pleading) all reasons why the lawsuit should not continue or why the deal in question is either completely invalid or can be canceled according to the law. They must also include any defenses that, if not mentioned, might surprise the

other side or bring up new facts that were not mentioned in the original complaint. Examples of such defenses include:

fraud (dishonest behavior)

limitation (time limits for bringing a lawsuit)

release (agreement to not sue)

payment (money has already been paid)

performance (the task has already been completed)

facts showing illegality (the action was against the law)

Explanation using Example

Example 1:

Ravi files a lawsuit against Suresh claiming that Suresh owes him Rs. 5 lakhs for a loan given two years ago. In his written statement, Suresh must specifically mention if he believes the loan agreement is void because it was made under duress (fraud). If Suresh fails to mention this in his initial pleading, he cannot later surprise Ravi with this defense during the trial.

Example 2:

Anita sues Raj for breach of contract, alleging that Raj did not deliver goods as per their agreement. In his written statement, Raj must specifically plead if he believes the contract is voidable because it was signed under a mistaken belief (illegality). Additionally, if Raj has already made a payment to Anita that she has not acknowledged, he must mention this payment in his initial defense to avoid surprising Anita later in the proceedings.

Example 3:

Sunita files a suit against her former business partner, Arjun, for not sharing profits as agreed. Arjun, in his written statement, must specifically mention if he believes the suit is barred by the statute of limitations because the agreement was made more than three years ago (limitation). If Arjun does not raise this point initially, he cannot later argue that the suit is time-barred.

Example 4:

Manoj sues his tenant, Priya, for not paying rent for the last six months. In her written statement, Priya must specifically mention if she believes she has already paid the rent through bank transfers (payment). If Priya fails to mention this in her initial defense, she cannot later introduce bank statements as evidence of payment without risking surprise to Manoj.

Example 5:

Kavita files a lawsuit against her contractor, Vinod, for not completing the construction of her house as per the contract. In his written statement, Vinod must specifically mention if he believes the contract was already performed to the agreed specifications (performance). If Vinod does not raise this defense initially, he cannot later argue that he has fulfilled his contractual obligations.

Rule 3: Denial to be specific.

It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

3A. Denial by the defendant in suits before the Commercial Division of the High Court or the Commercial Court

(1) Denial shall be in the manner provided in sub-rules (2), (3), (4) and (5) of this Rule.

(2) The defendant in his written statement shall state which of the allegations in the particulars of plaint he denies, which allegations he is unable to admit or deny, but which he requires the plaintiff to prove, and which allegations he admits.

(3) Where the defendant denies an allegation of fact in a plaint, he must state his reasons for doing so and if he intends to put forward a different version of events from that given by the plaintiff, he must state his own version.

(4) If the defendant disputes the jurisdiction of the Court he must state the reasons for doing so, and if he is able, give his own statement as to which Court ought to have jurisdiction.

(5) If the defendant disputes the plaintiff's valuation of the suit, he must state his reasons for doing so, and if he is able, give his own statement of the value of the suit.

Simplified act

A defendant cannot just generally deny the claims made by the plaintiff in their written statement. Instead, the defendant must specifically address each fact that they do not agree with, except for the amount of damages.

3A. How a defendant should deny claims in cases before the Commercial Division of the High Court or the Commercial Court

(1) The denial must follow the steps outlined in sub-rules (2), (3), (4), and (5) of this Rule.

(2) In their written statement, the defendant must clearly state which claims in the plaintiff's complaint they deny, which claims they cannot admit or deny but want the plaintiff to prove, and which claims they admit.

(3) If the defendant denies a fact stated in the complaint, they must explain why. If they have a different version of events, they must describe their version.

(4) If the defendant believes the Court does not have the authority to hear the case, they must explain why and, if possible, suggest which Court should have the authority.

(5) If the defendant disagrees with the plaintiff's valuation of the case, they must explain why and, if possible, provide their own valuation of the case.

Explanation using Example

Example 1:

Scenario: A property dispute between two neighbors, Mr. Sharma (plaintiff) and Mr. Verma (defendant).

Plaintiff's Allegation: Mr. Sharma claims that Mr. Verma has encroached upon 5 feet of his land and built a wall.

Defendant's Written Statement:

Specific Denial: Mr. Verma denies the allegation of encroachment. He states, "I deny the allegation that I have encroached upon Mr. Sharma's land. The wall was built within the boundaries of my property as per the land survey conducted on 1st January 2022."

Inability to Admit or Deny: Mr. Verma states, "I am unable to admit or deny the exact measurements of Mr. Sharma's property as I do not have access to his land records. I require Mr. Sharma to provide proof of his land measurements."

Admission: Mr. Verma admits, "I admit that a wall has been constructed, but it is within my property boundaries."

Jurisdiction Dispute: Mr. Verma states, "I dispute the jurisdiction of this Court as the property is located in a different district. The appropriate Court with jurisdiction is the District Court of XYZ."

Valuation Dispute: Mr. Verma states, "I dispute the plaintiff's valuation of the suit at ₹10,00,000. The correct valuation should be ₹5,00,000 based on the current market rate of the land."

Example 2:

Scenario: A breach of contract case between a supplier, ABC Pvt. Ltd. (plaintiff), and a retailer, XYZ Stores (defendant).

Plaintiff's Allegation: ABC Pvt. Ltd. claims that XYZ Stores failed to pay ₹2,00,000 for goods delivered as per the contract dated 1st March 2023.

Defendant's Written Statement:

Specific Denial: XYZ Stores denies the allegation of non-payment. They state, "We deny the allegation that we failed to pay ₹2,00,000 for the goods delivered. We made the payment on 15th March 2023 via bank transfer, transaction ID 123456."

Inability to Admit or Deny: XYZ Stores states, "We are unable to admit or deny the exact quantity of goods delivered as we do not have the delivery receipts. We require ABC Pvt. Ltd. to provide proof of delivery."

Admission: XYZ Stores admits, "We admit that there was a contract dated 1st March 2023 for the supply of goods."

Jurisdiction Dispute: XYZ Stores states, "We do not dispute the jurisdiction of this Court."

Valuation Dispute: XYZ Stores states, "We dispute the plaintiff's valuation of the suit at ₹2,00,000. The correct valuation should be ₹1,80,000 as per the agreed contract terms and the actual goods received."

Rule 4: Evasive denial.

Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

Simplified act

If someone being sued (the defendant) disagrees with a fact stated in the lawsuit, they must clearly address the main issue and not avoid it.

For example, if the lawsuit says the defendant received a certain amount of money, the defendant cannot just say they didn't receive that exact amount. They must either deny receiving any of the money or specify how much they did receive.

If the lawsuit includes details about different situations, the defendant cannot just deny everything together. They need to address each detail separately.

Explanation using Example

Example 1:

Scenario: Ravi files a lawsuit against Suresh claiming that Suresh borrowed ₹50,000 from him and has not repaid it. In his written statement, Suresh denies the allegation.

Incorrect Evasive Denial by Suresh: "I deny that I received ₹50,000 from Ravi."

Correct Denial as per Rule 4: "I deny that I received ₹50,000 or any part thereof from Ravi. In fact, I only received ₹20,000 from Ravi, which I have already repaid."

Example 2:

Scenario: Meena files a lawsuit against Raj claiming that Raj damaged her car on a specific date and time by driving negligently. In his written statement, Raj denies the allegation.

Incorrect Evasive Denial by Raj: "I deny that I damaged Meena's car."

Correct Denial as per Rule 4: "I deny that I damaged Meena's car on the specified date and time by driving negligently. On that day, I was not driving my car at the location mentioned by Meena. I was at my office from 9 AM to 6 PM, and I have witnesses to support this."

Example 3:

Scenario: Anita files a lawsuit against Vijay claiming that Vijay failed to deliver goods worth ₹1,00,000 as per their contract. In his written statement, Vijay denies the allegation.

Incorrect Evasive Denial by Vijay: "I deny that I failed to deliver goods worth ₹1,00,000."

Correct Denial as per Rule 4: "I deny that I failed to deliver goods worth ₹1,00,000. I delivered goods worth ₹80,000 as per the contract, and the remaining goods were delayed due to unforeseen circumstances, which I communicated to Anita in advance."

Example 4:

Scenario: Sunita files a lawsuit against Arjun claiming that Arjun trespassed on her property and caused damage to her garden. In his written statement, Arjun denies the allegation.

Incorrect Evasive Denial by Arjun: "I deny that I trespassed on Sunita's property."

Correct Denial as per Rule 4: "I deny that I trespassed on Sunita's property and caused damage to her garden. On the alleged date, I was out of town attending a family function, and I have travel tickets and witnesses to prove my absence."

Example 5:

Scenario: Kiran files a lawsuit against Priya claiming that Priya did not pay the rent of ₹15,000 for the month of June. In her written statement, Priya denies the allegation.

Incorrect Evasive Denial by Priya: "I deny that I did not pay the rent for June."

Correct Denial as per Rule 4: "I deny that I did not pay the rent of ₹15,000 for the month of June. I paid ₹10,000 on June 5th and the remaining ₹5,000 on June 10th, and I have bank statements to support these transactions."

Rule 5: Specific denial.

Order - Allegations of Fact

(1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission:

Provided further that every allegation of fact in the plaint, if not denied in the manner provided under Rule 3A of this Order, shall be taken to be admitted except as against a person under disability.

(2) Where the defendant has not filed a pleading, it shall be lawful for the court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.

(3) In exercising its discretion under the proviso to sub-rule (1) or under sub-rule (2), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

(4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced.

Simplified act

Order - Allegations of Fact

(1) If the defendant does not specifically deny or imply denial of any fact stated in the complaint, or does not say they do not admit it, the court will consider that fact to be true, except for people who are legally unable to respond (like minors or mentally incapacitated individuals):

However, the court can still ask for proof of any fact, even if it has been admitted as true:

Additionally, if the defendant does not deny the facts in the way specified under Rule 3A of this Order, the court will consider those facts to be true, except for people who are legally unable to respond.

(2) If the defendant does not submit a response, the court can make a decision based on the facts in the complaint, except for people who are legally unable to respond. But the court can still ask for proof of any fact.

(3) When deciding whether to ask for proof of facts, the court will consider whether the defendant could have hired a lawyer or has hired one.

(4) When the court makes a decision under this rule, a formal order (decree) will be written based on that decision, and it will be dated the same day the decision was made.

Explanation using Example

Example 1:

Ravi files a lawsuit against Shyam claiming that Shyam owes him Rs. 1,00,000 for a loan given on January 1, 2022. In his plaint, Ravi details the date, amount, and circumstances of the loan. Shyam, in his written statement, does not specifically deny the loan or the amount but simply states that he does not owe Ravi any money. According to Rule 5 of the Code of Civil Procedure 1908, since Shyam did not specifically deny the allegations of the loan and the amount, the court may take these facts as admitted by Shyam. The court may then proceed to pronounce judgment in favor of Ravi based on these admitted facts.

Example 2:

Anita files a suit against her neighbor, Sunita, claiming that Sunita has encroached on her property by building a wall that extends 2 feet into her land. Anita provides detailed measurements and a surveyor's report in her plaint. Sunita, in her written statement, does not address the specific measurements or the surveyor's report but simply denies any encroachment. According to Rule 5, since Sunita did not specifically deny the detailed measurements and the surveyor's report, the court may consider these facts as admitted. The court may then require Sunita to prove otherwise or may pronounce judgment in favor of Anita based on the admitted facts.

Rule 6: Particulars of set-off to be given in written statement.

(1) Where in a suit for the recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the Court, and both parties fill the same character as they fill in

the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, present a written statement containing the particulars of the debt sought to be set-off.

(2)

Simplified act

(1) If someone is being sued to pay back money and they believe the person suing them also owes them money, they can ask the court to consider this. The amount they claim must be a specific amount that can be legally recovered and must be within the financial limits that the court can handle. Both people involved must be in the same roles as they are in the original lawsuit. The person being sued (the defendant) must present their claim in writing at the first court hearing, unless the court allows them to do it later.

(2)

Explanation using Example

Example 1:

Scenario: Ravi lends Rs. 50,000 to Suresh. Later, Suresh sues Ravi for Rs. 30,000 for some unpaid services he provided to Ravi.

Application of Rule 6: In this case, Ravi can claim a set-off against Suresh's demand. Ravi can present a written statement at the first hearing of the suit, stating that Suresh owes him Rs. 50,000, which is legally recoverable. Since both parties are in the same character (Ravi as the lender and Suresh as the borrower), Ravi can set-off the Rs. 30,000 claimed by Suresh against the Rs. 50,000 owed to him. Therefore, if the court permits, Ravi would only need to pay the balance amount, if any, after the set-off.

Example 2:

Scenario: Anita sells goods worth Rs. 1,00,000 to Bharat. Bharat later sues Anita for Rs. 20,000, claiming that the goods were defective and he had to spend that amount on repairs.

Application of Rule 6: Anita can claim a set-off against Bharat's demand. At the first hearing, Anita can present a written statement detailing that Bharat owes her Rs. 1,00,000 for the goods sold, which is legally recoverable. Since both Anita and Bharat are in the same character (Anita as the seller and Bharat as the buyer), Anita can set-off the Rs. 20,000 claimed by Bharat against the Rs.

1,00,000 owed to her. If the court allows, Anita would only need to pay the balance amount, if any, after the set-off.

Example 3:

Scenario: Priya provides consultancy services to Rajesh and charges Rs. 40,000. Rajesh later sues Priya for Rs. 10,000, claiming that Priya did not complete the agreed-upon work.

Application of Rule 6: Priya can claim a set-off against Rajesh's demand. At the first hearing, Priya can present a written statement stating that Rajesh owes her Rs. 40,000 for the consultancy services, which is legally recoverable. Since both parties are in the same character (Priya as the service provider and Rajesh as the client), Priya can set-off the Rs. 10,000 claimed by Rajesh against the Rs. 40,000 owed to her. If the court permits, Priya would only need to pay the balance amount, if any, after the set-off.

The written statement shall have the same effect as a plaint in a cross-suit so as to enable the court to pronounce a final judgment in respect both of the original claim and of the set-off: but this shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.

(3) The rules relating to a written statement by a defendant apply to a written statement in answer to a claim of set-off.

Illustrations

(a) A bequeaths Rs. 2,000 to B and appoints C his executor and residuary legatee. B dies and D takes out administration to B's effects, C pays Rs. 1,000 as surety for D; then D sues C for the legacy. C cannot set-off the debt of Rs. 1,000 against the legacy, for neither C nor D fills the same character with respect to the legacy as they fill with respect to the payment of the Rs. 1,000.

(b) A dies intestate and in debt to B. C takes out administration to A's effects and B buys part of the effects from C. In a suit for the purchase-money by C against B, the latter cannot set-off the debt against the price, for C fills two different characters, one as the vendor to B, in which he sues B, and the other as representative to A.

(c) A sues B on a bill of exchange. B alleges that A has wrongfully neglected to insure B's goods and is liable to him in compensation which he claims to set-off. The amount not being ascertained cannot be set-off.

(d) A sues B on a bill of exchange for Rs. 500. B holds a judgment against A for Rs. 1,000. The two claims being both definite pecuniary demands may be set-off.

(e) A sues B for compensation on account of trespass. B holds a promissory note for Rs. 1,000 from A and claims to set-off that amount against any sum that A may recover in the suit. B may do so, for, as soon as A recovers, both sums are definite pecuniary demands.

(f) A and B sue C for Rs. 1,000. C cannot set-off a debt due to him by A alone.

(g) A sues B and C for Rs. 1,000. B cannot set-off a debt due to him alone by A.

(h) A owes the partnership firm of B and C Rs. 1,000. B dies, leaving C surviving. A sues C for a debt for Rs. 1,500 due in his separate character. C may set-off the debt of Rs. 1,000.

Simplified act

A written statement has the same effect as a complaint in a counter-lawsuit. This allows the court to make a final decision on both the original claim and the counterclaim. However, this does not affect any lawyer's right to be paid for their costs from the amount awarded by the court.

(3) The rules for a written statement by a defendant also apply to a written statement in response to a counterclaim.

Examples

(a) A leaves Rs. 2,000 to B in a will and names C as the executor. B dies, and D takes over B's estate. C pays Rs. 1,000 as a guarantee for D. When D sues C for the Rs. 2,000, C cannot deduct the Rs. 1,000 from the amount owed because C and D have different roles regarding the legacy and the payment.

(b) A dies without a will and owes money to B. C manages A's estate, and B buys some of A's belongings from C. If C sues B for the purchase money, B cannot deduct the debt A owed him because C has two different roles: one as the seller and one as the estate manager.

(c) A sues B over a bill of exchange. B claims A failed to insure B's goods and owes him compensation, which B wants to deduct. Since the compensation amount is not determined, it cannot be deducted.

(d) A sues B over a bill of exchange for Rs. 500. B has a court judgment against A for Rs. 1,000. Since both amounts are clear and specific, they can be deducted from each other.

(e) A sues B for damages due to trespassing. B has a promissory note from A for Rs. 1,000 and wants to deduct this amount from any damages A might win. B can do this because both amounts are clear and specific.

(f) A and B sue C for Rs. 1,000. C cannot deduct a debt that only A owes him.

(g) A sues B and C for Rs. 1,000. B cannot deduct a debt that only A owes him.

(h) A owes the partnership of B and C Rs. 1,000. B dies, leaving C as the surviving partner. A sues C for a separate debt of Rs. 1,500. C can deduct the Rs. 1,000 debt from the amount A is claiming.

6A.

Explanation using Example

Example 1:

Ravi lends Rs. 50,000 to Suresh. Later, Suresh sues Ravi for Rs. 30,000 claiming damages for breach of contract. Ravi, in his written statement, claims a set-off of Rs. 30,000 against the Rs. 50,000 that Suresh owes him. The court can consider both the original claim and the set-off, and if the set-off is valid, Suresh will only owe Ravi Rs. 20,000 after deducting the set-off amount.

Example 2:

Meena sues Raj for Rs. 10,000 for non-payment of rent. Raj, in his written statement, claims a set-off of Rs. 5,000 for the cost of repairs he made to the rented property, which Meena was supposed to bear. The court will consider both Meena's claim for rent and Raj's set-off for repairs, and if Raj's set-off is valid, Meena will only receive Rs. 5,000 after deducting the set-off amount.

Example 3:

Arjun sues Priya for Rs. 15,000 for goods sold and delivered. Priya, in her written statement, claims a set-off of Rs. 15,000 for a loan she gave to Arjun. Since both claims are definite pecuniary demands, the court can set-off Priya's claim against Arjun's claim, resulting in no amount being payable by either party.

Example 4:

Vikram sues Anjali for Rs. 20,000 for breach of contract. Anjali, in her written statement, claims a set-off of Rs. 10,000 for services she provided to Vikram under a different contract. The court will consider both Vikram's claim and Anjali's set-off, and if Anjali's set-off is valid, Vikram will only receive Rs. 10,000 after deducting the set-off amount.

Example 5:

Kiran sues Deepak for Rs. 25,000 for unpaid rent. Deepak, in his written statement, claims a set-off of Rs. 5,000 for the cost of repairs he made to the property. The court will consider both Kiran's claim for rent and Deepak's set-off for repairs, and if Deepak's set-off is valid, Kiran will only receive Rs. 20,000 after deducting the set-off amount.

EFFECT OF SET-OFF.

Rule 6A: Counter-claim by defendant.

(1) A defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not:

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the court.

(2) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the court.

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.

Simplified act

(1) A person being sued (the defendant) can, besides responding to the lawsuit, also make a counter-claim against the person suing them (the plaintiff). This

counter-claim can be about any issue that arose before or after the lawsuit was filed, but it must be made before the defendant submits their defense or before the deadline to submit their defense passes. The counter-claim can be for any type of claim, including asking for money (damages), but it cannot be for more money than the court is allowed to handle.

(2) The counter-claim will be treated like a separate lawsuit within the same case. This means the court can make a final decision on both the original claim and the counter-claim in one go.

(3) The person who started the lawsuit (the plaintiff) can respond in writing to the counter-claim made by the defendant. The court will set a deadline for this response.

(4) The counter-claim will be treated like a new lawsuit and must follow the same rules that apply to new lawsuits.

Explanation using Example

Example 1:

Scenario: Property Dispute

Plaintiff: Mr. Sharma Defendant: Mr. Verma

Situation: Mr. Sharma files a suit against Mr. Verma claiming that Mr. Verma has encroached upon his land and seeks possession of the disputed property.

Counter-Claim: Mr. Verma, in his written statement, asserts that Mr. Sharma has actually encroached upon his land and seeks damages for the unauthorized use of his property.

Application of Rule 6A:

Mr. Verma, the defendant, can file a counter-claim against Mr. Sharma, the plaintiff, for the damages caused by the alleged encroachment.

This counter-claim is treated as a separate suit within the same proceedings, allowing the court to resolve both the original claim and the counter-claim in a single judgment.

Mr. Sharma can file a written statement in response to Mr. Verma's counter-claim within the period fixed by the court.

Example 2:

Scenario: Breach of Contract

Plaintiff: ABC Pvt. Ltd. Defendant: XYZ Pvt. Ltd.

Situation: ABC Pvt. Ltd. files a suit against XYZ Pvt. Ltd. for failing to deliver goods as per the contract and seeks compensation for the losses incurred.

Counter-Claim: XYZ Pvt. Ltd., in its defense, claims that ABC Pvt. Ltd. did not make the payment as per the agreed schedule, which led to the delay in delivery. XYZ Pvt. Ltd. seeks compensation for the financial losses due to the delayed payment.

Application of Rule 6A:

XYZ Pvt. Ltd., the defendant, can file a counter-claim against ABC Pvt. Ltd., the plaintiff, for the financial losses caused by the delayed payment.

This counter-claim will be treated as a cross-suit, allowing the court to adjudicate both the original claim and the counter-claim together.

ABC Pvt. Ltd. can file a written statement in response to XYZ Pvt. Ltd.'s counter-claim within the period fixed by the court.

Example 3:

Scenario: Personal Injury

Plaintiff: Ms. Gupta Defendant: Mr. Khan

Situation: Ms. Gupta files a suit against Mr. Khan for causing a car accident that resulted in her sustaining injuries and seeks compensation for medical expenses and pain and suffering.

Counter-Claim: Mr. Khan, in his defense, claims that Ms. Gupta was actually at fault for the accident due to reckless driving and seeks compensation for the damage to his vehicle.

Application of Rule 6A:

Mr. Khan, the defendant, can file a counter-claim against Ms. Gupta, the plaintiff, for the damages to his vehicle caused by her alleged reckless driving.

This counter-claim will be treated as a separate suit within the same proceedings, allowing the court to resolve both the original claim and the counter-claim in a single judgment.

Ms. Gupta can file a written statement in response to Mr. Khan's counter-claim within the period fixed by the court.

Rule 6B: Counter-claim to be stated.

Where any defendant seeks to rely upon any ground as supporting a right of counter-claim, he shall, in his written statement, state specifically that he does so by way of counter-claim.

Simplified act

If a defendant wants to make a counter-claim, they must clearly say so in their written statement.

Explanation using Example

Example 1:

Ravi files a lawsuit against Shyam for non-payment of a loan amounting to ₹1,00,000. Shyam, in his written statement, acknowledges the loan but also claims that Ravi owes him ₹50,000 for a business transaction they had earlier. Shyam specifically states in his written statement that he is making this claim by way of a counter-claim. This means that Shyam is not only defending himself against Ravi's claim but is also asserting his own claim against Ravi within the same legal proceedings.

Example 2:

Meera sues her tenant, Raj, for damages amounting to ₹20,000 caused to her property. Raj, in his written statement, admits to some damage but claims that Meera has not returned his security deposit of ₹15,000. Raj specifically mentions in his written statement that he is making this claim by way of a counter-claim. This allows Raj to seek recovery of his security deposit within the same lawsuit filed by Meera, rather than filing a separate lawsuit.

Rule 6C: Exclusion of counter-claim.

Where a defendant sets up a counter-claim and the plaintiff contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent suit, the plaintiff may, at any time before issues are settled in relation to the counter-claim, apply to the Court for an order that such

counter-claim may be excluded, and the Court may, on the hearing of such application make such order as it thinks fit.

Simplified act

If the person being sued (defendant) makes a counter-claim (a claim against the person who sued them), and the person who started the lawsuit (plaintiff) believes that this counter-claim should be handled separately in a different lawsuit, the plaintiff can ask the Court to exclude the counter-claim.

The plaintiff must make this request before the main issues of the counter-claim are decided.

The Court will then listen to the request and decide whether to exclude the counter-claim or not, based on what it thinks is appropriate.

Explanation using Example

Example 1:

Scenario: Ravi files a lawsuit against Shyam for non-payment of a loan amounting to ₹5,00,000. In response, Shyam files a counter-claim stating that Ravi owes him ₹2,00,000 for a separate business transaction.

Application of Rule 6C: Ravi believes that Shyam's counter-claim regarding the ₹2,00,000 should not be addressed within the same lawsuit but should be handled as a separate case. Ravi can apply to the court before the issues related to the counter-claim are settled, requesting the court to exclude Shyam's counter-claim from the current proceedings. The court will then decide whether to exclude the counter-claim and require Shyam to file a separate lawsuit for his claim.

Example 2:

Scenario: Meera sues her tenant, Raj, for damages amounting to ₹1,00,000 due to property damage. Raj, in his defense, files a counter-claim stating that Meera has not returned his security deposit of ₹50,000.

Application of Rule 6C: Meera argues that Raj's counter-claim about the security deposit is unrelated to the property damage and should be dealt with separately. Meera can apply to the court before the issues related to the counter-claim are settled, asking the court to exclude Raj's counter-claim from the current lawsuit. The court will then review the application and decide

whether to exclude the counter-claim and require Raj to pursue his claim in a separate suit.

Rule 6D: Effect of discontinuance of suit.

If in any case in which the defendant sets up a counterclaim, the suit of the plaintiff is stayed, discontinued or dismissed, the counter-claim may nevertheless be proceeded with.

Simplified act

If the person being sued (the defendant) makes a counterclaim (a claim against the person who sued them),

and the original lawsuit by the person who sued (the plaintiff) is paused, stopped, or thrown out,

the counterclaim can still continue.

Explanation using Example

Example 1:

Ravi files a lawsuit against Suresh for breach of contract, claiming damages of ₹5,00,000. In response, Suresh files a counterclaim against Ravi, alleging that Ravi owes him ₹2,00,000 for services rendered. During the proceedings, Ravi decides to discontinue his lawsuit against Suresh. According to Rule 6D of the Code of Civil Procedure 1908, even though Ravi has discontinued his suit, Suresh's counterclaim for ₹2,00,000 can still proceed independently in the court.

Example 2:

Meena sues her neighbor, Raj, for encroaching on her property and seeks an injunction to remove the encroachment. Raj, in his defense, files a counterclaim stating that Meena has illegally constructed a wall on his property and demands compensation of ₹1,00,000. Later, Meena's suit is dismissed by the court due to lack of evidence. Despite the dismissal of Meena's suit, Raj's counterclaim for compensation can continue to be heard and decided by the court as per Rule 6D of the Code of Civil Procedure 1908.

Rule 6E: Default of plaintiff to reply to counter-claim.

If the plaintiff makes default in putting in a reply to the counter-claim made by the defendant, the Court may pronounce judgment against the plaintiff in relation to the counter-claim made against him, or make such order in relation to the counter-claim as it thinks fit.

Simplified act

If the person who started the lawsuit (the plaintiff) does not respond to the counter-claim made by the person being sued (the defendant), the Court can:

- a. Decide in favor of the defendant regarding the counter-claim, or
- b. Make any other decision about the counter-claim that it thinks is appropriate.

Explanation using Example

Example 1:

Scenario: Ravi files a lawsuit against Suresh for breach of contract, seeking damages of ₹5,00,000. In response, Suresh files a counter-claim against Ravi, alleging that Ravi actually owes him ₹2,00,000 for services rendered.

Application of Rule 6E: Ravi fails to reply to Suresh's counter-claim within the stipulated time. The court, observing Ravi's default, decides to pronounce judgment against Ravi concerning the counter-claim. Consequently, the court orders Ravi to pay ₹2,00,000 to Suresh.

Example 2:

Scenario: Meera sues her neighbor, Anil, for encroaching on her property and seeks an injunction to remove the encroachment. Anil files a counter-claim stating that Meera has blocked his access to a shared pathway and demands compensation of ₹50,000 for the inconvenience caused.

Application of Rule 6E: Meera does not respond to Anil's counter-claim within the required period. The court, noting Meera's default, decides to make an order in relation to the counter-claim. The court orders Meera to unblock the shared pathway and pay Anil ₹50,000 as compensation.

Rule 6F: Relief to defendant where counter-claim succeeds.

Where in any suit a set-off or counter-claim is established as a defence against the plaintiff's claim and any balance is found due to the plaintiff or the defendant, as the case may be, the Court may give judgment to the party entitled to such balance.

6G.

Simplified act

If in a lawsuit, the defendant proves a set-off or counter-claim against the plaintiff's claim, and there is any remaining amount owed to either the plaintiff or the defendant, the Court can decide who should get that remaining amount.

6G.

Explanation using Example

Example 1:

Scenario: Ravi files a lawsuit against Suresh for non-payment of Rs. 1,00,000 for goods supplied. Suresh, in his written statement, acknowledges the debt but also files a counter-claim stating that Ravi owes him Rs. 50,000 for damages caused by defective goods supplied in a previous transaction.

Application of Rule 6F: The court examines both Ravi's claim and Suresh's counter-claim. It finds that Ravi's claim of Rs. 1,00,000 is valid, but also agrees with Suresh's counter-claim of Rs. 50,000. Therefore, the court determines that the net balance due to Ravi is Rs. 50,000 (Rs. 1,00,000 - Rs. 50,000). The court then gives a judgment in favor of Ravi for Rs. 50,000.

Example 2:

Scenario: Priya sues Anil for Rs. 2,00,000 for breach of contract. Anil, in his defense, files a counter-claim stating that Priya owes him Rs. 2,50,000 for a separate contract where Priya failed to deliver the agreed services.

Application of Rule 6F: The court reviews both Priya's claim and Anil's counter-claim. It finds that Priya's claim of Rs. 2,00,000 is justified, but also finds Anil's counter-claim of Rs. 2,50,000 to be valid. Therefore, the court determines that the net balance due to Anil is Rs. 50,000 (Rs. 2,50,000 - Rs. 2,00,000). The court then gives a judgment in favor of Anil for Rs. 50,000.

Rule 6G: Rules relating to written statement to apply.

The rules relating to a written statement by a defendant shall apply to a written statement filed in answer to a counter-claim.

Simplified act

The same rules that apply to a written response by a defendant also apply to a written response to a counter-claim.

Explanation using Example

Example 1:

Scenario: Rajesh files a lawsuit against Sunita for breach of contract, claiming damages of ₹5,00,000. Sunita, in her defense, files a written statement denying the allegations and also makes a counter-claim against Rajesh for ₹2,00,000, alleging that Rajesh failed to deliver goods as per their agreement.

Application of Rule 6G: According to Rule 6G, the rules that apply to Sunita's written statement in response to Rajesh's original claim will also apply to Rajesh's written statement in response to Sunita's counter-claim. This means Rajesh must follow the same procedural rules and timelines for filing his written statement against Sunita's counter-claim as Sunita had to follow for her initial written statement.

Example 2:

Scenario: Meera sues her neighbor, Anil, for encroaching on her property and seeks an injunction to stop the encroachment. Anil files a written statement denying the encroachment and counter-claims that Meera has blocked his access to a shared pathway, seeking a court order to remove the obstruction.

Application of Rule 6G: Under Rule 6G, the procedural rules that governed Anil's written statement in response to Meera's original claim will also govern Meera's written statement in response to Anil's counter-claim. Meera must adhere to the same rules regarding the format, content, and timing of her written statement addressing Anil's counter-claim as Anil had to follow for his initial written statement.

Rule 7: Defence or set-off founded upon separate grounds.

Where the defendant relies upon several distinct grounds of defence or set-off or counter-claim founded upon separate and distinct facts, they shall be stated, as far as may be, separately and distinctly.

Simplified act

If the defendant has different reasons for their defense, set-off, or counter-claim, and these reasons are based on different facts, they must explain each reason separately and clearly.

Explanation using Example

Example 1:

Ravi is a contractor who built a house for Suresh. Suresh did not pay Ravi the full amount agreed upon in the contract. Ravi sues Suresh for the remaining balance of ₹5,00,000. In his defense, Suresh claims that:

The construction was delayed by three months, causing him a loss of ₹1,00,000.

The quality of materials used was substandard, and he had to spend ₹50,000 to replace them.

Here, Suresh is relying on two distinct grounds of defense:

Delay in construction.

Substandard materials.

According to Rule 7, Suresh must state these grounds separately and distinctly in his written statement.

Example 2:

Priya runs a garment business and supplies clothes to a retail store owned by Anil. Anil fails to pay Priya ₹2,00,000 for the last shipment. Priya files a lawsuit to recover the amount. Anil, in his defense, claims:

Priya delivered the clothes two weeks late, causing him a loss of ₹30,000 in sales.

Some of the clothes were damaged, and he had to spend ₹20,000 to repair them.

Additionally, Anil files a counter-claim stating that:

Priya owes him ₹10,000 for a previous overpayment.

Here, Anil is presenting:

Two distinct grounds of defense (late delivery and damaged goods).

A counter-claim for the overpayment.

According to Rule 7, Anil must state each ground of defense and the counter-claim separately and distinctly in his written statement.

Rule 8: New ground of defence.

Any ground of defence which has arisen after the institution of the suit or the presentation of a written statement claiming a set-off or counter-claim may be raised by the defendant or plaintiff, as the case may be, in his written statement.

Simplified act

If something happens after the lawsuit starts or after a written response with a counter-claim is filed, the defendant or plaintiff can include this new information in their written response.

Explanation using Example

Example 1:

Ravi files a lawsuit against Shyam for breach of contract on January 1, 2023. Shyam submits his written statement on February 1, 2023, denying the breach and claiming a set-off for an amount Ravi owes him from a previous transaction. On March 1, 2023, Shyam discovers that Ravi has committed another breach of a different contract between them, which occurred after the lawsuit was filed. According to Rule 8 of the Code of Civil Procedure 1908, Shyam can raise this new ground of defence in his written statement, even though it arose after the initial suit was filed.

Example 2:

Meera sues her tenant, Raj, for unpaid rent on April 1, 2023. Raj files his written statement on May 1, 2023, claiming that he has already paid the rent and providing proof of payment. On June 1, 2023, Raj finds out that Meera has failed to repair the leaking roof, which is a new issue that arose after the lawsuit was filed. Under Rule 8 of the Code of Civil Procedure 1908, Raj can include this new ground of defence in his written statement, arguing that the failure to repair the roof justifies withholding the rent.

Rule 8A: Omitted.

Duty of defendant to produce documents upon which relief is claimed by him omitted by Act 46 of 1999, s. 18 (with effect from 1-7-2002).

Simplified act

Duty of defendant to produce documents upon which relief is claimed by him removed by Act 46 of 1999, section 18 (effective from 1st July 2002).

Explanation using Example

Example 1:

Rajesh files a lawsuit against Sunita for breach of contract, claiming that Sunita did not deliver the goods as agreed. Sunita, in her defense, claims that Rajesh did not make the payment on time, which is why the goods were not delivered. Sunita also claims a set-off, stating that Rajesh owes her money for a previous transaction.

Before the amendment, Sunita would have been required to produce all documents supporting her claim for set-off at the time of filing her written statement. However, after the amendment by Act 46 of 1999, this specific duty to produce documents upon which relief is claimed by the defendant has been omitted. This means Sunita is no longer legally bound by this specific rule to produce those documents at the initial stage, although she may still need to produce them later in the proceedings.

Example 2:

Meera sues her tenant, Arjun, for unpaid rent. Arjun responds by filing a counter-claim, stating that he had spent a significant amount on repairs which should be deducted from the rent owed.

Prior to the amendment, Arjun would have been required to submit all receipts and documents related to the repairs along with his written statement to support his counter-claim. However, with the omission of Rule 8A by Act 46 of 1999, Arjun is no longer required to produce these documents at the initial stage of filing his defense. He can present these documents later during the trial when required by the court.

Rule 9: Subsequent pleadings.

No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same.

Simplified act

After the defendant has submitted their written statement, no other documents can be submitted unless:

It is a defense to a set-off or counter-claim.

The Court gives permission.

The Court can set conditions for allowing additional documents.

The Court can also ask any party to submit a written statement or an extra written statement at any time.

The Court will give a deadline of up to thirty days for submitting these documents.

Explanation using Example

Example 1:

Scenario: Rajesh files a lawsuit against Sunita for breach of contract. Sunita submits her written statement denying the allegations and also includes a counter-claim for damages caused by Rajesh's alleged breach of the same contract.

Application of Rule 9:

After Sunita submits her written statement and counter-claim, Rajesh wants to submit an additional pleading to address new evidence he found.

According to Rule 9, Rajesh cannot submit this additional pleading without the permission (leave) of the Court.

Rajesh files an application seeking the Court's permission to submit the additional pleading.

The Court reviews the application and decides whether to allow Rajesh to submit the additional pleading and under what conditions (e.g., within a specified time frame).

Example 2:

Scenario: Meera sues her neighbor, Anil, for encroaching on her property. Anil submits his written statement denying the encroachment and also claims a set-off for the expenses he incurred in maintaining the disputed area.

Application of Rule 9:

Meera wants to respond to Anil's set-off claim with additional arguments and evidence.

Since Meera's response is by way of defense to the set-off, she is allowed to present this subsequent pleading without needing the Court's permission.

However, if Meera wants to introduce new claims unrelated to the set-off, she would need to seek the Court's permission.

The Court may also require Anil to submit an additional written statement to clarify his set-off claim and will set a deadline of no more than thirty days for him to do so.

Rule 10: Procedure when party fails to present written statement called for by Court.

Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up:

Provided further that no Court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement.

Simplified act

If a party is supposed to submit a written statement according to rule 1 or rule 9 but doesn't do it within the time allowed by the Court, the Court will either give a judgment against that party or make another suitable order for the case.

Once the Court gives its judgment, a formal decision (called a decree) will be prepared.

Additionally, the Court is not allowed to give more time for submitting the written statement as per Rule 1 of this Order.

Explanation using Example

Example 1:

Scenario: Ramesh files a civil suit against Suresh for breach of contract in a district court in Mumbai. The court issues a notice to Suresh to present a written statement (his defense) within 30 days as per Rule 1 of Order VIII.

Application of Rule 10:

Suresh fails to submit his written statement within the 30-day period and does not request an extension.

The court, as per Rule 10, decides to pronounce judgment against Suresh due to his failure to present the written statement.

The court rules in favor of Ramesh and issues a decree for damages to be paid by Suresh.

Example 2:

Scenario: Priya files a lawsuit against her neighbor, Anil, for encroachment on her property in a civil court in Delhi. The court asks Anil to submit a written statement within 45 days as per Rule 9 of Order VIII.

Application of Rule 10:

Anil submits a request for an extension of time to file his written statement, but the court denies the request as per the proviso under Rule 10.

Anil still fails to submit the written statement within the original 45-day period.

The court, exercising its discretion under Rule 10, decides to make an order to proceed with the suit without Anil's written statement.

The court may either pronounce judgment in favor of Priya or make another suitable order regarding the suit.

Example 3:

Scenario: Sunita files a suit for recovery of money against her business partner, Rajesh, in a civil court in Bangalore. The court directs Rajesh to file his written statement within 30 days.

Application of Rule 10:

Rajesh fails to file the written statement within the 30-day period and does not appear in court to explain his delay.

The court, under Rule 10, decides to pronounce judgment against Rajesh due to his non-compliance.

The court issues a decree ordering Rajesh to pay the amount claimed by Sunita.

Example 4:

Scenario: A company, XYZ Ltd., files a suit against another company, ABC Pvt. Ltd., for non-payment of dues in a commercial court in Chennai. The court instructs ABC Pvt. Ltd. to file a written statement within 60 days.

Application of Rule 10:

ABC Pvt. Ltd. fails to file the written statement within the 60-day period and does not seek an extension.

The court, as per Rule 10, decides to pronounce judgment against ABC Pvt. Ltd.

The court issues a decree in favor of XYZ Ltd., ordering ABC Pvt. Ltd. to pay the outstanding dues along with interest.

Example 5:

Scenario: Meera files a suit for defamation against a local newspaper in a civil court in Kolkata. The court directs the newspaper to file its written statement within 30 days.

Application of Rule 10:

The newspaper fails to file the written statement within the 30-day period and does not request an extension.

The court, under Rule 10, decides to pronounce judgment against the newspaper.

The court issues a decree awarding damages to Meera for defamation.

ORDER IX: APPEARANCE OF PARTIES AND CONSEQUENCE OF NON-APPEARANCE

Rule 1: Parties to appear on day fixed in summons for defendant to appear and answer.

On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the Court-house in person or by their respective pleaders, and the suit shall then be heard unless the hearing is adjourned to a future day fixed by the Court.

Simplified act

On the date mentioned in the summons for the defendant to show up and respond, both parties must be present at the courthouse either in person or through their lawyers.

The case will be heard on that day unless the court decides to postpone the hearing to another specified date.

Explanation using Example

Example 1:

Rajesh files a civil suit against Suresh for breach of contract in a district court in Mumbai. The court issues a summons to Suresh, instructing him to appear and answer the allegations on the 15th of October. On the specified date, Rajesh appears in court with his lawyer, and Suresh also appears with his lawyer. The court proceeds to hear the case as both parties are present. If either party had failed to appear, the court might have adjourned the hearing to another date or taken other actions as per the law.

Example 2:

Anita files a lawsuit against her neighbor, Ramesh, for encroaching on her property in a civil court in Delhi. The court issues a summons to Ramesh, asking him to appear on the 20th of November. On the day of the hearing, Anita is present with her lawyer, but Ramesh does not show up, nor does his lawyer. The court decides to adjourn the hearing to the 5th of December and issues a notice to Ramesh, warning him that if he fails to appear again, the court may proceed ex-parte, meaning the case will be decided in his absence.

Example 3:

Sunita files a defamation suit against a local newspaper in a civil court in Bangalore. The court issues a summons to the newspaper's editor, asking him to appear on the 10th of January. On the specified date, Sunita appears with her lawyer, but the editor sends his legal representative instead of appearing in person. The court accepts the appearance of the legal representative and

proceeds with the hearing. If the editor or his representative had failed to appear, the court might have issued a new date for the hearing or taken other legal measures.

Example 4:

Vikram files a civil suit against a construction company for not completing the work on his house as per the contract. The court issues a summons to the construction company's manager, asking him to appear on the 25th of February. On the day of the hearing, Vikram appears with his lawyer, but the manager of the construction company does not appear, nor does any representative. The court decides to proceed with the hearing in the absence of the defendant, and the case is heard ex-parte. The court later rules in favor of Vikram due to the non-appearance of the defendant.

Rule 2: Dismissal of suit where summons not served in consequence of plaintiff's failure to pay costs.

Where on the day so fixed it is found that summons has not been served upon the defendant in consequence of the failure of the plaintiff to pay the court-fee or postal charges, if any, chargeable for such service, or failure to present copies of the plaint as required by rule 9 of Order VII, the Court may make an order that the suit be dismissed:

Provided that no such order shall be made, if notwithstanding such failure, the defendant attends in person or by agent when he is allowed to appear by agent on the day fixed for him to appear and answer.

Simplified act

If on the scheduled day, it is found that the defendant has not received the summons because the plaintiff did not pay the required court fees or postal charges, or did not provide the necessary copies of the complaint, the Court may decide to dismiss the case.

However, the Court will not dismiss the case if the defendant shows up in person or through an authorized representative on the scheduled day.

Explanation using Example

Example 1:

Scenario: Ramesh files a civil suit against Suresh for recovery of a loan amounting to ₹1,00,000. The court fixes a date for the hearing and instructs

Ramesh to pay the necessary court fees and postal charges for serving the summons to Suresh.

Situation: Ramesh fails to pay the required court fees and postal charges, and as a result, the summons is not served to Suresh.

Outcome: On the day of the hearing, the court finds that the summons has not been served due to Ramesh's failure to pay the necessary charges. The court decides to dismiss the suit under Rule 2 of Order IX of The Code of Civil Procedure, 1908.

Exception: If Suresh, despite not receiving the summons, appears in court either in person or through an authorized agent on the scheduled date, the court will not dismiss the suit.

Example 2:

Scenario: Priya files a lawsuit against her neighbor, Anil, for encroachment on her property. The court sets a date for the first hearing and instructs Priya to submit copies of the plaint and pay the required court fees for serving the summons to Anil.

Situation: Priya fails to submit the copies of the plaint as required by Rule 9 of Order VII and does not pay the court fees. Consequently, the summons is not served to Anil.

Outcome: On the scheduled hearing date, the court discovers that the summons has not been served due to Priya's failure to comply with the requirements. The court decides to dismiss the suit under Rule 2 of Order IX of The Code of Civil Procedure, 1908.

Exception: If Anil, despite not receiving the summons, appears in court either in person or through an authorized agent on the scheduled date, the court will not dismiss the suit.

Rule 3: Where neither party appears, suit to be dismissed.

Where neither party appears when the suit is called on for hearing, the court may make an order that the suit be dismissed.

Simplified act

If neither the person who started the lawsuit nor the person being sued shows up when the case is scheduled to be heard, the court can decide to cancel the case.

Explanation using Example

Example 1:

Rajesh files a civil suit against Suresh for breach of contract in a district court in Mumbai. The court schedules a hearing date and notifies both parties. On the day of the hearing, neither Rajesh nor Suresh, nor their respective lawyers, appear in court. Since neither party is present when the case is called for hearing, the judge decides to dismiss the suit under Rule 3 of Order IX of The Code of Civil Procedure, 1908.

Example 2:

Meena files a lawsuit against her neighbor, Anil, for encroaching on her property in a civil court in Delhi. The court sets a date for the hearing and informs both Meena and Anil. On the scheduled date, both Meena and Anil fail to show up in court, and neither party has sent any representative or lawyer. As a result, the judge, following Rule 3 of Order IX of The Code of Civil Procedure, 1908, orders that the suit be dismissed due to the non-appearance of both parties.

Rule 4: Plaintiff may bring fresh suit or Court may restore suit to file.

Where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit; or he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for such failure as is referred to in rule 2, or for his non-appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.

Simplified act

If a case is dismissed under rule 2 or rule 3, the person who filed the case (the plaintiff) has two options:

They can file a new case, as long as they do it within the time limits set by law.

They can ask the court to cancel the dismissal.

If the plaintiff can show the court that there was a good reason for not following rule 2 or for not showing up, the court will:

Cancel the dismissal.

Set a new date to continue with the case.

Explanation using Example

Example 1:

Ravi filed a civil suit against his neighbor, Suresh, for encroaching on his property. The court scheduled a hearing, but Ravi failed to appear on the appointed day. Consequently, the court dismissed the suit under Rule 2 of Order IX. Ravi later realized his mistake and wanted to pursue the case again. He had two options:

Ravi could file a fresh suit against Suresh, provided it was within the limitation period prescribed by law.

Alternatively, Ravi could apply to the court to set aside the dismissal. He explained to the court that he missed the hearing due to a medical emergency. The court, satisfied with Ravi's explanation, set aside the dismissal and scheduled a new date for the hearing.

Example 2:

Meera filed a lawsuit against a construction company for damages caused to her house due to negligent construction work. The court set a date for the hearing, but Meera's lawyer failed to appear because he was stuck in traffic due to a major accident on the highway. The court dismissed the suit under Rule 3 of Order IX.

Meera, upon learning about the dismissal, decided to take action. She had two choices:

Meera could initiate a new lawsuit against the construction company, ensuring it was within the legal time frame.

Meera could request the court to reinstate her original suit. She submitted an application explaining the reason for her lawyer's absence. The court, convinced that the traffic accident was a sufficient cause, reinstated the suit and set a new date for the proceedings.

Rule 5: Dismissal of suit where plaintiff, after summons returned unserved, fails for one month to apply for fresh summons.

(1) Where after a summons has been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails, for a period of seven days from the date of the return made to the Court by the officer ordinarily certifying to the Court returns made by the serving officers, to apply for the issue of a fresh summons the Court shall make an order that the suit be dismissed as against such defendant, unless the plaintiff has within the said period satisfied the Court that -

(a) he has failed after using his best endeavours to discover the residence of the defendant, who has not been served, or

(b) such defendant is avoiding service of process, or

(c) there is any other sufficient cause for extending the time, in which case the Court may extend the time for making such application for such period as it thinks fit.

(2) In such case the plaintiff may (subject to the law of limitation) bring a fresh suit.

Simplified act

(1) If a summons (a legal notice to appear in court) is sent to the defendant (the person being sued) or one of several defendants and it comes back unserved (not delivered), the plaintiff (the person who is suing) has seven days from the date the court receives the return notice to request a new summons. If the plaintiff does not do this, the court will dismiss the case against that defendant unless the plaintiff can show the court within those seven days that:

(a) They tried their best to find the defendant's address but couldn't, or

(b) The defendant is deliberately avoiding being served, or

(c) There is another good reason to give more time. In this case, the court can give more time to request a new summons as it sees fit.

(2) If the case is dismissed, the plaintiff can start a new lawsuit (as long as it is within the time limits set by law).

Explanation using Example

Example 1:

Scenario: Ramesh files a civil suit against Suresh for recovery of a loan amount. The court issues a summons to Suresh, but the process server returns the summons unserved, stating that Suresh has moved to an unknown location.

Application of Rule 5:

The court informs Ramesh that the summons was returned unserved.

Ramesh does not apply for a fresh summons within seven days of this notification.

The court dismisses the suit against Suresh because Ramesh failed to take timely action to reissue the summons.

Outcome: Ramesh's suit is dismissed, but he can file a fresh suit against Suresh, provided it is within the limitation period.

Example 2:

Scenario: Priya files a civil suit against her tenant, Raj, for eviction. The court issues a summons to Raj, but the process server returns the summons unserved, stating that Raj is deliberately avoiding service by not being available at his residence.

Application of Rule 5:

The court informs Priya that the summons was returned unserved.

Priya applies for a fresh summons within seven days, explaining that Raj is avoiding service.

The court is satisfied with Priya's explanation and extends the time for issuing a fresh summons.

Outcome: The court allows the issuance of a fresh summons to Raj, and the suit continues without being dismissed.

Example 3:

Scenario: Anil files a civil suit against his business partner, Sunil, for breach of contract. The court issues a summons to Sunil, but the process server returns the summons unserved, stating that Sunil's address is incorrect.

Application of Rule 5:

The court informs Anil that the summons was returned unserved.

Anil uses his best efforts to find Sunil's correct address and applies for a fresh summons within seven days, providing the new address to the court.

The court is satisfied with Anil's efforts and extends the time for issuing a fresh summons.

Outcome: The court allows the issuance of a fresh summons to Sunil at the new address, and the suit continues without being dismissed.

Example 4:

Scenario: Meera files a civil suit against her neighbor, Ravi, for encroachment on her property. The court issues a summons to Ravi, but the process server returns the summons unserved, stating that Ravi is out of the country for an extended period.

Application of Rule 5:

The court informs Meera that the summons was returned unserved.

Meera applies for a fresh summons within seven days, explaining that Ravi is out of the country and providing evidence of his travel plans.

The court is satisfied with Meera's explanation and extends the time for issuing a fresh summons until Ravi returns.

Outcome: The court allows the issuance of a fresh summons to Ravi upon his return, and the suit continues without being dismissed.

Rule 6: Procedure when only plaintiff appears.

(1) Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then -

(a)

Simplified act

(1) If the person who started the lawsuit (plaintiff) shows up but the person being sued (defendant) does not show up when the case is scheduled to be heard, then -

(a)

Explanation using Example

Example 1:

Rajesh files a civil suit against Suresh for breach of contract in a district court in Mumbai. The court schedules a hearing date and both parties are notified. On the day of the hearing, Rajesh appears in court, but Suresh does not show up. According to Rule 6 of the Code of Civil Procedure 1908, since only the plaintiff (Rajesh) appears and the defendant (Suresh) does not, the court may proceed to hear the case in Suresh's absence. The court may then decide the case based on the evidence and arguments presented by Rajesh.

Example 2:

Anita files a lawsuit against her neighbor, Ramesh, for encroaching on her property in Chennai. The court sets a date for the hearing and sends notices to both parties. On the scheduled date, Anita is present in court, but Ramesh fails to appear. Under Rule 6 of the Code of Civil Procedure 1908, the court can proceed with the hearing in Ramesh's absence. The judge may listen to Anita's claims and evidence, and if satisfied, may pass a judgment in her favor, potentially ordering Ramesh to remove the encroachment and pay damages.

When summons duly served.

if it is proved that the summons was duly served, the Court may make an order that the suit shall be heard ex parte;

(b)

Simplified act

If it is shown that the summons (official notice to appear in court) was properly delivered, the Court can decide that the case will be heard without the other party being present.

(b)

Explanation using Example

Example 1:

Rajesh files a civil suit against Suresh for non-payment of a loan. The court issues a summons to Suresh to appear on a specified date. The court's process server delivers the summons to Suresh's residence, and Suresh's wife receives it and signs the acknowledgment. On the hearing date, Suresh does not appear in court. Rajesh's lawyer presents the signed acknowledgment as proof that the summons was duly served. The court, satisfied with the proof of service, decides to proceed with the case ex parte, meaning the case will be heard in Suresh's absence.

Example 2:

Meena files a property dispute case against her neighbor, Anil. The court sends a summons to Anil's office address. The office receptionist receives the summons and signs the delivery receipt. On the scheduled hearing date, Anil fails to appear in court. Meena's lawyer submits the signed delivery receipt as evidence that the summons was duly served. The court, finding the service of summons to be proper, orders that the case will be heard ex parte, allowing Meena to present her case without Anil's presence.

When summons not duly served.

If it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant;

(c)

Simplified act

If it is not shown that the first court notice was properly delivered, the Court will order a second notice to be sent and delivered to the defendant;

(c)

Explanation using Example

Example 1:

Rajesh files a civil suit against Suresh for non-payment of a loan. The court issues a summons to Suresh to appear on a specified date. However, the process server fails to deliver the summons to Suresh because he was out of town. On the hearing date, Suresh does not appear in court. Rajesh argues that Suresh is avoiding the court intentionally. The court examines the service

report and finds that the summons was not duly served as Suresh was not present to receive it. According to the act, the court directs that a second summons be issued and properly served on Suresh.

Example 2:

Meena files a property dispute case against her neighbor, Anil. The court issues a summons to Anil to appear in court. The process server goes to Anil's house but mistakenly delivers the summons to Anil's brother, who does not inform Anil about it. On the scheduled court date, Anil does not show up. Meena requests the court to proceed ex-parte (in the absence of Anil). However, the court checks the service report and realizes that the summons was not duly served to Anil himself. As per the act, the court orders that a second summons be issued and served directly to Anil to ensure he is properly notified.

When summons served, but not in due time.

If it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

(2) Where it is owing to the plaintiff's default that the summons was not duly served or was not served in sufficient time, the Court shall order the plaintiff to pay the costs occasioned by the postponement.

Simplified act

If it is shown that the defendant received the summons but didn't have enough time to show up and respond on the date mentioned, the Court will reschedule the hearing to a new date and inform the defendant about this new date.

If the reason the summons wasn't served properly or on time is because of the plaintiff's mistake, the Court will make the plaintiff pay for the costs caused by the delay.

Explanation using Example

Example 1:

Scenario: Ramesh files a civil suit against Suresh for a property dispute. The court issues a summons to Suresh to appear on the 15th of June. However,

Suresh receives the summons only on the 14th of June, which does not give him enough time to prepare and appear in court.

Application of the Act:

Suresh informs the court that he received the summons only a day before the hearing.

The court verifies that the summons was indeed served late.

The court decides to postpone the hearing to a future date, say the 30th of June, and directs that a notice of the new date be given to Suresh.

Example 2:

Scenario: Priya files a civil suit against her neighbor, Anil, for encroachment on her land. The court issues a summons to Anil to appear on the 10th of July. However, due to an error on Priya's part, the summons is sent to the wrong address and Anil receives it only on the 9th of July.

Application of the Act:

Anil informs the court that he received the summons late due to it being sent to the wrong address.

The court verifies that the delay was due to Priya's mistake.

The court decides to postpone the hearing to a future date, say the 25th of July, and directs that a notice of the new date be given to Anil.

Additionally, the court orders Priya to pay the costs incurred due to the postponement, as the delay was caused by her default.

Rule 7: Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance.

Where the Court has adjourned the hearing of the suit, ex parte, and the defendant, at or before such hearing appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

Simplified act

If the Court has postponed the hearing of the case without the defendant being present, and the defendant shows up before or during the new hearing date and gives a good reason for not showing up earlier, the Court can allow the defendant to participate in the case. The Court may set certain conditions, like paying costs, but the defendant will be treated as if they had been there on the original date.

Explanation using Example

Example 1:

Ravi was sued by his neighbor, Suresh, over a property boundary dispute. The court scheduled a hearing for the case, but Ravi did not appear on the scheduled date because he was hospitalized due to a sudden illness. The court proceeded with the hearing *ex parte* (in Ravi's absence) and adjourned the case to a later date.

On the day of the adjourned hearing, Ravi appeared in court and provided medical records and a doctor's note as evidence of his hospitalization, explaining his previous non-appearance. The court accepted Ravi's explanation as a good cause for his absence. The judge then allowed Ravi to present his defense against Suresh's claims, just as if he had been present on the original hearing date. The court also directed Ravi to pay a nominal cost for the adjournment.

Example 2:

Meera was involved in a civil lawsuit regarding a breach of contract with her business partner, Anil. The court issued a summons for Meera to appear on a specific date, but she missed the hearing because she was out of town for an urgent family matter. The court proceeded with the hearing *ex parte* and adjourned the case to a new date.

Before the adjourned hearing, Meera appeared in court and submitted travel documents and a letter from her family explaining the emergency situation that caused her to miss the initial hearing. The court found Meera's reason to be valid and allowed her to participate in the proceedings. The judge permitted Meera to present her side of the case and defend herself against Anil's allegations, as if she had attended the original hearing. The court also imposed a small cost on Meera for the inconvenience caused by her absence.

Rule 8: Procedure where defendant only appears.

Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

Simplified act

If the person being sued (defendant) shows up in court but the person who is suing (plaintiff) does not show up when the case is scheduled to be heard, the court will dismiss the case.

However, if the defendant admits to the claim or part of the claim, the court will rule against the defendant based on what they admitted.

If the defendant only admits to part of the claim, the court will dismiss the rest of the case that the defendant did not admit to.

Explanation using Example

Example 1:

Rajesh files a civil suit against Suresh for recovery of Rs. 1,00,000. The court schedules a hearing date and both parties are notified. On the day of the hearing, Rajesh (the plaintiff) does not appear in court, but Suresh (the defendant) does. According to Rule 8 of the Code of Civil Procedure 1908, the court will dismiss the suit filed by Rajesh unless Suresh admits to owing the Rs. 1,00,000 or a part of it. If Suresh admits that he owes Rs. 50,000, the court will pass a decree against Suresh for Rs. 50,000 and dismiss the suit for the remaining Rs. 50,000.

Example 2:

Meera files a lawsuit against her neighbor, Anil, claiming that he has encroached on her property. The court issues a summons to both parties to appear for the hearing. On the scheduled date, Meera does not show up, but Anil is present. As per Rule 8, the court will dismiss Meera's suit unless Anil admits to the encroachment or part of it. If Anil admits that he has encroached on a small portion of Meera's property, the court will pass a decree against Anil for that portion and dismiss the suit for the rest of the property.

Rule 9: Decree against plaintiff by default bars fresh suit.

Rule 8 - Dismissal of Suit

(1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party.

Simplified act

Rule 8 - Dismissal of Suit

(1) If a case is completely or partially dismissed under Rule 8, the person who filed the case (the plaintiff) cannot start a new case about the same issue. However, the plaintiff can ask the court to cancel the dismissal. If the plaintiff can show a good reason for not being present when the case was scheduled for hearing, the court will cancel the dismissal. The court may also decide on any costs or other conditions and will set a new date to continue with the case.

(2) The court will not cancel the dismissal unless the other party involved in the case has been notified about the plaintiff's request.

Explanation using Example

Example 1:

Scenario: Rajesh files a lawsuit against his neighbor, Suresh, claiming that Suresh has encroached on his property. The court schedules a hearing date, but Rajesh fails to appear in court on that day.

Application of Rule 9:

The court dismisses Rajesh's suit due to his non-appearance.

Rajesh cannot file a new lawsuit against Suresh for the same property encroachment issue.

However, Rajesh can apply to the court to set aside the dismissal if he can prove that he had a valid reason for not appearing (e.g., a medical emergency).

If the court is satisfied with Rajesh's explanation, it may set aside the dismissal and reschedule the hearing, possibly imposing some costs on Rajesh for the inconvenience caused.

Example 2:

Scenario: Priya files a suit against a company for breach of contract. The court issues a summons, but Priya does not appear on the scheduled date because she did not receive the summons in time.

Application of Rule 9:

The court dismisses Priya's suit due to her non-appearance.

Priya is barred from filing a new suit against the company for the same breach of contract.

Priya can apply to the court to set aside the dismissal, explaining that she did not receive the summons in time.

If the court finds Priya's reason valid, it will set aside the dismissal and set a new date for the hearing, possibly with conditions regarding costs.

Example 3:

Scenario: Anil files a suit against his business partner, Sunil, for misappropriation of funds. Anil fails to appear in court because he was out of the country on an urgent business trip and could not return in time.

Application of Rule 9:

The court dismisses Anil's suit due to his non-appearance.

Anil cannot bring a fresh suit against Sunil for the same issue of misappropriation of funds.

Anil can apply to the court to set aside the dismissal, providing evidence of his urgent business trip and inability to return in time.

If the court is convinced by Anil's explanation, it will set aside the dismissal and reschedule the hearing, potentially imposing costs on Anil for the delay.

Example 4:

Scenario: Meera files a suit against her tenant, Ravi, for non-payment of rent. Meera fails to appear in court because she was hospitalized due to a sudden illness.

Application of Rule 9:

The court dismisses Meera's suit due to her non-appearance.

Meera is barred from filing a new suit against Ravi for the same non-payment of rent.

Meera can apply to the court to set aside the dismissal, providing medical records to prove her hospitalization.

If the court accepts Meera's reason, it will set aside the dismissal and set a new date for the hearing, possibly with conditions regarding costs.

Rule 10: Procedure in case of non-attendance of one or more of several plaintiffs.

Where there are more plaintiffs than one, and one or more of them appear and the others do not appear, the Court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit to proceed in the same way as if all the plaintiffs had appeared, or make such order as it thinks fit.

Simplified act

If there are multiple people (plaintiffs) who have filed a lawsuit together, and some of them show up in court while others do not, the court has two options:

- The court can allow the case to continue as if all the plaintiffs were present.
- The court can make any other decision it thinks is appropriate.

Explanation using Example

Example 1:

Rajesh, Suresh, and Meena jointly file a civil suit against a construction company for breach of contract. On the day of the hearing, Rajesh and Suresh appear in court, but Meena does not. The court, upon the request of Rajesh and Suresh, decides to allow the case to proceed as if all three plaintiffs were present. The court continues with the hearing and considers the evidence and arguments presented by Rajesh and Suresh.

Example 2:

Anita, Ravi, and Priya file a lawsuit against their landlord for failing to return their security deposit. On the scheduled court date, only Anita shows up, while Ravi and Priya are absent. Anita requests the court to proceed with the case despite the absence of Ravi and Priya. The court, considering Anita's request, decides to proceed with the hearing. However, the court also has the discretion to make any other order it deems fit, such as adjourning the case to give Ravi and Priya another chance to appear.

Rule 11: Procedure in case of non-attendance of one or more of several defendants.

Where there are more defendants than one, and one or more of them appear, and the others do not appear, the suit shall proceed, and the Court shall, at the time of pronouncing judgment, make such order as it thinks fit with respect to the defendants who do not appear.

Simplified act

If there is more than one defendant in a case and some of them show up while others do not, the case will still continue.

When the court gives its judgment, it will decide what to do about the defendants who did not show up.

Explanation using Example

Example 1:

Ravi files a civil suit against three defendants: Suresh, Ramesh, and Mahesh, claiming that they collectively owe him Rs. 5,00,000. The court issues summons to all three defendants to appear on a specified date. On the day of the hearing, only Suresh and Ramesh appear in court, while Mahesh does not show up despite being duly served with the summons.

In this scenario, according to Rule 11 of the Code of Civil Procedure 1908, the court will proceed with the case against all three defendants. The court will hear the arguments and evidence presented by Ravi, Suresh, and Ramesh. When it comes time to pronounce the judgment, the court will make an appropriate order regarding Mahesh, who did not appear. This could include passing a judgment against Mahesh in his absence, depending on the merits of the case and the evidence presented.

Example 2:

Priya files a lawsuit against four defendants: Anil, Sunil, Vinod, and Rajesh, alleging that they have encroached on her property. The court sends summons to all four defendants to appear on a given date. On the scheduled date, only Anil and Vinod appear in court, while Sunil and Rajesh do not appear despite receiving the summons.

In this case, under Rule 11 of the Code of Civil Procedure 1908, the court will continue with the proceedings against all four defendants. The court will listen to the arguments and evidence from Priya, Anil, and Vinod. When delivering the judgment, the court will decide what order to make concerning Sunil and Rajesh, who did not attend the hearing. This could result in a default judgment against Sunil and Rajesh if the court finds Priya's claims to be valid and supported by evidence.

Rule 12: Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person.

Where a plaintiff or defendant, who has been ordered to appear in person, does not appear in person, or show sufficient cause to the satisfaction of the court for failing so to appear, he shall be subject to all provisions of the foregoing rules applicable to plaintiffs and defendants, respectively, who do not appear.

Simplified act

If a person who is supposed to show up in court (either the one suing or the one being sued) does not show up in person, and does not give a good enough reason that the court accepts for not showing up, then:

They will face the same consequences as others in their position (either suing or being sued) who do not show up in court.

Explanation using Example

Example 1:

Ravi filed a civil suit against his neighbor, Suresh, for encroaching on his property. The court ordered both Ravi and Suresh to appear in person for a hearing. On the day of the hearing, Ravi appeared, but Suresh did not. Suresh also did not provide any valid reason for his absence. As a result, the court proceeded with the hearing in Suresh's absence and ruled in favor of Ravi, ordering Suresh to remove the encroachment and pay damages.

Example 2:

Meena filed a lawsuit against a construction company for poor quality work on her house. The court ordered both Meena and the representative of the construction company to appear in person. On the scheduled date, the representative of the construction company failed to appear and did not provide any sufficient cause for the absence. Consequently, the court decided to proceed with the case in the absence of the construction company's representative and passed a judgment in favor of Meena, awarding her compensation for the poor construction work.

Setting aside decrees ex parte

Rule 13: Setting aside decree ex parte against defendant.

In any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also:

Provided further that no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.

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.

Simplified act

If a court makes a decision without the defendant being present (called "ex parte"), the defendant can ask the same court to cancel that decision. The defendant must show that:

They did not receive the court summons properly, or

They had a good reason for not being able to attend the court hearing.

If the court is convinced by the defendant's reasons, it will cancel the decision and may set conditions like paying costs or other requirements. The court will also set a new date to continue the case.

If the decision affects other defendants and cannot be canceled for just one defendant, the court may cancel it for all or some of the other defendants too.

The court will not cancel a decision just because there was a mistake in serving the summons if the defendant knew about the hearing date and had enough time to attend and respond to the plaintiff's claim.

Explanation: If there has been an appeal against the ex parte decision and the appeal was resolved for any reason other than the appellant withdrawing it, the defendant cannot apply to cancel the ex parte decision under this rule.

Explanation using Example

Example 1:

Rajesh, a businessman in Mumbai, was sued by his supplier for non-payment of dues. The court issued a summons to Rajesh, but due to a clerical error, the summons was sent to the wrong address. As a result, Rajesh never received the summons and did not appear in court. The court proceeded with the hearing and passed a decree ex parte (in Rajesh's absence) ordering him to pay the dues.

Upon learning about the decree, Rajesh applied to the court to set aside the ex parte decree. He provided evidence that the summons was not duly served to him. The court, satisfied with Rajesh's explanation, set aside the ex parte decree and scheduled a new date for the hearing, allowing Rajesh to present his defense.

Example 2:

Priya, a resident of Delhi, was involved in a property dispute with her neighbor. The court issued a summons for Priya to appear on a specific date. However, on the day of the hearing, Priya was hospitalized due to a sudden medical emergency and could not attend the court session. The court, unaware of her situation, proceeded with the hearing and passed a decree ex parte against her.

After being discharged from the hospital, Priya applied to the court to set aside the ex parte decree. She submitted her medical records as proof of her

hospitalization and explained that she was prevented by a sufficient cause from appearing in court. The court, finding her reason valid, set aside the ex parte decree and fixed a new date for the hearing, giving Priya an opportunity to present her case.

Example 3:

Vikram, a software engineer in Bangalore, was sued by his former employer for breach of contract. The court issued a summons, which was duly served to Vikram. However, Vikram mistakenly believed that the court date was a week later than it actually was. As a result, he did not appear in court on the scheduled date, and the court passed a decree ex parte against him.

Vikram applied to the court to set aside the ex parte decree, arguing that he had made an honest mistake regarding the date. The court, however, found that Vikram had received the summons and had sufficient time to appear but failed to do so due to his own negligence. Therefore, the court did not set aside the ex parte decree, and Vikram had to comply with the court's order.

Example 4:

Sunita, a shop owner in Chennai, was sued by a customer for selling defective goods. The court issued a summons, but Sunita was out of town for a family emergency and did not receive the notice. The court proceeded with the hearing and passed a decree ex parte against her.

Upon returning, Sunita applied to the court to set aside the ex parte decree, explaining her absence and providing evidence of her family emergency. The court, satisfied with her explanation, set aside the ex parte decree and scheduled a new hearing date, allowing Sunita to defend herself against the customer's claims.

Rule 14: No decree to be set aside without notice to opposite party.

No decree shall be set aside on any such application as aforesaid unless notice thereof has been served on the opposite party.

Simplified act

A court decision cannot be canceled based on an application unless the other party involved has been notified.

Explanation using Example

Example 1:

Rajesh filed a civil suit against Suresh for non-payment of a loan. Suresh did not appear in court despite being served notice, and the court passed an ex parte decree in favor of Rajesh. Later, Suresh filed an application to set aside the ex parte decree, claiming he was out of town and did not receive the notice. According to Rule 14 of the Code of Civil Procedure 1908, the court cannot set aside the decree without first serving a notice of Suresh's application to Rajesh. This ensures that Rajesh is aware of the application and has an opportunity to present his side before the court makes any decision.

Example 2:

Anita sued her tenant, Ramesh, for eviction due to non-payment of rent. Ramesh did not attend the court hearings, and the court issued an ex parte decree ordering his eviction. Ramesh later discovered the decree and filed an application to set it aside, arguing that he was hospitalized and could not attend the hearings. Under Rule 14 of the Code of Civil Procedure 1908, the court must serve a notice of Ramesh's application to Anita before considering setting aside the decree. This allows Anita to be informed and to contest Ramesh's application if she chooses.

ORDER X: EXAMINATION OF PARTIES BY THE COURT

Rule 1: Ascertainment whether allegations in pleadings are admitted or denied.

At the first hearing of the suit the Court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

Simplified act

At the first hearing of the case, the Court will ask each party or their lawyer whether they agree or disagree with the facts stated in the complaint or written response from the other side.

The Court will note down what each party admits or denies.

Explanation using Example

Example 1:

Scenario: A property dispute between two neighbors, Mr. Sharma and Mr. Verma.

Details:

Mr. Sharma files a plaint claiming that Mr. Verma has encroached on his land by building a wall.

Mr. Verma submits a written statement denying the encroachment and claiming that the wall is within his property boundaries.

Application of Rule 1:

At the first hearing, the judge asks Mr. Sharma and Mr. Verma (or their lawyers) to confirm which specific allegations in the plaint and written statement they admit or deny.

Mr. Sharma admits that the wall exists but denies that it is within Mr. Verma's property.

Mr. Verma admits that he built the wall but denies that it encroaches on Mr. Sharma's land.

The judge records these admissions and denials to clarify the points of contention for the case.

Example 2:

Scenario: A breach of contract case between a contractor, Ms. Gupta, and a homeowner, Mr. Rao.

Details:

Ms. Gupta files a plaint alleging that Mr. Rao failed to pay the final installment for the construction work completed.

Mr. Rao submits a written statement claiming that the work was not completed as per the contract specifications, hence he withheld the payment.

Application of Rule 1:

At the first hearing, the judge asks Ms. Gupta and Mr. Rao (or their lawyers) to confirm which specific allegations in the plaint and written statement they admit or deny.

Ms. Gupta admits that there were some minor delays but asserts that the work was completed satisfactorily.

Mr. Rao admits that he withheld the payment but denies that the work was completed as per the contract.

The judge records these admissions and denials to identify the exact issues that need to be resolved during the trial.

Rule 1A: Direction of the court to opt for any one mode of alternative dispute resolution.

After recording the admissions and denials, the court shall direct the parties to the suit to opt either mode of the settlement outside the court as specified in sub-section (1) of section 89. On the option of the parties, the court shall fix the date of appearance before such forum or authority as may be opted by the parties.

1B.

Simplified act

After noting what each side agrees or disagrees with, the court will ask the parties involved in the case to choose a way to settle the matter outside of court, as mentioned in sub-section (1) of section 89. Once the parties make their choice, the court will set a date for them to appear before the chosen forum or authority.

1B.

Explanation using Example

Example 1:

Rajesh and Sunita are involved in a property dispute over a piece of land in Mumbai. After both parties have presented their admissions and denials in court, the judge refers to Rule 1A of Order X under the Code of Civil Procedure, 1908. The judge informs Rajesh and Sunita that they must choose an alternative dispute resolution (ADR) method, such as mediation, arbitration, or conciliation, as specified in Section 89(1). Rajesh and Sunita agree to opt for mediation. The court then schedules a date for them to appear before a certified mediator to attempt to resolve their dispute outside the courtroom.

Example 2:

Meera and Anil are embroiled in a commercial dispute regarding a breach of contract in Delhi. During the preliminary hearing, the court records the admissions and denials from both parties. Following Rule 1A of Order X, the judge directs Meera and Anil to select an ADR method to settle their dispute. They choose arbitration as their preferred method. Consequently, the court sets a date for Meera and Anil to appear before an arbitrator, who will facilitate the resolution process in accordance with the Arbitration and Conciliation Act, 1996.

Rule 1B: Appearance before the conciliatory forum or authority.

Where a suit is referred under rule 1A, the parties shall appear before such forum or authority for conciliation of the suit.

Simplified act

If a case is sent for settlement under rule 1A, the people involved in the case must go to the specified forum or authority to try to resolve the case through conciliation.

Explanation using Example

Example 1:

Rajesh and Sunita are neighbors who have a dispute over the boundary of their properties. Rajesh files a civil suit against Sunita in the local court. The judge, under Rule 1A, refers the case to a conciliatory forum to try and resolve the matter amicably. According to Rule 1B, both Rajesh and Sunita are required to appear before the conciliatory forum. They attend the session, where a conciliator helps them discuss their issues and reach a mutual agreement on the boundary dispute without proceeding to a full court trial.

Example 2:

Meena and her business partner, Arjun, have a disagreement over the distribution of profits from their joint venture. Meena decides to take legal action and files a suit in the civil court. The court, seeing the potential for an amicable resolution, refers the case to a conciliatory authority under Rule 1A. As per Rule 1B, Meena and Arjun must appear before this authority. During the conciliation process, they are able to negotiate and agree on a fair distribution of profits, thus resolving their dispute without further litigation.

Rule 1C: Appearance before the court consequent to the failure of efforts of conciliation.

Where a suit is referred under rule 1A, and the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then, it shall refer the matter again to the court and direct the parties to appear before the court on the date fixed by it.

Simplified act

If a case is sent to a conciliation forum (a place where disputes are settled out of court) under rule 1A, and the person in charge of the forum believes that continuing with the case there would not be fair or just, then the forum will send the case back to the court. The forum will also tell the parties involved to go to the court on a specific date.

Explanation using Example

Example 1:

Rajesh and Sunita are involved in a property dispute. The court refers their case to a conciliation forum under Rule 1A to try and resolve the matter amicably. After several meetings, the presiding officer of the conciliation forum realizes that the parties are not willing to compromise and that continuing the conciliation process would not serve the interest of justice. The presiding officer then decides to refer the matter back to the court and directs Rajesh and Sunita to appear before the court on a specified date for further proceedings.

Example 2:

Anita files a lawsuit against her business partner, Vikram, over a breach of contract. The court, aiming to settle the dispute out of court, sends the case to a conciliation authority under Rule 1A. Despite multiple sessions, the conciliation officer finds that the differences between Anita and Vikram are too significant to be resolved through conciliation. Concluding that it would be unjust to continue with the conciliation, the officer refers the case back to the court and instructs both Anita and Vikram to appear before the court on a designated date for the continuation of the legal process.

Rule 2: Oral examination of party, or companion of party.

(1) At the first hearing of the suit, the Court -

(a) shall, with a view to elucidating matters in controversy in the suit, examine orally such of the parties to the suit appearing in person or present in Court, as it deems fit; and

(b) may orally examine any person, able to answer any material question relating to the suit, by whom any party appearing in person or present in Court or his pleader is accompanied.

(2) At any subsequent hearing, the Court may orally examine any party appearing in person or present in Court, or any person, able to answer any material question relating to the suit, by whom such party or his pleader is accompanied.

(3) The Court may, if it thinks fit, put in the course of an examination under this rule questions suggested by either party.

3.

Simplified act

(1) At the first hearing of the case, the Court -

(a) will talk to the people involved in the case who are present in person or in Court to understand the issues better; and

(b) can also talk to anyone who can answer important questions about the case, who is with the people involved or their lawyer.

(2) At any later hearing, the Court can talk to anyone involved in the case who is present in person or in Court, or anyone who can answer important questions about the case, who is with the people involved or their lawyer.

(3) The Court can ask questions suggested by either side during these talks if it thinks it's a good idea.

3.

Explanation using Example

Example 1:

Scenario: Property Dispute between Siblings

Parties Involved:

Plaintiff: Rajesh

Defendant: Suresh

Context: Rajesh has filed a suit against his brother Suresh, claiming that Suresh has illegally occupied a portion of their ancestral property.

First Hearing:

Court's Action: The judge, aiming to clarify the issues in dispute, decides to orally examine both Rajesh and Suresh.

Examination of Parties:

Rajesh's Examination: The judge asks Rajesh to explain his claim and provide details about the property and the alleged illegal occupation.

Suresh's Examination: The judge then questions Suresh about his side of the story and his justification for occupying the property.

Subsequent Hearing:

Court's Action: During a later hearing, the judge decides to examine Rajesh's friend, Amit, who is accompanying Rajesh and has knowledge about the property and the family arrangements.

Examination of Companion:

Amit's Examination: The judge asks Amit about his knowledge of the property and any agreements or understandings between Rajesh and Suresh regarding the property.

Questions Suggested by Parties:

Rajesh's lawyer suggests a question to the judge: "Did Suresh ever acknowledge Rajesh's ownership of the disputed portion in any family meetings?"

The judge, finding the question relevant, asks Suresh this question during the examination.

Example 2:

Scenario: Breach of Contract Case

Parties Involved:

Plaintiff: Meera

Defendant: ABC Constructions Pvt. Ltd.

Context: Meera has filed a suit against ABC Constructions Pvt. Ltd. for not completing the construction of her house as per the contract.

First Hearing:

Court's Action: The judge, to understand the core issues, decides to orally examine Meera and a representative from ABC Constructions.

Examination of Parties:

Meera's Examination: The judge asks Meera to describe the terms of the contract and the specific breaches committed by ABC Constructions.

ABC Constructions' Examination: The judge questions the company's representative about the reasons for the delay and their response to Meera's complaints.

Subsequent Hearing:

Court's Action: In a later hearing, the judge decides to examine Meera's architect, who is accompanying her and has detailed knowledge about the construction project.

Examination of Companion:

Architect's Examination: The judge asks the architect about the construction progress, any deviations from the plan, and the quality of work done by ABC Constructions.

Questions Suggested by Parties:

ABC Constructions' lawyer suggests a question to the judge: "Did Meera make any changes to the original construction plan that could have caused delays?"

The judge, considering the question pertinent, asks Meera this question during the examination.

Rule 3: Substance of examination to be written.

The substance of the examination shall be reduced to writing by the Judge, and shall form part of the record.

Simplified act

The Judge will write down what is discussed during the examination.

This written record will become part of the official case file.

Explanation using Example

Example 1:

Scenario: A property dispute case in a civil court in Mumbai.

Situation: Rajesh and Suresh are in a legal battle over the ownership of a piece of land. During the court proceedings, the judge decides to examine both parties to understand their claims better.

Application of Rule 3:

The judge asks Rajesh to explain his claim to the property.

Rajesh states that he inherited the land from his grandfather and provides some documents as evidence.

The judge then asks Suresh to present his side of the story.

Suresh claims that he purchased the land from Rajesh's uncle and also provides some documents.

Action: The judge writes down the key points from both Rajesh's and Suresh's statements, including their claims and the evidence they presented. This written record becomes part of the official court record for the case.

Example 2:

Scenario: A breach of contract case in a civil court in Delhi.

Situation: Priya files a lawsuit against a construction company for not completing her house on time as per the contract.

Application of Rule 3:

The judge calls Priya to explain her grievances.

Priya states that the construction company promised to complete the house within six months, but it has been over a year, and the work is still incomplete.

The judge then asks the representative of the construction company to explain their side.

The representative claims that the delay was due to unforeseen circumstances like heavy rains and shortage of materials.

Action: The judge writes down the essential points from both Priya's and the construction company's statements, including the reasons for the delay and any evidence provided. This written record is added to the case file as part of the official court record.

Rule 4: Consequence of refusal or inability of pleader to answer.

Rule on Pleader's Inability to Answer

(1) Where the pleader of any party who appears by a pleader or any such person accompanying a pleader as is referred to in rule 2, refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a day not later than seven days from the date of first hearing and direct that such party shall appear in person on such day.

(2) If such party fails without lawful excuse to appear in person on the day so appointed, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit.

Simplified act

Rule on Pleader's Inability to Answer

(1) If a lawyer representing a party, or someone with the lawyer, cannot or refuses to answer important questions about the case that the Court believes the party should be able to answer if asked directly, the Court can delay the case. The delay can be up to seven days from the first hearing, and the Court can order the party to come in person on the new date.

(2) If the party does not show up in person on the new date without a good reason, the Court can make a decision against them or take any other action it thinks is appropriate for the case.

Explanation using Example

Example 1:

Rajesh files a civil suit against his neighbor, Suresh, for encroaching on his property. Rajesh hires a pleader (lawyer) to represent him in court. During the hearing, the judge asks Rajesh's pleader a specific question about the exact boundaries of Rajesh's property. The pleader is unable to answer this question because he does not have the detailed information. The judge believes that

Rajesh himself would be able to answer this question if he were present. Therefore, the judge postpones the hearing for seven days and directs Rajesh to appear in person at the next hearing to answer the question.

Example 2:

Meera is involved in a civil dispute with a construction company over the quality of materials used in building her house. Meera's pleader is questioned by the court about the specific types of materials used and their compliance with the contract. The pleader refuses to answer, stating that only Meera has the detailed knowledge of the materials. The court then decides to postpone the hearing for a week and orders Meera to appear in person to provide the necessary information. If Meera fails to appear without a valid reason, the court may decide the case against her or issue another appropriate order.

ORDER XI: DISCOVERY AND INSPECTION

Rule 1: Discovery by interrogatories.

In any suit the plaintiff or defendant by leave of the Court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such person is required to answer:

Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose:

Provided also that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

Simplified act

In any lawsuit, the plaintiff (the person who brings the case) or the defendant (the person being sued) can ask the court for permission to send written questions (called interrogatories) to the other side. These questions are meant to get information from the other side.

When these questions are sent, there must be a note at the bottom saying which questions each person needs to answer.

You can only send one set of questions to the same person unless the court gives you special permission to send more.

Any questions that do not relate to the issues in the lawsuit are considered irrelevant, even if they might be allowed during a live cross-examination of a witness.

Explanation using Example

Example 1:

Scenario: A property dispute between two neighbors, Mr. Sharma (plaintiff) and Mr. Verma (defendant).

Details: Mr. Sharma has filed a suit against Mr. Verma claiming that Mr. Verma has encroached on his land. To gather more information, Mr. Sharma seeks the court's permission to deliver interrogatories to Mr. Verma.

Interrogatories:

Did you construct a boundary wall on the disputed land in January 2022?

Do you have any documents proving your ownership of the disputed land?

Have you ever received any notices from the municipal corporation regarding the encroachment?

Court's Note: Mr. Verma is required to answer all the above interrogatories in writing.

Outcome: Mr. Verma must respond to these questions truthfully and provide any relevant documents. If he fails to do so, the court may take adverse inference against him.

Example 2:

Scenario: A breach of contract case between a software company, Tech Solutions Pvt. Ltd. (plaintiff), and a client, Mr. Gupta (defendant).

Details: Tech Solutions Pvt. Ltd. has filed a suit against Mr. Gupta for non-payment of dues after the completion of a software project. To strengthen their case, Tech Solutions seeks the court's permission to deliver interrogatories to Mr. Gupta.

Interrogatories:

Did you sign the contract dated 15th March 2021 with Tech Solutions Pvt. Ltd. for the development of a custom software application?

Did you receive the final deliverables of the software project on 30th June 2021?

Have you made any payments towards the invoices dated 1st July 2021 and 15th July 2021?

Court's Note: Mr. Gupta is required to answer all the above interrogatories in writing.

Outcome: Mr. Gupta must provide written answers to these questions. If he admits to signing the contract and receiving the deliverables but fails to justify non-payment, it will strengthen Tech Solutions' case for recovering the dues.

Rule 2: Particular interrogatories to be submitted.

On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the Court and that court shall decide within seven days from the day of filing of the said application. In deciding upon such application, the Court shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the Court shall consider necessary either for disposing fairly of the suit or for saving costs.

Simplified act

When someone wants permission to ask the other party questions (called interrogatories) in a legal case, they must submit the specific questions they want to ask to the Court.

The Court has seven days from the day the request is filed to make a decision.

While deciding, the Court will consider if the other party has offered to provide details, admit certain facts, or produce documents related to the case.

The Court will only allow the questions it thinks are necessary to either resolve the case fairly or to save money.

Explanation using Example

Example 1:

Scenario: A property dispute between two neighbors, Mr. Sharma and Mr. Verma.

Details: Mr. Sharma files a suit against Mr. Verma, claiming that Mr. Verma has encroached on his land. Mr. Sharma wants to gather more information about the boundary markers and any previous agreements regarding the property boundaries.

Application of Rule 2: Mr. Sharma's lawyer submits an application to the court seeking permission to deliver specific interrogatories (questions) to Mr. Verma. The proposed interrogatories include questions about:

The exact measurements of Mr. Verma's property.

Any documents or agreements Mr. Verma has regarding the property boundaries.

Whether Mr. Verma has conducted any surveys of the property.

The court reviews the application and decides within seven days. The court considers whether Mr. Verma is willing to provide the requested information voluntarily or produce relevant documents. The court grants permission for only those interrogatories it deems necessary to resolve the dispute fairly or to save costs.

Example 2:

Scenario: A breach of contract case between a supplier, ABC Pvt. Ltd., and a retailer, XYZ Stores.

Details: ABC Pvt. Ltd. sues XYZ Stores for failing to pay for goods delivered. XYZ Stores claims that the goods were defective and not as per the agreed specifications.

Application of Rule 2: ABC Pvt. Ltd.'s lawyer submits an application to the court to deliver specific interrogatories to XYZ Stores. The proposed interrogatories include questions about:

The specific defects XYZ Stores found in the goods.

Any communication between XYZ Stores and ABC Pvt. Ltd. regarding the defects.

Any inspection reports or expert opinions obtained by XYZ Stores about the goods.

The court reviews the application and decides within seven days. The court considers whether XYZ Stores is willing to provide the requested information or produce relevant documents. The court grants permission for only those interrogatories it considers necessary to resolve the case fairly or to save costs.

Rule 3: Costs of interrogatories.

In adjusting the costs of the suit, inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the Court, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the cost occasioned by the interrogatories and the answers thereto shall be paid in any event by the party in fault.

Simplified act

When figuring out the costs of a lawsuit, any party involved can ask to check if the questions (interrogatories) asked were appropriate.

If the person in charge of costs (taxing officer) or the Court thinks that the questions were asked in a way that was unreasonable, annoying, or too long, they can decide this on their own or if someone asks them to.

If they find that the questions were indeed unreasonable, annoying, or too long, the party who asked those questions will have to pay for the costs related to those questions and their answers, no matter what.

Explanation using Example

Example 1:

Scenario: Rajesh files a civil suit against his neighbor, Suresh, for encroaching on his property. During the discovery process, Rajesh's lawyer sends a set of 50 interrogatories (written questions) to Suresh, asking for detailed information about the property boundaries, past disputes, and other related matters.

Application of Rule 3:

Suresh finds the interrogatories to be excessive and believes many of them are irrelevant and meant to harass him.

Suresh's lawyer requests the court to review the propriety of these interrogatories.

The court examines the interrogatories and determines that many of them are indeed unreasonable and vexatious.

As a result, the court orders Rajesh to bear the costs associated with these unnecessary interrogatories and the time Suresh spent answering them.

Example 2:

Scenario: Priya is involved in a breach of contract case with her former business partner, Anil. Anil's lawyer sends a set of interrogatories to Priya, asking for detailed financial records, emails, and other documents spanning over ten years.

Application of Rule 3:

Priya feels that the interrogatories are overly broad and not directly relevant to the breach of contract issue.

Priya's lawyer files a motion with the court to review the interrogatories.

The court reviews the interrogatories and finds that they are excessively lengthy and not all questions are pertinent to the case.

The court rules that Anil's interrogatories were exhibited at improper length and orders Anil to pay the costs incurred by Priya in responding to these interrogatories.

Example 3:

Scenario: Meera is suing a construction company for poor workmanship on her house. The construction company's lawyer sends a set of interrogatories to Meera, asking for detailed information about her communications with other contractors, her financial status, and her personal life.

Application of Rule 3:

Meera believes that many of the interrogatories are irrelevant and intended to intimidate her.

Meera's lawyer requests the court to investigate the propriety of these interrogatories.

The court reviews the interrogatories and concludes that several questions are irrelevant and vexatious.

The court orders the construction company to pay for the costs Meera incurred in answering the unreasonable interrogatories.

Rule 4: Form of interrogatories.

Interrogatories shall be in Form No. 2 in Appendix C, with such variations as circumstances may require.

Simplified act

Interrogatories should follow the format given in Form No. 2 in Appendix C, but you can make changes if needed based on the situation.

Explanation using Example

Example 1:

Scenario: A property dispute case in a civil court in Mumbai.

Details: Rajesh has filed a lawsuit against his neighbor, Suresh, claiming that Suresh has encroached on his property. Rajesh's lawyer wants to gather more information about the construction activities carried out by Suresh.

Interrogatories:

Did you obtain the necessary municipal permissions before starting the construction on your property?

Can you provide the dates on which the construction activities were carried out?

Were there any objections raised by the local residents during the construction period?

Can you provide the names and contact details of the contractors involved in the construction?

These questions are designed to gather specific information that can help Rajesh's case by establishing whether Suresh followed legal procedures and if there were any objections to the construction.

Example 2:

Scenario: A breach of contract case in a civil court in Delhi.

Details: Priya has filed a lawsuit against a company, XYZ Pvt. Ltd., for not delivering goods as per the contract terms. Priya's lawyer wants to gather more information about the company's actions and reasons for the breach.

Interrogatories:

Did you receive the purchase order and payment from Priya on the agreed date?

Can you provide the reasons for the delay in delivering the goods?

Were there any issues with the suppliers that affected the delivery schedule?

Can you provide copies of any internal communications regarding the delay in delivery?

These questions aim to uncover the reasons behind the breach of contract and gather evidence that can support Priya's claim for damages.

Rule 5: Corporations.

Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation or body, and an order may be made accordingly.

Simplified act

If a party involved in a lawsuit is a company or a group of people (whether they are officially registered or not) that has the legal right to start or face a lawsuit, either in its own name or through an officer or another person, then the opposing party can request permission to ask questions (interrogatories) to any member or officer of that company or group. The court can then grant this request.

Explanation using Example

Example 1:

Scenario: A consumer files a lawsuit against a large electronics corporation for selling a defective product.

Application: The consumer's lawyer wants to gather more information about the corporation's quality control processes. Under Rule 5 of Order XI of The

Code of Civil Procedure 1908, the consumer's lawyer can apply to the court for permission to send a list of questions (interrogatories) to a senior manager or quality control officer of the corporation. The court grants the order, and the corporation is required to provide detailed answers to these questions, which can then be used as evidence in the lawsuit.

Example 2:

Scenario: A group of residents files a public interest litigation (PIL) against a municipal corporation for failing to maintain proper sanitation in their locality.

Application: The residents' lawyer needs specific information about the municipal corporation's sanitation policies and budget allocations. Using Rule 5 of Order XI of The Code of Civil Procedure 1908, the lawyer can request the court to allow them to send interrogatories to the municipal commissioner or another relevant officer. The court approves the request, and the municipal corporation must respond to the interrogatories, providing the necessary information that can help the residents build their case.

Rule 6: Objections to interrogatories by answer.

Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited bona fide for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on the ground of privilege or any other ground, may be taken in the affidavit in answer.

7.

Simplified act

If you have a reason to object to answering a question in a legal case because you think it is offensive, not relevant, not asked in good faith, not important enough at that point, or because you have a right to keep it private, you can state your objection in your written response.

7.

Explanation using Example

Example 1:

Scenario: Rajesh files a civil suit against his former business partner, Suresh, for breach of contract. During the discovery process, Rajesh sends a set of

interrogatories (written questions) to Suresh, asking for detailed information about their business transactions.

Interrogatory: "Please provide a detailed account of all financial transactions you conducted with third parties over the last five years."

Objection by Answer: Suresh objects to this interrogatory in his affidavit, stating that the question is irrelevant to the breach of contract case and is not exhibited bona fide for the purpose of the suit. He argues that the financial transactions with third parties have no bearing on the specific breach of contract between him and Rajesh.

Legal Basis: Under Rule 6 of Order XI of The Code of Civil Procedure 1908, Suresh is entitled to object to answering the interrogatory on the grounds that it is irrelevant and not exhibited bona fide for the purpose of the suit.

Example 2:

Scenario: Priya files a civil suit against her neighbor, Anil, for encroachment on her property. During the discovery process, Anil sends an interrogatory to Priya asking for details about her personal relationships and social activities.

Interrogatory: "Please provide details of all your social activities and personal relationships over the past three years."

Objection by Answer: Priya objects to this interrogatory in her affidavit, stating that the question is scandalous and irrelevant to the property encroachment case. She argues that her social activities and personal relationships have no connection to the legal dispute over property boundaries.

Legal Basis: Under Rule 6 of Order XI of The Code of Civil Procedure 1908, Priya is entitled to object to answering the interrogatory on the grounds that it is scandalous and irrelevant to the suit.

Rule 7: Setting aside and striking out interrogatories.

Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous; and any application for this purpose may be made within seven days after service of the interrogatories.

Simplified act

You can ask the court to cancel questions (interrogatories) if they were asked in an unreasonable or annoying way.

You can also ask the court to remove questions if they are too long, too harsh, unnecessary, or offensive.

You must make this request within seven days after you receive the questions.

Explanation using Example

Example 1:

Scenario: Rajesh files a civil lawsuit against his former business partner, Suresh, for breach of contract. During the discovery process, Rajesh serves Suresh with a set of interrogatories (written questions that must be answered under oath).

Application of Rule 7: Suresh finds that many of the interrogatories are irrelevant to the case and seem designed to harass him. For instance, one interrogatory asks about his personal relationships, which has no bearing on the breach of contract issue.

Action Taken: Suresh's lawyer files an application within seven days after receiving the interrogatories, requesting the court to set aside these questions on the grounds that they are exhibited unreasonably and vexatiously.

Outcome: The court reviews the application and agrees that the interrogatories are irrelevant and intended to harass. The court sets aside the unreasonable interrogatories, allowing Suresh to focus on the relevant questions.

Example 2:

Scenario: Priya is involved in a property dispute with her neighbor, Anil. During the discovery phase, Anil serves Priya with a set of interrogatories that are excessively long and detailed, asking for minute details about her daily activities and financial transactions over the past ten years.

Application of Rule 7: Priya finds these interrogatories to be prolix (too lengthy) and oppressive, as they require an unreasonable amount of effort to answer and are not directly related to the property dispute.

Action Taken: Priya's lawyer files an application within seven days after receiving the interrogatories, requesting the court to strike out the questions on the grounds that they are prolix and oppressive.

Outcome: The court reviews the application and agrees that the interrogatories are unnecessarily lengthy and burdensome. The court strikes out the prolix and oppressive interrogatories, ensuring that Priya only has to answer questions that are relevant and necessary for the case.

Rule 8: Affidavit in answer, filing.

Interrogatories shall be answered by affidavit to be filed within ten days or within such other time as the Court may allow.

Simplified act

You must answer the questions (interrogatories) in a written statement (affidavit).

You have to file this written statement within ten days.

If the Court allows more time, you can file it later within that allowed time.

Explanation using Example

Example 1:

Ravi has filed a civil lawsuit against his neighbor, Suresh, for encroaching on his property. During the discovery process, Ravi's lawyer sends a set of interrogatories (written questions) to Suresh to gather more information about the encroachment. According to Rule 8 of Order XI of The Code of Civil Procedure 1908, Suresh is required to answer these interrogatories by filing an affidavit within ten days. However, Suresh's lawyer requests additional time due to the complexity of the questions. The court grants an extension, allowing Suresh to file the affidavit within twenty days instead.

Example 2:

Meera is involved in a civil dispute with a construction company over the quality of materials used in building her house. As part of the discovery process, Meera's lawyer serves interrogatories to the construction company, asking detailed questions about the materials used. The construction company must respond to these interrogatories by filing an affidavit within ten days. If the construction company fails to do so within the stipulated time, Meera's lawyer can request the court to compel the company to file the affidavit or face potential penalties.

Rule 9: Form of affidavit in answer.

An affidavit in answer to interrogatories shall be in Form No. 3 in Appendix C, with such variations as circumstances may require.

Simplified act

If you need to respond to questions (interrogatories) in a legal case, you must use Form No. 3 from Appendix C.

You can make changes to the form if needed, depending on the situation.

Explanation using Example

Example 1:

Scenario: A property dispute case in a civil court in Mumbai.

Details: Mr. Sharma has filed a lawsuit against Mr. Verma, claiming that Mr. Verma has encroached on his property. During the discovery phase, Mr. Sharma's lawyer serves interrogatories (a set of formal questions) to Mr. Verma to gather more information about the case.

Application of Rule 9: Mr. Verma is required to respond to these interrogatories with an affidavit. According to Rule 9 of the Code of Civil Procedure, 1908, this affidavit must be in Form No. 3 in Appendix C, with any necessary modifications based on the specific circumstances of the case. Mr. Verma's lawyer drafts the affidavit in the prescribed form, ensuring that all answers to the interrogatories are truthful and complete, and submits it to the court.

Example 2:

Scenario: A breach of contract case in a civil court in Delhi.

Details: Ms. Gupta has sued a construction company for failing to complete a building project on time. During the discovery process, Ms. Gupta's lawyer sends interrogatories to the construction company to obtain detailed information about the delays and the reasons behind them.

Application of Rule 9: The construction company must respond to these interrogatories with an affidavit. In compliance with Rule 9 of the Code of Civil Procedure, 1908, the affidavit must follow Form No. 3 in Appendix C, with adjustments as needed for the specific details of the case. The construction company's legal team prepares the affidavit, ensuring that it accurately addresses each interrogatory, and files it with the court as part of the discovery process.

Rule 10: No exception to be taken.

No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the Court.

Simplified act

You cannot challenge or question an affidavit (a written statement confirmed by oath) that is given in response to something.

If someone thinks the affidavit is not good enough, the Court will decide if it is sufficient or not.

Explanation using Example

Example 1:

Scenario: Ramesh files a civil lawsuit against Suresh for breach of contract. During the discovery process, Ramesh requests certain documents from Suresh. Suresh submits an affidavit stating that he has provided all relevant documents.

Application of Rule 10: Ramesh believes that Suresh's affidavit is insufficient and objects to it. According to Rule 10 of the Code of Civil Procedure 1908, Ramesh cannot take exception to the affidavit itself. Instead, he must bring the issue before the court, which will then determine whether Suresh's affidavit is sufficient or not.

Outcome: The court reviews the affidavit and decides whether Suresh has indeed provided all relevant documents. If the court finds the affidavit insufficient, it may order Suresh to provide additional documents.

Example 2:

Scenario: Priya is involved in a property dispute with her neighbor, Anil. During the discovery phase, Priya requests Anil to disclose certain financial records. Anil submits an affidavit claiming that he has disclosed all necessary financial records.

Application of Rule 10: Priya feels that Anil's affidavit does not cover all the financial records she requested and objects to its sufficiency. Under Rule 10, Priya cannot challenge the affidavit itself. She must present her concerns to the court, which will then assess the sufficiency of Anil's affidavit.

Outcome: The court examines the affidavit and determines whether Anil has adequately disclosed the financial records. If the court finds the affidavit lacking, it may instruct Anil to provide the missing records.

Rule 11: Order to answer or answer further.

Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer or answer further, either by affidavit or by viva voce examination, as the Court may direct.

Simplified act

If someone being questioned does not answer or gives an incomplete answer, the person asking the questions can ask the Court to make an order requiring the person to answer properly. The Court can then order the person to give a complete answer, either in writing (affidavit) or by speaking in person (viva voce), as the Court decides.

Explanation using Example

Example 1:

Scenario: Ramesh files a civil lawsuit against Suresh for breach of contract. During the discovery process, Ramesh sends a set of interrogatories (written questions) to Suresh to gather more information about the case. Suresh responds to some questions but omits answers to others and provides vague responses to a few.

Application of Rule 11: Ramesh can apply to the Court under Rule 11 of the Code of Civil Procedure, 1908, requesting an order that requires Suresh to provide complete and specific answers to the interrogatories he omitted or answered insufficiently. The Court may then direct Suresh to answer the questions either through a written affidavit or by appearing in person (viva voce examination) to provide the necessary information.

Example 2:

Scenario: Priya is involved in a property dispute with her neighbor, Anil. During the discovery phase, Priya sends interrogatories to Anil to obtain details about the property boundaries and any previous agreements. Anil responds

but fails to provide detailed information about a crucial agreement and gives incomplete answers about the property boundaries.

Application of Rule 11: Priya can approach the Court under Rule 11 of the Code of Civil Procedure, 1908, seeking an order that compels Anil to provide more detailed and complete answers to the interrogatories. The Court may issue an order requiring Anil to answer the questions more thoroughly, either by submitting a detailed affidavit or by appearing in Court for a viva voce examination to clarify the information.

Rule 12: Application for discovery of documents.

Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oaths, of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion be thought fit:

Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

13.

Simplified act

Any party involved in a lawsuit can ask the Court, without needing to submit a sworn statement, to order another party in the lawsuit to reveal, under oath, the documents they have or had that are related to the case. When this request is made, the Court can either deny it, delay it if it believes the documents are not needed at that time, or approve it, either for all documents or just specific types of documents, based on what the Court thinks is appropriate:

However, the Court will not order the sharing of documents if it believes that doing so is not necessary to resolve the case fairly or to save costs.

13.

Explanation using Example

Example 1:

Scenario: A property dispute between two brothers, Raj and Ravi.

Context: Raj and Ravi are in a legal battle over the ownership of a piece of ancestral land. Raj believes that Ravi has documents that prove the land was willed to him by their father.

Application of Rule 12: Raj files an application under Rule 12 of the Code of Civil Procedure, 1908, requesting the court to order Ravi to produce all documents related to the ownership of the land. Raj does not need to file an affidavit for this application.

Court's Decision: The court reviews the application and decides that the discovery of these documents is necessary for a fair resolution of the dispute. The court orders Ravi to produce all relevant documents in his possession or power that pertain to the ownership of the land.

Example 2:

Scenario: A breach of contract case between a supplier, ABC Pvt. Ltd., and a retailer, XYZ Stores.

Context: ABC Pvt. Ltd. claims that XYZ Stores has not paid for the goods delivered as per the contract. XYZ Stores argues that they never received the goods.

Application of Rule 12: ABC Pvt. Ltd. applies to the court under Rule 12, requesting an order for XYZ Stores to produce all documents related to the delivery and receipt of the goods, including delivery receipts and inventory records.

Court's Decision: The court considers the application and determines that the discovery of these documents is crucial for resolving the dispute. The court orders XYZ Stores to produce the requested documents. However, the court limits the order to documents from the specific period during which the disputed deliveries were supposed to have occurred.

Example 3:

Scenario: A defamation case involving a journalist, Priya, and a politician, Mr. Sharma.

Context: Mr. Sharma sues Priya for defamation, claiming that she published false information about him in a newspaper article. Priya argues that her article was based on credible sources and documents.

Application of Rule 12: Mr. Sharma applies to the court under Rule 12, requesting an order for Priya to produce all documents and sources she relied upon for her article.

Court's Decision: The court reviews the application and decides that the discovery of these documents is necessary to determine the truthfulness of the article. The court orders Priya to produce the documents and sources she used for her article. However, the court also considers Priya's right to protect her sources and may limit the order to certain documents that are directly relevant to the case.

Rule 13: Affidavit of documents.

The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which (if any) of the documents therein mentioned he objects to produce, and it shall be in Form No. 5 in Appendix C, with such variations as circumstances may require.

Simplified act

If a court order has been made against someone, that person must make a sworn statement (affidavit).

In this affidavit, the person must clearly state which documents they do not want to show.

The affidavit should follow the format of Form No. 5 in Appendix C, but can be adjusted if needed.

Explanation using Example

Example 1:

Scenario: Rajesh files a civil lawsuit against his neighbor, Suresh, for encroaching on his property. During the discovery process, the court orders Suresh to produce certain documents related to the property boundaries.

Application of Rule 13: Suresh is required to submit an affidavit of documents. In this affidavit, Suresh must list all the documents he has that are relevant to the property boundaries. If Suresh objects to producing any of these documents, he must specify which documents he objects to and the reasons for his objections. The affidavit should follow Form No. 5 in Appendix C, with any necessary adjustments based on the specific circumstances of the case.

Example 2:

Scenario: Priya sues a construction company for breach of contract, claiming that the company did not complete the construction of her house as per the agreed terms. The court orders the construction company to produce all documents related to the construction project, including contracts, invoices, and communication records.

Application of Rule 13: The construction company must prepare an affidavit of documents. In this affidavit, the company must list all the documents related to the construction project. If the company objects to producing any specific documents, such as confidential internal communications, it must clearly state which documents it objects to producing and provide reasons for the objections. The affidavit should be formatted according to Form No. 5 in Appendix C, with modifications as needed to fit the situation.

Rule 14: Production of documents.

It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

Simplified act

The Court can ask any party involved in a lawsuit to show certain documents they have, if those documents are related to the case.

The party must provide these documents under oath.

The Court can make this request at any time while the lawsuit is ongoing.

Once the documents are provided, the Court will decide how to handle them in a fair way.

Explanation using Example

Example 1:

Scenario: A property dispute between two brothers, Raj and Ravi.

Details: Raj and Ravi are in a legal battle over the ownership of a piece of ancestral land. Raj claims that their father had transferred the property to him through a will, while Ravi disputes the authenticity of the will.

Application of Rule 14:

During the trial, Ravi requests the court to order Raj to produce the original will and any other related documents.

The court, exercising its power under Rule 14, orders Raj to produce the original will and any other documents related to the property transfer.

Raj is required to submit these documents to the court under oath.

The court examines the documents to determine their authenticity and relevance to the case.

Example 2:

Scenario: A breach of contract case between a supplier, ABC Pvt. Ltd., and a retailer, XYZ Stores.

Details: ABC Pvt. Ltd. supplied goods to XYZ Stores, but XYZ Stores failed to make the payment as per the agreed terms. ABC Pvt. Ltd. files a suit for recovery of the outstanding amount.

Application of Rule 14:

During the proceedings, ABC Pvt. Ltd. requests the court to order XYZ Stores to produce the purchase orders, delivery receipts, and communication records related to the transactions.

The court, using its authority under Rule 14, orders XYZ Stores to produce these documents.

XYZ Stores must provide the requested documents under oath.

The court reviews the documents to verify the claims made by ABC Pvt. Ltd. and to determine the legitimacy of the breach of contract claim.

Rule 15: Inspection of documents referred to in pleading or affidavits.

Every party to a suit shall be entitled at or before the settlement of issues to give notice to any other party, in whose pleadings or affidavits reference is made to any document, or who has entered any document in any list annexed

to his pleadings, to produce such document for the inspection of the party giving such notice, or of his pleader, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the suit, or that he had some other cause or excuse which the Court shall deem sufficient for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think fit.

Simplified act

Every person involved in a lawsuit has the right, before the issues are settled, to ask any other person involved in the lawsuit to show any document they have mentioned in their legal papers or affidavits, or listed in their documents.

The person who receives this request must allow the requesting person or their lawyer to look at the document and make copies of it.

If a person does not comply with this request, they will not be allowed to use that document as evidence in the lawsuit later on, unless they can convince the Court that: a. The document only relates to their own ownership or rights, and they are the defendant in the lawsuit, or b. They had a valid reason or excuse for not complying with the request, which the Court finds acceptable.

If the Court accepts the reason for not complying, it may allow the document to be used as evidence, but may also impose conditions, such as covering costs or other terms the Court thinks are appropriate.

Explanation using Example

Example 1:

Scenario: A property dispute between two neighbors, Mr. Sharma and Mr. Verma.

Details:

Mr. Sharma files a suit claiming that a piece of land belongs to him.

In his pleadings, Mr. Sharma refers to a sale deed from 1995 as evidence of his ownership.

Mr. Verma, the defendant, wants to inspect this sale deed to verify its authenticity.

Application of Rule 15:

Mr. Verma sends a notice to Mr. Sharma requesting to inspect the sale deed mentioned in Mr. Sharma's pleadings.

Mr. Sharma is obligated to produce the sale deed for Mr. Verma's inspection and allow him to take copies.

If Mr. Sharma fails to comply with the notice, he cannot later use the sale deed as evidence in court unless he provides a satisfactory reason for not complying.

Example 2:

Scenario: A breach of contract case between a supplier, ABC Pvt. Ltd., and a retailer, XYZ Stores.

Details:

ABC Pvt. Ltd. files a suit against XYZ Stores for non-payment of goods delivered.

In the affidavit, ABC Pvt. Ltd. refers to several invoices and delivery receipts as proof of delivery and payment due.

XYZ Stores wants to inspect these documents to prepare their defense.

Application of Rule 15:

XYZ Stores sends a notice to ABC Pvt. Ltd. requesting to inspect the invoices and delivery receipts mentioned in the affidavit.

ABC Pvt. Ltd. must produce these documents for inspection and allow XYZ Stores to take copies.

If ABC Pvt. Ltd. does not comply with the notice, they cannot use these documents as evidence unless they provide a valid reason for non-compliance that the court accepts.

Example 3:

Scenario: A family inheritance dispute over a will.

Details:

Ms. Kapoor files a suit claiming her right to a share in her late father's property.

In her pleadings, she refers to a will that allegedly grants her the property.

Her brother, Mr. Kapoor, who is contesting the will, wants to inspect the document to challenge its validity.

Application of Rule 15:

Mr. Kapoor sends a notice to Ms. Kapoor requesting to inspect the will mentioned in her pleadings.

Ms. Kapoor must produce the will for Mr. Kapoor's inspection and allow him to take copies.

If Ms. Kapoor fails to comply with the notice, she cannot use the will as evidence unless she provides a satisfactory reason for not complying, which the court accepts.

Rule 16: Notice to produce.

Notice to any party to produce any documents referred to in his pleading or affidavits shall be in Form No. 7 in Appendix C, with such variations as circumstances may require.

Simplified act

If you want another party to show any documents they mentioned in their legal papers or sworn statements, you need to use Form No. 7 from Appendix C. You can make changes to the form if needed based on the situation.

Explanation using Example

Example 1:

Rajesh has filed a civil suit against his neighbor, Suresh, claiming that Suresh has encroached on his property. In his complaint, Rajesh mentions a property map and a sale deed that he claims prove his ownership of the disputed land. During the discovery phase, Suresh's lawyer sends a "Notice to Produce" to Rajesh, requesting him to produce the property map and the sale deed mentioned in his complaint. Rajesh is legally obligated to provide these documents for inspection as per Rule 16 of the Code of Civil Procedure, 1908.

Example 2:

Meera is involved in a civil litigation case against a construction company, alleging that the company did not complete the construction of her house as per the agreed contract. In her affidavit, Meera refers to several emails and the original contract agreement that outline the terms and conditions of the construction project. The construction company's lawyer issues a "Notice to Produce" to Meera, asking her to provide the emails and the contract agreement mentioned in her affidavit. Meera must comply with this notice and produce the requested documents for the court's inspection.

Rule 17: Time for inspection when notice given.

The party to whom such notice is given shall, within ten days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his pleader, or in the case of bankers' books or other books of account or books in constant use for the purposes of any trade or business, at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what ground.

Such notice shall be in Form No. 8 in Appendix C; with such variations as circumstances may require.

Simplified act

If you receive a notice, you have ten days to respond. In your response, you need to:

Give a time within the next three days when the other party can come and look at the documents you are willing to show.

This inspection can happen at your lawyer's office or, if the documents are business records or books that are used regularly, at their usual location.

Also, you need to mention which documents you do not want to show and explain why.

The notice you send should follow the format of Form No. 8 in Appendix C, but you can make changes if needed based on the situation.

Explanation using Example

Example 1:

Scenario: Rajesh files a civil suit against Suresh for breach of contract. Rajesh believes that certain documents in Suresh's possession are crucial for proving his case. Rajesh sends a notice to Suresh requesting the inspection of these documents.

Application of Rule 17:

Notice Sent: Rajesh sends a notice to Suresh on 1st October 2023, requesting the inspection of specific documents.

Response Time: Suresh receives the notice on 3rd October 2023. According to Rule 17, Suresh has ten days to respond.

Response Given: Suresh must respond by 13th October 2023. He sends a notice to Rajesh on 10th October 2023, stating that the documents can be inspected on 12th October 2023 at his lawyer's office.

Inspection Time: The inspection is scheduled within three days from the delivery of Suresh's response, complying with the rule.

Objection to Produce: Suresh also mentions in his response that he objects to producing certain documents on the grounds of confidentiality.

Example 2:

Scenario: Meena is involved in a property dispute with her neighbor, Anil. Meena believes that Anil has certain property records that are essential for her case. She sends a notice to Anil requesting to inspect these records.

Application of Rule 17:

Notice Sent: Meena sends a notice to Anil on 5th November 2023, requesting the inspection of property records.

Response Time: Anil receives the notice on 7th November 2023. According to Rule 17, Anil has ten days to respond.

Response Given: Anil must respond by 17th November 2023. He sends a notice to Meena on 15th November 2023, stating that the documents can be inspected on 16th November 2023 at his lawyer's office.

Inspection Time: The inspection is scheduled within three days from the delivery of Anil's response, complying with the rule.

Objection to Produce: Anil also mentions in his response that he objects to producing certain documents on the grounds that they are irrelevant to the case.

Example 3:

Scenario: A company, XYZ Pvt. Ltd., is in a legal dispute with a supplier, ABC Traders, over the quality of goods supplied. XYZ Pvt. Ltd. believes that ABC Traders' internal quality control records are crucial for their case. XYZ Pvt. Ltd. sends a notice to ABC Traders requesting to inspect these records.

Application of Rule 17:

Notice Sent: XYZ Pvt. Ltd. sends a notice to ABC Traders on 10th December 2023, requesting the inspection of quality control records.

Response Time: ABC Traders receives the notice on 12th December 2023. According to Rule 17, ABC Traders has ten days to respond.

Response Given: ABC Traders must respond by 22nd December 2023. They send a notice to XYZ Pvt. Ltd. on 20th December 2023, stating that the documents can be inspected on 21st December 2023 at their usual place of custody, which is their factory.

Inspection Time: The inspection is scheduled within three days from the delivery of ABC Traders' response, complying with the rule.

Objection to Produce: ABC Traders also mentions in their response that they object to producing certain documents on the grounds that they are proprietary and confidential.

Rule 18: Order for inspection.

Inspection of Documents

(1) Where the party served with notice rule 15 omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his pleader, the Court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit:

Provided that the order shall not be made when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

(2) Any application to inspect documents, except such as are referred to in the pleadings, particulars or affidavit of the party against whom the application is made or disclosed in his affidavit of documents, shall be founded upon an affidavit showing:

of what documents inspection is sought,

that the party applying is entitled to inspect them, and

that they are in the possession or power of the other party.

The Court shall not make such order for inspection of such documents when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

Simplified act

Inspection of Documents

(1) If a party who receives a notice under rule 15 does not set a time for inspection, objects to the inspection, or suggests a different location other than their lawyer's office, the Court can, upon request from the interested party, order the inspection to happen at a place and in a manner it deems appropriate:

Provided that the Court will not make such an order if it believes it is not necessary for resolving the case fairly or for saving costs.

(2) Any request to inspect documents, except those mentioned in the pleadings, details, or affidavit of the party against whom the request is made, must be supported by an affidavit showing:

Which documents are being requested for inspection,

That the requesting party has the right to inspect them, and

That the documents are in the possession or control of the other party.

The Court will not order the inspection of such documents if it believes it is not necessary for resolving the case fairly or for saving costs.

Explanation using Example

Example 1:

Scenario: Property Dispute

Ravi and Suresh are involved in a property dispute. Ravi claims that Suresh has forged documents to claim ownership of a piece of land. Ravi's lawyer sends a notice under Rule 15 to Suresh, asking to inspect the original property documents. Suresh does not respond to the notice and does not provide a time for inspection.

Application of Rule 18: Ravi's lawyer files an application in the court under Rule 18, requesting an order for inspection of the property documents. The court, after considering the application, orders that the inspection of the documents should take place at the court premises to ensure fairness and transparency. The court also ensures that the inspection is necessary for the fair disposal of the suit and to save costs.

Example 2:

Scenario: Business Contract Dispute

Meera and Anil are business partners who have a dispute over the terms of a business contract. Meera believes that Anil is hiding certain documents that are crucial to the case. Meera's lawyer sends a notice under Rule 15 to Anil, asking to inspect the financial records and emails related to the contract. Anil objects to the inspection and offers to show the documents at his home instead of his lawyer's office.

Application of Rule 18: Meera's lawyer files an application in the court under Rule 18, requesting an order for inspection of the financial records and emails at a neutral location. The court reviews the application and decides that the inspection should take place at the office of Anil's pleader to ensure that the documents are properly examined. The court also verifies that the inspection is necessary for the fair resolution of the dispute and to minimize costs.

Example 3:

Scenario: Employment Dispute

Priya is suing her former employer, a large corporation, for wrongful termination. She believes that the company has internal emails and performance reviews that will support her case. Priya's lawyer sends a notice under Rule 15 to the company's legal team, asking to inspect these documents. The company does not respond to the notice and does not provide a time for inspection.

Application of Rule 18: Priya's lawyer files an application in the court under Rule 18, requesting an order for inspection of the internal emails and performance reviews. The court, after considering the necessity of these documents for the fair disposal of the suit, orders that the inspection should take place at the office of the company's pleader. The court ensures that the inspection is necessary for the fair resolution of the case and to save costs.

Example 4:

Scenario: Family Inheritance Dispute

Amit and his siblings are in a dispute over their late father's will. Amit believes that his brother, Raj, is hiding a newer version of the will that favors him. Amit's lawyer sends a notice under Rule 15 to Raj, asking to inspect all versions of the will and related documents. Raj objects to the inspection and offers to show the documents at his home.

Application of Rule 18: Amit's lawyer files an application in the court under Rule 18, requesting an order for inspection of all versions of the will and related documents. The court reviews the application and decides that the inspection should take place at the office of Raj's pleader to ensure that the documents are properly examined. The court also verifies that the inspection is necessary for the fair resolution of the inheritance dispute and to minimize costs.

Rule 19: Verified copies.

20.

(1) Where inspection of any business books is applied for, the Court may, if it thinks fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations: Provided that, notwithstanding that such copy has been supplied, the Court may order inspection of the book from which the copy was made.

(2) Where on an application for an order for inspection privilege is claimed for any document, it shall be lawful for the Court to inspect the document for the purpose of deciding as to the validity of the claim of privilege unless the document relates to matters of State.

(3) The Court may, on the application of any party to suit at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any one or more specific documents, to be specified in the application, is or are, or has or have at any time been, in his possession or power; and, if not then in his possession, when he parted with the same and what has become thereof. Such application shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has, or has at some time had in his possession or power the document or documents specified in the application, and that they relate to the matters in question in the suit, or to some of them.

Simplified act

20.

(1) If someone wants to look at a business's books, the Court can decide to provide a copy of the entries instead of the original books. This copy must be checked and confirmed by someone who has compared it with the original. This person must also state if there are any changes, erasures, or additions in the original book. However, even if a copy is given, the Court can still allow inspection of the original book.

(2) If someone claims that a document is privileged (protected from being shown) when asking to inspect it, the Court can look at the document to decide if the privilege claim is valid, unless the document involves State matters.

(3) At any time during a case, any party can ask the Court to order another party to confirm by affidavit (a sworn statement) if they have or had specific documents. If they no longer have the documents, they must explain when they got rid of them and what happened to them. This request must be supported by an affidavit stating that the requesting party believes the other party has or had the documents and that these documents are relevant to the case.

Explanation using Example

Example 1:

Scenario: A business dispute between two companies, ABC Pvt. Ltd. and XYZ Pvt. Ltd., over a contract breach.

Situation: ABC Pvt. Ltd. has filed a lawsuit against XYZ Pvt. Ltd. claiming that XYZ breached the contract by not delivering goods on time. ABC Pvt. Ltd.

requests the court to inspect XYZ's business books to verify the delivery schedules and payments.

Application of Rule 19:

Inspection of Business Books: ABC Pvt. Ltd. applies for inspection of XYZ's business books.

Court's Decision: The court decides that instead of inspecting the original books, XYZ Pvt. Ltd. should provide a verified copy of the relevant entries. XYZ's accountant examines the original entries and prepares a copy, verifying it with an affidavit stating there are no erasures or alterations.

Further Inspection: Despite the verified copy, ABC Pvt. Ltd. suspects discrepancies and requests the court to inspect the original books. The court orders the inspection of the original books to ensure transparency.

Example 2:

Scenario: A property dispute between two siblings, Ravi and Sita, over the ownership of ancestral land.

Situation: Ravi claims that Sita has altered the original property documents to exclude him from ownership. Ravi requests the court to inspect the original property documents held by Sita.

Application of Rule 19:

Claim of Privilege: Sita claims privilege over the original property documents, stating they contain sensitive family information.

Court's Inspection: The court decides to inspect the documents to determine the validity of Sita's claim of privilege. Upon inspection, the court finds that the documents do not relate to matters of State and orders Sita to provide a verified copy of the entries.

Affidavit Requirement: The court also orders Sita to submit an affidavit stating whether the original documents have any erasures, interlineations, or alterations.

Specific Document Inquiry: Ravi believes Sita has other documents related to the property. He applies to the court, stating his belief that Sita has these documents. The court orders Sita to state by affidavit whether she has or had these documents, when she parted with them, and what has become of them.

Example 3:

Scenario: A financial dispute between a lender, Mr. Sharma, and a borrower, Mr. Verma, over a loan agreement.

Situation: Mr. Sharma claims that Mr. Verma has not repaid the loan as per the agreement. Mr. Verma disputes the claim, stating he has made all payments.

Application of Rule 19:

Inspection of Financial Records: Mr. Sharma requests the court to inspect Mr. Verma's financial records to verify the payments.

Court's Decision: The court orders Mr. Verma to provide a verified copy of his bank statements showing the loan repayments. Mr. Verma's bank manager prepares the copies and verifies them with an affidavit, stating there are no erasures or alterations.

Further Inquiry: Mr. Sharma suspects that Mr. Verma has other financial documents proving the repayments. He applies to the court, stating his belief that Mr. Verma has these documents. The court orders Mr. Verma to state by affidavit whether he has or had these documents, when he parted with them, and what has become of them.

Rule 20: Premature discovery.

Where the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the suit, or that for any other reason it is desirable that any issue or question in dispute in the suit should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

Simplified act

If a party does not agree to share information or allow inspection of something in a case,

The Court can decide if the right to get that information or inspection depends on solving a specific issue or question in the case.

If the Court thinks it is better to solve that issue or question first,

The Court can order that the issue or question be solved before deciding on the right to get the information or inspection.

Explanation using Example

Example 1:

Scenario: A property dispute between two brothers, Raj and Ravi.

Details: Raj files a suit against Ravi claiming that Ravi has illegally occupied a piece of ancestral land. Raj seeks discovery of certain documents from Ravi, including old property deeds and family records, to prove his claim.

Application of Rule 20: Ravi objects to providing these documents, arguing that they are irrelevant to the case. The court, upon hearing both parties, decides that the right to discovery of these documents depends on determining whether the land in question is indeed ancestral property. The court orders that this issue be resolved first before deciding whether Ravi must provide the documents.

Outcome: The court schedules a preliminary hearing to determine the nature of the property. If it is established that the land is ancestral, the court will then decide on the discovery of the documents Raj requested.

Example 2:

Scenario: A breach of contract case between a supplier, Meera, and a retailer, Suresh.

Details: Meera sues Suresh for not paying for goods delivered. Suresh counters that the goods were defective and seeks discovery of Meera's internal quality control reports to support his defense.

Application of Rule 20: Meera objects to providing these reports, claiming they contain sensitive business information. The court finds that the right to discovery of the quality control reports hinges on whether the goods were indeed defective, which is a key issue in the dispute. The court orders that the issue of the goods' quality be determined first.

Outcome: The court arranges for an expert to examine the goods and report on their quality. Based on the expert's findings, the court will then decide if Suresh is entitled to access Meera's quality control reports.

Rule 21: Non-compliance with order for discovery.

(1) Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect and an order may be made on such application accordingly, after notice to the parties and after giving them a reasonable opportunity of being heard.

(2) Where an order is made under sub-rule (1) dismissing any suit, the plaintiff shall be precluded from bringing a fresh suit on the same cause of action.

Simplified act

(1) If a party does not follow a court order to answer questions (interrogatories) or to share or show documents:

If they are the plaintiff (the one who started the lawsuit), their case can be dismissed for not pursuing it properly.

If they are the defendant (the one being sued), their defense can be removed, and it will be as if they never defended themselves.

The party asking for the answers or documents can ask the court to make this happen. The court can decide to do this after notifying everyone involved and giving them a chance to speak.

(2) If the court dismisses a case because of the above reason, the plaintiff cannot start a new case based on the same issue.

Explanation using Example

Example 1:

Scenario: Rajesh files a lawsuit against his former business partner, Suresh, for breach of contract. During the discovery phase, Rajesh requests Suresh to provide certain financial documents and answer specific interrogatories (written questions that must be answered under oath).

Application of Rule 21:

Suresh fails to comply with the court's order to provide the requested documents and answer the interrogatories.

Rajesh applies to the court for an order under Rule 21.

The court, after giving Suresh a reasonable opportunity to be heard, decides to strike out Suresh's defense.

As a result, Suresh is placed in the same position as if he had not defended the case at all, significantly weakening his position in the lawsuit.

Example 2:

Scenario: Priya sues a construction company for poor workmanship in building her house. During the discovery process, the court orders Priya to provide certain emails and documents related to the contract and construction process.

Application of Rule 21:

Priya fails to comply with the court's order to produce the requested documents.

The construction company applies to the court for an order under Rule 21.

The court, after giving Priya a reasonable opportunity to be heard, decides to dismiss Priya's suit for want of prosecution.

As a result, Priya is precluded from bringing a fresh suit on the same cause of action, meaning she cannot file another lawsuit against the construction company for the same issue.

Example 3:

Scenario: Anil files a lawsuit against a car manufacturer for selling him a defective vehicle. During the discovery phase, the court orders Anil to answer certain interrogatories and provide maintenance records of the vehicle.

Application of Rule 21:

Anil fails to comply with the court's order to answer the interrogatories and provide the maintenance records.

The car manufacturer applies to the court for an order under Rule 21.

The court, after giving Anil a reasonable opportunity to be heard, decides to dismiss Anil's suit for want of prosecution.

As a result, Anil is precluded from bringing a fresh suit on the same cause of action, meaning he cannot file another lawsuit against the car manufacturer for the same defect in the vehicle.

Example 4:

Scenario: Meera sues her employer for wrongful termination. During the discovery phase, the court orders Meera to provide certain emails and documents related to her employment and termination.

Application of Rule 21:

Meera fails to comply with the court's order to produce the requested documents.

The employer applies to the court for an order under Rule 21.

The court, after giving Meera a reasonable opportunity to be heard, decides to dismiss Meera's suit for want of prosecution.

As a result, Meera is precluded from bringing a fresh suit on the same cause of action, meaning she cannot file another lawsuit against her employer for the same wrongful termination.

Rule 22: Using answers to interrogatories at trial.

Any party may, at the trial of a suit, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer:

Provided always that in such case the Court may look at the whole of the answers, and if it shall be of opinion that any others of them are so connected with those put in that the last-mentioned answer ought not to be used without them, it may direct them to be put in.

Simplified act

During a trial, any party can use one or more answers from the other party's responses to questions (interrogatories) as evidence. They don't have to use all the answers or the entire response.

However, the Court has the right to review all the answers. If the Court thinks that some answers are closely related to the ones being used, it can order that those related answers must also be included.

Explanation using Example

Example 1:

Scenario: Rajesh files a civil suit against Sunita for breach of contract. During the discovery process, Rajesh sends a set of interrogatories (written questions) to Sunita, which she answers under oath. One of the questions is about whether Sunita received the payment for the contract, to which she answers "Yes."

Application of Rule 22: At the trial, Rajesh wants to use Sunita's answer to the interrogatory where she admitted receiving the payment. He presents this specific answer as evidence to support his claim that Sunita breached the contract despite receiving the payment.

Court's Role: The court may review all of Sunita's answers to the interrogatories. If the court finds that other answers are closely related to the one Rajesh wants to use and that presenting only one answer might be misleading, the court can direct Rajesh to present the additional related answers as well.

Example 2:

Scenario: Priya sues her landlord, Mr. Sharma, for not returning her security deposit after she vacated the rented apartment. During the discovery phase, Priya sends interrogatories to Mr. Sharma, asking about the reasons for withholding the deposit. Mr. Sharma answers that the deposit was withheld due to alleged damages to the property.

Application of Rule 22: At the trial, Priya wants to use Mr. Sharma's answer about the alleged damages to show that the reason for withholding the deposit is unfounded. She presents this specific answer as evidence.

Court's Role: The court may examine all of Mr. Sharma's answers to the interrogatories. If the court believes that other answers provide necessary context to the answer Priya wants to use, it can instruct Priya to present those additional answers to ensure a fair and complete understanding of the situation.

Rule 23: Order to apply to minors.

This Order shall apply to minor plaintiffs and defendants, and to the next friends and guardians for the suit of persons under disability.

Simplified act

This rule applies to children who are suing or being sued, and to the people who are helping or representing those who cannot take care of themselves.

Explanation using Example

Example 1:

Scenario: A minor named Rohan, aged 15, files a lawsuit through his next friend (his mother) against a company for breach of contract.

Application of Rule 23:

Rohan, being a minor, cannot file the lawsuit on his own.

His mother acts as his "next friend" and files the lawsuit on his behalf.

The court allows the discovery and inspection process to proceed as if Rohan were an adult, but his mother handles all legal procedures and communications.

Example 2:

Scenario: A minor named Priya, aged 17, is sued by a neighbor for property damage. Priya's father is appointed as her guardian for the suit.

Application of Rule 23:

Priya, being a minor, cannot defend the lawsuit on her own.

Her father is appointed as her guardian for the suit and represents her in court.

The court applies the same rules of discovery and inspection to Priya's case, but her father manages all legal responsibilities and interactions with the court.

ORDER XI-A: DISCLOSURE, DISCOVERY AND INSPECTION OF DOCUMENTS IN SUITS BEFORE THE COMMERCIAL DIVISION OF A HIGH COURT OR A COMMERCIAL COURT

Rule 1: Disclosure and discovery of documents.

Document Disclosure Requirements

(1) Plaintiff shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the plaint, including:

(a) documents referred to and relied on by the plaintiff in the plaint;

(b) documents relating to any matter in question in the proceedings, in the power, possession, control or custody of the plaintiff, as on the date of filing the plaint, irrespective of whether the same is in support of or adverse to the plaintiff's case;

(c) nothing in this Rule shall apply to documents produced by plaintiffs and relevant only:

(i) for the cross-examination of the defendant's witnesses, or

(ii) in answer to any case set up by the defendant subsequent to the filing of the plaint, or

(iii) handed over to a witness merely to refresh his memory.

(2) The list of documents filed with the plaint shall specify whether the documents in the power, possession, control or custody of the plaintiff are originals, office copies or photocopies and the list shall also set out in brief, details of parties to each document, mode of execution, issuance or receipt and line of custody of each document.

(3) The plaint shall contain a declaration on oath from the plaintiff that all documents in the power, possession, control or custody of the plaintiff, pertaining to the facts and circumstances of the proceedings initiated by him have been disclosed and copies thereof annexed with the plaint, and that the plaintiff does not have any other documents in its power, possession, control or custody.

Explanation: A declaration on oath under this sub-rule shall be contained in the Statement of Truth as set out in the Appendix.

(4) In case of urgent filings, the plaintiff may seek leave to rely on additional documents, as part of the above declaration on oath and subject to grant of

such leave by Court, the plaintiff shall file such additional documents in Court, within thirty days of filing the suit, along with a declaration on oath that the plaintiff has produced all documents in its power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by the plaintiff and that the plaintiff does not have any other documents, in its power, possession, control or custody.

(5) The plaintiff shall not be allowed to rely on documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with the plaintiff or within the extended period set out above, save and except by leave of Court and such leave shall be granted only upon the plaintiff establishing reasonable cause for non-disclosure along with the plaintiff.

(6) The plaintiff shall set out details of documents, which the plaintiff believes to be in the power, possession, control or custody of the defendant and which the plaintiff wishes to rely upon and seek leave for production thereof by the said defendant.

(7) The defendant shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the written statement or with its counter-claim if any, including:

(a) the documents referred to and relied on by the defendant in the written statement;

(b) the documents relating to any matter in question in the proceeding in the power, possession, control or custody of the defendant, irrespective of whether the same is in support of or adverse to the defendant's defence;

(c) nothing in this Rule shall apply to documents produced by the defendants and relevant only:

(i) for the cross-examination of the plaintiff's witnesses,

(ii) in answer to any case set up by the plaintiff subsequent to the filing of the plaintiff, or

(iii) handed over to a witness merely to refresh his memory.

(8) The list of documents filed with the written statement or counterclaim shall specify whether the documents, in the power, possession, control or custody of the defendant, are originals, office copies or photocopies and the list shall also set out in brief, details of parties to each document being produced by the

defendant, mode of execution, issuance or receipt and line of custody of each document.

(9) The written statement or counterclaim shall contain a declaration on oath made by the deponent that all documents in the power, possession, control or custody of the defendant, save and except for those set out in sub-rule (7)(c)(iii) pertaining to the facts and circumstances of the proceedings initiated by the plaintiff or in the counterclaim, have been disclosed and copies thereof annexed with the written statement or counterclaim and that the defendant does not have in its power, possession, control or custody, any other documents.

(10) Save and except for sub-rule (7)(c)(iii), defendant shall not be allowed to rely on documents, which were in the defendant's power, possession, control or custody and not disclosed along with the written statement or counterclaim, save and except by leave of Court and such leave shall be granted only upon the defendant establishing reasonable cause for non-disclosure along with the written statement or counterclaim.

(11) The written statement or counterclaim shall set out details of documents in the power, possession, control or custody of the plaintiff, which the defendant wishes to rely upon and which have not been disclosed with the plaintiff, and call upon the plaintiff to produce the same.

(12) Duty to disclose documents, which have come to the notice of a party, shall continue till disposal of the suit.

Simplified act

Document Disclosure Requirements

(1) The person bringing the lawsuit (plaintiff) must provide a list of all documents and copies of documents they have related to the case when they file the lawsuit. This includes:

(a) documents mentioned and relied on in the lawsuit;

(b) any documents related to the case that the plaintiff has, whether they help or hurt their case;

(c) this rule does not apply to documents used only:

(i) to question the defendant's witnesses,

- (ii) to respond to new claims made by the defendant after the lawsuit is filed, or
- (iii) to help a witness remember something.

(2) The list of documents must state whether the documents are originals, office copies, or photocopies. It should also briefly describe who is involved in each document, how it was created, and how it was handled.

(3) The lawsuit must include a sworn statement from the plaintiff saying that all relevant documents they have are listed and attached, and that they have no other documents related to the case.

Explanation: This sworn statement must be included in the Statement of Truth as shown in the Appendix.

(4) If the plaintiff needs to file the lawsuit urgently, they can ask the court for permission to add more documents later. If the court agrees, the plaintiff must file these additional documents within thirty days, along with a sworn statement that they have now provided all relevant documents.

(5) The plaintiff cannot use any documents they had but did not disclose when they filed the lawsuit or within the allowed extra time, unless the court gives special permission. The court will only give permission if the plaintiff has a good reason for not disclosing the documents earlier.

(6) The lawsuit must also list any documents the plaintiff believes the defendant has and wants the court to order the defendant to provide.

(7) The defendant must provide a list of all documents and copies of documents they have related to the case when they file their response or counter-claim. This includes:

- (a) documents mentioned and relied on in their response;
- (b) any documents related to the case that the defendant has, whether they help or hurt their defense;
- (c) this rule does not apply to documents used only:
 - (i) to question the plaintiff's witnesses,
 - (ii) to respond to new claims made by the plaintiff after the lawsuit is filed, or
 - (iii) to help a witness remember something.

(8) The list of documents must state whether the documents are originals, office copies, or photocopies. It should also briefly describe who is involved in each document, how it was created, and how it was handled.

(9) The defendant's response or counter-claim must include a sworn statement saying that all relevant documents they have are listed and attached, and that they have no other documents related to the case.

(10) The defendant cannot use any documents they had but did not disclose when they filed their response or counter-claim, unless the court gives special permission. The court will only give permission if the defendant has a good reason for not disclosing the documents earlier.

(11) The defendant's response or counter-claim must also list any documents the defendant believes the plaintiff has and wants the court to order the plaintiff to provide.

(12) Both parties must continue to disclose any new documents they find that are relevant to the case until the case is resolved.

Explanation using Example

Example 1:

Scenario: A business dispute between two companies, ABC Pvt. Ltd. (plaintiff) and XYZ Pvt. Ltd. (defendant), over a breach of contract.

Plaintiff's Actions:

Filing the Suit: ABC Pvt. Ltd. files a suit against XYZ Pvt. Ltd. for breach of contract.

Document Disclosure: Along with the plaint, ABC Pvt. Ltd. submits a list of all relevant documents:

Contract Agreement: The original contract signed by both parties.

Emails: Email correspondence between the companies discussing the terms of the contract.

Invoices: Copies of invoices sent to XYZ Pvt. Ltd. for services rendered.

Internal Memos: Internal memos discussing the breach and its impact on ABC Pvt. Ltd.

Declaration on Oath: ABC Pvt. Ltd. includes a declaration on oath stating that all documents in their possession, control, or custody related to the case have been disclosed and attached.

Defendant's Actions:

Written Statement: XYZ Pvt. Ltd. files a written statement in response to the suit.

Document Disclosure: Along with the written statement, XYZ Pvt. Ltd. submits a list of all relevant documents:

Payment Receipts: Copies of payment receipts showing partial payments made to ABC Pvt. Ltd.

Emails: Email correspondence disputing the quality of services provided by ABC Pvt. Ltd.

Internal Reports: Internal reports highlighting issues with the services provided by ABC Pvt. Ltd.

Declaration on Oath: XYZ Pvt. Ltd. includes a declaration on oath stating that all documents in their possession, control, or custody related to the case have been disclosed and attached.

Court's Role:

Review of Documents: The court reviews the documents submitted by both parties.

Additional Documents: If either party wishes to submit additional documents after the initial filing, they must seek the court's permission and provide a reasonable cause for the delay.

Ongoing Duty: Both parties have a continuing duty to disclose any new documents that come to their notice until the case is resolved.

Example 2:

Scenario: A property dispute between two individuals, Mr. Sharma (plaintiff) and Mr. Verma (defendant), over the ownership of a piece of land.

Plaintiff's Actions:

Filing the Suit: Mr. Sharma files a suit against Mr. Verma claiming ownership of the disputed land.

Document Disclosure: Along with the complaint, Mr. Sharma submits a list of all relevant documents:

Title Deed: The original title deed of the land.

Sale Agreement: A copy of the sale agreement between Mr. Sharma and the previous owner.

Tax Receipts: Copies of property tax receipts paid by Mr. Sharma.

Photographs: Photographs of the land showing Mr. Sharma's possession.

Declaration on Oath: Mr. Sharma includes a declaration on oath stating that all documents in his possession, control, or custody related to the case have been disclosed and attached.

Defendant's Actions:

Written Statement: Mr. Verma files a written statement in response to the suit.

Document Disclosure: Along with the written statement, Mr. Verma submits a list of all relevant documents:

Title Deed: A copy of the title deed claimed by Mr. Verma.

Witness Statements: Statements from witnesses supporting Mr. Verma's claim of ownership.

Utility Bills: Copies of utility bills paid by Mr. Verma for the disputed land.

Declaration on Oath: Mr. Verma includes a declaration on oath stating that all documents in his possession, control, or custody related to the case have been disclosed and attached.

Court's Role:

Review of Documents: The court reviews the documents submitted by both parties.

Additional Documents: If either party wishes to submit additional documents after the initial filing, they must seek the court's permission and provide a reasonable cause for the delay.

Ongoing Duty: Both parties have a continuing duty to disclose any new documents that come to their notice until the case is resolved.

Rule 2: Discovery by interrogatories.

(1) In any suit the plaintiff or defendant by leave of the court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer:

Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose:

Provided further that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

(2) On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the court, and that court shall decide within seven days from the day of filing of the said application, in deciding upon such application, the court shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the court shall consider necessary either for disposing fairly of the suit or for saving costs.

(3) In adjusting the costs of the suit inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the court, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault.

(4) Interrogatories shall be in the form provided in Form No. 2 in Appendix C to the Code of Civil Procedure, 1908, (5 of 1908) with such variations as circumstances may require.

(5) Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may

apply for an order allowing him to deliver interrogatories to any member or officer of such corporation or body, and an order may be made accordingly.

(6) Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited bona fide for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on the ground of privilege or any other ground may be taken in the affidavit in answer.

(7) Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous and any application for this purpose may be made within seven days after service of the interrogatories.

(8) Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as the court may allow.

(9) An affidavit in answer to interrogatories shall be in the form provided in Form No. 3 in Appendix C to the Code of Civil Procedure, 1908, (5 of 1908), with such variations as circumstances may require.

(10) No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the court.

(11) Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the court for an order requiring him to answer, or to answer further, as the case may be, and an order may be made requiring him to answer, or to answer further, either affidavit or by viva voce examination, as the court may direct.

Simplified act

(1) In any lawsuit, the plaintiff (the person who brings the case) or the defendant (the person being sued) can ask the court for permission to send written questions (called interrogatories) to the other side. These questions must clearly state who needs to answer each one:

However, you can't send more than one set of questions to the same person without the court's permission.

Also, questions that don't relate to the case are considered irrelevant, even if they might be allowed during a witness's oral cross-examination.

(2) When asking the court for permission to send these questions, you must show the court the specific questions you want to ask. The court will decide within seven days whether to allow them. The court will consider if the other side has offered to provide information, admit certain facts, or produce documents related to the case. The court will only allow questions that it thinks are necessary to resolve the case fairly or to save costs.

(3) When deciding who pays the costs of the lawsuit, the court will check if the questions were reasonable. If the court or the officer in charge of costs thinks the questions were unreasonable, annoying, or too long, the person who asked them will have to pay the costs related to those questions and their answers.

(4) The questions should follow the format given in Form No. 2 in Appendix C of the Code of Civil Procedure, 1908, with any changes needed for the situation.

(5) If one of the parties in the lawsuit is a corporation or a group of people (whether officially registered or not), the other side can ask the court for permission to send questions to any member or officer of that corporation or group, and the court can allow this.

(6) If you don't want to answer a question because it's offensive, irrelevant, not asked in good faith, not important at that stage, or for any other reason, you can state your objection in your written response.

(7) Any questions can be dismissed if they are unreasonable, annoying, too long, or offensive. You can apply to dismiss them within seven days after receiving them.

(8) You must answer the questions in a written statement (affidavit) within ten days, or within any other time the court allows.

(9) Your written answers should follow the format given in Form No. 3 in Appendix C of the Code of Civil Procedure, 1908, with any changes needed for the situation.

(10) You can't challenge the written answers, but the court will decide if the answers are sufficient if someone objects.

(11) If someone doesn't answer or gives incomplete answers, the other side can ask the court to order them to answer or give more complete answers. The court can order them to answer in writing or in person, as it sees fit.

Explanation using Example

Example 1:

Scenario: A commercial dispute between two companies, ABC Pvt. Ltd. (plaintiff) and XYZ Pvt. Ltd. (defendant), over a breach of contract.

Application of Rule 2:

Interrogatories Delivery: ABC Pvt. Ltd. seeks to understand the details of XYZ Pvt. Ltd.'s internal communications regarding the contract. They request the court's permission to deliver a set of written questions (interrogatories) to XYZ Pvt. Ltd.

Court's Decision: The court reviews the proposed interrogatories and grants permission for those questions that are relevant to the breach of contract issue. The court rejects any questions that are deemed irrelevant or overly broad.

Answering Interrogatories: XYZ Pvt. Ltd. is required to answer the approved interrogatories within ten days. They must provide their answers in the form of an affidavit.

Objections: XYZ Pvt. Ltd. objects to some of the interrogatories on the grounds that they are irrelevant and scandalous. They file an affidavit stating their objections.

Court's Review: The court reviews the objections and decides whether the interrogatories should be answered or set aside.

Insufficient Answers: If XYZ Pvt. Ltd. provides insufficient answers, ABC Pvt. Ltd. can apply to the court for an order requiring XYZ Pvt. Ltd. to provide more detailed answers.

Example 2:

Scenario: A lawsuit involving a partnership firm, PQR & Co., and an individual, Mr. Sharma, over a financial dispute.

Application of Rule 2:

Interrogatories Delivery: Mr. Sharma, the plaintiff, seeks to uncover financial records and communications within PQR & Co. He requests the court's permission to deliver interrogatories to the partners of PQR & Co.

Court's Decision: The court reviews the proposed interrogatories and grants permission for those questions that are necessary to resolve the financial dispute. The court rejects any questions that are not relevant to the case.

Answering Interrogatories: The partners of PQR & Co. are required to answer the approved interrogatories within ten days. They must provide their answers in the form of an affidavit.

Objections: PQR & Co. objects to some of the interrogatories on the grounds that they are not material to the case at this stage. They file an affidavit stating their objections.

Court's Review: The court reviews the objections and decides whether the interrogatories should be answered or set aside.

Insufficient Answers: If the partners of PQR & Co. provide insufficient answers, Mr. Sharma can apply to the court for an order requiring them to provide more detailed answers.

Example 3:

Scenario: A dispute between a housing society, Green Acres Society, and a construction company, BuildWell Constructions, over the quality of construction.

Application of Rule 2:

Interrogatories Delivery: Green Acres Society, the plaintiff, seeks to understand the construction processes and materials used by BuildWell Constructions. They request the court's permission to deliver interrogatories to the project manager of BuildWell Constructions.

Court's Decision: The court reviews the proposed interrogatories and grants permission for those questions that are relevant to the quality of construction issue. The court rejects any questions that are deemed irrelevant or overly broad.

Answering Interrogatories: The project manager of BuildWell Constructions is required to answer the approved interrogatories within ten days. They must provide their answers in the form of an affidavit.

Objections: BuildWell Constructions objects to some of the interrogatories on the grounds that they are oppressive and unnecessary. They file an affidavit stating their objections.

Court's Review: The court reviews the objections and decides whether the interrogatories should be answered or set aside.

Insufficient Answers: If the project manager of BuildWell Constructions provides insufficient answers, Green Acres Society can apply to the court for an order requiring them to provide more detailed answers.

Rule 3: Inspection.

(1) All parties shall complete inspection of all documents disclosed within thirty days of the date of filing of the written statement or written statement to the counterclaim, whichever is later. The Court may extend this time limit upon application at its discretion, but not beyond thirty days in any event.

(2) Any party to the proceedings may seek directions from the Court, at any stage of the proceedings, for inspection or production of documents by the other party, of which inspection has been refused by such party or documents have not been produced despite issuance of a notice to produce.

(3) Order in such application shall be disposed of within thirty days of filing such application, including filing replies and rejoinders (if permitted by Court) and hearing.

(4) If the above application is allowed, inspection and copies thereof shall be furnished to the party seeking it, within five days of such order.

(5) No party shall be permitted to rely on a document, which it had failed to disclose or of which inspection has not been given, save and except with leave of Court.

(6) The Court may impose exemplary costs against a defaulting party, who wilfully or negligently failed to disclose all documents pertaining to a suit or essential for a decision therein and which are in their power, possession, control or custody or where a Court holds that inspection or copies of any documents had been wrongfully or unreasonably withheld or refused.

Simplified act

(1) All parties must check all documents shared within thirty days after the written statement or counterclaim is filed, whichever comes later. The Court can extend this deadline if asked, but not for more than thirty extra days.

(2) Any party involved in the case can ask the Court at any time to order the other party to show or provide documents if they have refused to do so or ignored a notice to produce them.

(3) The Court must decide on such a request within thirty days of it being filed, including any replies and additional statements (if allowed by the Court) and a hearing.

(4) If the Court approves the request, the documents must be shown and copies given to the requesting party within five days of the order.

(5) No party can use a document in the case if they did not share it or allow it to be inspected, unless the Court gives special permission.

(6) The Court can make a party pay extra costs if they intentionally or carelessly did not share important documents they had, or if they wrongly or unreasonably refused to show or provide copies of documents.

Explanation using Example

Example 1:

Scenario: A dispute arises between two companies, ABC Pvt. Ltd. and XYZ Ltd., over a breach of contract. ABC Pvt. Ltd. files a suit in the Commercial Court against XYZ Ltd.

Application of Rule 3:

Inspection Timeline: ABC Pvt. Ltd. files the written statement on January 1, 2023. XYZ Ltd. files a counterclaim on January 15, 2023. Both parties must complete the inspection of all disclosed documents by February 14, 2023 (30 days from the later date of the counterclaim).

Request for Inspection: During the proceedings, ABC Pvt. Ltd. realizes that XYZ Ltd. has not produced certain financial documents despite a notice to produce. ABC Pvt. Ltd. files an application on February 20, 2023, seeking directions from the Court for the inspection of these documents.

Court Order: The Court hears the application and disposes of it by March 22, 2023 (within 30 days of filing the application). The Court orders XYZ Ltd. to provide the inspection and copies of the requested documents within five days.

Compliance: XYZ Ltd. complies with the Court's order and provides the documents to ABC Pvt. Ltd. by March 27, 2023.

Failure to Disclose: If XYZ Ltd. had failed to disclose these documents initially and the Court finds this was done willfully or negligently, the Court may impose exemplary costs on XYZ Ltd. for withholding essential documents.

Example 2:

Scenario: A real estate developer, RealBuild Ltd., sues a contractor, BuildRight Ltd., for poor construction quality in a commercial project. The case is filed in the Commercial Division of the High Court.

Application of Rule 3:

Inspection Timeline: RealBuild Ltd. files the written statement on March 1, 2023. BuildRight Ltd. does not file a counterclaim. Both parties must complete the inspection of all disclosed documents by March 31, 2023 (30 days from the date of the written statement).

Request for Inspection: BuildRight Ltd. notices that RealBuild Ltd. has not produced certain quality inspection reports despite a notice to produce. BuildRight Ltd. files an application on April 5, 2023, seeking directions from the Court for the inspection of these reports.

Court Order: The Court hears the application and disposes of it by May 5, 2023 (within 30 days of filing the application). The Court orders RealBuild Ltd. to provide the inspection and copies of the requested reports within five days.

Compliance: RealBuild Ltd. complies with the Court's order and provides the reports to BuildRight Ltd. by May 10, 2023.

Failure to Disclose: If RealBuild Ltd. had failed to disclose these reports initially and the Court finds this was done willfully or negligently, the Court may impose exemplary costs on RealBuild Ltd. for withholding essential documents.

Reliance on Undisclosed Documents: During the trial, RealBuild Ltd. attempts to introduce a new document that was not disclosed earlier. BuildRight Ltd. objects, and the Court does not permit RealBuild Ltd. to rely on this document unless the Court grants special permission (leave of Court).

Rule 4: Admission and denial of documents.

(1) Each party shall submit a statement of admissions or denials of all documents disclosed and of which inspection has been completed, within fifteen days of the completion of inspection or any later date as fixed by the Court.

(2) The statement of admissions and denials shall set out explicitly, whether such party was admitting or denying:

- (a) correctness of contents of a document;
- (b) existence of a document;
- (c) execution of a document;
- (d) issuance or receipt of a document;
- (e) custody of a document.

Explanation: A statement of admission or denial of the existence of a document made in accordance with sub-rule (2)(b) shall include the admission or denial of the contents of a document.

(3) Each party shall set out reasons for denying a document under any of the above grounds and bare and unsupported denials shall not be deemed to be denials of a document and proof of such documents may then be dispensed with at the discretion of the Court.

(4) Any party may however submit bare denials for third party documents of which the party denying does not have any personal knowledge of, and to which the party denying is not a party to in any manner whatsoever.

(5) An Affidavit in support of the statement of admissions and denials shall be filed confirming the correctness of the contents of the statement.

(6) In the event that the Court holds that any party has unduly refused to admit a document under any of the above criteria, costs (including exemplary costs) for deciding on admissibility of a document may be imposed by the Court on such party.

(7) The Court may pass orders with respect to admitted documents including for waiver of further proof thereon or rejection of any documents.

Simplified act

(1) Each party must submit a list of documents they agree with or disagree with within fifteen days after looking at the documents, or by a later date if the Court allows.

(2) This list must clearly state whether the party agrees or disagrees with:

- (a) the accuracy of the document's contents;
- (b) the existence of the document;

- (c) the signing of the document;
- (d) the sending or receiving of the document;
- (e) who has the document.

Explanation: If a party agrees or disagrees with the existence of a document (as per 2(b)), it also means they agree or disagree with what is written in the document.

- (3) Each party must explain why they disagree with a document. Simply saying "I disagree" without a reason is not enough, and the Court may decide to accept the document without further proof.
- (4) A party can simply deny documents from third parties if they have no personal knowledge about them and are not involved with them in any way.
- (5) An affidavit (a sworn statement) must be filed to confirm that the list of agreements and disagreements is correct.
- (6) If the Court finds that a party has unfairly refused to agree with a document, it may order that party to pay costs, including extra costs, for deciding whether the document is acceptable.
- (7) The Court can make decisions about documents that are agreed upon, such as not requiring further proof or rejecting certain documents.

Explanation using Example

Example 1:

Scenario: A dispute over a commercial contract between Company A and Company B.

Facts:

Company A sues Company B for breach of contract.

During the discovery phase, Company A discloses several documents, including emails, the signed contract, and invoices.

Company B inspects these documents.

Application of Rule 4:

Submission of Statement:

Within fifteen days of completing the inspection, Company B must submit a statement admitting or denying the documents disclosed by Company A.

Explicit Admissions or Denials:

Company B must explicitly state whether it admits or denies:

The correctness of the contents of the emails.

The existence of the signed contract.

The execution of the contract.

The issuance and receipt of the invoices.

The custody of the documents.

Reasons for Denial:

If Company B denies any document, it must provide reasons. For example, if it denies the correctness of an invoice, it might state that the invoice amount is incorrect due to a calculation error.

Affidavit:

Company B must file an affidavit supporting the statement of admissions and denials, confirming the correctness of the statement.

Court's Discretion:

If Company B unduly refuses to admit a document without valid reasons, the court may impose costs on Company B for deciding on the admissibility of the document.

Orders on Admitted Documents:

The court may pass orders regarding the admitted documents, such as waiving the need for further proof of the signed contract.

Example 2:

Scenario: A property dispute between Mr. Sharma and Mr. Verma.

Facts:

Mr. Sharma claims ownership of a piece of land and sues Mr. Verma for illegal occupation.

Mr. Sharma discloses documents including the property deed, tax receipts, and a survey report.

Mr. Verma inspects these documents.

Application of Rule 4:

Submission of Statement:

Within fifteen days of completing the inspection, Mr. Verma must submit a statement admitting or denying the documents disclosed by Mr. Sharma.

Explicit Admissions or Denials:

Mr. Verma must explicitly state whether he admits or denies:

The correctness of the contents of the property deed.

The existence of the tax receipts.

The execution of the survey report.

The issuance and receipt of the tax receipts.

The custody of the property deed.

Reasons for Denial:

If Mr. Verma denies any document, he must provide reasons. For example, if he denies the execution of the survey report, he might state that the survey was conducted without proper authorization.

Affidavit:

Mr. Verma must file an affidavit supporting the statement of admissions and denials, confirming the correctness of the statement.

Court's Discretion:

If Mr. Verma unduly refuses to admit a document without valid reasons, the court may impose costs on Mr. Verma for deciding on the admissibility of the document.

Orders on Admitted Documents:

The court may pass orders regarding the admitted documents, such as waiving the need for further proof of the property deed.

Rule 5: Production of documents.

- (1) Any party to a proceeding may seek or the Court may order, at any time during the pendency of any suit, production by any party or person, of such documents in the possession or power of such party or person, relating to any matter in question in such suit.
- (2) Notice to produce such document shall be issued in the Form provided in Form No. 7 in Appendix C to the Code of Civil Procedure, 1908 (5 of 1908).
- (3) Any party or person to whom such notice to produce is issued shall be given not less than seven days and not more than fifteen days to produce such document or to answer to their inability to produce such document.
- (4) The Court may draw an adverse inference against a party refusing to produce such document after issuance of a notice to produce and where sufficient reasons for such non-production are not given and order costs.

Simplified act

- (1) Any person involved in a court case can ask, or the court can decide, at any time while the case is ongoing, for any other person involved to show documents they have that are related to the case.
- (2) A request to show these documents must be made using a specific form, which is Form No. 7 in Appendix C of the Code of Civil Procedure, 1908.
- (3) The person who receives this request must be given at least seven days but no more than fifteen days to either show the documents or explain why they can't.
- (4) If someone refuses to show the documents without a good reason after being asked, the court can assume that the documents would have been unfavorable to that person and may also order them to pay costs.

Explanation using Example

Example 1:

Scenario: A dispute over a business contract between Company A and Company B.

Details:

Company A files a suit against Company B in the Commercial Division of a High Court, alleging breach of contract.

During the proceedings, Company A believes that Company B has certain emails and internal documents that are crucial to proving the breach.

Company A requests the Court to order Company B to produce these documents.

Application of Rule 5:

Request for Production: Company A files an application under Rule 5(1) seeking the production of specific emails and internal documents from Company B.

Court Order: The Court, considering the relevance of the documents, orders Company B to produce the requested documents.

Notice Issuance: A notice is issued to Company B in the form provided in Form No. 7 in Appendix C to the Code of Civil Procedure, 1908, giving them 10 days to produce the documents.

Compliance: Company B produces the documents within the stipulated time.

Non-Compliance: If Company B fails to produce the documents without a valid reason, the Court may draw an adverse inference against Company B and may also order them to bear the costs of the application.

Example 2:

Scenario: A property dispute between two individuals, Mr. Sharma and Mr. Verma.

Details:

Mr. Sharma files a suit against Mr. Verma, claiming ownership of a piece of land.

Mr. Verma claims that he has a sale deed proving his ownership, but Mr. Sharma believes that the sale deed is forged.

Mr. Sharma requests the Court to order Mr. Verma to produce the original sale deed and related documents.

Application of Rule 5:

Request for Production: Mr. Sharma files an application under Rule 5(1) seeking the production of the original sale deed and related documents from Mr. Verma.

Court Order: The Court, considering the importance of the documents to the case, orders Mr. Verma to produce the original sale deed and related documents.

Notice Issuance: A notice is issued to Mr. Verma in the form provided in Form No. 7 in Appendix C to the Code of Civil Procedure, 1908, giving him 7 days to produce the documents.

Compliance: Mr. Verma produces the original sale deed and related documents within the stipulated time.

Non-Compliance: If Mr. Verma fails to produce the documents without a valid reason, the Court may draw an adverse inference against Mr. Verma, potentially weakening his case, and may also order him to bear the costs of the application.

Rule 6: Electronic records.

(1) In case of disclosures and inspection of Electronic Records (as defined in the Information Technology Act, 2000 (21 of 2000)), furnishing of printouts shall be sufficient compliance of the above provisions.

(2) At the discretion of the parties or where required (when parties wish to rely on audio or video content), copies of electronic records may be furnished in electronic form either in addition to or in lieu of printouts.

(3) Where Electronic Records form part of documents disclosed, the declaration on oath to be filed by a party shall specify:

(a) the parties to such Electronic Record;

(b) the manner in which such electronic record was produced and by whom;

(c) the dates and time of preparation or storage or issuance or receipt of each such electronic record;

(d) the source of such electronic record and date and time when the electronic record was printed;

(e) in case of email ids, details of ownership, custody and access to such email ids;

(f) in case of documents stored on a computer or computer resource (including on external servers or cloud), details of ownership, custody and access to such data on the computer or computer resource;

(g) deponent's knowledge of contents and correctness of contents;

(h) whether the computer or computer resource used for preparing or receiving or storing such document or data was functioning properly or in case of malfunction that such malfunction did not affect the contents of the document stored;

(i) that the printout or copy furnished was taken from the original computer or computer resource.

(4) The parties relying on printouts or copy in electronic form, of any electronic records, shall not be required to give inspection of electronic records, provided a declaration is made by such party that each such copy, which has been produced, has been made from the original electronic record.

(5) The Court may give directions for admissibility of Electronic Records at any stage of the proceedings.

(6) Any party may seek directions from the Court and the Court may of its motion issue directions for submission of further proof of any electronic record including metadata or logs before admission of such electronic record.

Simplified act

(1) If you need to show or check electronic records (as defined in the Information Technology Act, 2000), providing printouts is enough to meet the requirements.

(2) If the parties agree or if needed (for example, if they want to use audio or video content), electronic records can be provided in electronic form either in addition to or instead of printouts.

(3) When electronic records are part of the documents shown, the party must declare under oath:

(a) who the electronic record is between;

(b) how and by whom the electronic record was created;

- (c) the dates and times when the electronic record was made, stored, sent, or received;
 - (d) where the electronic record came from and when it was printed;
 - (e) for email addresses, who owns, controls, and can access them;
 - (f) for documents stored on a computer or online (like on external servers or cloud), who owns, controls, and can access the data;
 - (g) that the person making the declaration knows and confirms the contents are correct;
 - (h) that the computer or device used to create, receive, or store the document was working properly, or if it wasn't, that the issue didn't affect the document's contents;
 - (i) that the printout or copy provided was taken from the original computer or device.
- (4) If a party is using printouts or electronic copies of electronic records, they don't have to show the original electronic records, as long as they declare that each copy provided is made from the original electronic record.
- (5) The Court can give instructions on whether electronic records are acceptable at any point during the case.
- (6) Any party can ask the Court for instructions, and the Court can also decide on its own to ask for more proof of any electronic record, including details like metadata or logs, before accepting it.

Explanation using Example

Example 1:

Scenario: A commercial dispute between two companies, ABC Pvt. Ltd. and XYZ Ltd., is being heard in the High Court. ABC Pvt. Ltd. claims that XYZ Ltd. breached a contract by not delivering goods on time. ABC Pvt. Ltd. wants to present email communications as evidence.

Application of Rule 6:

Disclosure and Inspection: ABC Pvt. Ltd. provides printouts of the email communications between the two companies as part of the disclosure process. This is sufficient compliance under Rule 6(1).

Electronic Form: XYZ Ltd. requests to see the emails in their original electronic form to verify the metadata. ABC Pvt. Ltd. agrees and provides the emails on a USB drive, complying with Rule 6(2).

Declaration on Oath: ABC Pvt. Ltd. files a declaration on oath specifying:

The parties to the emails (ABC Pvt. Ltd. and XYZ Ltd.).

The manner in which the emails were produced (from the company's email server) and by whom (IT department).

The dates and times of the emails.

The source of the emails (company email server) and the date and time when the printouts were made.

Details of ownership, custody, and access to the email accounts.

Confirmation that the email server was functioning properly.

That the printouts were taken from the original email server.

Inspection: Since ABC Pvt. Ltd. has made a declaration that the printouts are from the original electronic records, they are not required to give further inspection of the electronic records under Rule 6(4).

Court Directions: The Court may give directions regarding the admissibility of the emails at any stage of the proceedings under Rule 6(5).

Further Proof: XYZ Ltd. may seek directions from the Court for further proof, such as metadata or logs, before the emails are admitted as evidence under Rule 6(6).

Example 2:

Scenario: A software development company, Tech Solutions, is suing a former employee, Mr. Sharma, for allegedly stealing proprietary code and sharing it with a competitor. Tech Solutions wants to present chat logs from a messaging app as evidence.

Application of Rule 6:

Disclosure and Inspection: Tech Solutions provides printouts of the chat logs from the messaging app as part of the disclosure process. This is sufficient compliance under Rule 6(1).

Electronic Form: Mr. Sharma requests to see the chat logs in their original electronic form to verify the authenticity. Tech Solutions provides the chat logs on a CD, complying with Rule 6(2).

Declaration on Oath: Tech Solutions files a declaration on oath specifying:

The parties to the chat logs (Tech Solutions and Mr. Sharma).

The manner in which the chat logs were produced (exported from the messaging app) and by whom (IT department).

The dates and times of the chat messages.

The source of the chat logs (messaging app) and the date and time when the printouts were made.

Details of ownership, custody, and access to the messaging app accounts.

Confirmation that the messaging app was functioning properly.

That the printouts were taken from the original messaging app.

Inspection: Since Tech Solutions has made a declaration that the printouts are from the original electronic records, they are not required to give further inspection of the electronic records under Rule 6(4).

Court Directions: The Court may give directions regarding the admissibility of the chat logs at any stage of the proceedings under Rule 6(5).

Further Proof: Mr. Sharma may seek directions from the Court for further proof, such as metadata or logs, before the chat logs are admitted as evidence under Rule 6(6).

Rule 7: Certain provisions of the Code of Civil Procedure, 1908 not to apply.

For avoidance of doubt, it is hereby clarified that Order XIII Rule 1, Order VII Rule 14 and Order VIII Rule 1A of the Code of Civil Procedure, 1908 (5 of 1908) shall not apply to suits or applications before the Commercial Divisions of High Court or Commercial Courts.

Simplified act

To avoid any confusion, it is clearly stated that the rules mentioned in Order XIII Rule 1, Order VII Rule 14, and Order VIII Rule 1A of the Code of Civil

Procedure, 1908 (5 of 1908) do not apply to cases or applications in the Commercial Divisions of High Courts or Commercial Courts.

Explanation using Example

Example 1:

Scenario: A large corporation, ABC Ltd., files a commercial suit against XYZ Pvt. Ltd. in the Commercial Division of the High Court for breach of contract.

Context: ABC Ltd. submits a list of documents they intend to rely on during the trial. Normally, under Order XIII Rule 1 of the Code of Civil Procedure, 1908, parties are required to produce all documents in their possession or power at the first hearing or at such subsequent hearings as the court may fix.

Application of Rule 7: Since Rule 7 states that Order XIII Rule 1 does not apply to commercial suits, ABC Ltd. is not bound by this requirement. Instead, they follow the specific rules for disclosure, discovery, and inspection of documents as outlined in Order XI-A, which may have different timelines and procedures tailored for commercial disputes.

Example 2:

Scenario: A startup, Tech Innovators, files a suit against a former employee in the Commercial Court for misappropriation of trade secrets.

Context: Tech Innovators wants to submit additional documents that were not included in their initial pleadings. Under Order VII Rule 14 and Order VIII Rule 1A of the Code of Civil Procedure, 1908, parties are generally required to file all documents they rely upon at the time of presenting their plaint or written statement.

Application of Rule 7: Since Rule 7 clarifies that Order VII Rule 14 and Order VIII Rule 1A do not apply to commercial suits, Tech Innovators can submit additional documents according to the specific rules for commercial courts. This flexibility allows them to introduce new evidence as per the procedures set out in Order XI-A, which may be more accommodating for the dynamic nature of commercial litigation.

ORDER XII: ADMISSIONS

Rule 1: Notice of admission of case.

Any party to a suit may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

Simplified act

Any person involved in a lawsuit can let the court and the other parties know, either in their legal documents or in writing, that they agree with all or part of what the other side is saying.

Explanation using Example

Example 1:

Ravi files a civil suit against Shyam claiming that Shyam owes him Rs. 50,000 for goods supplied. Shyam, in his written statement, admits that he owes Ravi Rs. 30,000 but disputes the remaining Rs. 20,000. By admitting part of Ravi's claim in writing, Shyam has complied with Rule 1 of Order XII of the Code of Civil Procedure, 1908.

Example 2:

Meera sues her neighbor, Anil, for encroaching on her property by building a wall that extends into her land. Anil, in his defense, admits in writing that he did build the wall but claims it was done with Meera's consent. By admitting the construction of the wall, Anil has acknowledged part of Meera's case as per Rule 1 of Order XII of the Code of Civil Procedure, 1908.

Rule 2: Notice to admit documents.

Either party may call upon the other party to admit, within seven days from the date of service of the notice any document, saving all exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs; and no costs of proving any document shall be allowed unless such notice is given, except where the omission to give the notice is, in the opinion of the Court, a saving of expense.

Simplified act

Either party can ask the other party to admit that a document is genuine within seven days of receiving a notice.

If the other party refuses or ignores the request, they will have to pay the costs of proving the document, no matter who wins the case, unless the Court decides otherwise.

No costs for proving a document will be allowed unless such a notice is given, except if the Court believes that not giving the notice saved money.

Explanation using Example

Example 1:

Scenario: Ramesh files a civil suit against Suresh for breach of contract.

Details:

Ramesh has a signed contract document that he wants to use as evidence in court.

Ramesh sends a notice to Suresh asking him to admit the authenticity of the contract document within seven days.

Suresh ignores the notice and does not respond within the given time frame.

Outcome:

Ramesh has to prove the authenticity of the contract document in court.

Since Suresh neglected to admit the document after receiving the notice, the court orders Suresh to pay the costs incurred by Ramesh for proving the document, regardless of the final judgment in the case.

Example 2:

Scenario: Priya is involved in a property dispute with her neighbor, Anil.

Details:

Priya has a property deed that she wants to use as evidence to support her claim.

Priya sends a notice to Anil asking him to admit the authenticity of the property deed within seven days.

Anil responds within the given time frame, admitting the authenticity of the property deed.

Outcome:

Since Anil admitted the document, Priya does not need to prove its authenticity in court.

Priya does not incur any additional costs for proving the document.

The court proceeds with the case based on the admitted document, saving time and expenses for both parties.

Example 3:

Scenario: Sunita files a lawsuit against a company for unpaid wages.

Details:

Sunita has several payslips that she wants to use as evidence in court.

Sunita sends a notice to the company asking them to admit the authenticity of the payslips within seven days.

The company refuses to admit the payslips, claiming they are forged.

Outcome:

Sunita has to prove the authenticity of the payslips in court.

Since the company refused to admit the documents after receiving the notice, the court orders the company to pay the costs incurred by Sunita for proving the documents, regardless of the final judgment in the case.

If the court finds that the refusal to admit the documents was justified, it may direct otherwise regarding the costs.

Example 4:

Scenario: Ajay is suing a contractor for poor workmanship on his house renovation.

Details:

Ajay has a series of emails and a signed agreement with the contractor that he wants to use as evidence.

Ajay sends a notice to the contractor asking him to admit the authenticity of these documents within seven days.

The contractor admits the authenticity of the signed agreement but refuses to admit the emails, claiming they are incomplete.

Outcome:

Ajay does not need to prove the authenticity of the signed agreement in court, saving him time and costs.

Ajay has to prove the authenticity of the emails in court.

Since the contractor admitted the signed agreement but refused the emails, the court may order the contractor to pay the costs incurred by Ajay for proving the emails, unless the court finds the refusal justified.

Rule 2A: Document to be deemed to be admitted if not denied after service of notice to admit documents.

(1) Every document which a party is called upon to admit, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of that party or in his reply to the notice to admit documents, shall be deemed to be admitted except as against a person under a disability:

Provided that the Court may, in its discretion and for reasons to be recorded, require any document so admitted to be proved otherwise than by such admission.

(2) Where a party unreasonably neglects or refuses to admit a document after the service on him of the notice to admit documents, the Court may direct him to pay costs to the other party by way of compensation.

Simplified act

(1) If a party is asked to admit a document and they don't specifically deny it, imply that they deny it, or say they don't admit it in their official statements or replies, the document will be considered admitted. This doesn't apply to people who are legally unable to make such decisions (like minors or those with certain disabilities).

However, the Court can decide, and must explain why, that even if a document is admitted this way, it still needs to be proven in another manner.

(2) If a party unreasonably ignores or refuses to admit a document after being formally asked to do so, the Court can order them to pay the other party's costs as compensation.

Explanation using Example

Example 1:

Scenario: Ramesh and Suresh are involved in a civil dispute over the ownership of a piece of land. Ramesh has a sale deed that he claims proves his ownership. He sends a notice to Suresh to admit the sale deed as evidence.

Application of Rule 2A:

Ramesh sends a notice to Suresh to admit the sale deed.

Suresh does not respond to the notice within the stipulated time.

According to Rule 2A, since Suresh did not deny the document specifically or by necessary implication, the sale deed is deemed to be admitted as evidence.

The court may still, at its discretion, require Ramesh to prove the sale deed through other means, but the initial burden of proof is eased due to Suresh's non-response.

Example 2:

Scenario: Priya files a lawsuit against her former business partner, Anil, for breach of contract. Priya has several email correspondences that she believes are crucial to her case. She sends a notice to Anil to admit these emails as evidence.

Application of Rule 2A:

Priya sends a notice to Anil to admit the email correspondences.

Anil responds to the notice but only denies one of the emails and does not mention the others.

According to Rule 2A, the emails that Anil did not specifically deny are deemed to be admitted as evidence.

The court may still require Priya to prove the authenticity of the emails, but Anil's failure to deny them simplifies Priya's task.

Example 3:

Scenario: Asha is suing a construction company for poor workmanship on her house. She has a contract and several inspection reports that she believes support her case. She sends a notice to the construction company to admit these documents.

Application of Rule 2A:

Asha sends a notice to the construction company to admit the contract and inspection reports.

The construction company does not respond to the notice at all.

According to Rule 2A, since the construction company did not deny the documents, they are deemed to be admitted as evidence.

The court may still, at its discretion, require Asha to provide additional proof of the documents, but the construction company's non-response works in Asha's favor.

Example 4:

Scenario: Rajesh is involved in a property dispute with his neighbor, Sunita. Rajesh has a property tax receipt that he believes proves his ownership. He sends a notice to Sunita to admit the property tax receipt.

Application of Rule 2A:

Rajesh sends a notice to Sunita to admit the property tax receipt.

Sunita responds, stating that she does not admit the document and provides reasons for her denial.

Since Sunita specifically denied the document, it is not deemed to be admitted under Rule 2A.

Rajesh will need to provide additional evidence to prove the authenticity and relevance of the property tax receipt in court.

Example 5:

Scenario: Meera is suing a car dealership for selling her a defective car. She has a warranty document and several repair bills that she believes are crucial to her case. She sends a notice to the car dealership to admit these documents.

Application of Rule 2A:

Meera sends a notice to the car dealership to admit the warranty document and repair bills.

The car dealership unreasonably neglects to respond to the notice.

According to Rule 2A, the documents are deemed to be admitted as evidence.

Additionally, the court may direct the car dealership to pay costs to Meera by way of compensation for their unreasonable neglect to admit the documents.

Rule 3: Form of notice.

A notice to admit documents shall be in Form No. 9 in Appendix C, with such variations as circumstances may require.

Simplified act

A notice asking someone to accept documents as true should be in Form No. 9 found in Appendix C. You can make changes to the form if needed based on the situation.

Explanation using Example

Example 1:

Rajesh is involved in a civil lawsuit against his former business partner, Suresh, over a breach of contract. Rajesh wants to use certain emails and financial statements as evidence to support his claim. According to Rule 3 of Order XII of The Code of Civil Procedure, 1908, Rajesh's lawyer sends a notice to Suresh to admit these documents. The notice is in Form No. 9 of Appendix C, but it includes slight modifications to address the specific details of the emails and financial statements. Suresh receives the notice and must respond, either admitting or denying the authenticity of the documents.

Example 2:

Anita is suing a construction company for poor workmanship on her house. She has several inspection reports and photographs showing the defects. Anita's lawyer prepares a notice to admit these documents, following Form No. 9 in Appendix C, but adjusts the form to include the dates and specific details of each inspection report and photograph. The notice is then sent to the construction company's legal team. The company must then review the documents and respond to the notice, either admitting that the documents are genuine or providing reasons for their denial.

Rule 3A: Power of Court to record admission.

Notwithstanding that no notice to admit documents has been given under rule 2, the Court may, at any stage of the proceeding before it, of its own motion,

call upon any party to admit any document and shall, in such a case, record whether the party admits or refuses or neglects to admit such document.

Simplified act

Even if no one has asked for documents to be admitted under rule 2, the Court can still ask any party to admit a document at any time during the case.

The Court will then record whether the party admits, refuses, or ignores the request to admit the document.

Explanation using Example

Example 1:

Scenario: Property Dispute

Context: Ramesh and Suresh are involved in a property dispute. Ramesh claims that he has a sale deed proving his ownership of the property, but Suresh disputes the authenticity of the document.

Application of Rule 3A: During the court proceedings, the judge, without any prior notice to admit documents, asks Suresh to admit or deny the authenticity of the sale deed presented by Ramesh. The court records Suresh's response, whether he admits, refuses, or neglects to admit the document.

Outcome: This helps the court to quickly ascertain the points of agreement and disagreement, thereby streamlining the proceedings.

Example 2:

Scenario: Loan Agreement Dispute

Context: Priya has filed a case against her friend Anil, claiming that he owes her money based on a loan agreement they both signed. Anil, however, denies ever signing such an agreement.

Application of Rule 3A: During the trial, the judge, on their own initiative, asks Anil to admit or deny the loan agreement presented by Priya. The court then records Anil's response, whether he admits, refuses, or neglects to admit the document.

Outcome: This allows the court to determine the authenticity of the loan agreement early in the proceedings, which can significantly impact the direction and duration of the case.

Rule 4: Notice to admit facts.

Any party, may, by notice in writing, at any time not later than nine days before the day fixed for the hearing, call on any other party to admit, for the purposes of the suit only, any specific fact or facts, mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the Court, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs:

Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular suit, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice:

Simplified act

Any party involved in a lawsuit can send a written notice to another party, asking them to admit that certain facts are true. This must be done at least nine days before the hearing date.

If the other party does not admit these facts within six days of receiving the notice (or within more time if the Court allows it), they will have to pay the costs of proving these facts, no matter who wins the case, unless the Court decides otherwise.

Any admission made because of this notice is only for the current lawsuit and cannot be used against the party in any other situation or by anyone else except the party who sent the notice.

Explanation using Example

Example 1:

Scenario: Property Dispute

Ravi and Suresh are involved in a property dispute over a piece of land. Ravi claims that he has been in possession of the land for over 12 years, which Suresh disputes.

Application of Rule 4:

Ravi sends a written notice to Suresh, nine days before the hearing, asking Suresh to admit that Ravi has been in possession of the land for the past 12 years.

Suresh receives the notice but does not respond within six days.

Because Suresh neglected to admit the fact, Ravi incurs costs to prove his possession in court.

The court may order Suresh to pay the costs incurred by Ravi for proving the fact of possession, regardless of the final outcome of the case, unless the court decides otherwise.

Example 2:

Scenario: Breach of Contract

Anita and Rajesh have a contract where Rajesh is supposed to deliver 100 bags of cement to Anita by a specific date. Anita claims that Rajesh failed to deliver the cement on time, causing her financial loss.

Application of Rule 4:

Anita sends a written notice to Rajesh, nine days before the hearing, asking him to admit that he did not deliver the cement by the agreed date.

Rajesh receives the notice but refuses to admit the fact within six days.

Anita has to prove in court that Rajesh failed to deliver the cement on time.

The court may order Rajesh to pay the costs Anita incurred to prove the breach of contract, regardless of the final outcome of the case, unless the court decides otherwise.

Example 3:

Scenario: Personal Injury Claim

Priya files a lawsuit against a construction company, claiming that she was injured due to their negligence at a construction site. The company disputes the claim, stating that Priya was not present at the site on the day of the incident.

Application of Rule 4:

Priya sends a written notice to the construction company, nine days before the hearing, asking them to admit that she was present at the construction site on the day of the incident.

The construction company receives the notice but does not respond within six days.

Priya has to provide evidence in court to prove her presence at the site.

The court may order the construction company to pay the costs Priya incurred to prove her presence, regardless of the final outcome of the case, unless the court decides otherwise.

Rule 5: Form of admissions.

A notice to admit facts shall be in Form No. 10 in Appendix C, and admissions of facts shall be in Form No. 11 in Appendix C, with such variations as circumstances may require.

Simplified act

If you want someone to admit certain facts, you need to use Form No. 10 from Appendix C.

If someone agrees to those facts, they should use Form No. 11 from Appendix C.

You can make small changes to these forms if needed, depending on the situation.

Explanation using Example

Example 1:

Scenario: Property Dispute

Context: Ramesh and Suresh are involved in a property dispute. Ramesh claims that Suresh has encroached on his land. To streamline the case, Ramesh sends a notice to Suresh to admit certain facts.

Notice to Admit Facts (Form No. 10 in Appendix C): Ramesh sends a notice to Suresh stating:

Admit that the property located at 123, MG Road, Delhi, measuring 500 sq. yards, belongs to Ramesh.

Admit that the boundary wall constructed by Suresh encroaches 50 sq. yards into Ramesh's property.

Admission of Facts (Form No. 11 in Appendix C): Suresh responds:

Admitted that the property located at 123, MG Road, Delhi, measuring 500 sq. yards, belongs to Ramesh.

Denied that the boundary wall constructed by Suresh encroaches 50 sq. yards into Ramesh's property.

Example 2:

Scenario: Breach of Contract

Context: Priya and Anil entered into a contract where Anil was supposed to deliver 100 units of goods to Priya by a certain date. Priya claims that Anil failed to deliver the goods on time and files a lawsuit. To expedite the proceedings, Priya sends a notice to Anil to admit certain facts.

Notice to Admit Facts (Form No. 10 in Appendix C): Priya sends a notice to Anil stating:

Admit that a contract was signed between Priya and Anil on 1st January 2023 for the delivery of 100 units of goods.

Admit that the delivery date agreed upon was 15th January 2023.

Admit that the goods were not delivered until 25th January 2023.

Admission of Facts (Form No. 11 in Appendix C): Anil responds:

Admitted that a contract was signed between Priya and Anil on 1st January 2023 for the delivery of 100 units of goods.

Admitted that the delivery date agreed upon was 15th January 2023.

Admitted that the goods were not delivered until 25th January 2023.

Rule 6: Judgment on admissions.

(1) Where admissions of fact have been made either in the pleading or otherwise; whether orally or in writing, the Court may at any stage of the suit,

either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.

Simplified act

(1) If someone admits to certain facts, either in their legal documents or in other ways (like speaking or writing), the Court can make a decision or give a judgment at any time during the case. This can happen if one of the parties asks for it or if the Court decides to do it on its own, without waiting for other issues in the case to be resolved.

(2) When the Court gives a judgment based on these admissions, an official order (called a decree) will be created. This decree will have the same date as the judgment.

Explanation using Example

Example 1:

Scenario: Ramesh files a suit against Suresh for the recovery of Rs. 5,00,000, claiming that Suresh borrowed the amount and has not repaid it. In his written statement, Suresh admits that he borrowed Rs. 5,00,000 from Ramesh but claims that he has already repaid Rs. 2,00,000.

Application of Rule 6:

Ramesh can file an application under Rule 6 of Order XII, requesting the court to pass a judgment on the admitted fact that Suresh borrowed Rs. 5,00,000.

The court, based on Suresh's admission, can pass a judgment for the recovery of Rs. 5,00,000 without waiting for the determination of whether Rs. 2,00,000 has been repaid or not.

A decree will be drawn up in accordance with the judgment, bearing the date on which the judgment was pronounced.

Example 2:

Scenario: Priya files a suit against her landlord, Mr. Sharma, for the return of her security deposit of Rs. 1,00,000 after vacating the rented premises. In his written statement, Mr. Sharma admits that Priya paid a security deposit of Rs. 1,00,000 but claims that he is entitled to deduct Rs. 20,000 for damages to the property.

Application of Rule 6:

Priya can file an application under Rule 6 of Order XII, requesting the court to pass a judgment on the admitted fact that Mr. Sharma received a security deposit of Rs. 1,00,000.

The court, based on Mr. Sharma's admission, can pass a judgment for the return of Rs. 1,00,000 without waiting for the determination of the alleged damages.

A decree will be drawn up in accordance with the judgment, bearing the date on which the judgment was pronounced.

Rule 7: Affidavit of signature.

An affidavit of the pleader or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents or facts, shall be sufficient evidence of such admissions, if evidence thereof is required.

Simplified act

If a lawyer or their assistant signs a statement admitting certain documents or facts,

and if someone needs proof of these admissions,

the signed statement by the lawyer or their assistant will be enough proof.

Explanation using Example

Example 1:

Ravi files a civil suit against Shyam for the recovery of a loan amounting to ₹5,00,000. During the proceedings, Ravi's lawyer sends a notice to Shyam to admit certain documents, including the loan agreement and bank statements, as evidence. Shyam's lawyer responds, admitting the authenticity of these documents. To formalize this admission, Ravi's lawyer submits an affidavit stating that Shyam's lawyer has duly signed the admission of these documents.

The court accepts this affidavit as sufficient evidence of Shyam's admission, without requiring further proof.

Example 2:

Meera is involved in a property dispute with her neighbor, Anil. Meera's lawyer sends a notice to Anil to admit certain facts, such as the boundary measurements and the ownership history of the property. Anil's lawyer responds, admitting these facts. Meera's lawyer then files an affidavit, signed by her clerk, confirming that Anil's lawyer has duly signed the admission of these facts. The court accepts this affidavit as sufficient evidence of Anil's admission, thereby simplifying the proceedings and avoiding the need for additional evidence.

Rule 8: Notice to produce documents.

Notice to produce documents shall be in Form No. 12 in Appendix C, with such variations as circumstances may require.

An affidavit of the pleader, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served.

Simplified act

If you need someone to show documents, you must use Form No. 12 from Appendix C. You can change the form a bit if needed based on the situation.

A sworn statement (affidavit) from the lawyer or their assistant, saying that they delivered the notice to show documents and when they delivered it, along with a copy of the notice, will always be enough proof that the notice was delivered and when it was delivered.

Explanation using Example

Example 1:

Scenario: Rajesh is involved in a civil lawsuit against his former business partner, Suresh, over a breach of contract. Rajesh believes that certain emails and financial documents in Suresh's possession are crucial to proving his case.

Application of Rule 8: Rajesh's lawyer sends a "Notice to Produce Documents" to Suresh, requesting the production of specific emails and financial records.

The notice is in Form No. 12 as prescribed in Appendix C of the Code of Civil Procedure, 1908. Rajesh's lawyer's clerk serves the notice to Suresh and makes an affidavit stating the date and time of service, attaching a copy of the notice.

Outcome: If Suresh fails to produce the requested documents, Rajesh can present the affidavit of service as evidence in court to show that Suresh was duly notified and failed to comply. This can strengthen Rajesh's case and may lead to adverse inferences against Suresh.

Example 2:

Scenario: Priya is suing a construction company for poor workmanship on her new house. She needs the original blueprints and project plans that the construction company used to prove her claims.

Application of Rule 8: Priya's lawyer issues a "Notice to Produce Documents" to the construction company, requesting the original blueprints and project plans. The notice is drafted in Form No. 12, with necessary variations to fit the specific circumstances of the case. The lawyer's clerk serves the notice to the construction company's legal representative and files an affidavit detailing the service of the notice, including the date and time.

Outcome: If the construction company does not produce the requested documents, Priya's lawyer can use the affidavit of service as evidence in court. This can help Priya demonstrate that the construction company was given a fair opportunity to produce the documents and failed to do so, potentially leading to a favorable judgment for Priya.

Rule 9: Costs.

If a notice to admit or produce specifies documents which are not necessary, the costs occasioned thereby shall be borne by the party giving such notice.

Simplified act

If someone asks you to admit or show documents that aren't needed, they have to pay for any costs that come up because of that request.

Explanation using Example

Example 1:

Ravi files a civil suit against Shyam for breach of contract. During the proceedings, Ravi sends a notice to Shyam to admit or produce several

documents, including Shyam's personal diary and unrelated business records. These documents are not necessary for proving the breach of contract. The court finds that these documents are irrelevant to the case. As a result, the costs incurred by Shyam to gather and produce these unnecessary documents must be borne by Ravi, the party who issued the notice.

Example 2:

Meera is involved in a property dispute with her neighbor, Anil. Meera sends a notice to Anil to admit or produce various documents, including Anil's children's school records and medical reports, which have no relevance to the property dispute. The court determines that these documents are not necessary for resolving the property dispute. Consequently, the costs incurred by Anil in responding to this notice will be borne by Meera, who issued the notice.

ORDER XIII: PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS

Rule 1: Original documents to be produced at or before the settlement of issues.

Documentary Evidence

(1) The parties or their pleader shall produce on or before the settlement of issues, all the documentary evidence in original where the copies thereof have been filed along with plaint or written statement.

(2) The Court shall receive the documents so produced:

Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

(3) Nothing in sub-rule (1) shall apply to documents -

(a) produced for the cross-examination of the witnesses of the other party; or

(b) handed over to a witness merely to refresh his memory.

Simplified act

Documentary Evidence

(1) The people involved in the case or their lawyer must bring all the original documents to court before the issues are settled. These should be the original versions of any copies they have already submitted with their complaint or defense.

(2) The Court will accept these documents:

As long as they come with a detailed list that is made in the way the High Court requires.

(3) The rule in (1) does not apply to documents that are:

(a) used to question the other party's witnesses; or

(b) given to a witness just to help them remember something.

Explanation using Example

Example 1:

Scenario: Property Dispute

Ravi files a lawsuit against his neighbor, Suresh, claiming that Suresh has encroached on his land. Ravi submits a plaint (formal written statement) to the court, including copies of his property deed, land survey maps, and previous correspondence with Suresh. According to Rule 1 of Order XIII of the Code of Civil Procedure 1908, Ravi must produce the original property deed and land survey maps at or before the settlement of issues in the court.

During the settlement of issues, Ravi's lawyer presents the original documents to the court, along with an accurate list of these documents as directed by the High Court. The court receives these documents and proceeds with the case. However, Ravi's lawyer also has some additional documents to use for cross-examining Suresh's witnesses, which do not need to be produced at this stage as per sub-rule (3).

Example 2:

Scenario: Breach of Contract

Meera sues a construction company for failing to complete her house as per the agreed contract. She files a written statement with the court, attaching copies of the signed contract, payment receipts, and email communications with the company. According to Rule 1 of Order XIII of the Code of Civil Procedure 1908,

Meera must produce the original signed contract and payment receipts at or before the settlement of issues.

At the settlement of issues, Meera's lawyer presents the original signed contract and payment receipts to the court, along with an accurate list of these documents as required by the High Court's format. The court accepts these documents and moves forward with the case. Meera's lawyer also has some documents to refresh the memory of a witness, which do not need to be produced at this stage as per sub-rule (3).

2. [Effect of non-production of documents.] Rep. by the Code of Civil Procedure (Amendment) Act, 1999 (46 of 1999) s. 23 (w.e.f. 1-7-2002).

Rule 3: Rejection of irrelevant or inadmissible documents.

The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

Simplified act

The Court can reject any document at any time during the case if it thinks the document is not important or not allowed to be used. The Court must explain why it rejected the document.

Explanation using Example

Example 1:

Case: Ram vs. Shyam

Scenario: Ram files a civil suit against Shyam for breach of contract. During the trial, Ram submits a document that he claims is a written agreement between him and Shyam. However, upon examination, the court finds that the document is a photocopy and not the original, and there is no evidence to prove its authenticity.

Application of Rule 3: The court decides to reject the photocopy of the document as it is considered inadmissible due to the lack of authenticity. The court records the reason for rejection, stating that the document is not the original and there is no supporting evidence to verify its validity.

Example 2:

Case: Priya vs. Anil

Scenario: Priya sues Anil for defamation, claiming that Anil made false statements about her in a public forum. Anil submits a document as evidence, which is a printout of a social media post allegedly made by Priya. However, the court finds that the printout does not have any metadata or digital signature to confirm its origin and authenticity.

Application of Rule 3: The court rejects the printout of the social media post as it is considered irrelevant and inadmissible without proper verification. The court records the grounds for rejection, noting that the document lacks necessary metadata and digital signature to establish its authenticity.

Rule 4: Endorsements on documents admitted in evidence.

(1) Subject to the provisions of the next following sub-rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely:

- (a) the number and title of the suit,
- (b) the name of the person producing the document,
- (c) the date on which it was produced, and
- (d) a statement of its having been so admitted;

and the endorsement shall be signed or initialled by the Judge.

(2) Where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under the next following rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialled by the Judge.

Simplified act

(1) According to the next rule, every document that is accepted as evidence in a case must have the following details written on it:

- (a) the case number and title,
- (b) the name of the person who provided the document,
- (c) the date it was provided, and
- (d) a note saying it was accepted as evidence;

The judge must sign or initial this note.

(2) If the accepted document is an entry in a book, account, or record, and a copy of it has been used instead of the original as per the next rule, the same details must be written on the copy, and the judge must sign or initial this note on the copy.

Explanation using Example

Example 1:

Case Title: Ram Kumar vs Shyam Lal

Scenario: Ram Kumar has filed a civil suit against Shyam Lal for the recovery of a loan amounting to ₹5,00,000. During the trial, Ram Kumar produces a promissory note signed by Shyam Lal as evidence of the loan.

Application of Rule 4:

The court admits the promissory note as evidence.

The Judge endorses the document with the following details:

(a) Suit No. 123/2023, Ram Kumar vs Shyam Lal

(b) Produced by Ram Kumar

(c) Produced on 15th March 2023

(d) Admitted as evidence

The Judge signs or initials the endorsement on the promissory note.

Example 2:

Case Title: Sita Devi vs Gopal Singh

Scenario: Sita Devi has filed a civil suit against Gopal Singh for the partition of ancestral property. During the trial, Sita Devi produces an old family ledger that contains entries of property distribution among family members.

Application of Rule 4:

The court admits the family ledger as evidence.

Since the ledger is a book, a copy of the relevant entries is made and substituted for the original.

The Judge endorses the copy with the following details:

(a) Suit No. 456/2023, Sita Devi vs Gopal Singh

(b) Produced by Sita Devi

(c) Produced on 20th April 2023

(d) Admitted as evidence

The Judge signs or initials the endorsement on the copy of the ledger entries.

Rule 5: Endorsements on copies of admitted entries in books, accounts and records.

1. Save in so far as is otherwise provided by the Bankers' Books Evidence Act, 1891 (XVIII of 1891) where a document admitted in evidence in the suit is an entry in a letter-book or a shop-book or other account in current use, the party on whose behalf the book or account is produced may furnish a copy of the entry.

2. Where such a document is an entry in a public record produced from a public office or by a public officer, or an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the Court may require a copy of the entry to be furnished:

(a) where the record, book or account is produced on behalf of a party, then by that party, or

(b) where the record, book or account is produced in obedience to an order of the Court acting of its own motion, then by either or any party.

3. Where a copy of an entry is furnished under the foregoing provisions of this rule, the Court shall, after causing the copy to be examined, compared and certified in manner mentioned in rule 17 of Order VII, mark the entry and cause the book, account or record in which it occurs to be returned to the person producing it.

Simplified act

Except as otherwise provided by the Bankers' Books Evidence Act, 1891, if a document used as evidence in a case is an entry in a letter-book, shop-book, or other current account, the party presenting the book or account can provide a copy of the entry.

If the document is an entry in a public record from a public office or by a public officer, or an entry in a book or account belonging to someone other than the party presenting it, the Court may ask for a copy of the entry to be provided:

(a) If the record, book, or account is presented by a party, then that party must provide the copy, or

(b) If the record, book, or account is presented because the Court ordered it, then any party can provide the copy.

When a copy of an entry is provided as described above, the Court will check, compare, and certify the copy as per the procedure in rule 17 of Order VII. The Court will then mark the entry and return the book, account, or record to the person who brought it.

Explanation using Example

Example 1:

Scenario: A small business owner, Mr. Sharma, is involved in a civil lawsuit with a supplier, Mr. Verma, over unpaid invoices.

Application of Rule 5:

Admitted Entry in Shop-Book:

Mr. Sharma produces his shop-book as evidence in court, showing entries of goods supplied to Mr. Verma.

According to Rule 5(1), Mr. Sharma can furnish a copy of the relevant entries from his shop-book instead of submitting the entire book.

Public Record Entry:

Mr. Verma, in his defense, produces a public record from the local municipal office showing that he had made a payment to Mr. Sharma.

As per Rule 5(2), the court may require Mr. Verma to furnish a copy of the entry from the public record.

Court Examination and Certification:

The court examines, compares, and certifies the copies of the entries provided by both parties as per Rule 5(3).

After certification, the court marks the entries and returns the original shop-book and public record to Mr. Sharma and Mr. Verma, respectively.

Example 2:

Scenario: A bank is involved in a civil case with a customer, Ms. Gupta, regarding a disputed transaction.

Application of Rule 5:

Admitted Entry in Bank's Books:

The bank produces its ledger book showing the disputed transaction entry.

Under the Bankers' Books Evidence Act, 1891, the bank provides a certified copy of the ledger entry as evidence.

Entry in a Third-Party Account:

Ms. Gupta produces an account book belonging to her accountant, showing a different transaction record.

According to Rule 5(2), the court may require Ms. Gupta to furnish a copy of the entry from her accountant's book.

Court Examination and Certification:

The court examines, compares, and certifies the copies of the entries provided by the bank and Ms. Gupta as per Rule 5(3).

After certification, the court marks the entries and returns the original ledger book to the bank and the account book to Ms. Gupta.

Example 3:

Scenario: A government contractor, Mr. Khan, is in a legal dispute with a government department over the completion of a project.

Application of Rule 5:

Admitted Entry in Contractor's Records:

Mr. Khan produces his project logbook showing the completion dates and milestones of the project.

As per Rule 5(1), Mr. Khan can furnish a copy of the relevant entries from his logbook.

Entry in Government Records:

The government department produces an official project report from the public works office showing discrepancies in the completion dates.

According to Rule 5(2), the court may require the government department to furnish a copy of the entry from the official project report.

Court Examination and Certification:

The court examines, compares, and certifies the copies of the entries provided by Mr. Khan and the government department as per Rule 5(3).

After certification, the court marks the entries and returns the original logbook to Mr. Khan and the official project report to the government department.

Rule 6: Endorsements on documents rejected as inadmissible in evidence.

Where a document relied on as evidence by either party is considered by the Court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in clauses (a), (b) and (c) of rule 4, sub-rule (1) together with a statement of its having been rejected, and the endorsement shall be signed or initialled by the Judge.

7.

Simplified act

If a document that either side wants to use as evidence is found by the Court to be unacceptable, the following details must be written on it:

(a) The specifics mentioned in clauses (a), (b), and (c) of rule 4, sub-rule (1). (b) A note saying that the document has been rejected.

This note must be signed or initialled by the Judge.

7.

Explanation using Example

Example 1:

Ravi and Suman are involved in a civil dispute over the ownership of a piece of land. During the trial, Ravi presents a document that he claims is the original sale deed proving his ownership. However, upon examination, the court finds that the document is a photocopy and not the original. According to Rule 6 of

Order XIII of The Code Of Civil Procedure 1908, the court deems the document inadmissible as evidence. The judge then endorses the document with the following particulars:

The name of the case: Ravi vs. Suman

The date of the hearing: 15th March 2023

A statement that the document has been rejected as inadmissible The judge signs the endorsement, and the document is marked as rejected.

Example 2:

In a case where Meena is suing her former business partner, Raj, for breach of contract, Meena submits an email printout as evidence of Raj's agreement to certain terms. The court, however, finds that the email lacks proper authentication and cannot be verified as coming from Raj. As per Rule 6 of Order XIII of The Code Of Civil Procedure 1908, the court rules the email printout inadmissible. The judge endorses the document with the following details:

The name of the case: Meena vs. Raj

The date of the hearing: 22nd April 2023

A statement that the document has been rejected as inadmissible The judge initials the endorsement, and the email printout is officially rejected as evidence.

Rule 7: Recording of admitted and return of rejected documents.

(1) Every document which has been admitted in evidence, or a copy thereof where a copy has been substituted for the original under rule 5, shall form part of the record of the suit.

(2) Documents not admitted in evidence shall not form part of the record and shall be returned to the persons respectively producing them.

Simplified act

(1) Any document that has been accepted as evidence, or a copy of it if the original was replaced by a copy under rule 5, will be included in the official records of the case.

(2) Documents that are not accepted as evidence will not be included in the official records and will be given back to the people who provided them.

Explanation using Example

Example 1:

Scenario: Rajesh files a civil suit against his neighbor, Suresh, for encroaching on his property. During the trial, Rajesh submits a property deed as evidence to prove his ownership.

Application of Rule 7:

Admitted Document: The court examines the property deed and finds it relevant and authentic. The deed is admitted as evidence.

Outcome: The property deed becomes part of the official court record for the suit.

Rejected Document: Rajesh also submits a handwritten note from a third party claiming that Suresh admitted to the encroachment. The court finds the note unreliable and irrelevant.

Outcome: The handwritten note is not admitted as evidence and is returned to Rajesh.

Example 2:

Scenario: Priya sues a construction company for poor workmanship in building her house. She submits several documents, including the construction contract and photographs of the defects.

Application of Rule 7:

Admitted Document: The court reviews the construction contract and finds it pertinent to the case. The contract is admitted as evidence.

Outcome: The construction contract becomes part of the official court record for the suit.

Rejected Document: Priya also submits a letter from her friend, who is not an expert, stating that the construction quality is poor. The court deems the letter irrelevant and not credible.

Outcome: The letter is not admitted as evidence and is returned to Priya.

Rule 8: Court may order any document to be impounded.

Notwithstanding anything contained in rule 5 or rule 7 of this Order or in rule 17 of Order VII, the Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit.

Simplified act

Even if rules 5 or 7 of this Order or rule 17 of Order VII say otherwise, the Court has the power to: a. Order any document or book brought before it in a case to be taken and kept safe by a Court officer. b. Decide how long and under what conditions the document or book will be kept.

Explanation using Example

Example 1:

Scenario: A property dispute case is being heard in a civil court in Mumbai. During the proceedings, one of the parties submits a property deed as evidence. The opposing party raises an objection, claiming that the deed is forged.

Application of Rule 8: The judge, upon reviewing the objections and the document, finds sufficient cause to suspect the authenticity of the property deed. The judge orders the deed to be impounded and kept in the custody of the court officer until further verification is completed. This ensures that the document is not tampered with or destroyed while the investigation is ongoing.

Example 2:

Scenario: In a commercial litigation case in Delhi, a company submits its financial records to support its claim for damages. The opposing party argues that the financial records are manipulated to inflate the damages.

Application of Rule 8: The court, after considering the arguments, decides that there is sufficient cause to doubt the integrity of the financial records. The judge orders the financial records to be impounded and kept in the custody of the court officer. The records will remain in custody until an independent audit is conducted to verify their accuracy. This prevents any alteration or destruction of the records during the audit process.

Rule 9: Return of admitted documents.

(1) Any person, whether a party to the suit or not, desirous of receiving back any documents produced by him in the suit and placed on the record shall, unless the document is impounded under rule 8, be entitled to receive back the same, -

(a) where the suit is one in which an appeal is not allowed, when the suit has been disposed of, and

(b) where the suit is one in which an appeal is allowed, when the Court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or, if an appeal has been preferred, when the appeal has been disposed of :

Provided that a document may be returned at any time earlier than that prescribed by this rule if the person applying therefor -

(a) delivers to the proper officer for being substituted for the original, -

(i) in the case of a party to the suit, a certified copy, and

(ii) in the case of any other person, an ordinary copy which has been examined, compared and certified in the manner mentioned in sub-rule (2) of rule 17 of Order VII, and

(b) undertakes to produce the original, if required to do so :

Provided also, that no document shall be returned which, by force of the decree, has become wholly void or useless.

(2) On the return of a document admitted in evidence, a receipt shall be given by the person receiving it.

Simplified act

(1) Anyone, whether they are involved in the case or not, who wants to get back any documents they submitted in the case, can get them back unless the document is being held by the court under rule 8. They can get the documents back:

(a) if the case cannot be appealed, when the case is finished, and

(b) if the case can be appealed, when the court is sure that the time to file an appeal has passed and no appeal has been filed, or if an appeal was filed, when the appeal is finished:

However, a document can be returned earlier if the person asking for it:

(a) gives the proper officer a replacement for the original document, which is:

(i) a certified copy if they are a party to the case, and

(ii) an ordinary copy that has been checked and certified if they are not a party to the case, as described in sub-rule (2) of rule 17 of Order VII, and

(b) promises to bring the original document if needed:

Also, no document will be returned if it has become completely invalid or useless because of the court's decision.

(2) When a document that was used as evidence is returned, the person receiving it must give a receipt.

Explanation using Example

Example 1:

Scenario: Rajesh files a civil suit against his neighbor, Suresh, for encroaching on his property. During the trial, Rajesh submits the original sale deed of his property as evidence. The court admits the document and places it on the record.

Application of Rule 9:

When the suit is disposed of without an appeal: The court rules in favor of Rajesh, and Suresh does not appeal the decision. Rajesh can apply to the court to get his original sale deed back once the suit is disposed of.

When the suit is disposed of with an appeal: If Suresh decides to appeal the decision, Rajesh can only get his original sale deed back after the appeal is resolved and no further appeals are filed.

Early Return of Document:

Rajesh needs the original sale deed for another legal matter before the suit is disposed of. He can request the court to return the document earlier by providing a certified copy of the sale deed to the court and undertaking to produce the original if required.

Example 2:

Scenario: Meera, a third party, submits a lease agreement as evidence in a civil suit between two other parties, Anil and Sunita, regarding a rental dispute. The court admits the lease agreement and places it on the record.

Application of Rule 9:

When the suit is disposed of without an appeal: The court resolves the dispute, and neither Anil nor Sunita appeals the decision. Meera can apply to the court to get her original lease agreement back once the suit is disposed of.

When the suit is disposed of with an appeal: If either Anil or Sunita appeals the decision, Meera can only get her original lease agreement back after the appeal is resolved and no further appeals are filed.

Early Return of Document:

Meera needs the original lease agreement for her personal records before the suit is disposed of. She can request the court to return the document earlier by providing an ordinary copy of the lease agreement, which has been examined, compared, and certified, and undertaking to produce the original if required.

Example 3:

Scenario: A company, XYZ Pvt. Ltd., submits its financial statements as evidence in a civil suit against another company, ABC Ltd., for breach of contract. The court admits the financial statements and places them on the record.

Application of Rule 9:

When the suit is disposed of without an appeal: The court rules in favor of XYZ Pvt. Ltd., and ABC Ltd. does not appeal the decision. XYZ Pvt. Ltd. can apply to the court to get its original financial statements back once the suit is disposed of.

When the suit is disposed of with an appeal: If ABC Ltd. decides to appeal the decision, XYZ Pvt. Ltd. can only get its original financial statements back after the appeal is resolved and no further appeals are filed.

Early Return of Document:

XYZ Pvt. Ltd. needs the original financial statements for an audit before the suit is disposed of. The company can request the court to return the document

earlier by providing a certified copy of the financial statements to the court and undertaking to produce the original if required.

Rule 10: Court may sent for papers from its own records or from other Courts.

Rule on Court Records

(1) The Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

(2) Every application made under this rule shall (unless the Court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

(3) Nothing contained in this rule shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit.

Simplified act

Rule on Court Records

(1) The Court can, on its own or if requested by any party involved in a case, retrieve and look at records from its own files or from any other Court's files.

(2) If someone wants the Court to get these records, they must usually provide a sworn statement (affidavit) explaining why the records are important for their case and why they can't get a certified copy of the records quickly or cheaply, or why the original records are needed for justice.

(3) This rule does not allow the Court to use any document as evidence if it would normally be considered inadmissible under the law of evidence.

Explanation using Example

Example 1:

Scenario: A property dispute case in a Delhi Civil Court.

Details: Mr. Sharma and Mr. Verma are involved in a property dispute over a piece of land. Mr. Sharma claims that he has already won a similar case involving the same piece of land in a different court in Mumbai.

Application of Rule 10:

Court's Motion: The Delhi Civil Court, on its own motion, decides to send for the records of the previous case from the Mumbai Court to verify Mr. Sharma's claim.

Party's Application: Alternatively, Mr. Sharma files an application requesting the Delhi Civil Court to obtain the records from the Mumbai Court. He supports his application with an affidavit stating that the records are crucial to prove his ownership and that obtaining a certified copy would cause unreasonable delay and expense.

Outcome: The Delhi Civil Court receives the records from the Mumbai Court, inspects them, and uses the information to make an informed decision in the current property dispute.

Example 2:

Scenario: A breach of contract case in a Bangalore Civil Court.

Details: Ms. Rao is suing a company for breach of contract. She claims that the company has a history of similar breaches and refers to a previous case in a Chennai Court where the company was found guilty of breaching a contract with another party.

Application of Rule 10:

Court's Motion: The Bangalore Civil Court, on its own motion, decides to send for the records of the previous case from the Chennai Court to examine the company's history of contract breaches.

Party's Application: Ms. Rao files an application requesting the Bangalore Civil Court to obtain the records from the Chennai Court. She supports her application with an affidavit explaining that the records are essential to establish a pattern of behavior by the company and that obtaining a certified copy would be time-consuming and costly.

Outcome: The Bangalore Civil Court receives the records from the Chennai Court, inspects them, and considers the company's past behavior in its judgment on the current breach of contract case.

Example 3:

Scenario: A family inheritance dispute in a Kolkata Civil Court.

Details: Siblings are disputing the inheritance of their late father's estate. One sibling, Mr. Gupta, claims that their father had previously filed a will in a different case in a Patna Court, which supports his claim to the estate.

Application of Rule 10:

Court's Motion: The Kolkata Civil Court, on its own motion, decides to send for the records of the previous case from the Patna Court to verify the existence and contents of the will.

Party's Application: Mr. Gupta files an application requesting the Kolkata Civil Court to obtain the records from the Patna Court. He supports his application with an affidavit stating that the will is crucial to the inheritance dispute and that obtaining a certified copy would cause unreasonable delay and expense.

Outcome: The Kolkata Civil Court receives the records from the Patna Court, inspects them, and uses the information to make an informed decision regarding the inheritance dispute.

Example 4:

Scenario: A fraud case in a Hyderabad Civil Court.

Details: Mr. Khan is accused of committing fraud in a business transaction. He claims that he was previously acquitted of a similar fraud charge in a Pune Court, and the records of that case would prove his innocence.

Application of Rule 10:

Court's Motion: The Hyderabad Civil Court, on its own motion, decides to send for the records of the previous case from the Pune Court to verify Mr. Khan's claim of acquittal.

Party's Application: Mr. Khan files an application requesting the Hyderabad Civil Court to obtain the records from the Pune Court. He supports his application with an affidavit explaining that the records are essential to prove his innocence and that obtaining a certified copy would be time-consuming and costly.

Outcome: The Hyderabad Civil Court receives the records from the Pune Court, inspects them, and considers the previous acquittal in its judgment on the current fraud case.

Rule 11: Provisions as to documents applied to material objects.

The provisions therein contained as to documents shall, so far as may be, apply to all other material objects producible as evidence.

Simplified act

The rules about documents being used as evidence also apply to any other physical objects that can be used as evidence.

Explanation using Example

Example 1:

Scenario: A civil lawsuit involves a dispute over the ownership of a rare antique vase.

Application of Rule 11:

During the trial, one party presents the antique vase as evidence to support their claim of ownership.

According to Rule 11, the same rules that apply to the submission, impounding, and return of documents will also apply to the antique vase.

This means the vase must be properly cataloged, stored securely, and returned to the rightful owner after the trial, just as if it were a document.

Example 2:

Scenario: A case involves a car accident where the condition of a car part (e.g., a brake pad) is crucial evidence.

Application of Rule 11:

The plaintiff submits the brake pad as evidence to demonstrate that it was defective and caused the accident.

Under Rule 11, the brake pad will be treated with the same procedural rules as documents.

This includes ensuring the brake pad is preserved in its current state, securely stored, and returned after the case concludes, ensuring its integrity as evidence throughout the trial.

ORDER XIII-A: SUMMARY JUDGMENT

Rule 1: Scope of and classes of suits to which this Order applies.

Order on Commercial Disputes

(1) This Order sets out the procedure by which Courts may decide a claim pertaining to any Commercial Dispute without recording oral evidence.

(2) For the purposes of this Order, the word "claim" shall include -

(a) part of a claim;

(b) any particular question on which the claim (whether in whole or in part) depends; or

(c) a counterclaim, as the case may be.

(3) Notwithstanding anything to the contrary, an application for summary judgment under this Order shall not be made in a suit in respect of any Commercial Dispute that is originally filed as a summary suit under Order XXXVII.

Simplified act

Order on Commercial Disputes

(1) This Order explains how Courts can decide on a Commercial Dispute without needing to hear spoken evidence.

(2) In this Order, the word "claim" includes:

(a) part of a claim;

(b) any specific question that the claim (whether fully or partially) depends on; or

(c) a counterclaim (a claim made to oppose another claim).

(3) Even if there are other rules, you cannot apply for a quick decision (summary judgment) under this Order if the Commercial Dispute was originally filed as a summary suit under Order XXXVII.

Explanation using Example

Example 1:

Scenario: A company, ABC Pvt. Ltd., supplies machinery to XYZ Ltd. under a commercial contract. XYZ Ltd. fails to make the payment as per the agreed terms. ABC Pvt. Ltd. decides to file a suit for recovery of the outstanding amount.

Application of the Act: ABC Pvt. Ltd. files a claim in the court under Order XIII-A for a summary judgment, arguing that the case is straightforward and does not require oral evidence. The court, after reviewing the documents and the contract, decides that there is no need for a full trial and grants a summary judgment in favor of ABC Pvt. Ltd., ordering XYZ Ltd. to pay the outstanding amount.

Example 2:

Scenario: DEF Ltd. and GHI Ltd. enter into a contract for the supply of raw materials. DEF Ltd. alleges that GHI Ltd. delivered substandard materials and files a counterclaim for damages.

Application of the Act: GHI Ltd. initially files a claim for the payment of the supplied materials. DEF Ltd. responds with a counterclaim for damages due to the substandard quality. Under Order XIII-A, the court decides to handle the counterclaim through a summary judgment procedure. After examining the evidence presented in documents, the court finds that the materials were indeed substandard and awards damages to DEF Ltd. without proceeding to a full trial.

Example 3:

Scenario: JKL Ltd. files a suit against MNO Ltd. for breach of a commercial lease agreement. MNO Ltd. argues that the lease was terminated lawfully due to JKL Ltd.'s non-compliance with certain terms.

Application of the Act: JKL Ltd. seeks a summary judgment under Order XIII-A, claiming that the breach is evident from the documents and no oral evidence is necessary. The court reviews the lease agreement and correspondence between

the parties. Finding that the documents clearly support JKL Ltd.'s claim, the court grants a summary judgment in favor of JKL Ltd., ordering MNO Ltd. to compensate for the breach.

Example 4:

Scenario: PQR Ltd. files a suit against STU Ltd. for non-delivery of goods as per the purchase order. STU Ltd. contends that the goods were delivered and provides delivery receipts as evidence.

Application of the Act: PQR Ltd. applies for a summary judgment under Order XIII-A, asserting that the non-delivery is evident from the purchase order and payment records. The court examines the delivery receipts provided by STU Ltd. and finds them to be valid. Consequently, the court denies the summary judgment and decides that the matter requires a full trial to resolve the factual disputes.

Example 5:

Scenario: A financial institution, Bank ABC, files a suit against a borrower, Mr. X, for defaulting on a commercial loan. Mr. X does not dispute the loan but claims that the bank has charged excessive interest.

Application of the Act: Bank ABC applies for a summary judgment under Order XIII-A, arguing that the default is clear from the loan agreement and repayment records. The court reviews the loan documents and interest calculations. Finding that the interest charged is as per the agreement, the court grants a summary judgment in favor of Bank ABC, ordering Mr. X to repay the outstanding loan amount.

Rule 2: Stage for application for summary judgment.

An applicant may apply for summary judgment at any time after summons has been served on the defendant:

Provided that, no application for summary judgment may be made by such applicant after the Court has framed the issues in respect of the suit.

Simplified act

A person who has filed a lawsuit can ask the court for a quick decision at any time after they have officially notified the other person (the defendant) about the lawsuit.

However, the person who filed the lawsuit cannot ask for a quick decision after the court has identified the main points of disagreement in the case.

Explanation using Example

Example 1:

Rajesh files a civil suit against Suresh for non-payment of a loan amounting to ₹5,00,000. After the court issues a summons to Suresh and he receives it, Rajesh believes that Suresh has no valid defense and the case is straightforward. Rajesh decides to apply for a summary judgment, requesting the court to decide the case without a full trial. He submits his application for summary judgment before the court has framed any issues in the suit. The court reviews the application and, finding no substantial defense from Suresh, grants the summary judgment in favor of Rajesh, ordering Suresh to pay the ₹5,00,000.

Example 2:

Meera sues her tenant, Ravi, for eviction and unpaid rent of ₹1,00,000. The court issues a summons to Ravi, and he receives it. Meera believes that Ravi has no valid defense and the facts are clear. She decides to apply for a summary judgment. However, Meera delays her application, and by the time she submits it, the court has already framed the issues for the suit, identifying the points of contention that need to be resolved through a full trial. Since the application for summary judgment was made after the issues were framed, the court rejects Meera's application, and the case proceeds to a full trial.

Rule 3: Grounds for summary judgment.

The Court may give a summary judgment against a plaintiff or defendant on a claim if it considers that--

(a) the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and

(b) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.

Simplified act

The Court can make a quick decision against a person who is suing (plaintiff) or being sued (defendant) if it believes that--

(a) the person suing has no real chance of winning the case, or the person being sued has no real chance of successfully defending themselves, depending on the situation; and

(b) there is no other important reason why the case should go to a full trial with oral evidence.

Explanation using Example

Example 1:

Rajesh files a lawsuit against his neighbor, Suresh, claiming that Suresh has encroached on his property by building a wall. Rajesh provides no substantial evidence to support his claim, and Suresh presents clear property documents and a surveyor's report showing that the wall is within his own property boundaries. The court, after reviewing the documents, finds that Rajesh has no real prospect of succeeding on the claim and decides to give a summary judgment in favor of Suresh without proceeding to a full trial.

Example 2:

Meena sues a local grocery store, alleging that she slipped and fell due to a wet floor, causing her injury. The grocery store provides CCTV footage showing that the floor was dry and that Meena did not fall in the store. Additionally, witness statements corroborate the store's evidence. The court determines that Meena has no real prospect of successfully defending her claim and issues a summary judgment in favor of the grocery store, avoiding the need for a lengthy trial.

Rule 4: Procedure.

Application for Summary Judgment

(1) An application for summary judgment to a Court shall, in addition to any other matters the applicant may deem relevant, include the matters set forth in sub-clauses (a) to (f) mentioned hereunder:

(a) The application must contain a statement that it is an application for summary judgment made under this Order;

(b) The application must precisely disclose all material facts and identify the point of law, if any;

(c) In the event the applicant seeks to rely upon any documentary evidence, the applicant must,--

- (i) Include such documentary evidence in its application, and
- (ii) Identify the relevant content of such documentary evidence on which the applicant relies;
- (d) The application must state the reason why there are no real prospects of succeeding on the claim or defending the claim, as the case may be;
- (e) The application must state what relief the applicant is seeking and briefly state the grounds for seeking such relief.
- (2) Where a hearing for summary judgment is fixed, the respondent must be given at least thirty days' notice of:
 - (a) The date fixed for the hearing; and
 - (b) The claim that is proposed to be decided by the Court at such hearing.
- (3) The respondent may, within thirty days of the receipt of notice of application of summary judgment or notice of hearing (whichever is earlier), file a reply addressing the matters set forth in clauses (a) to (f) mentioned hereunder in addition to any other matters that the respondent may deem relevant:
 - (a) The reply must precisely--
 - (i) Disclose all material facts;
 - (ii) Identify the point of law, if any; and
 - (iii) State the reasons why the relief sought by the applicant should not be granted;
 - (b) In the event the respondent seeks to rely upon any documentary evidence in its reply, the respondent must--
 - (i) Include such documentary evidence in its reply; and
 - (ii) Identify the relevant content of such documentary evidence on which the respondent relies;
 - (c) The reply must state the reason why there are real prospects of succeeding on the claim or defending the claim, as the case may be;
 - (d) The reply must concisely state the issues that should be framed for trial;

(e) The reply must identify what further evidence shall be brought on record at trial that could not be brought on record at the stage of summary judgment; and

(f) The reply must state why, in light of the evidence or material on record if any, the Court should not proceed to summary judgment.

Simplified act

Application for Summary Judgment

(1) When you apply for a summary judgment in court, your application should include the following important points:

(a) Clearly state that this is an application for summary judgment under this specific rule;

(b) Provide all important facts and mention any legal points;

(c) If you are using any documents as evidence, you must:

(i) Include these documents with your application, and

(ii) Highlight the parts of the documents that support your case;

(d) Explain why you believe the other side has no real chance of winning or defending the case;

(e) Specify what you want the court to do and briefly explain why you deserve this outcome.

(2) If a court hearing for summary judgment is scheduled, the other party must be given at least thirty days' notice of:

(a) The date of the hearing; and

(b) The specific claim that the court will decide on at the hearing.

(3) The other party (respondent) has thirty days from receiving the notice of the summary judgment application or hearing (whichever comes first) to respond. Their response should cover the following points:

(a) The response must:

(i) Provide all important facts;

- (ii) Mention any legal points; and
- (iii) Explain why the court should not grant the relief requested by the applicant;
- (b) If the respondent is using any documents as evidence, they must:
 - (i) Include these documents with their response; and
 - (ii) Highlight the parts of the documents that support their case;
- (c) Explain why they believe they have a real chance of winning or defending the case;
- (d) Briefly outline the issues that should be addressed in a full trial;
- (e) Identify any additional evidence they will present at trial that wasn't included in the summary judgment stage; and
- (f) Explain why, based on the evidence or material already presented, the court should not proceed with a summary judgment.

Explanation using Example

Example 1:

Scenario: A property dispute between two neighbors, Mr. Sharma and Mr. Verma.

Application for Summary Judgment by Mr. Sharma:

Statement: This is an application for summary judgment made under Order XIII-A of the Code of Civil Procedure, 1908.

Material Facts and Point of Law: Mr. Sharma claims that Mr. Verma has encroached upon his property by constructing a wall that extends 2 feet into his land. The point of law is the illegal encroachment on private property.

Documentary Evidence:

Included Evidence: Land survey report, property ownership documents, and photographs of the encroachment.

Relevant Content: The land survey report clearly shows the boundary lines and the encroachment by Mr. Verma.

Reason for No Real Prospects of Defense: Mr. Sharma argues that the documentary evidence is clear and unambiguous, showing that Mr. Verma has no legal right to the encroached land.

Relief Sought: Mr. Sharma seeks an order for the removal of the encroaching wall and restoration of the original boundary. The grounds for this relief are based on the clear evidence of encroachment.

Notice to Mr. Verma:

Date of Hearing: Mr. Verma is given a notice of the hearing date fixed for 30 days later.

Claim to be Decided: The court will decide on the encroachment claim at the hearing.

Reply by Mr. Verma:

Material Facts and Point of Law: Mr. Verma discloses that the wall was constructed based on an old agreement with the previous owner of Mr. Sharma's property. The point of law is the validity of the old agreement.

Documentary Evidence:

Included Evidence: Copy of the old agreement and witness statements.

Relevant Content: The agreement allegedly permits the construction of the wall.

Reason for Real Prospects of Defense: Mr. Verma argues that the old agreement provides a valid defense and that the matter requires a detailed examination of the agreement's terms.

Issues for Trial: Whether the old agreement is valid and enforceable.

Further Evidence: Mr. Verma intends to bring additional witness testimonies and expert opinions on the agreement's validity.

Reason Against Summary Judgment: Mr. Verma contends that the evidence on record is insufficient for a summary judgment and that a full trial is necessary to resolve the factual disputes.

Example 2:

Scenario: A breach of contract case between a supplier, ABC Pvt. Ltd., and a retailer, XYZ Stores.

Application for Summary Judgment by ABC Pvt. Ltd.:

Statement: This is an application for summary judgment made under Order XIII-A of the Code of Civil Procedure, 1908.

Material Facts and Point of Law: ABC Pvt. Ltd. claims that XYZ Stores failed to pay for goods delivered as per the contract. The point of law is the breach of contract.

Documentary Evidence:

Included Evidence: Copies of the contract, delivery receipts, and unpaid invoices.

Relevant Content: The invoices and delivery receipts show that goods were delivered and accepted by XYZ Stores, but payment was not made.

Reason for No Real Prospects of Defense: ABC Pvt. Ltd. argues that the documentary evidence clearly shows a breach of contract with no valid defense from XYZ Stores.

Relief Sought: ABC Pvt. Ltd. seeks payment of the outstanding amount along with interest. The grounds for this relief are based on the clear breach of contract.

Notice to XYZ Stores:

Date of Hearing: XYZ Stores is given a notice of the hearing date fixed for 30 days later.

Claim to be Decided: The court will decide on the breach of contract claim at the hearing.

Reply by XYZ Stores:

Material Facts and Point of Law: XYZ Stores discloses that the goods delivered were defective and not as per the contract specifications. The point of law is the right to reject defective goods.

Documentary Evidence:

Included Evidence: Inspection reports and correspondence with ABC Pvt. Ltd. regarding the defects.

Relevant Content: The inspection reports detail the defects in the goods delivered.

Reason for Real Prospects of Defense: XYZ Stores argues that the defects in the goods provide a valid defense against the payment claim.

Issues for Trial: Whether the goods delivered were defective and whether XYZ Stores is entitled to reject them.

Further Evidence: XYZ Stores intends to bring expert testimony on the nature of the defects and the contractual obligations.

Reason Against Summary Judgment: XYZ Stores contends that the evidence on record is insufficient for a summary judgment and that a full trial is necessary to resolve the factual disputes.

Rule 5: Evidence for hearing of summary judgment.

(1) Notwithstanding anything in this Order, if the respondent in an application for summary judgment wishes to rely on additional documentary evidence during the hearing, the respondent must:

- (a) file such documentary evidence; and
- (b) serve copies of such documentary evidence on every other party to the application at least fifteen days prior to the date of the hearing.

(2) Notwithstanding anything in this Order, if the applicant for summary judgment wishes to rely on documentary evidence in reply to the defendant's documentary evidence, the applicant must:

- (a) file such documentary evidence in reply; and
- (b) serve a copy of such documentary evidence on the respondent at least five days prior to the date of the hearing.

(3) Notwithstanding anything to the contrary, sub-rules (1) and (2) shall not require documentary evidence to be:

- (a) filed if such documentary evidence has already been filed; or
- (b) served on a party on whom it has already been served.

Simplified act

(1) Even though this Order says otherwise, if the person responding to a request for a quick decision (summary judgment) wants to use extra documents during the hearing, they must:

(a) submit those documents to the court; and

(b) give copies of those documents to all other parties involved in the case at least fifteen days before the hearing date.

(2) Even though this Order says otherwise, if the person asking for a quick decision (summary judgment) wants to use documents to respond to the defendant's documents, they must:

(a) submit those response documents to the court; and

(b) give a copy of those response documents to the respondent at least five days before the hearing date.

(3) No matter what, the rules in (1) and (2) do not require documents to be:

(a) submitted to the court if they have already been submitted; or

(b) given to a party if they have already received them.

Explanation using Example

Example 1:

Scenario: A property dispute case between Mr. Sharma (plaintiff) and Mr. Verma (defendant).

Details:

Mr. Sharma files an application for summary judgment, claiming that Mr. Verma has no valid defense against his claim for the property.

Mr. Verma wishes to rely on additional documentary evidence, such as a previous sale deed and property tax receipts, to support his defense.

Application of Rule 5:

Mr. Verma must file the additional documentary evidence with the court.

Mr. Verma must serve copies of this documentary evidence to Mr. Sharma at least fifteen days before the hearing date.

Outcome:

Mr. Verma files and serves the documents on time.

During the hearing, the court considers Mr. Verma's additional evidence in deciding whether to grant the summary judgment.

Example 2:

Scenario: A breach of contract case between ABC Pvt. Ltd. (plaintiff) and XYZ Pvt. Ltd. (defendant).

Details:

ABC Pvt. Ltd. files for summary judgment, asserting that XYZ Pvt. Ltd. has no valid defense against the breach of contract claim.

XYZ Pvt. Ltd. submits additional documentary evidence, such as email correspondences and a revised contract, to counter the claim.

Application of Rule 5:

XYZ Pvt. Ltd. files the additional documentary evidence with the court.

XYZ Pvt. Ltd. serves copies of this evidence to ABC Pvt. Ltd. at least fifteen days before the hearing date.

ABC Pvt. Ltd. wishes to reply to XYZ Pvt. Ltd.'s evidence with additional documents, such as internal memos and meeting minutes.

Application of Rule 5 for Reply:

ABC Pvt. Ltd. files the reply documentary evidence with the court.

ABC Pvt. Ltd. serves a copy of the reply evidence to XYZ Pvt. Ltd. at least five days before the hearing date.

Outcome:

Both parties file and serve their respective documents within the stipulated time frames.

The court reviews all the documentary evidence during the hearing to determine whether to grant the summary judgment.

Example 3:

Scenario: A loan recovery case between Bank of India (plaintiff) and Mr. Kumar (defendant).

Details:

Bank of India files for summary judgment, claiming Mr. Kumar has defaulted on his loan and has no valid defense.

Mr. Kumar wishes to rely on additional documentary evidence, such as bank statements and loan repayment receipts, to show he has made payments.

Application of Rule 5:

Mr. Kumar files the additional documentary evidence with the court.

Mr. Kumar serves copies of this evidence to Bank of India at least fifteen days before the hearing date.

Outcome:

Mr. Kumar files and serves the documents on time.

During the hearing, the court considers Mr. Kumar's additional evidence in deciding whether to grant the summary judgment.

Example 4:

Scenario: A tenant eviction case between Mrs. Gupta (landlord) and Mr. Singh (tenant).

Details:

Mrs. Gupta files for summary judgment, claiming Mr. Singh has no valid defense against the eviction notice.

Mr. Singh wishes to rely on additional documentary evidence, such as rent receipts and a lease agreement, to support his defense.

Application of Rule 5:

Mr. Singh files the additional documentary evidence with the court.

Mr. Singh serves copies of this evidence to Mrs. Gupta at least fifteen days before the hearing date.

Mrs. Gupta wishes to reply to Mr. Singh's evidence with additional documents, such as a notice of rent increase and proof of non-payment.

Application of Rule 5 for Reply:

Mrs. Gupta files the reply documentary evidence with the court.

Mrs. Gupta serves a copy of the reply evidence to Mr. Singh at least five days before the hearing date.

Outcome:

Both parties file and serve their respective documents within the stipulated time frames.

The court reviews all the documentary evidence during the hearing to determine whether to grant the summary judgment.

Rule 6: Orders that may be made by Court.

(1) On an application made under this Order, the Court may make such orders that it may deem fit in its discretion including the following:

- (a) judgment on the claim;
- (b) conditional order in accordance with Rule 7 mentioned hereunder;
- (c) dismissing the application;
- (d) dismissing part of the claim and a judgment on part of the claim that is not dismissed;
- (e) striking out the pleadings (whether in whole or in part); or
- (f) further directions to proceed for case management under Order XV-A.

(2) Where the Court makes any of the orders as set forth in sub-rule (1) (a) to (f), the Court shall record its reasons for making such order.

Simplified act

(1) When someone applies to the Court under this Order, the Court can make any decision it thinks is appropriate, including:

- (a) giving a final decision on the claim;
- (b) making a conditional order as described in Rule 7 below;
- (c) rejecting the application;
- (d) rejecting part of the claim and giving a decision on the part that is not rejected;

- (e) removing the pleadings (either completely or partially); or
 - (f) giving further instructions for managing the case under Order XV-A.
- (2) When the Court makes any of the decisions listed in points (1) (a) to (f), it must explain why it made that decision.

Explanation using Example

Example 1:

Scenario: A business owner, Mr. Sharma, files a lawsuit against a supplier, Mr. Verma, for breach of contract. Mr. Sharma claims that Mr. Verma failed to deliver goods worth ₹10 lakhs as per the agreement.

Application: Mr. Sharma applies for a summary judgment under Order XIII-A, Rule 6 of the Code of Civil Procedure, 1908, arguing that there is no genuine dispute to be tried and that he is entitled to a judgment on the claim.

Court's Orders:

- (a) Judgment on the claim: The court reviews the evidence and finds that Mr. Verma has no valid defense. The court grants a summary judgment in favor of Mr. Sharma, ordering Mr. Verma to pay ₹10 lakhs.
- (b) Conditional order: Alternatively, the court may issue a conditional order requiring Mr. Verma to deposit ₹10 lakhs in the court within a specified period, failing which a summary judgment will be entered against him.
- (c) Dismissing the application: If the court finds that there is a genuine dispute that requires a trial, it may dismiss Mr. Sharma's application for summary judgment.
- (d) Dismissing part of the claim: If the court finds that only part of Mr. Sharma's claim is undisputed, it may dismiss the disputed part and grant a judgment on the undisputed part.
- (e) Striking out the pleadings: If Mr. Verma's defense is found to be frivolous or vexatious, the court may strike out his pleadings in whole or in part.
- (f) Further directions: The court may issue further directions for case management, such as setting timelines for the completion of discovery or scheduling a pre-trial conference.

Example 2:

Scenario: Ms. Gupta files a lawsuit against her tenant, Mr. Khan, for non-payment of rent for six months amounting to ₹1.2 lakhs. Ms. Gupta applies for a summary judgment under Order XIII-A, Rule 6.

Application: Ms. Gupta argues that Mr. Khan has no valid defense and that the rent agreement clearly shows the amount due.

Court's Orders:

(a) Judgment on the claim: The court finds that Mr. Khan has no valid defense and grants a summary judgment in favor of Ms. Gupta, ordering Mr. Khan to pay ₹1.2 lakhs.

(b) Conditional order: The court may issue a conditional order requiring Mr. Khan to deposit ₹1.2 lakhs in the court within a specified period, failing which a summary judgment will be entered against him.

(c) Dismissing the application: If the court finds that there is a genuine dispute regarding the amount of rent due or the terms of the agreement, it may dismiss Ms. Gupta's application for summary judgment.

(d) Dismissing part of the claim: If the court finds that only part of Ms. Gupta's claim is undisputed, it may dismiss the disputed part and grant a judgment on the undisputed part.

(e) Striking out the pleadings: If Mr. Khan's defense is found to be without merit, the court may strike out his pleadings in whole or in part.

(f) Further directions: The court may issue further directions for case management, such as setting timelines for the completion of discovery or scheduling a pre-trial conference.

Rule 7: Conditional order.

(1) Where it appears to the Court that it is possible that a claim or defence may succeed but it is improbable that it shall do so, the Court may make a conditional order as set forth in Rule 6 (1) (b).

(2) Where the Court makes a conditional order, it may:

(a) make it subject to all or any of the following conditions:

(i) require a party to deposit a sum of money in the Court;

- (ii) require a party to take a specified step in relation to the claim or defence, as the case may be;
- (iii) require a party, as the case may be, to give such security or provide such surety for restitution of costs as the Court deems fit and proper;
- (iv) impose such other conditions, including providing security for restitution of losses that any party is likely to suffer during the pendency of the suit, as the Court may deem fit in its discretion;
- (b) specify the consequences of the failure to comply with the conditional order, including passing a judgment against the party that have not complied with the conditional order.

Simplified act

- (1) If the Court thinks that a claim or defense might have a chance to win but probably won't, the Court can make a special order as described in Rule 6 (1) (b).
- (2) If the Court makes this special order, it can:
 - (a) include any of the following conditions:
 - (i) require a party to deposit some money with the Court;
 - (ii) require a party to do something specific related to the claim or defense;
 - (iii) require a party to provide a guarantee or security for covering costs, as the Court sees fit;
 - (iv) impose other conditions, like providing security for any losses that might happen while the case is ongoing, as the Court thinks appropriate;
 - (b) state what will happen if the conditions are not met, which could include making a judgment against the party that did not follow the order.

Explanation using Example

Example 1:

Rajesh files a lawsuit against his former business partner, Suresh, claiming that Suresh owes him Rs. 10 lakhs from their dissolved partnership. Suresh denies the claim, stating that he has already settled all dues. The Court, after reviewing the initial evidence, believes that Rajesh's claim might have some

merit but is not very strong. Therefore, the Court issues a conditional order under Rule 7.

The Court orders Rajesh to deposit Rs. 1 lakh as security in the Court within 30 days. The Court also specifies that if Rajesh fails to deposit this amount, his claim will be dismissed, and judgment will be passed in favor of Suresh.

Example 2:

Meena sues a construction company for poor workmanship in building her house, claiming damages of Rs. 5 lakhs. The construction company defends itself by arguing that the work was done as per the contract and any issues are due to Meena's modifications. The Court finds that Meena's claim might succeed but is not very likely to do so. Hence, the Court issues a conditional order.

The Court requires Meena to provide a surety bond of Rs. 50,000 to cover potential legal costs for the construction company if she loses the case. Additionally, the Court orders Meena to submit detailed evidence of the alleged poor workmanship within 15 days. The Court also states that if Meena fails to comply with these conditions, her lawsuit will be dismissed, and judgment will be passed in favor of the construction company.

Rule 8: Power to impose costs.

The Court may make an order for payment of costs in an application for summary judgment in accordance with the provisions of sections 35 and 35A of the Code.

Simplified act

The Court can order someone to pay legal costs in a quick judgment case, following the rules in sections 35 and 35A of the Code.

Explanation using Example

Example 1:

Rajesh files a lawsuit against Sunita for breach of contract, claiming that Sunita did not deliver goods as per their agreement. Sunita believes that Rajesh's case is baseless and files an application for summary judgment, asking the court to dismiss the case without a full trial. The court reviews the application and finds that Rajesh's claim indeed lacks merit. Consequently, the court grants the summary judgment in favor of Sunita and orders Rajesh to

pay the costs incurred by Sunita for defending the baseless lawsuit. This order for payment of costs is made in accordance with sections 35 and 35A of the Code of Civil Procedure, 1908.

Example 2:

Meera sues her former business partner, Anil, for allegedly misappropriating company funds. Anil, confident that he has sufficient evidence to prove his innocence, files an application for summary judgment, requesting the court to resolve the matter without proceeding to a full trial. After examining the evidence presented by Anil, the court concludes that Meera's allegations are unfounded and grants the summary judgment in Anil's favor. The court also orders Meera to pay the legal costs Anil incurred while defending himself, as per the provisions of sections 35 and 35A of the Code of Civil Procedure, 1908.

ORDER XIV: SETTLEMENT OF ISSUES AND DETERMINATION OF SUIT ON ISSUES OF LAW OR ON ISSUES AGREED UPON

Rule 1: Framing of issues.

- (1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.
- (2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.
- (3) Each material proposition affirmed by one party and denied by the other shall form the subject of distinct issue.
- (4) Issues are of two kinds:
 - (a) issues of fact,
 - (b) issues of law.
- (5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements if any, and after examination under rule 2 of Order X and after hearing the parties or their pleaders, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.

Simplified act

(1) Problems come up when one side says something important about the facts or the law, and the other side disagrees.

(2) Important points are those facts or laws that the person suing (plaintiff) needs to mention to show they have a reason to sue, or that the person being sued (defendant) needs to mention to defend themselves.

(3) Each important point that one side says and the other side denies will become a separate issue to be decided.

(4) There are two types of issues:

(a) issues about the facts,

(b) issues about the law.

(5) At the first court meeting for the case, the judge will read the complaint and any written responses, ask questions if needed, and listen to both sides or their lawyers. The judge will then figure out which important points of fact or law the sides disagree on and will write down the issues that need to be decided to resolve the case.

(6) The judge does not have to write down the issues if the defendant does not present any defense at the first court meeting.

Explanation using Example

Example 1:

Case: Dispute over Property Ownership

Scenario: Ravi files a lawsuit against Suresh claiming ownership of a piece of land. Ravi alleges that he inherited the land from his grandfather and has all the necessary documents to prove it. Suresh, on the other hand, denies Ravi's claim and asserts that he purchased the land from a third party and has been in possession of it for the past 10 years.

Application of Rule 1:

Material Propositions:

Ravi's claim of inheritance and ownership.

Suresh's claim of purchase and possession.

Issues to be Framed:

Issue of Fact: Whether Ravi inherited the land from his grandfather.

Issue of Fact: Whether Suresh purchased the land from a third party.

Issue of Law: Whether Ravi's claim of inheritance is legally valid.

Issue of Law: Whether Suresh's possession of the land for 10 years gives him ownership rights.

Court's Action: At the first hearing, the court will read the plaint and written statements, examine the parties, and frame the issues based on the material propositions affirmed by Ravi and denied by Suresh. The court will then proceed to record these issues for the right decision of the case.

Example 2:

Case: Breach of Contract

Scenario: Meera files a lawsuit against Rajesh for breach of contract. Meera claims that Rajesh agreed to deliver 100 units of goods by a certain date but failed to do so. Rajesh denies the breach and argues that the delay was due to unforeseen circumstances beyond his control.

Application of Rule 1:

Material Propositions:

Meera's claim of breach of contract by Rajesh.

Rajesh's defense of unforeseen circumstances causing the delay.

Issues to be Framed:

Issue of Fact: Whether Rajesh agreed to deliver 100 units of goods by the specified date.

Issue of Fact: Whether Rajesh failed to deliver the goods as agreed.

Issue of Law: Whether the delay caused by unforeseen circumstances can be considered a valid defense for the breach of contract.

Court's Action: At the first hearing, the court will read the plaint and written statements, examine the parties, and frame the issues based on the material propositions affirmed by Meera and denied by Rajesh. The court will then proceed to record these issues for the right decision of the case.

Rule 2: Court to pronounce judgment on all issues.

(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if the issue relates to -

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

Simplified act

(1) Even if a case can be decided based on a preliminary issue, the Court must, according to the rules in section (2), give a judgment on all the issues involved.

(2) If a case involves both legal and factual issues, and the Court believes that the case or any part of it can be decided based only on a legal issue, it can address that legal issue first if it concerns:

(a) whether the Court has the authority to hear the case, or

(b) a legal rule that prevents the case from proceeding,

For this reason, the Court can choose to delay addressing the other issues until the legal issue is resolved, and then handle the case based on the decision of that legal issue.

Explanation using Example

Example 1:

Scenario: A property dispute case is filed in a civil court in Mumbai.

Facts:

Plaintiff: Mr. Sharma

Defendant: Mr. Verma

Issue: Ownership of a piece of land

Issues Raised:

Whether the court has jurisdiction to hear the case.

Whether Mr. Sharma is the rightful owner of the land.

Whether the sale deed presented by Mr. Verma is valid.

Application of Rule 2:

The court first examines the issue of jurisdiction (Issue 1) because if the court does not have jurisdiction, it cannot proceed with the case.

The court finds that it does have jurisdiction.

The court then proceeds to pronounce judgment on all other issues (Issues 2 and 3) to resolve the dispute completely.

Example 2:

Scenario: A breach of contract case is filed in a civil court in Delhi.

Facts:

Plaintiff: Ms. Gupta

Defendant: ABC Pvt. Ltd.

Issue: Non-payment for services rendered

Issues Raised:

Whether the suit is barred by limitation (i.e., whether it was filed within the legally allowed time frame).

Whether ABC Pvt. Ltd. breached the contract.

Whether Ms. Gupta is entitled to damages.

Application of Rule 2:

The court first examines the issue of limitation (Issue 1) because if the suit is barred by limitation, the case can be disposed of without examining other issues.

The court finds that the suit is not barred by limitation.

The court then proceeds to pronounce judgment on all other issues (Issues 2 and 3) to resolve the dispute completely.

Rule 3: Materials from which issues may be framed.

The Court may frame the issues from all or any of the following materials:

- (a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties;
- (b) allegations made in the pleadings or in answers to interrogatories delivered in the suit;
- (c) the contents of documents produced by either party.

Simplified act

The Court can decide what the main points of the case are based on the following:

- (a) statements made under oath by the people involved in the case, or by anyone representing them, or by their lawyers;
- (b) statements made in the official documents of the case or in responses to questions asked during the case;
- (c) the information in documents provided by either side in the case.

Explanation using Example

Example 1:

Scenario: A property dispute between two brothers, Raj and Ravi.

Context: Raj and Ravi are in a legal battle over the ownership of a piece of ancestral land. Raj claims that the land was gifted to him by their father, while Ravi argues that the land belongs to both of them equally.

Application of Rule 3:

(a) Allegations made on oath: Raj and Ravi both provide sworn statements. Raj states that their father verbally gifted the land to him in the presence of family members. Ravi, on the other hand, swears that their father intended the land to be shared equally.

(b) Allegations in pleadings: In their written pleadings, Raj includes a statement that their father had always favored him and had verbally promised the land. Ravi's pleadings include a counter-statement that their father had always treated them equally and had no intention of favoring one over the other.

(c) Contents of documents: Raj produces a letter allegedly written by their father, indicating his intention to gift the land to Raj. Ravi produces a will that mentions the land should be divided equally between the two brothers.

Outcome: The court frames issues based on these materials, such as:

Whether the father verbally gifted the land to Raj.

Whether the letter produced by Raj is authentic.

Whether the will produced by Ravi is valid and enforceable.

Example 2:

Scenario: A breach of contract case between a contractor, Suresh, and a homeowner, Priya.

Context: Priya hired Suresh to renovate her house. Suresh claims that Priya did not pay the full amount agreed upon, while Priya argues that Suresh did not complete the work as per the contract.

Application of Rule 3:

(a) Allegations made on oath: Suresh swears that he completed the renovation work as per the contract and that Priya still owes him ₹2,00,000. Priya swears that Suresh left the work incomplete and did not follow the agreed specifications.

(b) Allegations in pleadings: Suresh's pleadings include a statement that he completed the work and provided a detailed invoice. Priya's pleadings include a counter-statement that the work was substandard and incomplete.

(c) Contents of documents: Suresh produces the contract agreement and the invoice for the completed work. Priya produces photographs of the incomplete work and a written complaint she sent to Suresh regarding the substandard work.

Outcome: The court frames issues based on these materials, such as:

Whether Suresh completed the renovation work as per the contract.

Whether Priya owes Suresh the remaining ₹2,00,000.

Whether the work done by Suresh was substandard and incomplete as claimed by Priya.

Rule 4: Court may examine witnesses or documents before framing issues.

Where the Court is of opinion that the issues cannot be correctly framed without the examination of some person not before the Court or without the inspection of some document not produced in the suit, it may adjourn the framing of issues to a day not later than seven days and may (subject to any law for the time being in force) compel the attendance of any person or the production of any document by the person in whose possession or power it is by summons or other process.

Simplified act

If the Court thinks it can't properly decide what the main questions of the case are without talking to someone who isn't currently in court or without looking at a document that hasn't been shown yet, it can delay deciding the main questions for up to seven days.

The Court can force the person who has the document or who needs to be questioned to come to court or bring the document, using a legal order or other method.

Explanation using Example

Example 1:

Scenario: A property dispute case is being heard in a civil court in Mumbai. The plaintiff claims that a piece of land belongs to him based on a will left by his deceased father. The defendant, however, argues that the will is forged and that the land was sold to him by the plaintiff's father before his death.

Application of Rule 4: The court is unable to frame the issues correctly because the original will and the sale deed are not produced in court. The court decides that it needs to examine these documents to understand the validity of the claims. Therefore, the court adjourns the framing of issues for seven days and issues a summons to the local registrar's office to produce the original will and sale deed. Additionally, the court summons a handwriting expert to examine the signatures on the documents.

Example 2:

Scenario: In a breach of contract case in Delhi, the plaintiff alleges that the defendant failed to deliver goods as per the contract terms. The defendant contends that the goods were delivered, and the plaintiff acknowledged receipt.

Application of Rule 4: The court finds it challenging to frame the issues because the delivery receipts and the contract documents are not presented in court. The court decides that it needs to inspect these documents to determine the facts. Consequently, the court adjourns the framing of issues for seven days and issues a summons to the defendant to produce the delivery receipts and the original contract. The court also summons the warehouse manager who allegedly received the goods to testify.

Example 3:

Scenario: A family dispute over ancestral property is being heard in a civil court in Chennai. The plaintiff claims that the property should be divided equally among all siblings as per their father's will. The defendant, one of the siblings, argues that the will was amended to give him a larger share due to his financial contributions to the property.

Application of Rule 4: The court realizes that it cannot frame the issues correctly without examining the amended will and financial records showing the defendant's contributions. The court adjourns the framing of issues for seven days and issues a summons to the bank to produce financial records and to the family lawyer to produce the amended will. The court also summons the accountant who managed the financial transactions related to the property.

Example 4:

Scenario: In a defamation case in Kolkata, the plaintiff claims that the defendant published false statements about him in a local newspaper, damaging his reputation. The defendant argues that the statements were true and were made in the public interest.

Application of Rule 4: The court finds it difficult to frame the issues without examining the newspaper articles and any related correspondence. The court adjourns the framing of issues for seven days and issues a summons to the newspaper editor to produce the original articles and any emails or letters related to the publication. The court also summons the journalist who wrote the articles to testify about the sources of the information.

Example 5:

Scenario: A business partnership dispute is being heard in a civil court in Bangalore. The plaintiff alleges that the defendant misappropriated funds from the partnership account. The defendant denies the allegations and claims that all transactions were legitimate and approved by the plaintiff.

Application of Rule 4: The court is unable to frame the issues correctly without examining the partnership's financial records and bank statements. The court adjourns the framing of issues for seven days and issues a summons to the bank to produce the partnership's account statements. The court also summons the accountant who managed the partnership's finances to testify about the transactions.

Rule 5: Power to amend, and strike out, issues.

(1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

Simplified act

(1) The Court can change or add new questions to be decided in a case at any time before making a final decision. These changes or additions are made to help resolve the disagreements between the parties involved.

(2) The Court can also remove any questions that seem to be incorrectly included or created at any time before making a final decision.

Explanation using Example

Example 1:

Scenario: A property dispute case between Mr. Sharma and Mr. Verma.

Details:

Mr. Sharma claims that Mr. Verma has encroached on his land.

Mr. Verma argues that the land in question belongs to him as per a sale deed.

Application of Rule 5:

During the trial, the court initially frames issues based on the claims and defenses presented by both parties.

Later, it is discovered that there is a significant question about the validity of the sale deed presented by Mr. Verma.

The court decides to amend the issues to include the question of the sale deed's validity.

Additionally, the court finds that one of the initially framed issues regarding the boundary demarcation is irrelevant due to new evidence.

The court strikes out the irrelevant issue and frames an additional issue to determine the authenticity of the sale deed.

Example 2:

Scenario: A breach of contract case between ABC Pvt. Ltd. and XYZ Ltd.

Details:

ABC Pvt. Ltd. sues XYZ Ltd. for not delivering goods as per the contract terms.

XYZ Ltd. defends itself by claiming that ABC Pvt. Ltd. did not make the payment on time, which led to the delay in delivery.

Application of Rule 5:

Initially, the court frames issues related to the breach of contract and the delay in delivery.

During the proceedings, it is revealed that there is a dispute about the interpretation of a specific clause in the contract regarding payment terms.

The court decides to amend the issues to include the interpretation of the disputed clause.

The court also finds that an issue regarding the quality of goods, which was initially framed, is not relevant to the current dispute.

The court strikes out the irrelevant issue and frames an additional issue to address the interpretation of the payment clause.

Example 3:

Scenario: A family dispute over inheritance between siblings.

Details:

Sibling A claims that the family property should be divided equally among all siblings.

Sibling B argues that they should receive a larger share due to taking care of their parents in their old age.

Application of Rule 5:

The court initially frames issues regarding the division of property and the contributions of each sibling.

Later, it is found that there is a legal question about the validity of a will left by the parents, which was not initially considered.

The court decides to amend the issues to include the validity of the will.

Additionally, the court finds that an issue regarding the valuation of the property is not necessary at this stage.

The court strikes out the valuation issue and frames an additional issue to determine the validity of the will.

Example 4:

Scenario: A consumer dispute case where a customer sues a car manufacturer for selling a defective vehicle.

Details:

The customer claims that the car has multiple defects and demands a refund.

The manufacturer argues that the defects are minor and can be repaired under warranty.

Application of Rule 5:

The court initially frames issues regarding the nature of the defects and the terms of the warranty.

During the trial, it is revealed that there is a significant question about whether the defects existed at the time of sale or occurred later.

The court decides to amend the issues to include the question of when the defects occurred.

The court also finds that an issue regarding the customer's driving habits, which was initially framed, is not relevant to the case.

The court strikes out the irrelevant issue and frames an additional issue to determine the timing of the defects.

Rule 6: Questions of fact or law may by, agreement be stated in form of issues.

(1) Where the parties to a suit are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing that, upon the finding of the Court in the affirmative or the negative or such issue, -

(a) a sum of money specified in the agreement or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject some liability specified in the agreement;

(b) some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct; or

(c) one or more of the parties shall do or abstain from doing some particular act specified in the agreement and relating to the matter in dispute.

Simplified act

(1) If both sides in a lawsuit agree on the facts or legal questions that need to be decided, they can write down these issues and make a written agreement. This agreement will state that, depending on what the Court decides, the following will happen:

- (a) One side will pay the other a certain amount of money, either specified in the agreement or determined by the Court, or one side will be given a specific right or responsibility mentioned in the agreement;
- (b) One side will give the other a specific piece of property mentioned in the agreement and being disputed in the lawsuit, or as directed by the other side;
- (c) One or more of the parties will do or not do a specific action mentioned in the agreement that relates to the dispute.

Explanation using Example

Example 1:

Scenario: Property Dispute

Ravi and Suresh are involved in a legal dispute over the ownership of a piece of land. Both parties agree that the main question to be decided is whether Ravi has a valid title to the land.

Agreement: Ravi and Suresh agree to state this question in the form of an issue and enter into a written agreement. They agree that if the court finds in favor of Ravi, Suresh will pay Ravi ₹5,00,000 as compensation for the legal expenses and emotional distress caused. If the court finds in favor of Suresh, Ravi will transfer the disputed land to Suresh.

Outcome: The court examines the evidence and finds in favor of Ravi. As per the agreement, Suresh pays Ravi ₹5,00,000.

Example 2:

Scenario: Contract Dispute

Anita and Bharat have a dispute over a business contract. The main issue is whether Bharat breached the contract by not delivering goods on time.

Agreement: Anita and Bharat agree to state this question in the form of an issue and enter into a written agreement. They agree that if the court finds Bharat breached the contract, Bharat will pay Anita ₹2,00,000 as damages. If the court finds Bharat did not breach the contract, Anita will withdraw her claim and pay Bharat ₹50,000 for legal costs.

Outcome: The court finds that Bharat did breach the contract. As per the agreement, Bharat pays Anita ₹2,00,000.

Example 3:

Scenario: Employment Dispute

Priya and her employer, XYZ Pvt. Ltd., are in a dispute over whether Priya was wrongfully terminated from her job.

Agreement: Priya and XYZ Pvt. Ltd. agree to state this question in the form of an issue and enter into a written agreement. They agree that if the court finds Priya was wrongfully terminated, XYZ Pvt. Ltd. will reinstate her and pay her ₹1,00,000 in back wages. If the court finds the termination was justified, Priya will not pursue any further legal action and will pay ₹20,000 towards the company's legal expenses.

Outcome: The court finds that Priya was wrongfully terminated. As per the agreement, XYZ Pvt. Ltd. reinstates Priya and pays her ₹1,00,000 in back wages.

Example 4:

Scenario: Family Dispute

Rahul and Meena are in a dispute over the custody of their child. The main issue is whether Rahul is fit to have joint custody.

Agreement: Rahul and Meena agree to state this question in the form of an issue and enter into a written agreement. They agree that if the court finds Rahul fit for joint custody, Meena will allow joint custody and Rahul will pay ₹10,000 per month for child support. If the court finds Rahul unfit, Meena will have sole custody and Rahul will pay ₹15,000 per month for child support.

Outcome: The court finds Rahul fit for joint custody. As per the agreement, Meena allows joint custody and Rahul pays ₹10,000 per month for child support.

Rule 7: Court, if satisfied that agreement was executed in good faith, may pronounce judgment.

Where the Court is satisfied, after making such inquiry as it deems proper, -

- (a) that the agreement was duly executed by the parties,
- (b) that they have a substantial interest in the decision of such question as aforesaid, and

(c) that the same is fit to be tried and decided,
it shall proceed to record and try the issue and state its finding or decision thereon in the same manner as if the issue had been framed by the Court;
and shall, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement; and, upon the judgment so pronounced, a decree shall follow.

Simplified act

If the Court is convinced, after looking into the matter properly, that:

- (a) the agreement was properly signed by all parties involved,
- (b) the parties have a significant interest in resolving the question at hand, and
- (c) the issue is suitable to be examined and decided,

the Court will then record and examine the issue and give its decision on it just as if the issue had been officially set by the Court.

Based on this decision, the Court will announce a judgment according to the terms of the agreement, and a formal order will be issued based on that judgment.

Explanation using Example

Example 1:

Scenario: Two business partners, Raj and Simran, have a dispute over the profit-sharing ratio in their partnership agreement. They decide to resolve the issue through a written agreement rather than going through a lengthy court trial. They draft an agreement stating that an independent auditor will review their accounts and determine the correct profit-sharing ratio.

Application of Rule 7:

Court Inquiry: The court examines the agreement to ensure it was executed in good faith by both Raj and Simran.

Substantial Interest: The court confirms that both parties have a substantial interest in resolving the profit-sharing dispute.

Fit to be Tried: The court deems the issue appropriate for resolution based on the agreement.

Outcome: The court records the issue, reviews the auditor's findings, and pronounces judgment according to the terms of the agreement. A decree is issued based on the judgment, finalizing the profit-sharing ratio as determined by the auditor.

Example 2:

Scenario: A property dispute arises between two brothers, Arjun and Ravi, over the division of their ancestral land. They agree to resolve the matter through mediation and sign an agreement stating that a retired judge will mediate and decide the division of the property.

Application of Rule 7:

Court Inquiry: The court verifies that the mediation agreement was executed in good faith by both Arjun and Ravi.

Substantial Interest: The court acknowledges that both brothers have a significant interest in the fair division of the ancestral property.

Fit to be Tried: The court finds the issue suitable for resolution through the agreed-upon mediation process.

Outcome: The court records the issue, considers the retired judge's mediation decision, and pronounces judgment according to the terms of the agreement. A decree is issued based on the judgment, finalizing the division of the property as mediated by the retired judge.

ORDER XV: DISPOSAL OF THE SUIT AT THE FIRST HEARING

Rule 1: Parties not at issue.

(1) Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.

Simplified act

(1) If, at the first court hearing of a lawsuit, it is clear that both sides agree on all the facts and legal points, the judge can immediately give a decision.

Explanation using Example

Example 1:

Ravi files a suit against Shyam for the recovery of a loan amounting to ₹50,000. At the first hearing, both Ravi and Shyam agree that the loan was given, the amount is correct, and Shyam has not repaid it. Since there is no dispute on any question of law or fact, the court decides to pronounce judgment immediately in favor of Ravi, ordering Shyam to repay the ₹50,000.

Example 2:

Meera files a suit against her neighbor, Anil, claiming that Anil has encroached on her property by building a wall. At the first hearing, both Meera and Anil agree that the wall exists and that it is on Meera's property. Since there is no disagreement on the facts or the law, the court promptly pronounces judgment in favor of Meera, ordering Anil to remove the wall from her property.

Rule 2: One of several defendants not at issue.

(1) Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or of fact, the Court may at once pronounce judgment for or against such defendant and the suit shall proceed only against the other defendants.

(2) Whenever a judgment is pronounced under this rule, decree shall be drawn up in accordance with such judgment and the decree shall bear the date on which the judgment was pronounced.

3.

Simplified act

(1) If there are multiple defendants in a case, and one of them does not have any disagreement with the plaintiff about the facts or the law, the Court can immediately make a decision for or against that defendant. The case will then continue only with the other defendants.

(2) When a decision is made under this rule, a formal order (called a decree) will be written based on that decision. The decree will have the same date as the decision.

3.

Explanation using Example

Example 1:

Scenario: A property dispute case involving three defendants.

Details:

Plaintiff: Mr. Sharma

Defendants: Mr. Verma, Mr. Gupta, and Mr. Singh

Situation: Mr. Sharma files a lawsuit claiming ownership of a piece of land. Mr. Verma and Mr. Gupta contest the claim, arguing that they have a rightful share in the property. However, Mr. Singh does not dispute Mr. Sharma's ownership and agrees with the plaintiff's claim.

Application of Rule 2: Since Mr. Singh is not at issue with Mr. Sharma on any question of law or fact, the court can immediately pronounce judgment in favor of Mr. Sharma against Mr. Singh. The suit will then proceed only against Mr. Verma and Mr. Gupta.

Outcome: The court issues a decree stating that Mr. Sharma is the rightful owner of the land as far as Mr. Singh is concerned. The case continues to address the disputes raised by Mr. Verma and Mr. Gupta.

Example 2:

Scenario: A breach of contract case involving multiple defendants.

Details:

Plaintiff: ABC Pvt. Ltd.

Defendants: Mr. A, Mr. B, and Mr. C

Situation: ABC Pvt. Ltd. sues Mr. A, Mr. B, and Mr. C for breach of a business contract. Mr. A and Mr. B deny the breach and present their defenses. However, Mr. C admits to the breach and does not contest the plaintiff's claims.

Application of Rule 2: Since Mr. C is not at issue with ABC Pvt. Ltd. on any question of law or fact, the court can immediately pronounce judgment against Mr. C. The suit will then proceed only against Mr. A and Mr. B.

Outcome: The court issues a decree against Mr. C, holding him liable for the breach of contract. The case continues to address the defenses and arguments presented by Mr. A and Mr. B.

Rule 3: Parties at issue.

(1) Where the parties are at issue on some question of law or of fact, and issues have been framed by the Court as hereinbefore provided, if the Court is satisfied that no further argument or evidence that the parties can at once adduce is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues, and, if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit:

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present and none of them objects.

(2) Where the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument as the case requires.

Simplified act

(1) If the people involved in a case disagree on some legal or factual question, and the Court has already identified the key issues, the Court can decide on these issues right away if:

The Court believes that no more arguments or evidence are needed from either side.

Deciding these issues immediately won't cause any unfairness.

The Court can then make a decision based on these issues and give a judgment, whether the case was scheduled just to settle the issues or to make a final decision:

However, if the case was scheduled only to settle the issues, everyone involved or their lawyers must be present and no one should object.

(2) If the Court finds that the decision on these issues is not enough to resolve the case, it will delay the case and set a new date for more evidence or arguments to be presented.

Explanation using Example

Example 1:

Scenario: Property Dispute

Ravi and Suresh are in a legal dispute over the ownership of a piece of land. Ravi claims that he inherited the land from his grandfather, while Suresh argues that he purchased the land from Ravi's uncle. The court frames issues to determine the rightful owner of the land.

Application of Rule 3:

The court identifies that the main issue is whether Ravi's grandfather had the legal right to transfer the land to Ravi.

Both parties present their arguments and evidence regarding the inheritance and the sale.

The court finds that the evidence provided by both parties is sufficient to make a decision on the ownership without needing further arguments or evidence.

Since no injustice will result from proceeding with the suit immediately, the court decides to pronounce judgment based on the current findings.

The court rules in favor of Ravi, determining that he is the rightful owner of the land.

Example 2:

Scenario: Breach of Contract

Anita files a lawsuit against a construction company, claiming that they failed to complete the construction of her house within the agreed timeframe. The construction company argues that the delay was due to unforeseen circumstances beyond their control.

Application of Rule 3:

The court frames issues to determine whether the construction company breached the contract and if the delay was justified.

Both parties present their arguments and evidence regarding the contract terms and the reasons for the delay.

The court is satisfied that the evidence and arguments presented are sufficient to decide whether the delay was justified.

Since no further evidence or arguments are needed and no injustice will result from proceeding, the court decides to pronounce judgment based on the current findings.

The court finds that the construction company did breach the contract and orders them to compensate Anita for the delay.

Example 3:

Scenario: Employment Dispute

Priya files a lawsuit against her former employer, alleging wrongful termination. The employer claims that Priya was terminated due to poor performance and misconduct.

Application of Rule 3:

The court frames issues to determine whether Priya's termination was justified.

Both parties present their arguments and evidence regarding Priya's performance and the reasons for her termination.

The court finds that the evidence provided is sufficient to make a decision on the wrongful termination claim.

Since no further arguments or evidence are required and no injustice will result from proceeding, the court decides to pronounce judgment based on the current findings.

The court rules in favor of Priya, determining that her termination was wrongful and orders the employer to compensate her.

Example 4:

Scenario: Loan Repayment Dispute

Rajesh files a lawsuit against his friend, Arjun, claiming that Arjun has not repaid a loan of ₹5 lakhs. Arjun argues that he has already repaid the loan in cash, but has no receipts to prove it.

Application of Rule 3:

The court frames issues to determine whether Arjun has repaid the loan.

Both parties present their arguments and evidence regarding the loan and its repayment.

The court finds that the evidence provided is sufficient to make a decision on the loan repayment issue.

Since no further arguments or evidence are needed and no injustice will result from proceeding, the court decides to pronounce judgment based on the current findings.

The court rules in favor of Rajesh, determining that Arjun has not repaid the loan and orders him to repay the amount with interest.

Example 5:

Scenario: Consumer Complaint

Sunita files a lawsuit against an electronics company, claiming that the refrigerator she purchased is defective and the company refused to repair or replace it. The company argues that the defect was due to improper use by Sunita.

Application of Rule 3:

The court frames issues to determine whether the refrigerator was defective and if the company is liable for repair or replacement.

Both parties present their arguments and evidence regarding the defect and the usage of the refrigerator.

The court finds that the evidence provided is sufficient to make a decision on the defect and liability issue.

Since no further arguments or evidence are needed and no injustice will result from proceeding, the court decides to pronounce judgment based on the current findings.

The court rules in favor of Sunita, determining that the refrigerator was defective and orders the company to repair or replace it.

Rule 4: Failure to produce evidence.

Where the summons has been issued for the final disposal of the suit and either party fails without sufficient cause to produce the evidence on which he relies, the Court may at once pronounce judgment, or may, if it thinks fit, after framing and recording issues, adjourn the suit for the production of such evidence as may be necessary for its decision upon such issues.

Simplified act

If a court has called both parties to present their final arguments and evidence in a case, and one of the parties does not show up or fails to provide their evidence without a good reason, the court has two options:

The court can immediately make a decision based on the available information.

The court can decide to outline the main points of disagreement (called "issues") and postpone the case to give the absent party another chance to present their evidence.

Explanation using Example

Example 1:

Rajesh files a civil suit against his neighbor, Suresh, claiming that Suresh has encroached on his property. The court issues a summons for the final disposal of the suit. On the day of the hearing, Rajesh fails to produce any evidence to support his claim of encroachment and does not provide any valid reason for his failure. The court, seeing that Rajesh has not presented any evidence, decides to pronounce judgment immediately and dismisses the suit in favor of Suresh.

Example 2:

Anita sues a construction company for poor workmanship in building her house. The court issues a summons for the final disposal of the suit. On the hearing day, the construction company fails to produce any evidence to defend their work quality and does not provide any sufficient cause for their failure. The court, after framing and recording the issues, decides to adjourn the suit to give the construction company another chance to produce the necessary evidence. The court sets a new date for the hearing, allowing the construction company to gather and present their evidence.

ORDER XV-A: CASE MANAGEMENT HEARING

Rule 1: First Case Management Hearing.

The Court shall hold the first Case Management Hearing, not later than four weeks from the date of filing of affidavit of admission or denial of documents by all parties to the suit.

Simplified act

The Court must have the first Case Management Hearing within four weeks after all parties involved in the case have submitted their affidavits admitting or denying the documents.

Explanation using Example

Example 1:

Scenario: Rajesh files a civil suit against his neighbor, Suresh, for encroaching on his property. Both parties submit their affidavits of admission or denial of documents related to the case on January 1st.

Application of the Act: According to Rule 1 of Order XV-A of The Code Of Civil Procedure 1908, the court must hold the first Case Management Hearing within four weeks from January 1st. Therefore, the court schedules the first Case Management Hearing for January 29th.

Outcome: During this hearing, the court will discuss the issues at hand, set timelines for the submission of evidence, and outline the steps for the trial process. This helps streamline the case and ensures that both parties are clear on the procedural steps moving forward.

Example 2:

Scenario: Priya files a lawsuit against a construction company for breach of contract. The construction company and Priya both file their affidavits of admission or denial of documents on March 15th.

Application of the Act: In compliance with Rule 1 of Order XV-A of The Code Of Civil Procedure 1908, the court is required to hold the first Case Management Hearing within four weeks from March 15th. Consequently, the court schedules the hearing for April 12th.

Outcome: At this hearing, the court will address preliminary issues, set deadlines for the exchange of evidence, and establish a timeline for the trial. This ensures that the case proceeds efficiently and that both parties are aware of their responsibilities and the court's expectations.

Rule 2: Orders to be passed in a Case Management Hearing.

In a Case Management Hearing, after hearing the parties, and once it finds that there are issues of fact and law which require to be tried, the Court may pass an order--

- (a) framing the issues between the parties in accordance with Order XIV of the Code of Civil Procedure, 1908 (5 of 1908), after examining pleadings, documents and documents produced before it, and on examination conducted by the Court under Rule 2 of Order X, if required;
- (b) listing witnesses to be examined by the parties;
- (c) fixing the date by which affidavit of evidence to be filed by parties;
- (d) fixing the date on which evidence of the witnesses of the parties to be recorded;
- (e) fixing the date by which written arguments are to be filed before the Court by the parties;
- (f) fixing the date on which oral arguments are to be heard by the Court; and
- (g) setting time limits for parties and their advocates to address oral arguments.

Simplified act

In a Case Management Hearing, after listening to both sides and finding that there are facts and legal issues that need to be resolved, the Court can make an order to:

- (a) identify the main points of disagreement between the parties, based on the documents and statements provided, and any additional examination by the Court if needed;
- (b) list the witnesses that each party plans to call;
- (c) set a deadline for when each party must submit their written evidence;
- (d) set a date for when the witnesses will give their testimony;
- (e) set a deadline for when each party must submit their written arguments to the Court;
- (f) set a date for when the Court will hear the oral arguments from both parties; and
- (g) set time limits for how long each party and their lawyers can speak during the oral arguments.

Explanation using Example

Example 1:

Scenario: A property dispute between two brothers, Raj and Ravi, over the ownership of ancestral land.

Case Management Hearing:

Framing Issues: The Court identifies the main issues, such as whether the land was legally transferred to Raj and whether Ravi has any legal claim to the property.

Listing Witnesses: The Court lists witnesses, including family members and local officials, who can testify about the history and ownership of the land.

Affidavit of Evidence: The Court sets a deadline for both Raj and Ravi to submit affidavits containing their evidence, such as property documents and witness statements.

Recording Evidence: The Court schedules a date for recording the testimonies of the witnesses listed by both parties.

Written Arguments: The Court fixes a date by which both parties must submit their written arguments, summarizing their case and evidence.

Oral Arguments: The Court sets a date for hearing oral arguments from both parties, allowing them to present their case in person.

Time Limits: The Court imposes time limits for each party to present their oral arguments to ensure the hearing proceeds efficiently.

Example 2:

Scenario: A breach of contract case where a contractor, Suresh, sues a company, XYZ Ltd., for non-payment for construction work completed.

Case Management Hearing:

Framing Issues: The Court identifies key issues, such as whether the contract was breached and the amount of payment due to Suresh.

Listing Witnesses: The Court lists witnesses, including Suresh's employees and XYZ Ltd.'s representatives, who can provide relevant testimony about the contract and work performed.

Affidavit of Evidence: The Court sets a deadline for both Suresh and XYZ Ltd. to file affidavits containing their evidence, such as the contract, invoices, and correspondence.

Recording Evidence: The Court schedules a date for recording the testimonies of the witnesses listed by both parties.

Written Arguments: The Court fixes a date by which both parties must submit their written arguments, detailing their claims and defenses.

Oral Arguments: The Court sets a date for hearing oral arguments from both parties, allowing them to present their case and respond to each other's arguments.

Time Limits: The Court imposes time limits for each party to present their oral arguments to ensure the hearing is conducted in a timely manner.

Rule 3: Time limit for the completion of a trial.

In fixing dates or setting time limits for the purposes of Rule 2 of this Order, the Court shall ensure that the arguments are closed not later than six months from the date of the first Case Management Hearing.

Simplified act

When setting dates or deadlines according to Rule 2 of this Order, the Court must make sure that all arguments are finished within six months from the first Case Management Hearing.

Explanation using Example

Example 1:

Rajesh filed a civil suit against his neighbor, Suresh, for encroaching on his property. The court scheduled the first Case Management Hearing on January 1, 2023. According to Rule 3 of Order XV-A of The Code Of Civil Procedure 1908, the court must ensure that all arguments are closed by June 30, 2023, which is six months from the date of the first Case Management Hearing. This means that both Rajesh and Suresh, along with their respective lawyers, must present all their arguments and evidence within this six-month period to ensure a timely resolution of the case.

Example 2:

Meera filed a lawsuit against a construction company for not completing her house as per the contract. The first Case Management Hearing was held on March 15, 2023. As per Rule 3 of Order XV-A of The Code Of Civil Procedure 1908, the court is required to ensure that the arguments from both Meera and the construction company are concluded by September 14, 2023. This six-month deadline helps in expediting the trial process and ensures that the case does not drag on indefinitely, providing a quicker resolution for Meera.

Rule 4: Recording of oral evidence on a day-to-day basis.

The Court shall, as far as possible, ensure that the recording of evidence shall be carried on, on a day-to-day basis until the cross-examination of all the witnesses is complete.

Simplified act

The Court should try its best to make sure that the process of recording evidence happens every day without breaks until all the witnesses have been cross-examined.

Explanation using Example

Example 1:

Ravi filed a civil suit against his neighbor, Suresh, for encroaching on his property. The court scheduled the hearing and began recording oral evidence. Ravi's lawyer presented three witnesses to support his claim. According to Rule 4 of Order XV-A of the Code of Civil Procedure 1908, the court ensured that the recording of oral evidence was conducted on consecutive days without unnecessary delays. This allowed the cross-examination of all witnesses to be completed efficiently, preventing the case from dragging on for months.

Example 2:

Meena filed a case against a construction company for not completing her apartment on time. During the trial, the court had to record the testimonies of several witnesses, including Meena, the construction company's representatives, and independent experts. To avoid prolonged litigation and ensure a swift resolution, the court adhered to Rule 4 of Order XV-A of the Code of Civil Procedure 1908. The court scheduled the recording of oral evidence on a day-to-day basis, ensuring that all witnesses were cross-

examined promptly. This helped in speeding up the trial process and reaching a judgment more quickly.

Rule 5: Case Management Hearings during a trial.

The Court may, if necessary, also hold Case Management Hearings anytime during the trial to issue appropriate orders so as to ensure adherence by the parties to the dates fixed under Rule 2 and facilitate speedy disposal of the suit.

Simplified act

The Court can hold meetings called Case Management Hearings at any time during the trial.

These meetings are to give orders to make sure everyone follows the schedule set under Rule 2.

The goal is to help the case move along quickly and be resolved faster.

Explanation using Example

Example 1:

Scenario: A property dispute case between Mr. Sharma and Mr. Verma is ongoing in a civil court. The court had previously set specific dates for the submission of evidence and witness testimonies under Rule 2.

Application of Rule 5: During the trial, Mr. Sharma's lawyer requests an extension for submitting additional evidence, claiming that the evidence is crucial but not yet available. The court decides to hold a Case Management Hearing to address this request.

Outcome: In the Case Management Hearing, the judge listens to both parties and decides to grant a short extension for Mr. Sharma to submit the additional evidence. The judge also issues an order to ensure that Mr. Verma's lawyer receives the evidence promptly to avoid any further delays. This helps in adhering to the trial schedule and facilitates the speedy disposal of the suit.

Example 2:

Scenario: A breach of contract case is being heard in a civil court between a construction company and a homeowner. The court had set deadlines for both parties to submit their respective documents and evidence.

Application of Rule 5: Midway through the trial, the homeowner's lawyer informs the court that the construction company has not provided certain critical documents that were requested. The court decides to hold a Case Management Hearing to address this issue.

Outcome: During the Case Management Hearing, the judge orders the construction company to produce the requested documents within a week. The judge also sets a new date for the next hearing to ensure that the trial proceeds without unnecessary delays. This intervention helps in maintaining the trial schedule and ensures a timely resolution of the case.

Rule 6: Powers of the Court in a Case Management Hearing.

Case Management Hearing

(1) In any Case Management Hearing held under this Order, the Court shall have the power to -

- (a) prior to the framing of issues, hear and decide any pending application filed by the parties under Order XIII-A;
- (b) direct parties to file compilations of documents or pleadings relevant and necessary for framing issues;
- (c) extend or shorten the time for compliance with any practice, direction or Court order if it finds sufficient reason to do so;
- (d) adjourn or bring forward a hearing if it finds sufficient reason to do so;
- (e) direct a party to attend the Court for the purposes of examination under Rule 2 of Order X;
- (f) consolidate proceedings;
- (g) strike off the name of any witness or evidence that it deems irrelevant to the issues framed;
- (h) direct a separate trial of any issue;
- (i) decide the order in which issues are to be tried;
- (j) exclude an issue from consideration;
- (k) dismiss or give judgment on a claim after a decision on a preliminary issue;

- (l) direct that evidence be recorded by a Commission where necessary in accordance with Order XXVI;
 - (m) reject any affidavit of evidence filed by the parties for containing irrelevant, inadmissible or argumentative material;
 - (n) strike off any parts of the affidavit of evidence filed by the parties containing irrelevant, inadmissible or argumentative material;
 - (o) delegate the recording of evidence to such authority appointed by the Court for this purpose;
 - (p) pass any order relating to the monitoring of recording the evidence by a commission or any other authority;
 - (q) order any party to file and exchange a costs budget;
 - (r) issue directions or pass any order for the purpose of managing the case and furthering the overriding objective of ensuring the efficient disposal of the suit.
- (2) When the Court passes an order in exercise of its powers under this Order, it may -
- (a) make it subject to conditions, including a condition to pay a sum of money into Court; and
 - (b) specify the consequence of failure to comply with the order or a condition.
- (3) While fixing the date for a Case Management Hearing, the Court may direct that the parties also be present for such Case Management Hearing, if it is of the view that there is a possibility of settlement between the parties.

Simplified act

Case Management Hearing

- (1) During a Case Management Hearing, the Court can do the following:
- (a) Before deciding the main issues, the Court can hear and decide any pending applications from the parties.
 - (b) Ask the parties to submit important documents or pleadings needed to decide the issues.
 - (c) Extend or shorten deadlines if there is a good reason.

- (d) Reschedule a hearing if there is a good reason.
 - (e) Order a party to come to Court for questioning.
 - (f) Combine different legal proceedings into one.
 - (g) Remove any witness or evidence that is not relevant.
 - (h) Order a separate trial for any specific issue.
 - (i) Decide the order in which issues will be tried.
 - (j) Exclude any issue from consideration.
 - (k) Dismiss or give a judgment on a claim after deciding a preliminary issue.
 - (l) Order that evidence be recorded by a Commission if necessary.
 - (m) Reject any affidavit of evidence that contains irrelevant or argumentative material.
 - (n) Remove parts of an affidavit that contain irrelevant or argumentative material.
 - (o) Delegate the recording of evidence to an appointed authority.
 - (p) Pass orders related to monitoring the recording of evidence by a commission or other authority.
 - (q) Order any party to file and share a budget for costs.
 - (r) Issue directions or orders to manage the case efficiently and ensure a quick resolution.
- (2) When the Court makes an order under this section, it can:
- (a) Make the order subject to conditions, such as requiring a party to pay money into Court.
 - (b) Specify what will happen if the order or condition is not followed.
- (3) When setting a date for a Case Management Hearing, the Court can also require the parties to be present if it believes there is a chance they might settle the case.

Explanation using Example

Example 1:

Scenario: A property dispute between two brothers, Raj and Ravi, over their ancestral land.

Application of Rule 6:

Pending Application (6(a)): Before framing the issues, the court hears and decides on Raj's application for summary judgment under Order XIII-A, claiming that Ravi has no valid defense.

Document Compilation (6(b)): The court directs both Raj and Ravi to file all relevant documents and pleadings necessary for framing the issues.

Time Extension (6(c)): Raj requests an extension to submit additional documents. The court finds sufficient reason and grants an extension.

Adjournment (6(d)): Ravi's lawyer falls ill, and the court adjourns the hearing to a later date.

Examination (6(e)): The court directs Ravi to attend for examination under Rule 2 of Order X to clarify certain facts.

Consolidation (6(f)): The court consolidates this case with another related case involving the same property dispute.

Striking Off Witness (6(g)): The court strikes off a witness proposed by Raj, deeming the witness irrelevant to the issues framed.

Separate Trial (6(h)): The court orders a separate trial for the issue of property ownership.

Order of Issues (6(i)): The court decides that the issue of property ownership will be tried first.

Exclusion of Issue (6(j)): The court excludes the issue of property valuation from consideration at this stage.

Preliminary Judgment (6(k)): After deciding on the preliminary issue of ownership, the court dismisses Ravi's claim.

Evidence by Commission (6(l)): The court directs that evidence be recorded by a commission due to the complexity of the case.

Rejection of Affidavit (6(m)): The court rejects an affidavit filed by Raj for containing argumentative material.

Striking Off Affidavit Parts (6(n)): The court strikes off parts of Ravi's affidavit that are irrelevant.

Delegation of Evidence Recording (6(o)): The court delegates the recording of evidence to a court-appointed authority.

Monitoring Order (6(p)): The court passes an order to monitor the recording of evidence by the commission.

Costs Budget (6(q)): The court orders both parties to file and exchange a costs budget.

Case Management Order (6(r)): The court issues directions to ensure the efficient disposal of the suit.

Conditions and Consequences (6(2)):

The court orders Raj to deposit a sum of money into the court as a condition for granting the extension.

The court specifies that failure to comply with the order will result in the dismissal of Raj's application.

Settlement Possibility (6(3)):

While fixing the date for the Case Management Hearing, the court directs both Raj and Ravi to be present, considering the possibility of an amicable settlement.

Example 2:

Scenario: A contractual dispute between a contractor, Meera, and a company, XYZ Ltd., over delayed construction work.

Application of Rule 6:

Pending Application (6(a)): Before framing the issues, the court hears and decides on XYZ Ltd.'s application for summary judgment under Order XIII-A, claiming Meera has no valid defense.

Document Compilation (6(b)): The court directs both Meera and XYZ Ltd. to file all relevant documents and pleadings necessary for framing the issues.

Time Extension (6(c)): Meera requests an extension to submit additional documents. The court finds sufficient reason and grants an extension.

Adjournment (6(d)): XYZ Ltd.'s lawyer is unavailable, and the court adjourns the hearing to a later date.

Examination (6(e)): The court directs Meera to attend for examination under Rule 2 of Order X to clarify certain facts.

Consolidation (6(f)): The court consolidates this case with another related case involving the same contractual dispute.

Striking Off Witness (6(g)): The court strikes off a witness proposed by Meera, deeming the witness irrelevant to the issues framed.

Separate Trial (6(h)): The court orders a separate trial for the issue of contract breach.

Order of Issues (6(i)): The court decides that the issue of contract breach will be tried first.

Exclusion of Issue (6(j)): The court excludes the issue of damages from consideration at this stage.

Preliminary Judgment (6(k)): After deciding on the preliminary issue of breach, the court dismisses XYZ Ltd.'s claim.

Evidence by Commission (6(l)): The court directs that evidence be recorded by a commission due to the complexity of the case.

Rejection of Affidavit (6(m)): The court rejects an affidavit filed by Meera for containing argumentative material.

Striking Off Affidavit Parts (6(n)): The court strikes off parts of XYZ Ltd.'s affidavit that are irrelevant.

Delegation of Evidence Recording (6(o)): The court delegates the recording of evidence to a court-appointed authority.

Monitoring Order (6(p)): The court passes an order to monitor the recording of evidence by the commission.

Costs Budget (6(q)): The court orders both parties to file and exchange a costs budget.

Case Management Order (6(r)): The court issues directions to ensure the efficient disposal of the suit.

Conditions and Consequences (6(2)):

The court orders Meera to deposit a sum of money into the court as a condition for granting the extension.

The court specifies that failure to comply with the order will result in the dismissal of Meera's application.

Settlement Possibility (6(3)):

While fixing the date for the Case Management Hearing, the court directs both Meera and XYZ Ltd. to be present, considering the possibility of an amicable settlement.

Rule 7: Adjournment of Case Management Hearing.

(1) The Court shall not adjourn the Case Management Hearing for the sole reason that the advocate appearing on behalf of a party is not present:

Provided that an adjournment of the hearing is sought in advance by moving an application, the Court may adjourn the hearing to another date upon the payment of such costs as the Court deems fit, by the party moving such application.

(2) Notwithstanding anything contained in this Rule, if the Court is satisfied that there is a justified reason for the absence of the advocate, it may adjourn the hearing to another date upon such terms and conditions it deems fit.

Simplified act

(1) The Court will not delay the Case Management Hearing just because the lawyer for one of the parties is not there:

However, if a request to delay the hearing is made ahead of time through an application, the Court may agree to delay it to another date. The party making the request might have to pay some costs as decided by the Court.

(2) Even with the above rule, if the Court believes there is a good reason for the lawyer's absence, it can decide to delay the hearing to another date with any conditions it thinks are appropriate.

Explanation using Example

Example 1:

Mr. Sharma has a civil dispute with his neighbor, Mr. Verma, regarding the boundary of their properties. The court has scheduled a Case Management Hearing to streamline the case and set timelines for various stages of the trial. On the day of the hearing, Mr. Sharma's advocate is not present. According to Rule 7 of Order XV-A of The Code Of Civil Procedure 1908, the court will not adjourn the hearing solely because Mr. Sharma's advocate is absent. However, if Mr. Sharma had filed an application in advance requesting an adjournment and agreed to pay the costs determined by the court, the court might have considered rescheduling the hearing.

Example 2:

Ms. Gupta is involved in a civil lawsuit against a construction company for breach of contract. A Case Management Hearing is scheduled, but on the day of the hearing, Ms. Gupta's advocate is unable to attend due to a medical emergency. Ms. Gupta's advocate had not filed an application in advance for adjournment. Despite this, the court, upon being satisfied with the reason for the advocate's absence, decides to adjourn the hearing to another date. The court imposes certain terms and conditions, such as the payment of costs or submission of medical proof, before granting the adjournment.

Rule 8: Consequences of non-compliance with orders.

Where any party fails to comply with the order of the Court passed in a Case Management Hearing, the Court shall have the power to -

- (a) condone such non-compliance by payment of costs to the Court;
- (b) foreclose the non-compliant party's right to file affidavits, conduct cross-examination of witnesses, file written submissions, address oral arguments or make further arguments in the trial, as the case may be; or
- (c) dismiss the plaint or allow the suit where such non-compliance is wilful, repeated and the imposition of costs is not adequate to ensure compliance.

Simplified act

If any party does not follow the Court's order given during a Case Management Hearing, the Court can:

- (a) excuse the non-compliance if the party pays a fee to the Court;

(b) prevent the non-compliant party from filing affidavits, questioning witnesses, submitting written statements, speaking in court, or making further arguments in the trial; or

(c) dismiss the case or decide in favor of the other party if the non-compliance is intentional, happens repeatedly, and paying a fee is not enough to make the party follow the rules.

Explanation using Example

Example 1:

Scenario: Rajesh files a civil suit against his neighbor, Suresh, for encroaching on his property. The court schedules a Case Management Hearing and orders both parties to submit their evidence and witness lists by a specific date.

Non-compliance: Suresh fails to submit his evidence and witness list by the deadline.

Court's Action:

The court may condone Suresh's non-compliance by ordering him to pay a fine (costs) to the court.

If Suresh repeatedly fails to comply, the court may foreclose his right to file affidavits, conduct cross-examination of Rajesh's witnesses, or make further arguments in the trial.

If Suresh's non-compliance is wilful and repeated, and the fine is not sufficient to ensure compliance, the court may dismiss Suresh's defense and allow Rajesh's suit.

Example 2:

Scenario: Priya files a lawsuit against a construction company for breach of contract. During the Case Management Hearing, the court orders the construction company to provide detailed project reports and financial statements within two weeks.

Non-compliance: The construction company does not provide the required documents within the stipulated time.

Court's Action:

The court may condone the company's non-compliance by imposing a monetary penalty (costs) on the company.

If the company continues to ignore the court's orders, the court may prevent the company from submitting any further evidence, cross-examining Priya's witnesses, or presenting oral arguments.

If the company's non-compliance is deliberate and persistent, and fines are not effective, the court may dismiss the company's defense and rule in favor of Priya.

Example 3:

Scenario: Anil sues a car dealership for selling him a defective vehicle. The court orders both parties to exchange all relevant documents and schedule depositions of key witnesses within a month.

Non-compliance: The car dealership fails to schedule the depositions and does not provide the requested documents.

Court's Action:

The court may allow the dealership to rectify the non-compliance by paying a fine (costs) to the court.

If the dealership continues to ignore the court's orders, the court may restrict the dealership from filing any further affidavits, conducting cross-examinations, or making additional arguments.

If the dealership's non-compliance is intentional and ongoing, and fines are insufficient, the court may dismiss the dealership's defense and grant judgment in favor of Anil.

ORDER XVI: SUMMONING AND ATTENDANCE OF WITNESSES

Rule 1: List of witnesses and summons to witnesses.

(1) On or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in Court.

(2) A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned.

(3) The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.

(4) Subject to the provisions of sub-rule (2), summonses referred to in this rule may be obtained by the parties on an application to the Court or to such officer as may be appointed by the Court in this behalf within five days of presenting the list of witnesses under sub-rule (1).

Simplified act

(1) By a date set by the Court, and no later than fifteen days after the issues are decided, the parties must give the Court a list of witnesses they plan to call to testify or provide documents. They must also get summonses (official orders) for these witnesses to come to Court.

(2) If a party wants to get a summons for someone to come to Court, they must file an application with the Court explaining why they need that person to testify.

(3) The Court can allow a party to call a witness who is not on the original list if the party can give a good reason for not including that witness earlier. This can be done either by summoning through the Court or by other means.

(4) Following the rules in point (2), parties can get summonses by applying to the Court or an appointed officer within five days after giving the list of witnesses mentioned in point (1).

Explanation using Example

Example 1:

Scenario: Rajesh is involved in a civil lawsuit regarding a property dispute with his neighbor, Suresh. The court has set a date for the hearing, and both parties need to present their witnesses.

Application of Rule 1:

List of Witnesses: Rajesh and Suresh must each prepare a list of witnesses they intend to call to testify or produce documents. Rajesh lists his brother, who witnessed the property boundary agreement, and a local surveyor who has relevant documents.

Submission Deadline: The court has appointed a date for the submission of the witness list, which is not later than fifteen days after the issues in the case are settled. Rajesh and Suresh must submit their lists by this deadline.

Summons Application: Rajesh files an application in court stating that he needs a summons for his brother and the surveyor to attend the court hearing. He specifies that his brother will testify about the boundary agreement, and the surveyor will produce the relevant documents.

Additional Witnesses: Rajesh realizes he forgot to include a crucial witness, his neighbor who saw the original boundary marking. He applies to the court, explaining the omission and showing sufficient cause. The court records the reasons and permits Rajesh to call this additional witness.

Obtaining Summonses: Rajesh obtains the summonses for his witnesses within five days of presenting his list to the court, ensuring they will attend the hearing.

Example 2:

Scenario: Meera is suing a construction company for damages caused by faulty construction in her apartment. The court has scheduled a hearing, and Meera needs to call witnesses to support her case.

Application of Rule 1:

List of Witnesses: Meera prepares a list of witnesses, including her building's maintenance manager and an independent structural engineer who inspected the apartment.

Submission Deadline: The court has set a deadline for the submission of the witness list, which is within fifteen days after the issues are settled. Meera submits her list on time.

Summons Application: Meera files an application in court to obtain summonses for the maintenance manager and the structural engineer. She states that the maintenance manager will testify about the history of

complaints, and the engineer will provide expert testimony on the construction faults.

Additional Witnesses: Meera later discovers that a former employee of the construction company has crucial information about the use of substandard materials. She applies to the court, explaining why this witness was not included initially. The court, after recording the reasons, allows Meera to call this additional witness.

Obtaining Summonses: Meera obtains the summonses for her witnesses within five days of presenting her list to the court, ensuring their attendance at the hearing.

Rule 1A: Production of witnesses without summons.

A Subject to the provisions of sub-rule (3) of rule 1, any party to the suit may, without applying for summons under rule 1, bring any witness to give evidence or to produce documents.

Simplified act

A As long as the conditions in sub-rule (3) of rule 1 are met, any party involved in the lawsuit can bring a witness to testify or present documents without needing to request a summons under rule 1.

Explanation using Example

Example 1:

Ravi has filed a civil suit against his neighbor, Suresh, for encroaching on his property. Ravi believes that his friend, Amit, who witnessed the encroachment, can provide crucial evidence. Instead of applying for a formal summons to call Amit to court, Ravi decides to bring Amit directly to the court on the day of the hearing to testify and present photographs he took of the encroachment. Under Rule 1A of the Code of Civil Procedure 1908, Ravi is allowed to do this without needing to apply for a summons.

Example 2:

Meera is involved in a civil case regarding a breach of contract with a supplier. She knows that her accountant, Priya, has important documents that can prove the breach. Meera decides to bring Priya to the court hearing along with the relevant financial records. According to Rule 1A of the Code of Civil Procedure 1908, Meera can bring Priya to court to give evidence and produce

the documents without having to go through the process of applying for a summons.

Rule 2: Expenses of witness to be paid into Court on applying for summons.

(1) The party applying for a summons shall, before the summons is granted and within a period to be fixed which shall not be later than seven days from the date of making applications under sub-rule (4) of rule 1 pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance.

(2) Experts. - In determining the amount payable under this rule, the Court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

(3) Scale of expenses. - Where the Court is subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to any rules made in that behalf.

(4) Expenses to be directly paid to witnesses. - Where the summons is served directly by the party on a witness, the expenses referred to in sub-rule (1) shall be paid to the witness by the party or his agent.

Simplified act

(1) If you want the court to issue a summons (a legal order to appear in court), you must pay the court enough money to cover the travel and other expenses of the person being summoned. This payment must be made within a time set by the court, but no later than seven days from the date you apply for the summons. This money covers the person's travel to and from the court and one day's attendance.

(2) Experts. - If the person being summoned is an expert (someone with special knowledge or skills), the court can decide to pay them a reasonable amount for their time spent giving evidence and doing any expert work needed for the case.

(3) Scale of expenses. - If the court is under the authority of a High Court, the expenses will be set according to any rules made by the High Court.

(4) Expenses to be directly paid to witnesses. - If you serve the summons directly to the witness yourself, you or your agent must pay the witness the expenses mentioned in point (1).

Explanation using Example

Example 1:

Scenario: Ramesh is involved in a civil lawsuit regarding a property dispute in a court in Mumbai. He believes that his neighbor, Suresh, who witnessed the original property agreement, can provide crucial testimony to support his case.

Application of Rule 2:

Applying for Summons: Ramesh applies to the court for a summons to be issued to Suresh.

Payment of Expenses: Before the court grants the summons, Ramesh must pay into the court a sum of money to cover Suresh's travel expenses from his home to the court and back, as well as one day's attendance fee.

Court's Determination: The court calculates the amount based on the distance Suresh needs to travel and the standard attendance fee.

Issuance of Summons: Once Ramesh deposits the required amount, the court issues the summons to Suresh.

Example 2:

Scenario: Priya is involved in a civil case concerning a medical malpractice claim in a court in Delhi. She wants to summon Dr. Mehta, a renowned medical expert, to provide expert testimony on the standard of care in her case.

Application of Rule 2:

Applying for Summons: Priya applies to the court for a summons to be issued to Dr. Mehta.

Payment of Expenses: Before the court grants the summons, Priya must pay into the court a sum of money to cover Dr. Mehta's travel expenses and one day's attendance fee.

Expert Remuneration: Since Dr. Mehta is an expert, the court also allows reasonable remuneration for the time he will spend giving evidence and any preparatory work required.

Court's Determination: The court calculates the total amount, including travel expenses, attendance fee, and expert remuneration.

Issuance of Summons: Once Priya deposits the required amount, the court issues the summons to Dr. Mehta.

Example 3:

Scenario: Anil is involved in a civil case in a subordinate court in Chennai. He needs to summon a witness, Ravi, who lives in a different city.

Application of Rule 2:

Applying for Summons: Anil applies to the court for a summons to be issued to Ravi.

Payment of Expenses: Before the court grants the summons, Anil must pay into the court a sum of money to cover Ravi's travel expenses and one day's attendance fee.

Scale of Expenses: Since the court is subordinate to the Madras High Court, the court considers the rules made by the High Court regarding the scale of expenses.

Court's Determination: The court calculates the amount based on the High Court's rules.

Issuance of Summons: Once Anil deposits the required amount, the court issues the summons to Ravi.

Example 4:

Scenario: Sunita is involved in a civil case in a court in Bangalore. She needs to summon a witness, Neha, who lives nearby.

Application of Rule 2:

Applying for Summons: Sunita applies to the court for a summons to be issued to Neha.

Direct Payment to Witness: Sunita opts to serve the summons directly to Neha.

Payment of Expenses: Sunita pays Neha directly for her travel expenses and one day's attendance fee.

Issuance of Summons: Once Neha receives the payment, she agrees to attend the court as a witness.

Rule 3: Tender of expenses to witness.

The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

Simplified act

The money paid into the Court should be given to the person who is being summoned when the summons is delivered, if it can be handed to them directly.

Explanation using Example

Example 1:

Ravi is a key witness in a civil case involving a property dispute in Mumbai. The court issues a summons for Ravi to appear and testify. According to Rule 3 of Order XVI of The Code Of Civil Procedure 1908, the court clerk visits Ravi's residence to serve the summons. Along with the summons, the clerk also hands over a sum of money to cover Ravi's travel expenses and any other costs he might incur for attending the court. This ensures that Ravi is not financially burdened by his obligation to appear as a witness.

Example 2:

Meena is a school teacher in Delhi who witnessed a car accident. She is summoned to testify in a civil lawsuit regarding the accident. When the court official serves the summons to Meena at her school, he also provides her with a cheque to cover her expenses for traveling to the court and any loss of income for the day she will be attending the hearing. This payment is made at the time of serving the summons to ensure Meena can afford to attend the court without any financial strain.

Rule 4: Procedure where insufficient sum paid in.

(1) Where it appears to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses or reasonable remuneration, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and, in case of default in payment, may order such sum to be levied by attachment and sale of the movable property of the party obtaining the summons, or the

Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

Expenses of witnesses detained more than one day

Where it is necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the movable property of such party; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

Simplified act

(1) If the Court or an appointed officer finds that the money paid into Court isn't enough to cover expenses or reasonable payment, the Court can ask for more money to be paid to the person who was summoned. If this extra payment isn't made, the Court can order the money to be taken by seizing and selling the movable property of the person who requested the summons. Alternatively, the Court can let the summoned person go without making them testify, or it can do both—seize the property and let the person go.

Expenses of witnesses detained more than one day

If the summoned person needs to stay for more than one day, the Court can order the person who requested the summons to pay enough money into Court to cover the extra expenses. If this payment isn't made, the Court can order the money to be taken by seizing and selling the movable property of the person who requested the summons. Alternatively, the Court can let the summoned person go without making them testify, or it can do both—seize the property and let the person go.

Explanation using Example

Example 1:

Ravi is involved in a civil lawsuit and needs to summon a key witness, Suresh, to testify in court. Ravi deposits a sum of ₹2,000 into the court to cover Suresh's travel and accommodation expenses. However, upon review, the court finds that the amount is insufficient to cover Suresh's expenses, which total ₹3,500. The court directs Ravi to pay the additional ₹1,500. Ravi fails to make

this additional payment. Consequently, the court orders the attachment and sale of Ravi's movable property to recover the ₹1,500. Alternatively, the court may discharge Suresh from the obligation to testify without requiring his evidence.

Example 2:

Priya is a plaintiff in a civil case and has summoned a witness, Anjali, to testify. Priya deposits ₹1,000 for Anjali's expenses. The court later determines that Anjali needs to be detained for three days to complete her testimony, and the total expenses for her extended stay amount to ₹4,000. The court orders Priya to deposit the additional ₹3,000. Priya fails to deposit the additional amount. The court then orders the attachment and sale of Priya's movable property to recover the ₹3,000. Alternatively, the court may discharge Anjali from testifying without requiring her evidence.

Rule 5: Time, place and purpose of attendance to be specified in summons.

Every summons for the attendance of a person to give evidence or to produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document, which the person summoned is called on to produce, shall be described in the summons with reasonable accuracy.

Simplified act

Every time someone is asked to come to court to give evidence or bring a document, the summons must clearly state:

The time and place they need to be there.

Whether they need to come to give evidence, bring a document, or both.

If the person needs to bring a specific document, the summons must describe that document clearly and accurately.

Explanation using Example

Example 1:

Rajesh receives a summons from the District Court of Mumbai. The summons specifies that he must attend the court on 15th November 2023 at 10:00 AM.

The summons clearly states that Rajesh's attendance is required for the purpose of giving evidence in a civil case involving a property dispute. Additionally, the summons mentions that Rajesh needs to bring the original sale deed of his property located at Andheri, Mumbai, which he signed on 1st January 2010.

Example 2:

Priya is summoned by the Family Court in Chennai. The summons indicates that she is required to be present at the court on 20th December 2023 at 11:30 AM. The purpose of her attendance is to produce a document, specifically her marriage certificate dated 5th June 2015, in a case concerning the dissolution of marriage. The summons also mentions that Priya may be required to give evidence regarding the circumstances of her marriage.

Rule 6: Summons to produce document.

Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

7.

Simplified act

Anyone can be asked to bring a document without needing to testify in person. If someone is asked just to bring a document, they can send the document without having to show up themselves.

7.

Explanation using Example

Example 1:

Ravi is a bank manager at XYZ Bank. During a civil lawsuit involving a financial dispute, the court needs Ravi to produce certain bank statements related to the case. The court issues a summons to Ravi under Rule 6 of the Code of Civil Procedure, 1908, asking him to produce the specified bank statements. Ravi does not need to appear in court personally; he can comply with the summons by sending the required bank statements through a representative or by courier.

Example 2:

Meera is the custodian of records at a local hospital. In a medical malpractice lawsuit, the court requires the patient's medical records to be produced. The court issues a summons to Meera under Rule 6 of the Code of Civil Procedure, 1908, to produce the medical records. Meera can comply with the summons by arranging for the medical records to be sent to the court without having to appear in person.

Rule 7: Power to require persons present in Court to give evidence or produce document.

Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his possession or power.

7A.

Simplified act

Anyone who is in the courtroom can be asked by the judge to provide testimony or to show any document they have with them at that moment.

7A.

Explanation using Example

Example 1:

During a civil trial in a Delhi District Court, a witness named Rajesh is present in the courtroom to support his friend who is a party to the case. The judge realizes that Rajesh might have crucial information regarding the case. The judge exercises the power under Rule 7 of Order XVI of the Code of Civil Procedure, 1908, and asks Rajesh to come forward and give his testimony. Rajesh, being present in the court, is required to provide evidence about what he knows related to the case.

Example 2:

In a property dispute case in a Mumbai Civil Court, a person named Priya is attending the hearing as an observer. During the proceedings, it comes to light that Priya has a document that could potentially resolve the dispute. The judge, under Rule 7 of Order XVI of the Code of Civil Procedure, 1908,

instructs Priya to produce the document immediately. Priya, who has the document in her possession, is obliged to hand it over to the court for examination.

Rule 7A: Summons given to the party for service.

(1) The Court may, on the application of any party for the issue of a summons for the attendance of any person, permit such party to effect service of such summons on such person and shall, in such a case, deliver the summons to such party for service.

(2) The service of such summons, shall be effected by or on behalf of such party by delivering or tendering to the witness personally a copy thereof signed by the Judge or such officer of the Court as he may appoint in this behalf and sealed with the seal of the Court.

(3) The provisions of rules 16 and 18 of Order V shall apply to a summons personally served under this rule as if the person effecting service were a serving officer.

(4) If such summons, when tendered, is refused or if the person served refuses to sign an acknowledgement of service or for any reason such summons cannot be served personally, the Court shall, on the application of the party, re-issue such summons to be served by the Court in the same manner as a summons to a defendant.

(5) Where a summons is served by a party under this rule, the party shall not be required to pay the fees otherwise chargeable for the service of summons.

Simplified act

(1) If someone involved in a court case wants to call a person to court, they can ask the court for permission to deliver the court order (summons) themselves. If the court agrees, it will give the summons to that person to deliver.

(2) The person delivering the summons must give it directly to the witness. The summons must be signed by the judge or an authorized court officer and have the court's seal on it.

(3) The same rules that apply to court officers delivering summonses also apply to anyone personally delivering a summons under this rule.

(4) If the witness refuses to accept the summons or sign a receipt, or if the summons can't be delivered for any reason, the court will issue a new summons and handle the delivery itself, just like it would for a defendant.

(5) If a party delivers the summons themselves, they don't have to pay the usual fees for having the court deliver it.

Explanation using Example

Example 1:

Scenario: Ramesh is involved in a civil lawsuit regarding a property dispute. He believes that his neighbor, Suresh, has crucial information that can support his case. Ramesh wants Suresh to testify in court.

Application:

Ramesh applies to the court for a summons to be issued for Suresh's attendance.

The court permits Ramesh to serve the summons himself and provides him with the summons document.

Ramesh personally delivers the summons to Suresh, ensuring it is signed by the Judge and sealed with the court's seal.

Suresh accepts the summons and agrees to appear in court on the specified date.

Outcome: Suresh attends the court hearing and provides his testimony, which helps Ramesh in his property dispute case.

Example 2:

Scenario: Priya is suing a company for breach of contract. She needs her former colleague, Anil, to testify about the company's internal communications that are relevant to her case.

Application:

Priya applies to the court for a summons to be issued for Anil's attendance.

The court allows Priya to serve the summons and hands over the document to her.

Priya attempts to deliver the summons to Anil, but Anil refuses to accept it and does not sign an acknowledgment of service.

Priya informs the court about Anil's refusal.

The court re-issues the summons to be served by the court's serving officer, following the same procedure as serving a summons to a defendant.

Outcome: The court's serving officer successfully delivers the summons to Anil, who then appears in court to testify, providing crucial evidence for Priya's case.

Example 3:

Scenario: Sunita is involved in a civil case regarding a financial dispute with her business partner. She needs her accountant, Rajesh, to testify about the financial records.

Application:

Sunita applies to the court for a summons to be issued for Rajesh's attendance.

The court permits Sunita to serve the summons herself and provides her with the document.

Sunita delivers the summons to Rajesh, but Rajesh is out of town and cannot be reached personally.

Sunita informs the court about the inability to serve the summons personally.

The court re-issues the summons to be served by the court's serving officer.

Outcome: The court's serving officer eventually serves the summons to Rajesh, who then appears in court to provide his testimony, aiding Sunita in her financial dispute case.

Example 4:

Scenario: Arjun is involved in a civil case and needs his friend, Ravi, to testify about an incident they both witnessed.

Application:

Arjun applies to the court for a summons to be issued for Ravi's attendance.

The court allows Arjun to serve the summons and provides him with the document.

Arjun delivers the summons to Ravi, who accepts it but refuses to sign an acknowledgment of service.

Arjun informs the court about Ravi's refusal to sign.

The court re-issues the summons to be served by the court's serving officer.

Outcome: The court's serving officer serves the summons to Ravi, who then appears in court to testify, providing important evidence for Arjun's case.

Rule 8: Summons how served.

Every summons under this Order, not being a summons delivered to a party for service under rule 7A, shall be served as nearly as may be in the same manner as a summons to a defendant, and the rules in Order V as to proof of service shall apply in the case of all summonses served under this rule.

Simplified act

Any summons given under this Order, except for a summons given to a party for service under rule 7A, should be served in almost the same way as a summons to a defendant.

The rules in Order V about proving that the summons was served will also apply to all summonses served under this rule.

Explanation using Example

Example 1:

Scenario: Ramesh is a witness in a civil case regarding a property dispute between two parties, A and B. The court needs Ramesh to testify about the events he witnessed.

Application of Rule 8: The court issues a summons to Ramesh to appear and testify. Since this summons is not delivered to a party for service under rule 7A, it must be served in the same manner as a summons to a defendant. This means the court will follow the procedures outlined in Order V of the Code of Civil Procedure, 1908, which includes delivering the summons to Ramesh personally, or if he is not found, to an adult member of his family residing with

him. The court will also require proof of service, such as an affidavit from the serving officer or an acknowledgment from Ramesh.

Example 2:

Scenario: Sita is a key witness in a civil lawsuit involving a breach of contract between two companies, X and Y. The court needs her to provide crucial evidence.

Application of Rule 8: The court issues a summons to Sita to attend the hearing and provide her testimony. Since this is not a summons delivered to a party for service under rule 7A, it must be served in the same manner as a summons to a defendant. The serving officer goes to Sita's residence to deliver the summons. If Sita is not at home, the officer hands the summons to her husband, who is an adult member of her family. The officer then submits an affidavit to the court as proof of service, confirming that the summons was delivered to Sita's husband at her residence.

Rule 9: Time for serving summons.

Service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

Simplified act

The notice must be given well in advance before the date mentioned in the summons.

This advance notice should give the person enough time to get ready and travel to the place where they need to be.

Explanation using Example

Example 1:

Ravi is a key witness in a civil case regarding a property dispute in Mumbai. The court has scheduled the hearing for the 15th of October. According to Rule 9 of the Code of Civil Procedure 1908, the court must ensure that Ravi receives the summons well in advance. Suppose the court sends the summons on the 1st of October, giving Ravi two weeks to prepare and make travel arrangements

from his hometown in Pune to Mumbai. This time frame is considered reasonable and allows Ravi to attend the hearing without undue hardship.

Example 2:

Meera is summoned as a witness in a breach of contract case in Delhi. The court hearing is set for the 20th of November. To comply with Rule 9, the court sends the summons on the 5th of November. This gives Meera 15 days to prepare her testimony and arrange her travel from her residence in Jaipur to Delhi. The advance notice ensures that Meera has sufficient time to gather any necessary documents and make travel plans, thereby fulfilling the requirement of reasonable time for preparation and travel.

Rule 10: Procedure where witness fails to comply with summons.

Summons and Attendance

(1) Where a person has been issued either to attend to give evidence or to produce a document, fails to attend or to produce the document in compliance with such summons, the Court:

(a) shall, if the certificate of the serving officer has not been verified by the affidavit, or if service of the summons has effected by a party or his agent, or

(b) may, if the certificate of the serving officer has been so verified, examine on oath the serving officer or the party or his agent, as the case may be, who has effected service, or cause him to be so examined by any Court, touching the service or non-service of the summons.

(2) Where the Court sees reason to believe that such evidence or production is material, and that such person has, without lawful excuse, failed to attend or to produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

(3) In lieu of or at the time of issuing such proclamation, or at any time afterwards, the Court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under rule 12:

Provided that no Court of Small Causes shall make an order for the attachment of immovable property.

Simplified act

Summons and Attendance

(1) If someone is told by the court to come and give evidence or bring a document and they don't show up or bring the document, the Court:

(a) must, if the officer who delivered the summons hasn't confirmed it with an affidavit, or if the summons was delivered by a party involved or their agent, or

(b) can, if the officer who delivered the summons has confirmed it with an affidavit, question the officer or the party involved or their agent under oath about whether the summons was properly delivered or not.

(2) If the Court believes that the evidence or document is important and the person has no good reason for not showing up or bringing the document, or if the person has purposely avoided the summons, the Court can issue a public notice telling the person to come and give evidence or bring the document at a specific time and place. A copy of this notice will be posted on the front door or another noticeable part of the person's usual residence.

(3) Instead of, or at the same time as issuing the public notice, or at any time after, the Court can choose to issue an arrest warrant for the person, with or without the option of bail. The Court can also order the seizure of the person's property up to an amount it considers appropriate, but not more than the costs of the seizure and any fine that might be imposed under rule 12:

Provided that a Court of Small Causes cannot order the seizure of immovable property (like land or buildings).

Explanation using Example

Example 1:

Scenario: Ramesh is a key witness in a civil case regarding a property dispute in Mumbai. The court issues a summons for Ramesh to attend and give evidence on a specific date. However, Ramesh fails to appear in court on the given date.

Application of Rule 10:

The court checks the certificate of the serving officer to verify if the summons was properly served.

If the certificate is not verified by an affidavit, the court will examine the serving officer or the party who served the summons to confirm whether Ramesh received it.

If the court believes Ramesh's testimony is crucial and he has no lawful excuse for not attending, it may issue a proclamation requiring him to attend court on a new date.

A copy of this proclamation is affixed to the outer door of Ramesh's house.

If Ramesh still fails to comply, the court may issue a warrant for his arrest and order the attachment of his property to cover the costs of the attachment and any potential fines.

Example 2:

Scenario: Priya is required to produce certain financial documents in a civil lawsuit involving a breach of contract in Delhi. She receives a summons but does not produce the documents by the specified date.

Application of Rule 10:

The court first verifies the service of the summons through the serving officer's certificate.

If the certificate is verified, the court may examine the serving officer under oath to confirm that Priya received the summons.

Believing the documents are essential for the case and that Priya has no valid reason for not producing them, the court issues a proclamation demanding she produce the documents at a specified time and place.

This proclamation is posted on the outer door of Priya's residence.

If Priya continues to ignore the summons, the court may issue a warrant for her arrest and order the attachment of her property to cover the costs and any fines that may be imposed.

Example 3:

Scenario: Sunita is summoned to testify in a civil case about a car accident in Bangalore. She intentionally avoids the service of the summons by not being at her residence when the serving officer arrives.

Application of Rule 10:

The court examines the serving officer to confirm that Sunita intentionally avoided the service of the summons.

Concluding that Sunita's testimony is important and she has no lawful excuse for avoiding the summons, the court issues a proclamation requiring her to attend court on a new date.

A copy of the proclamation is posted on the outer door of Sunita's house.

If Sunita still does not comply, the court may issue a warrant for her arrest and order the attachment of her property to cover the costs and any fines.

Example 4:

Scenario: Ajay is required to produce a contract document in a civil case in Chennai. He receives the summons but claims he lost the document and does not attend the court.

Application of Rule 10:

The court verifies the service of the summons through the serving officer's certificate.

If the certificate is verified, the court may examine the serving officer under oath to confirm that Ajay received the summons.

The court believes the document is crucial and Ajay has no lawful excuse for not attending or producing the document. It issues a proclamation demanding Ajay to produce the document at a specified time and place.

This proclamation is posted on the outer door of Ajay's residence.

If Ajay continues to ignore the summons, the court may issue a warrant for his arrest and order the attachment of his property to cover the costs and any fines that may be imposed.

Rule 11: If witness appears, attachment may be withdrawn.

Where, at any time after the attachment of his property, such person appears and satisfies the Court, -

(a) that he did not, without lawful excuse, fail to comply with the summons or intentionally avoid service, and,

(b) where he has failed to attend at the time and place named in a proclamation issued under the last preceding rule, that he had no notice of such proclamation in time to attend,

the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

Simplified act

If, after someone's property has been taken by the court, that person shows up and proves to the court that:

(a) they had a good reason for not following the court's order or didn't purposely avoid being served the court papers, and,

(b) if they missed a court date mentioned in a public notice, they didn't know about the notice in time to attend,

then the court will order that their property be returned to them. The court will also decide who should pay for the costs related to taking the property.

Explanation using Example

Example 1:

Scenario: Rajesh, a businessman, was summoned by the court to appear as a witness in a civil case. However, Rajesh did not receive the summons because he was out of town for a business trip. Consequently, the court ordered the attachment of his property as a penalty for not appearing.

Application of Rule 11: Rajesh returns from his trip and learns about the attachment of his property. He immediately appears before the court and explains that he did not receive the summons because he was out of town and had a lawful excuse for not appearing. He also provides evidence of his business trip, such as travel tickets and hotel receipts.

Outcome: The court is satisfied with Rajesh's explanation and determines that he did not intentionally avoid the summons. The court orders the release of

Rajesh's property from attachment and decides that Rajesh should not bear the costs of the attachment.

Example 2:

Scenario: Priya, a school teacher, was summoned to testify in a civil dispute between her neighbors. The court issued a proclamation for her attendance, but Priya did not attend because she was not aware of the proclamation due to a change in her residence.

Application of Rule 11: Priya learns about the attachment of her property and appears before the court. She explains that she had moved to a new address and did not receive the proclamation in time to attend the court. She provides proof of her change of address and the date of her move.

Outcome: The court is convinced that Priya had no notice of the proclamation in time to attend. The court orders the release of Priya's property from attachment and decides on the costs of the attachment as it deems appropriate.

Rule 12: Procedure if witness fails to appear.

(1) The Court may, where such person does not appear, or appears but fails so to satisfy the Court, impose upon him such fine not exceeding five hundred rupees as it thinks fit, having regard to his condition in life and all the circumstances of the case, and may order his property, or any part thereof, to be attached and sold or, if already attached under rule 10, to be sold for the purpose of satisfying all costs of such attachment, together with the amount of the said fine, if any:

Provided that, if the person whose attendance is required pays into Court the costs and fine aforesaid, the Court shall order the property to be released from attachment.

(2) Notwithstanding that the Court has not issued a proclamation under sub-rule (2) of rule 10, nor issued a warrant nor ordered attachment under sub-rule (3) of that rule, the Court may impose fine under sub-rule (1) of this rule after giving notice to such person to show cause why the fine should not be imposed.

13.

Simplified act

(1) If a person does not show up in court, or shows up but does not convince the court, the court can fine them up to five hundred rupees. The amount of the fine will depend on the person's financial situation and the details of the case. The court can also order that the person's property be taken and sold to cover the costs of the attachment and the fine. If the property is already taken, it can be sold to cover these costs:

However, if the person pays the costs and the fine to the court, the court will release their property.

(2) Even if the court has not made a public announcement, issued a warrant, or ordered the taking of property as described in rule 10, the court can still fine the person after giving them a chance to explain why they should not be fined.

13.

Explanation using Example

Example 1:

Scenario: Ramesh is a key witness in a civil case regarding a property dispute. He was summoned by the court to appear on a specific date to provide his testimony. However, Ramesh fails to appear in court on the scheduled date without providing any valid reason.

Application of Rule 12:

The court notices Ramesh's absence and decides to take action.

The court considers Ramesh's financial condition and the circumstances of the case.

The court imposes a fine of ₹300 on Ramesh for failing to appear.

Additionally, the court orders the attachment and sale of Ramesh's motorcycle to cover the costs of the attachment and the fine.

Ramesh is notified of the fine and the attachment order.

If Ramesh pays the fine and the costs into the court, the court will release his motorcycle from attachment.

Example 2:

Scenario: Sita is summoned as a witness in a civil case involving a breach of contract. She appears in court but refuses to provide satisfactory answers to the court's questions.

Application of Rule 12:

The court determines that Sita's refusal to provide satisfactory answers is equivalent to failing to appear.

The court considers Sita's financial condition and the circumstances of the case.

The court imposes a fine of ₹200 on Sita for her non-cooperation.

The court orders the attachment and sale of Sita's gold necklace to cover the costs of the attachment and the fine.

Sita is given notice to show cause why the fine should not be imposed.

If Sita pays the fine and the costs into the court, the court will release her gold necklace from attachment.

Example 3:

Scenario: Mohan is a witness in a civil case regarding a loan dispute. He was summoned to appear in court but did not show up. The court had not previously issued a proclamation or a warrant for his appearance.

Application of Rule 12:

The court decides to impose a fine on Mohan for failing to appear.

The court sends a notice to Mohan, asking him to show cause why the fine should not be imposed.

Mohan fails to provide a satisfactory explanation.

The court imposes a fine of ₹400 on Mohan.

The court orders the attachment and sale of Mohan's television to cover the costs of the attachment and the fine.

If Mohan pays the fine and the costs into the court, the court will release his television from attachment.

Rule 13: Mode of attachment.

The provisions with regard to the attachment and sale of property in the execution of a decree shall, so far as they are applicable, be deemed to apply to any attachment and sale under this Order as if the person whose property is so attached were a judgment-debtor.

Simplified act

The rules for taking and selling someone's property to enforce a court decision will also apply to taking and selling property under this Order. It will be treated as if the person whose property is taken owes money from a court judgment.

Explanation using Example

Example 1:

Scenario: Ramesh has a court decree against him to pay Rs. 5 lakhs to Suresh. Ramesh fails to comply with the decree.

Application of Rule 13: The court orders the attachment of Ramesh's property, a plot of land, to recover the amount. The process of attachment and sale of the land will follow the same procedures as if Ramesh were a judgment-debtor under the Code of Civil Procedure, 1908. The court will issue a notice of attachment, and if Ramesh still does not pay, the land will be auctioned to recover the amount due to Suresh.

Example 2:

Scenario: Priya has been summoned as a witness in a civil case but fails to appear in court despite multiple summons.

Application of Rule 13: The court decides to attach Priya's bank account to compel her attendance. The procedures for attachment and potential sale of assets in her bank account will be the same as those for a judgment-debtor under the Code of Civil Procedure, 1908. The court will issue an order to the bank to freeze Priya's account, and if she still does not comply, the funds may be used to cover any penalties or costs imposed by the court.

Rule 14: Court may of its own accord summon as witnesses strangers to suit.

Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it

necessary to examine any person, including a party to the suit and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

Simplified act

According to the rules in this Code and any current laws, if the Court believes it needs to talk to someone, including someone involved in the case who hasn't been called as a witness, the Court can decide on its own to call that person to testify or bring any documents they have.

The Court can set a date for this person to come in and can ask them questions or request the documents they have.

Explanation using Example

Example 1:

Scenario: Property Dispute Case

Context: A property dispute is ongoing between two brothers, Raj and Ravi, over the ownership of a piece of land. Both parties have presented their witnesses and evidence. However, the court feels that the testimony of the local land registry officer, who has not been called by either party, is crucial to understanding the true ownership of the land.

Application of Rule 14: The court, on its own accord, summons the local land registry officer to appear as a witness. The officer is required to bring the official land records and provide testimony regarding the ownership history of the disputed land. This helps the court to make a more informed decision based on the official records and unbiased testimony.

Example 2:

Scenario: Breach of Contract Case

Context: A company, ABC Pvt. Ltd., has filed a lawsuit against a contractor, Mr. Sharma, for breach of contract. Both parties have presented their evidence and witnesses. However, the court believes that the testimony of an independent auditor, who reviewed the financial transactions between the company and the contractor, is essential for a fair judgment.

Application of Rule 14: The court decides to summon the independent auditor, even though neither party has called him as a witness. The auditor is asked to produce the audit report and testify about the financial dealings and whether there were any discrepancies. This additional evidence helps the court to determine whether there was indeed a breach of contract and who is at fault.

Example 3:

Scenario: Custody Battle

Context: In a custody battle between two parents, the court has to decide who should get the custody of their child. Both parents have presented their witnesses, including family members and friends. However, the court feels that the child's school teacher, who interacts with the child daily, can provide valuable insights into the child's well-being and preferences.

Application of Rule 14: The court summons the school teacher to appear as a witness. The teacher is asked to provide testimony about the child's behavior, academic performance, and any expressed preferences regarding living arrangements. This helps the court to make a decision that is in the best interest of the child.

Example 4:

Scenario: Workplace Harassment Case

Context: An employee, Ms. Gupta, has filed a case against her employer for workplace harassment. Both parties have presented their evidence and witnesses. However, the court believes that the testimony of a co-worker, who witnessed the alleged harassment but was not called by either party, is crucial.

Application of Rule 14: The court decides to summon the co-worker to testify about what they witnessed. The co-worker is required to provide an account of the incidents of harassment they observed. This testimony helps the court to ascertain the truth and deliver a fair judgment in the case.

Example 5:

Scenario: Accident Claim Case

Context: Mr. Kumar has filed a claim for compensation after being injured in a road accident. The insurance company disputes the claim, and both parties have presented their evidence and witnesses. However, the court feels that the

testimony of a traffic police officer, who arrived at the scene shortly after the accident, is important.

Application of Rule 14: The court summons the traffic police officer to appear as a witness. The officer is asked to provide details about the accident scene, the condition of the vehicles, and any statements made by the parties involved at the time. This helps the court to determine the liability and the appropriate compensation for Mr. Kumar.

Rule 15: Duty of persons summoned to give evidence or produce document.

Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit shall attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document shall either attend to produce it, or cause it to be produced, at such time and place.

16.

Simplified act

Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit shall attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document shall either attend to produce it, or cause it to be produced, at such time and place.

16.

Simplified act in Layman's English

If you are called to appear and give evidence in a case, you must go to the place and time mentioned in the summons. If you are called to bring a document, you must either go and bring it yourself or make sure it is brought to the place and time mentioned in the summons.

Explanation using Example

Example 1:

Ravi is a shopkeeper in Mumbai. He receives a summons from the court to appear as a witness in a civil case involving a dispute between two of his customers. The summons specifies that Ravi must appear in court on the 15th of October at 10:00 AM to give evidence about a transaction that took place in his shop. According to Rule 15 of the Code of Civil Procedure 1908, Ravi is

legally obligated to attend the court at the specified time and place to provide his testimony.

Example 2:

Sunita is an accountant working for a company in Delhi. She receives a summons from the court to produce certain financial documents related to a lawsuit involving her company. The summons specifies that Sunita must either attend the court on the 20th of November at 11:00 AM with the required documents or ensure that the documents are produced at the court at the specified time. According to Rule 15 of the Code of Civil Procedure 1908, Sunita must comply with the summons by either attending the court with the documents or making sure the documents are delivered to the court at the designated time and place.

Rule 16: When they may depart.

(1) A person so summoned and attending shall, unless the Court otherwise directs, attend at each hearing until the suit has been disposed of.

(2) On the application of either party and the payment through the Court of all necessary expenses (if any), the Court may require any person so summoned and attending to furnish security to attend at the next or any other hearing or until the suit is disposed of and, in default of his furnishing such security, may order him to be detained in the civil prison.

Simplified act

(1) If you are called to court and you show up, you must keep coming to each court session until the case is finished, unless the court says otherwise.

(2) If either side in the case asks for it and pays any necessary costs through the court, the court can make you promise to come to the next session or any future sessions until the case is finished. If you don't make this promise, the court can order that you be kept in a civil jail.

Explanation using Example

Example 1:

Ravi is summoned as a witness in a civil case involving a property dispute between two parties, Asha and Bharat. The court directs Ravi to attend each hearing until the case is resolved. Ravi attends the first hearing, but he has a family emergency and requests the court to excuse him from the next hearing.

The court considers his request and allows him to miss the next hearing, but instructs him to attend all subsequent hearings until the case is concluded.

Example 2:

Sunita is summoned as a witness in a breach of contract case. She attends the first hearing, but the case is adjourned to a later date. The plaintiff, Rajesh, applies to the court to ensure Sunita's attendance at the next hearing. Rajesh deposits the necessary expenses with the court, and the court requires Sunita to furnish security to guarantee her attendance at the next hearing. Sunita fails to provide the security, so the court orders her to be detained in civil prison until the next hearing to ensure her presence.

Rule 17: Application of rules 10 to 13.

The provisions of rules 10 to 13 shall, so far as they are applicable, be deemed to apply to any person who having attended in compliance with a summons departs, without lawful excuse, in contravention of rule 16.

Simplified act

Rules 10 to 13 will apply to anyone who, after being summoned and showing up, leaves without a good reason, breaking rule 16.

Explanation using Example

Example 1:

Ravi is a key witness in a civil case regarding a property dispute in Mumbai. He receives a summons to appear in court on a specific date. Ravi attends the court session as required but leaves the courtroom during a recess without informing the court or obtaining permission. The judge notices Ravi's absence when the session resumes and decides to apply Rule 17. Since Ravi left without a lawful excuse, the court can take action against him under the provisions of rules 10 to 13, which may include issuing a warrant for his arrest or imposing a fine.

Example 2:

Meena is summoned to testify in a civil lawsuit involving a breach of contract in Delhi. She attends the court hearing but, during the lunch break, she leaves the court premises and does not return for the afternoon session. Meena did not provide any reason for her departure. The judge, upon realizing Meena's absence, invokes Rule 17. As per the provisions of rules 10 to 13, the court

may issue a notice to Meena to explain her absence or face penalties such as a fine or even a warrant for her arrest for failing to comply with the court's requirements.

Rule 18: Procedure where witness apprehended can not give evidence or produce document.

Where any person arrested under a warrant is brought before the Court in custody and cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and, on such bail or security being given, may release him, and, in default of his giving such bail or security, may order him to be detained in the civil prison.

Simplified act

If someone is arrested with a warrant and brought to court but can't provide the evidence or documents needed because some people involved are not present, the court can ask that person to pay bail or provide some other form of security to ensure they will come back at a later date. If the person provides the bail or security, they can be released. If they can't provide it, the court can order that they be kept in a civil prison.

Explanation using Example

Example 1:

Scenario: Rajesh is a key witness in a civil lawsuit involving a property dispute. He has been summoned to produce certain documents that are crucial for the case. However, Rajesh fails to appear in court on the scheduled date, and a warrant is issued for his arrest.

Application of Rule 18: Rajesh is arrested and brought before the court. However, the plaintiff's lawyer is not present in court on that day. Since Rajesh cannot produce the documents or give his testimony in the absence of the plaintiff's lawyer, the court decides to handle the situation as per Rule 18.

Court's Decision: The court asks Rajesh to provide reasonable bail or other security to ensure his appearance at a later date when the plaintiff's lawyer will be present. Rajesh provides the required bail and is released. The court schedules a new date for Rajesh to appear and produce the documents.

Example 2:

Scenario: Meena is summoned as a witness in a civil case involving a breach of contract. She is required to bring certain financial records to the court. Meena is apprehended under a warrant because she did not respond to the initial summons.

Application of Rule 18: Meena is brought to the court in custody. However, the defendant's lawyer is absent on that day, making it impossible for Meena to give her testimony or produce the financial records.

Court's Decision: The court decides to follow Rule 18 and asks Meena to provide reasonable bail or other security to ensure her appearance at a future date. Meena is unable to provide the bail or security. Consequently, the court orders her to be detained in the civil prison until she can either provide the required bail or the defendant's lawyer is present to proceed with the case.

Rule 19: No witness to be ordered to attend in person unless resident within certain limits.

No one shall be ordered to attend in person to give evidence unless he resides -

(a) within the local limits of the Court's ordinary jurisdiction, or

(b) without such limits but at a place less than one hundred or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than five hundred kilometres distance from the court-house:

Provided that where transport by air is available between the two places mentioned in this rule and the witness is paid the fare by air, he may be ordered to attend in person.

Simplified act

No one will be required to show up in person to give evidence unless they live:

(a) within the area where the Court usually operates, or

(b) outside that area but less than 100 kilometers away, or if there is a train, boat, or other public transport for most of the distance, less than 500 kilometers away from the courthouse.

However, if there is an option to travel by air between the two places and the witness is given the airfare, they can be required to attend in person.

Explanation using Example

Example 1:

Ravi lives in Mumbai and is a key witness in a civil case being heard in the Mumbai City Civil Court. Since Ravi resides within the local limits of the court's ordinary jurisdiction, the court can order him to attend in person to give his testimony.

Example 2:

Priya lives in Pune, which is approximately 150 kilometers away from Mumbai. She is a crucial witness in a case being heard in the Mumbai City Civil Court. Since Pune is less than 500 kilometers away from Mumbai and there is established public conveyance (train and bus services) between Pune and Mumbai, the court can order Priya to attend in person to give her testimony.

Example 3:

Amit lives in Delhi and is a witness in a case being heard in the Chennai High Court. Delhi is more than 500 kilometers away from Chennai, and there is no direct public conveyance covering five-sixths of the distance. However, since there are regular flights between Delhi and Chennai, and if Amit is paid the airfare, the court can order him to attend in person to give his testimony.

Example 4:

Sunita lives in a remote village in Rajasthan, which is 600 kilometers away from Jaipur, where a civil case is being heard. There is no railway or steamer communication or other established public conveyance covering five-sixths of the distance. In this scenario, the court cannot order Sunita to attend in person to give her testimony. Instead, her testimony may be taken through other means such as a written affidavit or video conferencing.

Rule 20: Consequence of refusal of party to give evidence when called on by Court.

Where any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his possession or power, the Court may pronounce judgment against him or make such order in relation to the suit as it thinks fit.

Simplified act

If someone involved in a court case is present in court and refuses to give evidence or show a document they have, without a good reason, when the court asks them to:

The court can decide the case against them or make any other decision it thinks is appropriate.

Explanation using Example

Example 1:

Rajesh files a civil suit against his neighbor, Suresh, claiming that Suresh has encroached on his land. During the trial, the court asks Rajesh to produce the original property documents to support his claim. Rajesh, who has the documents in his possession, refuses to present them without any lawful excuse. As a result, the court decides to dismiss Rajesh's suit and pronounces judgment in favor of Suresh, stating that Rajesh's refusal to produce the documents indicates a lack of evidence to support his claim.

Example 2:

Meena sues a construction company for poor quality work on her house. During the proceedings, the court asks Meena to testify about the specific issues she faced and to present photographs she took of the defects. Meena, who is present in court, refuses to testify or produce the photographs without any valid reason. The court, seeing her refusal as an obstruction to justice, decides to rule against Meena and dismisses her case, concluding that her refusal to provide evidence suggests that her claims may not be substantiated.

Rule 21: Rules as to witnesses to apply to parties summoned.

Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as they are applicable.

Simplified act

If someone involved in a lawsuit needs to provide evidence or show a document, the rules that apply to witnesses will also apply to that person, as long as they are relevant.

Explanation using Example

Example 1:

Rajesh files a civil suit against his neighbor, Suresh, for encroaching on his property. During the trial, the court requires Rajesh to provide evidence to support his claim. Rajesh is summoned to testify and produce relevant documents, such as property deeds and survey reports. According to Rule 21 of the Code of Civil Procedure 1908, the same rules that apply to witnesses also apply to Rajesh. This means Rajesh must take an oath, answer questions truthfully, and can be cross-examined by Suresh's lawyer, just like any other witness.

Example 2:

Meera is involved in a civil lawsuit against a construction company for breach of contract. The court summons Meera to produce the original contract and other related documents. Under Rule 21 of the Code of Civil Procedure 1908, Meera is treated as a witness. She must follow the same procedures as any other witness, including presenting the documents in court, taking an oath, and being subject to cross-examination by the construction company's lawyer. This ensures that the evidence provided by Meera is scrutinized in the same manner as evidence from any other witness.

ORDER XVIA: ATTENDANCE OF WITNESSES CONFINED OR DETAINED IN PRISONS

Rule 1: Definitions.

In this Order, -

- (a) "detained" includes detained under any law providing for preventive detention;
- (b) "prison" includes -
 - (i) any place which has been declared by the State Government, by general or special order, to be a subsidiary jail; and
 - (ii) any reformatory, borstal institution or other institution of a like nature.

Simplified act

In this Order, -

(a) "detained" means being held under any law that allows for keeping someone in custody to prevent them from doing something.

(b) "prison" includes -

(i) any place that the State Government has officially declared to be a secondary jail; and

(ii) any reformatory, borstal institution, or similar type of institution.

Explanation using Example

Example 1:

Ravi is a key witness in a civil case involving a property dispute. However, Ravi is currently detained under a preventive detention law due to his involvement in activities that are considered a threat to public order. Despite his detention, the court can issue an order for Ravi's attendance as a witness in the civil case, as the term "detained" under Rule 1(a) includes those detained under preventive detention laws.

Example 2:

Sita is serving a sentence in a reformatory institution after being convicted of a minor offense. She has crucial information regarding a civil lawsuit involving a breach of contract. The court can order her attendance as a witness in the civil case because the term "prison" under Rule 1(b)(ii) includes reformatory institutions. This ensures that her testimony can be obtained despite her current confinement.

Rule 2: Power to require attendance of prisoners to give evidence.

Where it appears to a Court that the evidence of a person confined or detained in a prison within the State is material in a suit, the Court may make an order requiring the officer in charge of the prison to produce that person before the Court to give evidence:

Provided that, if the distance from the prison to the Court-house is more than twenty-five kilometers, no such order shall be made unless the Court is satisfied that the examination of such person on commission will not be adequate.

Simplified act

If a Court thinks that the testimony of someone who is in prison is important for a case, the Court can order the prison officer to bring that person to Court to testify.

However, if the prison is more than twenty-five kilometers away from the Court, the Court will only make this order if it believes that questioning the person in prison (instead of bringing them to Court) won't be good enough.

Explanation using Example

Example 1:

Case: A Property Dispute in Mumbai

Scenario: Rajesh and Suresh are involved in a property dispute over a piece of land in Mumbai. During the trial, it becomes evident that a key witness, Anil, who has crucial information about the ownership of the land, is currently serving a sentence in Taloja Central Jail, which is within Mumbai.

Application of the Act: The court recognizes that Anil's testimony is vital for resolving the dispute. Since Taloja Central Jail is within the state and less than twenty-five kilometers from the court, the judge issues an order to the officer in charge of the prison to produce Anil in court to give his testimony.

Outcome: Anil is brought to the court, and his testimony helps in clarifying the ownership issues, aiding the court in making a fair judgment.

Example 2:

Case: A Criminal Case in Bangalore

Scenario: In a criminal case involving a bank robbery in Bangalore, one of the accused, Ravi, claims that he was coerced into participating by another individual, Suraj, who is currently detained in Bellary Central Jail, which is approximately 300 kilometers from Bangalore.

Application of the Act: The court deems Suraj's testimony crucial for understanding the coercion claim. However, given the distance, the court considers whether examining Suraj on commission (i.e., through a video link or a local magistrate) would be sufficient. The court concludes that a video link examination would be adequate and orders the same.

Outcome: Suraj's testimony is recorded via video link, providing the necessary evidence without the need for transporting him over a long distance, thus ensuring a fair trial while adhering to the provisions of the act.

Rule 3: Expenses to be paid into Court.

1. Before making any order under rule 2, the Court shall require the party at whose instance or for whose benefit the order is to be issued, to pay into Court such sum of money as appears to the Court to be sufficient to defray the expenses of the execution of the order, including the travelling and other expenses of the escort provided for the witness.

(2) Where the Court is subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to any rules made by the High Court in that behalf.

Simplified act

Before the Court makes any order under rule 2, it will ask the person who requested the order or who will benefit from it to pay an amount of money to the Court. This money should be enough to cover the costs of carrying out the order, including travel and other expenses for the witness's escort.

If the Court is under the authority of a High Court, it must follow any rules set by the High Court when deciding how much these expenses should be.

Explanation using Example

Example 1:

Scenario: Ramesh is involved in a civil lawsuit regarding a property dispute. He believes that a key witness, who is currently in prison, can provide crucial testimony to support his case. Ramesh requests the court to issue an order for the witness to be brought to court to testify.

Application of Rule 3:

Court's Requirement: Before the court issues the order to bring the witness from prison, it requires Ramesh to deposit a certain amount of money.

Purpose of Deposit: This money is meant to cover the expenses related to executing the order, including the travel and security costs for the witness.

High Court Rules: Since the court handling Ramesh's case is subordinate to the High Court, it will follow the expense guidelines set by the High Court to determine the amount Ramesh needs to deposit.

Outcome: Ramesh deposits the required amount, and the court issues the order for the witness to be brought to testify.

Example 2:

Scenario: Priya is fighting a civil case involving a breach of contract. She needs testimony from a witness who is currently detained in a different state. Priya applies to the court to have the witness brought to testify.

Application of Rule 3:

Court's Requirement: The court informs Priya that she must pay a sum of money into the court to cover the expenses of bringing the witness from the other state.

Purpose of Deposit: The money will be used to cover travel expenses, accommodation, and the cost of the security escort for the witness.

High Court Rules: The court will refer to the rules set by the High Court to determine the appropriate amount Priya needs to deposit.

Outcome: Priya pays the required amount, and the court arranges for the witness to be brought to testify in her case.

Rule 4: Power of State Government to exclude certain persons from the operation of rule 2.

(1) The State Government may, at any time, having regard to the matters specified in sub-rule (2), by general or special order, direct that any person or class of persons shall not be removed from the prison in which he or they may be confined or detained, and thereupon, so long as the order remains in force, no order made under rule 2, whether before or after the date of the order made by the State Government, shall have effect in respect of such person or class of persons.

(2) Before making an order under sub-rule (1), the State Government shall have regard to the following matters, namely:

(a) the nature of the offence for which, or the grounds on which, the person or class of persons have been ordered to be confined or detained in prison;

- (b) the likelihood of the disturbance of public order if the person or class of persons is allowed to be removed from the prison; and
- (c) the public interest, generally.

Simplified act

(1) The State Government can decide at any time, based on the reasons listed in section (2), to issue a general or specific order that stops any person or group of people from being moved out of the prison where they are being held. As long as this order is in place, no other order, whether made before or after the State Government's order, will apply to these people.

(2) Before making an order as mentioned in section (1), the State Government will consider the following points:

- (a) the type of crime or reason why the person or group of people are being held in prison;
- (b) the chance that public order might be disrupted if the person or group of people are allowed to leave the prison; and
- (c) the overall public interest.

Explanation using Example

Example 1:

Ravi, a notorious gang leader, is currently detained in a high-security prison in Maharashtra for multiple serious offenses, including murder and extortion. The court has issued an order under Rule 2 of Order XVIA to have Ravi attend a trial as a witness in a different case. However, the State Government of Maharashtra, considering the nature of Ravi's offenses and the high likelihood of public disturbance if he is moved, issues a special order under Rule 4. This order states that Ravi shall not be removed from the prison for any reason, including attending the trial. As a result, the court's order under Rule 2 is rendered ineffective, and Ravi remains in prison.

Example 2:

A group of political activists is detained in a prison in West Bengal for organizing protests that led to significant public unrest. The court has issued an order under Rule 2 to have these activists attend a hearing as witnesses in a related case. However, the State Government of West Bengal, after assessing

the potential for further public disorder and considering the public interest, issues a general order under Rule 4. This order specifies that the detained political activists shall not be removed from the prison. Consequently, the court's order under Rule 2 does not apply to these activists, and they remain confined in the prison.

Rule 5: Officer in charge of prison to abstain from carrying out order in certain cases.

Where the person in respect of whom an order is made under rule 2 -

- (a) is certified by the medical officer attached to the prison as unfit to be removed from the prison by reason of sickness or infirmity, or
- (b) is under committal for trial or under remand pending trial or pending a preliminary investigation; or
- (c) is in custody for a period which would expire before the expiration of the time required for complying with the order and for taking him back to the prison in which he is confined or detained; or
- (d) is a person to whom an order made by the State Government under rule 4 applies, the officer in charge of the prison shall abstain from carrying out the Court's order and shall send to the Court a statement of reasons for so abstaining.

Simplified act

If a person has an order made against them under rule 2, the officer in charge of the prison should not follow the Court's order and must send a statement of reasons to the Court if:

- (a) The prison's medical officer certifies that the person is too sick or weak to be moved from the prison.
- (b) The person is waiting for their trial to start or is on remand (temporarily held) while waiting for their trial or a preliminary investigation.
- (c) The person is in custody for a period that will end before there is enough time to follow the order and bring them back to the prison.
- (d) The person is subject to an order made by the State Government under rule 4.

Explanation using Example

Example 1:

Ravi is a witness in a civil case and is currently confined in a prison in Mumbai. The court issues an order under Rule 2 of Order XVIA of the Code of Civil Procedure, 1908, to produce Ravi in court for his testimony. However, the medical officer at the prison certifies that Ravi is suffering from a severe illness and is unfit to be moved. In this case, the officer in charge of the prison will abstain from carrying out the court's order to produce Ravi and will send a statement to the court explaining that Ravi cannot be moved due to his medical condition.

Example 2:

Sita is detained in a prison in Delhi and is a key witness in a civil lawsuit. The court issues an order to produce her for testimony. However, Sita is currently under remand pending trial for a criminal case. Since she is under committal for trial, the officer in charge of the prison will abstain from carrying out the court's order to produce her for the civil case and will send a statement to the court explaining that Sita is under remand and cannot be produced.

Example 3:

Arjun is serving a short-term sentence in a prison in Chennai and is required to testify in a civil case. The court issues an order to produce him. However, Arjun's sentence is set to expire in two days, which is before the time required to comply with the court's order and return him to the prison. In this scenario, the officer in charge of the prison will abstain from carrying out the court's order and will send a statement to the court explaining that Arjun's custody period will expire before the order can be complied with.

Example 4:

Meera is confined in a prison in Kolkata and is needed as a witness in a civil case. The court issues an order to produce her. However, the State Government has issued an order under Rule 4 that applies to Meera, restricting her movement due to security concerns. In this case, the officer in charge of the prison will abstain from carrying out the court's order and will send a statement to the court explaining that the State Government's order prevents Meera from being moved.

Rule 6: Prisoner to be brought to Court in custody.

In any other case, the officer in charge of the prison shall, upon delivery of the Court's order, cause the person named therein to be taken to the Court so as to be present at the time mentioned in such order, and shall cause him to be kept in custody in or near the Court until he has been examined or until the Court authorises him to be taken back to the prison in which he is confined or detained.

Simplified act

If the Court gives an order, the prison officer must make sure the person named in the order is brought to the Court at the specified time.

The prison officer must keep the person in custody at or near the Court until the Court has finished questioning them or gives permission for the person to be taken back to prison.

Explanation using Example

Example 1:

Ravi, a key witness in a civil case involving a property dispute, is currently serving a sentence in Tihar Jail. The court handling the property dispute issues an order for Ravi to be present in court to provide his testimony. Upon receiving the court's order, the officer in charge of Tihar Jail arranges for Ravi to be transported to the court on the specified date and time. Ravi is kept in custody near the courtroom until he has given his testimony. After his examination, the court authorizes the officer to take Ravi back to Tihar Jail.

Example 2:

Sita, who is detained in a Mumbai prison, is required to testify in a civil case regarding a breach of contract. The court issues an order for her appearance. The prison officer receives the court's order and ensures that Sita is brought to the court on the appointed day. Sita remains in custody within the court premises until her testimony is completed. Once the court proceedings involving Sita are over, the court permits the officer to return her to the Mumbai prison where she is detained.

Rule 7: Power to issue commission for examination of witness in prison.

(1) Where it appears to the Court that the evidence of a person confined or detained in a prison, whether within the State or elsewhere in India, is material

in a suit but the attendance of such person cannot be secured under the preceding provisions of this Order, the Court may issue a commission for the examination of that person in the prison in which he is confined or detained.

(2) The provisions of Order XXVI shall, so far as may be, apply in relation to the examination on commission of such person in prison as they apply in relation to the examination on commission of any other person.

Simplified act

(1) If the Court thinks that the testimony of someone who is in prison (either in the same state or somewhere else in India) is important for a case, but it is not possible to bring that person to the Court using the usual methods, the Court can arrange for that person to be questioned in the prison where they are being held.

(2) The rules in Order XXVI, which deal with questioning people through a commission, will also apply to questioning someone in prison, just like they apply to questioning anyone else.

Explanation using Example

Example 1:

Rajesh is a key witness in a civil lawsuit involving a property dispute in Mumbai. However, Rajesh is currently serving a sentence in Tihar Jail, Delhi. The court in Mumbai deems Rajesh's testimony crucial for the case but realizes that it is not feasible to bring him to Mumbai for the hearing. Under Rule 7 of the Code of Civil Procedure 1908, the court issues a commission to examine Rajesh in Tihar Jail. A court-appointed commissioner travels to Tihar Jail and records Rajesh's testimony, which is then presented in the Mumbai court.

Example 2:

Anita is detained in a prison in Bangalore due to an ongoing criminal case. Meanwhile, she is also a vital witness in a civil case regarding a business contract dispute in Chennai. The Chennai court acknowledges the importance of Anita's testimony but understands that her physical presence cannot be arranged. Therefore, the court invokes Rule 7 and issues a commission for her examination in the Bangalore prison. A commissioner is appointed to visit the Bangalore prison, where Anita's statement is recorded and subsequently used in the Chennai court proceedings.

ORDER XVII: ADJOURNMENTS

Rule 1: Court may grant time and adjourn hearing. Costs of adjournment.

Adjournment of Hearing

(1) The court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during the hearing of the suit.

(2) Costs of adjournment. - In every such case the Court shall fix a day for the further hearing of the suit, and shall make such orders as to costs occasioned by the adjournment or such higher costs as the court deems fit:

Provided that, -

(a) when the hearing of the suit has commenced, it shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds that, for the exceptional reasons to be recorded by it, the adjournment of the hearing beyond the following day is necessary.

(b) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party,

(c) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment,

(d) where the illness of a pleader or his inability to conduct the case for any reason, other than his being engaged in another Court, is put forward as a ground for adjournment, the Court shall not grant the adjournment unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time,

(e) where a witness is present in Court but a party or his pleader is not present or the party or his pleader, though present in Court, is not ready to examine or cross-examine the witness, the Court may, if it thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be, by the party or his pleader not present or not ready as aforesaid.

Simplified act

Postponing a Court Hearing

(1) The court can give more time to the people involved in a case if they have a good reason. This can happen at any point during the case. The court can also delay the hearing, but it must write down the reasons for doing so:

However, no one can get more than three delays during the hearing of the case.

(2) Costs of postponing. - Every time the court delays a hearing, it will set a new date for the next hearing and decide who will pay for the costs caused by the delay:

However, -

(a) Once the hearing starts, it should continue every day until all the witnesses present have been questioned, unless the court finds a very good reason to delay it further and writes down those reasons.

(b) A delay will not be given just because someone asks for it, unless something happens that is out of their control.

(c) A delay will not be given just because a lawyer is busy in another court.

(d) If a lawyer is sick or unable to handle the case for any reason other than being busy in another court, the court will not delay the hearing unless it is sure that the person asking for the delay could not have hired another lawyer in time.

(e) If a witness is in court but the person or their lawyer is not there or is not ready to question the witness, the court can still record the witness's statement and make decisions without waiting for the absent or unprepared person or lawyer.

Explanation using Example

Example 1:

Rajesh has filed a civil suit against his neighbor, Suresh, for encroaching on his property. The case is being heard in a civil court in Mumbai. During the proceedings, Rajesh's lawyer falls ill and is unable to attend the hearing. Rajesh requests the court for an adjournment. The court, after verifying the illness of the lawyer and ensuring that Rajesh could not have engaged another lawyer in time, grants an adjournment and records the reason in writing. The

court also orders Rajesh to pay the costs incurred due to the adjournment and sets a new date for the hearing.

Example 2:

Anita is involved in a civil dispute over a contract with a business partner, and the case is being heard in a Delhi court. During the hearing, Anita's lawyer requests an adjournment because he is busy with another case in a different court. The court denies the request, stating that being engaged in another court is not a valid reason for adjournment. The court proceeds with the hearing and records the statement of the witness present in court, even though Anita's lawyer is not ready to cross-examine the witness. The court then passes orders as it deems fit, ensuring the case progresses without unnecessary delays.

Rule 2: Procedure if parties fail to appear on day fixed.

Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit.

Explanation. - Where the evidence or a substantial portion of the evidence of any party has already been recorded and such party fails to appear on any day to which the hearing of the suit is adjourned, the Court may, in its discretion proceed with the case as if such party were present.

Simplified act

If, on a day when the court hearing is rescheduled, any of the parties involved do not show up, the court can handle the case in one of the ways mentioned in Order IX or make any other decision it thinks is appropriate.

Explanation. - If a lot of the evidence from any party has already been recorded and that party does not show up on a rescheduled hearing day, the court can choose to continue with the case as if that party were there.

Explanation using Example

Example 1:

Scenario: Ramesh files a civil suit against Suresh for breach of contract. The court schedules a hearing for the case on 1st March. On that day, both parties

appear, and the court records some evidence. The court then adjourns the hearing to 15th March for further proceedings.

Application of Rule 2: On 15th March, Suresh fails to appear in court. Since a substantial portion of the evidence has already been recorded, the court decides to proceed with the hearing as if Suresh were present. The court continues to hear Ramesh's arguments and eventually makes a decision based on the evidence presented.

Example 2:

Scenario: Priya files a civil suit against her neighbor, Anil, for encroachment on her property. The court schedules the first hearing on 10th April. On that day, neither Priya nor Anil appears in court.

Application of Rule 2: Since both parties fail to appear on the scheduled date, the court has the discretion to dispose of the suit in one of the modes directed by Order IX of the Code of Civil Procedure, 1908. The court may choose to dismiss the suit for non-appearance or make any other order it deems fit, such as rescheduling the hearing to another date.

Example 3:

Scenario: Meera files a civil suit against a company for non-payment of dues. The court schedules a hearing on 5th June. On that day, Meera appears, but the company's representative does not.

Application of Rule 2: The court may decide to proceed with the hearing in the absence of the company's representative. Since Meera is present and ready to present her case, the court may record her evidence and proceed to make a judgment based on the available information. Alternatively, the court may choose to adjourn the hearing to another date, giving the company another opportunity to appear.

Rule 3: Court may proceed notwithstanding either party fails to produce evidence, etc.

Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed the Court may, notwithstanding such default,

(a) if the parties are present, proceed to decide the suit forthwith; or

(b) if the parties are, or any of them is, absent, proceed under rule 2.

Simplified act

If a person involved in a lawsuit is given extra time by the court but fails to:

Present their evidence,

Bring their witnesses to court, or

Do any other required action to move the case forward,

the court can still take action despite this failure:

(a) If everyone involved in the case is present, the court can make a decision on the case right away; or

(b) If anyone involved in the case is not present, the court will follow the procedure outlined in rule 2.

Explanation using Example

Example 1:

Rajesh files a civil suit against Suresh for breach of contract in a district court in Mumbai. The court grants Rajesh additional time to produce key evidence and bring his witnesses to court. However, on the scheduled date, Rajesh fails to produce the evidence and his witnesses do not appear. Suresh and his lawyer are present in court. According to Rule 3 of Order XVII of The Code of Civil Procedure 1908, the court decides to proceed with the case despite Rajesh's failure to produce evidence. The judge hears the arguments from both sides and makes a decision based on the available information.

Example 2:

Meena files a lawsuit against her neighbor, Anil, for encroachment on her property in a civil court in Delhi. The court grants Anil time to submit his evidence and bring his witnesses. On the day of the hearing, Anil does not show up, nor does he submit any evidence. Meena and her lawyer are present in court. Under Rule 3 of Order XVII, the court decides to proceed with the case in Anil's absence. The judge considers Meena's evidence and arguments and proceeds to make a judgment based on the merits of the case presented by Meena.

ORDER XVIII: HEARING OF THE SUIT AND EXAMINATION OF WITNESSES

Rule 1: Right to begin.

The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

Simplified act

The person who is suing (plaintiff) usually gets to start the case.

However, if the person being sued (defendant) agrees with the facts but argues that the law or other facts mean the plaintiff shouldn't get what they want, then the defendant gets to start the case.

Explanation using Example

Example 1:

Scenario: Rajesh files a lawsuit against his neighbor, Suresh, claiming that Suresh has built a wall that encroaches on his property.

Application of Rule 1: Right to begin:

Rajesh (Plaintiff): Rajesh has the right to begin the case by presenting his evidence and arguments first because he is the one who filed the lawsuit.

Suresh (Defendant): If Suresh admits that he built the wall but argues that the wall is on his property and not on Rajesh's, he can present his evidence and arguments after Rajesh.

Example 2:

Scenario: Priya sues a company for breach of contract, claiming that the company failed to deliver goods as per the agreement.

Application of Rule 1: Right to begin:

Priya (Plaintiff): Priya will start the proceedings by presenting her case, including the contract and evidence of the breach.

Company (Defendant): If the company admits that they did not deliver the goods but contends that the breach was due to Priya's failure to make the necessary payments, the company will present this defense after Priya has presented her case.

Rule 2: Statement and production of evidence.

(1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

(2) The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case.

(3) The party beginning may then reply generally on the whole case.

(3A) Any party may address oral arguments in a case, and shall, before he concludes the oral arguments, if any, submit if the Court so permits concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record.

(3B) A copy of such written arguments shall be simultaneously furnished to the opposite party.

(3C) No adjournment shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.

(3D) The Court shall fix such time-limits for the oral arguments by either of the parties in a case, as it thinks fit.

(3A) A party shall, within four weeks prior to commencing the oral arguments, submit concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record.

(3B) The written arguments shall clearly indicate the provisions of the laws being cited in support of the arguments and the citations of judgments being relied upon by the party and include copies of such judgments being relied upon by the party.

(3C) A copy of such written arguments shall be furnished simultaneously to the opposite party.

(3D) The Court may, if it deems fit, after the conclusion of arguments, permit the parties to file revised written arguments within a period of not more than one week after the date of conclusion of arguments.

(3E) No adjournment shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.

(3F) It shall be open for the Court to limit the time for oral submissions having regard to the nature and complexity of the matter.

Simplified act

(1) On the day set for the hearing of the case, or any other day it is postponed to, the party who has the right to start will present their case and show their evidence for the points they need to prove.

(2) The other party will then present their case and show their evidence (if they have any) and can then speak to the Court about the whole case.

(3) The party who started can then respond to the whole case.

(3A) Any party can speak to the Court about their case, and before they finish speaking, if the Court allows, they must submit a clear and organized written version of their arguments. This written version will be part of the official record.

(3B) A copy of these written arguments must be given to the other party at the same time.

(3C) The Court will not delay the case just to allow time for written arguments unless it writes down reasons why it is necessary to do so.

(3D) The Court will set time limits for how long each party can speak.

(3A) A party must submit a clear and organized written version of their arguments to the Court at least four weeks before they start speaking. This written version will be part of the official record.

(3B) The written arguments must clearly show the laws and previous court decisions they are using to support their case, and include copies of those decisions.

(3C) A copy of these written arguments must be given to the other party at the same time.

(3D) The Court may allow the parties to submit revised written arguments within one week after the arguments are finished, if it thinks it is necessary.

(3E) The Court will not delay the case just to allow time for written arguments unless it writes down reasons why it is necessary to do so.

(3F) The Court can limit the time for speaking based on how complicated the case is.

Explanation using Example

Example 1:

Scenario: Property Dispute between Two Brothers

Background: Two brothers, Raj and Ravi, are in a legal dispute over the ownership of a piece of ancestral property. Raj claims that their father had verbally promised the property to him, while Ravi argues that the property should be equally divided.

Application of Rule 2:

Day of Hearing:

On the day fixed for the hearing, Raj, who has the right to begin, states his case first. He presents evidence such as witness testimonies from relatives who heard the verbal promise and documents showing his investment in the property.

Ravi's Turn:

After Raj finishes, Ravi states his case. He presents evidence like the will of their father, which mentions equal division, and financial records showing his contributions to the property's maintenance.

Raj's Reply:

Raj then replies to Ravi's arguments, addressing the points raised and reinforcing his own evidence.

Oral Arguments:

Both parties are allowed to present oral arguments. Raj submits written arguments summarizing his points and provides copies to Ravi. Ravi does the same.

Court's Role:

The court sets time limits for the oral arguments and may allow both parties to file revised written arguments within a week after the oral arguments conclude.

Adjournments:

If either party requests an adjournment to file written arguments, the court will only grant it if there are valid reasons recorded in writing.

Example 2:

Scenario: Breach of Contract Case

Background: A contractor, Suresh, sues a company, XYZ Ltd., for not paying for the construction work completed. XYZ Ltd. claims that the work was substandard and not completed on time.

Application of Rule 2:

Day of Hearing:

On the scheduled hearing day, Suresh, who has the right to begin, presents his case. He provides evidence such as the contract, invoices, and photographs of the completed work.

XYZ Ltd.'s Turn:

XYZ Ltd. then presents its case, showing evidence like inspection reports, emails complaining about the work quality, and expert testimonies on the substandard work.

Suresh's Reply:

Suresh replies to XYZ Ltd.'s arguments, addressing the issues raised and presenting additional evidence if necessary.

Oral Arguments:

Both parties present oral arguments. Suresh submits written arguments with distinct headings and provides a copy to XYZ Ltd. XYZ Ltd. also submits its written arguments.

Court's Role:

The court sets time limits for the oral arguments and may allow both parties to file revised written arguments within a week after the oral arguments conclude.

Adjournments:

If either party requests an adjournment to file written arguments, the court will only grant it if there are valid reasons recorded in writing.

Rule 3: Evidence where several issues.

Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.

Simplified act

When there are multiple issues in a case, and some of these issues need to be proven by the other party, the party who starts the case has two options:

They can either present their evidence on those issues right away.

Or, they can wait and present their evidence after the other party has shown their evidence.

If the party who starts the case decides to wait, they can present their evidence on those issues after the other party has finished presenting all their evidence.

After the party who starts the case presents their evidence, the other party can respond specifically to that new evidence.

Finally, the party who started the case gets a chance to respond to everything in the case.

Explanation using Example

Example 1:

Scenario: A property dispute between two neighbors, Mr. Sharma and Mr. Verma.

Details:

Mr. Sharma claims that a piece of land belongs to him based on an old property deed.

Mr. Verma counters that the land is his, supported by a more recent government survey.

Application of Rule 3:

Mr. Sharma, as the plaintiff, begins the case by presenting his evidence, including the old property deed.

Mr. Verma, the defendant, then presents his evidence, including the recent government survey.

Mr. Sharma has the option to either present all his evidence initially or reserve some evidence to counter Mr. Verma's claims.

Mr. Sharma decides to reserve some evidence, such as witness testimonies from long-time residents who can attest to his ownership.

After Mr. Verma presents all his evidence, Mr. Sharma then introduces the reserved witness testimonies.

Mr. Verma can then specifically reply to these new testimonies.

Finally, Mr. Sharma is entitled to make a general reply covering the entire case.

Example 2:

Scenario: A breach of contract case between a supplier, Ms. Gupta, and a retailer, Mr. Khan.

Details:

Ms. Gupta sues Mr. Khan for not paying for goods delivered as per their contract.

Mr. Khan argues that the goods were defective and thus he is not liable to pay.

Application of Rule 3:

Ms. Gupta, as the plaintiff, starts by presenting her evidence, including the contract and delivery receipts.

Mr. Khan, the defendant, presents his evidence, such as reports and photographs showing the defects in the goods.

Ms. Gupta has the option to either present all her evidence initially or reserve some evidence to counter Mr. Khan's claims.

Ms. Gupta decides to reserve some evidence, such as expert testimony from a quality control specialist who inspected the goods.

After Mr. Khan presents all his evidence, Ms. Gupta then introduces the reserved expert testimony.

Mr. Khan can then specifically reply to this new expert testimony.

Finally, Ms. Gupta is entitled to make a general reply covering the entire case.

Rule 3A: Party to appear before other witnesses.

Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage.

Simplified act

If someone involved in a case wants to testify as a witness, they must do so before any other witnesses for their side are questioned.

However, the court can allow them to testify later if there are specific reasons, which the court must write down.

Explanation using Example

Example 1:

Ravi files a civil suit against his neighbor, Suresh, for encroaching on his property. Ravi wishes to testify as a witness to provide firsthand information about the encroachment. According to Rule 3A of the Code of Civil Procedure 1908, Ravi must appear as a witness before any other witnesses he plans to call, such as his surveyor or other neighbors who have seen the encroachment. However, if Ravi has a valid reason, such as needing more time to gather evidence or being unavailable due to health issues, he can request the court to allow him to testify at a later stage. The court will record the reasons for granting such permission.

Example 2:

Meera is involved in a civil lawsuit regarding a breach of contract with a supplier. She wants to testify about the details of the contract and the breach before calling her accountant and other employees as witnesses. According to Rule 3A, Meera must testify first before her other witnesses. However, if Meera is out of the country for an extended period and cannot appear in court immediately, she can ask the court to permit her to testify later. The court will consider her request and, if it finds the reasons valid, will record them and allow her to appear as a witness at a later stage.

Rule 4: Recording of evidence.

Examination of Witnesses

(1) In every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence:

Provided that where documents are filed and the parties rely upon the documents, the proof and admissibility of such documents which are filed along with affidavit shall be subject to the orders of the Court.

(1A) The affidavits of evidence of all witnesses whose evidence is proposed to be led by a party shall be filed simultaneously by that party at the time directed in the first Case Management Hearing.

(1B) A party shall not lead additional evidence by the affidavit of any witness (including of a witness who has already filed an affidavit) unless sufficient cause is made out in an application for that purpose and an order, giving reasons, permitting such additional affidavit is passed by the Court.

(1C) A party shall however have the right to withdraw any of the affidavits so filed at any time prior to commencement of cross-examination of that witness, without any adverse inference being drawn based on such withdrawal:

Provided that any other party shall be entitled to tender as evidence and rely upon any admission made in such withdrawn affidavit.

(2) 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, shall be taken either by the Court or by the Commissioner appointed by it:

Provided that the Court may, while appointing a commission under this sub-rule, consider taking into account such relevant factors as it thinks fit.

(3) The Court or the Commissioner, as the case may be, shall record evidence either in writing or mechanically in the presence of the Judge or of the Commissioner, as the case may be, and where such evidence is recorded by the Commissioner he shall return such evidence together with his report in writing signed by him to the Court appointing him and the evidence taken under it shall form part of the record of the suit.

(4) The Commissioner may record such remarks as it thinks material respecting the demeanour of any witness while under examination:

Provided that 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.

(5) The 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 for reasons to be recorded in writing extends the time.

(6) The High Court or the District Judge, as the case may be, shall prepare a panel of Commissioners to record the evidence under this rule.

(7) The Court may by general or special order fix the amount to be paid as remuneration for the services of the Commissioner.

(8) The provisions of rules 16, 16A, 17 and 18 of Order XXVI, in so far as they are applicable, shall apply to the issue, execution and return of such commission under this rule.

Simplified act

Examination of Witnesses

(1) In every case, the main questioning of a witness (called examination-in-chief) must be done through a written statement (affidavit). Copies of this affidavit must be given to the other side by the party who is calling the witness:

However, if documents are included and relied upon, the court will decide if these documents are valid and can be used as evidence.

(1A) All written statements (affidavits) from witnesses that a party wants to use must be submitted at the same time, as directed during the first Case Management Hearing.

(1B) A party cannot submit additional written statements from any witness (even if the witness has already submitted one) unless they provide a good reason in a formal request and the court approves it with an explanation.

(1C) A party can withdraw any of the submitted affidavits before the cross-examination of that witness starts, without any negative consequences:

However, the other party can still use any admissions made in the withdrawn affidavit as evidence.

(2) The questioning of the witness (cross-examination and re-examination) whose written statement has been given to the court will be done either by the court or by a Commissioner appointed by the court:

The court may consider various relevant factors when appointing a Commissioner.

(3) The court or the Commissioner will record the evidence either in writing or mechanically in the presence of the Judge or the Commissioner. If the Commissioner records the evidence, he will return it with a signed report to the court, and it will become part of the case record.

(4) The Commissioner can note any important observations about the witness's behavior during questioning:

Any objections raised during the recording of evidence will be noted by the Commissioner and decided by the court during the arguments stage.

(5) The Commissioner must submit his report to the court within sixty days from the date he was appointed, unless the court extends the time for a recorded reason.

(6) The High Court or the District Judge will prepare a list of Commissioners who can record evidence under this rule.

(7) The court may set the amount to be paid for the Commissioner's services through a general or special order.

(8) The rules 16, 16A, 17, and 18 of Order XXVI will apply to the issuing, execution, and return of such commissions as far as they are relevant.

Explanation using Example

Example 1:

Case: Property Dispute

Scenario: Rajesh and Suresh are involved in a property dispute. Rajesh claims that a piece of land belongs to him, while Suresh argues that it was sold to him by Rajesh's father.

Application of Rule 4:

Examination-in-Chief on Affidavit: Rajesh calls his uncle, who witnessed the transaction, as a witness. Rajesh's lawyer submits the uncle's examination-in-chief in the form of an affidavit to the court and provides a copy to Suresh's lawyer.

Simultaneous Filing: Both Rajesh and Suresh are required to file the affidavits of all their witnesses simultaneously at the first Case Management Hearing.

Additional Evidence: Suresh later finds another witness who can testify about the transaction. He files an application to the court explaining the reason for the delay and seeks permission to submit an additional affidavit. The court grants permission after considering the reasons.

Withdrawal of Affidavit: Rajesh decides to withdraw his uncle's affidavit before the cross-examination begins. The court allows this without drawing any adverse inference. However, Suresh's lawyer can still use any admissions made in the withdrawn affidavit.

Cross-Examination: The court appoints a Commissioner to record the cross-examination and re-examination of Rajesh's uncle. The Commissioner records the evidence in writing and submits it to the court.

Commissioner's Report: The Commissioner submits the report within sixty days, detailing the evidence and any remarks on the witness's demeanor. The court includes this report as part of the case record.

Remuneration: The court fixes the remuneration for the Commissioner as per the general order.

Example 2:

Case: Breach of Contract

Scenario: Priya sues a construction company for not completing her house on time as per the contract. The construction company argues that the delay was due to unforeseen circumstances.

Application of Rule 4:

Examination-in-Chief on Affidavit: Priya submits an affidavit from her architect, detailing the delays and the impact on the construction schedule. A copy of this affidavit is provided to the construction company's lawyer.

Simultaneous Filing: Both Priya and the construction company file the affidavits of their respective witnesses at the first Case Management Hearing.

Additional Evidence: The construction company wants to submit an affidavit from a new expert witness. They file an application explaining the necessity and the court grants permission for the additional affidavit.

Withdrawal of Affidavit: Priya decides to withdraw her architect's affidavit before the cross-examination. The court allows this, but the construction company can still use any admissions made in the withdrawn affidavit.

Cross-Examination: The court decides to record the cross-examination and re-examination of Priya's architect itself. The judge records the evidence mechanically in the presence of both parties.

Commissioner's Report: Since no Commissioner is appointed, there is no report. The evidence recorded by the judge forms part of the case record.

Remuneration: Not applicable as no Commissioner is appointed.

These examples illustrate how Rule 4 of Order XVIII under the Code of Civil Procedure, 1908, is applied in real-life legal scenarios in India.

Rule 5: How evidence shall be taken in appealable cases.

In case in which an appeal is allowed, the evidence of each witness shall be, -

(a) taken down in the language of the Court, -

(i) in writing by, or in the presence and under the personal direction and superintendence of, the Judge, or

(ii) from the dictation of the Judge directly on a typewriter ; or

(b) if the Judge, for reasons to be recorded, so directs, recorded mechanically in the language of the Court in the presence of the Judge.

Simplified act

If an appeal is allowed, the testimony of each witness must be:

(a) written down in the language used by the Court, either:

(i) by the Judge themselves or under their direct supervision, or

(ii) typed directly as the Judge dictates; or

(b) if the Judge decides and explains why, recorded using a mechanical device in the language of the Court while the Judge is present.

Explanation using Example

Example 1:

Ravi files a civil suit against Shyam in a district court in Delhi, claiming that Shyam has encroached on his property. The court hears the case and rules in favor of Ravi. Shyam decides to appeal the decision in the High Court. During the appeal, the High Court Judge needs to take down the evidence of each witness again. According to Rule 5 of Order XVIII of The Code of Civil Procedure 1908, the Judge takes down the evidence in Hindi (the language of the court) by dictating it directly to a typewriter in the presence of the witnesses and the parties involved.

Example 2:

Meera files a lawsuit against a construction company in a civil court in Mumbai, alleging that the company did not complete the construction of her house as per the contract. The court rules in favor of Meera, and the construction company decides to appeal the decision. During the appeal process, the Judge decides to record the evidence of each witness mechanically using audio recording equipment. The Judge records the reasons for this decision, stating that it ensures accuracy and efficiency. The evidence is recorded in Marathi (the language of the court) in the presence of the Judge, the witnesses, and the parties involved.

Rule 6: When deposition to be interpreted.

Where the evidence is taken down in a language different from that in which it is given, and the witness does not understand the language in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it is given.

Simplified act

If the evidence is written down in a different language from the one spoken by the witness, and the witness does not understand the written language, the written evidence must be translated for the witness into the language they spoke.

Explanation using Example

Example 1:

Ravi, a farmer from a remote village in Tamil Nadu, is a witness in a civil case being heard in a court in Delhi. Ravi speaks only Tamil, but the court proceedings and documentation are conducted in Hindi. When Ravi gives his testimony in Tamil, the court stenographer takes down the evidence in Hindi. Since Ravi does not understand Hindi, the court arranges for an interpreter to read back the recorded testimony to Ravi in Tamil to ensure that the written record accurately reflects what he said.

Example 2:

Ayesha, a shop owner from Kerala, is involved in a property dispute case in a Mumbai court. Ayesha's primary language is Malayalam, but the court records are maintained in Marathi. During her deposition, Ayesha provides her statement in Malayalam. The court clerk transcribes her statement into Marathi. To ensure Ayesha understands and confirms the accuracy of the recorded testimony, an interpreter translates the Marathi text back into Malayalam for Ayesha to verify.

Rule 7: Evidence under section 138.

Evidence taken down under section 138 shall be in the form prescribed by rule 5 and shall be read over and signed and, as occasion may require, interpreted and corrected as if it were evidence taken down under that rule.

Simplified act

Evidence recorded under section 138 must follow the format set by rule 5.

This evidence should be read aloud, signed, and, if needed, translated and corrected.

It should be treated the same way as evidence recorded directly under rule 5.

Explanation using Example

Example 1:

Ravi files a civil suit against Shyam for breach of contract in a district court in Mumbai. During the hearing, Ravi presents his evidence under Section 138 of the Code of Civil Procedure, 1908. The evidence is recorded by the court in the manner prescribed by Rule 5, which means it is written down verbatim. After the evidence is recorded, it is read back to Ravi to ensure accuracy. Ravi then signs the document to confirm that the recorded evidence is correct. If there were any parts of the evidence that needed interpretation or correction, the court would handle those adjustments before Ravi signs the document.

Example 2:

Anita is involved in a property dispute with her neighbor, Sunil, in a civil court in Delhi. During the examination of witnesses, Anita's lawyer presents evidence under Section 138. The court stenographer takes down the evidence as per Rule 5, ensuring it is a word-for-word account. After the evidence is recorded, it is read aloud to Anita and her lawyer to verify its accuracy. Anita notices a minor error in the transcription and points it out. The court corrects the error, and the corrected evidence is then read back to Anita. Once satisfied, Anita signs the document to confirm its accuracy. If any part of the evidence required translation, the court would provide an interpreter to ensure Anita fully understands before signing.

Rule 8: Memorandum when evidence not taken down by judge.

Where the evidence is not taken down in writing by the Judge, or from his dictation in the open Court, or recorded mechanically in his presence, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes, and such memorandum shall be written and signed by the Judge and shall form part of the record.

Simplified act

If the Judge does not write down the evidence himself, have it written down as he speaks in open court, or record it mechanically while he is there, he must:

As each witness speaks, make a note of the main points of what the witness says.

This note must be written and signed by the Judge.

This note will become part of the official record.

Explanation using Example

Example 1:

Scenario: A property dispute case in a district court in Mumbai.

Situation: During the hearing, the judge is listening to the testimony of a key witness, Mr. Sharma, who is providing crucial information about the ownership of the disputed property.

Application of Rule 8:

The judge does not write down Mr. Sharma's testimony word-for-word.

Instead, the judge listens carefully and makes a summary of the key points of Mr. Sharma's testimony.

This summary includes important details such as dates, names, and events mentioned by Mr. Sharma.

The judge writes this summary in his own words, signs it, and includes it in the official court record.

Outcome: The memorandum created by the judge serves as an official record of Mr. Sharma's testimony, ensuring that the key points are documented even though the full testimony was not written down verbatim.

Example 2:

Scenario: A breach of contract case in a civil court in Delhi.

Situation: During the trial, Ms. Gupta, a witness for the plaintiff, is called to testify about the terms of the contract and the alleged breach by the defendant.

Application of Rule 8:

The judge does not take down Ms. Gupta's testimony in writing as she speaks.

Instead, the judge listens to her testimony and makes a memorandum summarizing the essential points, such as the specific terms of the contract that were allegedly breached and any relevant dates and actions.

The judge ensures that this summary captures the essence of Ms. Gupta's testimony.

The judge then writes and signs this memorandum, which becomes part of the court's official record.

Outcome: The memorandum provides a concise and accurate record of Ms. Gupta's testimony, which can be referred to later in the trial or during appeals, ensuring that the key points are preserved even though the full testimony was not recorded verbatim.

Rule 9: When evidence may be taken in English.

1. Where English is not the language of the Court, but all the parties to the suit who appear in person, and the pleaders of such of the parties as appear by pleaders, do not object to having such evidence as is given in English, being taken down in English, the judge may so take it down or cause it to be taken down.
2. Where evidence is not given in English but all the parties who appear in person, and the pleaders of such of the parties as appear by pleaders, do not object to having such evidence being taken down in English, the Judge may take down, or cause to be taken down, such evidence in English.

Simplified act

If the court does not use English, but everyone involved in the case (whether they are representing themselves or have lawyers) agrees to have the evidence recorded in English, the judge can record it in English or have someone else do it.

If the evidence is not originally in English, but everyone involved in the case (whether they are representing themselves or have lawyers) agrees to have the evidence recorded in English, the judge can record it in English or have someone else do it.

Explanation using Example

Example 1:

Ravi and Suman are involved in a civil dispute over a property boundary in a court in Tamil Nadu, where Tamil is the official language of the court. Both Ravi and Suman, along with their respective lawyers, are fluent in English and do not object to the evidence being recorded in English. The judge, noting their consent, decides to record the witness testimonies and other evidence in English to expedite the process and ensure clarity for all parties involved.

Example 2:

In a commercial lawsuit in a court in Gujarat, where Gujarati is the official language, a foreign company is suing a local business for breach of contract. The representatives of the foreign company and their lawyer, as well as the local business and its lawyer, all agree to have the evidence recorded in English, as it is the common language understood by all parties. The judge, seeing no objections, orders that the evidence be taken down in English to facilitate smoother proceedings and better understanding among the parties.

Rule 10: Any particular question and answer may be taken down.

The Court may, of its own motion or on the application of any party or his pleader, take down any particular question and answer, or any objection to any question, if there appears to be any special reason for so doing.

11.

Simplified act

The Court can, either on its own or if requested by any party involved or their lawyer, write down any specific question and answer, or any objection to a question, if there is a special reason to do so.

11.

Explanation using Example

Example 1:

Scenario: A property dispute case is being heard in a civil court in Mumbai. During the cross-examination of a key witness, the plaintiff's lawyer asks a question about the witness's knowledge of a specific property transaction.

Application of Rule 10:

The witness provides a detailed answer that could significantly impact the case.

The defendant's lawyer believes that this particular question and answer are crucial for the case and requests the judge to take it down verbatim.

The judge, recognizing the importance of the question and answer, orders the court stenographer to record it exactly as stated.

Example 2:

Scenario: In a breach of contract case in Delhi, the defendant's lawyer raises an objection to a question posed by the plaintiff's lawyer during the examination of the defendant.

Application of Rule 10:

The plaintiff's lawyer asks the defendant about a specific clause in the contract that allegedly was not fulfilled.

The defendant's lawyer objects, arguing that the question is misleading and irrelevant.

The judge sees a special reason to document this objection and the question, as it may be important for future reference or appeals.

The judge instructs the court stenographer to take down the exact question and the objection raised by the defendant's lawyer.

Example 3:

Scenario: A family court in Bangalore is hearing a child custody case. During the hearing, the child's guardian ad litem asks the child a sensitive question about their living conditions with each parent.

Application of Rule 10:

The child gives an emotional and detailed response that could influence the court's decision on custody.

The judge, understanding the significance of the child's answer, decides to take down the question and answer verbatim.

This ensures that the child's exact words are preserved in the court record, which may be crucial for the final judgment.

Example 4:

Scenario: In a defamation case in Kolkata, the plaintiff's lawyer questions the defendant about a specific statement made on social media.

Application of Rule 10:

The defendant admits to making the statement but provides a context that could mitigate the impact.

The plaintiff's lawyer requests the court to take down the question and the defendant's answer exactly as stated.

The judge agrees, seeing the special reason to document this exchange accurately, as it could be pivotal in determining the outcome of the case.

Rule 11: Questions objected to and allowed by Court.

Where any question put to a witness is objected to by a party or his pleader, and the Court allows the same to be put, the Judge shall take down the question, the answer, the objection and the name of the person making it, together with the decision of the Court thereon.

Simplified act

If a lawyer or a party objects to a question asked to a witness, and the Court decides the question can be asked, the Judge must write down:

The question

The answer

The objection

The name of the person who made the objection

The Court's decision on the objection

Explanation using Example

Example 1:

Case: Property Dispute

Scenario: During a property dispute case, Mr. Sharma's lawyer asks a witness, Mr. Verma, a question about a conversation he had with the deceased property owner.

Question: "Did the deceased ever mention to you that he intended to leave the property to Mr. Sharma?"

Objection: The lawyer representing the opposing party, Mr. Gupta, objects to the question, arguing that it is hearsay and not admissible as evidence.

Court's Decision: The judge considers the objection and decides to allow the question. The judge then records the following:

The question asked: "Did the deceased ever mention to you that he intended to leave the property to Mr. Sharma?"

The answer given by the witness: "Yes, he mentioned it several times."

The objection raised by Mr. Gupta's lawyer: "Objection, hearsay."

The judge's decision: "Objection overruled. The question is allowed."

Example 2:

Case: Breach of Contract

Scenario: In a breach of contract case, Ms. Rao's lawyer questions a witness, Mr. Singh, about an email exchange between the parties involved.

Question: "Did you receive an email from the defendant on 15th March confirming the delivery date?"

Objection: The defendant's lawyer objects, claiming that the email is not relevant to the current issue being discussed.

Court's Decision: The judge reviews the objection and decides to allow the question. The judge then records the following:

The question asked: "Did you receive an email from the defendant on 15th March confirming the delivery date?"

The answer given by the witness: "Yes, I received the email confirming the delivery date as 20th March."

The objection raised by the defendant's lawyer: "Objection, irrelevant."

The judge's decision: "Objection overruled. The question is allowed."

Rule 12: Remarks on demeanour of witnesses.

The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

Simplified act

The Court can make notes about how a witness behaves while they are being questioned if it thinks it's important.

Explanation using Example

Example 1:

Case: Property Dispute

Scenario: During a property dispute case, Mr. Sharma is called as a witness to testify about the ownership of a piece of land. While being cross-examined, Mr. Sharma appears visibly nervous, avoids eye contact, and frequently changes his statements.

Application of Rule 12: The judge notices Mr. Sharma's nervous demeanor and inconsistent statements. The judge records these observations in the court's notes, indicating that Mr. Sharma's behavior may affect the credibility of his testimony. This record can be used later to assess the reliability of Mr. Sharma's statements when making a final judgment.

Example 2:

Case: Breach of Contract

Scenario: In a breach of contract case, Ms. Gupta is called as a witness to testify about the terms of an agreement between two companies. During her examination, Ms. Gupta is confident, maintains steady eye contact, and provides clear and consistent answers.

Application of Rule 12: The judge observes Ms. Gupta's confident and consistent demeanor and records these remarks in the court's notes. These observations may be used to support the credibility of Ms. Gupta's testimony, potentially influencing the court's decision in favor of the party she supports.

Rule 13: Memorandum of evidence in unappealable cases.

In cases in which an appeal is not allowed, it shall not be necessary to take down or dictate or record the evidence of the witnesses at length; but the Judge, as the examination of each witness proceeds, shall make in writing, or

dictate directly on the typewriter, or cause to be mechanically recorded, a memorandum of the substance of what the witness deposes, and such memorandum shall be signed by the Judge or otherwise authenticated, and shall form part of the record.

Simplified act

When an appeal is not allowed, the Judge does not need to write down or record everything the witnesses say in detail.

Instead, as each witness speaks, the Judge will write, type, or record a summary of what the witness says.

This summary must be signed by the Judge or verified in some other way.

The summary will then become part of the official record of the case.

Explanation using Example

Example 1:

Scenario: A property dispute case between two neighbors, Mr. Sharma and Mr. Verma, over a small piece of land. The case is heard in a lower civil court where the judgment is final and not subject to appeal.

Application of Rule 13: During the hearing, Mr. Sharma and Mr. Verma both present their witnesses. Mr. Sharma's witness, Mr. Gupta, testifies that he has seen Mr. Sharma using the disputed land for the past 10 years. Instead of recording Mr. Gupta's entire testimony word-for-word, the judge writes a brief summary: "Mr. Gupta testified that Mr. Sharma has been using the disputed land for 10 years." This summary is signed by the judge and added to the case record.

Example 2:

Scenario: A small claims court case where Ms. Rao is suing a local contractor for incomplete renovation work. The amount in dispute is minor, and the court's decision is final with no option for appeal.

Application of Rule 13: Ms. Rao's witness, Ms. Patel, states that she saw the contractor leaving the work site early on multiple occasions. The judge does not record every detail of Ms. Patel's testimony. Instead, the judge types a summary on a typewriter: "Ms. Patel observed the contractor leaving the work

site early on several days." This memorandum is then signed by the judge and included in the official court record.

Rule 14: Judge unable to make such memorandum to record reasons of his inability. Repealed.

Omitted by the Code of Civil Procedure (Amendment) Act, 1976 (104 of 1976), s. 69 (with effect from 1-2-1977).

Simplified act

This section was removed by the Code of Civil Procedure (Amendment) Act, 1976 (Act No. 104 of 1976), section 69, starting from February 1, 1977.

Explanation using Example

Example 1:

Scenario: A civil case is being heard in a district court in Mumbai. The judge, due to a sudden medical emergency, is unable to make a memorandum (a written record) of the proceedings and the reasons for his inability to do so.

Application: Before the amendment in 1976, Rule 14 of Order XVIII would have required the judge to record the reasons for his inability to make such a memorandum. However, since this rule has been repealed, there is no longer a legal requirement for the judge to document the reasons for his inability to make the memorandum. The court proceedings would continue without this requirement.

Example 2:

Scenario: In a civil suit in Delhi, the judge is unexpectedly transferred to another court before he can complete the memorandum of the case he was hearing.

Application: Prior to the 1976 amendment, the judge would have been required to record the reasons for his inability to complete the memorandum under Rule 14 of Order XVIII. However, with the repeal of this rule, the judge is no longer obligated to provide such reasons. The new judge taking over the case can proceed based on the existing records without needing an explanation for the previous judge's inability to complete the memorandum.

Rule 15: Power to deal with evidence taken before another Judge.

(1) Where a Judge is prevented by death, transfer or other cause from concluding the trial of a suit, his successor may deal with any evidence or memorandum taken down or made under the foregoing rules as if such evidence or memorandum had been taken down or made by him or under his direction under the said rules and may proceed with the suit from the stage at which his predecessor left it.

(2) The provisions of sub-rule (1) shall, so far as they are applicable, be deemed to apply to evidence taken in a suit transferred under section 24.

Simplified act

(1) If a Judge cannot finish a trial because of death, transfer, or any other reason, the new Judge can use the evidence or notes that were already taken as if they were taken by the new Judge. The new Judge can continue the trial from where the previous Judge stopped.

(2) The rule in (1) also applies to evidence in a trial that has been moved to a different court under section 24.

Explanation using Example

Example 1:

Scenario: Judge A is presiding over a civil suit involving a property dispute between Mr. Sharma and Mr. Verma. During the trial, Judge A has recorded the testimonies of several witnesses and has made detailed notes on the evidence presented. Unfortunately, Judge A is transferred to another district before the trial concludes.

Application of Rule 15: Judge B is appointed as the successor to Judge A. According to Rule 15 of the Code of Civil Procedure 1908, Judge B can use the evidence and notes recorded by Judge A as if they were recorded by Judge B himself. Judge B does not need to re-examine the witnesses or re-record the evidence. He can proceed with the trial from the point where Judge A left off, ensuring that the trial continues smoothly without unnecessary delays.

Example 2:

Scenario: A civil suit regarding breach of contract between Ms. Gupta and Mr. Khan is being heard by Judge C. During the trial, Judge C passes away unexpectedly after recording the evidence of key witnesses and making a memorandum of the proceedings.

Application of Rule 15: Judge D is appointed to take over the case. Under Rule 15, Judge D can utilize the evidence and memorandum recorded by Judge C. This means Judge D can continue the trial from the stage it was left by Judge C, without the need to start the trial afresh. This provision ensures that the judicial process is efficient and that the parties involved do not face undue delays.

Example 3:

Scenario: A civil suit involving a partnership dispute between Mr. Patel and Mr. Desai is being heard in the Mumbai High Court by Judge E. Midway through the trial, the case is transferred to the Delhi High Court under Section 24 of the Code of Civil Procedure 1908.

Application of Rule 15: Judge F in the Delhi High Court takes over the case. According to Rule 15(2), the evidence recorded by Judge E in the Mumbai High Court can be used by Judge F as if it was recorded by Judge F himself. Judge F can proceed with the trial from the stage it was at when it was transferred, ensuring continuity and efficiency in the judicial process.

Rule 16: Power to examine witness immediately.

Witness Testimony Procedures

(1) Where a witness is about to leave the jurisdiction of the Court, or other sufficient cause is shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon the application of any party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided.

(2) Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

(3) The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and the Judge shall, if necessary, correct the same, and shall sign it, and it may then be read at any hearing of the suit.

Simplified act

Witness Testimony Procedures

(1) If a witness is about to leave the area where the court has authority, or if there is another good reason, the court can decide to take the witness's

testimony right away. This can happen if any party involved in the case or the witness asks for it, at any time after the case has started.

(2) If the testimony is not taken immediately and in front of everyone involved, the court will give notice to the parties about the date set for the testimony. The notice will be as sufficient as the court thinks necessary.

(3) The testimony taken will be read back to the witness. If the witness agrees it is correct, they will sign it. The judge will also correct it if needed and then sign it. This testimony can then be used in any future hearings of the case.

Explanation using Example

Example 1:

Scenario: Ramesh, a key witness in a property dispute case, has received a job offer in the United States and needs to leave India within a week.

Application: Ramesh's lawyer files an application under Rule 16 of the Code of Civil Procedure, 1908, requesting the court to record Ramesh's testimony immediately due to his imminent departure.

Court's Action: The court, satisfied with the reason provided, schedules an immediate hearing to record Ramesh's testimony. The court notifies both parties about the date and time of the examination.

Procedure: During the hearing, Ramesh's testimony is recorded in the presence of both parties. After the testimony is recorded, it is read back to Ramesh, who confirms its accuracy and signs the document. The judge also signs the document, making it admissible in future hearings of the case.

Example 2:

Scenario: Sita, an elderly woman, is a crucial witness in a family inheritance dispute. She is in poor health and her doctor has advised that she may not be able to attend court hearings in the future.

Application: Sita's lawyer submits an application under Rule 16, citing her deteriorating health as a sufficient cause for her testimony to be recorded immediately.

Court's Action: The court reviews the medical documents and agrees that Sita's testimony should be taken without delay. The court sets a date for the examination and informs all parties involved.

Procedure: On the scheduled date, Sita's testimony is recorded in the presence of the parties. The testimony is then read back to her, and she confirms its accuracy by signing the document. The judge also signs the document, ensuring it can be used in subsequent hearings of the case.

Rule 17: Court may recall and examine witness.

The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.

Simplified act

The Court can call back any witness who has already given their testimony at any point during a trial.

The Court can ask the witness any questions it considers appropriate, as long as it follows the current rules of evidence.

Explanation using Example

Example 1:

Scenario: A property dispute case is ongoing in a civil court in Mumbai. During the trial, a key witness, Mr. Sharma, testified about the ownership of the property. After several hearings, new evidence comes to light that contradicts Mr. Sharma's earlier testimony.

Application of Rule 17: The judge decides to recall Mr. Sharma to the witness stand to clarify the discrepancies between his previous testimony and the new evidence. The judge asks Mr. Sharma specific questions to understand the truth and ensure a fair judgment.

Example 2:

Scenario: In a breach of contract case in Delhi, Ms. Gupta testified about the terms of the contract between her company and the defendant. Later in the trial, the defendant presents a document that was not previously available, which appears to alter the terms Ms. Gupta described.

Application of Rule 17: The court recalls Ms. Gupta to the witness stand to address the new document. The judge questions her about the document's authenticity and its impact on the contract terms. This helps the court to get a clearer picture and make an informed decision.

Example 3:

Scenario: A personal injury lawsuit is being heard in a civil court in Bangalore. Dr. Rao, a medical expert, initially testified about the extent of the plaintiff's injuries. However, after further medical examinations, new findings suggest a different prognosis.

Application of Rule 17: The court recalls Dr. Rao to provide additional testimony based on the new medical findings. The judge asks Dr. Rao detailed questions to understand the implications of the new medical evidence on the plaintiff's condition and potential compensation.

Example 4:

Scenario: In a family inheritance dispute in Chennai, Mr. Patel testified about the contents of a will. Later, another family member produces a different version of the will that was not previously considered.

Application of Rule 17: The court recalls Mr. Patel to the witness stand to address the newly presented will. The judge questions Mr. Patel about the differences between the two versions and the circumstances under which each was created. This helps the court determine the validity of the wills and the rightful heirs.

Rule 17A: Omitted.

Production of evidence not previously known or which could not be produced despite due diligence, omitted by the Code of Civil Procedure (Amendment) Act, 1999 (46 of 1999), s. 27 (with effect from 1-7-2002).

Simplified act

Simplified act in Layman's English

Providing new evidence that was not known before or could not be found even with careful effort, was removed by the Code of Civil Procedure (Amendment) Act, 1999 (46 of 1999), section 27 (effective from July 1, 2002).

Explanation using Example

Example 1:

Ravi filed a civil suit against his neighbor, Suresh, for encroaching on his property. During the trial, Ravi presented all the evidence he had. However,

after the trial had concluded, Ravi discovered a crucial piece of evidence—a land survey report from 1995 that clearly showed the boundary lines. Ravi wanted to present this new evidence to the court. However, under Rule 17A, which has been omitted, Ravi cannot introduce this new evidence after the trial has concluded, even if it was not previously known or could not be produced despite due diligence.

Example 2:

Meena is involved in a civil lawsuit regarding a breach of contract with a construction company. During the hearing, she presented all the documents and witnesses she had. A few months later, she found an old email from the construction company that clearly indicated their acknowledgment of the breach. Meena wanted to submit this email as new evidence. However, due to the omission of Rule 17A, Meena is not allowed to introduce this new evidence after the hearing has already taken place, regardless of her previous inability to produce it.

Rule 18: Power of Court to inspect.

The Court may at any stage of a suit inspect any property or thing concerning which any question may arise and where the Court inspects any property or thing it shall, as soon as may be practicable, make a memorandum of any relevant facts observed at such inspection and such memorandum shall form a part of the record of the suit.

Simplified act

The Court can look at any property or item related to a case at any time during the case.

When the Court looks at the property or item, it must write down any important details it notices as soon as possible.

This written note will become part of the official records of the case.

Explanation using Example

Example 1:

Scenario: Property Dispute

Situation: Two brothers, Raj and Ravi, are in a legal dispute over the ownership of a piece of agricultural land in their village. Raj claims that the land belongs

to him as per their father's will, while Ravi argues that the will is forged and the land should be divided equally between them.

Application of Rule 18: The court decides to inspect the agricultural land to verify the claims made by both parties. During the inspection, the judge observes the boundaries, the condition of the land, and any relevant structures or markers that could support either Raj's or Ravi's claims. The judge makes a memorandum of these observations, noting the exact location of boundary markers and any other relevant details. This memorandum is then added to the court records and will be considered during the final judgment.

Example 2:

Scenario: Construction Defect Case

Situation: A homeowner, Priya, files a lawsuit against a construction company, alleging that the newly built house has several structural defects, including cracks in the walls and a leaking roof. The construction company denies these allegations, claiming that the house was built according to the agreed specifications.

Application of Rule 18: The court decides to inspect the house to assess the alleged defects. During the inspection, the judge examines the cracks in the walls, the condition of the roof, and any other issues raised by Priya. The judge makes a detailed memorandum of the observations, including photographs and descriptions of the defects. This memorandum is then included in the court records and will be used to determine whether the construction company is liable for the defects and what compensation, if any, Priya should receive.

Rule 19: Power to get statements recorded on commission.

Notwithstanding anything contained in these rules, the court may, instead of examining witnesses in open court, direct their statements to be recorded on commission under rule 4A of Order XXVI.

Simplified act

Even though the usual rules say witnesses should be questioned in open court, the court can decide to have their statements recorded privately by a commissioner according to rule 4A of Order XXVI.

Explanation using Example

Example 1:

Ravi, a businessman in Mumbai, files a civil suit against his former business partner, Suresh, for breach of contract. Suresh, who now resides in London, is a crucial witness in the case. Due to the difficulty and expense of traveling to India, Suresh requests the court to allow his testimony to be recorded on commission. The court, considering the circumstances, directs that Suresh's statement be recorded on commission under Rule 4A of Order XXVI, instead of requiring him to appear in open court.

Example 2:

Meena, a resident of Chennai, is involved in a property dispute with her neighbor. One of the key witnesses, her elderly father, is bedridden and unable to attend court due to severe health issues. Meena requests the court to record her father's statement on commission. The court, acknowledging the witness's health condition, orders that his testimony be recorded on commission under Rule 4A of Order XXVI, ensuring that his evidence is still considered without requiring his physical presence in court.

ORDER XIX: AFFIDAVITS

Rule 1: Power to order any point to be proved by affidavit.

Any Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable:

Provided that where it appears to the Court that either party bona fide desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

Simplified act

Any Court can decide at any time, for a good reason, that certain facts can be proven using a written statement (affidavit), or that a written statement from a witness can be read during the hearing, under conditions the Court finds fair.

However, if the Court believes that either side genuinely wants to question the witness in person and the witness can be brought to court, the Court will not allow the witness's evidence to be given through a written statement.

Explanation using Example

Example 1:

Scenario: A property dispute case in a civil court in Mumbai.

Situation: Mr. Sharma and Mr. Verma are in a legal dispute over the ownership of a piece of land. Mr. Sharma claims that he has been in possession of the land for over 20 years, while Mr. Verma claims that he inherited the land from his ancestors.

Application of Rule 1:

The court decides that the fact of Mr. Sharma's possession of the land for 20 years can be proved by an affidavit from Mr. Sharma's neighbor, Mr. Gupta, who has known Mr. Sharma for 25 years.

Mr. Gupta submits an affidavit stating that he has seen Mr. Sharma living on and maintaining the land for the past 20 years.

However, Mr. Verma's lawyer requests the court to produce Mr. Gupta for cross-examination to verify the authenticity of his statement.

The court finds the request reasonable and orders Mr. Gupta to appear in court for cross-examination.

Example 2:

Scenario: A breach of contract case in a civil court in Delhi.

Situation: Ms. Kapoor sues a construction company for not completing the construction of her house on time as per the contract. The construction company claims that the delay was due to unforeseen weather conditions.

Application of Rule 1:

The court orders that the fact of the weather conditions during the construction period can be proved by an affidavit from the local meteorological department.

The meteorological department provides an affidavit detailing the weather conditions during the construction period, confirming that there were indeed severe weather conditions that could have caused delays.

Ms. Kapoor's lawyer requests the court to produce the meteorological officer who signed the affidavit for cross-examination to ensure the accuracy of the information.

The court agrees that the request is bona fide and orders the meteorological officer to appear in court for cross-examination.

Example 3:

Scenario: A personal injury case in a civil court in Bangalore.

Situation: Mr. Rao files a lawsuit against a company after slipping and falling on their premises, resulting in a severe injury. The company claims that they had placed warning signs about the wet floor.

Application of Rule 1:

The court orders that the fact of the presence of warning signs can be proved by an affidavit from the company's maintenance manager, Mr. Singh.

Mr. Singh submits an affidavit stating that he had placed warning signs in the area where Mr. Rao fell.

Mr. Rao's lawyer requests the court to produce Mr. Singh for cross-examination to challenge the credibility of his statement.

The court finds the request reasonable and orders Mr. Singh to appear in court for cross-examination.

Rule 2: Power to order attendance of deponent for cross-examination.

(1) Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross-examination of the deponent.

(2) Such attendance shall be in Court, unless the deponent is exempted from personal appearance in Court, or the Court otherwise directs.

Simplified act

(1) When someone applies to the court, they can provide evidence through a written statement called an affidavit. However, if either side requests, the court can require the person who made the affidavit to come to court to answer questions about it.

(2) The person who made the affidavit must come to court unless they are excused from appearing in person or the court decides something different.

Explanation using Example

Example 1:

Scenario: A property dispute case in a civil court in Mumbai.

Details:

Rajesh files a suit against his neighbor, Suresh, claiming that Suresh has encroached on his property.

Rajesh submits an affidavit from a surveyor, Mr. Sharma, who states that the boundary lines have indeed been crossed by Suresh.

Suresh's lawyer, doubting the credibility of Mr. Sharma's affidavit, requests the court to order Mr. Sharma to attend the court for cross-examination.

Application of Rule 2:

The court, considering the request, orders Mr. Sharma to appear in court for cross-examination.

During the cross-examination, Suresh's lawyer questions Mr. Sharma about the methods used in the survey and any potential biases.

This process helps the court to better assess the reliability of the affidavit submitted by Rajesh.

Example 2:

Scenario: A divorce case in a family court in Delhi.

Details:

Priya files for divorce from her husband, Amit, citing mental cruelty.

Priya submits an affidavit from her therapist, Dr. Mehta, who attests to the mental stress and trauma Priya has been experiencing due to Amit's behavior.

Amit's lawyer, questioning the validity of Dr. Mehta's statements, requests the court to order Dr. Mehta to attend the court for cross-examination.

Application of Rule 2:

The court orders Dr. Mehta to appear in court for cross-examination.

During the cross-examination, Amit's lawyer asks Dr. Mehta about the therapy sessions, the basis of his conclusions, and any potential biases.

This helps the court to evaluate the credibility of the affidavit and make a more informed decision regarding the case.

Example 3:

Scenario: A commercial dispute in a civil court in Bangalore.

Details:

A company, XYZ Pvt. Ltd., files a suit against a supplier, ABC Traders, for delivering substandard goods.

XYZ Pvt. Ltd. submits an affidavit from an independent quality inspector, Ms. Reddy, who confirms that the goods were indeed substandard.

ABC Traders' lawyer, suspecting that the inspection might not have been thorough, requests the court to order Ms. Reddy to attend the court for cross-examination.

Application of Rule 2:

The court orders Ms. Reddy to appear in court for cross-examination.

During the cross-examination, ABC Traders' lawyer questions Ms. Reddy about the inspection process, the criteria used, and any potential conflicts of interest.

This allows the court to better understand the validity of the affidavit and make a fair judgment in the case.

Rule 3: Matters to which affidavits shall be confined.

(1) Affidavits

Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted: provided that the grounds thereof are stated.

(2) Costs of Affidavits

The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party filing the same.

4. Court may control evidence

(1) The Court may, by directions, regulate the evidence as to issues on which it requires evidence and the manner in which such evidence may be placed before the Court.

(2) The Court may, in its discretion and for reasons to be recorded in writing, exclude evidence that would otherwise be produced by the parties.

5. Redacting or rejecting evidence

A Court may, in its discretion, for reasons to be recorded in writing:

(i) redact or order the redaction of such portions of the affidavit of examination-in-chief as do not, in its view, constitute evidence; or

(ii) return or reject an affidavit of examination-in-chief as not constituting admissible evidence.

6. Format and guidelines of affidavit of evidence

An affidavit must comply with the form and requirements set forth below:

(a) such affidavit should be confined to, and should follow the chronological sequence of, the dates and events that are relevant for proving any fact or any other matter dealt with;

(b) where the Court is of the view that an affidavit is a mere reproduction of the pleadings, or contains the legal grounds of any party's case, the Court may, by order, strike out the affidavit or such parts of the affidavit, as it deems fit and proper;

(c) each paragraph of an affidavit should, as far as possible, be confined to a distinct portion of the subject;

(d) an affidavit shall state:

(i) which of the statements in it are made from the deponent's own knowledge and which are matters of information or belief; and

(ii) the source for any matters of information or belief;

(e) an affidavit should:

(i) have the pages numbered consecutively as a separate document (or as one of several documents contained in a file);

(ii) be divided into numbered paragraphs;

- (iii) have all numbers, including dates, expressed in figures; and
- (iv) if any of the documents referred to in the body of the affidavit are annexed to the affidavit or any other pleadings, give the annexures and page numbers of such documents that are relied upon.

Simplified act

(1) Affidavits

Affidavits should only include facts that the person making the affidavit knows personally, except in temporary matters where they can include what they believe, as long as they explain why they believe it.

(2) Costs of Affidavits

If an affidavit includes unnecessary hearsay, arguments, or copies of documents, the person who filed it will have to pay for it, unless the Court decides otherwise.

4. Court may control evidence

(1) The Court can give instructions on what evidence is needed for specific issues and how that evidence should be presented.

(2) The Court can choose to exclude certain evidence, but must explain why in writing.

5. Redacting or rejecting evidence

A Court can, with written reasons:

- (i) remove parts of an affidavit that it doesn't consider to be evidence; or
- (ii) return or reject an affidavit if it doesn't count as acceptable evidence.

6. Format and guidelines of affidavit of evidence

An affidavit must follow these rules:

- (a) It should only include relevant dates and events in the order they happened.
- (b) If the Court thinks the affidavit just repeats the legal arguments, it can remove those parts or the whole affidavit.
- (c) Each paragraph should cover a separate part of the topic.

(d) An affidavit must state:

(i) which statements are based on the person's own knowledge and which are based on information or belief; and

(ii) the source of any information or belief.

(e) An affidavit should:

(i) have pages numbered in order;

(ii) be divided into numbered paragraphs;

(iii) use figures for all numbers, including dates; and

(iv) if it refers to other documents, include those documents and their page numbers.

Explanation using Example

Example 1:

Scenario: A property dispute case in a civil court in Mumbai.

Context: Rajesh is involved in a property dispute with his neighbor, Sunil. Rajesh files an affidavit to support his claim that a particular piece of land belongs to him.

Application of Rule 3:

Affidavit Content: Rajesh's affidavit should only include facts that he personally knows. For instance, he can state that he has been living on the property for 20 years and has been paying property taxes, attaching receipts as evidence.

Interlocutory Applications: If Rajesh believes that Sunil has been encroaching on his land, he can state his belief in an interlocutory application, provided he explains the basis for this belief, such as witnessing Sunil's workers building a fence on the disputed land.

Costs of Affidavits: If Rajesh includes hearsay, like a neighbor's statement that the land belongs to him, or argumentative statements, like claiming Sunil is a dishonest person, the court may order Rajesh to bear the costs of filing such an affidavit.

Example 2:

Scenario: A divorce case in a family court in Delhi.

Context: Priya is seeking a divorce from her husband, Amit, on the grounds of cruelty. She files an affidavit detailing instances of Amit's abusive behavior.

Application of Rule 3:

Affidavit Content: Priya's affidavit should include specific incidents she personally experienced, such as dates and descriptions of abusive behavior, and any medical reports or police complaints she filed.

Interlocutory Applications: If Priya believes Amit is hiding assets, she can state this belief in an interlocutory application, provided she explains the basis for this belief, such as noticing large withdrawals from their joint bank account.

Costs of Affidavits: If Priya includes statements from her friends about Amit's behavior or makes argumentative claims without evidence, the court may order her to pay the costs of filing such an affidavit.

Example 3:

Scenario: A commercial contract dispute in a civil court in Bangalore.

Context: A company, XYZ Pvt. Ltd., is in a dispute with a supplier, ABC Traders, over the quality of goods delivered. XYZ files an affidavit to support their claim for damages.

Application of Rule 3:

Affidavit Content: The affidavit should include facts known to XYZ, such as the dates of delivery, the condition of the goods upon receipt, and any correspondence with ABC Traders regarding the issue. XYZ can attach inspection reports and emails as evidence.

Interlocutory Applications: If XYZ believes that ABC Traders is likely to dispose of assets to avoid paying damages, they can state this belief in an interlocutory application, provided they explain the basis for this belief, such as recent sales of ABC's assets.

Costs of Affidavits: If XYZ includes speculative statements about ABC's business practices or copies of unrelated documents, the court may order XYZ to bear the costs of filing such an affidavit.

Example 4:

Scenario: A tenant eviction case in a civil court in Chennai.

Context: A landlord, Suresh, is seeking to evict his tenant, Ramesh, for non-payment of rent. Suresh files an affidavit to support his eviction petition.

Application of Rule 3:

Affidavit Content: Suresh's affidavit should include facts he knows, such as the rental agreement, the amount of rent due, and the duration of non-payment. He can attach copies of the rental agreement and rent receipts as evidence.

Interlocutory Applications: If Suresh believes Ramesh is subletting the property without permission, he can state this belief in an interlocutory application, provided he explains the basis for this belief, such as observing strangers living in the property.

Costs of Affidavits: If Suresh includes hearsay, like a neighbor's statement about Ramesh's activities, or argumentative statements, like claiming Ramesh is a bad tenant, the court may order Suresh to pay the costs of filing such an affidavit.

ORDER XX: JUDGMENT AND DECREE

Rule 1: Judgment when pronounced.

Judgment Pronouncement

(1) The Court, after the case has been heard, shall pronounce judgment in an open Court, either at once, or as soon thereafter as may be practicable and when the judgment is to be pronounced on some future day, the Court shall fix a day for that purpose, of which due notice shall be given to the parties or their pleaders:

Provided that where the judgment is not pronounced at once, every endeavour shall be made by the Court to pronounce the judgment within thirty days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of the exceptional and extraordinary circumstances of the case, the Court shall fix a future day for the pronouncement of the judgment, and such day shall not ordinarily be a day beyond sixty days from the date on which the hearing of the case was concluded, and due notice of the day so fixed shall be given to the parties or their pleaders.

(1) The Commercial Court, Commercial Division, or Commercial Appellate Division, as the case may be, shall, within ninety days of the conclusion of arguments, pronounce judgment and copies thereof shall be issued to all the parties to the dispute through electronic mail or otherwise.

(2) Where a written judgment is to be pronounced, it shall be sufficient if the findings of the Court on each issue and the final order passed in the case are read out and it shall not be necessary for the Court to read out the whole judgment * * *.

(3) The judgment may be pronounced by dictation in open Court to a shorthand writer if the Judge is specially empowered by the High Court in this behalf:

Provided that, where the judgment is pronounced by dictation in open Court, the transcript of the judgment so pronounced shall, after making such correction therein as may be necessary, be signed by the judge, bear the date on which it was pronounced, and form a part of the record.

Simplified act

Judgment Pronouncement

(1) After the case has been heard, the Court will announce the judgment in an open Court. This can be done immediately or as soon as possible. If the judgment will be announced on a later date, the Court will set a specific day for it and inform the parties or their lawyers:

However, if the judgment is not announced immediately, the Court will try to announce it within thirty days after the case hearing ends. If there are exceptional circumstances making this impossible, the Court will set another day for the judgment, which should not be more than sixty days after the hearing ends. The parties or their lawyers will be informed of this new date.

(1) For Commercial Courts, Commercial Divisions, or Commercial Appellate Divisions, the judgment must be announced within ninety days after the arguments end. Copies of the judgment will be sent to all parties involved, either by email or other means.

(2) If the judgment is written, it is enough for the Court to read out the main findings and the final decision. The entire judgment does not need to be read out loud.

(3) The judgment can be announced by dictating it to a shorthand writer in open Court if the Judge has special permission from the High Court:

If the judgment is announced this way, the written version will be corrected if needed, signed by the Judge, dated, and included in the official record.

Explanation using Example

Example 1:

Scenario: A property dispute case in a District Court in Mumbai.

Details:

Parties: Mr. Sharma (Plaintiff) vs. Mr. Verma (Defendant)

Case: Mr. Sharma claims ownership of a piece of land that Mr. Verma is currently occupying.

Hearing: The final hearing of the case concluded on January 1, 2023.

Application of Rule 1:

The judge, after hearing the arguments from both sides, decides to pronounce the judgment.

The judge announces in open court that the judgment will be pronounced on January 15, 2023.

Both parties and their lawyers are given due notice of the judgment date.

On January 15, 2023, the judge pronounces the judgment in open court, ruling in favor of Mr. Sharma.

The judgment is pronounced within the 30-day period as stipulated by the rule.

Example 2:

Scenario: A commercial contract dispute in a Commercial Court in Delhi.

Details:

Parties: ABC Pvt. Ltd. (Plaintiff) vs. XYZ Ltd. (Defendant)

Case: ABC Pvt. Ltd. alleges that XYZ Ltd. breached a contract by failing to deliver goods on time.

Hearing: The final arguments concluded on February 1, 2023.

Application of Rule 1:

The judge decides to pronounce the judgment within 90 days as required for commercial cases.

The judge announces that the judgment will be pronounced on March 15, 2023.

Both parties and their lawyers are notified of the judgment date.

On March 15, 2023, the judge pronounces the judgment in open court, ruling in favor of ABC Pvt. Ltd.

Copies of the judgment are sent to both parties via email.

The judgment is pronounced within the 90-day period as required for commercial cases.

Example 3:

Scenario: A family dispute case in a Family Court in Bangalore.

Details:

Parties: Mrs. Rao (Plaintiff) vs. Mr. Rao (Defendant)

Case: Mrs. Rao seeks divorce and custody of their child.

Hearing: The final hearing of the case concluded on March 1, 2023.

Application of Rule 1:

The judge decides to pronounce the judgment but needs more time to consider the case details.

The judge announces that the judgment will be pronounced on April 15, 2023, due to the complexity of the case.

Both parties and their lawyers are given due notice of the judgment date.

On April 15, 2023, the judge pronounces the judgment in open court, granting the divorce and awarding custody to Mrs. Rao.

The judgment is pronounced within the 60-day period as allowed for exceptional and extraordinary circumstances.

Example 4:

Scenario: A civil suit for damages in a High Court in Chennai.

Details:

Parties: Mr. Kumar (Plaintiff) vs. DEF Corp. (Defendant)

Case: Mr. Kumar seeks damages for injuries sustained due to DEF Corp.'s negligence.

Hearing: The final hearing of the case concluded on April 1, 2023.

Application of Rule 1:

The judge decides to pronounce the judgment by dictation in open court.

The judge, specially empowered by the High Court, dictates the judgment to a shorthand writer in open court on April 20, 2023.

The transcript of the judgment is corrected, signed by the judge, and dated April 20, 2023.

The judgment is pronounced within the 30-day period as stipulated by the rule.

Rule 2: Power to pronounce judgment written by Judge's predecessor.

A Judge shall pronounce a judgment written, but not pronounced, by his predecessor.

Rule 3: Judgment to be signed.

The judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it and, when once signed, shall not afterwards be altered or added, to save as provided by section 152 or on review.

Simplified act

The judge will date and sign the judgment in the courtroom when announcing it.

Once the judgment is signed, it cannot be changed or added to, except as allowed by section 152 or during a review.

Explanation using Example

Example 1:

Scenario: A property dispute case between two neighbors, Mr. Sharma and Mr. Verma, has been ongoing for several months. The court has finally reached a decision.

Application of Rule 3: On the day of the judgment, the judge announces the decision in open court. The judgment is dated and signed by the judge in the presence of both parties. Once the judgment is signed, it becomes final and cannot be changed or added to, except under specific circumstances like clerical errors (as per section 152) or if a review is requested.

Outcome: Mr. Sharma and Mr. Verma receive the final judgment, which is now a binding decision. They understand that the judgment cannot be altered unless there is a clerical mistake or a valid reason for a review.

Example 2:

Scenario: Ms. Gupta files a lawsuit against a construction company for breach of contract. After hearing the arguments from both sides, the court is ready to deliver its judgment.

Application of Rule 3: The judge pronounces the judgment in open court, ensuring transparency. The judgment is dated and signed by the judge at the time of pronouncement. This signed judgment is now the official and final decision of the court. Any changes to this judgment can only be made if there is a clerical error or if a review is sought under the appropriate legal provisions.

Outcome: Ms. Gupta and the construction company receive the signed judgment. They are aware that this judgment is final and cannot be modified unless there is a clerical error or a review is granted by the court.

Rule 4: Judgments of Small Cause Courts.

(1) Judgments of a court of Small Causes need not contain more than the points for determination and the decision thereon.

(2)

Simplified act

(1) Judgments made by a Small Causes Court only need to include the main issues that were decided and the final decision on those issues.

(2)

Explanation using Example

Example 1:

Ravi filed a small cause suit against his tenant, Suresh, for non-payment of rent amounting to ₹10,000. The Small Cause Court heard the case and issued a judgment. The judgment stated:

Point for Determination: Whether Suresh owes ₹10,000 in unpaid rent to Ravi.

Decision: The court determined that Suresh does owe ₹10,000 to Ravi and ordered Suresh to pay the amount within 30 days.

The judgment did not include detailed reasoning or background information, as it only needed to address the main point for determination and the decision.

Example 2:

Priya filed a small cause suit against her neighbor, Anil, for damages caused to her garden due to Anil's negligence. The Small Cause Court issued a judgment with the following details:

Point for Determination: Whether Anil is responsible for the damage to Priya's garden and the amount of compensation owed.

Decision: The court found Anil responsible for the damage and ordered him to pay ₹5,000 as compensation to Priya.

The judgment was concise and focused solely on the key issue and the court's decision, without elaborating on the evidence or legal arguments presented.

Judgments of other Courts.

Judgments of other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

Sections

Simplified act

Judgments from other courts must include: a. A brief summary of the case. b. The main issues that need to be decided. c. The final decision on those issues. d. The reasons why that decision was made.

Explanation using Example

Example 1:

Rajesh filed a civil suit in the Delhi High Court against his neighbor, Suresh, for encroaching on his property. The Delhi High Court delivered a judgment in favor of Rajesh, stating that Suresh must remove the encroachment and pay damages. The judgment included:

A concise statement of the case: Rajesh's claim of property encroachment by Suresh.

Points for determination: Whether Suresh had encroached on Rajesh's property.

Decision: Suresh must remove the encroachment and pay damages.

Reasons: Based on the property documents and witness testimonies, it was clear that Suresh had encroached on Rajesh's property.

Example 2:

Meera filed a lawsuit in the Mumbai Civil Court against a construction company for not completing her apartment on time. The court ruled in favor of Meera, ordering the construction company to complete the apartment within six months and pay a penalty for the delay. The judgment included:

A concise statement of the case: Meera's claim against the construction company for delayed completion of her apartment.

Points for determination: Whether the construction company was responsible for the delay and the appropriate remedy.

Decision: The construction company must complete the apartment within six months and pay a penalty.

Reasons: The construction contract and evidence presented showed that the delay was due to the company's negligence, justifying the court's decision.

Rule 5: Court to state its decision on each issue.

In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

Simplified act

In cases where the court has identified specific questions to be answered, the court must explain its decision and the reasons for it for each question. However, if answering one or more of these questions is enough to decide the whole case, the court doesn't need to address the other questions.

Explanation using Example

Example 1:

Case: Property Dispute between Siblings

Scenario: Ramesh and Suresh are brothers who are in a legal dispute over the ownership of a piece of ancestral property. The court has framed several issues to be resolved, such as:

Whether the property was legally transferred to Ramesh by their father.

Whether Suresh has any legal claim to the property.

Whether the property division was done according to the family agreement.

Application of Rule 5: The court will examine each of these issues separately. For instance:

On the first issue, the court may find that the property was legally transferred to Ramesh based on the evidence presented.

On the second issue, the court may determine that Suresh does not have a legal claim to the property.

On the third issue, the court may find that the property division was not done according to the family agreement.

The court will provide its decision and the reasons for each issue. If the finding on the first issue (legal transfer to Ramesh) is sufficient to decide the case, the court may not need to address the other issues in detail.

Example 2:

Case: Breach of Contract

Scenario: A company, ABC Pvt. Ltd., has sued a contractor, Mr. Sharma, for breach of contract. The issues framed by the court include:

Whether there was a valid contract between ABC Pvt. Ltd. and Mr. Sharma.

Whether Mr. Sharma breached the terms of the contract.

Whether ABC Pvt. Ltd. suffered any damages due to the breach.

The amount of compensation, if any, that ABC Pvt. Ltd. is entitled to.

Application of Rule 5: The court will address each issue separately:

On the first issue, the court may find that there was indeed a valid contract between the parties.

On the second issue, the court may determine that Mr. Sharma breached the terms of the contract by not completing the work on time.

On the third issue, the court may find that ABC Pvt. Ltd. suffered financial losses due to the delay.

On the fourth issue, the court may decide the amount of compensation based on the evidence of damages provided by ABC Pvt. Ltd.

The court will state its findings and reasons for each issue. If the finding on the second issue (breach of contract) is sufficient to decide the case, the court may not need to elaborate on the other issues.

Rule 5A: Court to inform parties as to where an appeal lies in cases where parties are not represented by pleaders.

Except where both the parties are represented by pleaders, the Court shall, when it pronounces its judgment in a case subject to appeal, inform the parties present in Court as to the Court to which an appeal lies and the period of limitation for the filing of such appeal and place on record the information so given to the parties.

Simplified act

If both parties in a case do not have lawyers representing them, the Court must do the following when it announces its decision: a. Inform the parties present in the Court about which Court they can appeal to. b. Tell them how much

time they have to file the appeal. c. Make a note of this information in the Court records.

Explanation using Example

Example 1:

Ravi and Sita are involved in a civil dispute over a piece of land. Neither Ravi nor Sita has hired a lawyer to represent them in court. After hearing the case, the judge pronounces the judgment in favor of Sita. As per Rule 5A of the Code of Civil Procedure 1908, the judge informs Ravi and Sita that if they wish to appeal the decision, they must file the appeal in the District Court within 30 days from the date of the judgment. The judge also records this information in the court's records.

Example 2:

Anita and Rajesh are in a legal battle over a breach of contract. Both parties decide to represent themselves without hiring any pleaders. The court rules in favor of Anita. Following the judgment, the judge tells both Anita and Rajesh that they can appeal the decision in the High Court within 60 days. The judge ensures that this information is documented in the court's official records, complying with Rule 5A of the Code of Civil Procedure 1908.

Rule 6: Contents of decree.

Decree Details

- (1) The decree shall agree with the judgment: it shall contain the number of the suit, the names and descriptions of the parties, their registered addresses, and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit.
- (2) The decree shall also state the amount of costs incurred in the suit, and by whom or out of what property and in what proportions such costs are to be paid.
- (3) The Court may direct that the costs payable to one party by the other shall be set off against any sum which is admitted or found to be due from the former to the latter.

Simplified act

Decree Details

(1) The decree must match the judgment. It should include the case number, the names and details of the parties involved, their registered addresses, and details of the claim. It should also clearly state the relief granted or the decision made in the case.

(2) The decree should also mention the amount of costs incurred in the case, who has to pay these costs, from which property, and in what proportions.

(3) The Court can order that the costs one party has to pay to the other can be deducted from any amount that the latter owes to the former.

Explanation using Example

Example 1:

Case: Ram vs. Shyam

Scenario: Ram filed a suit against Shyam for the recovery of Rs. 1,00,000 which he had lent to Shyam. The court, after hearing both parties, passed a judgment in favor of Ram.

Decree Details:

Suit Number: 123/2023

Parties:

Plaintiff: Ram, S/o Laxman, residing at 45, MG Road, Delhi.

Defendant: Shyam, S/o Raghav, residing at 78, Nehru Place, Delhi.

Particulars of Claim: Recovery of Rs. 1,00,000 lent by Ram to Shyam.

Relief Granted: The court decreed that Shyam shall pay Rs. 1,00,000 to Ram.

Costs Incurred: The court also stated that Shyam shall pay the costs of Rs. 10,000 incurred by Ram in the suit.

Set Off: The court found that Ram owed Shyam Rs. 5,000 for a previous transaction. Therefore, the court directed that the costs payable by Shyam to Ram shall be set off against this amount, making the net payable amount Rs. 95,000 (Rs. 1,00,000 - Rs. 5,000).

Example 2:

Case: Sita vs. Gita

Scenario: Sita filed a suit against Gita for the possession of a piece of land. The court, after considering the evidence, passed a judgment in favor of Sita.

Decree Details:

Suit Number: 456/2023

Parties:

Plaintiff: Sita, D/o Ram, residing at 12, Ashok Nagar, Mumbai.

Defendant: Gita, D/o Hari, residing at 34, Shivaji Park, Mumbai.

Particulars of Claim: Possession of land located at Plot No. 23, Ashok Nagar, Mumbai.

Relief Granted: The court decreed that Gita shall hand over possession of the land to Sita.

Costs Incurred: The court also stated that Gita shall pay the costs of Rs. 15,000 incurred by Sita in the suit.

Set Off: There was no amount due from Sita to Gita, so no set off was applicable in this case.

Rule 6A: Preparation of Decree.

(1) Every endeavour shall be made to ensure that the decree is drawn up as expeditiously as possible and, in any case, within fifteen days from the date on which the judgment is pronounced.

(2) 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.

Simplified act

(1) Every effort should be made to ensure that the official decision (decree) is written up as quickly as possible, and definitely within fifteen days from the date the judgment is announced.

(2) You can appeal against the decision without needing a copy of the official decision (decree). In this case, the copy provided by the court will be treated as

the official decision for the purposes of rule 1 of Order XLI. However, once the official decision is written, the judgment will no longer be considered as the official decision for carrying out the judgment or for any other purpose.

Explanation using Example

Example 1:

Rajesh filed a civil suit against his neighbor, Suresh, for encroaching on his property. The court heard the case and pronounced the judgment on January 1st. According to Rule 6A of the Code of Civil Procedure 1908, the court must make every effort to prepare the decree as quickly as possible, and in any case, within fifteen days from the date of the judgment. Therefore, the decree should be drawn up by January 16th. If Rajesh wants to appeal the decision before the decree is formally prepared, he can do so using the copy of the judgment provided by the court. However, once the decree is drawn, the judgment will no longer serve as the decree for execution or any other purpose.

Example 2:

Meera won a civil case against a construction company for breach of contract, and the judgment was pronounced on February 10th. The court is required to prepare the decree by February 25th, as per Rule 6A. Meera wants to appeal certain parts of the judgment immediately. She can file an appeal without waiting for the formal decree by using the copy of the judgment provided by the court. However, once the decree is prepared, the judgment will no longer be used for execution or any other legal purposes, and the formal decree will take its place.

Rule 6B: Copies of judgments when to be made available.

Where the judgment is pronounced, copies of the judgment shall be made available to the parties immediately after the pronouncement of the judgment for preferring an appeal on payment of such charges as may be specified in the rule made by the High Court.

Simplified act

When the court announces its decision, copies of the decision must be given to the involved parties right away.

These copies are provided so that the parties can file an appeal if they want to.

The parties will need to pay a fee for these copies, as determined by the rules set by the High Court.

Explanation using Example

Example 1:

Ravi and Suman are involved in a property dispute case in a civil court in Delhi. After several hearings, the judge pronounces the judgment in favor of Ravi. According to Rule 6B of the Code of Civil Procedure 1908, immediately after the judgment is pronounced, both Ravi and Suman are entitled to receive copies of the judgment. Ravi needs the copy to understand the court's reasoning, while Suman needs it to consider filing an appeal. They approach the court clerk, pay the specified charges as determined by the Delhi High Court, and receive their copies of the judgment on the same day.

Example 2:

Meera files a lawsuit against a construction company for breach of contract in the Mumbai civil court. After a lengthy trial, the court pronounces its judgment, ruling in favor of Meera. Meera wants to enforce the judgment, and the construction company is considering an appeal. As per Rule 6B of the Code of Civil Procedure 1908, both parties are entitled to obtain copies of the judgment immediately after it is pronounced. They go to the court's administrative office, pay the required fees as set by the Bombay High Court, and receive their copies of the judgment right away. This allows the construction company to quickly start the process of filing an appeal if they choose to do so.

Rule 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.

Simplified act

The decree will have the date when the judgment was announced.

Once the judge confirms that the decree matches the judgment, he will sign it.

Explanation using Example

Example 1:

Rajesh filed a civil suit against his neighbor, Suresh, for encroaching on his property. After several hearings, the judge pronounced the judgment on 15th March 2023, ruling in favor of Rajesh. According to Rule 7 of the Code of Civil Procedure 1908, the decree issued by the court must bear the date of 15th March 2023, the same day the judgment was pronounced. Once the judge reviewed the decree to ensure it accurately reflected the judgment, he signed it, making it an official court order.

Example 2:

Meena filed a lawsuit against a construction company for not completing her house as per the contract. The court hearings went on for a few months, and finally, the judge delivered the judgment on 10th July 2023, ordering the construction company to pay compensation to Meena. As per Rule 7 of the Code of Civil Procedure 1908, the decree must be dated 10th July 2023, the date the judgment was given. The judge then verified that the decree was correctly drafted in line with the judgment and signed it, thereby formalizing the court's decision.

Rule 8: Procedure where Judge has vacated office before signing decree.

Where a Judge has vacated office after pronouncing judgment but without signing the decree, a decree drawn up in accordance with such judgment may be signed by his successor or, if the Court has ceased to exist, by the Judge of any Court to which such Court was subordinate.

Simplified act

If a Judge leaves their job after giving a decision but before signing the official document (decree), the following can happen: a. The official document can be signed by the Judge who takes over the job. b. If the Court no longer exists, the official document can be signed by a Judge from a higher Court that used to oversee the original Court.

Explanation using Example

Example 1:

Scenario: Judge Sharma has been presiding over a civil case involving a property dispute between Mr. A and Mr. B. After hearing all the arguments and evidence, Judge Sharma pronounces the judgment in favor of Mr. A. However, before he can sign the official decree, Judge Sharma retires from his position.

Application of Rule 8: According to Rule 8 of the Code of Civil Procedure 1908, the decree, which is to be drawn up based on Judge Sharma's judgment, can be signed by Judge Sharma's successor, Judge Verma. This ensures that the legal process is not stalled due to the retirement of the original judge.

Example 2:

Scenario: Judge Rao has been handling a case involving a contractual dispute between Company X and Company Y. Judge Rao delivers the judgment, ruling in favor of Company Y. Unfortunately, Judge Rao passes away before he can sign the decree.

Application of Rule 8: In this situation, the decree, which reflects Judge Rao's judgment, can be signed by the new judge appointed to replace Judge Rao. If the court where Judge Rao served has been dissolved, the decree can be signed by a judge from a higher court to which Judge Rao's court was subordinate. This ensures continuity and finality in the judicial process.

Rule 9: Decree for recovery of immovable property.

Where the subject-matter of the suit is immovable property, the decree shall contain a description of such property sufficient to identify the same, and where such property can be identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers.

Simplified act

If the lawsuit is about property that cannot be moved (like land or a building), the court's decision must include a description of the property that is detailed enough to identify it.

If the property can be identified by its boundaries (like fences or markers) or by numbers in official records (like a land survey or settlement records), the court's decision must include these boundaries or numbers.

Explanation using Example

Example 1:

Ravi owns a piece of agricultural land in Maharashtra, but he has been living in another city for work. One day, he finds out that his neighbor, Suresh, has encroached on his land and built a shed. Ravi files a suit for the recovery of his

immovable property. The court issues a decree in Ravi's favor. The decree includes a detailed description of Ravi's land, specifying its boundaries as per the local land records and survey numbers. This ensures that there is no confusion about the exact piece of land that Ravi is entitled to recover from Suresh.

Example 2:

Meena inherited a house in Chennai from her grandmother. However, a distant relative, Ramesh, claims that the house belongs to him and refuses to vacate. Meena files a suit for the recovery of the house. The court rules in Meena's favor and issues a decree. The decree contains a precise description of the house, including its address, plot number, and boundaries as recorded in the municipal records. This detailed description helps the local authorities enforce the decree and ensure that Meena can reclaim her property without any disputes over its identity.

Rule 10: Decree for delivery of movable property.

Where the suit is for movable property, and the decree is for the delivery of such property, the decree shall also state the amount of money to be paid as an alternative if delivery cannot be had.

Simplified act

If someone is suing to get back movable property (like a car or furniture), and the court orders that the property should be returned, the court must also say how much money should be paid if the property can't be returned.

Explanation using Example

Example 1:

Ravi lent his antique watch to his friend, Suresh, for a special occasion. After the event, Suresh refused to return the watch despite multiple requests. Ravi decided to file a suit in the civil court for the return of his watch. The court issued a decree ordering Suresh to return the antique watch to Ravi. However, the decree also mentioned that if Suresh fails to deliver the watch, he must pay Ravi Rs. 50,000 as an alternative compensation.

Example 2:

Meena sold her old laptop to her neighbor, Priya, with the agreement that Priya would pay the full amount within a month. Priya took the laptop but did not

pay the agreed amount even after several reminders. Meena filed a suit for the return of her laptop. The court passed a decree stating that Priya must return the laptop to Meena. Additionally, the decree specified that if Priya could not return the laptop, she would have to pay Meena Rs. 20,000 as an alternative.

Rule 11: Decree may direct payment by instalments.

(1) Where and in so far as a decree is for the payment of money, the Court may for any sufficient reason incorporate in the decree, after hearing such of the parties who had appeared personally or by pleader at the last hearing, before judgment, an order that payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable.

(2)

Simplified act

(1) If a court orders someone to pay money, the court can decide, for a good reason, to allow the payment to be delayed or to be made in parts (installments). This decision can be made even if the original agreement says otherwise. Before making this decision, the court will listen to the people involved in the case who were present at the last hearing, either in person or through their lawyer.

(2)

Explanation using Example

Example 1:

Rajesh borrowed ₹1,00,000 from Suresh and signed a contract agreeing to repay the amount in one lump sum within six months. However, Rajesh faced financial difficulties and was unable to repay the amount on time. Suresh filed a lawsuit to recover the money. The court, after hearing both parties, issued a decree in favor of Suresh but noted Rajesh's financial situation. The court decided to allow Rajesh to repay the amount in monthly instalments of ₹10,000 over ten months, with an interest rate of 5% per annum on the outstanding amount. This decision was made despite the original contract stipulating a lump sum payment.

Example 2:

Meena took a loan of ₹5,00,000 from a bank to start her small business. According to the loan agreement, she was supposed to repay the entire amount in one year. Unfortunately, her business did not perform well, and she was unable to repay the loan within the stipulated time. The bank filed a case against Meena to recover the loan amount. During the court proceedings, Meena explained her financial difficulties and requested more time to repay the loan. The court, considering her situation, decreed that Meena could repay the loan in 20 monthly instalments of ₹25,000 each, without any additional interest, even though the original contract did not provide for instalment payments.

Order, after decree, for payment by instalments.

After the passing of any such decree the Court may, on the application of the judgment-debtor and with the consent of the decree-holder, order that payment of the amount decreed shall be postponed or shall be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment-debtor, or the taking of security from him, or otherwise, as it thinks fit.

Simplified act

After a court decision is made, the court can, if the person who owes money (judgment-debtor) asks and the person who is owed money (decree-holder) agrees, order that the payment can be delayed or paid in parts. The court can set conditions like paying interest, taking the property of the person who owes money, or asking for some form of security, or any other terms it finds appropriate.

Explanation using Example

Example 1:

Scenario: Rajesh owes ₹5,00,000 to Suresh as per a court decree. Rajesh is unable to pay the entire amount at once due to financial difficulties.

Application: Rajesh applies to the court requesting to pay the amount in instalments. Suresh agrees to this arrangement.

Court Order: The court, considering Rajesh's financial situation and with Suresh's consent, orders that Rajesh can pay ₹50,000 per month for 10 months. The court also decides that Rajesh must pay an interest of 6% per annum on the outstanding amount until it is fully paid. Additionally, the court

requires Rajesh to provide a security deposit of ₹1,00,000 to ensure compliance with the instalment plan.

Example 2:

Scenario: Meena has a decree against her for ₹2,00,000 in favor of Anita. Meena's only significant asset is a piece of land, and she cannot pay the full amount immediately.

Application: Meena requests the court to allow her to pay the amount in instalments. Anita consents to this request.

Court Order: The court orders that Meena can pay ₹20,000 per month for 10 months. To secure the payment, the court attaches Meena's land, meaning that if Meena fails to make the payments, the land can be sold to recover the amount. The court also stipulates that no interest will be charged on the instalments, considering Meena's financial hardship.

Rule 12: Decree for possession and mesne profits.

(1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree -

(a) for the possession of the property;

(b) for the rents which have accrued on the property during the period prior to the institution of the suit or directing an inquiry as to such rent.

(ba) for the mesne profits or directing an inquiry as to such mesne profits;

(c) directing an inquiry as to rent or mesne profits from the institution of the suit until -

(i) the delivery of possession to the decree-holder,

(ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court, or

(iii) the expiration of three years from the date of the decree, whichever event first occurs.

(2) Where an inquiry is directed under clause (b) or clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry.

Simplified act

(1) If someone files a lawsuit to get back their property and to claim rent or compensation for the time someone else used their property, the Court can make the following decisions:

(a) Order that the property be returned to its rightful owner;

(b) Order payment for the rent that was due before the lawsuit started or decide to investigate how much rent is owed;

(ba) Order payment for the compensation (mesne profits) for the time the property was used without permission or decide to investigate how much compensation is owed;

(c) Decide to investigate how much rent or compensation is owed from the time the lawsuit started until one of the following happens:

(i) The property is returned to the rightful owner,

(ii) The person using the property gives it up and informs the rightful owner through the Court, or

(iii) Three years pass from the date of the Court's decision, whichever happens first.

(2) If the Court decides to investigate the rent or compensation as mentioned in (b) or (c), a final decision on how much is owed will be made based on the results of that investigation.

Explanation using Example

Example 1:

Mr. Sharma owns a piece of land in Delhi. Mr. Verma, without any legal right, occupies this land and starts using it for his own purposes. Mr. Sharma files a suit in the court for the recovery of possession of his land and for mesne profits (compensation for the unauthorized use of his property).

The court, after hearing the case, passes a decree:

(a) Ordering Mr. Verma to vacate the land and hand over possession to Mr. Sharma.

(b) Directing an inquiry to determine the rent that could have been earned from the land during the period Mr. Verma occupied it before the suit was filed.

(ba) Directing an inquiry to determine the mesne profits for the period Mr. Verma used the land without authorization.

(c) Directing an inquiry to determine the rent or mesne profits from the date the suit was filed until Mr. Verma vacates the land, or until three years from the date of the decree, whichever occurs first.

Once the inquiry is completed, the court will pass a final decree specifying the amount Mr. Verma must pay Mr. Sharma for the rent and mesne profits.

Example 2:

Ms. Gupta owns a commercial property in Mumbai, which she had rented out to Mr. Khan. The lease agreement expired, but Mr. Khan continued to occupy the property without paying any rent. Ms. Gupta files a suit for the recovery of possession of her property and for the unpaid rent and mesne profits.

The court issues a decree:

(a) Ordering Mr. Khan to vacate the commercial property and return possession to Ms. Gupta.

(b) Directing an inquiry to determine the rent that accrued during the period Mr. Khan occupied the property without paying rent before the suit was filed.

(ba) Directing an inquiry to determine the mesne profits for the unauthorized use of the property by Mr. Khan.

(c) Directing an inquiry to determine the rent or mesne profits from the date the suit was filed until Mr. Khan vacates the property, or until three years from the date of the decree, whichever occurs first.

After the inquiry, the court will pass a final decree specifying the amount Mr. Khan must pay Ms. Gupta for the unpaid rent and mesne profits.

Rule 12A: Decree for specific performance of contract for the sale or lease of immovable property.

Where a decree for the specific performance of a contract for the sale or lease of immovable property orders that the purchase-money or other sum be paid by the purchaser or lessee, it shall specify the period within which the payment shall be made.

Simplified act

If a court orders someone to complete a contract to buy or lease property, and the order includes a requirement for the buyer or renter to pay money, the court must also specify the deadline for making that payment.

Explanation using Example

Example 1:

Rajesh entered into a contract with Suresh to purchase a piece of land in Mumbai for ₹50 lakhs. However, Suresh later refused to complete the sale. Rajesh filed a lawsuit for specific performance of the contract. The court issued a decree ordering Suresh to sell the land to Rajesh as per the original agreement. The decree also specified that Rajesh must pay the ₹50 lakhs within 60 days from the date of the decree. If Rajesh fails to make the payment within this period, the decree may not be enforceable.

Example 2:

Anita agreed to lease a commercial property in Delhi from Meera for a period of 10 years with an annual rent of ₹5 lakhs. After signing the lease agreement, Meera refused to hand over the property. Anita filed a suit for specific performance of the lease agreement. The court decreed that Meera must lease the property to Anita as agreed. The decree also specified that Anita must pay the first year's rent of ₹5 lakhs within 30 days from the date of the decree. If Anita does not make the payment within this timeframe, she may lose the right to enforce the lease agreement.

Rule 13: Decree in administration-suit.

(1) Where a suit is for an account of any property and for its due administration under the decree of the Court, the Court shall, before passing the final decree, pass a preliminary decree ordering such accounts and inquiries to be taken and made, and giving such other directions as it thinks fit.

(2) In the administration by the Court of the property of any deceased person, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being, within the local limits of the

Court in which the administration-suit is pending with respect to the estates of persons adjudged or declared insolvent; and all persons who in any such case would be entitled to be paid out of such property, may come in under the preliminary decree, and make such claims against the same as they may respectively be entitled to by virtue of this Code.

Simplified act

(1) If someone files a lawsuit to get an account of a property and to ensure it is properly managed according to the Court's decision, the Court will first issue a preliminary order. This order will require detailed accounts and investigations to be done and will include any other instructions the Court thinks are necessary before making a final decision.

(2) When the Court is managing the property of a person who has passed away, and if the property is not enough to pay off all the person's debts and obligations, the same rules will apply as those used for handling the estates of people declared bankrupt. These rules will determine the rights of creditors with and without security, the types of debts and obligations that can be claimed, and how to value annuities and future or uncertain liabilities. Anyone who would be entitled to payment from the property can come forward under the preliminary order and make their claims according to these rules.

Explanation using Example

Example 1:

Scenario: Ram, a resident of Mumbai, passes away leaving behind a property and several debts. His heirs file a suit in the court for the administration of his estate.

Application of Rule 13:

Preliminary Decree: The court first issues a preliminary decree. This decree orders an accounting of Ram's property and an inquiry into his debts and liabilities.

Administration of Property: During the administration process, it is discovered that Ram's property is insufficient to cover all his debts.

Secured and Unsecured Creditors: The court follows the rules applicable to insolvent estates to determine the rights of secured and unsecured creditors.

For example, a bank holding a mortgage on Ram's house (secured creditor) will have priority over an unsecured creditor like a credit card company.

Claims Submission: All creditors, including those with future or contingent claims, are allowed to submit their claims under the preliminary decree. The court then evaluates these claims and decides the distribution of the estate accordingly.

Example 2:

Scenario: Sita, a businesswoman in Delhi, dies leaving behind a business property and various liabilities. Her business partners and family members are in dispute over the administration of her estate.

Application of Rule 13:

Preliminary Decree: The court issues a preliminary decree to take an account of Sita's business property and to inquire into her debts and liabilities.

Insufficient Property: It is found that Sita's business property is not enough to pay off all her debts.

Valuation of Liabilities: The court applies the rules for insolvent estates to value annuities and future or contingent liabilities. For instance, if Sita had a future liability to pay a business partner, the court will determine its present value.

Creditors' Rights: Both secured creditors (e.g., a bank with a lien on business equipment) and unsecured creditors (e.g., suppliers) are allowed to make claims. The court ensures that the distribution of the estate follows the legal priorities and rights of these creditors.

Final Decree: After all accounts and inquiries are completed, the court passes a final decree directing the distribution of the remaining property among the creditors and heirs as per the established priorities.

Rule 14: Decree in pre-emption-suit.

Decree for Pre-emption

(1) Where the Court decrees a claim to pre-emption in respect of a particular sale of property and the purchase-money has not been paid into Court, the decree shall -

(a) specify a day on or before which the purchase-money shall be so paid, and

(b) direct that on payment into Court of such purchase-money, together with the costs (if any) decreed against the plaintiff, on or before the day referred to in clause (a), the defendant shall deliver possession of the property to the plaintiff, whose title thereto shall be deemed to have accrued from the date of such payment, but that, if the purchase-money and the costs (if any) are not so paid, the suit shall be dismissed with costs.

(2) Where the Court has adjudicated upon rival claims to pre-emption, the decree shall direct, -

(a) if and in so far as the claims decreed are equal in degree, that the claim of each pre-emptor complying with the provisions of sub-rule (1) shall take effect in respect of a proportionate share of the property including any proportionate share in respect of which the claim of any pre-emptor failing to comply with the said provisions would, but for such default, have taken effect; and,

(b) if and in so far as the claims decreed are different in degree, that the claim of the inferior pre-emptor shall not take effect unless and until the superior pre-emptor has failed to comply with the said provisions.

Simplified act

Decree for Pre-emption

(1) When the Court decides that someone has the right to buy a property before others (pre-emption) and the money to buy it hasn't been paid yet, the Court's decision will:

(a) Set a deadline for when the money must be paid into the Court, and

(b) State that if the money and any court costs are paid by the deadline, the current owner must give the property to the buyer, and the buyer's ownership starts from the date of payment. If the money and costs are not paid by the deadline, the case will be dismissed, and the buyer will have to pay the court costs.

(2) When the Court has to decide between multiple people claiming the right to buy the property first, the decision will:

(a) If the claims are equally strong, each person who pays the money and costs by the deadline will get a share of the property. If someone doesn't pay, their share will be divided among those who did pay.

(b) If the claims are not equally strong, the person with the weaker claim will only get the property if the person with the stronger claim fails to pay the money and costs by the deadline.

Explanation using Example

Example 1:

Rajesh and Suresh are neighbors in a small village in Rajasthan. Rajesh decides to sell his piece of agricultural land to a third party, Anil. Suresh, who has a right of pre-emption (a right to buy the property before others), files a suit in the local court to enforce his pre-emption right.

The court decrees in favor of Suresh and orders that he must pay the purchase-money of ₹5,00,000 into the court by the 30th of the next month. The decree specifies that if Suresh pays the amount along with any court costs by the specified date, Anil must hand over possession of the land to Suresh. Suresh's ownership of the land will be considered effective from the date he makes the payment.

If Suresh fails to pay the amount by the specified date, the court will dismiss his suit, and he will also have to bear the costs of the suit.

Example 2:

In another scenario, two brothers, Amit and Sumit, both have a right of pre-emption over a piece of property that their uncle is selling. Amit and Sumit both file separate suits to enforce their pre-emption rights.

The court adjudicates the rival claims and finds that both Amit and Sumit have equal rights to pre-emption. The court decrees that both brothers must pay their respective shares of the purchase-money into the court by a specified date. If both comply, they will each get a proportionate share of the property.

However, if Amit pays his share but Sumit fails to do so, Amit will get not only his share but also Sumit's share of the property. Conversely, if Sumit pays and Amit fails, Sumit will get the entire property.

In a different case, if Amit's claim is superior to Sumit's, the court will decree that Sumit's claim will only take effect if Amit fails to comply with the payment provisions. If Amit pays the purchase-money, Sumit's claim will be dismissed.

Rule 15: Decree in suit for dissolution of partnership.

Where a suit is for the dissolution of a partnership, or the taking of partnership accounts, the Court, before passing a final decree, may pass a preliminary decree declaring the proportionate shares of the parties, fixing the day on which the partnership shall stand dissolved or be deemed to have been dissolved, and directing such accounts to be taken, and other acts to be done, as it thinks fit.

Simplified act

If someone files a lawsuit to end a business partnership or to review the partnership's financial records, the Court can issue an initial decision before making a final ruling. This initial decision can:

Declare the percentage of ownership each partner has.

Set the date when the partnership will officially end or be considered ended.

Order the review of financial records and any other necessary actions as the Court sees fit.

Explanation using Example

Example 1:

Raj and Simran run a textile business together as partners. Over time, disputes arise, and Raj files a suit for the dissolution of the partnership. The court, before passing a final decree, issues a preliminary decree. This decree declares that Raj and Simran each own 50% of the business, sets the dissolution date as March 31, 2023, and orders an accountant to audit the business finances to determine the final settlement between the partners.

Example 2:

Amit and Priya are partners in a restaurant business. Due to irreconcilable differences, Priya decides to dissolve the partnership and files a suit in court. The court issues a preliminary decree stating that Amit owns 60% and Priya owns 40% of the business. The decree also sets the dissolution date as December 31, 2022, and directs that all pending bills, employee salaries, and other financial obligations be settled before the final decree is passed.

Rule 16: Decree in suit for account between principal and agent.

In a suit for an account of pecuniary transactions between a principal and an agent, and in any other suit not hereinbefore provided for, where it is

necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken,

the Court shall, before passing its final decree, pass a preliminary decree directing such accounts to be taken as it thinks fit.

Simplified act

In a lawsuit about financial dealings between a boss (principal) and their representative (agent), or in any other lawsuit not mentioned before, where figuring out how much money is owed to or by someone requires checking the accounts,

The Court must, before making its final decision, first issue an initial order to review the accounts as it sees appropriate.

Explanation using Example

Example 1:

Scenario: Ramesh, a businessman, hires Suresh as his agent to manage his retail store. Over the years, Ramesh suspects that Suresh has been mismanaging funds and not providing accurate accounts of the transactions.

Application of Rule 16: Ramesh files a suit against Suresh for an account of the pecuniary transactions between them. The court, before passing its final decree, issues a preliminary decree directing that a detailed account of all transactions managed by Suresh be taken. This includes reviewing sales records, expenses, and any other financial dealings to determine the exact amount of money due to or from Suresh.

Example 2:

Scenario: Priya, a property owner, appoints Anil as her agent to collect rent from her tenants and manage the property. After a few years, Priya notices discrepancies in the rent collected and the maintenance expenses reported by Anil.

Application of Rule 16: Priya files a suit against Anil for an account of the pecuniary transactions related to the property management. The court, recognizing the need to ascertain the exact amount of money due to or from Anil, issues a preliminary decree. This decree directs that a thorough account of all rent collections, maintenance expenses, and other financial transactions be taken before the court can pass its final decree.

Rule 17: Special directions as to accounts.

The Court may either by the decree directing an account to be taken or by any subsequent order give special direction with regard to the mode in which the account is to be taken or vouched and in particular may direct that in taking the account the books of account in which the accounts in question have been kept shall be taken as prima facie evidence of the truth of the matters therein contained with liberty to the parties interested to take such objection thereto as they may be advised.

Simplified act

The Court can give specific instructions on how an account should be reviewed or verified.

These instructions can be given either in the initial decision or in a later order.

The Court can decide that the books where the accounts are recorded will be considered as initial proof of the accuracy of the information in them.

However, the parties involved have the right to raise objections to the information in these books if they have any concerns.

Explanation using Example

Example 1:

Scenario: A business partnership dispute.

Context: Raj and Simran are business partners who have decided to dissolve their partnership. They approach the court to settle their accounts and distribute the assets.

Application of Rule 17: The court issues a decree directing an account to be taken of the partnership's finances. The court gives special directions that the partnership's books of account will be considered as prima facie evidence of the financial transactions and balances. Raj and Simran are allowed to raise objections if they believe any entries in the books are incorrect or fraudulent.

Outcome: The court-appointed accountant reviews the partnership's books and prepares a report based on the entries. Raj objects to certain entries, claiming they were manipulated by Simran. The court then examines these objections and makes a final decision on the distribution of assets based on the evidence presented.

Example 2:

Scenario: A loan repayment dispute.

Context: Anil took a loan from a bank and agreed to repay it in monthly installments. After some time, the bank claims that Anil has defaulted on several payments, while Anil insists he has made all payments on time.

Application of Rule 17: The court issues a decree directing an account to be taken of Anil's loan repayments. The court gives special directions that the bank's account statements will be considered as *prima facie* evidence of the payments made. Anil is allowed to raise objections if he believes the statements are incorrect.

Outcome: The court-appointed auditor reviews the bank's account statements and Anil's payment receipts. Anil objects to certain entries, providing his own bank statements and receipts as evidence. The court examines these objections and determines whether Anil has indeed defaulted on his loan repayments or if the bank's records were incorrect.

Example 3:

Scenario: A family property dispute.

Context: After the death of their father, siblings Ravi and Priya are in dispute over the distribution of their father's property and assets. They approach the court to settle the accounts of their father's estate.

Application of Rule 17: The court issues a decree directing an account to be taken of the father's estate. The court gives special directions that the father's financial records and property documents will be considered as *prima facie* evidence of the estate's assets and liabilities. Ravi and Priya are allowed to raise objections if they believe any records are inaccurate.

Outcome: The court-appointed executor reviews the father's financial records and property documents. Priya objects to certain entries, claiming that some assets were not included in the records. The court examines these objections and makes a final decision on the distribution of the estate based on the evidence presented.

Example 4:

Scenario: A construction contract dispute.

Context: A contractor, Suresh, and a property developer, Meera, are in dispute over the payments for a construction project. Suresh claims that Meera has not paid the full amount agreed upon, while Meera claims that she has paid all dues.

Application of Rule 17: The court issues a decree directing an account to be taken of the payments made under the construction contract. The court gives special directions that the contractor's and developer's financial records will be considered as prima facie evidence of the payments made. Both parties are allowed to raise objections if they believe any records are incorrect.

Outcome: The court-appointed auditor reviews the financial records of both Suresh and Meera. Suresh objects to certain entries in Meera's records, providing his own invoices and receipts as evidence. The court examines these objections and determines the actual amount paid and any outstanding dues based on the evidence presented.

Rule 18: Decree in suit for partition of property or separate possession of a share therein.

Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then, -

(1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54;

(2) if and in so far as such decree relates to any other immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several parties interested in the property and giving such further directions as may be required.

Simplified act

When the Court decides to divide property or give someone their own share of it, then:

(1) If the property is land that has to pay taxes to the Government, the Court will state who owns what part of the property. However, the actual division will

be done by the Collector (a government official) or someone the Collector appoints, following the Court's instructions and the rules in section 54.

(2) If the property is any other type of land or movable items (like furniture or vehicles), and if dividing it is complicated and needs more investigation, the Court can issue a preliminary decision. This decision will state who owns what part and give additional instructions as needed.

Explanation using Example

Example 1:

Scenario: Ramesh and Suresh are brothers who inherited a piece of agricultural land from their father. The land is assessed to the payment of revenue to the Government. Ramesh wants his share of the land to be separated from Suresh's share.

Application of Rule 18:

Ramesh files a suit for partition of the property in the civil court.

The court passes a decree declaring the rights of Ramesh and Suresh in the property.

Since the land is assessed to the payment of revenue to the Government, the court directs the Collector to carry out the partition.

The Collector, or a gazetted subordinate deputed by him, will then partition the land in accordance with the court's declaration and the provisions of section 54 of the Code of Civil Procedure, 1908.

Example 2:

Scenario: Anjali and her cousin Priya jointly own a house in Mumbai. Anjali wants her share of the house to be separated from Priya's share, but the partition cannot be conveniently made without further inquiry.

Application of Rule 18:

Anjali files a suit for partition of the house in the civil court.

The court finds that the partition cannot be conveniently made without further inquiry.

The court passes a preliminary decree declaring the rights of Anjali and Priya in the property.

The court gives further directions as may be required to facilitate the partition, such as appointing a commissioner to evaluate the property and suggest a feasible method of partition.

Based on the commissioner's report and further proceedings, the court will pass a final decree for the partition of the house.

Example 3:

Scenario: Vijay and his sister Meena inherited a collection of valuable jewelry from their mother. Vijay wants his share of the jewelry to be separated from Meena's share.

Application of Rule 18:

Vijay files a suit for partition of the jewelry in the civil court.

The court passes a decree declaring the rights of Vijay and Meena in the jewelry.

Since the jewelry is movable property, the court may pass a preliminary decree if the partition cannot be conveniently made without further inquiry.

The court may give further directions, such as appointing an expert to appraise the jewelry and suggest a method of division.

Based on the expert's report and further proceedings, the court will pass a final decree for the partition of the jewelry.

Rule 19: Decree when set-off or counter-claim is allowed.

(1) Where the defendant has been allowed a set-off or counterclaim against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

(2) Appeal from decree relating to set-off or counterclaim. - Any decree passed in a suit in which a set-off or counterclaim is claimed shall be subject to the same provisions in respect of appeal to which it would have been subject if no set-off or counterclaim had been claimed.

(3) The provisions of this rule shall apply whether the set-off is admissible under rule 6 of Order VIII or otherwise.

Simplified act

(1) If the defendant is allowed to reduce the amount they owe by claiming a set-off or counterclaim against the plaintiff's claim, the court's decision will specify how much money each party owes. The decision will order the payment of any amount that is found to be due to either the plaintiff or the defendant.

(2) If you want to appeal a court decision involving a set-off or counterclaim, the same rules for appealing the decision will apply as if there were no set-off or counterclaim involved.

(3) These rules apply whether the set-off is allowed under rule 6 of Order VIII or any other rule.

Explanation using Example

Example 1:

Scenario: Ravi files a lawsuit against Suresh for non-payment of Rs. 1,00,000 for goods delivered. Suresh, in his defense, claims that Ravi owes him Rs. 40,000 for a previous transaction where Ravi had taken a loan from Suresh.

Application of Rule 19:

The court allows Suresh's counterclaim of Rs. 40,000.

The decree will state that Ravi is owed Rs. 1,00,000 by Suresh.

The decree will also state that Suresh is owed Rs. 40,000 by Ravi.

The net amount due will be calculated, and the decree will order Suresh to pay Ravi Rs. 60,000 (Rs. 1,00,000 - Rs. 40,000).

Example 2:

Scenario: Meena sues Raj for Rs. 2,00,000 for breach of contract. Raj countersues Meena for Rs. 50,000 for damages caused by Meena's delay in fulfilling another contract.

Application of Rule 19:

The court finds merit in Raj's counterclaim and allows it.

The decree will state that Meena is owed Rs. 2,00,000 by Raj.

The decree will also state that Raj is owed Rs. 50,000 by Meena.

The net amount due will be calculated, and the decree will order Raj to pay Meena Rs. 1,50,000 (Rs. 2,00,000 - Rs. 50,000).

Example 3:

Scenario: Anita files a suit against Vijay for Rs. 5,00,000 for unpaid rent. Vijay countersues Anita for Rs. 1,00,000 for repairs he had to make to the rented property due to Anita's negligence.

Application of Rule 19:

The court allows Vijay's counterclaim of Rs. 1,00,000.

The decree will state that Anita is owed Rs. 5,00,000 by Vijay.

The decree will also state that Vijay is owed Rs. 1,00,000 by Anita.

The net amount due will be calculated, and the decree will order Vijay to pay Anita Rs. 4,00,000 (Rs. 5,00,000 - Rs. 1,00,000).

Example 4:

Scenario: Sunil sues Priya for Rs. 3,00,000 for breach of a service contract. Priya countersues Sunil for Rs. 1,50,000 for non-delivery of certain services that were part of the same contract.

Application of Rule 19:

The court finds Priya's counterclaim valid and allows it.

The decree will state that Sunil is owed Rs. 3,00,000 by Priya.

The decree will also state that Priya is owed Rs. 1,50,000 by Sunil.

The net amount due will be calculated, and the decree will order Priya to pay Sunil Rs. 1,50,000 (Rs. 3,00,000 - Rs. 1,50,000).

Rule 20: Certified copies of judgment and decree to be furnished.

Certified copies of the judgment and decree shall be furnished to the parties on application to the Court, and at their expense.

Simplified act

If you want a certified copy of the court's judgment and decree, you need to apply to the Court.

You will have to pay for these copies yourself.

Explanation using Example

Example 1:

Ravi filed a civil lawsuit against his neighbor, Suresh, over a property boundary dispute. After several hearings, the court delivered a judgment in favor of Ravi, stating that the disputed land belongs to him. Ravi wants to have an official record of this judgment and the decree for future reference and to ensure that Suresh complies with the court's decision. Ravi applies to the court for certified copies of the judgment and decree. He pays the required fees, and the court provides him with the certified copies. Ravi now has official documents that he can use to enforce the court's decision if necessary.

Example 2:

Meena won a civil case against a construction company for damages caused to her house due to negligent construction work. The court issued a decree ordering the company to pay Meena a certain amount as compensation. Meena needs the certified copies of the judgment and decree to present to her insurance company and to keep for her records. She submits an application to the court and pays the necessary charges. The court then furnishes her with the certified copies, which she can use to claim her compensation and ensure that the construction company adheres to the court's order.

ORDER XXA: COSTS

Rule 1: Provisions relating to certain items.

Without prejudice to the generality of the provisions of this Code relating to costs, the Court may award costs in respect of, -

(a) expenditure incurred for the giving of any notice required to be given by law before the institution of the suit;

(b) expenditure incurred on any notice which, though not required to be given by law, has been given by any party to the suit to any other party before the institution of the suit;

- (c) expenditure incurred on the typing, writing or printing of pleadings filed by any party;
- (d) charges paid by a party for inspection of the records of the Court for the purposes of the suit;
- (e) expenditure incurred by a party for producing witnesses, even though not summoned through Court; and
- (f) in the case of appeals, charges incurred by a party for obtaining any copies of judgments and decrees which are required to be filed along with the memorandum of appeal.

Simplified act

Without affecting the general rules about costs in this Code, the Court can order the payment of costs for the following:

- (a) Money spent on giving any notice that the law requires before starting the lawsuit;
- (b) Money spent on giving any notice that wasn't required by law but was given by any party to another party before starting the lawsuit;
- (c) Money spent on typing, writing, or printing the legal documents filed by any party;
- (d) Fees paid by a party to look at the Court's records for the purposes of the lawsuit;
- (e) Money spent by a party to bring in witnesses, even if the witnesses were not officially summoned by the Court; and
- (f) In the case of appeals, money spent by a party to get copies of judgments and decrees that need to be filed with the appeal documents.

Explanation using Example

Example 1:

Rajesh files a lawsuit against his neighbor, Suresh, for encroaching on his property. Before filing the suit, Rajesh sends a legal notice to Suresh, informing him about the encroachment and asking him to remove the encroachment within 30 days. Rajesh incurs Rs. 2,000 for drafting and sending this notice through his lawyer. According to Rule 1 of Order XXA of the Code of Civil

Procedure 1908, the court may award Rajesh the Rs. 2,000 he spent on the notice as part of the costs of the suit.

Example 2:

Anita is involved in a civil dispute with her business partner, Ramesh, over the division of profits. Before filing the suit, Anita sends a notice to Ramesh, even though it is not legally required, to try and settle the matter amicably. She spends Rs. 1,500 on this notice. Additionally, Anita spends Rs. 3,000 on typing and printing the pleadings for the case. During the trial, she also incurs Rs. 1,000 for producing a key witness who was not summoned through the court. According to Rule 1 of Order XXA of the Code of Civil Procedure 1908, the court may award Anita the Rs. 1,500 for the notice, Rs. 3,000 for the pleadings, and Rs. 1,000 for producing the witness as part of the costs of the suit.

Example 3:

Vikram loses a civil case in the lower court and decides to appeal the decision. To file the appeal, he needs to obtain certified copies of the judgment and decree from the lower court, which costs him Rs. 2,500. According to Rule 1 of Order XXA of the Code of Civil Procedure 1908, the court may award Vikram the Rs. 2,500 he spent on obtaining these copies as part of the costs of the appeal.

Example 4:

Priya is involved in a property dispute and needs to inspect the court records to gather evidence for her case. She pays Rs. 1,200 in charges to inspect the records. According to Rule 1 of Order XXA of the Code of Civil Procedure 1908, the court may award Priya the Rs. 1,200 she spent on inspecting the records as part of the costs of the suit.

Example 5:

Sunita files a lawsuit against a contractor for breach of contract. Before filing the suit, she sends a notice to the contractor, which is required by law, and incurs Rs. 1,800 in expenses. During the trial, she also spends Rs. 2,200 on typing and printing the pleadings. According to Rule 1 of Order XXA of the Code of Civil Procedure 1908, the court may award Sunita the Rs. 1,800 for the notice and Rs. 2,200 for the pleadings as part of the costs of the suit.

Rule 2: Costs to be awarded in accordance with the rules made by High Court.

The award of Costs under this rule shall be in accordance with such rules as the High Court may make in that behalf.

Simplified act

The High Court will decide the rules for awarding costs under this rule.

Explanation using Example

Example 1:

Rajesh files a civil suit against his neighbor, Suresh, for encroaching on his property. After a lengthy trial, the court rules in favor of Rajesh and orders Suresh to remove the encroachment. Rajesh also requests the court to award him the costs he incurred during the litigation, such as lawyer fees, court fees, and other related expenses. The court, following the rules made by the High Court, calculates the costs and orders Suresh to pay Rajesh Rs. 50,000 as litigation costs.

Example 2:

Meera sues a construction company for poor workmanship in building her house. The court finds the construction company at fault and orders them to pay for the repairs. Meera also asks for the costs she incurred during the lawsuit. The court refers to the rules established by the High Court to determine the appropriate amount. Based on these rules, the court awards Meera Rs. 75,000 to cover her legal expenses, including lawyer fees, expert witness fees, and court fees.

ORDER XXI: EXECUTION OF DECREES AND ORDERS

Payment under decree

Rule 1: Modes of paying money under decree.

Payment of Money under Decree

(1) All money, payable under a decree shall be paid as follows, namely:

(a) by deposit into the court whose duty it is to execute the decree, or sent to that Court by postal money order or through a bank; or

(b) out of Court, to the decree-holder by postal money order or through a bank or by any other mode wherein payment is evidenced in writing; or

(c) otherwise, as the Court which made the decree, directs.

(2) Where any payment is made under clause (a) or clause (c) of sub-rule (1), the judgment-debtor shall give notice thereof to the decree-holder either through the Court or directly to him by registered post, acknowledgment due.

(3) Where money is paid by postal money order or through a bank under clause (a) or clause (b) of sub-rule (1), the money order or payment through bank, as the case may be, shall accurately state the following particulars, namely:

(a) the number of the original suit;

(b) the names of the parties or where there are more than two plaintiffs or more than two defendants, as the case may be, the names of the first two plaintiffs and the first two defendants;

(c) how the money remitted is to be adjusted, that is to say, whether it is towards the principal, interest or costs;

(d) the number of the execution case of the Court, where such case is pending; and

(e) the name and address of the payer.

(4) On any amount paid under clause (a) or clause (c) of sub-rule (1), interest, if any, shall cease to run from the date of service of the notice referred to in sub-rule (2).

(5) On any amount paid under clause (b) of sub-rule (1), interest, if any, shall cease to run from the date of such payment:

Provided that, where the decree-holder refuses to accept the postal money order or payment through a bank, interest shall cease to run from the date on which the money was tendered to him, or where he avoids acceptance of the postal money order or payment through bank, interest shall cease to run from the date on which the money would have been tendered to him in the ordinary course of business of the postal authorities or the bank, as the case may be.

Simplified act

Payment of Money under a Court Order

(1) All money that needs to be paid under a court order should be paid in one of the following ways:

(a) by depositing it into the court responsible for enforcing the order, or sending it to that court by postal money order or through a bank; or

(b) outside of court, directly to the person who won the case (decree-holder) by postal money order, through a bank, or any other method that provides written proof of payment; or

(c) in any other way that the court which made the order decides.

(2) If payment is made according to option (a) or (c) above, the person who owes the money (judgment-debtor) must notify the person who won the case (decree-holder) either through the court or directly by registered mail with a receipt.

(3) When money is paid by postal money order or through a bank under options (a) or (b) above, the payment must include the following details:

(a) the number of the original lawsuit;

(b) the names of the parties involved, or if there are more than two plaintiffs or defendants, the names of the first two plaintiffs and the first two defendants;

(c) how the money should be applied, such as towards the principal amount, interest, or costs;

(d) the number of the execution case in the court where the case is ongoing; and

(e) the name and address of the person making the payment.

(4) For any amount paid under options (a) or (c) above, interest (if any) will stop accumulating from the date the notice mentioned in point (2) is served.

(5) For any amount paid under option (b) above, interest (if any) will stop accumulating from the date of payment:

Provided that, if the person who won the case refuses to accept the postal money order or bank payment, interest will stop accumulating from the date the money was offered to them, or if they avoid accepting the payment, interest will stop accumulating from the date the money would have normally been delivered by the postal service or bank.

Explanation using Example

Example 1:

Rajesh owes Rs. 1,00,000 to Suresh as per a court decree. Rajesh decides to pay the amount through the court. He deposits the money into the court's account, which is responsible for executing the decree. Rajesh then sends a registered post to Suresh, notifying him of the payment. The notice includes details such as the original suit number, names of the parties, and how the money is to be adjusted (principal, interest, or costs). From the date Suresh receives the notice, any interest on the amount ceases to accrue.

Example 2:

Meena owes Rs. 50,000 to Anil as per a court decree. Meena decides to pay the amount directly to Anil through a bank transfer. She ensures that the bank transfer includes details like the original suit number, names of the first two plaintiffs and defendants, and how the money is to be adjusted. Meena also keeps a record of the bank transfer as evidence of payment. From the date of the bank transfer, any interest on the amount ceases to accrue. If Anil refuses to accept the payment, interest stops from the date the money was tendered.

Example 3:

Vikram owes Rs. 75,000 to Priya as per a court decree. Vikram decides to pay the amount by sending a postal money order directly to Priya. The money order includes details such as the original suit number, names of the parties, and how the money is to be adjusted. Vikram also sends a registered post to Priya, notifying her of the payment. From the date Priya receives the money order, any interest on the amount ceases to accrue. If Priya avoids accepting the money order, interest stops from the date the money would have been delivered in the ordinary course of business by the postal authorities.

Example 4:

Sunita owes Rs. 1,50,000 to Ramesh as per a court decree. The court directs Sunita to pay the amount in a specific manner, such as through a particular bank or by a specific date. Sunita follows the court's direction and makes the payment accordingly. She then sends a registered post to Ramesh, notifying him of the payment. From the date Ramesh receives the notice, any interest on the amount ceases to accrue.

Rule 2: Payment out of Court to decree-holder.

Payment or Adjustment of Decree

(1) Where any money payable under a decree of any kind is paid out of Court, or decree of any kind is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.

(2) The judgment-debtor or any person who has become surety for the judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

2A No payment or adjustment shall be recorded at the instance of the judgment-debtor unless -

(a) the payment is made in the manner provided in rule 1; or

(b) the payment or adjustment is proved by documentary evidence; or

(c) the payment or adjustment is admitted by, or on behalf of, the decree-holder in his reply to the notice given under sub-rule (2) of rule 1, or before the Court.

(3) A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognized by any Court executing the decree.

Simplified act

Payment or Adjustment of Decree

(1) If any money that is owed under a court order is paid outside of court, or if the court order is settled in any other way, either fully or partially, the person who is owed the money (the decree-holder) must inform the court about this payment or settlement. The court will then officially record this information.

(2) The person who owes the money (the judgment-debtor) or anyone who has guaranteed the payment for the judgment-debtor can also inform the court about the payment or settlement. They can ask the court to send a notice to the decree-holder, asking them to explain why this payment or settlement should not be officially recorded. If the decree-holder does not provide a good reason, the court will record the payment or settlement.

2A The court will not record a payment or settlement requested by the judgment-debtor unless:

- (a) The payment is made in the way specified in rule 1; or
- (b) There is written proof of the payment or settlement; or
- (c) The decree-holder admits the payment or settlement in their response to the notice or in court.

(3) Any payment or settlement that is not officially recorded as described above will not be recognized by any court that is enforcing the order.

Explanation using Example

Example 1:

Scenario: Rajesh owes Rs. 1,00,000 to Suresh as per a court decree. Rajesh decides to pay the amount directly to Suresh without involving the court.

Steps:

Rajesh pays Rs. 1,00,000 directly to Suresh.

Suresh, being the decree-holder, must inform the court about this payment.

Suresh certifies the payment to the court responsible for executing the decree.

The court records the payment, acknowledging that Rajesh has fulfilled his obligation.

Outcome: The court updates its records to show that Rajesh has paid the amount, and the decree is considered satisfied.

Example 2:

Scenario: Meena owes Rs. 50,000 to Anil as per a court decree. Meena pays Rs. 30,000 directly to Anil, and they agree to adjust the remaining Rs. 20,000 by providing services.

Steps:

Meena pays Rs. 30,000 to Anil and agrees to provide services worth Rs. 20,000.

Anil, the decree-holder, must inform the court about this payment and adjustment.

Anil certifies the payment and adjustment to the court responsible for executing the decree.

The court records the payment and adjustment, acknowledging that Meena has partially fulfilled her obligation.

Outcome: The court updates its records to show that Meena has paid Rs. 30,000 and adjusted Rs. 20,000 through services, partially satisfying the decree.

Example 3:

Scenario: Ravi owes Rs. 75,000 to Priya as per a court decree. Ravi pays Rs. 75,000 directly to Priya, but Priya does not inform the court.

Steps:

Ravi pays Rs. 75,000 directly to Priya.

Priya does not certify the payment to the court.

Ravi, the judgment-debtor, informs the court about the payment and requests the court to issue a notice to Priya.

The court issues a notice to Priya to show cause why the payment should not be recorded.

Priya fails to respond to the notice.

The court records the payment as certified.

Outcome: The court updates its records to show that Ravi has paid the amount, and the decree is considered satisfied.

Example 4:

Scenario: Sunita owes Rs. 1,50,000 to Ramesh as per a court decree. Sunita pays Rs. 1,50,000 directly to Ramesh, but Ramesh denies receiving the payment.

Steps:

Sunita pays Rs. 1,50,000 directly to Ramesh.

Ramesh denies receiving the payment.

Sunita, the judgment-debtor, informs the court about the payment and provides documentary evidence (e.g., bank transfer receipt).

The court issues a notice to Ramesh to show cause why the payment should not be recorded.

Ramesh fails to provide a valid reason.

The court records the payment as certified based on the documentary evidence.

Outcome: The court updates its records to show that Sunita has paid the amount, and the decree is considered satisfied.

Rule 3: Lands situate in more than one jurisdiction.

Where immovable property forms one estate or tenure situate within the local limits of the jurisdiction of two or more Courts, any one of such Courts may attach and sell the entire estate or tenure.

Simplified act

If a piece of land or property is located within the areas covered by two or more different courts, any one of those courts can take legal action to seize and sell the entire property.

Explanation using Example

Example 1:

Ravi owns a large agricultural estate that spans across the boundaries of two districts, District A and District B. Both districts have their own civil courts. Ravi defaults on a loan, and the lender obtains a decree from the court in District A to recover the debt. According to Rule 3 of Order XXI of The Code Of Civil Procedure 1908, the court in District A can attach and sell Ravi's entire estate, even the portion that lies in District B, to satisfy the decree.

Example 2:

Meena has a commercial property that is partly in City X and partly in City Y. She loses a lawsuit in the civil court of City X, and the court issues a decree for the payment of damages. Meena fails to pay the damages, so the court in City X decides to execute the decree. Under Rule 3 of Order XXI of The Code Of Civil Procedure 1908, the court in City X has the authority to attach and sell the

entire commercial property, including the part that is in City Y, to recover the amount specified in the decree.

Rule 4: Transfer to Court of Small Causes.

- Where a decree has been passed in a suit of which the value as set forth in the plaint did not exceed two thousand rupees and which, as regards its subject-matter, is not excepted by the law for the time being in force from the cognizance of either a Presidency or a Provincial Court of Small Causes, and the Court which passed it wishes it to be executed in Calcutta, Madras or Bombay, such Court may send to the Court of Small Causes in Calcutta, Madras or Bombay, as the case may be, the copies and certificates mentioned in rule 6; and such Court of Small Causes shall thereupon execute the decree as if it had been passed by itself.

Simplified act

If a court has made a decision in a case where the amount of money involved is not more than two thousand rupees, and the case is one that can be handled by either a Presidency or a Provincial Court of Small Causes according to the current law, and the court wants this decision to be carried out in Calcutta, Madras, or Bombay, then the court can send the necessary documents and certificates to the Court of Small Causes in the respective city (Calcutta, Madras, or Bombay). The Court of Small Causes in that city will then carry out the decision as if it had made the decision itself.

Explanation using Example

Example 1:

Rajesh filed a lawsuit in a district court in Mumbai against his tenant, Suresh, for unpaid rent amounting to ₹1,500. The district court passed a decree in favor of Rajesh, ordering Suresh to pay the ₹1,500. Since the amount involved is less than ₹2,000, the district court decides to transfer the execution of this decree to the Court of Small Causes in Mumbai. The district court sends the necessary documents and certificates to the Court of Small Causes, which then takes over the responsibility of ensuring that Suresh pays the ₹1,500 to Rajesh.

Example 2:

Meena filed a suit in a district court in Chennai against her neighbor, Ravi, for damages caused to her property, amounting to ₹1,800. The district court ruled in favor of Meena and issued a decree for Ravi to pay ₹1,800. Since the value of the decree is below ₹2,000, the district court opts to transfer the execution of the decree to the Court of Small Causes in Chennai. The district court sends the copies and certificates required by law to the Court of Small Causes, which then proceeds to execute the decree as if it had originally issued it, ensuring that Ravi pays the ₹1,800 to Meena.

Rule 5: Mode of transfer.

Where a decree is to be sent for execution to another Court, the Court which passed such decree shall send the decree directly to such other Court whether or not such other Court is situated in the same State, but the Court to which the decree is sent for execution shall, if it has no jurisdiction to execute the decree, send it to the Court having such jurisdiction.

Simplified act

If a court issues a decree (a formal order), and it needs to be carried out by a different court, the issuing court will send the decree directly to that other court. This applies whether the other court is in the same state or not.

If the court receiving the decree does not have the authority to carry it out, it must forward the decree to a court that does have the authority.

Explanation using Example

Example 1:

Rajesh wins a civil lawsuit in a court in Mumbai, and the court issues a decree ordering the defendant, Suresh, to pay Rajesh Rs. 5 lakhs. However, Suresh has moved to Bangalore and has no assets in Mumbai. Rajesh requests the Mumbai court to send the decree to a court in Bangalore for execution. The Mumbai court sends the decree directly to the Bangalore court. If the Bangalore court finds that it does not have the jurisdiction to execute the decree, it will forward the decree to the appropriate court in Bangalore that has the jurisdiction to enforce it.

Example 2:

Anita obtains a decree from a court in Delhi against her tenant, Ramesh, who is now residing in Chennai. The Delhi court sends the decree to a court in

Chennai for execution. The Chennai court, upon receiving the decree, realizes that it does not have the jurisdiction to execute it because Ramesh's property is located in a different part of Chennai. The Chennai court then forwards the decree to the appropriate court in Chennai that has the jurisdiction over the area where Ramesh's property is located, ensuring that the decree can be properly executed.

Rule 6: Procedure where Court desires that its own decree shall be executed by another Court.

The Court sending a decree for execution shall send -

- (a) a copy of the decree;
- (b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unsatisfied; and
- (c) a copy of any order for the execution of the decree, or, if no such order has been made, a certificate to that effect.

Simplified act

When a court sends a decree (official decision) to be carried out, it must include:

- (a) a copy of the decree;
- (b) a certificate stating that the decree has not been fully satisfied (completed) within the court's area, or if it has been partially satisfied, how much has been completed and what remains unfinished; and
- (c) a copy of any order for carrying out the decree, or if no such order exists, a certificate saying so.

Explanation using Example

Example 1:

Scenario: Rajesh wins a civil lawsuit in the Delhi High Court against a company based in Mumbai. The court orders the company to pay Rajesh ₹10

lakhs as compensation. However, the company does not have sufficient assets in Delhi to satisfy the decree.

Application of Rule 6:

The Delhi High Court decides to send the decree to the Mumbai City Civil Court for execution.

The Delhi High Court sends:

- (a) A copy of the decree ordering the company to pay ₹10 lakhs to Rajesh.
- (b) A certificate stating that the decree has not been satisfied within the jurisdiction of the Delhi High Court.
- (c) A copy of any order for the execution of the decree, or a certificate stating that no such order has been made.

Outcome: The Mumbai City Civil Court receives the documents and proceeds to execute the decree by identifying and attaching the company's assets in Mumbai to satisfy the ₹10 lakhs owed to Rajesh.

Example 2:

Scenario: Priya wins a civil case in the Chennai District Court against a property developer based in Bangalore. The court orders the developer to transfer ownership of a specific property in Bangalore to Priya. However, the developer does not comply with the order within the jurisdiction of the Chennai District Court.

Application of Rule 6:

The Chennai District Court decides to send the decree to the Bangalore City Civil Court for execution.

The Chennai District Court sends:

- (a) A copy of the decree ordering the property transfer to Priya.
- (b) A certificate stating that the decree has not been satisfied within the jurisdiction of the Chennai District Court.
- (c) A copy of any order for the execution of the decree, or a certificate stating that no such order has been made.

Outcome: The Bangalore City Civil Court receives the documents and proceeds to enforce the decree by ensuring the property developer transfers the specified property to Priya as ordered by the Chennai District Court.

Rule 7: Court receiving copies of decree, etc., to file same without proof.

The Court to which a decree is so sent shall cause such copies and certificates to be filed, without any further proof of the decree or order for execution, or of the copies thereof, unless the Court, for any special reasons to be recorded under the hand of the Judge, requires such proof.

Simplified act

The Court that receives a decree must file the copies and certificates without needing any additional proof of the decree or order for execution.

However, if the Court has special reasons, which must be written down by the Judge, it can ask for additional proof.

Explanation using Example

Example 1:

Scenario: Rajesh wins a civil lawsuit against Suresh in the Delhi High Court, and the court issues a decree ordering Suresh to pay Rajesh Rs. 5 lakhs. Rajesh wants to enforce this decree in the Mumbai High Court because Suresh has assets in Mumbai.

Application of Rule 7: Rajesh's lawyer sends a certified copy of the Delhi High Court decree to the Mumbai High Court for execution. According to Rule 7, the Mumbai High Court will file the copy of the decree without requiring any additional proof of the decree's authenticity. The court will proceed with the execution process unless the judge specifically records a reason for needing further proof.

Example 2:

Scenario: Meena obtains a court order from the Chennai Civil Court directing her tenant, Ravi, to vacate her property. Ravi, however, has moved to Bangalore, and Meena needs to enforce the order there.

Application of Rule 7: Meena's lawyer sends a certified copy of the Chennai Civil Court's order to the Bangalore Civil Court. Under Rule 7, the Bangalore Civil Court will file the order without demanding further proof of its validity.

The court will then take steps to enforce the order against Ravi in Bangalore, unless the judge finds a special reason to require additional proof and records it in writing.

Rule 8: Execution of decree or order by Court to which it is sent.

Where such copies are so filed, the decree or order may, if the Court to which it is sent is the District Court, be executed by such Court or be transferred for execution to any subordinate Court of competent jurisdiction.

Simplified act

If copies of the decree or order are filed in the District Court, that Court can either carry out the decree or order itself or send it to a lower court that has the authority to carry it out.

Explanation using Example

Example 1:

Ravi wins a civil lawsuit in the Bangalore City Civil Court and is awarded a decree for a sum of ₹5,00,000 against Shyam. However, Shyam resides in Mysore, which falls under the jurisdiction of the Mysore District Court. The Bangalore City Civil Court sends a copy of the decree to the Mysore District Court. The Mysore District Court can either execute the decree itself or transfer it to a subordinate court in Mysore that has the jurisdiction to enforce the decree.

Example 2:

Meena obtains an order from the Chennai High Court directing her former business partner, Raj, to return certain business assets located in Coimbatore. The Chennai High Court sends a copy of the order to the Coimbatore District Court. The Coimbatore District Court can choose to execute the order directly or transfer it to a subordinate court in Coimbatore that has the authority to enforce the order. This ensures that Meena can recover her business assets without having to travel back to Chennai for enforcement.

Rule 9: Execution by High court of decree transferred by other Court.

Where the Court to which the decree is sent for execution is a High Court, the decree shall be executed by such Court in the same manner as if it had been passed by such Court in the exercise of its ordinary original civil jurisdiction.

Simplified act

If a High Court receives a decree (a court order) to carry out, it will handle it just like it would handle any other case that it normally deals with.

Explanation using Example

Example 1:

Scenario: Rajesh wins a civil lawsuit in a District Court in Maharashtra against a company for breach of contract. The District Court issues a decree ordering the company to pay Rajesh ₹10 lakhs as compensation. However, the company has its main office and assets in Tamil Nadu.

Application: Rajesh requests the District Court in Maharashtra to transfer the decree to the Madras High Court for execution, as the company's assets are located in Tamil Nadu. The Madras High Court receives the decree and executes it as if it had originally passed the decree itself. This means the Madras High Court will follow its own procedures and rules to ensure Rajesh receives the ₹10 lakhs from the company.

Example 2:

Scenario: Priya wins a property dispute case in a Civil Court in Karnataka. The court issues a decree granting her ownership of a piece of land. However, the land is located in West Bengal, and the defendant, who is currently occupying the land, refuses to vacate.

Application: Priya requests the Civil Court in Karnataka to transfer the decree to the Calcutta High Court for execution. The Calcutta High Court receives the decree and proceeds to execute it as if it had originally issued the decree. This means the Calcutta High Court will take necessary actions, such as ordering the eviction of the defendant and handing over possession of the land to Priya, following its own procedures and rules.

Application for execution

Rule 10: Application for execution.

Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court then to such Court or to the proper officer thereof.

Simplified act

If you have a court order and you want to enforce it, you need to apply to the court that issued the order or to the officer assigned for this purpose.

If the court order has been transferred to another court, you should apply to that court or the appropriate officer there.

Explanation using Example

Example 1:

Rajesh won a civil lawsuit against his neighbor, Suresh, for encroaching on his property. The court passed a decree in favor of Rajesh, ordering Suresh to remove the encroachment and pay damages of ₹50,000. Suresh, however, did not comply with the court's order. Rajesh now wants to enforce the decree. He applies to the same court that passed the decree, requesting the court to execute the order by removing the encroachment and recovering the damages from Suresh.

Example 2:

Meena obtained a decree from a court in Mumbai against a company for failing to deliver goods she had paid for. The decree ordered the company to either deliver the goods or refund ₹1,00,000 to Meena. The company has its main office in Delhi and has not complied with the decree. Meena applies to the Mumbai court to transfer the decree to a court in Delhi for execution. The Mumbai court sends the decree to the Delhi court. Meena then applies to the Delhi court, requesting it to execute the decree by either ensuring the delivery of goods or recovering the ₹1,00,000 from the company.

Rule 11: Oral application.

Execution of Decrees

(1) Where a decree is for the payment of money the Court may, on the oral application of the decree-holder at the time of the passing of the decree, order immediate execution thereof by the arrest of the judgment-debtor, prior to the preparation of a warrant if he is within the precincts of the Court.

(2) Written application.- Save as otherwise provided by sub-rule (1), every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court

to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely:

- (a) the number of the suit;
 - (b) the names of the parties;
 - (c) the date of the decree;
 - (d) whether any appeal has been preferred from the decree;
 - (e) whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree;
 - (f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results;
 - (g) the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross-decree, whether passed before or after the date of the decree sought to be executed;
 - (h) the amount of the costs (if any) awarded;
 - (i) the name of the person against whom execution of the decree is sought; and
 - (j) the mode in which the assistance of the Court is required whether:
 - (i) by the delivery of any property specifically decreed;
 - (ii) by the attachment, or by the attachment and sale, or by the sale without attachment, of any property;
 - (iii) by the arrest and detention in prison of any person;
 - (iv) by the appointment of a receiver;
 - (v) otherwise, as the nature of the relief granted may require.
- (3) The Court to which an application is made under sub-rule (2) may require the applicant to produce a certified copy of the decree.

Simplified act

Execution of Decrees

(1) If a court orders someone to pay money, the person who won the case can ask the court right away to arrest the person who owes the money if they are still in the court building, even before a formal arrest warrant is prepared.

(2) Written application.- Except for the situation described in point (1), anyone asking the court to enforce a decree must submit a written application. This application must be signed and verified by the person applying or someone who knows the case well enough to satisfy the court. The application should include the following details in a table format:

(a) the case number;

(b) the names of the people involved in the case;

(c) the date when the court made its decision;

(d) whether there has been any appeal against the decision;

(e) any payments or agreements made between the parties after the court's decision;

(f) any previous requests to enforce the decision, including the dates and outcomes of those requests;

(g) the amount of money owed, including any interest, or other relief granted by the court, along with details of any related decrees;

(h) the amount of any costs awarded;

(i) the name of the person against whom the decree is to be enforced; and

(j) how the court's help is needed, such as:

(i) delivering specific property;

(ii) attaching or selling property, with or without prior attachment;

(iii) arresting and detaining someone in prison;

(iv) appointing a receiver;

(v) any other method needed to enforce the court's decision.

(3) The court where the application is made under point (2) may ask the applicant to provide a certified copy of the court's decision.

Explanation using Example

Example 1:

Scenario: Ramesh wins a lawsuit against Suresh for a debt of ₹5,00,000.

Application of Rule 11:

Oral Application: At the time the court passes the decree in favor of Ramesh, Ramesh makes an oral application to the judge requesting immediate execution of the decree. The judge orders the arrest of Suresh, who is present in the court, to ensure he does not evade payment.

Written Application: If Ramesh did not make an oral application at the time of the decree, he would need to file a written application for execution. This application would include:

The number of the suit: 123/2023

The names of the parties: Ramesh (Decree-holder) vs. Suresh (Judgment-debtor)

The date of the decree: 1st October 2023

Whether any appeal has been preferred: No

Any payment or adjustment made after the decree: None

Previous applications for execution: None

The amount due: ₹5,00,000 with 6% interest per annum

The amount of costs awarded: ₹10,000

The name of the person against whom execution is sought: Suresh

The mode of assistance required: By the arrest and detention in prison of Suresh

Example 2:

Scenario: Meena wins a property dispute against her neighbor, Rajesh, and the court decrees that Rajesh must vacate the disputed property and hand it over to Meena.

Application of Rule 11:

Oral Application: At the time the court passes the decree, Meena makes an oral application requesting immediate execution. The judge orders the court officers to ensure Rajesh vacates the property immediately.

Written Application: If Meena did not make an oral application, she would need to file a written application for execution. This application would include:

The number of the suit: 456/2023

The names of the parties: Meena (Decree-holder) vs. Rajesh (Judgment-debtor)

The date of the decree: 15th October 2023

Whether any appeal has been preferred: No

Any payment or adjustment made after the decree: None

Previous applications for execution: None

The relief granted: Delivery of the disputed property to Meena

The amount of costs awarded: ₹15,000

The name of the person against whom execution is sought: Rajesh

The mode of assistance required: By the delivery of the property specifically decreed

In both examples, the court may require Ramesh or Meena to produce a certified copy of the decree as part of their written application.

Rule 11A: Application for arrest to state grounds.

Where an application is made for the arrest and detention in prison of the judgment-debtor, it shall state, or be accompanied by an affidavit stating, the grounds on which arrest is applied for.

Simplified act

If someone asks the court to arrest and put a person who owes money (judgment-debtor) in prison, they must explain the reasons for the arrest in the application or include a written statement (affidavit) that explains these reasons.

Explanation using Example

Example 1:

Rajesh won a civil lawsuit against Suresh, and the court ordered Suresh to pay Rajesh a sum of ₹5,00,000. Despite multiple reminders and a court order, Suresh refuses to pay the amount. Rajesh decides to file an application for the arrest and detention of Suresh. In his application, Rajesh includes an affidavit stating that Suresh has the means to pay the amount but is willfully neglecting the court's order. Rajesh provides evidence such as Suresh's bank statements and property documents to support his claim. The court, after reviewing the application and affidavit, issues an arrest warrant for Suresh.

Example 2:

Meena obtained a decree from the court against her tenant, Ravi, for unpaid rent amounting to ₹1,00,000. Despite the decree, Ravi has not paid the amount and continues to live in the rented property. Meena files an application for Ravi's arrest and detention. In her application, Meena includes an affidavit stating that Ravi has a stable job and sufficient income to pay the rent but is deliberately avoiding payment. She attaches Ravi's salary slips and employment details as evidence. The court, after considering the affidavit and evidence, orders Ravi's arrest for non-compliance with the court's decree.

Rule 12: Application for attachment of movable property not in judgment-debtor's possession.

Where an application is made for the attachment of any movable property belonging to a judgment-debtor but not in his possession, the decree-holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same

Rule 13: Application for attachment of immovable property to contain certain particulars.

Where an application is made for the attachment of any immovable property belonging to a judgment-debtor, it shall contain at the foot:

- (a) a description of such property sufficient to identify the same and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, a specification of such boundaries or numbers; and
- (b) a specification of the judgment-debtor's share or interest in such property to the best of the belief of the applicant, and so far as he has been able to ascertain the same.

Simplified act

When someone asks the court to take away a piece of land or building from a person who owes them money (the judgment-debtor), the request must include:

(a) a detailed description of the property so it can be easily identified. If the property can be identified by boundaries or numbers in official records, those details must be included; and

(b) a statement of how much of the property the person who owes money owns, based on what the person making the request believes and has been able to find out.

Explanation using Example

Example 1:

Scenario: Rajesh, a businessman, has lost a civil lawsuit and owes ₹10 lakhs to Suresh. Rajesh has not paid the amount despite the court's decree. Suresh decides to apply for the attachment of Rajesh's immovable property to recover the debt.

Application Details:

Property Description: Rajesh owns a residential plot located at Plot No. 45, Sector 12, Gurgaon, Haryana. The plot is bounded by Plot No. 44 on the north, Plot No. 46 on the south, a public road on the east, and a park on the west.

Judgment-Debtor's Share: Rajesh is the sole owner of the plot, and this information is confirmed by the property records available with the local municipal authority.

Application for Attachment: Suresh files an application under Rule 13 of Order XXI of the Code of Civil Procedure, 1908, providing the above details to the court. The court, upon verifying the details, orders the attachment of Rajesh's plot to recover the ₹10 lakhs owed to Suresh.

Example 2:

Scenario: Meena has won a civil case against her former business partner, Anil, who owes her ₹5 lakhs. Anil owns a commercial property but has not paid the amount as decreed by the court. Meena decides to apply for the attachment of Anil's commercial property.

Application Details:

Property Description: Anil owns a commercial shop located at Shop No. 23, Main Market, Connaught Place, New Delhi. The shop is identified by its municipal number and is bounded by Shop No. 22 on the left, Shop No. 24 on the right, and a public alley at the back.

Judgment-Debtor's Share: Anil owns a 50% share in the shop, with the remaining 50% owned by his brother. This information is obtained from the property registration documents.

Application for Attachment: Meena files an application under Rule 13 of Order XXI of the Code of Civil Procedure, 1908, providing the above details to the court. The court, after verifying the details, orders the attachment of Anil's 50% share in the commercial shop to recover the ₹5 lakhs owed to Meena.

Rule 14: Power to require certified extract from Collector's register in certain cases.

- Where an application is made for the attachment of any land which is registered in the office of the Collector, the Court may require the applicant to produce a certified extract from the register of such office, specifying the persons registered as proprietors of, or as possessing any transferable interest in, the land or its revenue, or as liable to pay revenue for the land, and the shares of the registered proprietors.

Simplified act

If someone asks the court to seize a piece of land that is recorded in the Collector's office, the court can ask that person to provide an official copy from the Collector's records. This copy should list the people who are registered as owners of the land, those who have any transferable interest in the land or its income, those who are responsible for paying taxes on the land, and the shares of each registered owner.

Explanation using Example

Example 1:

Scenario: Rajesh has won a civil lawsuit against Suresh, and the court has issued a decree ordering Suresh to pay Rajesh a sum of ₹5,00,000. Suresh fails to comply with the court's order, so Rajesh decides to execute the decree by attaching Suresh's agricultural land to recover the amount.

Application: Rajesh files an application in the court for the attachment of Suresh's agricultural land. The land in question is registered in the office of the Collector. The court, before proceeding with the attachment, requires Rajesh to produce a certified extract from the Collector's register. This extract must specify the persons registered as proprietors of the land, any individuals possessing a transferable interest in the land or its revenue, and those liable to pay revenue for the land, along with the shares of the registered proprietors.

Outcome: Rajesh obtains the certified extract from the Collector's office, which confirms that Suresh is the registered proprietor of the land. The court then proceeds with the attachment of the land to satisfy the decree.

Example 2:

Scenario: Meena has a decree against her tenant, Ravi, for unpaid rent amounting to ₹1,00,000. Ravi owns a piece of commercial land, and Meena wants to attach this land to recover her dues.

Application: Meena applies to the court for the attachment of Ravi's commercial land. Since the land is registered in the office of the Collector, the court instructs Meena to provide a certified extract from the Collector's register. This document should detail the registered proprietors, any individuals with a transferable interest in the land or its revenue, and those responsible for paying revenue for the land, including the shares of the registered proprietors.

Outcome: Meena secures the certified extract from the Collector's office, which lists Ravi as the sole proprietor of the commercial land. With this information, the court authorizes the attachment of Ravi's land to enforce the decree and recover the unpaid rent.

Rule 15: Application for execution by joint decree-holder.

(1) Where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the legal representatives of the deceased.

(2) Where the Court sees sufficient cause for allowing the decree to be executed on an application made under this rule, it shall make such order as it deems necessary for protecting the interest of the persons who have not joined in the application.

Simplified act

(1) If a court decision (decree) is made in favor of multiple people together, any one or more of those people can ask the court to enforce the entire decision for the benefit of everyone involved. If one of those people has passed away, the request can be made for the benefit of the remaining people and the legal heirs of the deceased.

(2) If the court finds a good reason to allow the enforcement of the decision based on such a request, it will issue an order to protect the interests of those who did not join in making the request.

Explanation using Example

Example 1:

Scenario: A group of three business partners, Raj, Simran, and Aman, win a court case against a supplier for breach of contract. The court issues a decree ordering the supplier to pay ₹10,00,000 jointly to Raj, Simran, and Aman.

Application: Raj decides to apply for the execution of the decree to recover the ₹10,00,000 from the supplier. Even though Simran and Aman have not joined Raj in the application, Raj can still apply for the execution of the whole decree for the benefit of all three partners.

Outcome: The court, upon seeing no condition in the decree that prevents Raj from applying alone, allows the execution of the decree. The recovered amount will be distributed among Raj, Simran, and Aman as per their entitlement.

Example 2:

Scenario: Four siblings, Anil, Sunita, Ravi, and Priya, win a property dispute case against a distant relative. The court decrees that the disputed property should be transferred jointly to all four siblings.

Application: Unfortunately, Ravi passes away before the decree is executed. Anil, Sunita, and Priya decide to apply for the execution of the decree to transfer the property to their names.

Outcome: The court, recognizing the death of Ravi, allows the execution of the decree for the benefit of the surviving siblings (Anil, Sunita, and Priya) and the legal representatives of Ravi. The property will be transferred accordingly, ensuring Ravi's legal heirs receive his share.

Rule 16: Application for execution by transferee of decree.

Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder:

Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution:

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others.

Explanation: Nothing in this rule shall affect the provisions of section 146, and a transferee of rights in the property, which is the subject matter of the suit, may apply for execution of the decree without a separate assignment of the decree as required by this rule.

Simplified act

If a court order (decree) is given to one or more people, and one of those people transfers their interest in the decree to someone else in writing or by law, the new person (transferee) can ask the court to enforce the decree. The court will enforce it just like it would if the original person who got the decree asked for it.

However, if the decree or interest is transferred in writing, the person who transferred it and the person who owes the money (judgment-debtor) must be notified. The court will not enforce the decree until it has heard any objections they might have.

Also, if a money decree against multiple people is transferred to one of them, it cannot be enforced against the others.

Explanation: This rule does not change section 146. If someone has rights in the property involved in the case, they can ask the court to enforce the decree without needing a separate written transfer of the decree.

Explanation using Example

Example 1:

Ravi obtained a decree from the court stating that his neighbor, Suresh, must pay him Rs. 5 lakhs for damages caused to his property. Ravi later decides to sell this decree to his friend, Anil, for Rs. 4.5 lakhs. Anil, now the transferee of the decree, wants to execute the decree to recover the Rs. 5 lakhs from Suresh. Anil applies to the court for execution of the decree. The court will notify Ravi (the original decree-holder) and Suresh (the judgment-debtor) about Anil's application. The court will hear any objections from Ravi or Suresh before allowing Anil to proceed with the execution.

Example 2:

A decree was passed jointly in favor of two business partners, Priya and Meera, against a debtor, Rajesh, for Rs. 10 lakhs. Priya decides to transfer her interest in the decree to another person, Karan, through a written assignment. Karan now wants to execute the decree to recover the amount from Rajesh. Karan applies to the court for execution. The court will notify Meera (the other decree-holder) and Rajesh (the judgment-debtor) about Karan's application. The court will hear any objections from Meera or Rajesh before allowing Karan to proceed with the execution.

Example 3:

A decree was passed against two individuals, Amit and Rohit, requiring them to jointly pay Rs. 8 lakhs to a creditor, Neha. Amit decides to buy out the decree from Neha, making him the transferee of the decree. Amit now wants to execute the decree to recover the full amount from Rohit. However, according to the rule, since Amit is one of the judgment-debtors, he cannot execute the decree against Rohit. The court will not allow Amit to proceed with the execution against Rohit.

Example 4:

A decree was passed in favor of a company, XYZ Pvt. Ltd., against a debtor, Sunil, for Rs. 15 lakhs. XYZ Pvt. Ltd. undergoes a merger, and its rights, including the decree, are transferred to a new entity, ABC Pvt. Ltd., by operation of law. ABC Pvt. Ltd. now wants to execute the decree to recover the amount from Sunil. ABC Pvt. Ltd. applies to the court for execution. Since the transfer happened by operation of law, the court will allow ABC Pvt. Ltd. to

execute the decree in the same manner as XYZ Pvt. Ltd. would have, without requiring a separate assignment of the decree.

Rule 17: Procedure on receiving application for execution of decree.

(1) On receiving an application for the execution of a decree as provided by rule 11, sub-rule (2), the Court shall ascertain whether such of the requirements of rules 11 to 14 as may be applicable to the case have been complied with; and, if they have not been complied with, the Court shall allow the defect to be remedied then and there or within a time to be fixed by it.

1A If the defect is not so remedied, the Court shall reject the application:

Provided that where, in the opinion of the Court, there is some inaccuracy as to the amount referred to in clauses (g) and (h) of sub-rule (2) of rule 11, the Court shall, instead of rejecting the application, decide provisionally (without prejudice to the right of the parties to have the amount finally decided in the course of the proceedings) the amount and make an order for the execution of the decree for the amount so provisionally decided.

(2) Where an application is amended under the provisions of sub-rule (1), it shall be deemed to have been an application in accordance with law and presented on the date when it was first presented.

(3) Every amendment made under this rule shall be signed or initialled by the Judge.

(4) When the application is admitted, the Court shall enter in the proper register a note of the application and the date on which it was made, and shall, subject to the provisions hereinafter contained, order execution of the decree according to the nature of the application:

Provided that, in the case of a decree for the payment of money, the value of the property attached shall, as nearly as may be, correspond with the amount due under the decree.

Simplified act

(1) When the Court gets an application to enforce a judgment (as described in rule 11, sub-rule (2)), it will check if the rules from 11 to 14 have been followed. If they haven't been followed, the Court will give a chance to fix the mistakes right away or within a set time.

1A If the mistakes are not fixed, the Court will reject the application:

However, if the Court thinks there is a small mistake in the amount mentioned in parts (g) and (h) of sub-rule (2) of rule 11, it will not reject the application. Instead, the Court will temporarily decide the amount (without affecting the parties' right to have the final amount decided later) and order the enforcement of the judgment for that temporary amount.

(2) If the application is changed according to sub-rule (1), it will be considered as if it was correct and submitted on the original date it was first given.

(3) Every change made under this rule must be signed or initialed by the Judge.

(4) When the application is accepted, the Court will note it in the proper register along with the date it was made. Then, following the rules, the Court will order the enforcement of the judgment based on the type of application:

However, if the judgment is about paying money, the value of the property taken should be as close as possible to the amount owed under the judgment.

Explanation using Example

Example 1:

Scenario: Ramesh wins a civil lawsuit against Suresh, and the court issues a decree ordering Suresh to pay Ramesh ₹5,00,000. Ramesh files an application for the execution of this decree.

Application Submission: Ramesh submits an application for execution under Rule 11, sub-rule (2).

Court Review: The court reviews the application to ensure it complies with Rules 11 to 14. The court finds that Ramesh has not provided the correct details of the amount due.

Opportunity to Correct: The court allows Ramesh to correct the defect immediately or within a specified time.

Correction Made: Ramesh corrects the details and resubmits the application.

Court Decision: The court provisionally decides the amount due as ₹5,00,000 and orders the execution of the decree.

Register Entry: The court enters a note of the application and the date it was made in the proper register.

Execution Order: The court orders the execution of the decree, ensuring that the value of the property attached corresponds to the amount due.

Example 2:

Scenario: Meena wins a civil lawsuit against Rajesh, and the court issues a decree ordering Rajesh to transfer ownership of a piece of land to Meena. Meena files an application for the execution of this decree.

Application Submission: Meena submits an application for execution under Rule 11, sub-rule (2).

Court Review: The court reviews the application to ensure it complies with Rules 11 to 14. The court finds that Meena has not provided the exact boundaries of the land.

Opportunity to Correct: The court allows Meena to correct the defect immediately or within a specified time.

Correction Made: Meena corrects the details and resubmits the application.

Court Decision: The court provisionally decides the boundaries of the land and orders the execution of the decree.

Register Entry: The court enters a note of the application and the date it was made in the proper register.

Execution Order: The court orders the execution of the decree, ensuring that the land is transferred according to the corrected details.

Example 3:

Scenario: Anil wins a civil lawsuit against Sunil, and the court issues a decree ordering Sunil to pay Anil ₹2,00,000. Anil files an application for the execution of this decree, but there is an inaccuracy in the amount mentioned in the application.

Application Submission: Anil submits an application for execution under Rule 11, sub-rule (2).

Court Review: The court reviews the application and finds an inaccuracy in the amount mentioned.

Provisional Decision: Instead of rejecting the application, the court provisionally decides the amount as ₹2,00,000 and orders the execution of the decree.

Register Entry: The court enters a note of the application and the date it was made in the proper register.

Execution Order: The court orders the execution of the decree for the provisionally decided amount, allowing the parties to have the amount finally decided in the course of the proceedings.

Example 4:

Scenario: Priya wins a civil lawsuit against Karan, and the court issues a decree ordering Karan to vacate a property and hand it over to Priya. Priya files an application for the execution of this decree.

Application Submission: Priya submits an application for execution under Rule 11, sub-rule (2).

Court Review: The court reviews the application to ensure it complies with Rules 11 to 14. The court finds that Priya has not provided the exact address of the property.

Opportunity to Correct: The court allows Priya to correct the defect immediately or within a specified time.

Correction Made: Priya corrects the details and resubmits the application.

Court Decision: The court provisionally decides the address of the property and orders the execution of the decree.

Register Entry: The court enters a note of the application and the date it was made in the proper register.

Execution Order: The court orders the execution of the decree, ensuring that Karan vacates the property and hands it over to Priya according to the corrected details.

Rule 18: Execution in case of cross-decrees.

(1) Where applications are made to a Court for the execution of cross-decrees in separate suits for the payment of two sums of money passed between the same parties and capable of execution at the same time by such Court, then -

(a) if the two sums are equal, satisfaction shall be entered upon both decrees; and

(b) if the two sums are unequal, execution may be taken out only by the holder of the decree for the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.

(2) This rule shall be deemed to apply where either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.

(3) This rule shall not be deemed to apply unless -

(a) the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other and each party files the same character in both suits; and

(b) the sums due under the decrees are definite.

(4) The holder of a decree passed against several persons jointly and severally may treat it as a cross-decree in relation to a decree passed against him singly in favour of one or more of such persons.

Illustrations

(a) A holds a decree against B for Rs. 1,000. B holds a decree against A for payment of Rs. 1,000 in case A fails to deliver certain goods at a future day. B cannot treat his decree as a cross-decree under this rule.

(b) A and B, co-plaintiffs, obtain a decree for Rs. 1,000 against C, and C obtains a decree for Rs. 1,000 against B. C cannot treat his decree as a cross-decree under this rule.

A obtains a decree against B for Rs. 1,000. C, who is a trustee for B, obtains a decree on behalf of B against A for Rs. 1,000. B cannot treat C's decree as a cross-decree under this rule.

A, B, C, D, and E are jointly and severally liable for Rs. 1,000 under a decree obtained by F. A obtains a decree for Rs. 1,000 against F singly and applies for execution to the Court in which the joint-decree is being executed. F may treat his joint-decree as a cross-decree under this rule.

Simplified act

(1) When two people have court orders (decrees) against each other for different amounts of money, and they both ask the court to enforce these orders at the same time, then:

(a) If the amounts are the same, both debts are considered paid off.

(b) If the amounts are different, only the person owed the larger amount can collect money. They can only collect the difference between the two amounts. The smaller amount is considered paid off for both parties.

(2) This rule also applies if one of the people involved has taken over someone else's court order (decree). It applies to debts owed by the original person as well as debts owed by the new person.

(3) This rule only applies if:

(a) The person owed money in one case is the person who owes money in the other case, and they are in the same position in both cases.

(b) The amounts of money owed are clear and definite.

(4) If someone has a court order against multiple people together, they can treat it as a cross-decree (like in point 1) if they also have a court order against just one of those people.

Examples

(a) A has a court order to get Rs. 1,000 from B. B has a court order to get Rs. 1,000 from A if A doesn't deliver certain goods later. B cannot use this rule to treat his order as a cross-decree.

(b) A and B together win a court order to get Rs. 1,000 from C. C wins a court order to get Rs. 1,000 from B. C cannot use this rule to treat his order as a cross-decree.

A wins a court order to get Rs. 1,000 from B. C, who is managing money for B, wins a court order on behalf of B to get Rs. 1,000 from A. B cannot use this rule to treat C's order as a cross-decree.

A, B, C, D, and E together owe Rs. 1,000 to F under a court order. A wins a court order to get Rs. 1,000 from F alone and asks the court to enforce it where

the joint order is being enforced. F can use this rule to treat his joint order as a cross-decree.

Explanation using Example

Example 1:

A and B are business partners who had a falling out and sued each other. A obtained a decree from the court ordering B to pay him Rs. 50,000. In a separate suit, B obtained a decree ordering A to pay him Rs. 30,000. Both decrees are capable of being executed at the same time. According to Rule 18 of the Code of Civil Procedure 1908:

Since the sums are unequal, A (the holder of the larger decree) can execute the decree for Rs. 50,000 but only for the amount remaining after deducting the Rs. 30,000 that he owes B.

Therefore, A can execute the decree for Rs. 20,000 (Rs. 50,000 - Rs. 30,000).

Satisfaction for Rs. 30,000 will be entered on both decrees.

Example 2:

X and Y are involved in two separate legal disputes. In the first case, X obtained a decree against Y for Rs. 10,000. In the second case, Y obtained a decree against X for Rs. 10,000. Both decrees are capable of being executed at the same time. According to Rule 18 of the Code of Civil Procedure 1908:

Since the sums are equal, satisfaction shall be entered upon both decrees.

Neither X nor Y needs to pay any money to the other as the decrees cancel each other out.

Example 3:

P and Q are involved in a legal dispute where P obtained a decree against Q for Rs. 40,000. In a separate suit, Q obtained a decree against P for Rs. 25,000. Both decrees are capable of being executed at the same time. According to Rule 18 of the Code of Civil Procedure 1908:

Since the sums are unequal, P (the holder of the larger decree) can execute the decree for Rs. 40,000 but only for the amount remaining after deducting the Rs. 25,000 that he owes Q.

Therefore, P can execute the decree for Rs. 15,000 (Rs. 40,000 - Rs. 25,000).

Satisfaction for Rs. 25,000 will be entered on both decrees.

Example 4:

R and S are involved in a legal dispute. R obtained a decree against S for Rs. 20,000. S, who is an assignee of T, obtained a decree against R for Rs. 15,000. Both decrees are capable of being executed at the same time. According to Rule 18 of the Code of Civil Procedure 1908:

Since the sums are unequal, R (the holder of the larger decree) can execute the decree for Rs. 20,000 but only for the amount remaining after deducting the Rs. 15,000 that he owes S.

Therefore, R can execute the decree for Rs. 5,000 (Rs. 20,000 - Rs. 15,000).

Satisfaction for Rs. 15,000 will be entered on both decrees.

Rule 19: Execution in case of cross-claims under same decree.

Where application is made to a Court for the execution of a decree under which two parties are entitled to recover sums of money from each other, then -

- (a) if the two sums are equal, satisfaction for both shall be entered upon the decree;
- (b) if the two sums are unequal, execution may be taken out only by the party entitled to the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered upon the decree.

Simplified act

When someone asks a Court to enforce a decision where two people owe each other money, then -

- (a) if both amounts are the same, it will be recorded that both debts are settled;
- (b) if the amounts are different, only the person who is owed the larger amount can ask the Court to enforce the decision. They can only ask for the difference between the two amounts, and it will be recorded that the smaller debt is settled.

Explanation using Example

Example 1:

Rajesh and Suresh are involved in a legal dispute over a business transaction. The court issues a decree stating that Rajesh owes Suresh ₹1,00,000, and Suresh owes Rajesh ₹1,00,000 as well. Since both parties owe each other equal amounts, under Rule 19 of the Code of Civil Procedure 1908, satisfaction for both sums will be entered upon the decree. This means neither party will need to pay the other, as the amounts cancel each other out.

Example 2:

Anita and Sunil have a legal dispute over a property matter. The court issues a decree stating that Anita owes Sunil ₹2,00,000, and Sunil owes Anita ₹1,50,000. Since the sums are unequal, under Rule 19 of the Code of Civil Procedure 1908, Sunil, who is entitled to the larger sum, can take out execution for the remaining amount after deducting the smaller sum. Therefore, Sunil can execute the decree to recover ₹50,000 (₹2,00,000 - ₹1,50,000) from Anita. Satisfaction for the ₹1,50,000 owed by Sunil to Anita will be entered upon the decree.

Rule 20: Cross-decrees and cross-claims in mortgage-suits.

- The provisions contained in rules 18 and 19 shall apply to decrees for sale in enforcement of a mortgage or charge.

Simplified act

The rules mentioned in rules 18 and 19 must be followed when a court orders the sale of property to enforce a mortgage or charge.

Explanation using Example

Example 1:

Ravi and Suresh are involved in a legal dispute over a property. Ravi has a mortgage on the property, and Suresh has a separate claim against Ravi for unpaid debts. The court issues a decree for the sale of the property to enforce Ravi's mortgage. According to Rule 20, the provisions of rules 18 and 19 will apply. This means that if there are any cross-decrees or cross-claims between Ravi and Suresh, they will be considered and adjusted before the sale proceeds are distributed. For instance, if Suresh has a decree against Ravi for Rs. 2 lakhs and Ravi has a decree against Suresh for Rs. 1 lakh, the court will adjust these amounts, and Suresh will receive Rs. 1 lakh from the sale proceeds after the mortgage is settled.

Example 2:

Anita has taken a loan from a bank by mortgaging her house. She also has a separate legal dispute with her business partner, Meera, who has a claim against her for breach of contract. The court orders the sale of Anita's house to enforce the mortgage. Under Rule 20, the provisions of rules 18 and 19 will apply, meaning that any cross-decrees or cross-claims between Anita and Meera will be taken into account. If Meera has a decree against Anita for Rs. 3 lakhs and Anita has a decree against Meera for Rs. 1 lakh, the court will adjust these amounts. Meera will receive Rs. 2 lakhs from the sale proceeds after the mortgage is settled.

Rule 21: Simultaneous execution.

The Court may, in its discretion, refuse execution at the same time against the person and property of the judgment-debtor.

Simplified act

The Court has the option to decide not to take action against both the person and the property of the person who owes money at the same time.

Explanation using Example

Example 1:

Rajesh won a civil lawsuit against Suresh, and the court ordered Suresh to pay Rajesh Rs. 5 lakhs. Suresh, however, did not comply with the court's order. Rajesh then filed for execution of the decree to recover the amount. Rajesh requested the court to simultaneously seize Suresh's property and arrest him until the payment is made. The court, exercising its discretion under Rule 21, decided to only proceed with the seizure of Suresh's property and refused to order his arrest at the same time. The court believed that seizing the property would be sufficient to ensure compliance with the decree.

Example 2:

Meena obtained a court decree against her tenant, Ravi, for unpaid rent amounting to Rs. 1 lakh. When Ravi failed to pay, Meena sought execution of the decree. She requested the court to both attach Ravi's bank account and detain him in civil prison. The court, considering the circumstances, chose to only attach Ravi's bank account and refused to detain him simultaneously. The

court reasoned that attaching the bank account would likely compel Ravi to settle the debt without the need for detention.

Rule 22: Notice to show cause against execution in certain cases.

(1) Where an application for execution is made -

(a) more than two years after the date of the decree, or

(b) against the legal representative of a party to the decree or where an application is made for execution of a decree filed under the provisions of section 44A, or

(c) against the assignee or receiver in insolvency, where the party to the decree has been adjudged to be an insolvent

the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him:

Provided that no such notice shall be necessary in consequence of more than two years having elapsed between the date of the decree and the application for execution if the application is made within two years from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor if upon a previous application for execution against the same person the Court has ordered execution to issue against him.

(2) Nothing in the foregoing sub-rule shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.

Simplified act

(1) When someone wants to enforce a court decision (called a decree) -

(a) more than two years after the decision was made, or

(b) against the legal representative of someone involved in the decision, or if the request is made under section 44A, or

(c) against someone who has taken over the responsibilities of a bankrupt person involved in the decision, the court must send a notice to the person being targeted by the enforcement. This notice will ask them to explain, on a set date, why the decision should not be enforced against them.

However, this notice is not needed if: * More than two years have passed since the decision, but the request for enforcement is made within two years of the last court order against the person, or * The request is against the legal representative of the person who owes the judgment, and the court has already ordered enforcement against them in a previous request.

(2) The court can skip sending the notice if it believes that doing so would cause unreasonable delay or prevent justice from being served. The court must record its reasons for this decision.

Explanation using Example

Example 1:

Scenario: Ramesh obtained a decree from the court on January 1, 2018, against Suresh for a sum of ₹5,00,000. Ramesh did not take any steps to execute the decree immediately. On February 1, 2021, Ramesh decides to file an application for execution of the decree.

Application of Rule 22: Since Ramesh is applying for execution more than two years after the date of the decree, the court will issue a notice to Suresh requiring him to show cause why the decree should not be executed against him. Suresh will be given a date to appear in court and provide his reasons, if any, against the execution of the decree.

Example 2:

Scenario: Priya obtained a decree against her tenant, Raj, on March 1, 2019, for eviction and payment of arrears. Raj passed away on June 1, 2020, and his legal representative, his son Arjun, is now responsible. Priya files an application for execution of the decree on July 1, 2020.

Application of Rule 22: Since Priya is applying for execution against the legal representative of Raj, the court will issue a notice to Arjun requiring him to show cause why the decree should not be executed against him. Arjun will be given a date to appear in court and provide his reasons, if any, against the execution of the decree.

Example 3:

Scenario: Anil obtained a decree against Vijay on January 1, 2017. Vijay was declared insolvent on January 1, 2018, and his estate was assigned to a receiver. Anil files an application for execution of the decree on January 1, 2019, against the receiver.

Application of Rule 22: Since Anil is applying for execution against the receiver in insolvency, the court will issue a notice to the receiver requiring him to show cause why the decree should not be executed against him. The receiver will be given a date to appear in court and provide his reasons, if any, against the execution of the decree.

Example 4:

Scenario: Meera obtained a decree against her business partner, Ravi, on January 1, 2015. Meera filed an application for execution on January 1, 2016, and the court issued an order against Ravi on February 1, 2016. Meera did not take any further steps until January 1, 2018, when she filed another application for execution.

Application of Rule 22: Since Meera is applying for execution within two years from the date of the last order (February 1, 2016) against Ravi, the court does not need to issue a notice to Ravi. The execution can proceed without requiring Ravi to show cause.

Example 5:

Scenario: Sunita obtained a decree against her debtor, Mohan, on January 1, 2016. Mohan passed away on January 1, 2017, and his legal representative, his daughter Neha, was involved in a previous application for execution on January 1, 2018. Sunita files another application for execution on January 1, 2019, against Neha.

Application of Rule 22: Since the court had already ordered execution against Neha in a previous application, no notice is necessary for the current application. The execution can proceed without requiring Neha to show cause.

Rule 22A: Sale not to be set aside on the death of the judgment-debtor before the sale but after the service of the proclamation of sale.

Where any property is sold in execution of a decree, the sale shall not be set aside merely by reason of the death of the judgment-debtor between the date of

issue of the proclamation of sale and the date of the sale notwithstanding the failure of the decree-holder to substitute the legal representative of such deceased judgment-debtor, but, in case of such failure, the Court may set aside the sale if it is satisfied that the legal representative of the deceased judgment-debtor has been prejudiced by the sale.

Simplified act

If a property is sold because of a court order, the sale will not be canceled just because the person who owes the debt (the judgment-debtor) dies between the announcement of the sale and the actual sale date. This is true even if the person who won the case (the decree-holder) does not replace the deceased debtor with their legal representative. However, the court can cancel the sale if it believes that the legal representative of the deceased debtor has been unfairly affected by the sale.

Explanation using Example

Example 1:

Scenario: Ramesh, a judgment-debtor, has a property that is to be sold in execution of a decree obtained by Suresh, the decree-holder. The court issues a proclamation of sale on January 1st. Unfortunately, Ramesh passes away on January 10th, but the sale is scheduled for January 20th.

Application of Rule 22A:

The sale proceeds as planned on January 20th, despite Ramesh's death.

Suresh, the decree-holder, does not substitute Ramesh's legal representative before the sale.

Ramesh's son, who is his legal representative, later argues that the sale should be set aside because he was not substituted in place of his deceased father.

Outcome:

The court will not set aside the sale merely because Ramesh died after the proclamation but before the sale.

However, if Ramesh's son can prove that he was prejudiced by the sale (e.g., he was not given a fair opportunity to settle the debt or protect the property), the court may consider setting aside the sale.

Example 2:

Scenario: Meena, a judgment-debtor, has a property that is to be sold in execution of a decree obtained by Anil, the decree-holder. The court issues a proclamation of sale on February 1st. Meena dies on February 5th, and the sale is scheduled for February 15th.

Application of Rule 22A:

The sale takes place on February 15th as planned, despite Meena's death.

Anil, the decree-holder, does not substitute Meena's legal representative before the sale.

Meena's daughter, who is her legal representative, later claims that the sale should be set aside because she was not substituted in place of her deceased mother.

Outcome:

The court will not automatically set aside the sale just because Meena died after the proclamation but before the sale.

If Meena's daughter can demonstrate that she was prejudiced by the sale (e.g., she was not informed about the sale or did not have the opportunity to contest it), the court may decide to set aside the sale.

Example 3:

Scenario: Vijay, a judgment-debtor, has a property that is to be sold in execution of a decree obtained by Raj, the decree-holder. The court issues a proclamation of sale on March 1st. Vijay dies on March 10th, and the sale is scheduled for March 25th.

Application of Rule 22A:

The sale proceeds on March 25th as planned, despite Vijay's death.

Raj, the decree-holder, does not substitute Vijay's legal representative before the sale.

Vijay's wife, who is his legal representative, later argues that the sale should be set aside because she was not substituted in place of her deceased husband.

Outcome:

The court will not set aside the sale merely because Vijay died after the proclamation but before the sale.

However, if Vijay's wife can prove that she was prejudiced by the sale (e.g., she was not given a fair opportunity to settle the debt or protect the property), the court may consider setting aside the sale.

Rule 23: Procedure after issue of notice.

(1) Where the person to whom notice is issued under rule 22 does not appear or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed.

(2) Where such person offers any objection to the execution of the decree, the Court shall consider such objection and make such order as it thinks fit.

Simplified act

(1) If the person who gets a notice under rule 22 does not show up or does not give a good reason to the Court why the decision should not be carried out, the Court will order that the decision be carried out.

(2) If the person has any objections to carrying out the decision, the Court will look at those objections and decide what to do.

Explanation using Example

Example 1:

Rajesh obtained a court decree against Suresh for the repayment of a loan amounting to ₹5,00,000. Rajesh then filed an application for the execution of the decree. The court issued a notice to Suresh under Rule 22, asking him to show cause why the decree should not be executed. Suresh neither appeared in court nor provided any reason for not executing the decree. As per Rule 23(1), the court, finding no objection from Suresh, ordered the execution of the decree, allowing Rajesh to proceed with the recovery of the ₹5,00,000.

Example 2:

Meena won a civil case against her tenant, Ravi, for unpaid rent amounting to ₹1,00,000. Meena applied for the execution of the decree, and the court issued a notice to Ravi under Rule 22. Ravi appeared in court and objected to the execution, claiming that he had already paid the rent in cash but had no receipt to prove it. The court, as per Rule 23(2), considered Ravi's objection.

After reviewing the evidence and hearing both parties, the court found Ravi's claim unsubstantiated and ordered the execution of the decree, allowing Meena to recover the ₹1,00,000.

Rule 24: Process for execution.

(1) When the preliminary measures (if any) required by the foregoing rules have been taken, the Court shall, unless it sees cause to the contrary, issue its process for the execution of the decree.

(2) Every such process shall bear date the day on which it is issued, and shall be signed by the Judge or such officer as the Court may appoint in this behalf, and shall be sealed with the seal of the Court and delivered to the proper officer to be executed.

(3) In every such process, a day shall be specified on or before which it shall be executed and a day shall also be specified on or before which it shall be returned to the Court, but no process shall be deemed to be void if no day for its return is specified therein.

Simplified act

(1) After completing any initial steps required by the previous rules, the Court will usually proceed to enforce the decision, unless there is a reason not to.

(2) Each enforcement order will have the date it was issued, be signed by the Judge or an authorized officer, have the Court's seal, and be given to the right officer to carry out.

(3) Each enforcement order will include a deadline for when it must be carried out and a deadline for when it must be returned to the Court. However, if no return date is mentioned, the order is still valid.

Explanation using Example

Example 1:

Scenario: Ramesh wins a civil lawsuit against Suresh for non-payment of a loan amounting to ₹5,00,000. The court issues a decree ordering Suresh to pay the amount to Ramesh.

Application of Rule 24:

Preliminary Measures: Before issuing the execution process, the court ensures that all preliminary measures, such as serving notice to Suresh and verifying the decree, are completed.

Issuance of Process: The court then issues a process for the execution of the decree. This process is dated, signed by the judge, sealed with the court's seal, and handed over to the court officer for execution.

Execution Timeline: The process specifies that the execution (e.g., attachment of Suresh's property) must be completed within 30 days and returned to the court within 45 days. Even if the return date is not specified, the process remains valid.

Example 2:

Scenario: Meena wins a property dispute case against her neighbor, Anil. The court decrees that Anil must vacate the disputed property and hand it over to Meena.

Application of Rule 24:

Preliminary Measures: The court ensures that all necessary steps, such as notifying Anil and confirming the decree, are taken.

Issuance of Process: The court issues a process for the execution of the decree, which includes the date of issuance, the judge's signature, and the court's seal. This process is then given to the court officer responsible for execution.

Execution Timeline: The process specifies that Anil must vacate the property within 15 days and the execution report must be returned to the court within 20 days. The process remains valid even if the return date is not mentioned.

Example 3:

Scenario: Priya wins a lawsuit against a company for breach of contract, and the court orders the company to pay her ₹10,00,000 in damages.

Application of Rule 24:

Preliminary Measures: The court ensures that all preliminary steps, such as serving notice to the company and verifying the decree, are completed.

Issuance of Process: The court issues a process for the execution of the decree, which includes the date of issuance, the judge's signature, and the court's seal. This process is then handed over to the court officer for execution.

Execution Timeline: The process specifies that the company must pay the damages within 60 days and the execution report must be returned to the court within 75 days. The process remains valid even if the return date is not mentioned.

Rule 25: Endorsement on process.

(1) The officer entrusted with the execution of the process shall endorse thereon the day on, and the manner in, which it was executed, and, if the latest day specified in the process for the return thereof has been exceeded, the reason of the delay, or, if it was not executed, the reason why it was not executed, and shall return the process with such endorsement to the Court.

(2) Where the endorsement is to the effect that such officer is unable to execute the process, the Court shall examine him touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability, and shall record the result.

Simplified act

(1) The officer responsible for carrying out the task must write down the date and how it was done. If the task was done after the deadline, the officer must explain why it was late. If the task was not done at all, the officer must explain why it wasn't done. The officer must then return the paperwork with these notes to the Court.

(2) If the officer writes that they couldn't do the task, the Court will ask the officer to explain why. The Court can also call in and question other people to understand why the task couldn't be done. The Court will then record what they find out.

Explanation using Example

Example 1:

Scenario: Execution of a Money Decree

Context: Mr. Sharma won a civil case against Mr. Verma, and the court issued a decree ordering Mr. Verma to pay Rs. 5,00,000 to Mr. Sharma. Mr. Sharma applied for the execution of this decree.

Process:

The court issues a process to the court officer (bailiff) to execute the decree by attaching Mr. Verma's property.

The bailiff goes to Mr. Verma's residence to attach his property.

Endorsement:

The bailiff endorses on the process the date and manner of execution, e.g., "Executed on 15th October 2023 by attaching Mr. Verma's car."

If the bailiff could not execute the process by the specified date, he must state the reason, e.g., "Execution delayed due to Mr. Verma's absence from the city."

If the process was not executed, the bailiff must state the reason, e.g., "Unable to execute as Mr. Verma's property was not found."

Return to Court:

The bailiff returns the process with the endorsement to the court.

Court Examination:

If the endorsement states that the bailiff was unable to execute the process, the court will examine the bailiff to understand the reasons.

The court may summon witnesses to verify the bailiff's claims and will record the findings.

Example 2:

Scenario: Execution of an Eviction Order

Context: Mrs. Gupta obtained an eviction order against her tenant, Mr. Khan, who has not paid rent for several months. Mrs. Gupta applied for the execution of the eviction order.

Process:

The court issues a process to the court officer (bailiff) to execute the eviction order by removing Mr. Khan from the premises.

The bailiff goes to the rented property to evict Mr. Khan.

Endorsement:

The bailiff endorses on the process the date and manner of execution, e.g., "Executed on 20th October 2023 by evicting Mr. Khan from the premises."

If the bailiff could not execute the process by the specified date, he must state the reason, e.g., "Execution delayed due to Mr. Khan's refusal to vacate and need for police assistance."

If the process was not executed, the bailiff must state the reason, e.g., "Unable to execute as Mr. Khan was not present at the premises."

Return to Court:

The bailiff returns the process with the endorsement to the court.

Court Examination:

If the endorsement states that the bailiff was unable to execute the process, the court will examine the bailiff to understand the reasons.

The court may summon witnesses to verify the bailiff's claims and will record the findings.

Stay of execution

Rule 26: When Court may stay execution.

Execution of Decree

(1) The Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto.

(2) Where the property or person of the judgment-debtor has been seized under an execution, the Court which issued the execution may order the restitution of such property or the discharge of such person pending the result of the application.

(3) Power to require security from, or impose conditions upon, judgment-debtor.-Before making an order to stay execution, or for the restitution of property or the discharge of the judgment-debtor, the Court shall require such security from, or impose such condition upon, the judgment-debtor as it thinks fit.

Simplified act

Execution of Decree

- (1) If a court receives a decree (a formal order) to enforce, it can pause the enforcement for a reasonable time if there is a good reason. This pause allows the person who owes money (the judgment-debtor) to ask the original court or an appellate court (a higher court that can review the decision) to stop the enforcement or make another related order.
- (2) If the judgment-debtor's property or person has been taken because of the enforcement, the court that ordered the enforcement can return the property or release the person while waiting for the result of the application.
- (3) Before pausing the enforcement, returning the property, or releasing the judgment-debtor, the court can ask the judgment-debtor to provide a guarantee or meet certain conditions as the court sees fit.

Explanation using Example

Example 1:

Rajesh, a businessman in Mumbai, lost a civil lawsuit and the court issued a decree ordering him to pay ₹10 lakhs to the plaintiff, Suresh. The decree was sent to the court in Pune for execution because Rajesh's assets are located there. Rajesh believes that the decree was unfair and plans to appeal the decision. He approaches the Pune court and shows sufficient cause, explaining that he needs time to file an appeal in the Mumbai court. The Pune court, upon being convinced, stays the execution of the decree for a reasonable time, allowing Rajesh to apply for a stay order from the Mumbai court.

Example 2:

Meena, a resident of Delhi, was ordered by the court to vacate her property and hand it over to the plaintiff, Anil, as part of a decree. The decree was sent to the Delhi court for execution. Meena's property was seized by the court officers. Meena then files an application showing sufficient cause and requests the court to stay the execution so she can appeal the decision. The Delhi court stays the execution and orders the restitution of Meena's property pending the result of her appeal application. However, before doing so, the court requires Meena to provide a security deposit to ensure that she complies with the final decision of the appellate court.

Stay of execution

Rule 27: Liability of judgment-debtor discharged.

No order of restitution or discharge under rule 26 shall prevent the property or person of a judgment-debtor from being retaken in execution of the decree sent for execution.

Simplified act

If a court orders that property or a person should be returned or released under rule 26, it does not stop the property or person from being taken again to fulfill the court's decision.

Explanation using Example

Example 1:

Rajesh owes money to Suresh and loses a court case, resulting in a decree that Rajesh must pay Suresh Rs. 1,00,000. Rajesh's property is seized to satisfy this debt. Rajesh then files an application under Rule 26, claiming that the execution of the decree should be stayed because he has already paid part of the amount. The court orders a temporary stay of execution and releases Rajesh's property. However, Rajesh fails to pay the remaining amount within the stipulated time. According to Rule 27, Suresh can again initiate execution proceedings to seize Rajesh's property or even have Rajesh arrested to recover the remaining amount, despite the earlier stay and release.

Example 2:

Meena wins a lawsuit against her tenant, Ravi, who is ordered to vacate the premises and pay Rs. 50,000 in damages. Ravi's bank account is frozen to recover the amount. Ravi appeals under Rule 26, arguing that he needs access to his bank account to pay for his mother's medical expenses. The court temporarily lifts the freeze on Ravi's bank account. However, Ravi does not vacate the premises or pay the damages within the given time. Under Rule 27, Meena can request the court to re-freeze Ravi's bank account or take other measures to enforce the original decree, ensuring that Ravi fulfills his obligations as per the court's order.

Rule 28: Order of Court which passed decree or of appellate Court to be binding upon Court applied to.

Any order of the Court by which the decree was passed, or of such Court of appeal as aforesaid, in relation to the execution of such decree, shall be binding upon the Court to which the decree was sent for execution.

Simplified act

Any decision made by the Court that issued the original judgment, or by the Court of appeal mentioned earlier, about carrying out that judgment, must be followed by the Court that received the judgment to enforce it.

Explanation using Example

Example 1:

Scenario: Mr. Sharma filed a lawsuit against Mr. Verma for breach of contract in the Delhi High Court. The Delhi High Court passed a decree in favor of Mr. Sharma, ordering Mr. Verma to pay Rs. 10 lakhs as compensation. Mr. Verma, residing in Mumbai, did not comply with the decree.

Application: Mr. Sharma then applied to the Mumbai City Civil Court for the execution of the decree. The Mumbai City Civil Court is bound by the order of the Delhi High Court and must enforce the decree as passed by the Delhi High Court. If the Delhi High Court issues any further orders regarding the execution, the Mumbai City Civil Court must comply with those orders as well.

Example 2:

Scenario: Ms. Gupta won a property dispute case against Mr. Singh in the Madras High Court. The court decreed that Mr. Singh must vacate the property and hand over possession to Ms. Gupta. Mr. Singh appealed to the Supreme Court of India, but the Supreme Court upheld the Madras High Court's decree.

Application: Ms. Gupta applied to the Bangalore Civil Court for the execution of the decree since the property is located in Bangalore. The Bangalore Civil Court is bound by the decree of the Madras High Court and the order of the Supreme Court. It must ensure that Mr. Singh vacates the property and hands over possession to Ms. Gupta as per the decree. Any further orders from the Madras High Court or the Supreme Court regarding the execution must also be followed by the Bangalore Civil Court.

Rule 29: Stay of execution pending suit between decree-holder and judgment-debtor.

Where a suit is pending in any Court against the holder of a decree of such Court or of a decree which is being executed by such Court, on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided:

Simplified act

If there is a lawsuit happening in any Court against someone who has won a judgment (decree) from that Court, or a judgment that is being carried out by that Court, and the lawsuit is brought by the person who lost the original case, the Court can pause the enforcement of the judgment.

The Court can decide to pause the enforcement under conditions it considers appropriate, such as requiring security or other terms, until the new lawsuit is resolved.

Explanation using Example

Example 1:

Rajesh obtained a decree from the court stating that Suresh must pay him Rs. 5 lakhs. Suresh, however, believes that the decree was obtained through fraudulent means and files a separate suit against Rajesh in the same court, claiming fraud. While this new suit is pending, Suresh requests the court to stay the execution of the original decree (i.e., to stop Rajesh from enforcing the payment of Rs. 5 lakhs) until the fraud case is resolved. The court, considering the circumstances, decides to stay the execution of the decree, requiring Suresh to provide some form of security to ensure that Rajesh's interests are protected if Suresh's fraud claim is not successful.

Example 2:

Meena has a decree from the court that orders Ravi to vacate a property. Ravi, however, files a new suit against Meena, claiming that the property actually belongs to him based on a different set of documents. Ravi then requests the court to stay the execution of the decree that requires him to vacate the property until his ownership claim is resolved. The court, after reviewing the situation, agrees to stay the execution of the decree, but asks Ravi to deposit a certain amount of money as security to ensure that Meena is compensated for any potential losses if Ravi's claim is found to be invalid.

Rule 30: Decree for 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 the detention in the civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both.

Simplified act

If a court orders someone to pay money, this order can be enforced in the following ways: a. The person who owes the money can be put in a civil prison. b. The person's property can be taken and sold. c. Both of the above methods can be used together.

Explanation using Example

Example 1:

Scenario: Ramesh lent Rs. 5,00,000 to Suresh, who promised to repay the amount within a year. However, Suresh failed to repay the loan even after multiple reminders. Ramesh filed a civil suit, and the court passed a decree ordering Suresh to pay Rs. 5,00,000 to Ramesh.

Application of Rule 30:

Detention in Civil Prison: If Suresh still refuses to pay the amount, Ramesh can request the court to execute the decree by detaining Suresh in a civil prison until he agrees to pay the money.

Attachment and Sale of Property: Alternatively, Ramesh can ask the court to attach and sell Suresh's property (e.g., his house or car) to recover the Rs. 5,00,000.

Both: In some cases, the court may decide to both detain Suresh in civil prison and attach and sell his property to ensure the payment is made.

Example 2:

Scenario: Priya won a lawsuit against a company for breach of contract, and the court awarded her Rs. 10,00,000 as compensation. The company was also given an option to provide an alternative relief by reinstating Priya's contract, but they failed to do either.

Application of Rule 30:

Detention in Civil Prison: Priya can request the court to detain the company's managing director or responsible officer in a civil prison until the company pays the Rs. 10,00,000.

Attachment and Sale of Property: Priya can also ask the court to attach and sell the company's assets, such as office equipment or vehicles, to recover the Rs. 10,00,000.

Both: The court may decide to both detain the responsible officer and attach and sell the company's assets to ensure Priya receives the compensation.

Rule 31: Decree for specific movable property.

Execution of Decree for Specific Movable Property

(1) Where the decree is for any specific movable, or for any share in a specific movable, it may be executed by the seizure, if practicable, of the movable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the detention in the civil prison of the judgment-debtor, or by the attachment of his property, or by both.

(2) Where any attachment under sub-rule (1) has remained in force for three months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed by the decree to be paid as an alternative to delivery of movable property, such amount, and in other cases, such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(3) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of three months from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease.

Simplified act

Execution of Decree for Specific Movable Property

(1) If a court order (decree) says someone must give a specific item or a share of an item to another person, it can be enforced by taking the item or share and giving it to the person who won the case, or to someone they choose to receive

it. If this isn't possible, the person who lost the case (judgment-debtor) can be put in jail or have their property taken, or both.

(2) If the property has been taken (attached) for three months and the person who lost the case hasn't followed the court order, the person who won the case can ask the court to sell the attached property. The money from the sale can be given to the person who won the case as compensation or as an amount fixed by the court order. Any leftover money will be given back to the person who lost the case if they ask for it.

(3) If the person who lost the case follows the court order and pays all the costs, or if three months pass and no one asks for the property to be sold, or if the request to sell the property is denied, the property will no longer be taken (the attachment will end).

Explanation using Example

Example 1:

Ravi lent his antique watch to his friend Suresh for a special occasion. After the event, Suresh refused to return the watch despite multiple requests. Ravi decided to take legal action and obtained a decree from the court for the return of his specific movable property, the antique watch.

The court ordered the execution of the decree by seizing the watch from Suresh and delivering it back to Ravi. If Suresh still refused to comply, the court could detain Suresh in civil prison or attach his other properties until he obeyed the decree.

Example 2:

Meena sold her rare painting to Rajesh, but Rajesh failed to pay the agreed amount. Meena filed a lawsuit and obtained a decree for the return of the painting. The court ordered the seizure of the painting from Rajesh's possession.

If Rajesh did not comply within three months, the court could sell the attached property (the painting) and use the proceeds to compensate Meena. If the painting was sold for more than the amount Rajesh owed, the remaining balance would be returned to Rajesh upon his application.

Example 3:

Anita won a court case against her business partner, who was supposed to return a specific piece of machinery to her. The court issued a decree for the return of the machinery. The court officials went to seize the machinery from the partner's warehouse.

If the partner did not comply within three months, Anita could apply to have the machinery sold. The court would then sell the machinery and compensate Anita with the proceeds. If the machinery was sold for more than the amount specified in the decree, the excess amount would be given back to the partner.

Example 4:

Vikram borrowed a valuable book from his colleague, Priya, and refused to return it. Priya took the matter to court and obtained a decree for the return of the book. The court ordered the seizure of the book from Vikram's possession.

If Vikram did not return the book within three months, the court could sell the book and compensate Priya with the proceeds. If the book was sold for more than the amount specified in the decree, the remaining balance would be returned to Vikram upon his application

Rule 32: Decree for specific performance for restitution of conjugal rights or for an injunction.

Enforcement of Decrees

(1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction by his detention in the civil prison, or by the attachment of his property, or by both.

(2) Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or, with the leave of the Court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.

(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for six months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property

may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of six months from the date of the attachment no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.

Explanation. - For the removal of doubts, it is hereby declared that the expression "the act required to be done" covers prohibitory as well as mandatory injunctions.

Illustration

A, a person of little substance, erects a building which renders uninhabitable a family mansion belonging to B. A, in spite of his detention in prison and the attachment of his property, declines to obey a decree obtained against him by B and directing him to remove the building. The Court is of opinion that no sum realizable by the sale of A's property would adequately compensate B for the depreciation in the value of his mansion. B may apply to the Court to remove the building and may recover the cost of such removal from A in the execution-proceedings.

Simplified act

Enforcement of Decrees

(1) If someone is ordered by the court to do something specific, like fulfill a contract, return to their spouse, or stop doing something (an injunction), and they have had a chance to follow the order but chose not to, the court can enforce the order. For returning to a spouse, the court can take their property. For fulfilling a contract or stopping an action, the court can put them in jail, take their property, or both.

(2) If a company is ordered to fulfill a contract or stop doing something and doesn't comply, the court can take the company's property. With the court's permission, the court can also put the company's directors or main officers in jail, or do both.

(3) If the court has taken someone's property because they didn't follow an order, and six months have passed without them complying, the person who won the case can ask the court to sell the property. The court can then give some of the money from the sale to the person who won the case as compensation and give any leftover money to the person who lost the case if they ask for it.

(4) If the person who lost the case follows the court's order and pays all the costs, or if six months pass and no one asks to sell the property, or if the request to sell the property is denied, the court will stop holding the property.

(5) If someone doesn't follow a court order to fulfill a contract or stop doing something, the court can allow the person who won the case or someone else to do what needs to be done, and the person who lost the case will have to pay for it. The court will decide how to figure out the costs, and these costs can be collected as if they were part of the original court order.

Explanation. - To clear up any confusion, "the act required to be done" includes both orders to do something and orders to stop doing something.

Example

A person named A builds a structure that makes B's family home unlivable. Even after being put in jail and having his property taken, A refuses to follow the court's order to remove the building. The court believes that selling A's property won't be enough to compensate B for the damage to his home. B can ask the court to remove the building and get the costs of removal from A through the court process.

Explanation using Example

Example 1:

Scenario: Specific Performance of a Contract

Ravi enters into a contract with Suresh to sell his house for ₹50 lakhs. Ravi receives an advance payment of ₹10 lakhs but later refuses to complete the

sale. Suresh files a suit for specific performance, and the court decrees that Ravi must complete the sale.

Application of the Act:

Ravi has had an opportunity to obey the decree but wilfully fails to do so.

The court may enforce the decree by attaching Ravi's property or detaining him in civil prison, or both.

If Ravi still does not comply, the court may order the sale of Ravi's attached property after six months and compensate Suresh from the proceeds.

Alternatively, the court may allow Suresh to complete the sale at Ravi's cost, and Suresh can recover the expenses as if they were included in the decree.

Example 2:

Scenario: Restitution of Conjugal Rights

Priya and Rajesh are married, but Rajesh leaves the matrimonial home without any valid reason. Priya files a suit for restitution of conjugal rights, and the court decrees that Rajesh must return to live with Priya.

Application of the Act:

Rajesh has had an opportunity to obey the decree but wilfully fails to do so.

The court may enforce the decree by attaching Rajesh's property.

If Rajesh still does not comply after six months, Priya can apply to have Rajesh's attached property sold, and the court may award her compensation from the proceeds.

If Rajesh returns to live with Priya and pays all costs of executing the decree, the attachment will cease.

Example 3:

Scenario: Injunction

Meera owns a piece of land and constructs a boundary wall. Her neighbor, Anil, starts constructing a building that encroaches on Meera's land. Meera files a suit for an injunction to stop Anil's construction, and the court grants the injunction.

Application of the Act:

Anil has had an opportunity to obey the decree but wilfully fails to stop the construction.

The court may enforce the decree by attaching Anil's property or detaining him in civil prison, or both.

If Anil still does not comply, the court may order the sale of Anil's attached property after six months and compensate Meera from the proceeds.

Alternatively, the court may allow Meera to remove the encroaching construction at Anil's cost, and Meera can recover the expenses as if they were included in the decree.

Rule 33: Discretion of Court in executing decrees for restitution of conjugal rights.

Execution of Decree for Restitution of Conjugal Rights

(1) Notwithstanding anything in rule 32, the Court, either at the time of passing a decree against a husband for the restitution of conjugal rights or at any time afterwards, may order that the decree shall be executed in the manner provided in this rule.

(2) Where the Court has made an order under sub-rule (1), it may order that, in the event of the decree not being obeyed within such period as may be fixed in this behalf, the judgment-debtor shall make to the decree-holder such periodical payments as may be just, and, if it thinks fit, require that the judgment-debtor shall, to its satisfaction, secure to the decree-holder such periodical payments.

(3) The Court may from time to time vary or modify any order made under sub-rule (2) for the periodical payment of money, either by altering the times of payment or by increasing or diminishing the amount, or may temporarily suspend the same as to the whole or any part of the money so ordered to be paid, and again review the same, either wholly or in part as it may think just.

(4) Any money ordered to be paid under this rule may be recovered as though it were payable under a decree for the payment of money.

Simplified act

Execution of Decree for Restitution of Conjugal Rights

(1) Despite what rule 32 says, the Court can decide, either when it issues a decree for a husband to restore marital rights or at any time after, that the decree will be carried out as described in this rule.

(2) If the Court makes an order under point (1), it can also decide that if the husband does not follow the decree within a set time, he must make regular payments to his spouse. The Court can also require the husband to provide a guarantee for these payments.

(3) The Court can change any order made under point (2) about regular payments. This can include changing the payment schedule, increasing or decreasing the amount, or temporarily stopping the payments, either fully or partially. The Court can review and adjust these changes as it sees fit.

(4) Any money that the Court orders to be paid under this rule can be collected as if it were ordered to be paid under a regular money payment decree.

Explanation using Example

Example 1:

Scenario: Raj and Priya are married, but due to some misunderstandings, Priya leaves the matrimonial home and starts living with her parents. Raj files a suit for restitution of conjugal rights, and the court passes a decree in his favor, ordering Priya to return to the matrimonial home.

Application of Rule 33:

Initial Decree: The court orders Priya to return to Raj within a specified period.

Non-Compliance: Priya does not return within the specified period.

Court's Discretion: The court, using its discretion under Rule 33, orders Priya to make periodical payments to Raj as compensation for not obeying the decree.

Modification: After some time, Priya's financial situation changes, and she requests the court to reduce the amount of periodical payments. The court reviews her request and modifies the order, reducing the payment amount.

Example 2:

Scenario: Anil and Sunita are married, but Sunita leaves the matrimonial home due to a dispute. Anil files a suit for restitution of conjugal rights, and the court passes a decree in his favor, ordering Sunita to return to the matrimonial home.

Application of Rule 33:

Initial Decree: The court orders Sunita to return to Anil within a specified period.

Non-Compliance: Sunita does not return within the specified period.

Court's Discretion: The court, using its discretion under Rule 33, orders Sunita to make periodical payments to Anil as compensation for not obeying the decree.

Security for Payments: The court also requires Sunita to provide security to ensure that she will make the periodical payments.

Temporary Suspension: Sunita faces a temporary financial crisis and requests the court to suspend the periodical payments for a few months. The court temporarily suspends the payments for three months.

Resumption of Payments: After three months, the court reviews the situation and orders Sunita to resume the periodical payments.

Example 3:

Scenario: Ravi and Meena are married, but Meena leaves the matrimonial home due to a conflict. Ravi files a suit for restitution of conjugal rights, and the court passes a decree in his favor, ordering Meena to return to the matrimonial home.

Application of Rule 33:

Initial Decree: The court orders Meena to return to Ravi within a specified period.

Non-Compliance: Meena does not return within the specified period.

Court's Discretion: The court, using its discretion under Rule 33, orders Meena to make periodical payments to Ravi as compensation for not obeying the decree.

Modification: After some time, Ravi's financial situation improves, and he no longer needs the periodical payments. He requests the court to stop the payments. The court reviews his request and suspends the periodical payments.

Recovery of Payments: Any unpaid periodical payments ordered by the court can be recovered by Ravi as though it were payable under a decree for the payment of money.

Rule 34: Decree for execution of document, or endorsement of negotiable instrument.

Where a decree is for the execution of a document or for the endorsement of a negotiable instrument and the judgment-debtor neglects or refuses to obey the decree, the decree-holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the Court.

(2) The Court shall thereupon cause the draft to be served on the judgment-debtor together with a notice requiring his objections (if any) to be made within such time as the Court fixes in this behalf.

(3) Where the judgment-debtor objects to the draft, his objections shall be stated in writing within such time, and the Court shall make such order approving or altering the draft, as it thinks fit.

(4) The decree-holder shall deliver to the Court a copy of the draft with such alterations (if any) as the Court may have directed upon the proper stamp-paper if a stamp is required by the law for the time being in force; and the Judge or such officer as may be appointed in this behalf shall execute the document so delivered.

(5) The execution of a document or the endorsement of a negotiable instrument under this rule may be in the following form, namely:

"C. D., Judge of the Court of, (or as the case may be), for A. B., in a suit by E. F against A. B.",

and shall have the same effect as the execution of the document or the endorsement of the negotiable instrument by the party ordered to execute or endorse the same.

(6) (a) Where the registration of the document is required under any law for the time being in force, the Court, or such officer of the Court as may be

authorised in this behalf by the Court, shall cause the document to be registered in accordance with such law.

(b) Where the registration of the document is not so required, but the decree-holder desires it to be registered, the Court may make such order as it thinks fit.

(c) Where the Court makes any order for the registration of any document, it may make such order as it thinks fit as to the expenses of registration.

Simplified act

If a court order requires someone to sign a document or endorse a negotiable instrument (like a check) and they refuse or ignore the order, the person who won the case can create a draft of the document or endorsement as per the court's decision and give it to the court.

The court will then send this draft to the person who lost the case, along with a notice asking them to submit any objections within a specified time.

If the person who lost the case has objections to the draft, they must write them down and submit them within the given time. The court will then decide whether to approve or change the draft.

The person who won the case must then provide the court with a copy of the draft, including any changes the court made, on the proper stamped paper if required by law. The judge or an authorized officer will then sign the document.

The signed document or endorsed negotiable instrument will be in a specific format, such as:

"C. D., Judge of the Court of, (or as the case may be), for A. B., in a suit by E. F against A. B.",

and it will have the same legal effect as if the person who was ordered to sign or endorse it had done so themselves.

Additional rules about registration:

(a) If the law requires the document to be registered, the court or an authorized officer will ensure it gets registered.

(b) If the law does not require registration but the person who won the case wants it registered, the court can decide whether to allow it.

(c) If the court orders the document to be registered, it can also decide who will pay for the registration costs.

Explanation using Example

Example 1:

Scenario: Ramesh wins a court case against Suresh, where the court orders Suresh to sign a property sale deed in favor of Ramesh. Suresh, however, refuses to sign the document.

Application of Rule 34:

Draft Preparation: Ramesh (decree-holder) prepares a draft of the property sale deed as per the court's decree and submits it to the court.

Service of Draft: The court serves the draft deed to Suresh (judgment-debtor) along with a notice to raise any objections within a specified time.

Objections: Suresh submits his objections in writing within the given time frame.

Court's Decision: The court reviews the objections and either approves the draft as it is or makes necessary alterations.

Final Draft Submission: Ramesh submits the final draft with the court's alterations on the required stamp paper.

Execution: The judge or an authorized officer executes the document on behalf of Suresh.

Registration: If the property sale deed requires registration, the court ensures it is registered as per the law.

Example 2:

Scenario: Priya wins a lawsuit against Raj, where the court orders Raj to endorse a promissory note in favor of Priya. Raj refuses to endorse the note.

Application of Rule 34:

Draft Preparation: Priya (decree-holder) prepares a draft of the endorsement on the promissory note as per the court's decree and submits it to the court.

Service of Draft: The court serves the draft endorsement to Raj (judgment-debtor) along with a notice to raise any objections within a specified time.

Objections: Raj submits his objections in writing within the given time frame.

Court's Decision: The court reviews the objections and either approves the draft as it is or makes necessary alterations.

Final Draft Submission: Priya submits the final draft with the court's alterations.

Execution: The judge or an authorized officer executes the endorsement on the promissory note on behalf of Raj.

Effect: The endorsement executed by the judge or officer has the same legal effect as if Raj had endorsed the promissory note himself.

Rule 35: Decree for immovable property.

(1) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.

(2) Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum, or other customary mode, at some convenient place, the substance of the decree.

(3) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.

Simplified act

Decree for Delivery of Immovable Property

(1) If a court orders that someone should get a piece of real estate (like land or a building), that property must be handed over to the person who won the case, or to someone they choose to receive it for them. If someone who is supposed to leave the property refuses to do so, they can be removed.

(2) If a court orders that multiple people should share possession of a piece of real estate, this will be done by posting a copy of the court order in a visible place on the property and announcing the main points of the order loudly, like by beating a drum or another common method, at a nearby location.

(3) If a court orders that someone should get possession of a building or enclosed area and the current occupant, who is supposed to leave, does not allow easy access, the court can send officers to give a fair warning. They will also give any women who do not appear in public according to local customs a chance to leave. Then, the officers can remove locks, open doors, or do whatever is necessary to give the property to the person who won the case.

Explanation using Example

Example 1:

Scenario: Rajesh wins a court case against his tenant, Suresh, who has refused to vacate Rajesh's property despite the lease agreement ending.

Application of Rule 35:

Decree for Delivery of Immovable Property: The court issues a decree in favor of Rajesh, ordering Suresh to vacate the property.

Execution of Decree: Rajesh approaches the court to execute the decree. The court sends an officer to deliver possession of the property to Rajesh.

Removal of Person Bound by Decree: Suresh refuses to vacate the property. The court officer, with the help of local police if necessary, removes Suresh from the property and hands over possession to Rajesh.

Example 2:

Scenario: Meena and her brother Ravi jointly inherit a piece of agricultural land from their deceased father. However, Ravi has been occupying the entire land and not allowing Meena to access her share.

Application of Rule 35:

Decree for Joint Possession of Immovable Property: Meena files a suit for joint possession, and the court issues a decree granting her joint possession of the land.

Execution of Decree: The court officer goes to the land and affixes a copy of the warrant in a conspicuous place on the property.

Proclamation: The officer proclaims the substance of the decree by beating a drum in the village, informing everyone that Meena is entitled to joint possession of the land.

Example 3:

Scenario: Anjali wins a court case to reclaim her ancestral house from a distant relative, who has been living there without permission and refuses to leave.

Application of Rule 35:

Decree for Delivery of Immovable Property: The court issues a decree in favor of Anjali, ordering the relative to vacate the house.

Execution of Decree: Anjali approaches the court to execute the decree. The court sends an officer to deliver possession of the house to Anjali.

Access to Property: The relative locks the house and refuses to open the door. The court officer, after giving reasonable warning, breaks open the lock and door to give Anjali possession of the house.

Respecting Customs: If there are women in the house who do not appear in public according to local customs, the officer ensures they have the opportunity to withdraw before taking action to open the house.

Example 4:

Scenario: A cooperative housing society wins a case against an illegal occupant, Mr. Sharma, who has been occupying the society's community hall.

Application of Rule 35:

Decree for Delivery of Immovable Property: The court issues a decree in favor of the housing society, ordering Mr. Sharma to vacate the community hall.

Execution of Decree: The society approaches the court to execute the decree. The court sends an officer to deliver possession of the community hall to the society.

Removal of Person Bound by Decree: Mr. Sharma refuses to vacate the hall. The court officer, with the help of local police if necessary, removes Mr. Sharma from the hall and hands over possession to the society.

Proclamation: The officer may also proclaim the substance of the decree by beating a drum in the society premises, informing all residents that the hall is now under the society's possession.

Rule 36: Decree for delivery of immovable property when in occupancy of tenant.

Where a decree is for the delivery of any immovable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, the substance of the decree in regard to the property.

Simplified act

If a court order requires someone to hand over a piece of property (like land or a building) that is currently being used by a tenant or someone else who has the right to be there and doesn't have to leave because of the order, the court will arrange for the property to be handed over by doing the following:

They will put a copy of the court order in a noticeable spot on the property.

They will announce the main points of the court order to the person living there, using a drum or another traditional method, at a convenient location.

Explanation using Example

Example 1:

Scenario: Rajesh owns a piece of agricultural land in Maharashtra, which he has leased to a tenant, Suresh, for farming. Rajesh wins a court case against a third party, Anil, who had illegally occupied the land. The court issues a decree for the delivery of the land back to Rajesh.

Application of Rule 36: Since Suresh, the tenant, is legally occupying the land and is not bound by the decree to leave, the court orders the delivery of the land to Rajesh by:

Affixing a copy of the warrant on a prominent place on the land.

Announcing the substance of the decree to Suresh and any other occupants by beating a drum or using another customary method at a convenient location.

Example 2:

Scenario: Priya owns a commercial building in Delhi, which she has rented out to multiple tenants for running their businesses. Priya wins a legal battle against a former business partner, Vikram, who had taken over the building unlawfully. The court decrees that the building should be returned to Priya.

Application of Rule 36: Since the tenants are legally occupying their respective spaces and are not required to vacate under the decree, the court orders the delivery of the building to Priya by:

Affixing a copy of the warrant in a conspicuous place on the building.

Proclaiming the substance of the decree to the tenants and any other occupants by beating a drum or using another customary method at a convenient place.

Example 3:

Scenario: Meera owns a residential property in Bangalore, which she has rented out to a family. Meera wins a court case against a squatter, Ramesh, who had been living in a part of the property without permission. The court issues a decree for the delivery of the property back to Meera.

Application of Rule 36: Since the family renting the property is legally occupying it and is not required to leave under the decree, the court orders the delivery of the property to Meera by:

Affixing a copy of the warrant in a prominent place on the property.

Announcing the substance of the decree to the family and any other occupants by beating a drum or using another customary method at a convenient location.

Rule 37: Discretionary power to permit judgment-debtor to show cause against detention in prison.

(1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court shall, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison:

Provided that such notice shall not be necessary if the Court is satisfied, by affidavit, or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court.

(2) Where appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor.

Simplified act

(1) Despite what other rules say, if someone applies to have a person arrested and put in civil prison to make them pay money they owe (according to a court decision), the Court will first send a notice to that person. This notice will tell them to come to court on a specific day and explain why they shouldn't be put in prison:

However, if the Court believes, based on evidence or other reasons, that the person might run away to avoid paying, the Court can skip the notice and directly issue an arrest warrant.

(2) If the person doesn't show up in court as instructed in the notice, the Court will, if the person owed money requests it, issue a warrant to arrest the person who owes the money.

Explanation using Example

Example 1:

Scenario: Ramesh owes Rs. 5 lakhs to Suresh as per a court decree. Ramesh has not paid the amount despite multiple reminders. Suresh files an application for the execution of the decree by arresting and detaining Ramesh in civil prison.

Application of Rule 37:

The court receives Suresh's application and decides to issue a notice to Ramesh instead of directly issuing a warrant for his arrest.

The notice requires Ramesh to appear before the court on a specified date to explain why he should not be sent to civil prison for failing to pay the debt.

Ramesh appears in court and explains that he is facing financial difficulties and requests more time to pay the amount.

The court considers Ramesh's explanation and decides to grant him an additional three months to pay the debt, thereby avoiding his detention in civil prison.

Example 2:

Scenario: Priya owes Rs. 2 lakhs to Anil as per a court decree. Priya has been avoiding payment and is suspected of planning to leave the city to evade the debt. Anil files an application for the execution of the decree by arresting and detaining Priya in civil prison.

Application of Rule 37:

The court receives Anil's application and Anil submits an affidavit stating that Priya is likely to abscond to avoid paying the debt.

The court, satisfied with the affidavit, decides that issuing a notice to Priya would delay the execution of the decree.

The court directly issues a warrant for Priya's arrest without issuing a notice.

Priya is arrested and brought before the court. She is given an opportunity to explain her situation but fails to provide a satisfactory explanation.

The court orders Priya's detention in civil prison until she pays the Rs. 2 lakhs owed to Anil.

Example 3:

Scenario: Vijay owes Rs. 1 lakh to Meena as per a court decree. Vijay has been avoiding payment and Meena suspects that Vijay might abscond. Meena files an application for the execution of the decree by arresting and detaining Vijay in civil prison.

Application of Rule 37:

The court receives Meena's application and decides to issue a notice to Vijay instead of directly issuing a warrant for his arrest.

The notice requires Vijay to appear before the court on a specified date to explain why he should not be sent to civil prison for failing to pay the debt.

Vijay does not appear in court on the specified date.

Meena requests the court to issue a warrant for Vijay's arrest.

The court issues a warrant for Vijay's arrest due to his failure to appear in court as required by the notice.

Vijay is arrested and brought before the court. He is given an opportunity to explain his situation but fails to provide a satisfactory explanation.

The court orders Vijay's detention in civil prison until he pays the Rs. 1 lakh owed to Meena.

Rule 38: Warrant for arrest to direct judgment-debtor to be brought up.

Every warrant for the arrest of a judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs (if any) to which he is liable, be sooner paid.

Simplified act

Every arrest warrant for someone who owes money (judgment-debtor) must tell the officer in charge to bring that person to court as quickly as possible, unless the person pays the amount they owe, including any interest and costs, before being brought to court.

Explanation using Example

Example 1:

Rajesh borrowed ₹5,00,000 from Suresh and failed to repay the amount despite multiple reminders. Suresh filed a civil suit, and the court passed a decree ordering Rajesh to pay the amount along with interest and legal costs. Rajesh still did not comply with the court's order. Suresh then applied for the execution of the decree. The court issued a warrant for Rajesh's arrest. The warrant directed the police officer to arrest Rajesh and bring him before the court as soon as possible unless Rajesh paid the total amount due, including interest and costs, before the arrest.

Example 2:

Meena won a civil case against her former business partner, Anil, who was ordered by the court to pay ₹2,00,000 along with interest and legal costs. Anil ignored the court's decree and did not make any payments. Meena approached the court for execution of the decree. The court issued a warrant for Anil's arrest. The warrant instructed the police officer to arrest Anil and present him

before the court promptly unless Anil paid the full amount, including interest and costs, before being taken into custody.

Rule 39: Subsistence-allowance.

Execution of Decree

(1) No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into Court such sum as the Judge thinks sufficient for the subsistence of the judgment-debtor from the time of his arrest until he can be brought before the Court.

(2) Where a judgment-debtor is committed to the civil prison in execution of a decree, the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the scales fixed under section 57, or, where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

(3) The monthly allowance fixed by the Court shall be supplied by the party on whose application the judgment-debtor has been arrested by monthly payments in advance before the first day of each month.

(4) The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the judgment-debtor is committed to the civil prison, and the subsequent payments (if any) shall be made to the officer in charge of the civil prison.

(5) Sums disbursed by the decree-holder for the subsistence of the judgment-debtor in the civil prison shall be deemed to be costs in the suit:

Provided that the judgment-debtor shall not be detained in the civil prison or arrested on account of any sum so disbursed.

Simplified act

Execution of Decree

(1) A person who owes money (judgment-debtor) cannot be arrested to enforce a court order (decree) unless the person who is owed money (decree-holder) pays the court enough money to cover the living expenses of the debtor from the time of arrest until they appear in court.

(2) If the debtor is sent to jail to enforce the court order, the court will decide how much money they need each month for living expenses. This amount is

based on standard rates or what the court thinks is enough for their social class.

(3) The person who requested the debtor's arrest must pay this monthly allowance in advance before the start of each month.

(4) The first payment should be made to the court officer for the remaining days of the current month before the debtor is sent to jail. Future payments should be made to the officer in charge of the jail.

(5) Any money spent by the decree-holder for the debtor's living expenses in jail will be considered part of the legal costs:

However, the debtor cannot be kept in jail or arrested just because of these living expense payments.

Explanation using Example

Example 1:

Scenario: Ramesh, a small business owner, owes Rs. 1,00,000 to Suresh, who has obtained a court decree for the amount. Ramesh fails to pay the amount, and Suresh seeks to have Ramesh arrested to enforce the decree.

Application of Rule 39:

Subsistence Allowance Before Arrest: Before Ramesh can be arrested, Suresh must deposit a sum with the court that the judge deems sufficient for Ramesh's subsistence from the time of arrest until he is brought before the court. For instance, the judge may determine that Rs. 500 per day is sufficient, and if it takes 3 days to bring Ramesh before the court, Suresh must deposit Rs. 1,500.

Monthly Allowance in Civil Prison: If Ramesh is committed to civil prison, the court will fix a monthly subsistence allowance based on the scales under section 57 or as deemed sufficient by the court. Suppose the court fixes Rs. 3,000 per month for Ramesh's subsistence.

Advance Monthly Payments: Suresh must pay this Rs. 3,000 monthly allowance in advance before the first day of each month to the court officer.

First Payment: The first payment must cover the remaining days of the current month before Ramesh is committed to prison. If Ramesh is committed on the 20th of the month, Suresh must pay Rs. 1,000 for the remaining 10 days.

Subsequent Payments: Subsequent monthly payments must be made to the officer in charge of the civil prison.

Costs in Suit: The sums paid by Suresh for Ramesh's subsistence will be considered costs in the suit, but Ramesh cannot be detained or arrested solely for the non-payment of these subsistence sums.

Example 2:

Scenario: Priya has a court decree against her former business partner, Anil, for Rs. 2,00,000. Anil has not paid the amount, and Priya seeks his arrest to enforce the decree.

Application of Rule 39:

Subsistence Allowance Before Arrest: Priya must deposit a sum with the court for Anil's subsistence from the time of arrest until he is brought before the court. The judge decides Rs. 600 per day is sufficient, and if it takes 2 days to bring Anil before the court, Priya must deposit Rs. 1,200.

Monthly Allowance in Civil Prison: If Anil is committed to civil prison, the court will fix a monthly subsistence allowance. Suppose the court fixes Rs. 4,000 per month for Anil's subsistence.

Advance Monthly Payments: Priya must pay this Rs. 4,000 monthly allowance in advance before the first day of each month to the court officer.

First Payment: The first payment must cover the remaining days of the current month before Anil is committed to prison. If Anil is committed on the 25th of the month, Priya must pay Rs. 800 for the remaining 5 days.

Subsequent Payments: Subsequent monthly payments must be made to the officer in charge of the civil prison.

Costs in Suit: The sums paid by Priya for Anil's subsistence will be considered costs in the suit, but Anil cannot be detained or arrested solely for the non-payment of these subsistence sums.

Rule 40: Proceedings on appearance of judgment-debtor in obedience to notice or after arrest.

Attachment of Property

(1) When a judgment-debtor appears before the Court in obedience to a notice issued under rule 37, or is brought before the Court after being arrested in

execution of a decree for the payment of money, the Court shall proceed to hear the decree-holder and take all such evidence as may be produced by him in support of his application for execution and shall then give the judgment-debtor an opportunity of showing cause why he should not be committed to the civil prison.

(2) Pending the conclusion of the inquiry under sub-rule (1) the Court may, in its discretion, order the judgment-debtor to be detained in the custody of an officer of the Court or release him on his furnishing security to the satisfaction of the Court for his appearance when required.

(3) Upon the conclusion of the inquiry under sub-rule (1) the Court may, subject to the provisions of section 51 and to the other provisions of this Code, make an order for the detention of the judgment-debtor in the civil prison and shall in that event cause him to be arrested if he is not already under arrest:

Provided that in order to give the judgment-debtor an opportunity of satisfying the decree, the Court may, before making the order of detention, leave the judgment-debtor in the custody of an officer of the Court for a specified period not exceeding fifteen days or release him on his furnishing security to the satisfaction of the Court for his appearance at the expiration of the specified period if the decree be not sooner satisfied.

(4) A judgment-debtor released under this rule may be re-arrested.

(5) When the Court does not make an order of detention under sub-rule (3) it shall disallow the application and, if the judgment-debtor is under arrest, direct his release.

Simplified act

Attachment of Property

(1) When a person who owes money (judgment-debtor) comes to court because they received a notice, or is brought to court after being arrested for not paying money they owe, the court will listen to the person who is owed the money (decree-holder). The court will look at any evidence the decree-holder provides and then give the judgment-debtor a chance to explain why they should not be sent to jail.

(2) While the court is deciding, it can choose to keep the judgment-debtor in custody or let them go if they provide a guarantee (security) that they will come back when needed.

(3) After the court finishes its inquiry, it can decide to send the judgment-debtor to jail, following certain rules. If the judgment-debtor is not already arrested, the court will have them arrested. However, before sending them to jail, the court can give the judgment-debtor up to fifteen days to pay the money they owe. During this time, the judgment-debtor can be kept in custody or released if they provide a guarantee to return after the specified period if the debt is not paid.

(4) If the judgment-debtor is released but does not comply, they can be arrested again.

(5) If the court decides not to send the judgment-debtor to jail, it will reject the application for detention and release the judgment-debtor if they are already under arrest.

Explanation using Example

Example 1:

Scenario: Ramesh owes Rs. 5 lakhs to Suresh as per a court decree. Ramesh has not paid the amount despite multiple reminders. Suresh files an application for execution of the decree.

Notice Issued: The court issues a notice under Rule 37 to Ramesh to appear before the court.

Appearance: Ramesh appears before the court in obedience to the notice.

Hearing: The court hears Suresh's application and takes evidence supporting the claim that Ramesh has not paid the amount.

Opportunity to Respond: Ramesh is given an opportunity to explain why he should not be committed to civil prison.

Interim Custody: Pending the inquiry, the court orders Ramesh to be detained in the custody of a court officer or releases him on furnishing security for his appearance.

Conclusion: After the inquiry, the court finds that Ramesh has no valid reason for non-payment and orders his detention in civil prison. However, the court gives Ramesh 15 days to satisfy the decree before finalizing the detention order.

Re-arrest: If Ramesh is released and fails to satisfy the decree within the specified period, he can be re-arrested.

Example 2:

Scenario: Priya owes Rs. 2 lakhs to Anil as per a court decree. Priya has been avoiding payment, and Anil files for execution of the decree.

Arrest: Priya is arrested by the court officers in execution of the decree and brought before the court.

Hearing: The court hears Anil's application and takes evidence supporting the claim that Priya has not paid the amount.

Opportunity to Respond: Priya is given an opportunity to explain why she should not be committed to civil prison.

Interim Custody: Pending the inquiry, the court orders Priya to be detained in the custody of a court officer or releases her on furnishing security for her appearance.

Conclusion: After the inquiry, the court finds that Priya has no valid reason for non-payment and orders her detention in civil prison. However, the court gives Priya 10 days to satisfy the decree before finalizing the detention order.

No Detention: If Priya manages to pay the amount within the specified period, the court disallows the application for detention and directs her release if she was under arrest.

Example 3:

Scenario: Mohan owes Rs. 3 lakhs to Raj as per a court decree. Mohan has not paid the amount, and Raj files for execution of the decree.

Notice Issued: The court issues a notice under Rule 37 to Mohan to appear before the court.

Non-Appearance: Mohan does not appear before the court as required.

Arrest: The court orders the arrest of Mohan and he is brought before the court.

Hearing: The court hears Raj's application and takes evidence supporting the claim that Mohan has not paid the amount.

Opportunity to Respond: Mohan is given an opportunity to explain why he should not be committed to civil prison.

Interim Custody: Pending the inquiry, the court orders Mohan to be detained in the custody of a court officer or releases him on furnishing security for his appearance.

Conclusion: After the inquiry, the court finds that Mohan has no valid reason for non-payment and orders his detention in civil prison. However, the court gives Mohan 7 days to satisfy the decree before finalizing the detention order.

Re-arrest: If Mohan is released and fails to satisfy the decree within the specified period, he can be re-arrested.

Rule 41: Examination of judgment-debtor as to his property.

Decree for Payment of Money

(1) Where a decree is for the payment of money the decree-holder may apply to the Court for an order that -

- (a) the judgment-debtor, or
- (b) where the judgment-debtor is a corporation, any officer thereof, or
- (c) any other person,

be orally examined as to whether any or what debts are owing to the judgment-debtor and whether the judgment-debtor has any and what other property or means of satisfying the decree; and the Court may make an order for the attendance and examination of such judgment-debtor, or officer or other person, and for the production of any books or documents.

(2) Where a decree for the payment of money has remained unsatisfied for a period of thirty days, the Court may, on the application of the decree-holder and without prejudice to its power under sub-rule (1), by order require the judgment-debtor or where the judgment-debtor is a corporation, any officer thereof, to make an affidavit stating the particulars of the assets of the judgment-debtor.

(3) In case of disobedience of any order made under sub-rule (2), the Court making the order, or any Court to which the proceeding is transferred, may direct that the person disobeying the order be detained in the civil prison for a term not exceeding three months unless before the expiry of such term the Court directs his release.

Simplified act

Decree for Payment of Money

(1) If a court orders someone to pay money (the decree), the person who is supposed to receive the money (the decree-holder) can ask the court to:

- (a) question the person who owes the money (the judgment-debtor), or
- (b) if the person who owes the money is a company, question any officer of that company, or
- (c) question any other person,

to find out if the judgment-debtor owes any debts or has any property or other means to pay the money. The court can order these people to attend and answer questions and to bring any relevant books or documents.

(2) If the money hasn't been paid within thirty days, the court can, at the request of the decree-holder, order the judgment-debtor or, if it's a company, any officer of the company, to provide a written statement (affidavit) detailing the assets of the judgment-debtor.

(3) If someone disobeys the court's order to provide this information, the court can order that person to be put in civil prison for up to three months, unless the court decides to release them earlier.

Explanation using Example

Example 1:

Scenario: Ramesh lent Rs. 5,00,000 to Suresh, and Suresh failed to repay the amount. Ramesh obtained a court decree ordering Suresh to pay the money back.

Application of Rule 41:

Ramesh's Action: Ramesh, the decree-holder, applies to the court for an order to examine Suresh, the judgment-debtor, about his assets and debts.

Court's Order: The court orders Suresh to attend and be examined about his financial status, including any debts owed to him and other properties he owns.

Examination: During the examination, Suresh reveals that he owns a piece of land and has a fixed deposit in a bank.

Outcome: The court may then decide to attach the land or the fixed deposit to satisfy the decree.

Example 2:

Scenario: ABC Corporation owes Rs. 10,00,000 to XYZ Ltd. and has not paid despite a court decree. XYZ Ltd. seeks to enforce the decree.

Application of Rule 41:

XYZ Ltd.'s Action: XYZ Ltd., the decree-holder, applies to the court to examine an officer of ABC Corporation about the corporation's assets.

Court's Order: The court orders the CFO of ABC Corporation to attend and be examined about the corporation's financial status.

Examination: During the examination, the CFO discloses that ABC Corporation has several outstanding invoices and owns office equipment.

Outcome: The court may order the attachment of the outstanding invoices or office equipment to satisfy the decree.

Example 3:

Scenario: Priya obtained a court decree against her former business partner, Anil, for Rs. 2,00,000. Anil has not paid the amount for over 30 days.

Application of Rule 41:

Priya's Action: Priya applies to the court for an order requiring Anil to make an affidavit detailing his assets.

Court's Order: The court orders Anil to submit an affidavit within a specified time, listing all his assets.

Non-compliance: Anil fails to submit the affidavit within the given time.

Outcome: The court orders Anil to be detained in civil prison for up to three months or until he complies with the order.

Example 4:

Scenario: A small business, DEF Enterprises, owes Rs. 1,50,000 to a supplier, GHI Traders, and has not paid despite a court decree.

Application of Rule 41:

GHI Traders' Action: GHI Traders applies to the court to examine the managing director of DEF Enterprises about the company's assets.

Court's Order: The court orders the managing director to attend and be examined about the company's financial status.

Examination: During the examination, the managing director reveals that DEF Enterprises has a pending payment from a large client and owns several pieces of machinery.

Outcome: The court may order the attachment of the pending payment or the machinery to satisfy the decree.

Rule 42: Attachment in case of decree for rent or mesne profits or other matter, amount of which to be subsequently determined.

Mesne Profits or Other Matter, Amount of Which to be Subsequently Determined

Where a decree directs an inquiry as to rent or mesne profits or any other matter, the property of the judgment-debtor may, before the amount due from him has been ascertained, be attached, as in the case of an ordinary decree for the payment of money.

Simplified act

Mesne Profits or Other Matter, Amount of Which to be Subsequently Determined

If a court order requires an investigation into rent, mesne profits (money earned from property by someone who shouldn't be using it), or any other issue, the property of the person who owes money can be seized even before the exact amount they owe is figured out, just like in a regular case where someone has to pay money.

Explanation using Example

Example 1:

Rajesh owns a piece of agricultural land that he leased to Suresh for farming. Suresh agreed to pay a monthly rent of ₹10,000. However, Suresh stopped paying rent after a few months, and Rajesh filed a lawsuit to recover the unpaid rent. The court issued a decree directing an inquiry to determine the exact amount of unpaid rent and any mesne profits (profits Suresh earned from

the land during the period he didn't pay rent). While the inquiry is ongoing, Rajesh requests the court to attach Suresh's tractor and other farming equipment to ensure that he can recover the amount once it is determined. The court allows the attachment of Suresh's property even before the exact amount of unpaid rent and mesne profits is ascertained.

Example 2:

Meena owns a commercial property that she rented out to a company for ₹50,000 per month. The company failed to pay rent for six months, and Meena filed a suit for recovery of the unpaid rent and mesne profits. The court issued a decree for an inquiry to determine the exact amount owed by the company. Meanwhile, Meena is concerned that the company might dispose of its assets to avoid payment. She requests the court to attach the company's office furniture and computers. The court orders the attachment of the company's assets to secure Meena's claim, even though the exact amount of unpaid rent and mesne profits is yet to be determined.

Rule 43: Attachment of movable property, other than agricultural produce, in possession of judgment-debtor.

If the property to be attached is 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 or in the custody of one of his subordinates, and shall be responsible for the due custody thereof:

Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once.

Simplified act

If the property that needs to be taken is movable (can be moved) and not agricultural produce, and it belongs to the person who owes money (judgment-debtor), the property will be taken by physically seizing it. The officer taking the property will keep it safe, either by holding onto it themselves or by giving it to one of their assistants to look after. The officer is responsible for making sure the property is kept safe.

However, if the property taken can quickly spoil or decay, or if it costs more to keep it safe than the property is worth, the officer can sell the property immediately.

Explanation using Example

Example 1:

Rajesh, a businessman in Mumbai, lost a civil lawsuit and was ordered by the court to pay ₹10 lakhs to the plaintiff, Suresh. Rajesh failed to comply with the court's order. Suresh then filed for execution of the decree. The court issued an order to attach Rajesh's movable property to recover the amount. The court-appointed officer went to Rajesh's office and seized office equipment, including computers, printers, and furniture. The officer kept these items in a secure storage facility under his supervision. Since these items were not perishable and their storage cost was reasonable, they were kept in custody until further court orders.

Example 2:

Meena, a resident of Delhi, was ordered by the court to pay ₹5 lakhs to her creditor, Anil, after losing a civil case. Meena did not pay the amount, so Anil sought execution of the decree. The court directed the attachment of Meena's movable property. The court officer went to Meena's house and seized her jewelry and electronic gadgets. However, among the seized items were some fresh fruits and vegetables that Meena had bought for her business. Since these items were perishable and would decay quickly, the officer decided to sell them immediately at the local market. The proceeds from the sale were then held in custody to be used towards satisfying the court's decree.

Rule 43A: Custody of movable property.

(1) Where the property attached consists of live-stock, agricultural implements or other articles which cannot conveniently be removed and the attaching officer does not act under the proviso to rule 43, he may, at the instance of the judgment-debtor or of the decree holder or of any other person claiming to be interested in such property, leave it in the village or place where it has been attached, in the custody of any respectable person (hereinafter referred to as the "custodian").

(2) If the custodian fails, after due notice, to produce such property at the place named by the Court before the officer deputed for the purpose or to restore it to the person in whose favour restoration is ordered by the Court, or if the property, though so produced or restored, is not in the same condition as it was when it was entrusted to him, -

(a) the custodian shall be liable to pay compensation to the decree-holder, judgment-debtor or any other person who is found to be entitled to the restoration thereof, for any loss or damage caused by his default; and

(b) such liability may be enforced -

(i) at the instance of the decree-holder, as if the custodian were a surety under section 145;

(ii) at the instance of the judgment-debtor or such other person, on an application in execution; and

(c) any order determining such liability shall be appealable as a decree.

Simplified act

(1) If the property that has been taken by the court includes live animals, farming tools, or other items that are hard to move, and the officer in charge does not follow the special rule in rule 43, he can, if asked by the person who owes money (judgment-debtor), the person who is owed money (decree holder), or anyone else who has an interest in the property, leave the property in the village or place where it was taken. The property will be left with a trustworthy person called the "custodian."

(2) If the custodian, after being properly notified, does not bring the property to the place named by the Court for the officer to collect, or does not return it to the person who the Court says should get it back, or if the property is not in the same condition as when it was given to him, -

(a) the custodian will have to pay for any loss or damage to the person who is supposed to get the property back;

(b) this responsibility can be enforced -

(i) by the person who is owed money, as if the custodian were a guarantor under section 145;

(ii) by the person who owes money or any other interested person, by applying to the court for enforcement; and

(c) any decision about this responsibility can be appealed like a court judgment.

Explanation using Example

Example 1:

Scenario: Ramesh, a farmer in a village in Maharashtra, owes money to Suresh, who has obtained a court decree to recover the debt. The court orders the attachment of Ramesh's agricultural implements and livestock.

Application of Rule 43A:

Attachment of Property: The court officer arrives at Ramesh's farm to attach his livestock and agricultural implements.

Custody Decision: Since the livestock and implements cannot be conveniently removed, the officer decides to leave them in the village.

Appointment of Custodian: At the request of Ramesh, the officer appoints a respectable villager, Mr. Patel, as the custodian of the attached property.

Custodian's Responsibility: Mr. Patel is responsible for ensuring the livestock and implements are kept in good condition and must produce them when required by the court.

Failure to Comply:

If Mr. Patel fails to produce the livestock and implements when the court officer arrives or if the property is damaged, he will be liable to pay compensation.

The compensation can be claimed by Suresh (the decree-holder) as if Mr. Patel were a surety under section 145.

Ramesh (the judgment-debtor) can also apply to the court for compensation if the property is not in the same condition as when it was entrusted to Mr. Patel.

Example 2:

Scenario: An industrialist, Mr. Sharma, in Delhi, has a court decree against him for failing to pay a supplier, Mr. Verma. The court orders the attachment of machinery in Mr. Sharma's factory.

Application of Rule 43A:

Attachment of Property: The court officer arrives at Mr. Sharma's factory to attach the machinery.

Custody Decision: Since the machinery cannot be conveniently removed, the officer decides to leave it in the factory.

Appointment of Custodian: At the request of Mr. Verma, the officer appoints the factory manager, Mr. Gupta, as the custodian of the attached machinery.

Custodian's Responsibility: Mr. Gupta is responsible for ensuring the machinery is kept in good condition and must produce it when required by the court.

Failure to Comply:

If Mr. Gupta fails to produce the machinery when the court officer arrives or if the machinery is damaged, he will be liable to pay compensation.

The compensation can be claimed by Mr. Verma (the decree-holder) as if Mr. Gupta were a surety under section 145.

Mr. Sharma (the judgment-debtor) can also apply to the court for compensation if the machinery is not in the same condition as when it was entrusted to Mr. Gupta.

Rule 44: Attachment of agricultural produce.

If the property to be attached is agricultural produce, the attachment shall be made by affixing a copy of the warrant of attachment:

(a) where such produce is a growing crop, on the land on which such crop has grown, or

(b) where such produce has been cut or gathered, on the threshing floor or place for treading out grain or the like or fodder-stack on or in which it is deposited,

and another copy on the outer door or on some other conspicuous part of the house in which the judgment-debtor ordinarily resides or, with the leave of the Court, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain or in which he is known to have last resided or carried on business or personally worked for gain; and the produce shall thereupon be deemed to have passed into the possession of the Court.

Simplified act

If the property to be taken is farm produce, the process will be as follows:

(a) If the produce is still growing, a copy of the attachment order will be placed on the land where the crop is growing, or

(b) If the produce has already been harvested, a copy of the attachment order will be placed on the threshing floor or the place where the grain or fodder is stored,

Additionally, another copy of the attachment order will be placed on the front door or another noticeable part of the house where the person who owes the debt usually lives. If the court allows, this copy can also be placed on the front door or another noticeable part of the house where the person does business, works, or last lived or worked. Once this is done, the produce is considered to be under the control of the Court.

Explanation using Example

Example 1:

Ramesh, a farmer in Maharashtra, has taken a loan from a local bank but has failed to repay it. The bank obtains a court decree to recover the loan amount. Ramesh's primary asset is his agricultural produce, specifically a field of growing wheat.

To execute the decree, the court issues a warrant of attachment for the wheat crop. The court officer goes to Ramesh's field and affixes a copy of the warrant of attachment on a prominent spot in the field where the wheat is growing. Additionally, another copy of the warrant is affixed to the outer door of Ramesh's house. This action legally transfers the possession of the wheat crop to the court, and Ramesh is no longer allowed to sell or use the crop until the debt is settled.

Example 2:

Sita, a farmer in Punjab, has harvested her rice crop and stored it in a threshing floor near her house. She owes money to a supplier who has obtained a court decree to recover the debt.

The court issues a warrant of attachment for the harvested rice. The court officer goes to the threshing floor and affixes a copy of the warrant of attachment on the stack of rice. Another copy is affixed to the outer door of Sita's house. This action legally transfers the possession of the rice to the court, preventing Sita from selling or using the rice until the debt is paid off.

Example 3:

Vikram, a farmer in Karnataka, has defaulted on a loan taken from a cooperative society. The society obtains a court decree to recover the loan amount. Vikram's agricultural produce, a stack of harvested sugarcane, is identified for attachment.

The court issues a warrant of attachment, and the court officer affixes a copy of the warrant on the stack of sugarcane stored in Vikram's field. Another copy is affixed to the outer door of Vikram's house. With these actions, the sugarcane is deemed to be in the possession of the court, and Vikram cannot use or sell it until the debt is cleared.

Example 4:

Anita, a farmer in Uttar Pradesh, has a debt that she has not been able to repay. The creditor obtains a court decree to recover the amount. Anita's agricultural produce, a field of growing mustard, is chosen for attachment.

The court issues a warrant of attachment, and the court officer affixes a copy of the warrant on the land where the mustard is growing. Another copy is affixed to the outer door of Anita's house. This legally transfers the possession of the mustard crop to the court, and Anita is prohibited from harvesting or selling the crop until the debt is settled.

Rule 45: Provisions as to agricultural produce under attachment.

Attachment of Agricultural Produce

(1) Where agricultural produce is attached, the Court shall make such arrangements for the custody thereof as it may deem sufficient and, for the purpose of enabling the Court to make such arrangements, every application for the attachment of a growing crop shall specify the time at which it is likely to be fit to be cut or gathered.

(2) Subject to such conditions as may be imposed by the Court in this behalf either in the order of attachment or in any subsequent order, the judgment-debtor may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it; and if the judgment-debtor fails to do, all or any of such acts, the decree-holder may, with the permission of the Court and subject to the like conditions, do all or any of them either by himself or by any person appointed by him in this behalf and the costs incurred by the

decree-holder shall be recoverable from the judgment-debtor as if they were included in, or formed part of, the decree.

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been severed from the soil.

(4) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may, in its discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.

(5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

Simplified act

Attachment of Agricultural Produce

(1) When a court orders the attachment (seizure) of agricultural produce, it will arrange for its safe keeping. To help the court make these arrangements, any request to attach a growing crop must state when the crop will be ready to harvest.

(2) The person who owes the debt (judgment-debtor) can take care of, harvest, and store the produce, and do anything else needed to keep it in good condition, as long as they follow any conditions set by the court. If the debtor doesn't do this, the person who is owed the debt (decree-holder) can get permission from the court to do these tasks themselves or hire someone to do them. The costs for this will be added to the debt owed by the debtor.

(3) Even if the attached crop is harvested, it is still considered under attachment and does not need to be re-attached.

(4) If the court orders the attachment of a crop well before it is ready to be harvested, the court can delay the attachment and may also order that the crop cannot be removed until the attachment is carried out.

(5) If a crop cannot be stored due to its nature, it cannot be attached less than twenty days before it is ready to be harvested.

Explanation using Example

Example 1:

Scenario: Ramesh, a farmer in Maharashtra, has a debt to pay to Suresh, a local moneylender. Suresh obtains a court decree to recover the debt from Ramesh. Ramesh's primary asset is his standing wheat crop.

Application of Rule 45:

Attachment of Crop: Suresh applies to the court for the attachment of Ramesh's wheat crop. In his application, Suresh specifies that the wheat will be ready for harvest in two months.

Custody Arrangements: The court orders the attachment of the wheat crop and makes arrangements for its custody. The court may appoint a custodian to oversee the crop until it is harvested.

Judgment-Debtor's Responsibilities: The court allows Ramesh to continue tending to the crop, including watering, fertilizing, and eventually harvesting it. If Ramesh fails to do so, Suresh can seek the court's permission to take over these responsibilities.

Costs Recovery: If Suresh incurs any costs in tending to the crop, he can recover these costs from Ramesh as part of the debt.

Attachment Continuity: Even after the wheat is harvested, it remains under attachment until the debt is settled.

Suspension of Order: If the court finds that the wheat will not be ready for harvest for a considerable time, it may suspend the attachment order and prohibit the removal of the crop until it is ready for harvest.

Timing of Attachment: The court ensures that the attachment order is made at least twenty days before the wheat is ready to be harvested.

Example 2:

Scenario: Priya, a farmer in Punjab, owes money to a bank. The bank obtains a court decree to recover the debt from Priya. Priya's primary asset is her standing rice crop.

Application of Rule 45:

Attachment of Crop: The bank applies to the court for the attachment of Priya's rice crop. In the application, the bank specifies that the rice will be ready for harvest in one month.

Custody Arrangements: The court orders the attachment of the rice crop and makes arrangements for its custody. The court may appoint a custodian to oversee the crop until it is harvested.

Judgment-Debtor's Responsibilities: The court allows Priya to continue tending to the crop, including watering, fertilizing, and eventually harvesting it. If Priya fails to do so, the bank can seek the court's permission to take over these responsibilities.

Costs Recovery: If the bank incurs any costs in tending to the crop, it can recover these costs from Priya as part of the debt.

Attachment Continuity: Even after the rice is harvested, it remains under attachment until the debt is settled.

Suspension of Order: If the court finds that the rice will not be ready for harvest for a considerable time, it may suspend the attachment order and prohibit the removal of the crop until it is ready for harvest.

Timing of Attachment: The court ensures that the attachment order is made at least twenty days before the rice is ready to be harvested.

Rule 46: Attachment of debt, share and other property not in possession of judgment-debtor.

Attachment of Property

(1) In the case of -

(a) a debt not secured by a negotiable instrument,

(b) a share in the capital of a corporation,

(c) other movable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any Court,

the attachment shall be made by a written order prohibiting, -

(i) in the case of the debt, the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Court;

(ii) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;

(iii) in the case of the other movable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

(2) A copy of such order shall be affixed on some conspicuous part of the court-house, and another copy shall be sent in the case of the debt, to the debtor; in the case of the share, to the proper officer of the corporation, and, in the case of the other movable property (except as aforesaid), to the person in possession of the same.

(3) A debtor prohibited under clause (i) of sub-rule (1) may pay the amount of his debt into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

(1) The Court may in the case of a debt (other than a debt secured by a mortgage or a charge) which has been attached under rule 46 upon the application of the attaching creditor, issue notice to the garnishee liable to pay such debt, calling upon him either to pay into Court the debt due from him to the judgment-debtor or so much thereof as may be sufficient to satisfy the decree and costs of execution, or to appear and show cause why he should not do so.

Simplified act

Attachment of Property

(1) In the case of -

(a) a debt that is not backed by a negotiable instrument (like a check or promissory note),

(b) a share in the capital of a corporation,

(c) other movable property that the person who owes money (judgment-debtor) does not have, except for property kept in or held by a Court,

the attachment (legal seizure) will be done by a written order that stops, -

(i) in the case of the debt, the creditor from collecting the debt and the debtor from paying it until the Court says otherwise;

(ii) in the case of the share, the person whose name is on the share from transferring it or receiving any dividends from it;

(iii) in the case of other movable property (except as mentioned above), the person holding the property from giving it to the judgment-debtor.

(2) A copy of this order will be posted in a visible place in the courthouse, and another copy will be sent to:

the debtor, in the case of the debt;

the proper officer of the corporation, in the case of the share;

the person holding the property, in the case of other movable property (except as mentioned above).

(3) A debtor who is stopped from paying the debt (as mentioned in clause (i) of sub-rule (1)) can pay the debt amount into the Court. This payment will free the debtor from the debt as if they had paid the person who was supposed to receive it.

(1) The Court can, in the case of a debt (other than one secured by a mortgage or charge) that has been attached under rule 46, upon the request of the creditor who attached the debt, issue a notice to the garnishee (the person who owes the debt to the judgment-debtor). This notice will ask the garnishee to either pay the debt into the Court or enough of it to cover the judgment and execution costs, or to appear and explain why they should not have to do so.

Explanation using Example

Example 1:

Rajesh has won a court case against Suresh, and the court has ordered Suresh to pay Rajesh ₹5,00,000. However, Suresh does not have the money in his bank account to pay Rajesh. Rajesh finds out that Suresh is owed ₹3,00,000 by his friend Ramesh. Rajesh approaches the court to attach this debt.

The court issues a written order prohibiting Ramesh from paying the ₹3,00,000 to Suresh and prohibiting Suresh from recovering this debt from Ramesh until further orders. The court also sends a copy of this order to Ramesh and affixes another copy on a conspicuous part of the court-house.

Ramesh, now prohibited from paying Suresh, decides to pay the ₹3,00,000 into the court. This payment discharges Ramesh from his debt to Suresh, and the court can then use this money to satisfy part of the decree in favor of Rajesh.

Example 2:

Meena has a court decree against her former business partner, Anil, for ₹10,00,000. Anil does not have sufficient funds in his bank account, but Meena discovers that Anil owns shares worth ₹4,00,000 in a corporation.

Meena requests the court to attach Anil's shares. The court issues a written order prohibiting the corporation from transferring Anil's shares or paying any dividends on these shares to Anil until further orders. The court sends a copy of this order to the corporation and affixes another copy on a conspicuous part of the court-house.

The corporation, now prohibited from transferring the shares or paying dividends to Anil, complies with the court's order. This ensures that Anil cannot benefit from these shares until the court decides how to use them to satisfy Meena's decree.

Example 3:

Vikram has a court decree against his tenant, Ravi, for ₹2,00,000. Ravi does not have the money to pay Vikram, but Vikram knows that Ravi has a valuable painting worth ₹1,50,000 stored with an art gallery.

Vikram requests the court to attach the painting. The court issues a written order prohibiting the art gallery from handing over the painting to Ravi until further orders. The court sends a copy of this order to the art gallery and affixes another copy on a conspicuous part of the court-house.

The art gallery, now prohibited from giving the painting to Ravi, complies with the court's order. This ensures that Ravi cannot access the painting until the court decides how to use it to satisfy Vikram's decree.

Rule 46A: Notice to garnishee.

(2) An application under sub-rule (1) shall be made on affidavit verifying the facts alleged and stating that in the belief of the deponent, the garnishee is indebted to the judgment-debtor.

(3) Where the garnishee pays in the Court the amount due from him to the judgment-debtor or so much thereof as is sufficient to satisfy the decree and the costs of the execution, the Court may direct that the amount may be paid to the decree-holder towards satisfaction of the decree and costs of the execution.

46B.

Simplified act

(2) To apply under the first rule, you need to submit a sworn statement (affidavit) confirming the facts you are claiming and stating that you believe the person holding the debtor's money (garnishee) owes money to the person who lost the case (judgment-debtor).

(3) If the garnishee pays the amount they owe to the judgment-debtor into the Court, or at least enough to cover the court's decision and the costs of enforcing it, the Court can order that this money be given to the person who won the case (decree-holder) to settle the debt and cover the costs.

46B.

Explanation using Example

Example 1:

Scenario: Rajesh has won a court case against Suresh, and the court has ordered Suresh to pay Rajesh ₹5,00,000. However, Suresh is not paying the amount voluntarily.

Application: Rajesh files an application under Rule 46A of the Code of Civil Procedure, 1908, stating that Suresh has a fixed deposit of ₹6,00,000 with XYZ Bank. Rajesh's application is supported by an affidavit verifying these facts and stating his belief that XYZ Bank (the garnishee) owes money to Suresh (the judgment-debtor).

Court's Action: The court issues a notice to XYZ Bank, directing it to either pay the amount due to Suresh or appear in court to explain why it should not be ordered to do so.

Outcome: XYZ Bank pays ₹5,00,000 into the court. The court then directs that this amount be paid to Rajesh towards the satisfaction of the decree and the costs of the execution.

Example 2:

Scenario: Meena has a decree against Ramesh for ₹2,00,000. Ramesh has not paid the amount, and Meena knows that Ramesh has a rental income of ₹25,000 per month from a property leased to ABC Company.

Application: Meena files an application under Rule 46A, supported by an affidavit, stating that ABC Company (the garnishee) owes monthly rent to Ramesh (the judgment-debtor).

Court's Action: The court issues a notice to ABC Company, directing it to either pay the monthly rent due to Ramesh into the court or appear in court to explain why it should not be ordered to do so.

Outcome: ABC Company pays the monthly rent of ₹25,000 into the court. The court directs that this amount be paid to Meena towards the satisfaction of the decree and the costs of the execution. This process continues until the full amount of ₹2,00,000 is recovered.

Rule 46B: Order against garnishee.

Where the garnishee does not forthwith pay into Court the amount due from him to the judgment-debtor or so much thereof as is sufficient to satisfy the decree and the costs of execution, and does not appear and show cause in answer to the notice, the Court may order the garnishee to comply with the terms of such notice, and on such order, execution may issue as though such order were a decree against him.

Simplified act

If the garnishee (the person who owes money to the judgment-debtor) does not immediately pay the amount they owe into the Court, or at least enough to cover the judgment and the costs of enforcing it, and does not show up to explain why they haven't paid, the Court can order the garnishee to follow the notice. If the garnishee still doesn't comply, the Court can treat this order like a judgment against the garnishee and take further action to enforce it.

Explanation using Example

Example 1:

Scenario: Rajesh wins a lawsuit against Suresh and the court orders Suresh to pay Rajesh ₹1,00,000. Suresh, however, does not have sufficient funds in his bank account to pay Rajesh. Rajesh finds out that Suresh is owed ₹1,50,000 by his client, ABC Corporation, for services rendered.

Application of Rule 46B:

Rajesh approaches the court and requests an order against ABC Corporation (the garnishee) to pay the amount owed to Suresh directly to Rajesh instead.

The court issues a notice to ABC Corporation to pay ₹1,00,000 to Rajesh or appear in court to explain why they should not.

ABC Corporation neither pays the amount to the court nor appears to show cause.

The court then orders ABC Corporation to pay ₹1,00,000 to Rajesh.

If ABC Corporation still does not comply, Rajesh can request the court to execute this order as if it were a decree against ABC Corporation, allowing Rajesh to take further legal steps to recover the money.

Example 2:

Scenario: Meena wins a lawsuit against her former business partner, Anil, and the court orders Anil to pay Meena ₹2,00,000. Anil has not paid the amount and Meena discovers that Anil is supposed to receive ₹2,50,000 from his tenant, XYZ Ltd., as rent arrears.

Application of Rule 46B:

Meena files an application in court to issue a garnishee order against XYZ Ltd. to pay the rent arrears directly to her.

The court sends a notice to XYZ Ltd. to pay ₹2,00,000 to the court or appear and explain why they should not.

XYZ Ltd. fails to pay the amount or appear in court.

The court orders XYZ Ltd. to pay ₹2,00,000 to Meena.

If XYZ Ltd. does not comply with the court order, Meena can request the court to execute the order as if it were a decree against XYZ Ltd., enabling her to take further legal action to recover the money.

Rule 46C: Trial of disputed questions.

Where the garnishee disputes liability, the Court may order that any issue or question necessary for the determination of liability shall be tried as if it were an issue in a suit, and upon the determination of such issue shall make such order or orders as it deems fit:

Provided that if the debt in respect of which the application under rule 46A is made is in respect of a sum of money beyond the pecuniary jurisdiction of the Court, the Court shall send the execution case to the Court of the District

Judge to which the said Court is subordinate, and thereupon the Court of the District Judge or any other competent Court to which it may be transferred by the District Judge shall deal with it in the same manner as if the case had been originally instituted in that Court.

Simplified act

If the person who owes money (the garnishee) argues that they do not owe the money, the Court can decide to treat this argument like a regular lawsuit. The Court will then figure out if the garnishee really owes the money and make a decision based on that.

However, if the amount of money involved is more than what this Court is allowed to handle, the Court will send the case to a higher Court, specifically the Court of the District Judge. The District Judge or another appropriate Court will then take over the case and handle it as if it started there in the first place.

Explanation using Example

Example 1:

Scenario: Ramesh has won a civil suit against Suresh and obtained a decree for Rs. 5 lakhs. Suresh, however, does not have sufficient funds in his bank account to pay Ramesh. Ramesh discovers that Suresh is owed Rs. 3 lakhs by his client, Mahesh, and decides to execute the decree by garnishing this debt.

Application: Ramesh files an application under Rule 46A to the court, requesting that Mahesh (the garnishee) be ordered to pay the Rs. 3 lakhs directly to him. Mahesh disputes the liability, claiming that he does not owe Suresh any money.

Court's Action: The court, under Rule 46C, orders that the disputed question of whether Mahesh owes Suresh Rs. 3 lakhs be tried as if it were an issue in a suit. After hearing evidence from both sides, the court determines that Mahesh indeed owes Suresh the money.

Outcome: The court then orders Mahesh to pay the Rs. 3 lakhs directly to Ramesh in satisfaction of the decree.

Example 2:

Scenario: Priya has a decree against Anil for Rs. 10 lakhs. Anil has no assets in his name, but Priya learns that Anil is owed Rs. 8 lakhs by his business partner, Raj. Priya files an application to garnish this debt.

Application: Priya files an application under Rule 46A to the court, requesting that Raj (the garnishee) be ordered to pay the Rs. 8 lakhs directly to her. Raj disputes the liability, claiming that the debt is not yet due and payable.

Court's Action: The court, under Rule 46C, orders that the disputed question of whether the debt is due and payable be tried as if it were an issue in a suit. After examining the business agreement and hearing testimony, the court finds that the debt is indeed due and payable.

Outcome: The court then orders Raj to pay the Rs. 8 lakhs directly to Priya. However, since the amount exceeds the pecuniary jurisdiction of the court, the case is sent to the Court of the District Judge. The District Judge or another competent court will then handle the execution as if the case had been originally instituted there.

The Code of Civil Procedure, 1908

Rule 46D: Procedure where debt, belongs to third person.

Where it is suggested or appears to be probable that the debt belongs to some third person, or that any third person has a lien or charge on, or other interest in such debt, the Court may order such third person to appear and state the nature and particulars of his claim, if any, to such debt and prove the same.

Simplified act

If it seems likely that the debt belongs to someone else, or that someone else has a right or interest in the debt, the Court can ask that person to come forward.

The Court can ask this person to explain their claim to the debt and provide details and proof of their claim.

Explanation using Example

Example 1:

Scenario: Rajesh owes Rs. 50,000 to Suresh. Suresh has a court decree to recover this amount from Rajesh. However, before Suresh can execute the

decree, Priya claims that Rajesh actually owes her the Rs. 50,000 and not Suresh.

Application of Rule 46D: The court, upon hearing Priya's claim, orders her to appear in court and provide evidence of her claim to the Rs. 50,000. Priya presents a promissory note signed by Rajesh, indicating that the debt is indeed owed to her. The court then examines the evidence and decides whether Priya's claim is valid. If the court finds Priya's claim to be legitimate, it may direct Rajesh to pay the amount to Priya instead of Suresh.

Example 2:

Scenario: Anil has a court decree to recover Rs. 1,00,000 from Sunil. However, before Anil can execute the decree, Ramesh claims that he has a lien on the Rs. 1,00,000 because Sunil had pledged his car to Ramesh as security for a loan of Rs. 1,00,000.

Application of Rule 46D: The court, upon hearing Ramesh's claim, orders him to appear in court and provide details and evidence of his lien on the Rs. 1,00,000. Ramesh presents the loan agreement and the pledge documents showing that Sunil had indeed pledged his car as security for the loan. The court then examines the evidence and decides whether Ramesh's lien is valid. If the court finds Ramesh's claim to be legitimate, it may direct that the Rs. 1,00,000 be used to satisfy Ramesh's lien before any payment is made to Anil.

Rule 46E: Order as regards third person.

After hearing such third person and any person or persons who may subsequently be ordered to appear, or where such third or other person or persons do not appear when so ordered, the Court may make such order as is hereinbefore provided, or such other order or orders upon such terms, if any, with respect to the lien, charge or interest, as the case may be, of such third or other person or persons as it may deem fit and proper.

Simplified act

After listening to the third person and anyone else who is asked to come to court, or if they don't show up when asked:

The Court can make the same order as mentioned before.

The Court can also make a different order with conditions about the lien, charge, or interest of the third person or others, as it thinks is right and fair.

Explanation using Example

Example 1:

Scenario: Ramesh has a court decree against Suresh for a sum of ₹5,00,000. Suresh owes this amount to Ramesh but has not paid it. Ramesh finds out that Suresh has lent ₹2,00,000 to his friend, Mahesh, and Mahesh is supposed to repay this amount to Suresh.

Application of Rule 46E:

Ramesh approaches the court to execute the decree and requests the court to order Mahesh to pay the ₹2,00,000 directly to him instead of Suresh.

The court issues a notice to Mahesh to appear and explain his position regarding the debt he owes to Suresh.

Mahesh appears in court and confirms that he indeed owes ₹2,00,000 to Suresh.

The court, after hearing Mahesh and considering the circumstances, orders Mahesh to pay the ₹2,00,000 directly to Ramesh. This order is made considering the lien or interest Ramesh has in recovering his money from Suresh.

Example 2:

Scenario: Priya has a court decree against her former business partner, Anil, for ₹10,00,000. Anil has not paid the amount. Priya discovers that Anil has a fixed deposit of ₹3,00,000 in a bank, which is due to mature soon.

Application of Rule 46E:

Priya files an application in court to execute the decree and requests the court to order the bank to pay the maturity amount of the fixed deposit directly to her.

The court issues a notice to the bank to appear and provide details about the fixed deposit.

The bank appears in court and confirms the existence of the fixed deposit in Anil's name.

The court, after hearing the bank and considering the details, orders the bank to pay the maturity amount of ₹3,00,000 directly to Priya. This order is made considering Priya's interest in recovering her money from Anil.

Example 3:

Scenario: Sunita has a court decree against her tenant, Raj, for ₹1,50,000 in unpaid rent. Raj has not paid the amount. Sunita learns that Raj has rented out a portion of his property to another tenant, Kiran, who pays Raj ₹10,000 per month as rent.

Application of Rule 46E:

Sunita approaches the court to execute the decree and requests the court to order Kiran to pay the monthly rent directly to her until the ₹1,50,000 is fully recovered.

The court issues a notice to Kiran to appear and explain his rental agreement with Raj.

Kiran appears in court and confirms that he pays ₹10,000 per month to Raj as rent.

The court, after hearing Kiran and considering the circumstances, orders Kiran to pay the monthly rent of ₹10,000 directly to Sunita until the total amount of ₹1,50,000 is recovered. This order is made considering Sunita's interest in recovering her unpaid rent from Raj.

Rule 46F: Payment by garnishee to be valid discharge.

Payment made by the garnishee on notice under rule 46A or under any such order as aforesaid shall be a valid discharge to him as against the judgment-debtor and any other person ordered to appear as aforesaid for the amount paid or levied, although the decree in execution of which the application under rule 46A was made, or the order passed in the proceedings on such application may be set aside or reversed.

Simplified act

If a person (called the garnishee) is told to pay money under rule 46A or a similar order, and they do so, this payment is considered valid.

This means the garnishee does not owe that money to the person who lost the court case (the judgment-debtor) or anyone else who was told to come to court.

This is true even if the court decision that led to the payment order is later canceled or changed.

Explanation using Example

Example 1:

Scenario: Rajesh owes ₹1,00,000 to Suresh as per a court decree. Suresh, the decree-holder, finds out that Rajesh has a fixed deposit in a bank. Suresh applies to the court under Rule 46A to attach the fixed deposit.

Process:

The court issues a notice to the bank (garnishee) to pay the amount from Rajesh's fixed deposit to Suresh.

The bank, upon receiving the notice, pays ₹1,00,000 to Suresh as per the court's order.

Outcome: The payment made by the bank to Suresh is considered a valid discharge of the bank's obligation towards Rajesh for the amount paid. Even if the original decree against Rajesh is later set aside or reversed, the bank is not liable to pay the amount again to Rajesh.

Example 2:

Scenario: Meena wins a lawsuit against Ramesh and is awarded ₹50,000. Ramesh has a salary account with XYZ Corporation. Meena applies to the court under Rule 46A to attach Ramesh's salary.

Process:

The court issues a notice to XYZ Corporation (garnishee) to withhold ₹50,000 from Ramesh's salary and pay it to Meena.

XYZ Corporation complies with the court's order and pays ₹50,000 to Meena from Ramesh's salary.

Outcome: The payment made by XYZ Corporation to Meena is considered a valid discharge of XYZ Corporation's obligation towards Ramesh for the amount paid. Even if the original decree against Ramesh is later set aside or reversed, XYZ Corporation is not liable to pay the amount again to Ramesh.

Rule 46G: Costs.

The costs of any application made under rule 46A and of any proceeding arising therefrom or incidental thereto shall be in the discretion of the Court.

Simplified act

The costs of any application made under rule 46A and of any proceeding arising from it or related to it will be decided by the Court.

Explanation using Example

Example 1:

Scenario: Ramesh has a court decree in his favor, stating that Suresh owes him Rs. 1,00,000. Ramesh files an application under Rule 46A to attach Suresh's bank account to recover the amount.

Application of Rule 46G: The court decides to grant the attachment of Suresh's bank account. However, Suresh argues that the attachment is unfair and files a proceeding to challenge it. The court, using its discretion under Rule 46G, decides that Suresh must bear the costs of both Ramesh's application and the subsequent proceeding because Suresh's challenge was found to be without merit.

Example 2:

Scenario: Priya wins a lawsuit against her former business partner, Anil, and is awarded Rs. 5,00,000. Priya files an application under Rule 46A to attach Anil's property to recover the amount. Anil does not contest the attachment but requests the court to allow him to pay in installments.

Application of Rule 46G: The court allows Anil to pay in installments but decides that the costs of Priya's application and the proceedings related to Anil's request for installment payments should be shared equally between Priya and Anil. The court uses its discretion under Rule 46G to make this decision, considering that both parties had valid points.

Rule 46H: Appeals.

An order made under rule 46B, rule 46C or rule 46E shall be applicable as a decree.

Rule 46I: Application to negotiable instruments.

The provisions of rule 46A to 46H (both inclusive) shall, so far as may be, apply in relation to negotiable instruments attached under rule 51 as they apply in relation to debts.

Simplified act

The rules from 46A to 46H will apply to negotiable instruments (like checks or promissory notes) that are seized under rule 51, just like they apply to debts.

Explanation using Example

Example 1:

Scenario: Ramesh has a court decree against Suresh for a debt of ₹5,00,000. Suresh has not paid the debt, and Ramesh seeks to execute the decree.

Application: Ramesh discovers that Suresh holds a promissory note worth ₹5,00,000, which is a negotiable instrument. Ramesh applies to the court under Rule 46I to attach the promissory note.

Outcome: The court, following the provisions of rules 46A to 46H, attaches the promissory note. This means that Suresh cannot transfer or negotiate the promissory note to anyone else. The court may then order the promissory note to be used to satisfy the debt owed to Ramesh.

Example 2:

Scenario: Priya has a court decree against her former business partner, Anil, for ₹2,00,000. Anil has not paid the amount, and Priya seeks to execute the decree.

Application: Priya learns that Anil has a cheque for ₹2,00,000 issued by a third party. Priya applies to the court under Rule 46I to attach the cheque.

Outcome: The court, applying the provisions of rules 46A to 46H, attaches the cheque. This prevents Anil from cashing or endorsing the cheque to someone else. The court may then direct that the cheque be used to pay off the debt owed to Priya.

Rule 47: Attachment of share in movables.

Where the property to be attached consists of the share or interest of the judgment-debtor in movable property belonging to him and another as co-owners, the attachment shall be made by a notice to the judgment-debtor

prohibiting him from transferring the share or interest or charging it in any way.

Simplified act

If the property that needs to be taken includes the share or interest of the person who owes money (judgment-debtor) in movable property that he owns together with someone else (co-owner),

The property will be taken by sending a notice to the person who owes money.

This notice will tell him that he is not allowed to transfer or use his share or interest in any way.

Explanation using Example

Example 1:

Rajesh and Suresh are co-owners of a fleet of delivery trucks. Rajesh owes a significant amount of money to a creditor, and the court has issued a decree against him. To recover the debt, the creditor seeks to attach Rajesh's share in the fleet of trucks. According to Rule 47 of the Code of Civil Procedure 1908, the court issues a notice to Rajesh, prohibiting him from transferring or charging his share in the fleet of trucks. This means Rajesh cannot sell, lease, or use his share of the trucks as collateral for another loan until the debt is settled.

Example 2:

Meera and Anil jointly own a collection of valuable paintings. Anil has defaulted on a loan, and the lender has obtained a court decree to recover the amount. The lender requests the court to attach Anil's share in the collection of paintings. The court, following Rule 47 of the Code of Civil Procedure 1908, sends a notice to Anil, prohibiting him from transferring or charging his share in the paintings. This ensures that Anil cannot sell or use his share of the paintings to secure another loan, thereby protecting the creditor's interest until the debt is paid off.

Rule 48: Attachment of salary or allowances of servant of the Government or railway company or local authority.

Attachment of Salary or Allowances

(1) Where the property to be attached is the salary or allowances of a servant of the Government or of a servant of a railway company or local authority or of a servant of a corporation engaged in any trade or industry which is established by a Central, Provincial or State Act, or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956) the Court, whether the judgment-debtor or the disbursing officer is or is not within the local limits of the Court's jurisdiction, may order that the amount shall, subject to the provisions of section 60, be withheld from such salary or allowances either in one payment or by monthly instalments as the Court may direct; and upon notice of the order to such officer as the appropriate Government may by notification in the Official Gazette appoint in this behalf, -

(a) where such salary or allowances are to be disbursed within the local limits to which this Code for the time being extends, the officer or other person whose duty it is to disburse the same shall withhold and remit to the Court the amount due under the order, or the monthly instalments, as the case may be;

(b) where such salary or allowances are to be disbursed beyond the said limits, the officer or other person within those limits whose duty it is to instruct the disbursing authority regarding the amount of the salary or allowances to be disbursed shall remit to the Court the amount due under the order, or the monthly instalments, as the case may be, and shall direct the disbursing authority to reduce the aggregate of the amounts from time to time, to be disbursed by the aggregate of the amounts from time to time remitted to the Court.

(2) Where the attachable proportion of such salary or allowances is already being withheld and remitted to a Court in pursuance of a previous and unsatisfied order of attachment, the officer appointed by the appropriate Government in this behalf shall forthwith return the subsequent order to the Court issuing it with a full statement of all the particulars of the existing attachment.

(3) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (2) shall, without further notice or other process, bind the appropriate Government or the railway company or local authority or corporation of Government company, as the case may be, while the judgement-debtor is within the local limits to which this Code for the time being extends and while he is beyond those limits, if he is in receipt of any salary or allowances payable out of the Consolidated Fund of India or the Consolidated Fund of the State or the funds of a railway company or local authority or

corporation or Government company in India; and the appropriate Government or the railway company or local authority or corporation or Government company, as the case may be, shall be liable for any sum paid in contravention of this rule.

Explanation

In this rule, "appropriate Government" means, -

- (i) as respects any person in the service of the Central Government, or any servant of a railway administration or of a cantonment authority or of the port authority of a major port, or any servant of a corporation engaged in any trade or industry which is established by a Central Act, or any servant of a Government company in which any part of the share capital is held by the Central Government or by more than one State Governments or partly by the Central Government and partly by one or more State Governments, the Central Government;
- (ii) As respects any other servant of the Government, or a servant of any other local or other authority, or any servant of a corporation engaged in any trade or industry which is established by a Provincial or State act, or a servant of any other Government company, the State Government.

Simplified act

Attachment of Salary or Allowances

(1) If someone's salary or allowances need to be taken to pay off a debt, and they work for the government, a railway company, a local authority, a corporation created by law, or a government company, the Court can order that the money be taken from their salary. This can be done all at once or in monthly payments, as the Court decides. Once the order is given, the officer in charge must:

- (a) If the salary is paid within the area covered by this law, the officer must hold back the amount ordered and send it to the Court.
- (b) If the salary is paid outside the area covered by this law, the officer must tell the person in charge of paying the salary to hold back the amount and send it to the Court.

(2) If part of the salary is already being taken to pay off another debt, the officer must return the new order to the Court and explain the current situation.

(3) Every order made under this rule will be binding on the government, railway company, local authority, corporation, or government company. This means they must follow the order as long as the person is within the area covered by this law or if they are getting paid from certain government funds. If they don't follow the order, they will be responsible for any money paid out wrongly.

Explanation

In this rule, "appropriate Government" means:

- (i) For people working for the Central Government, railway administration, cantonment authority, major port authority, or a corporation created by a Central Act, or a government company partly owned by the Central Government or multiple State Governments, it means the Central Government.
- (ii) For other government workers, local authority workers, or workers of a corporation created by a Provincial or State Act, or other government companies, it means the State Government.

Explanation using Example

Example 1:

Rajesh, a government school teacher in Maharashtra, has an outstanding debt of ₹2,00,000 owed to a private lender. The lender obtains a court decree to recover the amount. The court orders the attachment of Rajesh's salary. The court directs the disbursing officer of the school to withhold ₹10,000 from Rajesh's monthly salary and remit it to the court until the debt is fully paid. The disbursing officer complies with the court order and starts deducting ₹10,000 from Rajesh's salary every month and sends it to the court.

Example 2:

Suman, an engineer working for Indian Railways, has an unpaid loan of ₹5,00,000 from a bank. The bank gets a court order to recover the amount. The court orders the attachment of Suman's salary. The court instructs the railway's disbursing officer to withhold ₹20,000 from Suman's monthly salary and remit it to the court. The disbursing officer receives the court order and starts deducting ₹20,000 from Suman's salary each month and sends it to the court.

Example 3:

Anil, an employee of a municipal corporation in Delhi, owes ₹1,50,000 to a credit card company. The company secures a court decree to recover the amount. The court orders the attachment of Anil's salary. The court directs the municipal corporation's disbursing officer to withhold ₹5,000 from Anil's monthly salary and remit it to the court. The disbursing officer follows the court order and deducts ₹5,000 from Anil's salary every month and sends it to the court.

Example 4:

Priya, a manager at a state-owned enterprise in Karnataka, has an outstanding personal loan of ₹3,00,000. The lender obtains a court decree to recover the amount. The court orders the attachment of Priya's salary. The court instructs the enterprise's disbursing officer to withhold ₹15,000 from Priya's monthly salary and remit it to the court. The disbursing officer complies with the court order and starts deducting ₹15,000 from Priya's salary each month and sends it to the court.

Example 5:

Vikram, a clerk in a government office in Tamil Nadu, has an unpaid debt of ₹50,000 to a local moneylender. The moneylender gets a court order to recover the amount. The court orders the attachment of Vikram's salary. The court directs the disbursing officer of the government office to withhold ₹2,000 from Vikram's monthly salary and remit it to the court. The disbursing officer receives the court order and starts deducting ₹2,000 from Vikram's salary every month and sends it to the court.

Rule 48A: Attachment of salary or allowances of private employees.

Attachment of Salary or Allowances

(1) Where the property to be attached is the salary or allowances of an employee other than an employee to whom rule 48 applies, the Court, where the disbursing officer of the employee is within the local limits of the Court's jurisdiction, may order that the amount shall, subject to the provision of section 60, be withheld from such salary or allowances either in one payment or by monthly instalments as the Court may direct; and upon notice of the order to such disbursing officer, such disbursing officer shall remit to the court the amount due under the order, or the monthly instalments, as the case may be.

(2) Where the attachable portion of such salary or allowances is already being withheld or remitted to the Court in pursuance of a previous and unsatisfied order of attachment, the disbursing officer shall forthwith return the subsequent order to the Court issuing it with a full statement of all the particulars of the existing attachment.

(3) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (2), shall, without further notice or other process, bind the employer while the judgment-debtor is within the local limits to which this Code for the time being extends and while he is beyond those limits, if he is in receipt of salary or allowances payable out of the funds of an employer in any part of India, and the employer shall be liable for any sum paid in contravention of this rule.

Simplified act

Attachment of Salary or Allowances

(1) If the court needs to take money from an employee's salary or allowances (except for certain employees covered by a different rule), and the person who pays the employee is within the court's area, the court can order that the money be taken from the salary or allowances. This can be done either all at once or in monthly payments, as the court decides. Once the person who pays the employee gets the court's order, they must send the required amount to the court either in one payment or in monthly installments.

(2) If part of the employee's salary or allowances is already being taken and sent to the court because of an earlier order that hasn't been fully paid off, the person who pays the employee must immediately send the new order back to the court with details about the existing order.

(3) Every order made under this rule will automatically apply to the employer without needing any further notice, as long as the employee is within the area covered by this law. If the employee is outside this area but still gets paid from funds within India, the employer must follow the order. The employer will be responsible for any money paid out that goes against this rule.

Explanation using Example

Example 1:

Rajesh works as a software engineer at a private IT company in Bangalore. He has an outstanding debt of ₹5,00,000 that he owes to a creditor, and the

creditor has obtained a court decree to recover the amount. The creditor approaches the court to execute the decree by attaching Rajesh's salary.

The court, within whose jurisdiction Rajesh's employer's disbursing officer is located, issues an order to withhold ₹50,000 from Rajesh's monthly salary until the debt is fully paid. The court directs the disbursing officer of Rajesh's company to remit ₹50,000 each month to the court.

Upon receiving the court order, the disbursing officer starts deducting ₹50,000 from Rajesh's salary every month and sends it to the court. This continues until the entire debt of ₹5,00,000 is recovered.

Example 2:

Priya works as a marketing manager at a private firm in Mumbai. She has an outstanding loan of ₹3,00,000 from a bank, and the bank has obtained a court decree to recover the amount. The bank requests the court to attach Priya's salary to recover the loan amount.

The court issues an order to withhold ₹30,000 from Priya's monthly salary. However, Priya's salary is already being partially attached due to a previous court order for another debt she owes. The disbursing officer of Priya's firm informs the court about the existing attachment and provides all the details.

The court then decides to adjust the new attachment order accordingly. The disbursing officer continues to withhold the required amount from Priya's salary and remits it to the court as per the new adjusted order until the loan amount of ₹3,00,000 is fully recovered.

Rule 49: Attachment of partnership property.

Rule on Attachment and Sale of Partnership Property

(1) Save as otherwise provided by this rule, property belonging to a partnership shall not be attached or sold in execution of a decree other than a decree passed against the firm or against the partners in the firm as such.

(2) The Court may, on the application of the holder of a decree against a partner, make an order charging the interest of such partner in the partnership property, and profits with payment of the amount due under the decree, and may, by the same or a subsequent order, appoint a receiver of the share of such partner in the profits (whether already declared or accruing) and of any other money which may be coming to him in respect of the partnership, and

direct accounts and inquiries and make an order for the sale of such interest or other orders as might have been directed or made if a charge had been made in favour of the decree holder by such partner, or as the circumstances of the case may require.

(3) The other partner or partners shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.

(4) Every application for an order under sub-rule (2) shall be served on the judgment-debtor and on his partners or such of them as are within India.

(5) Every application made by any partner of the judgment-debtor under sub-rule (3) shall be served on the decree-holder and on the judgment-debtor, and on such of the other partners as do not join in the application and as are within India.

(6) Service under sub-rule (4) or sub-rule (5) shall be deemed to be service on all the partners and all orders made on such applications shall be similarly served.

Simplified act

Rule on Attachment and Sale of Partnership Property

(1) Generally, property owned by a partnership cannot be taken or sold to pay off a court judgment unless the judgment is against the partnership itself or the partners as a group.

(2) If someone has a court judgment against one partner, they can ask the court to charge that partner's share of the partnership property and profits to pay off the debt. The court can also appoint a receiver to manage that partner's share of the profits and any other money they are supposed to get from the partnership. The court can order the sale of that partner's share or take other actions as needed.

(3) The other partners have the right to pay off the charged interest or buy the charged interest if the court orders a sale.

(4) Any request to charge a partner's interest (as mentioned in point 2) must be given to the partner who owes the debt and to their other partners who are in India.

(5) If any partner wants to pay off or buy the charged interest (as mentioned in point 3), they must notify the person who won the judgment, the partner who

owes the debt, and any other partners who did not join in the request and are in India.

(6) Notifying partners as described in points 4 and 5 counts as notifying all partners, and any court orders made on these requests must also be similarly notified.

Explanation using Example

Example 1:

Scenario: Ramesh, Suresh, and Mahesh are partners in a textile business. Ramesh has a personal debt and a court decree has been passed against him to pay ₹10 lakhs to his creditor, Mr. Sharma.

Application of Rule 49:

Attachment of Partnership Property: Mr. Sharma cannot directly attach or sell the textile business's property to recover his money because the decree is against Ramesh personally, not against the partnership or all partners.

Charging Ramesh's Interest: Mr. Sharma applies to the court to charge Ramesh's interest in the partnership. The court orders that Ramesh's share of the profits and his interest in the partnership property be used to pay the debt.

Appointment of Receiver: The court appoints a receiver to manage Ramesh's share of the profits and any other money due to him from the partnership.

Redemption by Other Partners: Suresh and Mahesh, the other partners, have the option to pay off Ramesh's debt to Mr. Sharma to redeem Ramesh's interest in the partnership. If they choose not to, the court may order the sale of Ramesh's interest in the partnership to satisfy the debt.

Example 2:

Scenario: Anjali, Priya, and Kavita run a catering business as partners. Anjali has a personal loan and defaults on it. The bank obtains a court decree against Anjali for ₹5 lakhs.

Application of Rule 49:

Attachment of Partnership Property: The bank cannot attach or sell the catering business's assets directly because the decree is against Anjali personally.

Charging Anjali's Interest: The bank applies to the court to charge Anjali's interest in the partnership. The court orders that Anjali's share of the profits and her interest in the partnership property be used to pay the debt.

Appointment of Receiver: The court appoints a receiver to manage Anjali's share of the profits and any other money due to her from the partnership.

Redemption by Other Partners: Priya and Kavita, the other partners, have the option to pay off Anjali's debt to the bank to redeem Anjali's interest in the partnership. If they choose not to, the court may order the sale of Anjali's interest in the partnership to satisfy the debt.

Service of Application: The bank's application to charge Anjali's interest is served on Anjali and her partners, Priya and Kavita, who are within India. Similarly, if Priya and Kavita decide to redeem Anjali's interest, their application is served on the bank, Anjali, and any other partners who do not join in the application.

Rule 50: Execution of decree against firm.

Execution of Decree Against a Firm

(1) Where a decree has been passed against a firm, execution may be granted -

(a) against any property of the partnership;

(b) against any person who has appeared in his own name under rule 6 or rule 7 of Order XXX or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner;

(c) against any person who has been individually served as a partner with a summons and has failed to appear:

Provided that nothing in this sub-rule shall be deemed to limit or otherwise affect the provisions of section 30 of the Indian Partnership Act, 1932 (9 of 1932).

(2) Where the decree-holder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to in sub-rule (1), clauses (b) and (c), as being a partner in the firm, he may, apply to the Court which passed the decree for leave, and where the liability is not disputed, such court may grant such leave, or, where such liability is disputed, may order that the liability of such person be tried and determined in any manner in which any issue in a suit may be tried and determined.

(3) Where the liability of any person has been tried and determined under sub-rule (2), the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(4) Save as against any property of the partnership, a decree against a firm shall not lease, render liable or otherwise affect any partner therein unless he has been served with a summons to appear and answer.

(5) Nothing in this rule shall apply to a decree passed against a Hindu Undivided Family by virtue of the provisions of rule 10 of Order XXX.

Simplified act

Execution of Decree Against a Firm

(1) When a court decision (decree) is made against a business partnership (firm), it can be enforced in the following ways:

(a) Against any property owned by the partnership.

(b) Against any person who has shown up in court in their own name under specific rules (rule 6 or rule 7 of Order XXX), admitted in court documents that they are a partner, or has been legally declared a partner.

(c) Against any person who was personally notified as a partner and did not show up in court.

However, this does not change or affect the rules in section 30 of the Indian Partnership Act, 1932.

(2) If the person who won the case (decree-holder) believes they can enforce the decree against someone else who is not mentioned in (1)(b) or (1)(c) but is a partner, they can ask the court for permission. If the person's responsibility is not disputed, the court may grant permission. If it is disputed, the court will decide the person's responsibility as it would in any other legal case.

(3) If the court decides on a person's responsibility under (2), that decision will have the same effect and can be appealed just like a regular court decision.

(4) Except for the partnership's property, a decree against a firm does not affect any partner unless they have been notified to appear in court.

(5) This rule does not apply to decisions made against a Hindu Undivided Family under rule 10 of Order XXX.

Explanation using Example

Example 1:

Scenario: A textile firm named "Sharma Textiles" has taken a loan from a bank and failed to repay it. The bank files a lawsuit and obtains a decree against the firm for the repayment of the loan amount.

Application of Rule 50:

Against Partnership Property: The bank can execute the decree against any property owned by Sharma Textiles, such as their factory, machinery, or inventory.

Against Individual Partners:

Partner Appeared in Own Name: Mr. Sharma, one of the partners, appeared in court in his own name during the proceedings. The bank can execute the decree against Mr. Sharma's personal assets.

Admitted Partner: Mrs. Sharma admitted in the pleadings that she is a partner. The bank can execute the decree against her personal assets as well.

Served but Failed to Appear: Mr. Verma, another partner, was served with a summons but did not appear in court. The bank can execute the decree against Mr. Verma's personal assets.

Example 2:

Scenario: A construction firm named "Raj Builders" is sued by a client for breach of contract. The court passes a decree in favor of the client, ordering Raj Builders to pay damages.

Application of Rule 50:

Against Partnership Property: The client can execute the decree against any property owned by Raj Builders, such as their office building, construction equipment, or bank accounts.

Against Individual Partners:

Partner Appeared in Own Name: Mr. Raj, one of the partners, appeared in court in his own name. The client can execute the decree against Mr. Raj's personal assets.

Admitted Partner: Mr. Singh admitted in the pleadings that he is a partner. The client can execute the decree against Mr. Singh's personal assets.

Served but Failed to Appear: Mr. Kumar, another partner, was served with a summons but did not appear in court. The client can execute the decree against Mr. Kumar's personal assets.

Other Partners: If the client believes another person, Mr. Gupta, is a partner but Mr. Gupta's liability is disputed, the client can apply to the court for leave to execute the decree against Mr. Gupta. The court will then determine Mr. Gupta's liability through a trial.

Example 3:

Scenario: A firm named "Patel & Sons" is involved in a legal dispute with a supplier. The court passes a decree against Patel & Sons for non-payment of dues.

Application of Rule 50:

Against Partnership Property: The supplier can execute the decree against any property owned by Patel & Sons, such as their warehouse, delivery trucks, or office furniture.

Against Individual Partners:

Partner Appeared in Own Name: Mr. Patel, one of the partners, appeared in court in his own name. The supplier can execute the decree against Mr. Patel's personal assets.

Admitted Partner: Mr. Mehta admitted in the pleadings that he is a partner. The supplier can execute the decree against Mr. Mehta's personal assets.

Served but Failed to Appear: Mr. Desai, another partner, was served with a summons but did not appear in court. The supplier can execute the decree against Mr. Desai's personal assets.

Other Partners: If the supplier believes another person, Mr. Shah, is a partner but Mr. Shah's liability is disputed, the supplier can apply to the court for leave to execute the decree against Mr. Shah. The court will then determine Mr. Shah's liability through a trial.

Example 4:

Scenario: A firm named "Khan & Co." is sued by a former employee for unpaid wages. The court passes a decree in favor of the employee.

Application of Rule 50:

Against Partnership Property: The employee can execute the decree against any property owned by Khan & Co., such as their office space, computers, or company vehicles.

Against Individual Partners:

Partner Appeared in Own Name: Mr. Khan, one of the partners, appeared in court in his own name. The employee can execute the decree against Mr. Khan's personal assets.

Admitted Partner: Mr. Ali admitted in the pleadings that he is a partner. The employee can execute the decree against Mr. Ali's personal assets.

Served but Failed to Appear: Mr. Ahmed, another partner, was served with a summons but did not appear in court. The employee can execute the decree against Mr. Ahmed's personal assets.

Other Partners: If the employee believes another person, Mr. Rehman, is a partner but Mr. Rehman's liability is disputed, the employee can apply to the court for leave to execute the decree against Mr. Rehman. The court will then determine Mr. Rehman's liability through a trial.

Rule 51: Attachment of negotiable instruments.

Where the property is a negotiable instrument not deposited in a Court, not in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into Court and held subject to further orders of the Court.

Simplified act

If the property is a negotiable instrument (like a check or promissory note) that is not already in a Court or with a public officer, it must be physically taken.

The instrument must then be brought to the Court.

The Court will keep it and decide what to do with it next.

Explanation using Example

Example 1:

Rajesh lent Rs. 50,000 to his friend Suresh and received a promissory note as a guarantee for repayment. Suresh failed to repay the amount, and Rajesh filed a lawsuit. The court ruled in favor of Rajesh and issued a decree for the repayment of the amount. However, Suresh still did not pay. Rajesh then sought to execute the decree by attaching the promissory note (a negotiable instrument) that Suresh had given him. Since the promissory note was not deposited in a court or in the custody of a public officer, the court ordered the actual seizure of the promissory note. The court bailiff seized the promissory note from Suresh's possession and brought it to the court, where it was held until further orders were issued regarding its disposition.

Example 2:

Meena won a civil case against her business partner, Anil, who owed her Rs. 1,00,000. Anil had issued a cheque for the amount, but it was not deposited in a bank or held by any public officer. Meena sought to execute the court's decree by attaching the cheque. The court directed the bailiff to seize the cheque from Anil's possession. The bailiff went to Anil's office, took the cheque, and brought it to the court. The cheque was then held by the court until further orders were given on how to proceed with the execution of the decree.

Rule 52: Attachment of property in custody of Court or public officer.

Where the property to be attached is in the custody of any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court from which the notice is issued:

Provided that, where such property is in the custody of a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

Simplified act

If the property that needs to be taken is being held by a Court or a public officer, it will be attached by sending a notice to that Court or officer. This notice will ask them to hold onto the property, and any interest or dividends it earns, until the Court gives further instructions.

If the property is with a Court, and there is a dispute about who owns it or who has the right to it between the person who won the case (decree-holder) and anyone else (except the person who lost the case), the Court will decide who has the rightful claim. This includes claims based on assignments, attachments, or other reasons.

Explanation using Example

Example 1:

Scenario: Ramesh wins a lawsuit against Suresh and obtains a decree for Rs. 10 lakhs. Suresh has a fixed deposit of Rs. 5 lakhs in a nationalized bank, which is currently under the custody of the bank (a public officer).

Application of Rule 52: Ramesh's lawyer files an application in the court that issued the decree, requesting the attachment of Suresh's fixed deposit. The court issues a notice to the bank, instructing it to hold the fixed deposit and any interest accruing on it, subject to further orders from the court. The bank, upon receiving the notice, freezes the fixed deposit and informs the court of compliance.

Example 2:

Scenario: Priya wins a lawsuit against her business partner, Anil, and obtains a decree for Rs. 15 lakhs. Anil has shares worth Rs. 7 lakhs in a company, which are currently under the custody of the Securities and Exchange Board of India (SEBI) due to an ongoing investigation.

Application of Rule 52: Priya's lawyer files an application in the court that issued the decree, requesting the attachment of Anil's shares. The court issues a notice to SEBI, instructing it to hold the shares and any dividends accruing on them, subject to further orders from the court. SEBI, upon receiving the notice, holds the shares and informs the court of compliance.

Example 3:

Scenario: A court has custody of a disputed piece of land due to an ongoing property dispute between two parties, Raj and Simran. Raj wins a separate lawsuit against a third party, Karan, and obtains a decree for Rs. 20 lakhs. Karan claims an interest in the disputed land.

Application of Rule 52: Raj's lawyer files an application in the court that issued the decree, requesting the attachment of Karan's interest in the disputed land.

The court issues a notice to the court holding the land, instructing it to hold Karan's interest in the land subject to further orders. The court holding the land must then determine any questions of title or priority between Raj and any other person claiming an interest in the land, excluding Karan, the judgment-debtor.

Rule 53: Attachment of decrees.

(1) Where the property to be attached is a decree, either for the payment of money or for sale in enforcement of a mortgage or charge, the attachment shall be made, -

(a) if the decrees were passed by the same Court, then by Order of such Court, and

(b) if the decree sought to be attached was passed by another Court, then by the issue to such other Court of a notice by the Court which passed the decree sought to be executed, requesting such other Court to stay the execution of its decree unless and until -

(i) the court which passed the decree sought to be executed cancels the notice, or

(ii)

(a) the holder of the decree sought to be executed, or

(b) his judgment-debtor with the previous consent in writing of such decree-holder, or with the permission of the attaching Court, applies to the Court receiving such notice to execute the attached decree.

(2) Where a Court makes an order under clause (a) of sub-rule (1), or receives an application under subhead (ii) of clause (b) of the said sub-rule, it shall, on the application of the creditor who has attached the decree or his judgment-debtor, proceed to execute the attached decree and apply the net proceeds in satisfaction of the decree sought to be executed.

(3) The holder of a decree sought to be executed by the attachment of another decree of the nature specified in sub-rule (1) shall be deemed to be the representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

(4) Where the property to be attached in the execution of a decree is a decree other than a decree of the nature referred to in sub-rule (1), the attachment

shall be made, by a notice by the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way: and, where such decree has been passed by any other Court, also by sending to such other Court a notice to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent.

(5) The holder of a decree attached under this rule shall give the Court executing the decree such information and aid as may reasonably be required.

(6) On the application of the holder of a decree sought to be executed by the attachment of another decree, the Court making an order of attachment under this rule shall give notice of such order to the judgment-debtor bound by the decree attached; and no payment or adjustment of the attached decree made by the judgment-debtor in contravention of such order with knowledge thereof or after receipt of notice thereof, either through the Court or otherwise, shall be recognized by any Court so long as the attachment remains in force.

Simplified act

Attachment of Decrees

(1) When the property to be attached is a court order (decree) for either paying money or selling property to enforce a mortgage or charge, the attachment should be done as follows:

(a) If both decrees were issued by the same court, the court will issue an order to attach the decree.

(b) If the decree to be attached was issued by a different court, the court that issued the decree to be executed will send a notice to the other court, asking it to stop executing its decree until:

(i) The court that issued the decree to be executed cancels the notice, or

(ii)

(a) The person who holds the decree to be executed, or

(b) The person who owes money under the decree (with written consent from the decree-holder or permission from the attaching court), asks the court that received the notice to execute the attached decree.

(2) When a court issues an order under (a) of section (1), or receives an application under (ii) of (b) of section (1), it will, upon request from the creditor who attached the decree or the debtor, proceed to execute the attached decree and use the proceeds to satisfy the decree being executed.

(3) The person holding a decree that is being executed by attaching another decree (as described in section (1)) is considered the representative of the person holding the attached decree and has the right to execute the attached decree in any lawful manner.

(4) When the property to be attached is a decree that is not for paying money or selling property to enforce a mortgage or charge, the attachment will be done by the court that issued the decree to be executed. This court will send a notice to the holder of the decree to be attached, prohibiting them from transferring or charging it in any way. If the decree was issued by another court, a notice will also be sent to that court to stop executing the decree until the notice is canceled by the court that sent it.

(5) The holder of a decree that has been attached must provide the court executing the decree with any necessary information and assistance.

(6) When the holder of a decree being executed by attaching another decree requests it, the court will notify the debtor bound by the attached decree of the attachment order. Any payment or adjustment made by the debtor in violation of this order, with knowledge of it or after receiving notice, will not be recognized by any court as long as the attachment is in effect.

Explanation using Example

Example 1:

Scenario: Ramesh has a decree from Court A that orders Suresh to pay him ₹5,00,000. However, Ramesh owes ₹3,00,000 to Mahesh, who has a decree from Court B against Ramesh.

Application:

Mahesh wants to attach the decree that Ramesh holds against Suresh to recover his ₹3,00,000.

Since the decrees are from different courts, Mahesh applies to Court B to issue a notice to Court A.

Court B sends a notice to Court A requesting it to stay the execution of Ramesh's decree against Suresh.

Court A stays the execution of the decree until further notice.

Mahesh then applies to Court A to execute the decree against Suresh.

Court A proceeds to execute the decree and collects ₹5,00,000 from Suresh.

Court A uses ₹3,00,000 from the collected amount to satisfy Mahesh's decree and the remaining ₹2,00,000 is given to Ramesh.

Example 2:

Scenario: Priya has a decree from Court C that orders Ravi to sell a mortgaged property and pay her ₹10,00,000. However, Priya owes ₹4,00,000 to Anil, who has a decree from Court D against Priya.

Application:

Anil wants to attach the decree that Priya holds against Ravi to recover his ₹4,00,000.

Since the decrees are from different courts, Anil applies to Court D to issue a notice to Court C.

Court D sends a notice to Court C requesting it to stay the execution of Priya's decree against Ravi.

Court C stays the execution of the decree until further notice.

Anil then applies to Court C to execute the decree against Ravi.

Court C proceeds to execute the decree and sells the mortgaged property, collecting ₹10,00,000.

Court C uses ₹4,00,000 from the collected amount to satisfy Anil's decree and the remaining ₹6,00,000 is given to Priya.

Example 3:

Scenario: Sunita has a decree from Court E that orders Raj to pay her ₹2,00,000. However, Sunita owes ₹1,00,000 to Kiran, who has a decree from Court F against Sunita.

Application:

Kiran wants to attach the decree that Sunita holds against Raj to recover her ₹1,00,000.

Since the decrees are from different courts, Kiran applies to Court F to issue a notice to Court E.

Court F sends a notice to Court E requesting it to stay the execution of Sunita's decree against Raj.

Court E stays the execution of the decree until further notice.

Kiran then applies to Court E to execute the decree against Raj.

Court E proceeds to execute the decree and collects ₹2,00,000 from Raj.

Court E uses ₹1,00,000 from the collected amount to satisfy Kiran's decree and the remaining ₹1,00,000 is given to Sunita.

Rule 54: Attachment of immovable property.

Attachment of Immovable Property

(1) Where the property is immovable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer of charge.

(1A) The order shall also require the judgment-debtor to attend Court on a specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale.

(2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon, a conspicuous part of the Court-house, and also, where the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situate and, where the property is land situate in a village, also in the office of the Gram Panchayat, if any, having jurisdiction over that village.

Simplified act

Attachment of Immovable Property

(1) If the property cannot be moved (like land or a building), the court will issue an order that stops the person who owes money (the judgment-debtor) from

selling or mortgaging the property. It also stops anyone else from benefiting from such a sale or mortgage.

(1A) The order will also tell the person who owes money to come to court on a specific date to learn when the terms for selling the property will be decided.

(2) The order will be announced near the property, usually by beating a drum or another traditional method. A copy of the order will be posted in a noticeable place on the property, at the courthouse, and if the property is land that pays taxes to the government, at the district collector's office. If the property is in a village, a copy will also be posted at the village council office (Gram Panchayat), if there is one.

Explanation using Example

Example 1:

Rajesh borrowed ₹10 lakhs from a bank but failed to repay the loan. The bank filed a lawsuit, and the court issued a decree in favor of the bank. Rajesh owns a piece of land in his village. To recover the loan amount, the bank requests the court to attach Rajesh's land.

The court issues an order prohibiting Rajesh from selling or mortgaging the land and also prohibits others from buying or taking any interest in the land.

The court orders Rajesh to appear on a specified date to discuss the terms of the sale proclamation.

The court's order is announced in the village by beating a drum and is also posted on the land, the village Gram Panchayat office, the district Collector's office, and the court-house.

Example 2:

Meena won a lawsuit against her business partner, Suresh, who owes her ₹5 lakhs as per the court's decree. Suresh owns a commercial building in the city. Meena requests the court to attach Suresh's building to recover her money.

The court issues an order preventing Suresh from transferring or mortgaging the building and prohibits others from taking any benefit from such a transfer.

The court orders Suresh to attend a court hearing on a specified date to discuss the terms of the sale proclamation.

The court's order is announced by a public announcement system in the vicinity of the building, and copies of the order are posted on the building, the court-house, and other relevant public offices.

Example 3:

Anita lent ₹2 lakhs to her friend, Sunil, who failed to repay the amount. Anita filed a case, and the court ruled in her favor. Sunil owns agricultural land in a nearby village. Anita requests the court to attach Sunil's land to recover her money.

The court issues an order prohibiting Sunil from selling or mortgaging the land and also prohibits others from taking any interest in the land.

The court orders Sunil to appear on a specified date to discuss the terms of the sale proclamation.

The court's order is announced in the village by beating a drum and is also posted on the land, the Gram Panchayat office, the district Collector's office, and the court-house.

Rule 55: Removal of attachment after satisfaction of decree.

Where-

- (a) the amount decreed with costs and all charges and expenses resulting from the attachment of any property are paid into Court, or
- (b) satisfaction of the decree is otherwise made through the Court or certified to the Court, or
- (c) the decree is set aside or reversed,

the attachment shall be deemed to be withdrawn, and, in the case of immovable property, the withdrawal shall, if the judgment-debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner prescribed by the last preceding rule.

Simplified act

Where-

- (a) the amount ordered by the court, including costs and any charges from seizing property, is paid into the court, or

- (b) the court confirms that the debt has been settled in another way, or
- (c) the court's decision is canceled or overturned,

the seizure of the property will be considered canceled. If the property is real estate (like land or a house), and the person who owes the debt wants it, the cancellation will be announced publicly at their expense. A copy of this announcement will be posted as required by the previous rule.

Explanation using Example

Example 1:

Scenario: Ramesh owes Rs. 1,00,000 to Suresh, and Suresh has obtained a court decree to recover this amount. The court has attached Ramesh's property to ensure the payment.

Application of Rule 55:

(a) Payment into Court: Ramesh manages to gather Rs. 1,00,000 along with the court costs and expenses incurred due to the attachment and pays this amount into the court.

Outcome: The court will consider the decree satisfied, and the attachment on Ramesh's property will be removed.

(b) Satisfaction through Court: Alternatively, Ramesh and Suresh reach an agreement where Ramesh pays the amount directly to Suresh, and Suresh informs the court that he has received the payment.

Outcome: The court will certify the satisfaction of the decree, and the attachment on Ramesh's property will be removed.

(c) Decree Set Aside: If Ramesh successfully appeals the decree and the higher court sets it aside or reverses it.

Outcome: The attachment on Ramesh's property will be deemed withdrawn.

Proclamation: If the property attached is immovable (e.g., land or house), and Ramesh desires, he can request the court to proclaim the withdrawal of the attachment at his expense. The court will then issue a proclamation and affix it as prescribed.

Example 2:

Scenario: Meena has a decree against her for Rs. 50,000 in favor of Anita. The court has attached Meena's car to ensure the payment.

Application of Rule 55:

(a) Payment into Court: Meena arranges Rs. 50,000 along with the costs and expenses due to the attachment and deposits this amount into the court.

Outcome: The court will consider the decree satisfied, and the attachment on Meena's car will be removed.

(b) Satisfaction through Court: Meena and Anita agree on a payment plan, and Meena pays Anita directly. Anita then certifies to the court that she has received the payment.

Outcome: The court will certify the satisfaction of the decree, and the attachment on Meena's car will be removed.

(c) Decree Set Aside: Meena appeals the decree, and the appellate court sets it aside or reverses it.

Outcome: The attachment on Meena's car will be deemed withdrawn.

Proclamation: If the attached property were immovable (e.g., a house), and Meena desires, she can request the court to proclaim the withdrawal of the attachment at her expense. The court will then issue a proclamation and affix it as prescribed.

Rule 56: Order for payment of coin or currency notes to party entitled under decree.

Where the property attached is current coin or currency notes, the Court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same.

57.

Simplified act

If the property that has been seized includes money or currency notes, the Court can, at any time while the seizure is still in effect, order that enough of this money or notes be given to the person who has won the case to satisfy the judgment.

57.

Explanation using Example

Example 1:

Rajesh won a civil lawsuit against Suresh, and the court issued a decree ordering Suresh to pay Rajesh ₹1,00,000. Suresh, however, did not comply with the decree voluntarily. Rajesh then filed for execution of the decree. During the execution process, the court attached Suresh's bank account, which had a balance of ₹1,50,000. Under Rule 56 of the Code of Civil Procedure 1908, the court directed that ₹1,00,000 from Suresh's bank account be paid over to Rajesh to satisfy the decree.

Example 2:

Meena obtained a decree against her former business partner, Anil, for ₹50,000. Anil failed to pay the amount, so Meena sought execution of the decree. The court attached Anil's cash box, which contained ₹70,000 in currency notes. According to Rule 56 of the Code of Civil Procedure 1908, the court ordered that ₹50,000 from the attached currency notes be handed over to Meena to fulfill the decree.

Example 3:

Sunita won a case against her tenant, Ravi, for unpaid rent amounting to ₹30,000. Ravi did not pay the amount as ordered by the court. Sunita applied for execution of the decree, and the court attached Ravi's locker, which contained ₹40,000 in cash. Under Rule 56, the court directed that ₹30,000 from the attached cash be given to Sunita to satisfy the decree.

Example 4:

A company, XYZ Pvt. Ltd., secured a decree against a contractor, ABC Constructions, for ₹2,00,000. ABC Constructions did not pay the amount, leading XYZ Pvt. Ltd. to seek execution of the decree. The court attached ABC Constructions' office safe, which had ₹2,50,000 in currency notes. As per Rule 56, the court ordered that ₹2,00,000 from the attached currency notes be paid to XYZ Pvt. Ltd. to satisfy the decree.

Rule 57: Determination of attachment.

(1) Where any property has been attached in execution of a decree and the Court, for any reason, passes an order dismissing the application for the

execution of the decree, the Court shall direct whether the attachment shall continue or cease and shall also indicate the period up to which such attachment shall continue or the date on which such attachment shall cease.

(2) If the Court omits to give such direction, the attachment shall be deemed to have ceased.

Simplified act

(1) If a property has been seized because of a court order and the court later decides to reject the request to enforce that order, the court must specify whether the seizure should continue or stop. The court must also state how long the seizure will last or the exact date it will end.

(2) If the court forgets to provide this information, the seizure will be considered to have ended.

Explanation using Example

Example 1:

Scenario: Rajesh wins a lawsuit against Suresh and obtains a decree from the court for the recovery of ₹5,00,000. Rajesh then files an application for the execution of the decree, and the court orders the attachment of Suresh's car to satisfy the decree.

Application: During the execution process, Suresh files an appeal, and the court finds merit in his appeal and dismisses Rajesh's application for execution of the decree. According to Rule 57, the court must now decide whether the attachment of Suresh's car should continue or cease. The court may order that the attachment continues for another 30 days to allow Rajesh to file a fresh application or may order that the attachment ceases immediately.

Example 2:

Scenario: Meena wins a decree against her tenant, Ravi, for unpaid rent amounting to ₹1,00,000. Meena applies for the execution of the decree, and the court orders the attachment of Ravi's bank account.

Application: Later, the court finds that there was a procedural error in Meena's application and dismisses it. According to Rule 57, the court must specify whether the attachment of Ravi's bank account should continue or cease. If the court fails to provide such a direction, the attachment will automatically cease, and Ravi will regain access to his bank account.

Adjudication of claims and objections

Rule 58: Adjudication of claims to, or objections to attachment of property.

Execution of Decree

(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained:

Provided that no such claim or objection shall be entertained -

(a) where, before the claim is preferred or objection is made, the property attached has already been sold; or

(b) where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(2) All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.

(3) Upon the determination of the questions referred to in sub-rule (2), the Court shall, in accordance with such determination, -

(a) allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit; or

(b) disallow the claim or objection; or

(c) continue the attachment subject to any mortgage, charge or other interest in favour of any person; or

(d) pass such order as in the circumstances of the case it deems fit.

(4) Where any claim or objection has been adjudicated upon under this rule, order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(5) Where a claim or an objection is preferred and the Court, under the proviso to sub-rule (1), refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such suit, if any, an order so refusing to entertain the claim or objection shall be conclusive.

Simplified act

Execution of Decree

(1) If someone claims or objects to the attachment of property (saying the property shouldn't be taken) during the enforcement of a court order, the Court will look into the claim or objection according to the rules:

However, the Court will not consider the claim or objection if -

- (a) the property has already been sold before the claim or objection is made; or
- (b) the Court thinks the claim or objection was intentionally or unnecessarily delayed.

(2) Any questions about the rights, ownership, or interest in the attached property between the parties involved will be decided by the same Court handling the claim or objection, not by a separate lawsuit.

(3) After deciding on the questions mentioned in point (2), the Court will:

- (a) accept the claim or objection and release the property from attachment either completely or partially; or
- (b) reject the claim or objection; or
- (c) keep the attachment but recognize any mortgage, charge, or other interest someone else has in the property; or
- (d) make any other order it thinks is appropriate for the situation.

(4) Once a claim or objection has been decided under these rules, the order will have the same effect and be subject to the same conditions for appeal as if it were a final court decision.

(5) If the Court refuses to consider a claim or objection based on the reasons in point (1), the person affected can file a separate lawsuit to prove their right to the property. But until the result of such a lawsuit, the Court's refusal to consider the claim or objection will be final.

Explanation using Example

Example 1:

Scenario: Ramesh has a decree against Suresh for a debt of ₹5 lakhs. To recover the amount, Ramesh gets an order from the court to attach Suresh's car. However, Priya, Suresh's sister, claims that the car actually belongs to her and not to Suresh.

Application of Rule 58:

Claim by Priya: Priya files a claim in the court stating that the car is her property and should not be attached.

Court's Adjudication: The court will examine the evidence provided by Priya and Suresh to determine the true ownership of the car.

Possible Outcomes:

If the court finds that the car indeed belongs to Priya, it will release the car from attachment.

If the court finds that the car belongs to Suresh, it will disallow Priya's claim and the car will remain attached.

If the court finds that the car is jointly owned or has some other interest, it may continue the attachment subject to that interest.

Example 2:

Scenario: Anil has a decree against Sunil for ₹3 lakhs. The court orders the attachment of Sunil's house. However, Sunil's wife, Meena, objects to the attachment, claiming that the house is jointly owned by her and Sunil, and her share should not be attached.

Application of Rule 58:

Objection by Meena: Meena files an objection in the court stating that the house is jointly owned and her share should not be attached.

Court's Adjudication: The court will examine the ownership documents and other evidence to determine the extent of Meena's interest in the house.

Possible Outcomes:

If the court finds that the house is jointly owned and Meena has a valid share, it may release her share from attachment.

If the court finds that the house is solely owned by Sunil, it will disallow Meena's objection and the house will remain fully attached.

If the court finds that the house is subject to a mortgage or other charge, it may continue the attachment subject to that interest.

Example 3:

Scenario: Rajesh has a decree against Mohan for ₹2 lakhs. The court orders the attachment of Mohan's bank account. However, Mohan's business partner, Kiran, objects to the attachment, claiming that the funds in the account are business funds and not Mohan's personal funds.

Application of Rule 58:

Objection by Kiran: Kiran files an objection in the court stating that the funds in the bank account are business funds and should not be attached.

Court's Adjudication: The court will examine the bank statements, business records, and other evidence to determine the nature of the funds.

Possible Outcomes:

If the court finds that the funds are indeed business funds and not Mohan's personal funds, it will release the bank account from attachment.

If the court finds that the funds are Mohan's personal funds, it will disallow Kiran's objection and the bank account will remain attached.

If the court finds that the funds are mixed, it may continue the attachment subject to the determination of the exact amount that belongs to Mohan.

Example 4:

Scenario: Geeta has a decree against Neha for ₹1 lakh. The court orders the attachment of Neha's jewelry. However, Neha's mother, Shanti, claims that the jewelry was gifted to her by her parents and should not be attached.

Application of Rule 58:

Claim by Shanti: Shanti files a claim in the court stating that the jewelry belongs to her and not to Neha.

Court's Adjudication: The court will examine the evidence provided by Shanti and Neha to determine the true ownership of the jewelry.

Possible Outcomes:

If the court finds that the jewelry belongs to Shanti, it will release the jewelry from attachment.

If the court finds that the jewelry belongs to Neha, it will disallow Shanti's claim and the jewelry will remain attached.

If the court finds that the jewelry is jointly owned or has some other interest, it may continue the attachment subject to that interest.

Adjudication of claims and objections

Rule 59: Stay of sale.

Where before the claim was preferred or the objection was made, the property attached had already been advertised for sale, the Court may -

(a) if the property is movable, make an order postponing the sale pending the adjudication of the claim or objection, or

(b) if the property is immovable, make an order that, pending the adjudication of the claim or objection, the property shall not be sold, or that pending such adjudication, the property may be sold but the sale shall not be confirmed,

and any such order may be made subject to such terms and conditions as to security or otherwise as the Court thinks fit.

Simplified act

If someone makes a claim or objection about a property that has already been advertised for sale, the Court can do the following:

(a) If the property is something that can be moved (like a car or furniture), the Court can order to delay the sale until the claim or objection is resolved, or

(b) If the property is something that cannot be moved (like a house or land), the Court can order that:

The property should not be sold until the claim or objection is resolved, or

The property can be sold, but the sale will not be finalized until the claim or objection is resolved.

The Court can also set any terms and conditions it thinks are necessary, such as requiring security or other measures.

Explanation using Example

Example 1:

Scenario: Ramesh has a movable property (a car) that has been attached by the court due to a decree against him. Before the car is sold, Suresh claims that the car actually belongs to him and not Ramesh.

Application of Rule 59:

Suresh files a claim in the court asserting his ownership of the car.

The court, recognizing the claim, issues an order to postpone the sale of the car until Suresh's claim is adjudicated.

This means the car will not be sold until the court decides whether Suresh's claim is valid.

Example 2:

Scenario: Priya owns a piece of land that has been attached by the court due to a decree against her. Before the land is sold, her brother, Raj, objects, stating that the land is actually jointly owned by both of them.

Application of Rule 59:

Raj files an objection in the court regarding the sale of the land.

The court, acknowledging the objection, issues an order that the land shall not be sold until Raj's objection is adjudicated.

Alternatively, the court may allow the land to be sold but stipulate that the sale will not be confirmed until the objection is resolved.

The court may also impose conditions, such as requiring Raj to provide security, to ensure that the objection is made in good faith.

Example 3:

Scenario: Anil's house has been attached by the court due to a decree against him. Before the house is sold, his friend, Sunil, claims that he has a lease agreement with Anil and has been living in the house for years.

Application of Rule 59:

Sunil files a claim in the court asserting his leasehold interest in the house.

The court, considering Sunil's claim, issues an order that the house shall not be sold until Sunil's claim is adjudicated.

Alternatively, the court may allow the house to be sold but stipulate that the sale will not be confirmed until Sunil's claim is resolved.

The court may also impose conditions, such as requiring Sunil to provide security, to ensure that the claim is genuine.

Example 4:

Scenario: Meena's shop has been attached by the court due to a decree against her. Before the shop is sold, her business partner, Ravi, objects, stating that the shop is a partnership property and not solely owned by Meena.

Application of Rule 59:

Ravi files an objection in the court regarding the sale of the shop.

The court, recognizing the objection, issues an order that the shop shall not be sold until Ravi's objection is adjudicated.

Alternatively, the court may allow the shop to be sold but stipulate that the sale will not be confirmed until the objection is resolved.

The court may also impose conditions, such as requiring Ravi to provide security, to ensure that the objection is made in good faith.

60. [Release of property from attachment.] Omitted by the Code of Civil Procedure (Amendment) Act, 1976 (104 of 1976), s. 72 (w.e.f. 1-2-1977).

61. [Disallowance of claim to property attached.] omitted by s. 72, *ibid.* (w.e.f. 1-2-1977).

62. [Continuance of attachment subject to claim of incumbrancer.] omitted by s. 72, *ibid.* (w.e.f. 1-2-1977).

63. [Saving of suits to establish right to attached property.] omitted by s. 72, *ibid.* (w.e.f. 1-2-1977).]

Adjudication of claims and objections

Rule 64: Power to order property attached to be sold and proceeds to be paid to person entitled.

Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof as may see necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

Simplified act

Any Court that is carrying out a court order can decide to sell any property it has taken control of to pay off the debt mentioned in the order.

The Court can sell all or part of the property, depending on what is needed to satisfy the debt.

The money from the sale will be given to the person who is supposed to receive it according to the court order.

Explanation using Example

Example 1:

Rajesh had lent Rs. 5,00,000 to his friend Suresh, who failed to repay the amount despite multiple reminders. Rajesh approached the court and obtained a decree against Suresh for the repayment of the loan amount. Suresh, however, did not comply with the court's decree. Consequently, Rajesh filed for the execution of the decree. The court, upon investigation, found that Suresh owned a piece of land worth Rs. 7,00,000. The court ordered the attachment and sale of the land. The land was sold for Rs. 7,00,000, and the court directed that Rs. 5,00,000 from the sale proceeds be paid to Rajesh to satisfy the decree. The remaining Rs. 2,00,000 was returned to Suresh.

Example 2:

Meena had won a civil suit against a construction company for not completing her house as per the contract. The court awarded her Rs. 10,00,000 in damages. The construction company did not pay the amount, so Meena sought the execution of the decree. The court identified that the construction company owned several construction equipment and machinery. The court ordered the attachment and sale of some of the machinery, which was valued at Rs. 12,00,000. The machinery was sold, and the court directed that Rs. 10,00,000

from the sale proceeds be paid to Meena. The remaining Rs. 2,00,000 was returned to the construction company.

Rule 65: Sales by whom conducted and how made.

Save as otherwise prescribed, every sale in execution of a decree shall be conducted by an officer of the Court or by such other person as the Court may appoint in this behalf, and shall be made by public auction in manner prescribed.

Simplified act

Unless stated otherwise, every sale that happens because of a court order must be: a. Conducted by a court officer or someone the court chooses. b. Done through a public auction as described by the rules.

Explanation using Example

Example 1:

Rajesh has a court decree against him to pay a debt of ₹5,00,000 to Suresh. Rajesh fails to pay the amount within the stipulated time. Suresh approaches the court to execute the decree. The court orders the sale of Rajesh's property to recover the debt. The sale is conducted by an officer of the court, who organizes a public auction. The property is sold to the highest bidder, and the proceeds are used to pay off the debt owed to Suresh.

Example 2:

Meena has a court decree to recover ₹2,00,000 from her tenant, Ravi, who has defaulted on rent payments. Ravi does not comply with the decree. Meena requests the court to execute the decree. The court appoints a local auctioneer to conduct the sale of Ravi's assets. The auctioneer arranges a public auction where Ravi's car is sold. The money obtained from the sale is then handed over to Meena to satisfy the decree.

Rule 66: Proclamation of sales by public auction.

Execution of Decree - Sale by Public Auction

(1) Where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court.

(2) Such proclamation shall be drawn up after notice to the decree-holder and the judgment-debtor and shall state the time and place of sale, and specify as fairly and accurately as possible:

(a) the property to be sold or, where a part of the property would be sufficient to satisfy the decree, such part;

(b) the revenue assessed upon the estate or part of the estate, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government;

(c) any encumbrance to which the property is liable;

(d) the amount for the recovery of which the sale is ordered; and

(e) every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property:

Provided that where notice of the date for settling the terms of the proclamation has been given to the judgment-debtor by means of an order under rule 54, it shall not be necessary to give notice under this rule to the judgment-debtor unless the Court otherwise directs:

Provided further that nothing in this rule shall be construed as requiring the Court to enter in the proclamation of sale its own estimate of the value of the property, but the proclamation shall include the estimate, if any, given by either or both of the parties.

(3) Every application for an order for sale under this rule shall be accompanied by a statement signed and verified in the manner hereinbefore prescribed for the signing and verification of pleadings and containing, so far as they are known to or can be ascertained by the person making the verification, the matters required by sub-rule (2) to be specified in the proclamation.

(4) For the purpose of ascertaining the matters to be specified in the proclamation, the Court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto.

Simplified act

Execution of Decree - Sale by Public Auction

(1) When a court orders that property should be sold at a public auction to enforce a decree, the court must announce the upcoming sale in the court's language.

(2) This announcement must be made after informing both the person who won the decree (decree-holder) and the person who lost (judgment-debtor). The announcement should include the following details as clearly and accurately as possible:

(a) The property to be sold, or if only part of the property is needed to satisfy the decree, then just that part;

(b) The revenue assessed on the estate or part of the estate, if the property is an interest in an estate that pays revenue to the government;

(c) Any debts or obligations attached to the property;

(d) The amount of money that needs to be recovered through the sale; and

(e) Any other information the court thinks a buyer should know to understand the nature and value of the property.

There are two exceptions to this rule:

If the judgment-debtor has already been informed about the date for setting the terms of the announcement through an order under rule 54, then no additional notice is needed unless the court decides otherwise.

The court does not have to include its own estimate of the property's value in the announcement, but it should include any estimates provided by either or both parties involved.

(3) Any request for an order to sell the property must come with a signed and verified statement. This statement should include, as much as the person making it knows or can find out, the details required in the announcement mentioned in sub-rule (2).

(4) To find out the necessary details for the announcement, the court can call any person it thinks is needed and can question them about these details. The court can also require them to produce any relevant documents they have.

Explanation using Example

Example 1:

Scenario: Ramesh has a court decree against Suresh for a debt of ₹5,00,000. Suresh has not paid the amount, so the court orders the sale of Suresh's property by public auction to recover the debt.

Application of Rule 66:

Proclamation of Sale: The court issues a proclamation in Hindi (the language of the court) announcing the sale.

Notice to Parties: Both Ramesh (decree-holder) and Suresh (judgment-debtor) are notified about the sale.

Details in Proclamation:

Property Description: The proclamation specifies that Suresh's residential plot in Delhi, measuring 200 square yards, will be sold.

Revenue Assessment: The proclamation mentions that the property has an annual revenue assessment of ₹10,000 payable to the government.

Encumbrances: It states that the property is subject to a mortgage of ₹2,00,000.

Amount Recoverable: The proclamation clearly mentions that the sale is to recover ₹5,00,000.

Other Material Information: The proclamation includes information about the property's market value as estimated by Ramesh and Suresh.

Outcome: The auction is conducted as per the proclamation, and the property is sold to the highest bidder. The proceeds are used to satisfy Ramesh's decree.

Example 2:

Scenario: Meena has a court decree against Rajesh for ₹3,00,000. Rajesh owns agricultural land in Punjab, and the court orders its sale by public auction to recover the debt.

Application of Rule 66:

Proclamation of Sale: The court issues a proclamation in Punjabi (the language of the court) announcing the sale.

Notice to Parties: Both Meena (decree-holder) and Rajesh (judgment-debtor) are notified about the sale.

Details in Proclamation:

Property Description: The proclamation specifies that Rajesh's agricultural land in Ludhiana, measuring 5 acres, will be sold.

Revenue Assessment: The proclamation mentions that the land has an annual revenue assessment of ₹15,000 payable to the government.

Encumbrances: It states that the land is free from any encumbrances.

Amount Recoverable: The proclamation clearly mentions that the sale is to recover ₹3,00,000.

Other Material Information: The proclamation includes information about the land's fertility and irrigation facilities, which are important for potential buyers.

Outcome: The auction is conducted as per the proclamation, and the land is sold to the highest bidder. The proceeds are used to satisfy Meena's decree.

Rule 67: Mode of making proclamation.

Proclamation and Publication

(1) Every proclamation shall be made and published, as nearly as may be, in the manner prescribed by rule 54, sub-rule (2).

(2) Where the Court so directs, such proclamation shall also be published in the Official Gazette or in a local newspaper, or in both, and the costs of such publication shall be deemed to be costs of the sale.

(3) Where property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Court, otherwise be given.

Simplified act

Proclamation and Publication

(1) Every official announcement should be made and shared in the way described by rule 54, sub-rule (2).

(2) If the Court decides, the announcement should also be published in the Official Gazette, a local newspaper, or both. The cost of this publication will be considered part of the sale expenses.

(3) If property is divided into parts to be sold separately, you don't need to make a separate announcement for each part, unless the Court thinks that proper notice of the sale can't be given otherwise.

Explanation using Example

Example 1:

Rajesh has a court decree against him to pay a debt of ₹5,00,000 to Suresh. Rajesh fails to pay the amount, so Suresh approaches the court to execute the decree. The court orders the sale of Rajesh's property to recover the debt.

The court issues a proclamation for the sale of Rajesh's property.

The proclamation is made and published in the manner prescribed by Rule 54, sub-rule (2), which includes affixing the proclamation on a conspicuous part of the property and at the court premises.

Additionally, the court directs that the proclamation be published in the Official Gazette and a local newspaper to ensure wider publicity.

The costs incurred for publishing the proclamation in the Official Gazette and the local newspaper are added to the costs of the sale.

Example 2:

Meena has a court decree to recover ₹10,00,000 from her tenant, Ravi, who has defaulted on rent payments. Ravi owns multiple plots of land, and the court orders the sale of these plots to recover the amount.

The court decides to sell Ravi's property, which is divided into three separate plots.

A single proclamation is made and published for the sale of all three plots, as the court believes that proper notice of the sale can be given through one proclamation.

The proclamation is made and published in the manner prescribed by Rule 54, sub-rule (2), including affixing it on a conspicuous part of each plot and at the court premises.

The court also directs that the proclamation be published in a local newspaper to ensure that potential buyers are aware of the sale.

The costs of publishing the proclamation in the local newspaper are added to the costs of the sale.

Example 3:

Anita has a court decree to recover ₹2,00,000 from her business partner, Vikram, who has defaulted on a loan. Vikram owns a commercial property that the court orders to be sold to recover the amount.

The court issues a proclamation for the sale of Vikram's commercial property.

The proclamation is made and published in the manner prescribed by Rule 54, sub-rule (2), which includes affixing the proclamation on a conspicuous part of the property and at the court premises.

The court does not find it necessary to publish the proclamation in the Official Gazette or a local newspaper, as the affixed notices are deemed sufficient to inform potential buyers.

Since the property is not divided into lots, a single proclamation is sufficient for the sale.

Example 4:

Sunita has a court decree to recover ₹15,00,000 from her contractor, Ramesh, who has failed to complete a construction project. Ramesh owns a large piece of land that the court orders to be sold in smaller lots to recover the amount.

The court decides to sell Ramesh's land, which is divided into five smaller lots.

A single proclamation is made and published for the sale of all five lots, as the court believes that proper notice of the sale can be given through one proclamation.

The proclamation is made and published in the manner prescribed by Rule 54, sub-rule (2), including affixing it on a conspicuous part of each lot and at the court premises.

The court also directs that the proclamation be published in the Official Gazette and a local newspaper to ensure maximum publicity.

The costs of publishing the proclamation in the Official Gazette and the local newspaper are added to the costs of the sale.

Rule 68: Time of sale.

Save in the case of property of the kind described in the proviso to rule 43, no sale hereunder shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least fifteen days in the case of immovable property, and of at least seven days in the case of movable property, calculated from the date on which the copy of the proclamation has been affixed on the court-house of the Judge ordering the sale.

Simplified act

Except for the type of property mentioned in the exception to rule 43, no sale can happen without the written consent of the person who owes the debt. The sale must wait at least fifteen days for immovable property (like land or buildings) and at least seven days for movable property (like cars or furniture) from the date the sale notice is posted at the courthouse of the Judge who ordered the sale.

Explanation using Example

Example 1:

Scenario: Ramesh has a court decree against him to pay a debt to Suresh. Ramesh fails to pay the debt, so Suresh seeks to execute the decree by selling Ramesh's property.

Application of Rule 68:

The court orders the sale of Ramesh's house (immovable property).

A proclamation of the sale is issued and affixed on the court-house of the Judge ordering the sale on 1st January.

According to Rule 68, the sale cannot take place until at least 15 days have passed from the date of the proclamation.

Therefore, the earliest date the sale can occur is 16th January, unless Ramesh provides written consent for an earlier sale.

Example 2:

Scenario: Priya has a court decree against her to pay a debt to Anil. Priya fails to pay the debt, so Anil seeks to execute the decree by selling Priya's car (movable property).

Application of Rule 68:

The court orders the sale of Priya's car.

A proclamation of the sale is issued and affixed on the court-house of the Judge ordering the sale on 1st February.

According to Rule 68, the sale cannot take place until at least 7 days have passed from the date of the proclamation.

Therefore, the earliest date the sale can occur is 8th February, unless Priya provides written consent for an earlier sale.

Rule 69: Adjournment or stoppage of sale.

Sale Adjournment and Stoppage

(1) The Court may, in its discretion, adjourn any sale hereunder to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment:

Provided that, where the sale is made in, or within the precincts of, the court-house, no such adjournment shall be made without the leave of the Court.

(2) Where a sale is adjourned under sub-rule (1) for a longer period than thirty days afresh proclamation under rule 67 shall be made, unless the judgment-debtor consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court which ordered the sale.

Simplified act

Sale Adjournment and Stoppage

(1) The Court can decide to postpone any sale to a specific date and time. The officer in charge of the sale can also decide to postpone it, but must record the reasons for doing so:

However, if the sale is happening in or near the courthouse, the officer needs the Court's permission to postpone it.

(2) If the sale is postponed for more than thirty days, a new announcement must be made, unless the person who owes the debt agrees to skip this step.

(3) The sale must be stopped if, before the item is sold, the debt and costs (including sale costs) are paid to the officer in charge, or if proof is given that the amount has been paid into the Court that ordered the sale.

Explanation using Example

Example 1:

Scenario: Ajay owes Rs. 5 lakhs to Vijay and has not repaid the amount despite a court decree. Vijay initiates the process to sell Ajay's property to recover the debt.

Application of Rule 69:

Adjournment by Court: The court schedules the sale of Ajay's property for the 15th of March. However, on the 14th of March, Ajay's lawyer requests an adjournment due to a family emergency. The court, using its discretion, adjourns the sale to the 30th of March.

Adjournment by Officer: On the 30th of March, the officer conducting the sale finds that the weather is extremely bad, making it difficult for bidders to attend. The officer records the reason and adjourns the sale to the 5th of April.

Proclamation Requirement: Since the adjournment is for more than 30 days, a fresh proclamation of the sale is required unless Ajay consents to waive this requirement.

Stopping the Sale: On the 5th of April, just before the property is about to be sold, Ajay manages to arrange the Rs. 5 lakhs along with the costs of the sale and tenders the amount to the officer. The officer verifies the payment and stops the sale immediately.

Example 2:

Scenario: Priya has a court decree against her for Rs. 2 lakhs owed to Sunil. Sunil initiates the sale of Priya's car to recover the debt.

Application of Rule 69:

Adjournment by Court: The sale is scheduled for the 10th of June. Priya's lawyer files a petition on the 9th of June, stating that Priya is negotiating a loan to pay off the debt. The court, considering the petition, adjourns the sale to the 25th of June.

Adjournment by Officer: On the 25th of June, the officer conducting the sale notices that there is a significant traffic disruption in the area, preventing potential buyers from reaching the sale location. The officer records this reason and adjourns the sale to the 1st of July.

Proclamation Requirement: Since the adjournment is less than 30 days, no fresh proclamation is required.

Stopping the Sale: On the 1st of July, just before the car is sold, Priya's friend pays the Rs. 2 lakhs and the costs of the sale directly into the court. The officer receives proof of this payment and stops the sale immediately.

Rule 70: Saving of certain sales. Repealed.

Repealed by the Code of Civil Procedure (Amendment) Act, 1956 (66 of 1956), & 14.

Rule 71: Defaulting purchaser answerable for loss on re-sale.

Any deficiency of price which may happen on a re-sale by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Court by the officer or other person holding the sale, and shall, at the instance of either the decree-holder or the judgment-debtor, be recoverable from the defaulting purchaser under the provisions relating to the execution of a decree for the payment of money.

Simplified act

If the buyer fails to pay and the item has to be sold again at a lower price, the difference in price and any extra costs from the second sale must be reported to the Court by the person in charge of the sale.

Either the person who won the case (decree-holder) or the person who lost the case (judgment-debtor) can ask the Court to make the defaulting buyer pay the difference and extra costs, as if it were a regular debt.

Explanation using Example

Example 1:

Ravi, a businessman, won a court auction to purchase a property for ₹50 lakhs. However, after winning the bid, Ravi failed to make the payment within the stipulated time. Consequently, the court ordered a re-sale of the property. During the re-sale, the property was sold for only ₹45 lakhs. The court officer

certified that there was a deficiency of ₹5 lakhs due to Ravi's default. Additionally, the expenses incurred for the re-sale amounted to ₹1 lakh. The decree-holder, who was owed money from the original court case, requested the court to recover the ₹6 lakhs (₹5 lakhs deficiency + ₹1 lakh expenses) from Ravi. Under Rule 71 of the Code of Civil Procedure 1908, the court ordered Ravi to pay the ₹6 lakhs to cover the loss and expenses.

Example 2:

Meena, a real estate investor, bid ₹30 lakhs for a piece of land in a court-ordered auction but failed to complete the purchase. The court then re-sold the land for ₹28 lakhs. The court officer reported a deficiency of ₹2 lakhs due to Meena's default and additional re-sale expenses of ₹50,000. The judgment-debtor, who was the original owner of the land and owed money, requested the court to recover the ₹2.5 lakhs (₹2 lakhs deficiency + ₹50,000 expenses) from Meena. According to Rule 71 of the Code of Civil Procedure 1908, the court directed Meena to pay the ₹2.5 lakhs to cover the loss and expenses incurred due to her default.

Rule 72: Decree-holder not to bid for or buy property without permission. Where decree-holder purchases, amount of decree may be taken as payment.

Execution of Decree

- (1) No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.
- (2) Where decree-holder purchases, amount of decree may be taken as payment. - Where a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, subject to the provisions of section 73, be set off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.
- (3) Where a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person whose interests are affected by the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale and all expenses attending it, shall be paid by the decree-holder.

Simplified act

Execution of Decree

(1) If you have a court order to sell someone's property to pay off a debt, you cannot bid on or buy that property yourself unless the court specifically allows you to.

(2) If the court allows you to buy the property, the amount you owe can be subtracted from the purchase price. The court will then consider the debt paid off, either fully or partially, depending on the amounts.

(3) If you buy the property without the court's permission, the court can cancel the sale if the person who owes the debt or anyone else affected by the sale asks them to. You will also have to pay any costs related to canceling the sale and any loss in price if the property is sold again, plus all related expenses.

Explanation using Example

Example 1:

Scenario: Rajesh has a decree against Suresh for a debt of ₹5,00,000. Suresh's property is being auctioned to satisfy the decree.

Without Permission: Rajesh wants to bid for Suresh's property at the auction. However, he does not seek the court's permission and wins the bid at ₹4,00,000. Suresh learns about this and applies to the court to set aside the sale because Rajesh did not have permission to bid. The court agrees with Suresh and sets aside the sale. Rajesh is now responsible for any costs associated with the application and the re-sale of the property.

With Permission: Rajesh seeks and obtains the court's permission to bid at the auction. He wins the bid at ₹4,00,000. The court allows Rajesh to set off the ₹4,00,000 against the ₹5,00,000 decree. Rajesh now only needs to pay the remaining ₹1,00,000 to satisfy the decree fully.

Example 2:

Scenario: Meena has a decree against Ravi for ₹3,00,000. Ravi's property is being auctioned to satisfy the decree.

Without Permission: Meena does not seek the court's permission and bids for Ravi's property through her friend, Anil. Anil wins the bid at ₹2,50,000. Ravi finds out and applies to the court to set aside the sale because Meena, through Anil, did not have permission to bid. The court sets aside the sale, and Meena

is responsible for the costs of the application, any deficiency in price on re-sale, and all related expenses.

With Permission: Meena seeks and obtains the court's permission to bid at the auction. She wins the bid at ₹2,50,000. The court allows Meena to set off the ₹2,50,000 against the ₹3,00,000 decree. Meena now only needs to pay the remaining ₹50,000 to satisfy the decree full

Rule 72A: Mortgagee not to bid at sale without the leave of the Court.

Notwithstanding anything contained in rule 72, a mortgagee of immovable property shall not bid for or purchase property sold in execution of a decree on the mortgage unless the Court grants him leave to bid for or purchase the property.

(2) If leave to bid is granted to such mortgagee, then the Court shall fix a reserve price as regards the mortgagee, and unless the Court otherwise directs, the reserve price shall be -

(a) not less than the amount then due for principal, interest and costs in respect of the mortgage if the property is sold in one lot; and

(b) in the case of any property sold in lots, not less than such sum as shall appear to the Court to be properly attributable to each lot in relation to the amount then due for principal, interest and costs on the mortgage.

(3) In other respects, the provisions of sub-rules (2) and (3) of rule 72 shall apply in relation to purchase by the decree-holder under that rule.

Simplified act

Even though rule 72 says otherwise, if you have a mortgage on a property, you cannot bid for or buy that property when it is being sold to pay off a debt unless the Court gives you permission.

If the Court allows you to bid, it will set a minimum price for you to bid. This minimum price will usually be:

(a) At least the total amount you are owed for the mortgage, including the principal, interest, and costs, if the property is sold as one piece.

(b) If the property is sold in parts, the minimum price for each part will be what the Court thinks is fair based on the total amount you are owed for the mortgage, including the principal, interest, and costs.

Apart from these rules, the other rules in sub-rules (2) and (3) of rule 72 will still apply to you if you are the one who is owed the debt and want to buy the property.

Explanation using Example

Example 1:

Scenario: Rajesh is a mortgagee who has lent money to Suresh against Suresh's immovable property. Suresh fails to repay the loan, and Rajesh obtains a court decree to sell the property to recover his money.

Application of Rule 72A: Rajesh wants to bid for the property himself during the auction to ensure he gets his money back. However, according to Rule 72A, Rajesh cannot bid for or purchase the property without the court's permission.

Steps:

Rajesh applies to the court for permission to bid at the auction.

The court reviews Rajesh's application and decides to grant him leave to bid.

The court sets a reserve price for the property, which is the minimum amount Rajesh must bid. This reserve price is at least the total amount due for principal, interest, and costs related to the mortgage.

Rajesh participates in the auction and bids at or above the reserve price set by the court.

Example 2:

Scenario: Meena is a mortgagee who has lent money to Ravi against Ravi's immovable property. Ravi defaults on the loan, and Meena gets a court order to sell the property. The property is to be sold in multiple lots.

Application of Rule 72A: Meena wants to bid for one of the lots during the auction. According to Rule 72A, she needs the court's permission to bid.

Steps:

Meena applies to the court for permission to bid on the specific lot she is interested in.

The court grants Meena leave to bid and sets a reserve price for the lot. This reserve price is determined based on the amount due for principal, interest, and costs attributable to that specific lot.

Meena participates in the auction and bids at or above the reserve price set by the court for that lot.

In both examples, the court's involvement ensures that the mortgagee does not unfairly benefit from the auction process and that the property is sold at a fair price.

Rule 73: Restriction on bidding or purchase by officers.

No officer or other person having any duty to perform in connection with any sale shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

Simplified act

No officer or person involved in a sale is allowed to bid for, buy, or try to get any interest in the property being sold, either directly or indirectly.

Explanation using Example

Example 1:

Rajesh is a court officer responsible for overseeing the auction of a property to recover debts owed by a debtor. During the auction, Rajesh sees that the property is being sold at a very low price and decides to place a bid through his friend to acquire the property for himself. This action is a violation of Rule 73 of the Code of Civil Procedure, 1908, as Rajesh, being an officer with duties related to the sale, is prohibited from bidding on or acquiring any interest in the property, either directly or indirectly.

Example 2:

Meena is a clerk in the court's execution department, and her job involves processing paperwork for property auctions. She learns that a valuable piece of land is up for auction and asks her brother to bid on her behalf, planning to transfer the property to her name later. This scenario also breaches Rule 73 of the Code of Civil Procedure, 1908, because Meena, despite not directly participating in the auction, is indirectly attempting to acquire an interest in the property through her brother.

Sale of movable property

Rule 74: Sale of agricultural produce.

(1) Where the property to be sold is agricultural produce, the sale shall be held,

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(a) if such produce is a growing crop, on or near the land on which such crop has grown, or

(b) if such produce has been cut or gathered, at or near the threshing floor or place for trading out grain or the like or fodder-stack on or in which it is deposited :

Provided that the Court may direct the sale to be held at the nearest place of public resort, if it is of opinion that the produce is thereby likely to sell to greater advantage.

(2) Where, on the produce being put up for sale, -

(a) a fair price, in the estimation of the person holding the sale, is not offered for it, and

(b) the owner of the produce or a person authorized to act in his behalf applies to have the sale postponed till next day or, if a market is held at the place of sale, the next market-day,

the sale shall be postponed accordingly and shall be then completed, whatever price may be offered for the produce.

75.

Simplified act

(1) If the property being sold is farm produce, the sale should happen:

(a) If the produce is still growing, the sale should be on or near the land where it is growing, or

(b) If the produce has been harvested, the sale should be at or near the place where it is stored or processed, like a threshing floor or fodder stack.

However, the Court can decide to hold the sale at the nearest public place if it believes that the produce will sell better there.

(2) When the produce is put up for sale:

(a) If the person in charge of the sale thinks a fair price is not being offered, and

(b) The owner of the produce or someone authorized by the owner asks to delay the sale until the next day or the next market day,

then the sale should be postponed and completed on that next day, regardless of the price offered.

75.

Explanation using Example

Example 1:

Ramesh, a farmer in Maharashtra, has a debt that he is unable to repay. The court orders the sale of his agricultural produce to recover the debt. Ramesh has a field of sugarcane that is ready for harvest. According to Rule 74 of the Code of Civil Procedure 1908:

Since the sugarcane is a growing crop, the sale must be held on or near the land where the sugarcane is growing.

The court may decide to hold the sale at the nearest public market if it believes that the sugarcane will fetch a better price there.

On the day of the sale, the auctioneer finds that the bids are too low and not fair. Ramesh requests the auctioneer to postpone the sale to the next market day. The auctioneer agrees, and the sale is postponed. On the next market day, the sale is completed regardless of the price offered.

Example 2:

Sita, a farmer in Punjab, has harvested her wheat crop and stored it at the local threshing floor. She has an outstanding loan, and the court orders the sale of her wheat to recover the debt. According to Rule 74 of the Code of Civil Procedure 1908:

Since the wheat has been cut and gathered, the sale must be held at or near the threshing floor where the wheat is stored.

The court may decide to hold the sale at the nearest public market if it believes that the wheat will fetch a better price there.

On the day of the sale, the auctioneer finds that the bids are too low and not fair. Sita's authorized representative requests the auctioneer to postpone the sale to the next market day. The auctioneer agrees, and the sale is postponed. On the next market day, the sale is completed regardless of the price offered.

Rule 75: Special provisions relating to growing crops.

(1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed as to admit of its being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.

(2) Where the crop from its nature does not admit of being stored, it may be sold before it is cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending and cutting or gathering it.

Simplified act

(1) If the property being sold is a growing crop that can be stored but hasn't been stored yet, the sale date should be set so that there is enough time to prepare the crop for storage before the sale. The sale should only happen after the crop has been cut or gathered and is ready to be stored.

(2) If the crop cannot be stored, it can be sold before it is cut and gathered. The buyer has the right to go onto the land and do whatever is needed to take care of, cut, or gather the crop.

Explanation using Example

Example 1:

Scenario: Ramesh, a farmer in Punjab, has taken a loan from a local bank. Due to unforeseen circumstances, he is unable to repay the loan, and the bank obtains a court decree to recover the amount by selling Ramesh's property, which includes a field of wheat that is almost ready for harvest.

Application of Rule 75:

Since wheat is a crop that can be stored after harvesting, the court fixes the sale date after ensuring that there is enough time for the wheat to be cut and stored.

The sale is scheduled for a date after the wheat has been harvested and stored properly.

The sale proceeds smoothly, and the harvested wheat is sold to recover the loan amount.

Example 2:

Scenario: Sita, a farmer in Maharashtra, has a sugarcane field. She has defaulted on a loan, and the creditor has obtained a court order to sell her property to recover the debt. The sugarcane is still growing and not yet ready for harvest.

Application of Rule 75:

Since sugarcane is a crop that does not admit of being stored in its growing state, the court allows the sale of the sugarcane field before the crop is cut and gathered.

The purchaser of the sugarcane field is given the right to enter the land and take necessary actions to tend, cut, and gather the sugarcane.

The purchaser hires laborers to harvest the sugarcane and sells it to a sugar mill, thereby recovering the investment made in purchasing the field.

Example 3:

Scenario: Mohan, a farmer in Karnataka, has a field of tomatoes that are almost ripe. He has defaulted on a loan, and the creditor has obtained a court order to sell his property to recover the debt.

Application of Rule 75:

Since tomatoes are perishable and do not admit of being stored for long periods, the court allows the sale of the tomato field before the tomatoes are harvested.

The purchaser of the tomato field is given the right to enter the land and take necessary actions to tend, pick, and gather the tomatoes.

The purchaser hires workers to pick the tomatoes and sells them in the market, thereby recovering the investment made in purchasing the field.

Example 4:

Scenario: Lakshmi, a farmer in Tamil Nadu, has a field of rice that is almost ready for harvest. She has defaulted on a loan, and the creditor has obtained a court order to sell her property to recover the debt.

Application of Rule 75:

Since rice can be stored after harvesting, the court fixes the sale date after ensuring that there is enough time for the rice to be cut and stored.

The sale is scheduled for a date after the rice has been harvested and stored properly.

The sale proceeds smoothly, and the harvested rice is sold to recover the loan amount.

Rule 76: Negotiable instruments and shares in corporations.

Where the property to be sold is a negotiable instrument or a share in a corporation, the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker.

Simplified act

If the property to be sold is a negotiable instrument (like a check or promissory note) or a share in a corporation, the Court can allow the sale to be done through a broker instead of a public auction.

Explanation using Example

Example 1:

Rajesh has a court decree against Suresh for a debt of ₹5,00,000. Suresh owns shares in a prominent Indian corporation, Reliance Industries Ltd. To recover the debt, Rajesh approaches the court to execute the decree. Instead of ordering a public auction of Suresh's shares, the court authorizes the sale of these shares through a registered stockbroker. The broker sells the shares on the stock exchange, and the proceeds are used to satisfy the debt owed to Rajesh.

Example 2:

Meena has a court decree against her former business partner, Anil, for ₹2,00,000. Anil owns several negotiable instruments, including promissory notes and bills of exchange. To recover the amount, Meena requests the court

to execute the decree. The court decides that instead of selling these negotiable instruments through a public auction, it will authorize the sale through a financial broker who specializes in such instruments. The broker finds buyers for the promissory notes and bills of exchange, and the money obtained from the sale is used to pay off the debt owed to Meena.

Rule 77: Sale by public auction.

(1) Where movable property is sold by public auction the price of each lot shall be paid at the time of sale or as soon after as the officer or other person holding the sale directs, and in default of payment the property shall forthwith be re-sold.

(2) On payment of the purchase-money, the officer or other person holding the sale shall grant a receipt for the same, and the sale shall become absolute.

(3) Where the movable property to be sold is a share in goods belonging to the judgment-debtor and a co-owner, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

Simplified act

(1) When items that can be moved (like furniture or cars) are sold at a public auction, the buyer must pay for each item right away or as soon as the person running the auction says. If the buyer doesn't pay, the item will be sold again immediately.

(2) Once the buyer pays, the person running the auction will give them a receipt, and the sale will be final.

(3) If the item being sold is something that the person who owes money owns together with someone else, and both the co-owner and another person offer the same amount of money for it, the co-owner's offer will be considered the winning bid.

Explanation using Example

Example 1:

Rajesh owes money to Suresh and fails to repay the debt. Suresh takes Rajesh to court and wins a decree for the amount owed. Rajesh has a collection of antique furniture, which the court orders to be sold to satisfy the debt. The court arranges a public auction for the sale of the furniture.

During the auction, each piece of furniture (movable property) is sold as a separate lot.

A bidder named Anil wins a lot by bidding ₹50,000 for an antique chair.

Anil is required to pay the ₹50,000 immediately or as directed by the auction officer.

Anil pays the amount on the spot, and the auction officer gives him a receipt for the payment.

The sale of the chair to Anil becomes final and absolute.

If Anil had failed to pay the ₹50,000 immediately, the chair would have been re-auctioned right away.

Example 2:

Meena and her brother Ravi jointly own a collection of rare coins. Meena has a debt, and the court orders her share of the coin collection to be sold at a public auction to satisfy the debt.

During the auction, Meena's share of the coin collection is put up for sale.

Ravi, being a co-owner, participates in the auction along with other bidders.

Ravi and another bidder, Sunil, both bid ₹1,00,000 for Meena's share of the coins.

According to Rule 77(3), since Ravi is a co-owner and has bid the same amount as Sunil, the bid is considered to be Ravi's.

Ravi pays the ₹1,00,000, receives a receipt from the auction officer, and the sale becomes absolute.

This ensures that Ravi, as a co-owner, has the first right to purchase the share at the highest bid amount.

Rule 78: Irregularity not to vitiate sale, but any person injured may sue.

The sale of movable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

Simplified act

If someone sells movable property in a way that is not allowed, the sale is not valid.

If this improper sale causes harm to someone, that person can take legal action.

The harmed person can sue the person responsible for compensation.

If the person responsible is the buyer, the harmed person can also ask for the property back and compensation if they can't get the property back.

Explanation using Example

Example 1:

Ravi had a court decree against him, and his motorcycle was auctioned off to satisfy the judgment. During the auction process, there was a procedural irregularity: the auction notice was not properly published in the local newspaper as required by law. Despite this irregularity, the auction proceeded, and Suresh purchased the motorcycle.

Ravi, feeling aggrieved by the irregularity, cannot invalidate the sale solely because of the procedural mistake. However, Ravi can file a lawsuit against the responsible party (e.g., the court officer who failed to publish the notice correctly) for any damages he suffered due to this irregularity. If Suresh, the purchaser, was aware of the irregularity and acted in bad faith, Ravi could also sue Suresh to recover the motorcycle and seek compensation.

Example 2:

Meena's jewelry was seized and sold at an auction to satisfy a debt she owed. During the auction, the auctioneer failed to follow the proper bidding process, leading to a lower sale price than the jewelry's market value. Despite this irregularity, the sale was completed, and Anil bought the jewelry.

Meena cannot invalidate the sale just because the auctioneer did not follow the correct bidding process. However, she can file a lawsuit against the auctioneer for the loss she incurred due to the irregularity. If Anil, the purchaser, was complicit in the irregularity, Meena could also sue Anil to recover her jewelry and seek compensation for any additional losses.

Rule 79: Delivery of movable property, debts and shares.

(1) Where the property sold is movable property of which actual seizure has been made, it shall be delivered to the purchaser.

(2) Where the property sold is movable property in the possession of some person other than the judgement-debtor, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

(3) Where the property sold is a debt not secured by a negotiable instrument, or is a share in a corporation, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the corporation from permitting any such transfer or making any such payment to any person except the purchaser.

Simplified act

(1) If the property sold is something that can be moved and has been physically taken, it should be given to the buyer.

(2) If the property sold is something that can be moved but is currently with someone other than the person who owes money, the buyer should get it by notifying the person holding it that they can't give it to anyone else except the buyer.

(3) If the property sold is a debt that isn't backed by a negotiable document, or a share in a company, the buyer should get it through a written court order. This order will stop the creditor from collecting the debt or interest from anyone other than the buyer, and stop the debtor from paying anyone other than the buyer. It will also stop the person whose name the share is in from transferring it to anyone other than the buyer or receiving any dividends or interest, and stop the company's officials from allowing any such transfer or payment to anyone other than the buyer.

Explanation using Example

Example 1:

Scenario: Seizure and Sale of a Car

Context: Rajesh owes a significant amount of money to Suresh, and Suresh has obtained a court decree to recover the debt. Rajesh owns a car, which is seized by the court officers as part of the execution of the decree.

Application of Rule 79:

Actual Seizure and Delivery: The car, being a movable property, is seized by the court officers. Once the car is sold at an auction, it is delivered to the purchaser, Mr. Kumar, who won the bid.

Possession by Third Party: If the car was in the possession of Rajesh's friend, Anil, instead of Rajesh, the court would issue a notice to Anil, prohibiting him from delivering the car to anyone except Mr. Kumar, the purchaser.

Example 2:

Scenario: Sale of Shares in a Corporation

Context: Priya has a debt to pay to her creditor, Ankit, and Ankit has obtained a court decree to recover the debt. Priya owns shares in a corporation, which are not secured by a negotiable instrument.

Application of Rule 79:

Debt or Shares: The court issues a written order prohibiting the corporation from allowing Priya to transfer her shares to anyone except the purchaser, Mr. Sharma, who bought the shares at the court-ordered sale.

Dividend or Interest: The court also prohibits the corporation from paying any dividends or interest on those shares to anyone except Mr. Sharma. The corporation's secretary ensures that no transfer or payment is made to anyone other than Mr. Sharma.

Example 3:

Scenario: Recovery of Unsecured Debt

Context: Meena owes money to her creditor, Ravi, and Ravi has obtained a court decree to recover the debt. Meena has an unsecured debt owed to her by another individual, Sunil.

Application of Rule 79:

Debt Not Secured by Negotiable Instrument: The court issues a written order prohibiting Sunil from paying the debt to Meena or anyone else except Ravi, the purchaser of the debt.

Prohibition on Payment: Sunil is notified that he must pay the debt amount directly to Ravi, and Meena is prohibited from receiving any payment from Sunil regarding this debt.

Example 4:

Scenario: Sale of Household Items

Context: Arjun owes money to his creditor, Neha, and Neha has obtained a court decree to recover the debt. Arjun's household items, such as furniture and electronics, are seized by the court officers.

Application of Rule 79:

Actual Seizure and Delivery: The household items, being movable property, are seized by the court officers. Once these items are sold at an auction, they are delivered to the purchaser, Mrs. Gupta, who won the bid.

Possession by Third Party: If the household items were in the possession of Arjun's relative, Ramesh, instead of Arjun, the court would issue a notice to Ramesh, prohibiting him from delivering the items to anyone except Mrs. Gupta, the purchaser.

Rule 80: Transfer of negotiable instruments and shares.

Execution of Documents and Endorsements

(1) Where the execution of a document or the endorsement of the party in whose name a negotiable instrument or a share in a corporation is standing is required to transfer such negotiable instrument or share, the Judge or such officer as he may appoint in this behalf may execute such document or make such endorsement as may be necessary, and such execution or endorsement shall have the same effect as an execution or endorsement by the party.

(2) Such execution or endorsement may be in the following form, namely:

A. B. by C.D. Judge of the Court of (or as the case may be), in a suit by E. F. against A.B.

(3) Until the transfer of such negotiable instrument or share, the Court may, by order, appoint some person to receive any interest or dividend due thereon and

to sign a receipt for the same; and any receipt so signed shall be as valid and effectual for all purposes as if the same had been signed by the party himself.

Simplified act

Signing Documents and Endorsements

(1) If a document needs to be signed or a negotiable instrument (like a check) or a share in a company needs to be endorsed (signed on the back) to transfer it to someone else, a Judge or an officer appointed by the Judge can sign or endorse it. This signature or endorsement will be just as valid as if the original owner had done it themselves.

(2) The signature or endorsement can look like this:

A. B. by C.D. Judge of the Court of (or as the case may be), in a case by E. F. against A.B.

(3) Until the negotiable instrument or share is transferred, the Court can appoint someone to receive any interest or dividends (profits) that are due and to sign a receipt for them. This receipt will be just as valid as if the original owner had signed it.

Explanation using Example

Example 1:

Scenario: Ramesh has a share certificate in XYZ Corporation, but he owes money to Suresh as per a court decree. Ramesh is refusing to transfer the shares to Suresh.

Application of Rule 80:

The court orders Ramesh to transfer the shares to Suresh.

Ramesh does not comply with the court order.

The judge appoints an officer to execute the transfer of shares on behalf of Ramesh.

The officer signs the necessary documents as follows: "Ramesh by C.D. Judge of the Court, in a suit by Suresh against Ramesh."

The transfer is legally valid as if Ramesh himself had signed the documents.

Example 2:

Scenario: Priya holds a negotiable instrument (a promissory note) in her name, but she has a debt to Anil as per a court decree. Priya is not willing to endorse the promissory note to Anil.

Application of Rule 80:

The court orders Priya to endorse the promissory note to Anil.

Priya does not comply with the court order.

The judge appoints an officer to endorse the promissory note on behalf of Priya.

The officer endorses the note as follows: "Priya by C.D. Judge of the Court, in a suit by Anil against Priya."

The endorsement is legally valid as if Priya herself had endorsed the note.

Example 3:

Scenario: Sunita has shares in ABC Corporation, but she is involved in a legal dispute with Rajesh, who has a court decree against her. Sunita is not transferring the shares, and dividends are due on these shares.

Application of Rule 80:

The court orders Sunita to transfer the shares to Rajesh.

Sunita does not comply with the court order.

The judge appoints an officer to execute the transfer of shares on behalf of Sunita.

The officer signs the necessary documents as follows: "Sunita by C.D. Judge of the Court, in a suit by Rajesh against Sunita."

Until the shares are transferred, the court appoints a person to receive the dividends due on the shares.

The appointed person signs a receipt for the dividends, which is legally valid as if Sunita herself had signed it.

Example 4:

Scenario: Amit holds a negotiable instrument (a bill of exchange) in his name, but he has a debt to Neha as per a court decree. Amit is not willing to endorse the bill of exchange to Neha.

Application of Rule 80:

The court orders Amit to endorse the bill of exchange to Neha.

Amit does not comply with the court order.

The judge appoints an officer to endorse the bill of exchange on behalf of Amit.

The officer endorses the bill as follows: "Amit by C.D. Judge of the Court, in a suit by Neha against Amit."

The endorsement is legally valid as if Amit himself had endorsed the bill.

Rule 81: Vesting order in case of other property.

In the case of any movable property not hereinbefore provided for, the Court may make an order vesting such property in the purchaser or as he may direct; and such property shall vest accordingly.

Simplified act

If there is any movable property (like cars, furniture, etc.) that hasn't been mentioned before, the Court can decide to give ownership of that property to the buyer or to someone the buyer chooses. Once the Court makes this decision, the property will belong to the person as decided.

Explanation using Example

Example 1:

Rajesh won a court case against a company that owed him money. The court ordered the company to pay Rajesh a certain amount, but the company failed to do so. Rajesh then requested the court to execute the decree. The court decided to sell some of the company's movable assets, such as office furniture and computers, to recover the amount owed to Rajesh. Since these items were not specifically mentioned in previous provisions, the court issued a vesting order, transferring ownership of the sold items to Rajesh or as he directed. Rajesh chose to have the items sold at auction, and the proceeds were given to him to satisfy the debt.

Example 2:

Meena had a legal dispute with her business partner over the ownership of certain equipment used in their factory. The court ruled in Meena's favor and ordered her partner to transfer the equipment to her. However, her partner

refused to comply. Meena approached the court for execution of the decree. The court then issued a vesting order for the equipment, which included machinery and tools not specifically covered under other provisions. This order legally transferred the ownership of the equipment to Meena, allowing her to take possession of the items or sell them as she saw fit.

Rule 82: What Courts may order sales.

Sales of immovable property in execution of decrees may be ordered by any Court other than a Court of Small Causes.

Simplified act

Sales of property that cannot be moved (like land or buildings) to pay off court judgments can be ordered by any Court, except for a Court of Small Causes.

Explanation using Example

Example 1:

Rajesh had taken a loan from a bank and failed to repay it. The bank filed a lawsuit against Rajesh and won the case. The court issued a decree ordering Rajesh to repay the loan amount. Since Rajesh did not comply with the decree, the bank requested the court to execute the decree by selling Rajesh's immovable property (his house). The court, which is a District Court, ordered the sale of Rajesh's house to recover the loan amount. This is permissible under Rule 82 of the Code of Civil Procedure, 1908, as the District Court is not a Court of Small Causes.

Example 2:

Meena had a dispute with her tenant, Ramesh, over unpaid rent. Meena took the matter to court and obtained a decree for the unpaid rent. Ramesh did not pay the amount specified in the decree. Meena then approached the court to execute the decree by selling Ramesh's immovable property (a piece of land he owned). The court, which is a High Court, ordered the sale of Ramesh's land to satisfy the decree. This action is in accordance with Rule 82 of the Code of Civil Procedure, 1908, as the High Court is authorized to order such sales.

Rule 83: Postponement of sale to enable judgment-debtor to raise amount of decree.

Order for Sale of Immovable Property

(1) Where an order for the sale of immovable property has been made, if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the judgment-debtor, the Court may, on his application, postpone the sale of the property comprised in the order for sale on such terms and for such period as it thinks proper, to enable him to raise the amount.

(2) In such case the Court shall grant a certificate to the judgment-debtor authorizing him within a period to be mentioned therein, and notwithstanding anything contained in section 64, to make the proposed mortgage, lease or sale:

Provided that all moneys payable under such mortgage, lease or sale shall be paid, not to the judgment-debtor, but, save in so far as a decree-holder is entitled to set-off such money under the provisions of rule 72, into Court:

Provided also that no mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Court.

(3) Nothing in this rule shall be deemed to apply to a sale of property directed to be sold in execution of a decree for sale in enforcement of a mortgage of, or charge on, such property.

Simplified act

Order for Sale of Immovable Property

(1) If a court orders the sale of someone's property (like land or a house) to pay off a debt, the person who owes the money (the judgment-debtor) can ask the court to delay the sale. They need to show the court that they might be able to get the money by mortgaging, leasing, or privately selling the property, or any other property they own. The court can then decide to postpone the sale for a certain period and under certain conditions to give them time to raise the money.

(2) If the court agrees to postpone the sale, it will give the judgment-debtor a certificate. This certificate allows them to mortgage, lease, or sell the property within a specified time, even if other rules say they can't. However:

Any money made from the mortgage, lease, or sale must be paid into the court, not to the person who owes the money, unless the person who is owed the

money (the decree-holder) has the right to keep some of it according to specific rules.

The mortgage, lease, or sale won't be final until the court approves it.

(3) This rule does not apply if the property is being sold to enforce a mortgage or charge on that property.

Explanation using Example

Example 1:

Rajesh, a businessman in Mumbai, has a decree against him for failing to repay a loan of ₹10 lakhs. The court has ordered the sale of his immovable property, a commercial shop in Andheri, to recover the amount. Rajesh approaches the court and informs them that he can raise the ₹10 lakhs by leasing out another property he owns in Bandra. He requests the court to postpone the sale of the Andheri shop to give him time to arrange the lease.

The court, after being satisfied with Rajesh's proposal, grants him a certificate authorizing him to lease the Bandra property within a specified period. The court also stipulates that the lease money should be paid directly into the court and not to Rajesh. The court postpones the sale of the Andheri shop for three months to allow Rajesh to complete the lease arrangement.

Example 2:

Sita, a resident of Delhi, has a decree against her for ₹5 lakhs due to a failed business partnership. The court has ordered the sale of her residential flat in Lajpat Nagar to recover the amount. Sita informs the court that she can raise the ₹5 lakhs by selling a piece of agricultural land she owns in Haryana. She requests the court to postpone the sale of her Lajpat Nagar flat to give her time to sell the agricultural land.

The court, after reviewing Sita's application, grants her a certificate authorizing her to sell the agricultural land within a specified period. The court also mandates that the sale proceeds should be deposited directly into the court. The court postpones the sale of the Lajpat Nagar flat for four months to allow Sita to complete the sale of the agricultural land.

Example 3:

Vikram, a software engineer in Bangalore, has a decree against him for ₹15 lakhs due to a breach of contract. The court has ordered the sale of his

immovable property, a villa in Whitefield, to recover the amount. Vikram approaches the court and explains that he can raise the ₹15 lakhs by mortgaging another property he owns in Koramangala. He requests the court to postpone the sale of the Whitefield villa to give him time to arrange the mortgage.

The court, after being convinced by Vikram's proposal, grants him a certificate authorizing him to mortgage the Koramangala property within a specified period. The court also specifies that the mortgage money should be paid directly into the court. The court postpones the sale of the Whitefield villa for two months to allow Vikram to complete the mortgage arrangement.

Rule 84: Deposit by purchaser and re-sale on default.

(1) On every sale of immovable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per cent. on the amount of his purchase-money to the officer or other person conducting the sale, and in default of such deposit, the property shall forthwith be re-sold.

(2) Where the decree-holder is the purchaser and is entitled to set-off the purchase-money under rule 72, the Court may dispense with the requirements of this rule.

Simplified act

(1) When someone buys a property that cannot be moved (like land or a building), they must immediately pay a deposit of 25% of the purchase price right after they are declared the buyer. This payment should be made to the officer or person in charge of the sale. If they don't pay this deposit, the property will be put up for sale again right away.

(2) If the person who won the court case (the decree-holder) is the one buying the property and they are allowed to subtract the purchase price from what they are owed (according to rule 72), the Court can decide that they don't need to follow the deposit rule mentioned above.

Explanation using Example

Example 1:

Ravi participated in a court-ordered auction for a piece of land in Mumbai. He was declared the highest bidder with a bid of ₹50,00,000. According to Rule 84 of the Code of Civil Procedure 1908, Ravi must immediately pay 25% of the bid amount, which is ₹12,50,000, to the officer conducting the sale. If Ravi fails to make this deposit immediately, the land will be re-auctioned right away.

Example 2:

Sita, a decree-holder, won a court case and was awarded a monetary judgment against Ramesh. Ramesh's property in Delhi was put up for auction to satisfy the judgment. Sita decided to bid for the property and was declared the highest bidder with a bid of ₹30,00,000. Since Sita is the decree-holder and is entitled to set-off the purchase money under Rule 72, the court may allow her to bypass the requirement of depositing 25% of the bid amount immediately. Instead, the court may adjust the purchase money against the amount Ramesh owes her.

Rule 85: Time for payment in full of purchase-money.

The full amount of purchase-money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property:

Provided that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under rule 72.

86.

Simplified act

The buyer must pay the full purchase price into the Court before the Court closes on the fifteenth day after the property is sold:

However, when figuring out how much to pay into the Court, the buyer can subtract any amount they are allowed to under rule 72.

86.

Explanation using Example

Example 1:

Ravi participated in a court-ordered auction to purchase a piece of immovable property. The auction was held on the 1st of October. Ravi won the auction with a bid of ₹10,00,000. According to Rule 85 of The Code Of Civil Procedure 1908, Ravi must pay the full amount of ₹10,00,000 into the court by the 15th of October (fifteen days from the date of the auction). If Ravi fails to make the payment by this deadline, he risks losing his right to the property, and the court may re-auction the property.

Example 2:

Sita won a court-ordered auction for a plot of land with a bid of ₹15,00,000. The auction took place on the 5th of November. Sita has a set-off claim of ₹2,00,000 against the judgment debtor, which is recognized under rule 72. Therefore, Sita is entitled to deduct this amount from the total purchase price. As a result, Sita needs to pay ₹13,00,000 (₹15,00,000 - ₹2,00,000) into the court by the 20th of November (fifteen days from the date of the auction). If Sita fails to pay this amount by the deadline, she may lose her right to the property, and the court may proceed with a re-auction.

Rule 86: Procedure in default of payment.

In default of payment within the period mentioned in the last preceding rule, the deposit may, if the Court thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

Simplified act

If the payment is not made within the time given in the previous rule,

the Court can decide to keep the deposit for the Government after covering the sale expenses.

The property will then be sold again.

The person who didn't pay on time will lose any right to the property or any money from the new sale.

Explanation using Example

Example 1:

Scenario: Ramesh wins a court auction for a piece of land and is required to pay the full amount within 30 days.

Application of Rule 86: Ramesh fails to make the payment within the 30-day period. The court decides to forfeit the deposit Ramesh made during the auction process to the Government. The court then orders the land to be re-sold in another auction. Ramesh loses all claims to the land and any money he might have paid beyond the deposit.

Example 2:

Scenario: Sita bids on a commercial property in a court-ordered auction and wins, with a requirement to pay the full amount within 45 days.

Application of Rule 86: Sita is unable to arrange the funds within the 45-day period. The court, after deducting the expenses of the auction, forfeits Sita's deposit to the Government. The commercial property is then put up for auction again. Sita loses any right to the property and any part of the amount for which it may be sold in the future.

Rule 87: Notification on re-sale.

Every re-sale of immovable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of fresh proclamation in the manner and for the period hereinbefore prescribed for the sale.

Simplified act

If someone buys a property and doesn't pay the full amount within the given time, the property will be put up for sale again.

Before selling the property again, a new announcement must be made, following the same rules and time frame as the original sale announcement.

Explanation using Example

Example 1:

Rajesh purchased a piece of land through a court-ordered auction because the original owner, Suresh, defaulted on a loan. Rajesh was required to pay the full purchase amount within 30 days. However, Rajesh failed to make the payment within the stipulated time. As per Rule 87 of the Code of Civil Procedure 1908, the court issued a fresh proclamation for the re-sale of the land. This means

the court announced a new auction date and followed the same procedures as the initial sale, giving other potential buyers an opportunity to purchase the land.

Example 2:

Meena won a bid for a commercial property in a court auction. She was given 45 days to pay the purchase money. Unfortunately, Meena could not arrange the funds within the given period. According to Rule 87 of the Code of Civil Procedure 1908, the court had to cancel her purchase and issue a fresh proclamation for re-sale. The court then advertised the property again, following the same legal procedures as before, to ensure transparency and fairness in the re-sale process.

Rule 88: Bid of co-sharer to have preference.

Where the property sold is a share of undivided immovable property and two or more persons, of whom one is a co-sharer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

Simplified act

If a piece of property that is being sold is a share of undivided real estate and two or more people bid the same amount for it, and one of those people is a co-owner, the bid will be considered to be from the co-owner.

Explanation using Example

Example 1:

Ravi and Suresh are brothers who jointly own an ancestral house in Delhi. Due to a legal dispute, the court orders the sale of the house. During the auction, Ravi (a co-sharer) and an outsider named Amit both bid ₹50 lakhs for the house. According to Rule 88 of the Code of Civil Procedure 1908, Ravi's bid will be given preference over Amit's bid because Ravi is a co-sharer of the property.

Example 2:

Meena and her cousin Ramesh jointly own a piece of agricultural land in Punjab. The land is put up for auction due to a decree for execution. During the auction, both Ramesh (a co-sharer) and a local businessman named Raj bid ₹30 lakhs for the land. Under Rule 88, Ramesh's bid will be considered the

winning bid because he is a co-sharer, even though both bids were for the same amount.

Rule 89: Application to set aside sale on deposit.

Execution of Decree - Sale of Immovable Property

(1) Where immovable property has been sold in execution of a decree, any person claiming an interest in the property sold at the time of the sale or at the time of making the application, or acting for or in the interest of such person, may apply to have the sale set aside on his depositing in Court, -

(a) for payment to the purchaser, a sum equal to five per cent. of the purchase-money, and

(b) for payment, to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder.

(2) Where a person applies under rule 90 to set aside the sale of his immovable property, he shall not, unless he withdraws his application, be entitled to make or prosecute an application under this rule.

(3) Nothing in this rule shall relieve the judgment-debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale.

Simplified act

Execution of Decree - Sale of Immovable Property

(1) If a piece of real estate (like land or a building) has been sold because of a court order, anyone who has a stake in that property at the time of the sale or when they apply can ask the court to cancel the sale. To do this, they need to deposit:

(a) an amount equal to 5% of the purchase price to be paid to the buyer, and

(b) the amount mentioned in the sale notice to be paid to the person who won the court case, minus any amount that person has already received since the sale notice was issued.

(2) If someone tries to cancel the sale of their property under rule 90, they cannot make or continue another application under this rule unless they withdraw their first application.

(3) This rule does not remove any responsibility the person who lost the case (the judgment-debtor) has for costs and interest that are not included in the sale notice.

Explanation using Example

Example 1:

Ravi owns a piece of land in Bangalore. Due to a financial dispute, a court issues a decree against him, and his land is sold in an auction to recover the debt. The land is purchased by Suresh for ₹10,00,000. Ravi, who still has an interest in the property, wants to set aside the sale. According to Rule 89, Ravi can apply to the court to set aside the sale by depositing:

₹50,000 (which is 5% of the purchase money) for payment to Suresh, the purchaser.

The amount specified in the proclamation of sale for recovery, say ₹8,00,000, less any amount already received by the decree-holder since the proclamation.

Ravi deposits these amounts in the court, and the court sets aside the sale, allowing Ravi to retain his property.

Example 2:

Meena's house in Chennai is sold in execution of a decree to recover a loan she defaulted on. The house is sold to Priya for ₹20,00,000. Meena's brother, who has an interest in the property, decides to help Meena by applying to set aside the sale. He deposits:

₹1,00,000 (which is 5% of the purchase money) for payment to Priya, the purchaser.

The amount specified in the proclamation of sale for recovery, say ₹15,00,000, less any amount already received by the decree-holder since the proclamation.

Meena's brother makes the deposit in the court, and the court sets aside the sale, allowing Meena to keep her house.

Example 3:

Arjun's commercial property in Mumbai is sold in execution of a decree to recover a business loan. The property is sold to Neha for ₹50,00,000. Arjun wants to set aside the sale but has also filed an application under Rule 90 to set aside the sale on grounds of irregularity. According to Rule 89(2), Arjun cannot pursue both applications simultaneously. He decides to withdraw his application under Rule 90 and proceeds with the application under Rule 89 by depositing:

₹2,50,000 (which is 5% of the purchase money) for payment to Neha, the purchaser.

The amount specified in the proclamation of sale for recovery, say ₹40,00,000, less any amount already received by the decree-holder since the proclamation.

Arjun makes the deposit in the court, and the court sets aside the sale, allowing Arjun to retain his commercial property.

Rule 90: Application to set aside sale on ground of irregularity or fraud.

Execution of Decree - Setting Aside Sale

(1) Where any immovable property has been sold in execution of a decree, the decree-holder, or the purchaser, or any other person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it.

(2) No sale shall be set aside on the ground of irregularity or fraud in publishing or conducting it unless, upon the facts proved, the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

(3) No application to set aside a sale under this rule shall be entertained upon any ground which the applicant could have taken on or before the date on which the proclamation of sale was drawn up.

Explanation: The mere absence of, or defect in, attachment of the property sold shall not, by itself, be a ground for setting aside a sale under this rule.

Simplified act

Execution of Decree - Setting Aside Sale

(1) If any real estate (like land or buildings) has been sold because of a court order, the person who won the case, the buyer, or anyone else who has a right to the money from the sale, or whose interests are affected by the sale, can ask the court to cancel the sale if there was a major mistake or fraud in the way the sale was announced or carried out.

(2) The court will not cancel the sale just because of a mistake or fraud in the way it was announced or carried out unless the person asking to cancel the sale can prove that they suffered significant harm because of that mistake or fraud.

(3) You cannot ask the court to cancel the sale for any reason that you could have brought up before the sale was officially announced.

Explanation: Just because the property was not properly attached (legally connected to the sale) or there was a mistake in the attachment process, that alone is not enough reason to cancel the sale.

Explanation using Example

Example 1:

Scenario: Ramesh, a farmer, had his land sold in an auction due to a court decree against him for an unpaid loan. During the auction process, the auctioneer did not properly advertise the sale, and only a few people attended, resulting in a very low sale price.

Application: Ramesh can apply to the court to set aside the sale of his land on the grounds of material irregularity. He can argue that the improper advertisement of the auction led to a low turnout and a significantly lower sale price, causing him substantial injury.

Outcome: If the court finds that the irregularity in advertising the auction indeed caused substantial injury to Ramesh, it may set aside the sale and order a new auction to be conducted properly.

Example 2:

Scenario: Sita's ancestral home was sold in execution of a decree. However, Sita later discovered that the auctioneer had colluded with the buyer to undervalue the property and sell it at a much lower price than its market value.

Application: Sita can apply to the court to set aside the sale on the grounds of fraud. She can present evidence of the collusion between the auctioneer and the buyer, showing that the sale was conducted fraudulently to deprive her of the true value of the property.

Outcome: If the court is satisfied with the evidence of fraud and finds that Sita has sustained substantial injury due to this fraudulent conduct, it may set aside the sale and order a new, fair auction to be conducted.

Example 3:

Scenario: Mohan, a businessman, had his commercial property sold in an auction due to a court decree. He later found out that the auction notice was not properly served to him, and he was unaware of the auction date, resulting in the property being sold without his knowledge.

Application: Mohan can apply to the court to set aside the sale on the grounds of material irregularity. He can argue that the improper service of the auction notice prevented him from participating in the auction, causing him substantial injury as he could not protect his interests.

Outcome: If the court finds that the improper service of the auction notice indeed caused substantial injury to Mohan, it may set aside the sale and order a new auction with proper notice given to all interested parties.

Example 4:

Scenario: Priya's land was sold in an auction due to a court decree. However, she later discovered that the auctioneer did not follow the proper procedure for conducting the auction, such as not allowing sufficient time for bidding and not following the prescribed steps for auctioning the property.

Application: Priya can apply to the court to set aside the sale on the grounds of material irregularity. She can present evidence that the auctioneer did not follow the proper procedure, leading to a sale that did not reflect the true value of the property.

Outcome: If the court is satisfied with the evidence of procedural irregularity and finds that Priya has sustained substantial injury due to this irregularity, it may set aside the sale and order a new auction to be conducted following the proper procedure.

Rule 91: Application by purchaser to set aside sale on ground of judgment-debtor having no saleable interest.

The purchaser at any such sale in execution of a decree may apply to the Court to set aside the sale, on the ground that the judgment-debtor had no saleable interest in the property sold.

92.

Simplified act

If you buy something at a court-ordered sale and later find out that the person who owed money (the judgment-debtor) didn't actually own the property that was sold, you can ask the court to cancel the sale.

92.

Explanation using Example

Example 1:

Rajesh purchased a piece of land in an auction conducted by the court to recover a debt owed by Suresh. After the purchase, Rajesh discovered that Suresh did not actually own the land; it was owned by Suresh's brother, Ramesh. Rajesh can apply to the court under Rule 91 of the Code of Civil Procedure, 1908, to set aside the sale on the ground that Suresh, the judgment-debtor, had no saleable interest in the property.

Example 2:

Meena bought a house in a court-ordered auction to satisfy a decree against Anil. Later, Meena found out that Anil had already transferred the house to his daughter before the court auction took place, and thus, Anil had no legal right to sell the house. Meena can file an application under Rule 91 to have the sale set aside, arguing that Anil, the judgment-debtor, had no saleable interest in the house at the time of the auction.

Rule 92: Sale when to become absolute or be set aside.

Rule on Sale Confirmation and Setting Aside

(1) Where no application is made under rule 89, rule 90 or rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall become absolute:

Provided that, where any property is sold in execution of a decree pending the final disposal of any claim to, or any objection to the attachment of, such property, the Court shall not confirm such sale until the final disposal of such claim or objection.

(2) Where such application is made and allowed, and where, in the case of an application under rule 89, the deposit required by that rule is made within sixty days from the date of sale, or in cases where the amount deposited under rule 89 is found to be deficient owing to any clerical or arithmetical mistake on the part of the depositor and such deficiency has been made good within such time as may be fixed by the Court, the Court shall make an order setting aside the sale:

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.

Provided further that the deposit under this sub-rule may be made within sixty days in all such cases where the period of thirty days, within which the deposit had to be made, has not expired before the commencement of the Code of Civil Procedure (Amendment) Act, 2002.

(3) No suit to set aside an order made under this rule shall be brought by any person against whom such order is made.

(4) Where a third party challenges the judgment-debtor's title by filing a suit against the auction-purchaser, the decree-holder and the judgment-debtor shall be necessary parties to the suit.

(5) If the suit referred to in sub-rule (4) is decreed, the Court shall direct the decree-holder to refund the money to the auction-purchaser, and where such an order is passed the execution proceeding in which the sale had been held shall, unless the Court otherwise directs, be revived at the stage at which the sale was ordered.

Simplified act

Rule on Sale Confirmation and Setting Aside

(1) If no one files an application under rules 89, 90, or 91, or if such an application is filed but rejected, the Court will confirm the sale, making it final:

However, if the property is sold while there is still a pending claim or objection to the attachment of the property, the Court will not confirm the sale until that claim or objection is resolved.

(2) If an application is filed and approved, and if, in the case of an application under rule 89, the required deposit is made within sixty days from the sale date, or if there is a mistake in the deposited amount due to a clerical or calculation error and it is corrected within the time set by the Court, the Court will cancel the sale:

But, no order will be made unless everyone affected by the application is notified.

Additionally, the deposit can be made within sixty days in cases where the original thirty-day period had not expired before the start of the Code of Civil Procedure (Amendment) Act, 2002.

(3) No one can file a lawsuit to cancel an order made under this rule if the order is against them.

(4) If a third party challenges the ownership of the judgment-debtor by suing the auction-purchaser, the decree-holder and the judgment-debtor must be included in the lawsuit.

(5) If the lawsuit mentioned in sub-rule (4) is successful, the Court will order the decree-holder to refund the money to the auction-purchaser. If such an order is made, the execution process where the sale occurred will continue from the point where the sale was ordered, unless the Court decides otherwise.

Explanation using Example

Example 1:

Scenario: Rajesh owes money to Suresh and fails to repay it. Suresh obtains a court decree to recover the money by selling Rajesh's immovable property.

Auction and No Objections: The property is auctioned, and no applications are made under Rule 89, Rule 90, or Rule 91 to set aside the sale. The court confirms the sale, making it absolute. Rajesh loses ownership of the property, and the auction purchaser gains full rights.

Pending Claims: If there was a pending claim or objection to the attachment of the property, the court would not confirm the sale until the final disposal of such claims or objections.

Example 2:

Scenario: Meena's property is sold in an auction to recover a debt. She files an application under Rule 89 to set aside the sale by depositing the required amount within sixty days.

Application Allowed: Meena's application is allowed, and she deposits the required amount within the stipulated time. The court sets aside the sale, and Meena retains ownership of her property.

Deficient Deposit: If Meena's deposit was deficient due to a clerical error, she corrects the deficiency within the time fixed by the court. The court then sets aside the sale.

Notice Requirement: The court ensures that notice of Meena's application is given to all affected parties before making an order to set aside the sale.

Example 3:

Scenario: An auction purchaser, Ravi, buys a property in an auction. Later, a third party, Anil, files a suit claiming that the property actually belongs to him and not to the judgment-debtor.

Necessary Parties: In Anil's suit, the decree-holder (who initiated the auction), the judgment-debtor, and Ravi (the auction purchaser) are necessary parties.

Court's Decision: If the court decrees in favor of Anil, it directs the decree-holder to refund the money to Ravi. The execution proceeding is revived at the stage where the sale was ordered, unless the court directs otherwise.

Example 4:

Scenario: A property is sold in an auction, and the auction purchaser, Priya, faces a challenge from a third party, Sunil, who claims ownership of the property.

Suit Decreed: The court finds Sunil's claim valid and decrees in his favor. The court orders the decree-holder to refund the auction money to Priya.

Revival of Execution: The execution proceeding is revived at the stage where the sale was ordered, allowing the decree-holder to pursue other means to recover the debt from the judgment-debtor.

Rule 93: Return of purchase-money in certain cases.

Where a sale of immovable property is set aside under rule 92, the purchaser shall be entitled to an order for repayment of his purchase-money, with or without interest as the Court may direct, against any person to whom it has been paid.

Simplified act

If a sale of property that cannot be moved (like land or a building) is canceled under rule 92, the buyer has the right to get their money back. The court will decide if the money will be returned with or without interest, and the buyer can get this money back from the person who received it.

Explanation using Example

Example 1:

Rajesh participated in a court-ordered auction and purchased a piece of land for ₹10,00,000. After the sale, it was discovered that there were irregularities in the auction process, and the sale was set aside under Rule 92 of the Code of Civil Procedure, 1908. Rajesh approached the court to get his money back. The court ordered that the ₹10,00,000 paid by Rajesh be returned to him, along with an interest of 6% per annum, to be paid by the person who had received the money.

Example 2:

Meena bought a commercial property in a court auction for ₹50,00,000. Later, it was found that the property was wrongly included in the auction due to a clerical error, and the sale was set aside under Rule 92. Meena filed a petition in the court for the return of her purchase money. The court directed that the ₹50,00,000 be refunded to Meena without any interest, as the error was promptly corrected and the money had not been utilized by the recipient.

Rule 94: Certificate to purchaser.

Where a sale of immovable property has become absolute, the Court shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear date the day on which the sale became absolute.

Simplified act

When the sale of a property that cannot be moved (like land or a building) is final, the Court will give a certificate.

This certificate will state what property was sold and the name of the person who bought it.

The certificate will be dated on the day the sale became final.

Explanation using Example

Example 1:

Rajesh participated in a court-ordered auction for a piece of land in Mumbai. After winning the auction and fulfilling all the necessary payment requirements, the sale of the land became absolute. The court then issued a certificate to Rajesh, specifying the details of the land and confirming Rajesh as the purchaser. This certificate was dated the day the sale was finalized, providing Rajesh with legal proof of his ownership.

Example 2:

Meena bought a commercial property in Delhi through a court-ordered sale. Once the sale was confirmed and all legal formalities were completed, the court issued a certificate to Meena. This certificate included the description of the commercial property and identified Meena as the purchaser. The certificate was dated the day the sale became absolute, ensuring Meena had official documentation of her purchase.

Rule 95: Delivery of property in occupancy of judgment-debtor.

Where the immovable property sold is in the occupancy of the judgment-debtor or of some person on his behalf or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

Simplified act

If a property that cannot be moved (like land or a building) is sold and the person who owes money (judgment-debtor) or someone on their behalf is living there, or if someone is living there because the judgment-debtor let them after the property was legally claimed, and a certificate has been given under rule 94:

The Court will, if the buyer asks, order that the buyer (or someone the buyer chooses) be given possession of the property.

If necessary, the Court will also order the removal of anyone who refuses to leave the property.

Explanation using Example

Example 1:

Scenario: Rajesh, a businessman, took a loan from a bank and failed to repay it. The bank filed a lawsuit and obtained a decree against Rajesh. The court ordered the sale of Rajesh's immovable property to recover the loan amount. The property was auctioned, and Suresh emerged as the highest bidder and received a sale certificate under Rule 94.

Application of Rule 95: Rajesh is still living in the property. Suresh, the purchaser, applies to the court for delivery of the property. The court, under Rule 95, orders that Suresh be put in possession of the property. If Rajesh refuses to vacate, the court will arrange for his removal and ensure Suresh gets possession.

Example 2:

Scenario: Meena, a property owner, had her property attached by the court due to a pending lawsuit. After the attachment, she rented out the property to her cousin, Anil. The court later ordered the sale of the property, and Ramesh purchased it in the auction, receiving a sale certificate under Rule 94.

Application of Rule 95: Anil, the tenant, refuses to vacate the property. Ramesh applies to the court for delivery of the property. The court, under Rule 95, orders that Ramesh be put in possession of the property. If Anil refuses to leave, the court will arrange for his removal and ensure Ramesh gets possession.

Example 3:

Scenario: Priya's property was attached by the court due to a decree against her. After the attachment, she sold the property to her friend, Sunil. The court later ordered the sale of the property, and Kavita purchased it in the auction, receiving a sale certificate under Rule 94.

Application of Rule 95: Sunil, claiming ownership under a title created by Priya after the attachment, refuses to vacate the property. Kavita applies to the court

for delivery of the property. The court, under Rule 95, orders that Kavita be put in possession of the property. If Sunil refuses to vacate, the court will arrange for his removal and ensure Kavita gets possession.

Rule 96: Delivery of property in occupancy of tenant.

Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser.

Simplified act

If the property that has been sold is currently being used by a tenant or someone else who has the right to live there, and a certificate for the sale has been given under rule 94, the following steps should be taken: a. The buyer can ask the Court to help them take possession of the property. b. The Court will then order that a copy of the sale certificate be put up in a noticeable spot on the property. c. The Court will also arrange for an announcement to be made to the person living there, using a drum or another common method, at a convenient location, to let them know that the property now belongs to the buyer.

Explanation using Example

Example 1:

Scenario: Rajesh, a landlord, has a property that he rented out to Suresh. Due to financial difficulties, Rajesh's property was auctioned off by the court to recover debts he owed to a bank. The property was purchased by Meena at the auction.

Application of Rule 96:

Certificate of Sale: Meena receives a certificate of sale from the court under Rule 94.

Application for Delivery: Meena applies to the court for delivery of the property.

Court Order: The court orders that a copy of the certificate of sale be affixed in a conspicuous place on the property.

Proclamation: The court also orders that the transfer of interest from Rajesh (the judgment-debtor) to Meena (the purchaser) be proclaimed to Suresh (the tenant) by beat of drum or other customary mode at a convenient place.

Outcome: Suresh is officially informed that Meena is now the owner of the property, and he must recognize her as the new landlord.

Example 2:

Scenario: Priya owns a commercial building that she leased to a retail store run by Anil. Priya defaulted on a loan, and the court ordered the sale of her building to recover the debt. The building was bought by Ramesh at the court auction.

Application of Rule 96:

Certificate of Sale: Ramesh is granted a certificate of sale by the court under Rule 94.

Application for Delivery: Ramesh submits an application to the court for the delivery of the property.

Court Order: The court directs that a copy of the certificate of sale be posted in a visible location on the commercial building.

Proclamation: The court further orders that the transfer of ownership from Priya (the judgment-debtor) to Ramesh (the purchaser) be announced to Anil (the tenant) through a public proclamation, such as beating a drum or another customary method.

Outcome: Anil is formally notified that Ramesh is the new owner of the commercial building, and he must now pay rent to Ramesh and acknowledge him as the landlord.

Resistance to delivery of possession to decree-holder or purchaser

Rule 97: Resistance or obstruction to possession of immovable property.

(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

Simplified act

(1) If someone has a court order to take possession of a property or has bought a property through a court order, and they are being stopped or blocked by someone from taking possession, they can file a complaint with the Court about this resistance or obstruction.

(2) When such a complaint is filed as mentioned in point (1), the Court will handle and decide on the complaint according to the rules provided here.

Explanation using Example

Example 1:

Rajesh obtained a court decree stating that he is the rightful owner of a piece of land in Mumbai. When Rajesh went to take possession of the land, he found that Ramesh, the previous owner, had locked the gate and placed guards to prevent Rajesh from entering. Rajesh then filed an application in the court under Rule 97 of the Code of Civil Procedure 1908, complaining about the resistance and obstruction by Ramesh. The court, upon receiving the application, initiated proceedings to address Rajesh's complaint and ensure that he could take possession of the property as per the decree.

Example 2:

Sita purchased a house in Delhi through a court auction after the previous owner, Mohan, defaulted on a loan. When Sita tried to move into the house, Mohan's relatives blocked her entry and refused to vacate the premises. Sita approached the court with an application under Rule 97, stating that she was being obstructed from taking possession of the house she legally purchased. The court then took up Sita's application, investigated the matter, and took necessary actions to remove the obstruction, allowing Sita to take possession of her new home.

Rule 98: Orders after adjudication.

Determination of Questions Referred to in Rule 101

(1) Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (2), -

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit.

(2) Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

Simplified act

Deciding Questions Mentioned in Rule 101

(1) After deciding the questions mentioned in rule 101, the Court will, based on that decision and following the rules in part (2), -

(a) either approve the request and order that the person asking for it be given the property, or reject the request; or

(b) make any other decision that it thinks is appropriate for the situation.

(2) If, after making the decision, the Court finds that the resistance or blockage was caused without a good reason by the person who lost the case or by someone acting for them, or by someone who got the property while the case was still going on, it will order that the person asking for the property be given it. If the person still faces resistance or blockage in getting the property, the Court can also, if the person asks, order that the person who lost the case or anyone acting for them be put in jail for up to thirty days.

Explanation using Example

Example 1:

Scenario: Rajesh obtained a court decree stating that he is the rightful owner of a piece of land. However, when he went to take possession of the land, he was met with resistance from Suresh, who claimed to have bought the land from the previous owner during the court proceedings.

Application of Rule 98:

Rajesh files an application in the court under Rule 98, seeking possession of the land.

The court examines the situation under Rule 101 and determines that Suresh's resistance is without just cause and that the transfer of the land to Suresh was made during the pendency of the suit.

The court orders that Rajesh be put into possession of the land.

If Suresh continues to resist, the court may order that Suresh be detained in civil prison for up to thirty days.

Example 2:

Scenario: Meena won a court case that declared her the owner of a house. When she tried to take possession, she faced resistance from the previous owner, Anil, who refused to vacate the property.

Application of Rule 98:

Meena files an application in the court under Rule 98, seeking possession of the house.

The court investigates the matter under Rule 101 and finds that Anil's resistance is without just cause.

The court orders that Meena be put into possession of the house.

If Anil continues to obstruct Meena from taking possession, the court may order that Anil be detained in civil prison for up to thirty days.

Example 3:

Scenario: Priya purchased a shop at an auction conducted by the court. When she went to take possession, she was obstructed by Ramesh, who claimed that he had a lease agreement with the previous owner.

Application of Rule 98:

Priya files an application in the court under Rule 98, seeking possession of the shop.

The court examines the lease agreement and determines under Rule 101 that Ramesh's lease was created during the pendency of the execution proceedings and is therefore invalid.

The court orders that Priya be put into possession of the shop.

If Ramesh continues to obstruct Priya, the court may order that Ramesh be detained in civil prison for up to thirty days.

Example 4:

Scenario: Arjun won a court decree for a piece of agricultural land. When he tried to take possession, he was resisted by a group of local villagers who claimed that the land was community property.

Application of Rule 98:

Arjun files an application in the court under Rule 98, seeking possession of the land.

The court investigates the villagers' claim under Rule 101 and determines that the resistance is without just cause.

The court orders that Arjun be put into possession of the land.

If the villagers continue to resist, the court may order that the leaders of the resistance be detained in civil prison for up to thirty days.

Rule 99: Dispossession by decree-holder or purchaser.

(1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

Simplified act

(1) If someone who is not the person ordered by the court to give up property is forced out of their property by the person who won the court case or by someone who bought the property after a court order, they can ask the court for help.

(2) When such a request is made, the court will look into the complaint and make a decision based on the rules provided here.

Explanation using Example

Example 1:

Scenario: Rajesh, a tenant, is living in a house owned by Suresh. Suresh has a legal dispute with another person, Anil, over the ownership of the house. Anil wins the case, and the court issues a decree in favor of Anil, granting him possession of the house. Anil, with the help of court officers, takes possession of the house, and Rajesh is forcibly removed.

Application: Rajesh, who is not the judgment-debtor (Suresh is), can file an application in the court complaining about his dispossession by Anil, the decree-holder. The court will then adjudicate upon Rajesh's application according to the provisions of Rule 99 of the Code of Civil Procedure, 1908.

Example 2:

Scenario: Meena owns a piece of agricultural land. Due to a financial dispute, the court orders the sale of the land to recover debts owed by Meena to a creditor, Ravi. The land is sold in an auction, and Sunil purchases it. Sunil, with the help of court officers, takes possession of the land, and Meena's brother, who was cultivating the land, is dispossessed.

Application: Meena's brother, who is not the judgment-debtor (Meena is), can file an application in the court complaining about his dispossession by Sunil, the purchaser. The court will then adjudicate upon Meena's brother's application according to the provisions of Rule 99 of the Code of Civil Procedure, 1908.

Rule 100: Order to be passed upon application complaining of dispossession.

Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination, -

- (a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or
- (b) pass such other order as, in the circumstances of the case, it may deem fit.

Simplified act

After deciding on the issues mentioned in rule 101, the Court will do one of the following based on that decision:

- (a) Either approve the request and order that the person asking for it gets the property, or reject the request; or
- (b) Make any other decision that it thinks is appropriate for the situation.

Explanation using Example

Example 1:

Scenario: Rajesh, a farmer, had a piece of land that was wrongfully occupied by his neighbor, Suresh. Rajesh had a court decree stating that the land belonged to him. However, when Rajesh tried to take possession of the land, Suresh resisted and refused to vacate the property.

Application: Rajesh filed an application under Rule 100 of the Code of Civil Procedure, 1908, complaining of dispossession by Suresh.

Court's Determination: The court examined the evidence and determined that Rajesh was indeed the rightful owner of the land as per the decree.

Order Passed:

- (a) The court made an order allowing Rajesh's application and directed that Rajesh be put into possession of the property.
- (b) The court also ordered the local police to assist Rajesh in taking possession of the land to ensure compliance with the court's order.

Example 2:

Scenario: Meena purchased a house at an auction conducted by the court. However, when she tried to take possession of the house, the previous owner, Ravi, refused to vacate and claimed that the auction was invalid.

Application: Meena filed an application under Rule 100 of the Code of Civil Procedure, 1908, complaining of dispossession by Ravi.

Court's Determination: The court reviewed the auction process and found that it was conducted legally and that Meena was the rightful purchaser of the house.

Order Passed:

(a) The court made an order allowing Meena's application and directed that Meena be put into possession of the house.

(b) The court also ordered Ravi to vacate the house within 15 days and warned of legal consequences if he failed to comply.

Example 3:

Scenario: Anil had a court decree in his favor for a shop that was occupied by a tenant, Sunil. When Anil tried to take possession of the shop, Sunil resisted and claimed that he had a right to stay.

Application: Anil filed an application under Rule 100 of the Code of Civil Procedure, 1908, complaining of dispossession by Sunil.

Court's Determination: The court found that Sunil had no legal right to stay in the shop as per the decree.

Order Passed:

(a) The court made an order allowing Anil's application and directed that Anil be put into possession of the shop.

(b) The court also ordered Sunil to pay compensation to Anil for the delay in taking possession.

Example 4:

Scenario: Priya had a court decree for a piece of land that was occupied by a third party, Kiran, who claimed to have purchased the land from someone else.

Application: Priya filed an application under Rule 100 of the Code of Civil Procedure, 1908, complaining of dispossession by Kiran.

Court's Determination: The court found that Kiran's claim was invalid and that Priya was the rightful owner as per the decree.

Order Passed:

- (a) The court made an order allowing Priya's application and directed that Priya be put into possession of the land.
- (b) The court also ordered Kiran to vacate the land immediately and pay legal costs to Priya.

Rule 101: Question to be determined.

All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.

Simplified act

Any questions about rights, ownership, or interest in property that come up between the people involved in a case under rule 97 or rule 99, or their representatives, will be decided by the same Court handling the case.

These questions will not be decided in a separate lawsuit.

The Court handling the case has the authority to decide these questions, even if other laws say otherwise.

Explanation using Example

Example 1:

Scenario: Rajesh obtained a court decree to take possession of a piece of land from Suresh. When Rajesh went to take possession, he was resisted by Mahesh, who claimed that he had a right to the land as he had purchased it from Suresh before the decree was passed.

Application: Rajesh files an application under Rule 97 of Order XXI, seeking the court's assistance to remove Mahesh's resistance and take possession of the land. Mahesh, in turn, files an application under Rule 99, claiming his right to the property.

Court's Role: According to Rule 101, the court will determine all questions related to the right, title, or interest in the property between Rajesh and Mahesh. The court will adjudicate on whether Mahesh's claim is valid or if Rajesh should be given possession, without requiring a separate lawsuit.

Example 2:

Scenario: Priya won a court decree to take possession of a house from Anil. When Priya went to take possession, she was resisted by Sunita, who claimed that she had been living in the house as a tenant and had a valid lease agreement with Anil.

Application: Priya files an application under Rule 97 of Order XXI, seeking the court's assistance to remove Sunita's resistance and take possession of the house. Sunita, in turn, files an application under Rule 99, asserting her tenancy rights.

Court's Role: According to Rule 101, the court will determine all questions related to the right, title, or interest in the property between Priya and Sunita. The court will adjudicate on whether Sunita's tenancy is valid or if Priya should be given possession, without requiring a separate lawsuit.

Rule 102: Rules not applicable to transferee pendente lite.

Nothing in rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgement-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

Explanation. - In this rule, "transfer" includes a transfer by operation of law.

Simplified act

Rules 98 and 100 do not apply if someone resists or obstructs the enforcement of a court order to take possession of property when the person causing the resistance or obstruction received the property from the person who lost the case (judgement-debtor) after the lawsuit started. This also applies to removing such a person from the property.

Explanation. - In this rule, "transfer" also means any transfer that happens automatically by law.

Explanation using Example

Example 1:

Rajesh owns a piece of land and is involved in a legal dispute with Suresh over its ownership. The court rules in favor of Suresh and issues a decree stating that Suresh is entitled to possession of the land. After the court case has started but before the decree is executed, Rajesh sells the land to his friend, Amit. When Suresh tries to take possession of the land, Amit resists and obstructs the process. According to Rule 102, Amit's resistance is not protected under rules 98 and 100 because the transfer of the property to Amit happened after the lawsuit began. Therefore, Suresh can proceed with taking possession of the land despite Amit's resistance.

Example 2:

Meena is the owner of a commercial property and is sued by her tenant, Ravi, for illegal eviction. The court rules in favor of Ravi and issues a decree for Ravi to regain possession of the property. After the lawsuit has started but before the decree is executed, Meena transfers the property to her brother, Arjun, through a legal process. When Ravi attempts to take possession of the property, Arjun obstructs the process. Under Rule 102, Arjun's obstruction is not protected because the transfer occurred after the lawsuit was initiated. Therefore, Ravi can enforce the decree and take possession of the property despite Arjun's obstruction.

Rule 103: Orders to be treated as decrees.

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 conditions as to an appeal or otherwise as if it were a decree.

Simplified act

If a decision has been made on an application under rule 98 or rule 100, that decision will be treated just like a court judgment.

This means the decision can be appealed or challenged in the same way as a court judgment.

Explanation using Example

Example 1:

Scenario: Ramesh, a decree-holder, has obtained a court decree to take possession of a property currently occupied by Suresh. When Ramesh attempts to take possession, Suresh resists and files an application under Rule 98, claiming that he has a right to stay on the property.

Application of Rule 103: The court adjudicates Suresh's application and issues an order. According to Rule 103, this order will be treated as a decree. Therefore, if Suresh or Ramesh is dissatisfied with the court's decision, they can appeal against this order just as they would appeal against a decree.

Example 2:

Scenario: Priya purchases a property at a court auction. However, when she tries to take possession, she faces resistance from the previous owner, Anil, who files an application under Rule 100, claiming that the auction was not conducted properly.

Application of Rule 103: The court examines Anil's application and issues an order. Under Rule 103, this order is treated as a decree. Consequently, if Priya or Anil is unhappy with the court's decision, they have the right to appeal against this order in the same manner as they would appeal against a decree.

Rule 104: Order under rule 101 or rule 103 to be subject to the result of pending suit.

Every order made under rule 101 or rule 103 shall, subject to the result of any suit that may be pending on the date of commencement of the proceeding in which such order is made, if in such suit the party against whom the order under rule 101 or rule 103 is made has sought to establish a right which he claims to the present possession of the property.

Simplified act

Any decision made under rule 101 or rule 103 will depend on the outcome of any ongoing lawsuit at the time the decision is made.

If the person who the decision is against is trying to prove in the lawsuit that they have the right to currently possess the property, the decision will be subject to the result of that lawsuit.

Explanation using Example

Example 1:

Scenario: Ravi obtained a decree from the court to take possession of a piece of land from Shyam. However, when Ravi went to take possession, Shyam resisted and claimed that he had a right to the land. The court then made an order under Rule 101, allowing Ravi to take possession.

Application of Rule 104: Shyam had already filed a suit claiming ownership of the land before the court made the order under Rule 101. According to Rule 104, the order allowing Ravi to take possession is subject to the outcome of Shyam's pending suit. If Shyam wins the suit, the order under Rule 101 may be overturned, and Shyam may retain possession of the land.

Example 2:

Scenario: Priya purchased a house at an auction conducted by the court. The previous owner, Anil, resisted Priya's attempt to take possession, claiming that the auction was invalid. The court made an order under Rule 103, allowing Priya to take possession of the house.

Application of Rule 104: Anil had already filed a suit challenging the validity of the auction before the court made the order under Rule 103. According to Rule 104, the order allowing Priya to take possession is subject to the outcome of Anil's pending suit. If Anil wins the suit, the order under Rule 103 may be overturned, and Anil may regain possession of the house.

Rule 105: Hearing of application.

(1) The Court, before which an application under any of the foregoing rules of this Order is pending, may fix a day for the hearing of the application.

(2) Where on the day fixed or on any other day to which the hearing may be adjourned the applicant does not appear when the case is called on for hearing, the Court may make an order that the application be dismissed.

(3) Where the applicant appears and the opposite party to whom the notice has been issued by the Court does not appear, the Court may hear the application ex parte and pass such order as it thinks fit.

Explanation. - An application referred to in sub-rule (1) includes a claim or objection made under rule 58.

Simplified act

(1) The Court, where an application under any of the previous rules of this Order is pending, can set a date for the hearing of the application.

(2) If, on the set date or any other date to which the hearing is postponed, the person who made the application does not show up when the case is called for hearing, the Court can order that the application be dismissed.

(3) If the person who made the application shows up but the other party, who was notified by the Court, does not show up, the Court can hear the application without the other party and make any decision it thinks is appropriate.

Explanation. - An application mentioned in sub-rule (1) includes a claim or objection made under rule 58.

Explanation using Example

Example 1:

Scenario: Ramesh, a decree-holder, has obtained a court order to take possession of a property from Suresh, the judgment-debtor. However, Suresh is resisting the delivery of possession.

Application: Ramesh files an application under Order XXI, Rule 105 of the Code of Civil Procedure, 1908, seeking the court's intervention to enforce the decree.

Court Action:

The court fixes a date for the hearing of Ramesh's application.

On the scheduled date, Ramesh appears in court, but Suresh does not.

The court decides to hear the application ex parte (in the absence of Suresh) and passes an order directing the police to assist Ramesh in taking possession of the property.

Example 2:

Scenario: Priya, a purchaser of a property at a court auction, faces resistance from the previous owner, Anil, who refuses to vacate the property.

Application: Priya files an application under Order XXI, Rule 105 of the Code of Civil Procedure, 1908, requesting the court to enforce the auction sale and deliver possession to her.

Court Action:

The court schedules a hearing for Priya's application.

On the hearing date, neither Priya nor Anil appears in court.

The court dismisses Priya's application due to her non-appearance.

Example 3:

Scenario: Sunita, a decree-holder, has obtained a court order to take possession of a shop from Rajesh, the judgment-debtor. Rajesh files an objection under Rule 58, claiming that the shop belongs to his brother and not him.

Application: Sunita files an application under Order XXI, Rule 105 of the Code of Civil Procedure, 1908, to dismiss Rajesh's objection and enforce the decree.

Court Action:

The court fixes a date for the hearing of Sunita's application.

On the scheduled date, Sunita appears in court, but Rajesh does not.

The court hears Sunita's application *ex parte* and passes an order dismissing Rajesh's objection and directing the delivery of possession to Sunita.

Rule 106: Setting aside orders passed *ex parte*, etc.

Ex Parte, etc.

(1) The applicant, against whom an order is made under sub-rule (2) rule 105 or the opposite party against whom an order is passed *ex parte* under sub-rule (3) of that rule or under sub-rule (1) of rule 23, may apply to the Court to set aside the order, and if he satisfies the Court that there was sufficient cause for his non-appearance when the application was called on for hearing, the Court shall set aside the order on such terms as to costs or otherwise as it thinks fit, and shall appoint a day for the further hearing of the application.

(2) No order shall be made on an application under sub-rule (1) unless notice of the application has been served on the other party.

(3) An application under sub-rule (1) shall be made within thirty days from the date of the order, or where, in the case of an *ex parte* order, the notice was not duly served, within thirty days from the date when the applicant had knowledge of the order.

Simplified act

Ex Parte, etc.

(1) If a person has an order made against them without their presence (ex parte) or under specific rules (rule 105 or rule 23), they can ask the Court to cancel that order. They need to explain to the Court why they couldn't be there when the order was made. If the Court believes their reason is good enough, it will cancel the order and set a new date to hear the case again. The Court may also decide who should pay for the costs involved.

(2) The Court will not cancel the order unless the other party involved has been informed about the application to cancel the order.

(3) The request to cancel the order must be made within thirty days from the date of the order. If the person didn't know about the order because they weren't properly notified, they have thirty days from the day they found out about the order to make the request.

Explanation using Example

Example 1:

Scenario: Ramesh filed a civil suit against Suresh for the recovery of a loan amount. The court scheduled a hearing, but Suresh did not appear on the date of the hearing because he was hospitalized due to a sudden illness. Consequently, the court passed an ex parte order in favor of Ramesh.

Application of Rule 106:

Suresh, upon recovering and learning about the ex parte order, can apply to the court to set aside the order.

Suresh must file this application within thirty days from the date he became aware of the order.

Suresh needs to provide sufficient cause for his non-appearance, such as medical records proving his hospitalization.

The court, if satisfied with Suresh's explanation, may set aside the ex parte order and schedule a new date for the hearing.

Notice of Suresh's application must be served to Ramesh before the court makes any decision on setting aside the order.

Example 2:

Scenario: Priya filed a suit for the partition of family property against her brother, Raj. The court issued a notice to Raj, but due to a clerical error, the notice was sent to the wrong address. Raj did not appear in court because he never received the notice, and the court passed an ex parte order in favor of Priya.

Application of Rule 106:

Raj, upon eventually learning about the ex parte order through a relative, can apply to the court to set aside the order.

Raj must file this application within thirty days from the date he became aware of the order.

Raj needs to demonstrate that he did not receive the notice due to the clerical error and was unaware of the hearing.

The court, if convinced that the notice was not duly served, may set aside the ex parte order and reschedule the hearing.

Notice of Raj's application must be served to Priya before the court makes any decision on setting aside the order.

ORDER XXII: DEATH, MARRIAGE AND INSOLVENCY OF PARTIES

Rule 1: No abatement by party's death, if right to sue survives.

The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

Simplified act

If the person who started the lawsuit (plaintiff) or the person being sued (defendant) dies, the lawsuit does not end as long as there is still a valid reason to continue the case.

Explanation using Example

Example 1:

Rajesh files a lawsuit against his neighbor, Suresh, for encroaching on his property. During the course of the trial, Rajesh unfortunately passes away. According to Rule 1 of Order XXII of The Code Of Civil Procedure 1908, the

lawsuit does not end with Rajesh's death because the right to sue survives. Rajesh's legal heirs, such as his wife or children, can continue the lawsuit against Suresh to reclaim the encroached property.

Example 2:

Meena sues a construction company for damages caused to her house due to negligent construction practices. While the case is still pending in court, the owner of the construction company, Mr. Sharma, dies. Under Rule 1 of Order XXII of The Code Of Civil Procedure 1908, the lawsuit does not abate because the right to sue survives. Meena can continue her lawsuit against the legal representatives or successors of Mr. Sharma's construction company to seek compensation for the damages.

Rule 2: Procedure where one of several plaintiffs or defendants dies and right to sue survives.

Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to the effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

Simplified act

If there are multiple people suing (plaintiffs) or being sued (defendants) in a case, and one of them dies:

If the right to continue the lawsuit belongs only to the remaining plaintiffs or against the remaining defendants:

The Court will make a note of this in the records.

The lawsuit will continue with the remaining plaintiffs or against the remaining defendants.

Explanation using Example

Example 1:

Scenario: A property dispute case involving multiple plaintiffs.

Details:

Plaintiffs: Rajesh, Suresh, and Meena

Defendants: Anil and Sunil

Rajesh, Suresh, and Meena are siblings who have filed a suit against Anil and Sunil over a piece of ancestral property.

Situation:

During the course of the trial, Rajesh passes away.

The right to sue for the property dispute survives with Suresh and Meena.

Application of the Act:

The court will make a note in the record that Rajesh has passed away.

The case will continue with Suresh and Meena as the surviving plaintiffs against Anil and Sunil.

Example 2:

Scenario: A breach of contract case involving multiple defendants.

Details:

Plaintiff: Priya

Defendants: Ramesh, Mahesh, and Dinesh

Priya has filed a suit against Ramesh, Mahesh, and Dinesh for breach of a business contract.

Situation:

During the proceedings, Mahesh dies.

The right to sue for the breach of contract survives against Ramesh and Dinesh.

Application of the Act:

The court will record the death of Mahesh in the case file.

The lawsuit will proceed with Priya continuing her case against the surviving defendants, Ramesh and Dinesh.

Rule 3: Procedure in case of death of one of several plaintiffs or of sole plaintiff.

(1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to the sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

Simplified act

(1) If one of several people who started a lawsuit dies and the right to continue the lawsuit does not pass to the remaining people, or if the only person who started the lawsuit dies and the right to continue the lawsuit does pass on, the Court will, upon request, add the deceased person's legal representative to the lawsuit and continue with the case.

(2) If no request is made within the time allowed by law to add the deceased person's legal representative, the lawsuit will end as far as the deceased person is concerned. If the defendant asks, the Court may order that the costs the defendant spent on defending the lawsuit be paid from the deceased person's estate.

Explanation using Example

Example 1:

Scenario: A property dispute case involving multiple plaintiffs.

Details:

Plaintiffs: Rajesh, Suresh, and Mahesh

Defendant: Anil

Case: The plaintiffs have filed a suit against Anil claiming ownership of a piece of land.

Event:

Rajesh, one of the plaintiffs, passes away during the course of the litigation.

The right to sue does not survive solely with Suresh and Mahesh because Rajesh had a significant individual claim to the property.

Application:

Suresh and Mahesh file an application to the court to include Rajesh's legal representative (his son, Ramesh) as a party to the suit.

The court accepts the application, makes Ramesh a party to the suit, and the case proceeds.

Outcome:

The suit continues with Ramesh, Suresh, and Mahesh as plaintiffs against Anil.

Example 2:

Scenario: A breach of contract case with a sole plaintiff.

Details:

Plaintiff: Priya

Defendant: Kumar

Case: Priya has filed a suit against Kumar for breach of contract regarding a business deal.

Event:

Priya, the sole plaintiff, passes away during the litigation.

The right to sue survives because the breach of contract claim can be pursued by Priya's legal representative.

Application:

Priya's husband, Ravi, files an application to the court to be made a party to the suit as Priya's legal representative.

The court accepts the application, makes Ravi a party to the suit, and the case proceeds.

Outcome:

The suit continues with Ravi as the plaintiff against Kumar.

Example 3:

Scenario: A personal injury case with a sole plaintiff.

Details:

Plaintiff: Anjali

Defendant: A local construction company

Case: Anjali has filed a suit for compensation due to injuries sustained from a construction accident.

Event:

Anjali, the sole plaintiff, passes away during the litigation.

No application is made within the time limited by law to substitute Anjali's legal representative.

Application:

The suit abates as far as Anjali is concerned.

The defendant, the construction company, files an application to the court to recover the costs incurred in defending the suit.

Outcome:

The court awards the costs to the construction company, to be recovered from Anjali's estate.

Rule 4: Procedure in case of death of one of several defendants or of sole defendant.

(1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendants to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.

(5) Where -

(a) the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 (36 of 1963), and the suit has, in consequence, abated, and

(b) the plaintiff applies after the expiry of the period specified therefore in the Limitation Act, 1963 (36 of 1963), for setting aside the abatement and also for the admission of that application under section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application within the period specified in the said Act,

the Court shall, in considering the application under the said section 5, have due regard to the fact of such ignorance, if proved.

Simplified act

(1) If one of several defendants dies and the right to sue doesn't continue against the remaining defendants alone, or if a sole defendant dies and the right to sue continues, the Court will, upon request, add the deceased defendant's legal representative to the case and continue with the lawsuit.

(2) Any person added to the case as a legal representative of the deceased defendant can present any defense suitable to their role as the legal representative.

(3) If no request is made within the time allowed by law to add the legal representative, the lawsuit will end against the deceased defendant.

(4) The Court can decide to excuse the plaintiff from having to replace the deceased defendant with a legal representative if the deceased defendant did

not file a written statement or did not show up to contest the case. In such situations, the Court can give a judgment against the deceased defendant as if they were still alive.

(5) If:

(a) The plaintiff did not know about the defendant's death and therefore could not request to add the legal representative within the time specified by the Limitation Act, 1963, causing the lawsuit to end, and

(b) The plaintiff applies after the deadline to set aside the ending of the lawsuit and also requests to accept this late application under section 5 of the Limitation Act, 1963, because they had a valid reason for not knowing about the death,

the Court will consider the plaintiff's ignorance of the death when deciding whether to accept the late application.

Explanation using Example

Example 1:

Scenario: A property dispute case involving three defendants.

Details:

Plaintiff: Mr. Sharma

Defendants: Mr. Verma, Mr. Gupta, and Mr. Singh

Mr. Verma passes away during the trial.

Application of Rule 4:

Sub-rule (1): Mr. Sharma (plaintiff) applies to the court to include Mr. Verma's legal representative (his son, Mr. Verma Jr.) as a party to the suit.

Sub-rule (2): Mr. Verma Jr. is now a party to the suit and can present any defense appropriate to his role as the legal representative of his deceased father.

Sub-rule (3): If Mr. Sharma had not applied within the time limit specified by law, the suit would have abated against Mr. Verma.

Sub-rule (4): If Mr. Verma had not filed a written statement or failed to appear and contest the suit, the court could exempt Mr. Sharma from substituting Mr. Verma's legal representative and proceed with the judgment.

Sub-rule (5): If Mr. Sharma was unaware of Mr. Verma's death and did not apply for substitution within the specified period, he could apply for setting aside the abatement and for the admission of his application under Section 5 of the Limitation Act, 1963, citing ignorance as a sufficient cause.

Example 2:

Scenario: A loan recovery case with a sole defendant.

Details:

Plaintiff: ABC Bank

Defendant: Mr. Reddy

Mr. Reddy passes away during the trial.

Application of Rule 4:

Sub-rule (1): ABC Bank applies to the court to include Mr. Reddy's legal representative (his wife, Mrs. Reddy) as a party to the suit.

Sub-rule (2): Mrs. Reddy is now a party to the suit and can present any defense appropriate to her role as the legal representative of her deceased husband.

Sub-rule (3): If ABC Bank had not applied within the time limit specified by law, the suit would have abated against Mr. Reddy.

Sub-rule (4): If Mr. Reddy had not filed a written statement or failed to appear and contest the suit, the court could exempt ABC Bank from substituting Mr. Reddy's legal representative and proceed with the judgment.

Sub-rule (5): If ABC Bank was unaware of Mr. Reddy's death and did not apply for substitution within the specified period, it could apply for setting aside the abatement and for the admission of its application under Section 5 of the Limitation Act, 1963, citing ignorance as a sufficient cause.

Rule 4A: Procedure where there is no legal representative.

(1) If, in any suit, it shall appear to the Court that any party who has died during the pendency of the suit has no legal representative, the Court may, on

the application of any party to the suit, proceed in the absence of a person representing the estate of the deceased person, or may by order appoint the Administrator-General, or an officer of the Court or such other person as it thinks fit to represent the estate of the deceased person for the purpose of the suit; and any judgment or order subsequently given or made in the suit shall bind the estate of the deceased person to the same extent as he would have been bound if a personal representative of the deceased person had been a party to the suit.

(2) Before making an order under this rule, the Court -

(a) may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate of the deceased person as it thinks fit; and

(b) shall ascertain that the person proposed to be appointed to represent the estate of the deceased person is willing to be so appointed and has no interest adverse to that of the deceased person.

Simplified act

(1) If someone involved in a lawsuit dies while the case is still going on and they don't have a legal representative, the Court can take certain actions. The Court can either continue the case without someone representing the deceased person's estate, or it can appoint someone to represent the estate. This could be the Administrator-General, a Court officer, or another suitable person. Any decision or order made by the Court in the case will affect the deceased person's estate just as if the deceased person had a representative involved in the case.

(2) Before the Court appoints someone to represent the deceased person's estate:

(a) The Court may require that notice of the application to appoint a representative be given to any interested parties in the deceased person's estate, if the Court thinks it's necessary.

(b) The Court must make sure that the person who is proposed to represent the estate is willing to take on the role and does not have any conflicting interests with the deceased person.

Explanation using Example

Example 1:

Scenario: Ramesh files a lawsuit against Suresh for a property dispute. During the pendency of the suit, Suresh passes away and has no legal representative.

Application of Rule 4A:

Ramesh applies to the court to proceed with the case despite Suresh's death.

The court, upon verifying that Suresh has no legal representative, decides to appoint the Administrator-General to represent Suresh's estate.

The court issues a notice to potential interested parties in Suresh's estate, such as distant relatives or creditors, informing them of the application.

The Administrator-General agrees to represent Suresh's estate and confirms that there is no conflict of interest.

The court proceeds with the case, and any judgment or order made will bind Suresh's estate as if Suresh himself were present.

Example 2:

Scenario: Priya sues her business partner, Anil, for breach of contract. Anil dies during the lawsuit, and no family members or legal representatives come forward to represent his estate.

Application of Rule 4A:

Priya requests the court to continue the case in the absence of Anil's legal representative.

The court examines the situation and finds that Anil has no legal representative.

The court decides to appoint an officer of the court to represent Anil's estate.

The court ensures that notice of the application is given to any known associates or interested parties in Anil's estate.

The appointed officer confirms their willingness to represent Anil's estate and that they have no conflicting interests.

The court proceeds with the lawsuit, and any resulting judgment or order will be binding on Anil's estate as if Anil had been represented by a legal representative.

Example 3:

Scenario: A civil suit is filed by a bank against Rajesh for defaulting on a loan. Rajesh dies during the proceedings, and no legal heir or representative is available to take his place.

Application of Rule 4A:

The bank applies to the court to continue the suit despite Rajesh's death.

The court finds that Rajesh has no legal representative.

The court decides to appoint a suitable person, such as a local lawyer, to represent Rajesh's estate.

The court issues a notice to any known parties with an interest in Rajesh's estate, such as other creditors or distant relatives.

The appointed lawyer agrees to represent Rajesh's estate and confirms no adverse interest.

The court proceeds with the case, and any judgment or order made will bind Rajesh's estate as if Rajesh had a personal representative in the suit.

Rule 5: Determination of question as to legal representative.

Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court:

Provided that where such question arises before an Appellate Court, that Court may, before determining the question, direct any subordinate Court to try the question and to return the records together with evidence, if any, recorded at such trial, its findings and reasons therefor, and the Appellate Court may take the same into consideration in determining the question.

Simplified act

If there is a question about whether someone is the legal representative of a person who has died and was involved in a lawsuit, the Court will decide the matter.

However, if this question comes up in a higher court (an Appellate Court), that court can ask a lower court to look into the matter first. The lower court will

then investigate, gather evidence, and provide its findings and reasons. The higher court will consider this information when making its decision.

Explanation using Example

Example 1:

Ravi, a plaintiff in a civil suit, passes away during the trial. His son, Arjun, claims to be his legal representative and wishes to continue the lawsuit. However, Ravi's brother, Suresh, also claims to be the legal representative based on a will that he presents. The court must now determine who the rightful legal representative is. The judge examines the evidence provided by both Arjun and Suresh, including the will and other relevant documents, and decides that Arjun is the legal representative. The case then proceeds with Arjun as the plaintiff.

Example 2:

Meena, a defendant in a property dispute case, dies while the case is on appeal. Her daughter, Priya, and her husband, Rajesh, both claim to be her legal representatives. The Appellate Court, unsure of who the rightful representative is, directs the subordinate court to investigate the matter. The subordinate court conducts a trial, examines the evidence, and concludes that Priya is the legal representative. The subordinate court sends its findings and reasons to the Appellate Court, which then considers this information and determines that Priya will continue the case as the defendant.

Rule 6: No abatement by reason of death after hearing.

Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place.

Simplified act

Even if the previous rules say otherwise, it doesn't matter if the reason for the lawsuit continues or not.

If one of the people involved in the case dies after the hearing is finished but before the judgment is given, the case will not be stopped because of their death.

The judgment can still be given even if one of the parties has died.

This judgment will be just as valid and effective as if it had been given before the person died.

Explanation using Example

Example 1:

Ramesh filed a civil suit against Suresh for breach of contract. The court heard the case, and both parties presented their arguments. After the hearing was concluded but before the judgment was pronounced, Suresh unfortunately passed away. According to Rule 6 of Order XXII of The Code of Civil Procedure 1908, the case does not abate (i.e., it does not end) due to Suresh's death. The court can still pronounce the judgment, and it will have the same legal effect as if Suresh were still alive.

Example 2:

Meena filed a property dispute case against her neighbor, Rajesh. The court completed the hearing process, and the judge reserved the judgment for a later date. Before the judgment could be pronounced, Meena passed away. Under Rule 6 of Order XXII of The Code of Civil Procedure 1908, the death of Meena does not cause the case to abate. The court can still deliver the judgment, and it will be legally binding as if Meena were alive at the time of the judgment.

Rule 7: Suit not abated by marriage of female party.

(1) The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may notwithstanding be proceeded with the judgment, and, where the decree is against a female defendant, it may be executed against her alone.

(2) Where the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and, in case of judgment for the wife, execution of the decree may, with such permission, be issued upon the application of the husband, where the husband is by law entitled to the subject-matter of the decree.

Simplified act

(1) If a woman involved in a lawsuit gets married, the case will not be stopped. The case can continue, and if the court decides against the woman, the decision can be enforced against her alone.

(2) If the law says that a husband is responsible for his wife's debts, the court can allow the decision to be enforced against the husband too. If the court decides in favor of the wife, the husband can ask the court to enforce the decision if he is legally entitled to what the decision is about.

Explanation using Example

Example 1:

Scenario: Priya files a lawsuit against her employer for wrongful termination. During the course of the lawsuit, Priya gets married.

Application of Rule 7:

Priya's marriage does not affect the ongoing lawsuit. The case will continue as if she had not married.

If the court rules in favor of Priya, the judgment will be executed against her employer.

If Priya were the defendant in a different case, the judgment could be executed against her alone, despite her marriage.

Example 2:

Scenario: Anjali is sued by a creditor for an unpaid loan. During the lawsuit, Anjali gets married to Raj, who is legally responsible for her debts.

Application of Rule 7:

Anjali's marriage does not cause the lawsuit to stop. The case will proceed to judgment.

If the court rules against Anjali, the judgment can be executed against her alone.

With the court's permission, the creditor can also execute the judgment against Raj, her husband, since he is legally liable for her debts.

Example 3:

Scenario: Meera wins a lawsuit against a company for breach of contract. During the execution of the decree, Meera gets married to Arjun.

Application of Rule 7:

Meera's marriage does not affect the execution of the decree.

If Arjun is legally entitled to the subject matter of the decree (e.g., monetary compensation), he can apply to the court for permission to execute the decree on Meera's behalf.

Rule 8: When plaintiff's insolvency bars suit.

Insolvency of Plaintiff

(1) The insolvency of a plaintiff in any suit which the assignee or receiver might maintain for the benefit of his creditors, shall not cause the suit to abate, unless such assignee or receiver declines to continue the suit or (unless for any special reason the Court otherwise directs) to give security for the costs thereof within such time as the Court may direct.

Procedure where assignee fails to continue suit, or give security

(2) Where the assignee or receiver neglects or refuses to continue the suit and to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's insolvency, and the Court may make an order dismissing the suit and awarding to the defendant the costs which he has incurred in defending the same to be proved as a debt against the plaintiff's estate.

Simplified act

Insolvency of Plaintiff

(1) If a person who has filed a lawsuit goes bankrupt, the lawsuit doesn't have to stop. The person managing the bankrupt person's assets (called an assignee or receiver) can continue the lawsuit for the benefit of the creditors. However, if the assignee or receiver decides not to continue the lawsuit or doesn't provide a guarantee to cover the legal costs within the time set by the court, the lawsuit might be stopped unless the court decides otherwise for a special reason.

Procedure where assignee fails to continue suit, or give security

(2) If the assignee or receiver doesn't continue the lawsuit or fails to provide the required guarantee within the given time, the person being sued (the defendant) can ask the court to dismiss the lawsuit because the person who filed it is bankrupt. The court can then dismiss the lawsuit and order that the defendant's legal costs be paid from the bankrupt person's estate.

Explanation using Example

Example 1:

Rajesh, a businessman, files a lawsuit against his supplier for breach of contract, claiming damages of ₹10 lakhs. During the course of the lawsuit, Rajesh is declared insolvent, and his assets are taken over by an official receiver. The receiver has the option to continue the lawsuit for the benefit of Rajesh's creditors. If the receiver decides to continue the lawsuit, the case proceeds as usual. However, if the receiver declines to continue the lawsuit or fails to provide security for the costs within the time directed by the court, the supplier (defendant) can apply to the court to dismiss the lawsuit on the grounds of Rajesh's insolvency. The court may then dismiss the lawsuit and order that the supplier's legal costs be paid from Rajesh's estate.

Example 2:

Meera, a freelance graphic designer, sues a client for non-payment of ₹2 lakhs for services rendered. While the case is ongoing, Meera is declared insolvent, and her financial affairs are handed over to an assignee. The assignee has the right to continue the lawsuit to recover the money for Meera's creditors. If the assignee chooses not to continue the lawsuit or fails to provide the required security for the legal costs within the timeframe set by the court, the client (defendant) can request the court to dismiss the case due to Meera's insolvency. The court may then dismiss the case and order that the client's legal expenses be claimed as a debt against Meera's estate.

Rule 9: Effect of abatement or dismissal.

Order

(1) Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.

(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if

it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

(3) The provisions of Section 5 of the Indian Limitation Act, 1877 (15 of 1877) shall apply to applications under sub-rule (2).

Explanation: Nothing in this rule shall be construed as barring, in any later suit, a defence based on the facts which constituted the cause of action in the suit which had abated or had been dismissed under this Order.

Simplified act

Order

(1) If a lawsuit is stopped or dismissed under this rule, you cannot start a new lawsuit for the same reason.

(2) If the person who started the lawsuit, or their legal representative if they have died, or someone managing their affairs if they are bankrupt, wants to restart the lawsuit, they can ask the court to do so. If they can show a good reason why they couldn't continue the lawsuit before, the court will allow it to continue, possibly with some conditions like paying costs.

(3) The rules about time limits in Section 5 of the Indian Limitation Act, 1877, will apply to requests made under rule (2).

Explanation: This rule does not stop someone from using the facts of the original lawsuit as a defense in a new lawsuit.

Explanation using Example

Example 1:

Scenario: Ramesh files a lawsuit against Suresh for breach of contract. During the proceedings, Ramesh passes away, and no legal representative steps forward to continue the case within the prescribed time.

Application of Rule 9:

Abatement of Suit: Since no legal representative of Ramesh comes forward, the suit abates.

No Fresh Suit: Suresh cannot be sued again by Ramesh's heirs on the same cause of action (breach of contract).

Setting Aside Abatement: If Ramesh's son, Rajesh, later learns about the suit and can prove that he was unaware of the proceedings due to being abroad, he can apply to the court to set aside the abatement. If the court is satisfied with Rajesh's reason, it may set aside the abatement and allow the suit to continue, possibly imposing some costs on Rajesh.

Example 2:

Scenario: Priya files a lawsuit against her business partner, Anil, for misappropriation of funds. During the case, Priya is declared insolvent, and a receiver is appointed to manage her estate.

Application of Rule 9:

Dismissal of Suit: If the receiver does not continue the lawsuit, the suit may be dismissed.

No Fresh Suit: Priya cannot file a new lawsuit against Anil on the same cause of action (misappropriation of funds).

Setting Aside Dismissal: If the receiver later decides to continue the lawsuit and can show that the delay was due to the complexity of Priya's insolvency proceedings, the receiver can apply to the court to set aside the dismissal. If the court finds the reason sufficient, it may set aside the dismissal and allow the suit to proceed, possibly with conditions regarding costs.

Example 3:

Scenario: Sunita files a lawsuit against her neighbor, Ravi, for encroachment on her property. During the proceedings, Sunita gets married and moves to another city, losing track of the case.

Application of Rule 9:

Abatement of Suit: If Sunita does not continue the lawsuit, it may abate.

No Fresh Suit: Sunita cannot file a new lawsuit against Ravi on the same cause of action (encroachment).

Setting Aside Abatement: If Sunita later realizes the importance of the case and can prove that her marriage and relocation prevented her from continuing the suit, she can apply to the court to set aside the abatement. If the court is convinced by her explanation, it may set aside the abatement and allow the suit to continue, possibly imposing some costs on Sunita.

Example 4:

Scenario: Ajay files a lawsuit against his tenant, Vijay, for non-payment of rent. During the case, Ajay becomes mentally incapacitated, and no one steps forward to represent him.

Application of Rule 9:

Abatement of Suit: If no legal representative of Ajay comes forward, the suit abates.

No Fresh Suit: Ajay or his legal representatives cannot file a new lawsuit against Vijay on the same cause of action (non-payment of rent).

Setting Aside Abatement: If Ajay's brother, Sanjay, later becomes aware of the situation and can prove that Ajay's mental incapacity prevented the continuation of the suit, Sanjay can apply to the court to set aside the abatement. If the court is satisfied with Sanjay's reason, it may set aside the abatement and allow the suit to continue, possibly imposing some costs on Sanjay.

Example 5:

Scenario: Meera files a lawsuit against her employer, a large corporation, for wrongful termination. During the proceedings, Meera is declared insolvent, and an assignee is appointed to manage her estate.

Application of Rule 9:

Dismissal of Suit: If the assignee does not continue the lawsuit, the suit may be dismissed.

No Fresh Suit: Meera cannot file a new lawsuit against her employer on the same cause of action (wrongful termination).

Setting Aside Dismissal: If the assignee later decides to continue the lawsuit and can show that the delay was due to the complexity of Meera's insolvency proceedings, the assignee can apply to the court to set aside the dismissal. If the court finds the reason sufficient, it may set aside the dismissal and allow the suit to proceed, possibly with conditions regarding costs.

Rule 10: Procedure in case of assignment before final order in suit.

10A.

(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1).

Simplified act

10A.

(1) If someone transfers, creates, or passes on any interest in something while a lawsuit is still ongoing, the lawsuit can continue with the new person who now has that interest, but only if the Court allows it.

(2) If a court decision is being appealed and someone has secured an attachment (a legal claim) on that decision, that person is considered to have an interest in the case. This means they can benefit from the rule mentioned in part (1).

Explanation using Example

Example 1:

Ravi filed a lawsuit against Shyam for the recovery of a piece of land. During the pendency of the suit, Ravi sold the land to Priya. According to Rule 10A of the Code of Civil Procedure 1908, Priya can request the court to continue the suit in her name instead of Ravi. The court, upon reviewing the request, grants permission, and the suit is now continued by Priya against Shyam.

Example 2:

Anil has a pending lawsuit against Bharat for a monetary claim. During the pendency of the suit, Anil becomes insolvent, and his interest in the claim is assigned to his creditor, Suresh. Suresh can apply to the court to continue the suit in his name. The court grants the application, and the suit is now continued by Suresh against Bharat.

Example 3:

Meena has a decree in her favor against Ramesh, but Ramesh has filed an appeal against the decree. During the pendency of the appeal, Meena's decree is attached by her creditor, Sunil, due to a separate debt Meena owes to Sunil.

According to Rule 10A(2), Sunil is entitled to continue the appeal proceedings in place of Meena, as he now has an interest in the decree.

Rule 10A: Duty of pleader to communicate to Court death of a party.

Wherever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it, and the Court shall thereupon give notice of such death to the other party, and, for this purpose, the contract between the pleader and the deceased party shall be deemed to subsist.

Simplified act

If a lawyer representing someone in a lawsuit finds out that their client has died, the lawyer must tell the Court about it.

The Court will then notify the other party involved in the lawsuit about the death.

For this process, the agreement between the lawyer and the deceased client will still be considered valid.

Explanation using Example

Example 1:

Rajesh is a plaintiff in a civil suit regarding a property dispute in a court in Mumbai. He has hired Advocate Sharma to represent him. Unfortunately, Rajesh passes away during the course of the litigation. Advocate Sharma learns about Rajesh's death from Rajesh's family. According to Rule 10A of the Code of Civil Procedure 1908, Advocate Sharma is obligated to inform the court about Rajesh's death. Upon receiving this information, the court will notify the defendant, Mr. Verma, about Rajesh's death. This ensures that all parties are aware of the situation and can take appropriate legal steps, such as substituting Rajesh's legal heirs in the suit.

Example 2:

Sita is involved in a civil lawsuit over a contractual dispute in a Delhi court. She has engaged Advocate Gupta to represent her. During the proceedings, Sita dies unexpectedly. Advocate Gupta is informed of Sita's death by her relatives. As per Rule 10A of the Code of Civil Procedure 1908, Advocate Gupta must inform the court about Sita's death. The court will then notify the opposing party, Mr. Kumar, about Sita's death. This notification allows Mr.

Kumar to prepare for any necessary legal adjustments, such as the inclusion of Sita's legal representatives in the ongoing case.

Rule 11: Application of Order to appeals.

In the application of this Order to appeals, so far as may be, the word "Plaintiff" shall be held to include an appellant, the word "defendant" a respondent, and the word "suit" an appeal.

Simplified act

When applying this Order to appeals, the following substitutions should be made:

The word "Plaintiff" should be understood to mean "appellant."

The word "defendant" should be understood to mean "respondent."

The word "suit" should be understood to mean "appeal."

Explanation using Example

Example 1:

Ravi filed a lawsuit against Shyam in a civil court, claiming that Shyam had encroached on his property. The court ruled in favor of Shyam, and Ravi decided to appeal the decision. In the appeal, Ravi is now referred to as the "appellant" instead of the "plaintiff," and Shyam is referred to as the "respondent" instead of the "defendant." The original lawsuit is now referred to as an "appeal."

Example 2:

Meera filed a civil suit against a company for breach of contract. The court ruled in favor of the company, and Meera decided to appeal the decision. In the appeal process, Meera is considered the "appellant," the company is the "respondent," and the original case is now termed an "appeal." This means that all the rules and procedures that applied to the original suit will now apply to the appeal, with the terms adjusted accordingly.

Rule 12: Application of Order to proceedings.

Nothing in rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order.

ORDER XXIII: WITHDRAWAL AND ADJUSTMENT OF SUITS

Rule 1: Withdrawal of suit or abandonment of part of claim.

Withdrawal and Abandonment of Suits

(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim.

Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

(3) Where the Court is satisfied, -

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of suit or part of a claim,

It may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff -

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),

he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to

withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiff.

Simplified act

Withdrawal and Abandonment of Suits

(1) After starting a lawsuit, the person who filed it (the plaintiff) can decide to drop the whole case or just part of it against all or some of the people being sued (the defendants).

However, if the plaintiff is a minor (underage) or someone who needs special protection under rules 1 to 14 of Order XXXII, they cannot drop the case or any part of it without the Court's permission.

(2) To get the Court's permission, the plaintiff must submit a request along with a statement from their guardian (next friend) and, if they have a lawyer, a certificate from the lawyer saying that dropping the case is in the best interest of the minor or protected person.

(3) The Court can allow the plaintiff to drop the case or part of it and start a new one if:

(a) There is a technical issue that would cause the case to fail, or

(b) There are good reasons to let the plaintiff start a new case about the same issue or part of the claim.

The Court can set conditions for this permission as it sees fit.

(4) If the plaintiff:

(a) Drops any part of the case as mentioned in (1), or

(b) Drops the case or part of it without the Court's permission as mentioned in (3),

they will have to pay any costs the Court decides and cannot start a new case about the same issue or part of the claim.

(5) This rule does not allow the Court to let one of several plaintiffs drop the case or part of it without the agreement of the other plaintiffs.

Explanation using Example

Example 1:

Ravi files a suit against his neighbor, Suresh, for encroaching on his property and causing damage to his garden. After the suit is filed, Ravi realizes that the damage to the garden was not as extensive as he initially thought. He decides to abandon the part of his claim related to the garden damage but continues with the suit regarding the property encroachment. According to Rule 1 of Order XXIII of the Code of Civil Procedure, 1908, Ravi can abandon part of his claim against Suresh.

Example 2:

Meena, a minor, represented by her next friend (her uncle), files a suit against a company for not delivering a product she purchased online. Later, they decide to withdraw the suit because they found out that the product was delivered to the wrong address and the company is willing to resolve the issue amicably. Since Meena is a minor, her uncle must seek the court's permission to withdraw the suit. He submits an application along with an affidavit stating that the withdrawal is in Meena's best interest. The court, after reviewing the application and affidavit, grants permission for the withdrawal.

Example 3:

Arjun files a suit against a contractor for poor construction work on his house. During the proceedings, Arjun realizes that his suit has a formal defect because he did not include a necessary party to the suit. Arjun applies to the court for permission to withdraw the suit with the liberty to file a fresh suit after correcting the defect. The court, satisfied with the reasons, grants Arjun permission to withdraw the suit and allows him to file a new suit after including the necessary party.

Example 4:

Priya and her brother Rajesh jointly file a suit against a tenant for not paying rent. Later, Priya wants to abandon the suit, but Rajesh wants to continue. According to Rule 1(5) of Order XXIII, Priya cannot abandon the suit without Rajesh's consent. Since Rajesh does not agree, Priya must continue with the suit.

Example 5:

Sunita files a suit against a car dealer for selling her a defective car. During the trial, she decides to withdraw the suit without seeking the court's permission. As a result, the court orders Sunita to pay the legal costs incurred by the car

dealer and precludes her from filing a fresh suit on the same matter in the future.

Rule 1A: When transposition of defendants as plaintiffs may be permitted.

Where a suit is withdrawn or abandoned by a plaintiff under rule 1, and a defendant applies to be transposed as a plaintiff under rule 10 of Order I, the Court shall, in considering such application, have due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendants.

Simplified act

If a plaintiff decides to withdraw or give up a lawsuit under rule 1, and

A defendant wants to take the place of the plaintiff under rule 10 of Order I,

The Court will look at whether the defendant has an important issue to resolve with any of the other defendants before making a decision.

Explanation using Example

Example 1:

Ravi files a lawsuit against Suresh and Mahesh, claiming that they have encroached on his land. During the proceedings, Ravi decides to withdraw the suit for personal reasons. Suresh, who believes that he has a valid claim to the land and wants to resolve the matter legally, applies to the court to be transposed as the plaintiff. The court will consider Suresh's application and determine if he has a substantial question to be decided against Mahesh. If the court finds that Suresh's claim is valid and substantial, it will allow Suresh to continue the lawsuit as the new plaintiff.

Example 2:

Anita files a suit against her business partners, Raj and Priya, alleging that they have misappropriated company funds. Midway through the case, Anita decides to abandon the suit due to a settlement offer from Raj. Priya, who wants to clear her name and believes that Raj is the one responsible for the misappropriation, applies to the court to be transposed as the plaintiff. The court will evaluate Priya's application to see if she has a substantial question to be decided against Raj. If the court finds Priya's concerns to be legitimate, it will permit her to continue the lawsuit as the new plaintiff.

Rule 2: Limitation law not affected by first suit.

In any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.

Simplified act

If you start a new lawsuit with permission given under the previous rule, you must follow the time limits for filing the lawsuit just as if you had never filed the first lawsuit.

Explanation using Example

Example 1:

Ravi files a lawsuit against Shyam for breach of contract on January 1, 2020. However, Ravi realizes that he made some errors in his initial filing and decides to withdraw the suit on March 1, 2020, with the court's permission to file a fresh suit. Ravi then files a new lawsuit on April 1, 2020. According to Rule 2 of Order XXIII of the Code of Civil Procedure 1908, the new lawsuit will be subject to the same limitation period as if the first suit had never been filed. If the limitation period for breach of contract is three years, Ravi must ensure that his new suit is filed within three years from the date the cause of action arose, not from the date of the first suit.

Example 2:

Anita files a suit against her neighbor, Sunil, for encroachment on her property on February 1, 2019. Later, she realizes that she needs to gather more evidence and withdraws the suit on June 1, 2019, with the court's permission to file a fresh suit. Anita then files a new suit on July 1, 2019. According to Rule 2 of Order XXIII of the Code of Civil Procedure 1908, the new suit will be subject to the same limitation period as if the first suit had never been filed. If the limitation period for property encroachment is twelve years, Anita must ensure that her new suit is filed within twelve years from the date the encroachment occurred, not from the date of the first suit.

Rule 3: Compromise of suit.

Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties or where the defendant satisfied the plaintiff in respect to the

whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:

Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.

Explanation: An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.

Simplified act

If the Court is convinced that a case has been settled completely or partially through a legal agreement or compromise that is written and signed by the parties involved, or if the defendant has satisfied the plaintiff regarding the whole or part of the case, the Court will record this agreement, compromise, or satisfaction. The Court will then issue a decision based on this agreement, compromise, or satisfaction as it applies to the parties involved in the case, even if the subject of the agreement, compromise, or satisfaction is different from the subject of the case.

If one party claims that an agreement or satisfaction has been reached and the other party denies it, the Court will decide on this matter. However, the Court will not delay the decision unless it records reasons for granting such a delay.

Explanation: An agreement or compromise that is invalid or can be invalidated under the Indian Contract Act, 1872, will not be considered legal under this rule.

Explanation using Example

Example 1:

Ravi and Suresh are involved in a civil suit over a property dispute. During the course of the trial, both parties decide to settle the matter out of court. They draft a written agreement where Ravi agrees to pay Suresh a sum of ₹10 lakhs, and in return, Suresh agrees to transfer his share of the disputed property to

Ravi. Both parties sign the agreement. Ravi and Suresh present this agreement to the court. The court, after verifying the authenticity and legality of the agreement, records the compromise and passes a decree in accordance with the terms of the agreement. The property dispute is thus resolved without further litigation.

Example 2:

Meena files a suit against her business partner, Anil, for breach of contract. During the proceedings, Anil offers to settle the dispute by paying Meena ₹5 lakhs as compensation. Meena agrees to this settlement. They both sign a written compromise agreement. However, when they present the agreement to the court, Meena claims that Anil has not fulfilled his part of the agreement. Anil denies this allegation. The court then examines the evidence and decides whether the compromise has indeed been fulfilled. If the court finds that Anil has satisfied the terms of the agreement, it will record the compromise and pass a decree accordingly. If not, the court may refuse to record the compromise and continue with the trial.

Example 3:

Priya sues her neighbor, Raj, for encroaching on her land. During the trial, they decide to settle the matter amicably. They draft a written agreement where Raj agrees to remove the encroachment and pay Priya ₹1 lakh for any inconvenience caused. Both parties sign the agreement. When they present the agreement to the court, the court finds that the agreement is lawful and records it. The court then passes a decree based on the terms of the agreement, thus resolving the dispute.

Example 4:

Aman and Bharat are in a legal dispute over a loan agreement. Aman claims that Bharat owes him ₹2 lakhs. During the trial, Bharat agrees to pay Aman ₹1.5 lakhs as a full and final settlement. They draft a written compromise agreement and sign it. When they present the agreement to the court, Aman alleges that Bharat has not paid the agreed amount. Bharat denies this. The court examines the evidence and decides whether the payment has been made. If the court finds that Bharat has paid the amount, it will record the compromise and pass a decree accordingly. If not, the court will continue with the trial.

Example 5:

Sunita files a suit against her employer, a private company, for wrongful termination. During the trial, the company offers to settle the matter by paying Sunita ₹3 lakhs and providing her with a positive reference letter. Sunita agrees, and they draft a written compromise agreement, which both parties sign. They present the agreement to the court. The court verifies the legality of the agreement and records it. The court then passes a decree based on the terms of the agreement, thus resolving the dispute.

Rule 3A: Bar to suit.

No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.

38B.

Simplified act

You cannot file a lawsuit to cancel a court decision just because the agreement that the decision is based on was not legal.

38B.

Explanation using Example

Example 1:

Ravi and Suresh were involved in a civil dispute over a piece of land. They decided to settle the matter out of court and reached a compromise. The court then issued a decree based on their compromise agreement. Later, Ravi felt that the compromise was not lawful because he believed Suresh had misrepresented some facts. Ravi wanted to file a new suit to set aside the decree on these grounds. However, under Rule 3A of the Code of Civil Procedure 1908, Ravi cannot file a new suit to set aside the decree simply because he now believes the compromise was not lawful. The decree remains valid and enforceable.

Example 2:

Anita and Bhaskar were in a legal battle over the ownership of a family business. They eventually agreed to a compromise, which was then formalized by a court decree. A few months later, Anita discovered that Bhaskar had hidden some crucial financial information during their compromise negotiations. Anita wanted to challenge the decree by filing a new suit, claiming the compromise was not lawful due to Bhaskar's deceit. However, according to

Rule 3A of the Code of Civil Procedure 1908, Anita cannot file a new suit to set aside the decree on the grounds that the compromise was not lawful. The decree based on the compromise stands as it is.

Rule 3B: No agreement or compromise to be entered in a representative suit without leave of Court.

1. No agreement or compromise in a representative suit shall be entered into without the leave of the Court expressly recorded in the proceedings; and any such agreement or compromise entered into without the leave of the Court as recorded shall be void.

2. Before granting such leave, the Court shall give notice in such manner as it may think fit to such persons as may appear to it to be interested in the suit.

Explanation

In this rule, "representative suit" means:

(a) a suit under Section 91 or Section 92,

(b) a suit under rule 8 of Order I,

(c) a suit in which the manager of an undivided Hindu family sues or is sued as representing the other members of the family,

(d) any other suit in which the decree passed may, by virtue of the provisions of this Code or of any other law for the time being in force, bind any person who is not named as party to the suit.

4.

Simplified act

1. You cannot make or agree to a settlement in a representative lawsuit without getting permission from the Court. If you do make such an agreement without the Court's permission, it will not be valid.

2. Before giving this permission, the Court will notify people who might be interested in the lawsuit in a way it thinks is appropriate.

Explanation

In this rule, a "representative suit" means:

(a) a lawsuit under Section 91 or Section 92,

(b) a lawsuit under rule 8 of Order I,

(c) a lawsuit where the manager of a joint Hindu family is suing or being sued on behalf of other family members,

(d) any other lawsuit where the decision can affect someone who is not directly named in the lawsuit.

4.

Explanation using Example

Example 1:

A group of residents in a locality files a representative suit under Section 91 of the Code of Civil Procedure, 1908, against a factory for causing environmental pollution. The residents are represented by a few individuals who act on behalf of the entire group. During the proceedings, the factory offers a settlement to the representatives, proposing to install pollution control equipment and pay compensation to the affected residents. According to Rule 3B, the representatives cannot accept this settlement without the explicit permission of the Court. The Court will review the proposed agreement, notify all interested parties (i.e., the residents), and ensure that the settlement is fair and in the best interest of all affected individuals before granting leave for the agreement to be entered into.

Example 2:

A manager of an undivided Hindu family files a suit on behalf of the family members to reclaim ancestral property that was wrongfully sold. During the litigation, the opposing party offers a compromise, suggesting that they will return a portion of the property and pay a sum of money as compensation. The manager cannot accept this compromise without the Court's permission. The Court will notify all family members, consider their interests, and ensure that the compromise is equitable for all members of the undivided family before granting leave for the compromise to be accepted.

Example 3:

A group of consumers files a representative suit under Rule 8 of Order I against a company for selling defective products. The company proposes a settlement where they agree to replace the defective products and provide additional compensation. The representatives of the consumers cannot agree to this

settlement without the Court's permission. The Court will notify all affected consumers, review the terms of the settlement, and ensure that it is fair and reasonable for all consumers involved before granting leave for the settlement to be accepted.

Example 4:

A public interest litigation (PIL) is filed by a group of activists under Section 92 of the Code of Civil Procedure, 1908, against a trust for mismanagement of funds. The trust offers a compromise, agreeing to restructure its management and return misappropriated funds. The activists cannot accept this compromise without the Court's permission. The Court will notify all interested parties, including beneficiaries of the trust, review the terms of the compromise, and ensure that it serves the best interest of all beneficiaries before granting leave for the compromise to be accepted.

Rule 4: Proceedings in execution of decrees not affected.

Nothing in this Order shall apply to any proceedings in execution of a decree or order.

ORDER XXIV: PAYMENT INTO COURT

Rule 1: Deposit by defendant of amount in satisfaction of claim.

The defendant in any suit to recover a debt or damages may, at any stage of the suit, deposit in Court such sum of money as he considers a satisfaction in full of the claim.

Simplified act

If someone is being sued to pay back money or for damages, they can, at any point during the case, put an amount of money in the court that they believe fully settles the claim.

Explanation using Example

Example 1:

Ravi has filed a lawsuit against Suresh for non-payment of a loan amounting to ₹1,00,000. During the course of the trial, Suresh realizes that he indeed owes Ravi the money but believes that the amount should be ₹80,000 due to some prior partial payments that were not accounted for. To settle the matter, Suresh decides to deposit ₹80,000 in the court as a full satisfaction of Ravi's

claim. This deposit is made under Rule 1 of Order XXIV of the Code of Civil Procedure, 1908. The court will then notify Ravi of this deposit, and Ravi can either accept this amount as full settlement or continue to contest the remaining amount.

Example 2:

Meera has sued her former employer, ABC Pvt. Ltd., for ₹5,00,000 in damages due to wrongful termination. ABC Pvt. Ltd. acknowledges that Meera is entitled to some compensation but disputes the amount claimed. The company believes that ₹3,00,000 is a fair settlement for the damages. To expedite the resolution, ABC Pvt. Ltd. deposits ₹3,00,000 in the court as a full satisfaction of Meera's claim. The court will inform Meera about this deposit, and she can choose to accept the ₹3,00,000 as a full settlement or continue to pursue the remaining amount through the legal process.

Rule 2: Notice of deposit.

- Notice of the deposit shall be given through the Court by the defendant to the plaintiff, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the plaintiff on his application.

Simplified act

The defendant must inform the plaintiff through the Court when they make a deposit. Unless the Court says otherwise, the plaintiff can get the deposited money by asking for it.

Explanation using Example

Example 1:

Rajesh, a tenant, is involved in a civil dispute with his landlord, Suresh, over unpaid rent. Rajesh decides to deposit the disputed rent amount into the court to show his willingness to pay and to avoid further legal complications. According to Rule 2 of Order XXIV of the Code of Civil Procedure 1908, Rajesh must notify Suresh through the court about this deposit. Once the court receives the deposit, Suresh can apply to the court to withdraw the amount.

Example 2:

Meera, a contractor, is sued by a client, Anil, for not completing a construction project on time. Meera believes she owes Anil a certain amount for the delay but disputes the total amount claimed by Anil. To demonstrate her good faith,

Meera deposits the amount she believes is due into the court. She then notifies Anil through the court about this deposit. Anil can then apply to the court to withdraw the deposited amount, unless the court directs otherwise.

Rule 3: Interest on deposit not allowed to plaintiff after notice.

No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited is in full of the claim or falls short thereof.

Simplified act

The plaintiff cannot earn any interest on money that the defendant deposits.

This rule applies from the date the plaintiff receives notice of the deposit.

It doesn't matter if the deposited amount covers the full claim or is less than the claim.

Explanation using Example

Example 1:

Ravi filed a lawsuit against Suresh for non-payment of a loan amounting to ₹1,00,000. During the court proceedings, Suresh deposited ₹1,00,000 into the court as a payment towards the loan. The court notified Ravi about this deposit on 1st January 2023. According to Rule 3 of Order XXIV of The Code Of Civil Procedure 1908, Ravi will not be entitled to any interest on the ₹1,00,000 from 1st January 2023 onwards, even if the case continues for several more months.

Example 2:

Meena sued Rajesh for ₹50,000 claiming damages for breach of contract. Rajesh deposited ₹30,000 into the court as a partial payment towards the claim. The court notified Meena about this deposit on 15th March 2023. From 15th March 2023 onwards, Meena will not be entitled to any interest on the ₹30,000 deposited by Rajesh, even though it is not the full amount of her claim. However, she can still claim interest on the remaining ₹20,000 that has not been deposited.

**Rule 4: Procedure where plaintiff accepts deposit as satisfaction in part.
Procedure where he accepts it as satisfaction in full.**

(1) Where the plaintiff accepts such amount as satisfaction in part only of his claim

he may prosecute his suit for the balance; and, if the Court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff shall pay the costs of the suit incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim.

(2) Procedure where he accepts it as satisfaction in full

Where the plaintiff accepts such amount as satisfaction in full of his claim, he shall present to the Court a statement to that effect, and such statement shall be filed and the Court shall pronounce judgment accordingly; and, in directing by whom the costs of each party are to be paid, the Court shall consider which of the parties is most to blame for the litigation.

Illustrations

(a) A owes B Rs. 100. B sues A for the amount, having made no demand for payment and having no reason to believe that the delay caused by making a demand would place him at a disadvantage. On the plaint being filed, A pays the money into Court, B accepts it in full satisfaction of his claim, but the Court should not allow him any costs, the litigation being presumably groundless on his part.

(b) B sues A under the circumstances mentioned in illustration (a). On the plaint being filed, A disputes the claim. Afterwards, A pays the money into Court. B accepts in full satisfaction of his claim. The Court should also give B his costs of suit, A's conduct having shown that the litigation was necessary.

(c) A owes B Rs. 100, and is willing to pay him that sum without suit. B claims Rs. 150 and sues A for that amount. On the plaint being filed, A pays Rs. 100 into Court and disputes only his liability to pay the remaining Rs. 50. B accepts the Rs. 100 in full satisfaction of his claim. The Court should order him to pay A's costs.

Simplified act

(1) If the plaintiff accepts part of the money offered by the defendant

The plaintiff can continue to sue for the remaining amount. If the Court decides that the money deposited by the defendant was enough to cover the

plaintiff's entire claim, the plaintiff will have to pay the legal costs that came after the deposit and any earlier costs that were due to the plaintiff asking for too much money.

(2) If the plaintiff accepts the full amount offered by the defendant

If the plaintiff accepts the money as full payment of his claim, he must tell the Court in writing. This statement will be filed, and the Court will make a judgment based on it. When deciding who should pay the legal costs, the Court will consider which party is more at fault for the lawsuit.

Examples

(a) A owes B Rs. 100. B sues A for the money without asking A to pay first and without any reason to think that asking would cause a problem. When the lawsuit is filed, A pays the money into Court, and B accepts it as full payment. The Court should not give B any legal costs because the lawsuit was unnecessary.

(b) B sues A under the same conditions as in example (a). When the lawsuit is filed, A disputes the claim but later pays the money into Court. B accepts it as full payment. The Court should give B his legal costs because A's actions showed that the lawsuit was needed.

(c) A owes B Rs. 100 and is willing to pay it without a lawsuit. B claims Rs. 150 and sues A for that amount. When the lawsuit is filed, A pays Rs. 100 into Court and disputes only the remaining Rs. 50. B accepts the Rs. 100 as full payment. The Court should order B to pay A's legal costs.

Explanation using Example

Example 1:

Ravi lent Rs. 50,000 to Suresh. After a few months, Ravi demanded repayment, but Suresh did not pay. Ravi then filed a lawsuit against Suresh for the full amount. During the court proceedings, Suresh deposited Rs. 30,000 into the court, claiming it as partial repayment. Ravi accepted the Rs. 30,000 but continued the lawsuit for the remaining Rs. 20,000. If the court later decides that the Rs. 30,000 was sufficient to cover the entire debt, Ravi would have to pay the legal costs incurred after the deposit and any costs caused by his excessive claim.

Example 2:

Priya sold goods worth Rs. 10,000 to Anil. Anil delayed the payment, and Priya filed a lawsuit for the amount. Anil then deposited Rs. 10,000 into the court, and Priya accepted it as full satisfaction of her claim. Priya presented a statement to the court confirming her acceptance. The court then pronounced judgment based on this acceptance. In deciding who should bear the legal costs, the court considered that Anil's delay in payment led to the litigation, so Anil was ordered to pay the costs.

Example 3:

Sunita provided consultancy services to Rajesh worth Rs. 25,000. Rajesh disputed the quality of the services and refused to pay. Sunita sued Rajesh for Rs. 25,000. During the court proceedings, Rajesh deposited Rs. 15,000 into the court, claiming it was the fair value of the services. Sunita accepted the Rs. 15,000 as partial satisfaction and continued the lawsuit for the remaining Rs. 10,000. If the court decides that Rs. 15,000 was indeed the fair value, Sunita would have to pay the legal costs incurred after the deposit and any costs caused by her excessive claim.

Example 4:

Manoj borrowed Rs. 5,000 from Deepak. Manoj was willing to repay the amount, but Deepak demanded Rs. 7,000, including interest and other charges. Deepak filed a lawsuit for Rs. 7,000. Manoj deposited Rs. 5,000 into the court, disputing the additional Rs. 2,000. Deepak accepted the Rs. 5,000 as full satisfaction of his claim. The court then ordered Deepak to pay Manoj's legal costs, as the court found that Deepak's claim for the additional Rs. 2,000 was excessive and unnecessary.

ORDER XXV: SECURITY FOR COSTS

Rule 1: When security for costs may be required from plaintiff.

1. Security for Costs

At any stage of a suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff, for reasons to be recorded, to give within the time fixed by it security for the payment of all costs incurred and likely to be incurred by any defendant:

Provided that such an order shall be made in all cases in which it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are, residing out of India and that such plaintiff does not

possess or that no one of such plaintiffs possesses any sufficient immovable property within India other than the property in suit.

2. Residing Out of India

Whoever leaves India under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of India within the meaning of the proviso to sub-rule (1).

Simplified act

1. Security for Costs

At any point during a lawsuit, the Court can, either on its own or if a defendant asks, require the plaintiff to provide a guarantee (security) to cover all the costs that the defendant has already spent or is likely to spend. The Court will record the reasons for this decision and set a deadline for the plaintiff to provide this security.

However, this requirement will always be enforced if the Court finds that the only plaintiff, or all plaintiffs if there are more than one, live outside of India and do not own any significant property in India other than the property involved in the lawsuit.

2. Residing Out of India

Anyone who leaves India in such a way that it seems likely they won't return when needed to pay costs will be considered as living outside of India according to the rule mentioned above.

Explanation using Example

Example 1:

Rajesh, an Indian citizen, files a lawsuit against Sunil in a Delhi court, claiming that Sunil owes him Rs. 10 lakhs. Sunil, the defendant, learns that Rajesh has recently moved to Canada and does not own any property in India except for the disputed amount in the lawsuit. Sunil is concerned that if he wins the case, Rajesh might not be able to pay the legal costs incurred by Sunil. Sunil requests the court to order Rajesh to provide security for the costs. The court, considering Rajesh's residence outside India and lack of immovable property in India, orders Rajesh to deposit a certain amount as security for the costs within a specified time.

Example 2:

Anita, who lives in the United States, files a lawsuit in a Mumbai court against a company based in Mumbai, alleging breach of contract. The company, as the defendant, argues that Anita does not have any property in India and might not be able to pay the legal costs if the company wins the case. The company requests the court to order Anita to provide security for the costs. The court, noting that Anita resides outside India and does not possess any immovable property in India, orders her to provide security for the costs within a fixed period. If Anita fails to provide the security within the given time, the court may dismiss her lawsuit.

Rule 2: Effect of failure to furnish security.

Order

(1) In the event of such security not being furnished within the time fixed, the Court shall make an order dismissing the suit unless the plaintiff or plaintiffs are permitted to withdraw therefrom.

(2) Where a suit is dismissed under this rule, the plaintiff may apply for an order to set the dismissal aside and, if it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from furnishing the security within the time allowed, the Court shall set aside the dismissal upon such terms as to security, costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(3) The dismissal shall not be set aside unless notice of such application has been served on the defendant.

Simplified act

Order

(1) If the required security (a form of guarantee or bond) is not provided within the given time, the Court will dismiss the case unless the plaintiff (the person who brought the case) is allowed to withdraw it.

(2) If the case is dismissed because the security was not provided, the plaintiff can ask the Court to undo the dismissal. If the plaintiff can prove that there was a good reason for not providing the security on time, the Court will undo the dismissal. The Court may set conditions related to security, costs, or other matters, and will set a new date to continue the case.

(3) The dismissal will not be undone unless the defendant (the person being sued) has been notified about the plaintiff's request to undo the dismissal.

Explanation using Example

Example 1:

Ravi files a civil suit against his neighbor, Suresh, for encroaching on his property. The court, considering the circumstances, orders Ravi to furnish a security deposit of ₹50,000 within 30 days to cover potential legal costs. Ravi fails to provide the security within the stipulated time. As a result, the court dismisses Ravi's suit. However, Ravi later applies to the court, explaining that he was hospitalized due to a severe illness and could not arrange the security deposit in time. The court, satisfied with Ravi's explanation, sets aside the dismissal, orders Ravi to furnish the security within the next 15 days, and schedules a new date for the proceedings. Notice of Ravi's application is served to Suresh, ensuring he is informed about the developments.

Example 2:

Meera files a lawsuit against a construction company for not completing her house as per the contract. The court orders Meera to provide a security deposit of ₹1,00,000 within 45 days. Meera fails to furnish the security within the given time frame, leading to the dismissal of her suit. Meera then applies to the court, stating that her financial situation was temporarily strained due to an unexpected medical emergency in her family. The court, upon verifying her claim and finding it genuine, sets aside the dismissal. The court then orders Meera to provide the security within the next 30 days and schedules a new hearing date. The court also ensures that the construction company is notified about Meera's application and the new hearing date.

ORDER XXVI: COMMISSIONS

Commissions to examine witnesses

Rule 1: Cases in which Court may issue commission to examine witness.

Any Court may in any suit issue a commission for the examination on interrogatories or otherwise of any person resident within the local limits of its jurisdiction who is exempted under this Code from attending the Court or who is from sickness or infirmity unable to attend it:

Provided that a commission for examination on interrogatories shall not be issued unless the Court, for reasons to be recorded, thinks it necessary so to do.

Explanation. - The Court may, for the purpose of this rule, accept a certificate purporting to be signed by a registered medical practitioner as evidence of the sickness or infirmity of any person, without calling the medical practitioner as a witness.

Simplified act

Any Court can send someone to ask questions or gather information from a person who lives within the area the Court covers if that person:

Is allowed by law not to come to Court, or

Is too sick or weak to come to Court.

However, the Court will only send someone to ask questions if it writes down the reasons why it is necessary.

Explanation: The Court can accept a note from a registered doctor as proof that a person is too sick or weak to come to Court. The doctor does not need to come to Court to confirm this.

Explanation using Example

Example 1:

Scenario: Mr. Sharma, an elderly man aged 85, is a key witness in a property dispute case in Delhi. Due to his advanced age and frail health, he is unable to travel to the court to provide his testimony.

Application of the Act: The court, recognizing Mr. Sharma's inability to attend due to his infirmity, issues a commission to examine him at his residence. A court-appointed commissioner visits Mr. Sharma's home to record his testimony. The court accepts a certificate from Mr. Sharma's registered medical practitioner, confirming his health condition, without requiring the doctor to appear in court.

Example 2:

Scenario: Ms. Priya, a software engineer residing in Bangalore, is a crucial witness in a breach of contract case being heard in a Mumbai court. Due to her

job commitments and the distance, she is unable to attend the court proceedings in Mumbai.

Application of the Act: The Mumbai court issues a commission to examine Ms. Priya in Bangalore. The court appoints a local commissioner in Bangalore to record her testimony through interrogatories. The court records the reasons for issuing the commission, citing Ms. Priya's professional commitments and the impracticality of her traveling to Mumbai. The testimony is then sent to the Mumbai court for consideration in the ongoing case.

Rule 2: Order for commission.

An order for the issue of a commission for the examination of a witness may be made by the Court either of its own motion or on the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be examined.

Simplified act

The court can decide to have a witness examined by a commission either on its own or if someone involved in the case or the witness asks for it.

The request to have a witness examined must be supported by an affidavit or other evidence.

Explanation using Example

Example 1:

Scenario: Ramesh files a civil suit against Suresh for breach of contract in a Delhi court. One of Ramesh's key witnesses, Mr. Sharma, is an elderly man who resides in Chennai and is unable to travel due to health issues.

Application of the Act: Ramesh's lawyer files an application in the Delhi court, supported by an affidavit, requesting the court to issue a commission for the examination of Mr. Sharma in Chennai. The court, considering the circumstances, issues an order for a commission to examine Mr. Sharma at his residence in Chennai. A local commissioner is appointed to record Mr. Sharma's testimony, which is then sent to the Delhi court to be used in the ongoing case.

Example 2:

Scenario: Priya is involved in a property dispute case in a Mumbai court. One of the witnesses, Ms. Anjali, is a crucial witness but she is currently residing in the United States for her higher studies and cannot return to India for the trial.

Application of the Act: Priya's lawyer submits an application to the Mumbai court, along with an affidavit, requesting the issuance of a commission to examine Ms. Anjali via video conferencing. The court, recognizing the importance of Ms. Anjali's testimony and her inability to travel, issues an order for a commission. The court arranges for a commissioner to conduct the examination of Ms. Anjali through video conferencing, ensuring her testimony is recorded and submitted to the court for consideration in the property dispute case.

Rule 3: Where witness resides within Court's jurisdiction.

A commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any person whom the Court thinks fit to execute it.

Simplified act

A court can appoint someone to examine a person who lives within the area the court has authority over.

The court can choose anyone it believes is suitable to carry out this examination.

Explanation using Example

Example 1:

Rajesh has filed a civil suit in the District Court of Mumbai against his former business partner, Suresh, for breach of contract. One of the key witnesses, Anil, resides in Mumbai and has crucial information regarding the case. However, Anil is unable to attend the court hearings due to his medical condition. The court decides to issue a commission to a local advocate in Mumbai to visit Anil's residence and record his testimony. This ensures that Anil's evidence is collected without requiring him to appear in court, while still being within the jurisdiction of the Mumbai District Court.

Example 2:

Priya is involved in a property dispute case in the Civil Court of Bangalore. Her neighbor, Ravi, who witnessed the original property boundaries, resides in

Bangalore but is currently bedridden due to an accident. The court acknowledges the importance of Ravi's testimony and issues a commission to a court-appointed officer to go to Ravi's home and record his statement. This allows the court to gather essential evidence from Ravi without causing him undue hardship, as he resides within the jurisdiction of the Bangalore Civil Court.

Rule 4: Persons for whose examination commission may issue.

Order for Examination on Commission

(1) Any Court may in any suit issue a commission for the examination on interrogatories or otherwise of:

(a) any person resident beyond the local limits of its jurisdiction;

(b) any person who is about to leave such limits before the date on which he is required to be examined in Court; and

(c) any person in the service of the Government who cannot, in the opinion of the Court, attend without detriment to the public service:

Provided that where, under rule 19 of Order XVI, a person cannot be ordered to attend a Court in person, a commission shall be issued for his examination if his evidence is considered necessary in the interests of justice:

Provided further that a commission for examination of such person on interrogatories shall not be issued unless the Court, for reasons to be recorded, thinks it necessary so to do.

(2) Such commission may be issued to any Court, not being a High Court, within the local limits of whose jurisdiction such person resides, or to any pleader or other person whom the Court issuing the commission may appoint.

(3) The Court on issuing any commission under this rule shall direct whether the commission shall be returned to itself or to any subordinate Court.

Simplified act

Order for Examination on Commission

(1) Any Court can order a commission to examine someone through questions or other means if:

(a) the person lives outside the area the Court has authority over;

(b) the person is about to leave the area before they are supposed to be examined in Court; and

(c) the person works for the Government and, in the Court's opinion, cannot attend without harming public service:

However, if a person cannot be ordered to attend Court in person under rule 19 of Order XVI, a commission must be issued to examine them if their testimony is important for justice:

Additionally, a commission to examine such a person through questions will only be issued if the Court records reasons for why it is necessary.

(2) This commission can be sent to any Court (except a High Court) within the area where the person lives, or to any lawyer or other person the issuing Court appoints.

(3) When the Court issues a commission under this rule, it will specify whether the commission should be returned to itself or to a lower Court.

Explanation using Example

Example 1:

Scenario: A business dispute case in Mumbai.

Details: Mr. Sharma, a key witness in a business dispute case, resides in Delhi, which is beyond the local limits of the Mumbai court's jurisdiction. Mr. Sharma's testimony is crucial for the case, but he cannot travel to Mumbai due to health issues.

Application of Rule 4:

The Mumbai court issues a commission for the examination of Mr. Sharma.

The commission is sent to a court in Delhi, where Mr. Sharma resides.

A pleader or an appointed person in Delhi conducts the examination of Mr. Sharma on behalf of the Mumbai court.

The recorded testimony is then sent back to the Mumbai court for inclusion in the case proceedings.

Example 2:

Scenario: A government employee as a witness in a property dispute case in Chennai.

Details: Ms. Rao, a government employee, is a witness in a property dispute case in Chennai. She is stationed in Bangalore and cannot attend the court in Chennai without affecting her public service duties.

Application of Rule 4:

The Chennai court determines that Ms. Rao's testimony is necessary for the interests of justice.

The court issues a commission for her examination, considering her inability to attend in person due to her government service.

The commission is sent to a court in Bangalore or to a designated pleader who will conduct the examination.

Ms. Rao's testimony is recorded in Bangalore and sent back to the Chennai court for use in the ongoing property dispute case.

Example 3:

Scenario: A witness about to leave the country in a fraud case in Kolkata.

Details: Mr. Gupta, a witness in a fraud case in Kolkata, is scheduled to leave for an overseas assignment before the date he is required to be examined in court.

Application of Rule 4:

The Kolkata court issues a commission for the examination of Mr. Gupta before he leaves the country.

The court appoints a pleader to conduct the examination at a convenient location within the local limits of the court's jurisdiction.

Mr. Gupta's testimony is recorded through the commission and submitted to the court before his departure.

This ensures that his crucial evidence is available for the case proceedings even in his absence.

Example 4:

Scenario: Examination of a witness through interrogatories in a family dispute case in Hyderabad.

Details: Mrs. Verma, a witness in a family dispute case in Hyderabad, resides in a remote village and cannot travel to the court due to personal constraints.

Application of Rule 4:

The Hyderabad court decides that Mrs. Verma's evidence is necessary for the case.

The court issues a commission for her examination through interrogatories, recording the reasons for this decision.

A pleader or appointed person travels to Mrs. Verma's village to conduct the examination based on the prepared interrogatories.

The responses are recorded and sent back to the Hyderabad court for inclusion in the case proceedings.

Rule 4A: Commission for examination of any person resident within the local limits of the jurisdiction of the Court.

Notwithstanding anything contained in these rules, any court may, in the interest of justice or for the expeditious disposal of the case or for any other reason, issue commission in any suit for the examination, on interrogatories or otherwise, of any person resident within the local limits of its jurisdiction, and the evidence so recorded shall be read in evidence.

Simplified act

Despite what these rules say, any court can, for the sake of justice, to speed up the case, or for any other reason, appoint someone to gather information in a case.

This can include questioning any person who lives within the court's area.

The information collected this way can be used as evidence in the case.

Explanation using Example

Example 1:

Scenario: A civil suit is filed in the Delhi High Court regarding a property dispute. One of the key witnesses, Mr. Sharma, is an elderly man who resides

within the local limits of Delhi but is unable to travel to the court due to health issues.

Application of Rule 4A: The Delhi High Court, in the interest of justice and to expedite the disposal of the case, issues a commission to examine Mr. Sharma at his residence. A court-appointed commissioner visits Mr. Sharma's home, records his testimony, and submits it to the court. The evidence recorded by the commissioner is then read in court as part of the proceedings.

Example 2:

Scenario: In a commercial dispute case in the Mumbai City Civil Court, one of the parties wants to examine a technical expert, Ms. Rao, who resides in Mumbai. Ms. Rao's busy schedule makes it difficult for her to appear in court.

Application of Rule 4A: The Mumbai City Civil Court, recognizing the importance of Ms. Rao's testimony and aiming for an expeditious resolution of the case, issues a commission to examine her at her office. A commissioner is appointed to visit Ms. Rao's office, where she is questioned on interrogatories prepared by both parties. The recorded evidence is then presented in court and read as part of the trial.

Example 3:

Scenario: A family dispute case is being heard in the Chennai Family Court. One of the witnesses, Mrs. Lakshmi, is a resident of Chennai but is currently bedridden due to a recent surgery.

Application of Rule 4A: The Chennai Family Court, to ensure that Mrs. Lakshmi's testimony is included without causing her undue hardship, issues a commission to examine her at her home. A court-appointed commissioner records her statement at her residence. This recorded evidence is then submitted to the court and read during the proceedings, ensuring that her testimony is considered without requiring her physical presence in court.

Rule 5: Commission or request to examine witness not within India.

Where any Court to which application is made for the issue of a commission for the examination of a person residing at any place not within India is satisfied that the evidence of such person is necessary, the Court may issue such commission or a letter of request.

Simplified act

If a court receives a request to gather testimony from someone who lives outside of India, and the court believes that this person's testimony is important, the court can either send a commission or a letter asking for this testimony.

Explanation using Example

Example 1:

Rajesh is involved in a civil lawsuit in India regarding a property dispute. One of the key witnesses, his cousin Suresh, resides in the United States and has crucial information about the property transactions. Rajesh's lawyer files an application in the Indian court requesting the issuance of a commission to examine Suresh. The court, upon being satisfied that Suresh's testimony is necessary for the case, issues a letter of request to the appropriate judicial authority in the United States to record Suresh's statement and send it back to the Indian court.

Example 2:

Meera is fighting a case in an Indian court over a breach of contract with a foreign company. The CEO of the foreign company, who resides in Germany, has vital evidence that can support Meera's claims. Meera's legal team applies to the court for a commission to examine the CEO. The court, recognizing the importance of the CEO's evidence, issues a commission directing the German judicial authorities to take the CEO's deposition and forward it to the Indian court for consideration in the ongoing case.

Rule 6: Court to examine witness pursuant to commission.

Every Court receiving a commission for the examination of any person shall examine him or cause him to be examined pursuant thereto.

7.

Simplified act

Every Court that gets a request to question someone must either question that person themselves or make sure someone else does it according to the request.

7.

Explanation using Example

Example 1:

Rajesh is involved in a civil lawsuit in a Delhi court regarding a property dispute. One of the key witnesses, Mr. Sharma, is an elderly man who resides in Mumbai and is unable to travel due to health issues. The Delhi court issues a commission to a local court in Mumbai to examine Mr. Sharma. The Mumbai court, upon receiving the commission, arranges for Mr. Sharma's examination at his residence. The testimony is recorded and sent back to the Delhi court to be used in the ongoing case.

Example 2:

Meena is fighting a civil case in a Bangalore court over a breach of contract. A crucial witness, Ms. Priya, is currently residing in the United States for work and cannot return to India for the trial. The Bangalore court issues a commission to a consular officer at the Indian Embassy in the United States to examine Ms. Priya. The consular officer conducts the examination via video conference, ensuring all legal formalities are followed. The recorded testimony is then sent back to the Bangalore court to be included in the case proceedings.

Rule 7: Return of commission with depositions of witnesses.

Where a commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the return thereto and the evidence taken under it shall (subject to the provisions of rule 8) form part of the record of the suit.

Simplified act

When a commission (a formal written order) has been properly carried out, it must be sent back to the Court that issued it, along with any evidence collected.

If the order that issued the commission says to return it somewhere else, then it should be sent there instead.

The commission, the return, and the evidence collected will become part of the official records of the case, unless rule 8 says otherwise.

Explanation using Example

Example 1:

Scenario: A property dispute case in a civil court in Mumbai.

Details:

Parties involved: Mr. Sharma (Plaintiff) and Mr. Verma (Defendant).

Issue: Ownership of a piece of land in Mumbai.

Witness: Mr. Gupta, an elderly neighbor who has crucial information about the history of the property.

Application of Rule 7:

The court in Mumbai issues a commission to a local commissioner to record Mr. Gupta's deposition because Mr. Gupta is too old to travel to the court.

The commissioner visits Mr. Gupta's residence, records his statement, and collects any relevant documents.

After completing the task, the commissioner returns the commission along with Mr. Gupta's deposition to the Mumbai court.

The court receives the commission and the deposition, which then become part of the official court record for the property dispute case.

Example 2:

Scenario: A breach of contract case in a civil court in Delhi.

Details:

Parties involved: ABC Pvt. Ltd. (Plaintiff) and XYZ Ltd. (Defendant).

Issue: Alleged breach of a supply contract.

Witness: Ms. Rani, a key employee of XYZ Ltd. who is currently on a business trip in Bangalore.

Application of Rule 7:

The Delhi court issues a commission to a commissioner in Bangalore to record Ms. Rani's deposition.

The commissioner in Bangalore arranges a meeting with Ms. Rani, records her statement, and collects any supporting documents.

The commissioner then returns the commission along with Ms. Rani's deposition to the Delhi court.

The court in Delhi receives the commission and the deposition, which are then included in the official court record for the breach of contract case.

Example 3:

Scenario: A family inheritance dispute in a civil court in Chennai.

Details:

Parties involved: Siblings A, B, and C.

Issue: Dispute over the distribution of their deceased father's estate.

Witness: Mr. D, a family friend who has knowledge about the father's intentions and the will.

Application of Rule 7:

The court in Chennai issues a commission to a local commissioner to record Mr. D's deposition because Mr. D is bedridden and cannot come to the court.

The commissioner visits Mr. D's home, records his statement, and collects any relevant documents.

After completing the task, the commissioner returns the commission along with Mr. D's deposition to the Chennai court.

The court receives the commission and the deposition, which then become part of the official court record for the inheritance dispute case.

Rule 8: When depositions may be read in evidence.

Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered, unless -

(a) the person who gave the evidence is beyond the jurisdiction of the Court, or dead or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance in Court, or is a person in the service of the Government who cannot, in the opinion of the Court, attend without detriment to the public service, or

(b) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in clause (a) and authorizes the evidence of any

person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

Simplified act

Evidence collected through a commission (a formal request to gather evidence) cannot be used in a court case without the agreement of the person it is being used against, unless:

(a) The person who gave the evidence is outside the court's area of authority, has passed away, is too sick or weak to come to court, is legally excused from appearing in court, or works for the government and cannot attend without harming public service, or

(b) The court decides to allow the evidence to be used even if the reasons mentioned in (a) no longer apply at the time the evidence is being read in court.

Explanation using Example

Example 1:

Ravi filed a civil suit against Shyam for breach of contract in a Delhi court. Ravi's key witness, Mr. Kumar, who had crucial information about the contract, was living in the United States and could not travel to India for the trial. Ravi requested the court to issue a commission to record Mr. Kumar's deposition in the United States. The deposition was recorded, but during the trial, Shyam objected to the deposition being read as evidence. The court allowed the deposition to be read because Mr. Kumar was beyond the jurisdiction of the court, satisfying the condition under clause (a) of Rule 8.

Example 2:

Meena filed a civil suit for property dispute in a Mumbai court. Her primary witness, Mrs. Sharma, was critically ill and hospitalized, making it impossible for her to attend the court. Meena requested the court to issue a commission to record Mrs. Sharma's deposition at the hospital. The deposition was recorded, but during the trial, the opposing party objected to the deposition being read as evidence. The court, using its discretion under clause (b) of Rule 8, dispensed with the proof of Mrs. Sharma's illness and allowed the deposition to be read as evidence, considering the circumstances.

Example 3:

Arjun filed a civil suit for defamation in a Chennai court. His key witness, Mr. Singh, was a high-ranking government official who could not attend the court without affecting public service. Arjun requested the court to issue a commission to record Mr. Singh's deposition at his office. The deposition was recorded, but during the trial, the defendant objected to the deposition being read as evidence. The court allowed the deposition to be read because Mr. Singh was a government official who could not attend without detriment to public service, satisfying the condition under clause (a) of Rule 8.

Example 4:

Sita filed a civil suit for recovery of money in a Kolkata court. Her main witness, Mr. Das, had passed away after his deposition was recorded under a commission. During the trial, the opposing party objected to the deposition being read as evidence. The court allowed the deposition to be read because Mr. Das was deceased, satisfying the condition under clause (a) of Rule 8.

Example 5:

Vikram filed a civil suit for damages in a Bangalore court. His key witness, Ms. Rao, was exempted from personal appearance in court due to her advanced age and frailty. Vikram requested the court to issue a commission to record Ms. Rao's deposition at her residence. The deposition was recorded, but during the trial, the defendant objected to the deposition being read as evidence. The court allowed the deposition to be read because Ms. Rao was exempted from personal appearance in court, satisfying the condition under clause (a) of Rule 8.

Rule 9: Commissions to make local investigations.

In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

Simplified act

If a court thinks it is necessary or helpful to investigate something locally to understand a dispute better, find out the market value of a property, or determine the amount of profits or damages, the court can appoint someone to do this investigation and report back.

However, if the State Government has set rules about who can be appointed for such investigations, the court must follow those rules.

Explanation using Example

Example 1:

Case: Dispute over Property Boundaries

Scenario: Mr. Sharma and Mr. Verma are neighbors in a village in Uttar Pradesh. They have a dispute over the exact boundary line between their properties. Mr. Sharma claims that Mr. Verma has encroached on his land by building a fence 2 feet into his property.

Application of Rule 9: The court deems it necessary to have a clear understanding of the property boundaries to resolve the dispute. Therefore, the court issues a commission to a local surveyor, Mr. Gupta, directing him to conduct a local investigation. Mr. Gupta visits the site, measures the properties, and prepares a detailed report with maps showing the exact boundaries. He submits this report to the court, which then uses it to make an informed decision on the dispute.

Example 2:

Case: Determining Market Value of Property for Compensation

Scenario: The government of Maharashtra decides to acquire a piece of land owned by Ms. Rao for a public infrastructure project. Ms. Rao is not satisfied with the compensation offered by the government and claims that the market value of her property is much higher.

Application of Rule 9: To ascertain the accurate market value of the property, the court issues a commission to a certified real estate appraiser, Mr. Desai. Mr. Desai conducts a local investigation, examining recent sales of similar properties in the area, the condition of Ms. Rao's property, and other relevant factors. He prepares a report detailing his findings on the market value of the property and submits it to the court. The court uses this report to determine a fair compensation amount for Ms. Rao.

Example 3:

Case: Calculation of Mesne Profits

Scenario: Mr. Khan rents out his commercial property in Delhi to Mr. Singh. However, Mr. Singh stops paying rent and continues to occupy the property even after the lease expires. Mr. Khan files a suit to recover possession of the property and also claims mesne profits (profits that Mr. Singh earned from the property during the period of unauthorized occupation).

Application of Rule 9: The court needs to determine the amount of mesne profits owed to Mr. Khan. It issues a commission to a chartered accountant, Ms. Mehta, directing her to conduct a local investigation. Ms. Mehta examines the rental income that similar properties in the area generate and calculates the profits Mr. Singh might have earned during the period of unauthorized occupation. She submits a detailed report to the court, which then uses it to decide the amount of mesne profits Mr. Singh must pay to Mr. Khan.

Example 4:

Case: Assessment of Damages in a Construction Dispute

Scenario: A construction company, ABC Builders, is contracted to build a residential complex for Mr. Patel in Gujarat. Due to poor construction quality, several issues arise, causing Mr. Patel to incur additional expenses for repairs. Mr. Patel files a suit against ABC Builders for damages.

Application of Rule 9: To assess the extent of damages and the cost of repairs, the court issues a commission to a civil engineer, Mr. Rao. Mr. Rao conducts a local investigation, inspecting the construction site, identifying the defects, and estimating the cost of necessary repairs. He prepares a report detailing his findings and submits it to the court. The court uses this report to determine the amount of damages ABC Builders must pay to Mr. Patel.

Rule 10: Procedure of Commissioner.

Commissions for Scientific Investigation, Performance of Ministerial Act and Sale of Movable Property

(1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him, to the Court.

(2) Report and depositions to be evidence in suit. Commissioner may be examined in person. - The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

(3) Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.

Simplified act

Commissions for Scientific Investigation, Performance of Ministerial Act and Sale of Movable Property

(1) The Commissioner will visit the location and gather evidence as needed. He will write down this evidence and send it, along with his signed report, to the Court.

(2) Report and depositions to be evidence in suit. Commissioner may be examined in person. - The Commissioner's report and the evidence he collects will be used as evidence in the case and will be part of the official record. However, the Court or any party involved in the case (with the Court's permission) can ask the Commissioner questions in open Court about the matters he investigated, his report, or how he conducted the investigation.

(3) If the Court is not satisfied with the Commissioner's work for any reason, it can order further investigation as it sees fit.

Explanation using Example

Example 1:

Scenario: Property Boundary Dispute

Context: Mr. Sharma and Mr. Verma are neighbors in a residential area in Delhi. They have a dispute regarding the boundary line between their properties. Mr. Sharma claims that Mr. Verma has encroached on his land by building a wall that extends into his property.

Application of Rule 10:

Appointment of Commissioner: The court appoints a Commissioner to conduct a local investigation to determine the exact boundary line.

Local Inspection: The Commissioner visits the site, inspects the properties, and measures the boundary lines.

Evidence Collection: The Commissioner interviews both parties and any witnesses, and records their statements in writing.

Report Submission: The Commissioner prepares a detailed report, including the measurements, observations, and evidence collected, and submits it to the court.

Court Proceedings: The report and the evidence collected by the Commissioner are presented in court. The court may call the Commissioner to testify in person to clarify any points in the report or the manner of investigation.

Further Inquiry: If the court is not satisfied with the Commissioner's report, it may order a further inquiry or appoint a new Commissioner to re-investigate the matter.

Example 2:

Scenario: Dispute Over Agricultural Land Usage

Context: In a village in Punjab, there is a dispute between two farmers, Mr. Singh and Mr. Kaur, over the usage of a piece of agricultural land. Mr. Singh claims that Mr. Kaur has been using the land for purposes other than what was agreed upon, affecting the irrigation system.

Application of Rule 10:

Appointment of Commissioner: The court appoints a Commissioner to investigate the usage of the disputed land.

Local Inspection: The Commissioner visits the agricultural land, inspects the irrigation system, and observes the current usage of the land.

Evidence Collection: The Commissioner takes written statements from both farmers and any other relevant witnesses, such as neighboring farmers or local authorities.

Report Submission: The Commissioner compiles a report detailing the findings, including the current state of the land, the irrigation system, and the evidence collected, and submits it to the court.

Court Proceedings: The report and the evidence are admitted as evidence in the court case. The court may summon the Commissioner to provide further explanations or answer questions regarding the investigation.

Further Inquiry: If the court finds the report unsatisfactory or incomplete, it may order additional investigations or appoint another Commissioner to conduct a more thorough inquiry.

Example 3:

Scenario: Sale of Movable Property in a Divorce Case

Context: In a divorce case in Mumbai, there is a dispute over the sale of a jointly owned car. Both parties, Mr. and Mrs. Desai, claim ownership and the right to sell the car.

Application of Rule 10:

Appointment of Commissioner: The court appoints a Commissioner to handle the sale of the car and determine the rightful ownership.

Local Inspection: The Commissioner inspects the car, verifies its condition, and checks the ownership documents.

Evidence Collection: The Commissioner records statements from both Mr. and Mrs. Desai and any other relevant witnesses, such as the car dealer or service center.

Report Submission: The Commissioner prepares a report detailing the car's condition, ownership documents, and the evidence collected, and submits it to the court.

Court Proceedings: The report and the evidence are presented in court. The court may call the Commissioner to testify about the investigation and the sale process.

Further Inquiry: If the court is not satisfied with the Commissioner's findings, it may order a further inquiry or appoint another Commissioner to re-evaluate the situation.

Example 4:

Scenario: Scientific Investigation in a Patent Infringement Case

Context: A pharmaceutical company in Hyderabad files a lawsuit against a competitor, alleging that the competitor has infringed on its patented drug formula.

Application of Rule 10:

Appointment of Commissioner: The court appoints a Commissioner with expertise in pharmaceuticals to conduct a scientific investigation.

Local Inspection: The Commissioner visits the laboratories of both companies, inspects the drug formulas, and compares them.

Evidence Collection: The Commissioner takes written statements from scientists and experts from both companies and collects relevant documents and samples.

Report Submission: The Commissioner compiles a detailed report, including the scientific analysis, observations, and evidence collected, and submits it to the court.

Court Proceedings: The report and the evidence are admitted as evidence in the court case. The court may summon the Commissioner to provide further explanations or answer questions regarding the scientific investigation.

Further Inquiry: If the court finds the report unsatisfactory or incomplete, it may order additional investigations or appoint another Commissioner with more expertise to conduct a more thorough inquiry.

Commissions for local investigations

Rule 10A: Commission for scientific investigation.

Commission for Scientific Investigation

(1) Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.

(2) The provisions of rule 10 of this Order shall, as far as may be, apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9.

Simplified act

Commission for Scientific Investigation

(1) If a case involves a scientific question that the Court believes cannot be easily investigated in the courtroom, the Court can appoint a qualified person to investigate the question and report back to the Court. This is done to ensure justice is served.

(2) The rules that apply to a Commissioner appointed under rule 10 of this Order will also apply to a Commissioner appointed under this rule, as much as possible.

Explanation using Example

Example 1:

Case: Property Dispute Involving Structural Integrity

Scenario: Mr. Sharma and Mr. Verma are neighbors in a residential area in Delhi. Mr. Sharma files a suit against Mr. Verma, claiming that the construction of Mr. Verma's new building has weakened the structural integrity of his own house. Mr. Sharma alleges that the vibrations from the construction have caused cracks in his walls.

Application of Rule 10A: The court recognizes that determining the cause of the structural damage requires a scientific investigation, which cannot be conveniently conducted in the courtroom. Therefore, the court issues a commission to a qualified structural engineer to investigate the matter. The engineer is directed to inspect both properties, analyze the construction methods, and report back to the court on whether Mr. Verma's construction has indeed caused the damage to Mr. Sharma's house.

Example 2:

Case: Environmental Pollution Dispute

Scenario: A group of residents in a village near Mumbai files a suit against a local factory, alleging that the factory's waste disposal practices are polluting the local river, which is their primary source of water. The residents claim that the pollution has led to health issues and environmental degradation.

Application of Rule 10A: The court acknowledges that the case involves complex scientific questions regarding water pollution and its effects. The court

decides to issue a commission to an environmental scientist with expertise in water pollution. The scientist is tasked with collecting water samples from the river, analyzing the levels of pollutants, and determining whether the factory's waste disposal practices are responsible for the contamination. The scientist's report will help the court make an informed decision on the matter.

Rule 10B: Commission for performance of a ministerial act.

Order 21, Rule 30

(1) Where any question arising in a suit involves the performance of any ministerial act which cannot, in the opinion of the Court, be conveniently performed before the Court, the Court may, if for reasons to be recorded, it is of opinion that it is necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to perform that ministerial act and report thereon to the Court.

(2) The provisions of rule 10 of this Order shall apply in relation to a commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9.

Simplified act

Order 21, Rule 30

(1) If a case involves a task that is more administrative (like paperwork) and the Court thinks it can't be done easily in the courtroom, the Court can assign someone else to do it. The Court must explain why this is necessary and how it helps justice. The person assigned will do the task and then report back to the Court.

(2) The rules that apply to someone appointed under Rule 9 of this Order will also apply to the person appointed under this rule.

Explanation using Example

Example 1:

Scenario: Property Boundary Dispute

Context: Rajesh and Suresh are neighbors in a village in Maharashtra. They have a dispute over the exact boundary line between their properties. Both parties have presented their own versions of the boundary, supported by old

documents and local witnesses. The court finds it difficult to ascertain the boundary based on the documents alone.

Application of Rule 10B: The court decides that a local investigation is necessary to resolve the dispute. It issues a commission to a local surveyor, Mr. Sharma, directing him to visit the site, measure the properties, and determine the boundary line based on the available documents and physical markers. Mr. Sharma is instructed to prepare a detailed report and submit it to the court.

Outcome: Mr. Sharma conducts the survey, prepares a report with precise measurements and boundary markers, and submits it to the court. The court uses this report to make a final decision on the boundary dispute, ensuring a fair resolution based on accurate and impartial information.

Example 2:

Scenario: Assessment of Damages in a Construction Dispute

Context: A construction company, ABC Builders, is sued by a client, Mr. Verma, for poor workmanship and delays in completing a residential project in Delhi. Mr. Verma claims significant financial losses due to the delays and substandard construction quality. The court needs to assess the extent of the damages and the quality of the construction work.

Application of Rule 10B: The court finds that it is not feasible to assess the construction quality and damages within the courtroom. Therefore, it issues a commission to an experienced civil engineer, Ms. Gupta, directing her to inspect the construction site, evaluate the quality of work, and estimate the financial losses incurred by Mr. Verma. Ms. Gupta is required to submit a detailed report to the court.

Outcome: Ms. Gupta visits the construction site, conducts a thorough inspection, and prepares a report detailing the construction deficiencies and the estimated financial losses. The court uses this report to determine the compensation amount that ABC Builders must pay to Mr. Verma, ensuring a just and informed decision.

Example 3:

Scenario: Verification of Accounts in a Partnership Dispute

Context: Two partners, Mr. Singh and Mr. Kumar, are involved in a legal dispute over the dissolution of their partnership business in Bangalore. Mr.

Singh alleges that Mr. Kumar has misappropriated funds and manipulated the accounts. The court needs to verify the accuracy of the financial records and determine the actual financial position of the partnership.

Application of Rule 10B: The court decides that a detailed examination of the partnership accounts is necessary, which cannot be conveniently performed in the courtroom. It issues a commission to a chartered accountant, Mr. Mehta, directing him to audit the partnership accounts, verify the financial transactions, and report any discrepancies or misappropriations. Mr. Mehta is instructed to submit a comprehensive report to the court.

Outcome: Mr. Mehta conducts a thorough audit of the partnership accounts, identifies discrepancies, and prepares a detailed report highlighting the financial irregularities. The court uses this report to make an informed decision on the dissolution of the partnership and the settlement of financial claims between Mr. Singh and Mr. Kumar.

Example 4:

Scenario: Determination of Market Value in a Land Acquisition Case

Context: The government of Karnataka acquires a piece of agricultural land owned by Mr. Reddy for a public infrastructure project. Mr. Reddy disputes the compensation amount offered by the government, claiming that it is significantly lower than the market value of the land. The court needs to determine the fair market value of the land to resolve the compensation dispute.

Application of Rule 10B: The court finds that determining the market value of the land requires a local investigation and expert valuation. It issues a commission to a certified property valuer, Ms. Rao, directing her to inspect the land, analyze recent sales of similar properties in the area, and determine the fair market value. Ms. Rao is required to submit a detailed valuation report to the court.

Outcome: Ms. Rao conducts a thorough inspection of the land, reviews recent property sales in the vicinity, and prepares a valuation report. The court uses this report to determine the fair compensation amount that the government must pay to Mr. Reddy, ensuring a just and equitable resolution of the land acquisition dispute.

Rule 10C: Commission for the sale of movable property.

Sale of Movable Property in Custody of Court

(1) Where, in any suit, it becomes necessary to sell any movable property which is in the custody of the Court pending the determination of the suit and which cannot be conveniently preserved, the Court may, if, for reasons to be recorded, it is of opinion that it is necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to conduct such sale and report thereon to the Court.

(2) The provisions of rule 10 of this Order shall apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9.

(3) Every such sale shall be held, as far as may be, in accordance with the procedure prescribed for the sale of movable property in execution of a decree.

Simplified act

Sale of Movable Property in Custody of Court

(1) If, during a lawsuit, the court has some movable property (like goods or items) that needs to be sold because it can't be easily kept safe until the case is over, the court can decide to sell it. The court must explain why it thinks selling the property is necessary or helpful for justice. The court will then appoint someone to handle the sale and report back to the court.

(2) The rules that apply to a Commissioner (the person appointed to handle the sale) in another specific situation (rule 10) will also apply to the Commissioner appointed for this sale, just like they do for a Commissioner appointed under rule 9.

(3) The sale of the property should follow the same steps and procedures as those used when selling movable property to enforce a court decision (decree).

Explanation using Example

Example 1:

Scenario: A dispute over the ownership of a valuable painting.

Details:

Two art collectors, Mr. Sharma and Mr. Verma, are in a legal dispute over the ownership of a valuable painting.

The painting is currently in the custody of the court as evidence.

The painting is delicate and requires special preservation conditions which the court cannot provide.

Application of Rule 10C:

The court determines that it is necessary to sell the painting because it cannot be conveniently preserved.

The court records its reasons for this decision, noting the painting's delicate nature and the high cost of preservation.

The court issues a commission to an art auctioneer, Ms. Kapoor, directing her to conduct the sale of the painting.

Ms. Kapoor conducts the sale and reports the results to the court.

The sale is conducted in accordance with the procedure prescribed for the sale of movable property in execution of a decree.

Example 2:

Scenario: Sale of perishable goods in a business dispute.

Details:

A business dispute arises between two partners, Mr. Gupta and Mr. Singh, over the ownership of a large consignment of fresh fruits.

The fruits are in the custody of the court pending the resolution of the dispute.

The fruits are perishable and cannot be preserved for long.

Application of Rule 10C:

The court decides that it is necessary to sell the fruits to prevent them from spoiling.

The court records its reasons, highlighting the perishable nature of the goods.

The court issues a commission to a local fruit market manager, Mr. Khan, directing him to conduct the sale of the fruits.

Mr. Khan conducts the sale and reports the proceeds to the court.

The sale is carried out following the procedure for the sale of movable property in execution of a decree.

Commissions to examine accounts

Rule 11: Commission to examine or adjust accounts.

In any suit in which an examination or adjustment of the accounts is necessary, the Court may issue a commission to such person as it thinks fit directing him to make such examination or adjustment.

Simplified act

In any lawsuit where it is necessary to review or adjust financial records, the Court can appoint someone it considers suitable to carry out this review or adjustment.

Explanation using Example

Example 1:

Scenario: Dispute Between Business Partners

Context: Ramesh and Suresh are business partners who run a textile business. Over the years, they have accumulated significant profits and expenses. Recently, Ramesh accused Suresh of mismanaging funds and not sharing profits fairly. Ramesh decides to file a lawsuit against Suresh to resolve the financial discrepancies.

Application of Rule 11: The court, recognizing the complexity of the financial records and the need for a detailed examination, issues a commission to a qualified chartered accountant. The accountant is directed to examine the business accounts, verify the transactions, and adjust the accounts to determine the accurate financial standing of the partnership. The accountant's report will then be used by the court to make a fair judgment in the case.

Example 2:

Scenario: Family Property Dispute

Context: The Sharma family owns several properties and businesses. After the death of the family patriarch, there is a dispute among the heirs regarding the distribution of assets and income generated from the properties. The heirs are unable to agree on the division and file a suit in court.

Application of Rule 11: The court decides that a thorough examination of the family accounts is necessary to resolve the dispute. It issues a commission to an experienced auditor, instructing them to review the financial records, assess the income and expenses related to the properties, and adjust the accounts to reflect each heir's rightful share. The auditor's findings will help the court in making an equitable distribution of the family assets.

Commissions to examine accounts

Rule 12: Court to give Commissioner necessary instructions.

(1) The Court shall furnish the Commissioner with such part of the proceedings and such instructions as appear necessary, and the instructions shall distinctly specify whether the commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination.

(2) Proceedings and report to be evidence. Court may direct further inquiry.

The proceedings and report (if any) of the Commissioner shall be evidence in the suit, but where the Court has reason to be dissatisfied with them, it may direct such further inquiry as it shall think fit.

Simplified act

(1) The Court will give the Commissioner the necessary parts of the case and clear instructions. These instructions will clearly state whether the Commissioner should just send back the information he gathers or also give his own opinion on the matter he is investigating.

(2) The Commissioner's findings and report will be used as evidence in the case. However, if the Court is not satisfied with the findings or report, it can order more investigation as it sees fit.

Explanation using Example

Example 1:

Scenario: Dispute over Business Accounts

Background: Two business partners, Raj and Simran, are in a legal dispute over the accounts of their joint venture. Raj claims that Simran has mismanaged the funds, while Simran denies these allegations. The court decides to appoint a Commissioner to examine the accounts.

Application of Rule 12:

Court's Instructions: The court provides the Commissioner with the necessary documents related to the case, including financial statements, transaction records, and other relevant evidence. The court instructs the Commissioner to not only review the accounts but also to provide an opinion on whether there has been any mismanagement of funds.

Commissioner's Role: The Commissioner examines the accounts, conducts interviews with both parties, and prepares a detailed report. The report includes the Commissioner's findings and opinion on the alleged mismanagement.

Court's Use of Report: The report is submitted to the court and is considered as evidence in the ongoing suit. If the court finds the report satisfactory, it may use it to make a decision. However, if the court is not satisfied with the report, it may order a further inquiry, possibly appointing another Commissioner or seeking additional evidence.

Example 2:

Scenario: Property Partition Dispute

Background: A family is in dispute over the partition of ancestral property. The siblings cannot agree on the division of the property, and the matter is taken to court. The court decides to appoint a Commissioner to survey the property and suggest a fair division.

Application of Rule 12:

Court's Instructions: The court provides the Commissioner with the details of the property, including maps, ownership documents, and the claims of each sibling. The court instructs the Commissioner to conduct a survey and provide a report suggesting a fair division of the property.

Commissioner's Role: The Commissioner visits the property, conducts a survey, and considers the claims of each sibling. The Commissioner prepares a report that includes a suggested division of the property, taking into account the size, value, and usability of different portions.

Court's Use of Report: The report is submitted to the court and is considered as evidence in the suit. If the court finds the report satisfactory, it may use it to make a decision on the partition. If the court is not satisfied with the report, it

may order a further inquiry, such as appointing another Commissioner or seeking additional expert opinions.

Example 3:

Scenario: Dispute over Construction Quality

Background: A homeowner, Priya, files a lawsuit against a construction company, alleging poor quality of construction in her newly built house. The court decides to appoint a Commissioner to inspect the construction quality.

Application of Rule 12:

Court's Instructions: The court provides the Commissioner with the construction contract, blueprints, and Priya's complaints. The court instructs the Commissioner to inspect the construction quality and provide an opinion on whether it meets the contractual standards.

Commissioner's Role: The Commissioner inspects the house, checks the materials used, and assesses the construction quality. The Commissioner prepares a report detailing the findings and providing an opinion on whether the construction meets the agreed standards.

Court's Use of Report: The report is submitted to the court and is considered as evidence in the suit. If the court finds the report satisfactory, it may use it to make a decision on the case. If the court is not satisfied with the report, it may order a further inquiry, such as appointing another Commissioner or seeking additional expert opinions.

Example 4:

Scenario: Dispute over Agricultural Land Usage

Background: Two farmers, Anil and Sunil, are in a dispute over the usage of a piece of agricultural land. Anil claims that Sunil has encroached on his portion of the land. The court decides to appoint a Commissioner to examine the land and determine the boundaries.

Application of Rule 12:

Court's Instructions: The court provides the Commissioner with land records, maps, and the claims of both farmers. The court instructs the Commissioner to survey the land and provide a report on the boundaries.

Commissioner's Role: The Commissioner surveys the land, checks the records, and considers the claims of both farmers. The Commissioner prepares a report detailing the boundaries and any encroachments.

Court's Use of Report: The report is submitted to the court and is considered as evidence in the suit. If the court finds the report satisfactory, it may use it to make a decision on the case. If the court is not satisfied with the report, it may order a further inquiry, such as appointing another Commissioner or seeking additional expert opinions.

Commissions to make partitions.

Rule 13: Commission to make partition of immovable property.

Where a preliminary decree for partition has been passed, the Court may, in any case not provided for by section 54, issue a commission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree.

Simplified act

If a court has made an initial decision to divide property, and the situation is not covered by section 54, the court can appoint someone to carry out the division or separation based on the rights stated in that decision.

Explanation using Example

Example 1:

Ravi and his three siblings inherited a large piece of agricultural land from their deceased father. They could not agree on how to divide the land among themselves. Ravi filed a suit in the civil court seeking partition of the property. The court passed a preliminary decree declaring the shares of each sibling. Since the land was vast and complex to divide, the court issued a commission to a local surveyor to physically partition the land according to the shares declared in the decree. The surveyor, acting as the commissioner, measured and divided the land into four equal parts, ensuring each sibling received their rightful share.

Example 2:

Meena and her cousins inherited a family house in Mumbai. Disputes arose regarding the division of the property, and Meena approached the court for a partition. The court issued a preliminary decree specifying the share of each

cousin. Given the intricacies involved in dividing a single house, the court appointed an architect as a commissioner to facilitate the partition. The architect assessed the property and proposed a plan to either physically divide the house into separate units or suggest a sale and distribution of proceeds as per the shares declared in the decree. The court approved the plan, ensuring a fair and equitable partition of the property.

Rule 14: Procedure of Commissioner.

Commissioner's Duties and Reports

(1) The Commissioner shall, after such inquiry as may be necessary, divide the property into as many shares as may be directed by the order under which the commission was issued, and shall allot such shares to the parties, and may, if authorized thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

(2) The Commissioner shall then prepare and sign a report or the Commissioners (where the commission was issued to more than one person and they cannot agree) shall prepare and sign separate reports appointing the share of each party and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court; and the Court, after hearing any objections which the parties may make to the report or reports, shall confirm, vary, or set aside the same.

(3) Where the Court confirms or varies the report or reports it shall pass a decree in accordance with the same as confirmed or varied; but where the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit.

Simplified act

Commissioner's Duties and Reports

(1) The Commissioner will look into the matter and divide the property into the number of parts as instructed by the order. The Commissioner will then assign these parts to the respective parties. If the order allows, the Commissioner can also decide on payments to make the value of the parts equal.

(2) After dividing the property, the Commissioner will write and sign a report. If there is more than one Commissioner and they disagree, each will write and sign their own report. These reports will detail which part of the property goes to which party and describe each part clearly if the order requires it. The reports will be attached to the commission and sent to the Court. The Court will listen to any objections from the parties and then decide to approve, change, or reject the reports.

(3) If the Court approves or changes the reports, it will issue a final decision based on the approved or changed reports. If the Court rejects the reports, it will either issue a new commission or make another decision as it sees fit.

Explanation using Example

Example 1:

Scenario: Partition of Ancestral Property

Ravi, Suman, and Priya are siblings who have inherited an ancestral property from their deceased parents. They cannot agree on how to divide the property among themselves. Ravi files a suit in the civil court seeking partition of the property.

Application of Rule 14:

The court appoints a Commissioner to divide the property.

The Commissioner conducts an inquiry, surveys the property, and divides it into three equal shares as directed by the court order.

The Commissioner allots one share to Ravi, one to Suman, and one to Priya. Since Ravi's share includes a portion with a higher market value, the Commissioner, as authorized by the court, awards a sum of money to Suman and Priya to equalize the value of the shares.

The Commissioner prepares a detailed report, describing each share by metes and bounds, and submits it to the court.

The court reviews the report and hears any objections from Ravi, Suman, and Priya.

After considering the objections, the court confirms the report and passes a decree in accordance with the confirmed report, finalizing the partition.

Example 2:

Scenario: Dispute Over Agricultural Land

Four cousins, Anil, Sunil, Meena, and Rina, jointly own a large piece of agricultural land. They decide to partition the land but cannot agree on the division. Meena approaches the court for a legal partition.

Application of Rule 14:

The court issues a commission to a Commissioner to divide the land into four equal parts.

The Commissioner visits the land, conducts necessary inquiries, and divides it into four parts as per the court's directions.

The Commissioner allots one part to each cousin. Since one part has a well and is more valuable, the Commissioner, as authorized by the court, awards compensation to the other three cousins to equalize the value.

The Commissioner prepares a report detailing the division and distinguishing each part by metes and bounds. The report is signed and submitted to the court.

The court reviews the report and allows the cousins to raise any objections.

After hearing the objections, the court confirms the report and issues a decree based on the confirmed report, thereby legally partitioning the land.

General Provisions

Rule 15: Expenses of commission to be paid into Court.

Before issuing any commission under this Order, the Court may order such sum (if any) as it thinks reasonable for the expenses of the commission to be, within a time to be fixed, paid into Court by the party at whose instance or for whose benefit the commission is issued.

Simplified act

Before giving out any commission under this Order, the Court can ask the party who requested or benefits from the commission to pay a reasonable amount of money for the commission's expenses into the Court within a set time.

Explanation using Example

Example 1:

Scenario: Property Dispute

Ravi and Suman are involved in a property dispute over a piece of land. Ravi claims that the land belongs to him, while Suman argues that it is her ancestral property. To resolve the matter, the court decides to issue a commission to a surveyor to inspect the land and provide a detailed report.

Application of Rule 15: Before the court issues the commission to the surveyor, it orders Ravi, who requested the commission, to deposit Rs. 10,000 into the court to cover the expenses of the surveyor's work. Ravi is given a deadline of 15 days to make this payment. If Ravi fails to deposit the amount within the specified time, the commission may not be issued.

Example 2:

Scenario: Medical Negligence Case

Anita files a lawsuit against a hospital, alleging medical negligence during her surgery. To support her case, Anita requests the court to issue a commission to a medical expert to examine her medical records and provide an expert opinion.

Application of Rule 15: The court agrees to issue the commission but orders Anita to deposit Rs. 20,000 into the court to cover the expenses of the medical expert's fees. Anita is given 10 days to make this payment. If Anita does not deposit the amount within the given time frame, the court may decide not to issue the commission, potentially weakening her case.

Rule 16: Powers of Commissioners.

Any commissioner appointed under this Order may, unless otherwise directed by the order of appointment, -

- (a) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him;
- (b) call for and examine documents and other things relevant to the subject of inquiry;
- (c) at any reasonable time enter upon or into any land or building mentioned in the order.

Simplified act

Any commissioner appointed under this Order can, unless the appointment order says otherwise, -

- (a) talk to the people involved and any witnesses they bring, and anyone else the Commissioner thinks should give evidence about the matter;
- (b) ask for and look at documents and other things related to the inquiry;
- (c) at any reasonable time, go into any land or building mentioned in the order.

Explanation using Example

Example 1:

Scenario: Property Dispute

Context: Raj and Simran are involved in a property dispute over a piece of land. The court appoints a commissioner to investigate the matter.

Application of Rule 16:

- (a) Examination of Parties and Witnesses: The commissioner can call Raj and Simran to provide their statements and can also summon any witnesses they wish to present, such as neighbors or local officials who might have relevant information about the land.
- (b) Examination of Documents: The commissioner can request and review documents such as land deeds, tax receipts, and any other paperwork that might clarify the ownership and history of the property.
- (c) Inspection of Property: The commissioner can visit the disputed land to inspect its current condition, boundaries, and any structures on it, to gather firsthand information.

Example 2:

Scenario: Business Partnership Dispute

Context: Two business partners, Anil and Sunil, are in a legal dispute over the dissolution of their partnership and the division of assets.

Application of Rule 16:

(a) Examination of Parties and Witnesses: The commissioner can interview Anil and Sunil to understand their perspectives and can also call upon employees, accountants, or other relevant witnesses who might have insights into the partnership's operations and finances.

(b) Examination of Documents: The commissioner can request access to financial records, partnership agreements, bank statements, and other relevant documents to assess the financial status and asset distribution of the partnership.

(c) Inspection of Business Premises: The commissioner can visit the business premises to evaluate the physical assets, inventory, and overall condition of the business, which will help in making a fair division of assets.

Example 3:

Scenario: Construction Dispute

Context: A contractor and a homeowner are in a dispute over the quality and completion of a construction project.

Application of Rule 16:

(a) Examination of Parties and Witnesses: The commissioner can interview both the contractor and the homeowner, as well as any subcontractors, workers, or experts who can provide testimony about the construction work.

(b) Examination of Documents: The commissioner can review contracts, invoices, work orders, and any correspondence between the contractor and the homeowner to understand the terms of the agreement and the nature of the dispute.

(c) Inspection of Construction Site: The commissioner can visit the construction site to inspect the work done, assess the quality, and verify if the project meets the agreed-upon specifications and standards.

Example 4:

Scenario: Family Inheritance Dispute

Context: Siblings are in a dispute over the division of their deceased parent's estate, which includes a house and several valuable items.

Application of Rule 16:

(a) Examination of Parties and Witnesses: The commissioner can interview the siblings and any other family members or witnesses who might have knowledge about the deceased's wishes or the family dynamics.

(b) Examination of Documents: The commissioner can review the will, property deeds, bank statements, and any other relevant documents to understand the estate's composition and the deceased's intentions.

(c) Inspection of Property: The commissioner can visit the family home and other properties to assess their condition and value, which will aid in the fair division of the estate among the siblings.

Rule 16A: Questions objected to before the Commissioner.

Order - (1)

Where any question put to a witness is objected to by a party or his pleader in proceedings before a Commissioner appointed under this Order, the Commissioner shall take down the question, the answer, the objections and the name of the party or, as the case may be, the pleader so objecting:

Provided that the Commissioner shall not take down the answer to a question which is objected to on the ground of privilege but may continue with the examination of the witness, leaving the party to get the question of privilege decided by the Court, and, where the Court decides that there is no question of privilege, the witness may be recalled by the Commissioner and examined by him or the witness may be examined by the Court with regard to the question which was objected to on the ground of privilege.

(2)

No answer taken down under sub-rule (1) shall be read as evidence in the suit except by the order of the Court.

Simplified act

Order - (1)

If a party or their lawyer objects to a question asked to a witness during proceedings before a Commissioner, the Commissioner must write down the question, the answer, the objections, and the name of the person or lawyer who objected:

However, if the objection is because of a privilege (a special right), the Commissioner should not write down the answer. Instead, the Commissioner can continue questioning the witness, and the party can ask the Court to decide if the privilege applies. If the Court decides there is no privilege, the witness can be called back by the Commissioner or questioned by the Court about the objected question.

(2)

Any answer written down under rule (1) cannot be used as evidence in the case unless the Court orders it.

Explanation using Example

Example 1:

Scenario: A property dispute case in a civil court in Mumbai.

Context: During the proceedings, the court appoints a Commissioner to record the testimony of witnesses.

Situation:

Witness: Mr. Sharma, a neighbor who witnessed the events leading to the dispute.

Question: The plaintiff's lawyer asks Mr. Sharma, "Did you see Mr. Verma (the defendant) threatening Mr. Gupta (the plaintiff) on the night of the incident?"

Objection: The defendant's lawyer objects to the question, claiming it is leading and prejudicial.

Application of Rule 16A:

The Commissioner notes down the question, the objection raised by the defendant's lawyer, and the name of the lawyer.

The Commissioner also records Mr. Sharma's answer to the question.

Since the objection is not based on privilege, the answer is recorded.

Outcome:

The court later reviews the objection and decides whether the answer can be admitted as evidence.

If the court orders, the answer recorded by the Commissioner will be read as evidence in the suit.

Example 2:

Scenario: A defamation case in a civil court in Delhi.

Context: The court appoints a Commissioner to record the testimony of witnesses.

Situation:

Witness: Ms. Kapoor, a journalist who published an article about the plaintiff.

Question: The defendant's lawyer asks Ms. Kapoor, "Did the plaintiff ever confide in you about their involvement in the scandal?"

Objection: The plaintiff's lawyer objects to the question on the grounds of privilege, arguing that the information is protected by journalistic privilege.

Application of Rule 16A:

The Commissioner notes down the question, the objection raised by the plaintiff's lawyer, and the name of the lawyer.

The Commissioner does not record Ms. Kapoor's answer to the question.

The examination of Ms. Kapoor continues on other matters.

The plaintiff's lawyer takes the issue of privilege to the court for a decision.

Outcome:

The court reviews the objection and decides whether the question involves privileged information.

If the court decides there is no privilege, the Commissioner may recall Ms. Kapoor to answer the question, or the court may examine her directly on this point.

If the court decides the information is privileged, the question remains unanswered and is not part of the evidence.

Rule 17: Attendance and examination of witnesses before Commissioner.

Provisions of the Code

(1) The provisions of this Code relating to the summoning, attendance and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this Order whether the commission in execution of which they are so required has been issued by a Court situate within or by a Court situate beyond the limits of India, and for the purposes of this rule the Commissioner shall be deemed to be a Civil Court:

Provided that when the Commissioner is not a Judge of a Civil Court, he shall not be competent to impose penalties; but such penalties may be imposed on the application of such Commissioner by the Court by which the commission was issued.

(2) A Commissioner may apply to any Court (not being a High Court) within the local limits or whose jurisdiction a witness resides for the issue of any process which he may find it necessary to issue to or against such witness, and such Court may, in its discretion, issue such process as it considers reasonable and proper.

Simplified act

Provisions of the Code

(1) The rules in this Code about calling, attending, and questioning witnesses, as well as paying them and punishing them if needed, apply to anyone who has to give evidence or show documents under this Order. This is true whether the order comes from a court inside or outside India. For these rules, the Commissioner is treated like a Civil Court:

However, if the Commissioner is not a Judge of a Civil Court, he cannot punish anyone. But, the court that issued the order can punish someone if the Commissioner asks them to.

(2) A Commissioner can ask any local court (except a High Court) where a witness lives to issue any necessary orders to that witness. The local court can decide to issue these orders if it thinks they are reasonable and appropriate.

Explanation using Example

Example 1:

Scenario: A property dispute case in Mumbai.

Details: Mr. Sharma and Mr. Verma are involved in a property dispute in a Mumbai Civil Court. The court has appointed a Commissioner to gather evidence and examine witnesses. One of the key witnesses, Mrs. Gupta, resides in Delhi and has crucial information about the property in question.

Application of Rule 17:

Summoning and Attendance: The Commissioner issues a summons to Mrs. Gupta to attend and give her testimony regarding the property dispute.

Examination: Mrs. Gupta is examined by the Commissioner in Delhi. The Commissioner records her statements and collects any relevant documents she provides.

Remuneration and Penalties: Mrs. Gupta is entitled to remuneration for her time and travel expenses. If she fails to attend without a valid reason, the Commissioner can report this to the Mumbai Civil Court, which can then impose penalties on her.

Example 2:

Scenario: A commercial contract dispute in Bangalore.

Details: A Bangalore-based company, ABC Pvt. Ltd., is in a legal dispute with XYZ Ltd. over a breach of contract. The court appoints a Commissioner to collect evidence from witnesses. One of the witnesses, Mr. Reddy, is an employee of XYZ Ltd. and resides in Hyderabad.

Application of Rule 17:

Summoning and Attendance: The Commissioner issues a summons to Mr. Reddy to appear and provide evidence regarding the contract dispute.

Examination: Mr. Reddy is examined by the Commissioner in Hyderabad. The Commissioner records his testimony and collects any relevant documents he provides.

Remuneration and Penalties: Mr. Reddy is entitled to remuneration for his time and travel expenses. If he refuses to attend without a valid reason, the Commissioner can apply to the Hyderabad Civil Court to issue a process compelling his attendance. If Mr. Reddy still fails to comply, the Hyderabad Civil Court can impose penalties on him.

Example 3:

Scenario: A family inheritance dispute in Chennai.

Details: The heirs of a deceased person are in a dispute over the distribution of the inheritance. The Chennai Civil Court appoints a Commissioner to gather evidence from various family members. One of the family members, Ms. Lakshmi, resides in Kolkata and has important documents related to the inheritance.

Application of Rule 17:

Summoning and Attendance: The Commissioner issues a summons to Ms. Lakshmi to attend and produce the documents related to the inheritance.

Examination: Ms. Lakshmi is examined by the Commissioner in Kolkata. The Commissioner records her statements and collects the documents she provides.

Remuneration and Penalties: Ms. Lakshmi is entitled to remuneration for her time and travel expenses. If she fails to attend without a valid reason, the Commissioner can report this to the Chennai Civil Court, which can then impose penalties on her.

Example 4:

Scenario: A cross-border trade dispute involving an Indian company and a foreign entity.

Details: An Indian company, DEF Ltd., is in a legal dispute with a foreign company over a trade agreement. The Indian court appoints a Commissioner to gather evidence from witnesses located in India and abroad. One of the witnesses, Mr. Singh, resides in London and has crucial information about the trade agreement.

Application of Rule 17:

Summoning and Attendance: The Commissioner issues a summons to Mr. Singh to attend and provide evidence regarding the trade agreement.

Examination: Mr. Singh is examined by the Commissioner in London. The Commissioner records his statements and collects any relevant documents he provides.

Remuneration and Penalties: Mr. Singh is entitled to remuneration for his time and travel expenses. If he fails to attend without a valid reason, the

Commissioner can report this to the Indian court, which can then impose penalties on him through appropriate legal channels.

Example 5:

Scenario: A defamation case in Jaipur.

Details: Mr. Kumar files a defamation case against a local newspaper in Jaipur. The court appoints a Commissioner to gather evidence from witnesses. One of the witnesses, Ms. Mehta, resides in Pune and has information about the defamatory article.

Application of Rule 17:

Summoning and Attendance: The Commissioner issues a summons to Ms. Mehta to attend and provide evidence regarding the defamation case.

Examination: Ms. Mehta is examined by the Commissioner in Pune. The Commissioner records her statements and collects any relevant documents she provides.

Remuneration and Penalties: Ms. Mehta is entitled to remuneration for her time and travel expenses. If she fails to attend without a valid reason, the Commissioner can report this to the Jaipur Civil Court, which can then impose penalties on her.

Rule 18: Parties to appear before Commissioner.

Where a commission is issued under this Order, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders.

(2) Where all or any of the parties do not so appear, the Commissioner may proceed in their absence.

Simplified act

When a commission is given under this Order, the Court will instruct that the people involved in the case must show up before the Commissioner either in person or through their representatives or lawyers.

(2) If any or all of the people involved do not show up, the Commissioner can continue without them.

Explanation using Example

Example 1:

Rajesh and Sunita are involved in a property dispute case in a civil court in Mumbai. The court decides to issue a commission to investigate the property in question. According to Rule 18 of Order XXVI of The Code Of Civil Procedure 1908, the court directs both Rajesh and Sunita to appear before the Commissioner, either in person or through their legal representatives. Rajesh attends the commission proceedings with his lawyer, but Sunita fails to appear. Despite Sunita's absence, the Commissioner proceeds with the investigation and records the findings, which will later be submitted to the court.

Example 2:

In a divorce case between Anil and Priya in a Delhi civil court, the court issues a commission to gather evidence regarding the custody of their child. The court instructs both Anil and Priya to appear before the Commissioner. Anil appears with his pleader, but Priya, due to personal reasons, does not attend the proceedings. As per Rule 18, the Commissioner continues with the evidence collection in Priya's absence and compiles a report based on the available information, which will be used by the court to make a decision on the custody matter.

Rule 18A: Application of Order to execution proceedings.

The provisions of this Order shall apply, so far as may be, to proceedings in execution of a decree or order.

Simplified act

The rules in this Order will apply, as much as possible, to the process of carrying out a court's decision or order.

Explanation using Example

Example 1:

Scenario: Ramesh wins a civil lawsuit against Suresh, and the court issues a decree ordering Suresh to pay Ramesh Rs. 5 lakhs. Suresh fails to comply with the court's decree.

Application of Rule 18A: Ramesh can initiate execution proceedings to enforce the court's decree. During these proceedings, the court may appoint a commissioner to investigate Suresh's assets and determine how the decree can

be satisfied. The provisions of Order XXVI, which deal with the appointment and duties of commissioners, will apply to these execution proceedings. For instance, the commissioner may be tasked with identifying Suresh's bank accounts, properties, or other assets that can be seized or sold to satisfy the decree.

Example 2:

Scenario: Meena obtains a court order for the partition of a jointly owned property with her siblings. The court's decree specifies how the property should be divided, but the siblings are unable to agree on the division.

Application of Rule 18A: Meena can apply for execution of the partition decree. The court may appoint a commissioner to oversee the physical division of the property according to the decree. The commissioner will conduct a survey, prepare a partition plan, and ensure that the property is divided as per the court's order. The provisions of Order XXVI will guide the commissioner's actions, ensuring that the execution proceedings are carried out fairly and in accordance with the law.

Rule 18B: Court to fix a time for return of Commission.

The Court issuing a commission shall fix a date on or before which the commission shall be returned to it after execution, and the date so fixed shall not be extended except where the Court, for reasons to be recorded, is satisfied that there is sufficient cause for extending the date.

Simplified act

The Court will set a deadline for when the commission must be returned after it has been carried out.

This deadline cannot be extended unless the Court writes down the reasons and is convinced that there is a good enough reason to extend it.

Explanation using Example

Example 1:

Scenario: Property Dispute

Context: Ramesh and Suresh are involved in a property dispute over a piece of land. The court decides to issue a commission to a local surveyor to measure and report on the boundaries of the disputed land.

Application of Rule 18B:

The court issues a commission to the surveyor on January 1st, 2023.

The court fixes the return date for the commission as February 1st, 2023.

The surveyor is expected to complete the survey and submit the report by this date.

If the surveyor encounters unexpected difficulties, such as bad weather or access issues, they must inform the court.

The court will then review the reasons provided by the surveyor.

If the court is satisfied that there is a sufficient cause, it may extend the return date to, say, February 15th, 2023, and record the reasons for this extension.

Example 2:

Scenario: Medical Negligence Case

Context: Priya files a lawsuit against a hospital for medical negligence. The court decides to issue a commission to a medical expert to examine Priya's medical records and provide an opinion on the alleged negligence.

Application of Rule 18B:

The court issues a commission to the medical expert on March 1st, 2023.

The court fixes the return date for the commission as April 1st, 2023.

The medical expert is expected to review the records and submit their report by this date.

If the medical expert needs more time due to the complexity of the case or the need for additional tests, they must inform the court.

The court will then review the reasons provided by the medical expert.

If the court is satisfied that there is a sufficient cause, it may extend the return date to, say, April 15th, 2023, and record the reasons for this extension.

Commissions issued at the instance of Foreign Tribunals

Rule 19: Cases in which High Court may issue commission to examine witness.

Rule for Obtaining Evidence from a Foreign Court

(1) If a High Court is satisfied:

(a) that a foreign court situated in a foreign country wishes to obtain the evidence of a witness in any proceeding before it,

(b) that the proceeding is of a civil nature, and

(c) that the witness is residing within the limits of the High Court's appellate jurisdiction,

it may, subject to the provisions of rule 20, issue a commission for the examination of such witness.

(2) Evidence may be given of the matters specified in clause (a), (b) and (c) of sub-rule (1):

(a) by a certificate signed by the consular officer of the foreign country of the highest rank in India and transmitted to the High Court through the Central Government, or

(b) by a letter of request issued by the foreign Court and transmitted to the High Court through the Central Government, or

(c) by a letter of request issued by the foreign court and produced before the High Court by a party to the proceeding.

Simplified act

Rule for Obtaining Evidence from a Foreign Court

(1) If a High Court is convinced:

(a) that a court in another country wants to get the testimony of a witness for a case it is handling,

(b) that the case is a civil case (not criminal), and

(c) that the witness lives within the area covered by the High Court,

it can, following the rules in rule 20, send an order to examine the witness.

(2) Proof that the foreign court wants the evidence mentioned in points (a), (b), and (c) of part (1) can be shown:

- (a) by a certificate signed by the highest-ranking consular officer of that foreign country in India, sent to the High Court through the Central Government, or
- (b) by a formal request letter from the foreign court, sent to the High Court through the Central Government, or
- (c) by a formal request letter from the foreign court, given directly to the High Court by someone involved in the case.

Explanation using Example

Example 1:

Scenario: A civil lawsuit is ongoing in a court in the United Kingdom regarding a breach of contract. One of the key witnesses, Mr. Rajesh Kumar, resides in Mumbai, India, which falls under the appellate jurisdiction of the Bombay High Court.

Application of Rule 19:

The UK court wishes to obtain Mr. Rajesh Kumar's testimony.

The UK court sends a letter of request to the Central Government of India, asking for assistance in obtaining the evidence.

The Central Government forwards this request to the Bombay High Court.

The Bombay High Court, upon being satisfied that the request is genuine and pertains to a civil matter, issues a commission to examine Mr. Rajesh Kumar.

Mr. Rajesh Kumar's testimony is recorded by the appointed commissioner and sent back to the UK court for use in the ongoing proceedings.

Example 2:

Scenario: A family dispute case is being heard in a court in Canada. The case involves the division of property, and a crucial witness, Ms. Anjali Sharma, resides in Chennai, India, under the jurisdiction of the Madras High Court.

Application of Rule 19:

The Canadian court needs Ms. Anjali Sharma's evidence to proceed with the case.

The Canadian consular officer in India issues a certificate stating the need for Ms. Sharma's testimony and sends it to the Central Government of India.

The Central Government transmits this certificate to the Madras High Court.

The Madras High Court, after verifying the certificate and ensuring the matter is civil in nature, issues a commission to examine Ms. Anjali Sharma.

The appointed commissioner records Ms. Sharma's testimony and sends it back to the Canadian court to aid in the resolution of the family dispute.

Example 3:

Scenario: A civil lawsuit concerning intellectual property rights is ongoing in a court in Germany. A key witness, Dr. Suresh Mehta, resides in Delhi, India, which falls under the jurisdiction of the Delhi High Court.

Application of Rule 19:

The German court issues a letter of request for Dr. Suresh Mehta's testimony.

A party to the proceeding in Germany, who is also based in India, submits this letter of request directly to the Delhi High Court.

The Delhi High Court, upon reviewing the letter of request and confirming that the case is civil in nature, issues a commission to examine Dr. Suresh Mehta.

Dr. Mehta's testimony is recorded by the appointed commissioner and sent back to the German court for use in the intellectual property rights case.

Commissions issued at the instance of Foreign Tribunals

Rule 20: Application for issue of commission.

The High Court may issue a commission under rule 19 -

- (a) upon application by a party to the proceeding before the foreign court, or
- (b) upon an application by a law officer of the State Government acting under instructions from the State Government.

Simplified act

The High Court can issue a commission under rule 19 -

- (a) if a person involved in a case in a foreign court asks for it, or
- (b) if a government lawyer asks for it, following orders from the State Government.

Explanation using Example

Example 1:

Scenario: A multinational company, XYZ Ltd., based in the United States, is involved in a legal dispute with an Indian company, ABC Pvt. Ltd., over a breach of contract. The case is being heard in a U.S. court, but crucial evidence and witnesses are located in India.

Application: XYZ Ltd. applies to the U.S. court to issue a commission to collect evidence in India. The U.S. court, under Rule 19, requests the Indian High Court to issue a commission to gather the necessary evidence.

Outcome: The Indian High Court, upon receiving the application from XYZ Ltd. (a party to the proceeding before the foreign court), issues a commission to collect the evidence from India. This evidence is then sent back to the U.S. court to be used in the ongoing legal proceedings.

Example 2:

Scenario: The State Government of Maharashtra is involved in an international child custody case where the child is currently residing in India, but the case is being heard in a court in the United Kingdom.

Application: The law officer of the State Government of Maharashtra, acting under instructions from the State Government, applies to the Indian High Court to issue a commission to gather information and evidence regarding the child's living conditions and welfare in India.

Outcome: The Indian High Court, upon receiving the application from the law officer of the State Government, issues a commission to collect the necessary information and evidence about the child's living conditions in India. This information is then sent to the court in the United Kingdom to assist in making a decision regarding the child's custody.

Rule 21: To whom commission may be issued.

A commission under rule 19 may be issued to any Court within the local limits of whose jurisdiction the witness resides, or the witness resides within the local limits of the ordinary original civil jurisdiction of the High Court, to any person whom the Court thinks fit to execute the commission.

Simplified act

A commission under rule 19 can be given to any Court within the area where the witness lives.

If the witness lives within the main civil area of the High Court, the commission can be given to any person the Court chooses to carry it out.

Explanation using Example

Example 1:

Rajesh, a businessman based in Mumbai, is involved in a civil lawsuit in the Delhi High Court. The case requires the testimony of a key witness, Mr. Sharma, who resides in Chennai. Under Rule 21 of the Code of Civil Procedure 1908, the Delhi High Court can issue a commission to a court in Chennai to record Mr. Sharma's testimony. This allows the witness to provide his statement without having to travel to Delhi, ensuring that the legal process is efficient and convenient for all parties involved.

Example 2:

An international company based in the United States is involved in a legal dispute in the Bombay High Court. The case requires evidence from a witness, Ms. Priya, who lives in Kolkata. Since the witness resides within the local limits of the ordinary original civil jurisdiction of the Calcutta High Court, the Bombay High Court can issue a commission to a suitable person or court in Kolkata to record Ms. Priya's testimony. This ensures that the witness can provide her evidence locally, facilitating the legal process while respecting the witness's convenience.

Rule 22: Issue, execution and return of commissions, and transmission of evidence to foreign Court.

The provisions of rules 6, 15, sub-rule (1) of rule 16A, 17, 18 and 18B of this Order in so far as they are applicable shall apply to the issue, execution and return of such commissions, and when any such commission has, along with the letter of request for transmission to the foreign been duly executed it shall be returned, together with the evidence taken under it, to the High Court, which shall forward it to the Central Government court.

Simplified act

The rules mentioned in rules 6, 15, sub-rule (1) of rule 16A, 17, 18, and 18B of this Order will apply to the process of issuing, carrying out, and returning

commissions. When such a commission, along with a request letter for sending it to a foreign country, has been properly carried out, it should be sent back with the collected evidence to the High Court. The High Court will then send it to the Central Government court.

Explanation using Example

Example 1:

Scenario: A business dispute between an Indian company and a foreign company.

Details: An Indian company, ABC Pvt. Ltd., is involved in a legal dispute with a foreign company, XYZ Corp., over a breach of contract. The case is being heard in an Indian court. XYZ Corp. requests the Indian court to issue a commission to record the testimony of a key witness who resides in the United States.

Application of Rule 22:

The Indian court issues a commission to a designated officer in the United States to record the testimony of the witness.

The designated officer in the United States executes the commission by recording the witness's testimony.

The recorded testimony, along with the letter of request, is sent back to the High Court in India.

The High Court forwards the recorded testimony to the Central Government court handling the case.

The testimony is then used as evidence in the ongoing legal proceedings in India.

Example 2:

Scenario: A family law case involving child custody between an Indian citizen and a foreign national.

Details: An Indian citizen, Mrs. Sharma, is involved in a child custody battle with her ex-husband, Mr. Smith, who is a foreign national residing in the UK. The case is being heard in an Indian court. Mr. Smith requests the Indian court to issue a commission to record the testimony of his relatives who reside in the UK and can provide crucial information about his ability to care for the child.

Application of Rule 22:

The Indian court issues a commission to a designated officer in the UK to record the testimonies of Mr. Smith's relatives.

The designated officer in the UK executes the commission by recording the testimonies.

The recorded testimonies, along with the letter of request, are sent back to the High Court in India.

The High Court forwards the recorded testimonies to the Central Government court handling the case.

The testimonies are then used as evidence in the ongoing child custody proceedings in India.

Example 3:

Scenario: A patent infringement case involving an Indian inventor and a foreign company.

Details: An Indian inventor, Dr. Rao, files a patent infringement lawsuit against a foreign company, Tech Innovators Inc., in an Indian court. Tech Innovators Inc. requests the Indian court to issue a commission to record the testimony of their technical expert who resides in Germany.

Application of Rule 22:

The Indian court issues a commission to a designated officer in Germany to record the testimony of the technical expert.

The designated officer in Germany executes the commission by recording the expert's testimony.

The recorded testimony, along with the letter of request, is sent back to the High Court in India.

The High Court forwards the recorded testimony to the Central Government court handling the case.

The testimony is then used as evidence in the ongoing patent infringement proceedings in India.

ORDER XXVII: SUITS BY OR AGAINST THE GOVERNMENT OR PUBLIC OFFICERS IN THEIR OFFICIAL CAPACITY

Rule 1: Suits by or against Government.

In any suit by or against the Government, the plaint or written statement shall be signed by such person as the Government may, by general or special order, appoint in this behalf, and shall be verified by any person whom the Government may so appoint and who is acquainted with the facts of the case.

Simplified act

In any lawsuit involving the Government, the complaint or response must be signed by a person chosen by the Government through a general or special order.

This document must be confirmed as true by someone appointed by the Government who knows the details of the case.

Explanation using Example

Example 1:

Scenario: A citizen files a lawsuit against the Government of India for not providing compensation for land acquired for a public project.

Application of the Act:

The citizen files a plaint (formal written statement) in the court.

The Government of India, in response, appoints Mr. Rajesh Kumar, an officer in the Ministry of Law and Justice, to sign the written statement on behalf of the government.

Mr. Rajesh Kumar, who is well-acquainted with the facts of the case, verifies the written statement as per the general order issued by the government.

Example 2:

Scenario: The Government of Karnataka files a lawsuit against a construction company for breach of contract in a public infrastructure project.

Application of the Act:

The Government of Karnataka files a plaint in the court.

The government appoints Ms. Priya Sharma, an officer in the Public Works Department, to sign the plaint on behalf of the government.

Ms. Priya Sharma, who has detailed knowledge of the project and the breach of contract, verifies the plaint as per the special order issued by the government for this specific case.

Rule 2: Persons authorized to act for Government.

Persons being ex officio or otherwise authorised to act for the Government in respect of any judicial proceeding shall be deemed to be recognised agents by whom appearances, acts and applications under this Code may be made or done on behalf of the Government.

Simplified act

People who are officially allowed to represent the Government in court cases are considered recognized agents.

These agents can appear in court, take actions, and make applications on behalf of the Government according to this Code.

Explanation using Example

Example 1:

The State Government of Maharashtra is involved in a civil lawsuit regarding a land dispute. The government appoints Mr. Rajesh Kumar, an officer in the Revenue Department, to represent it in court. Mr. Kumar, being an authorized agent of the government, files all necessary documents, makes court appearances, and submits applications on behalf of the State Government. The court recognizes Mr. Kumar as the legitimate representative of the government in this judicial proceeding.

Example 2:

The Central Government of India is sued by a private contractor for breach of contract. The government designates Ms. Priya Sharma, a senior legal advisor in the Ministry of Law and Justice, to handle the case. Ms. Sharma, acting in her official capacity, attends court hearings, negotiates settlements, and files motions as required. The court accepts Ms. Sharma as the authorized agent of the Central Government, allowing her to perform all legal actions necessary for the case.

Rule 3: Complaints in suits by or against Government.

In suits by or against the Government, instead of inserting in the complaint the name and description and place of residence of the plaintiff or defendant, it shall be sufficient to insert the appropriate name as provided in section 79 * *

Simplified act

In lawsuits involving the Government, you don't need to include the name, description, and address of the person suing or being sued in the complaint.

Instead, just use the appropriate name as mentioned in section 79.

Explanation using Example

Example 1:

Scenario: A citizen, Mr. Sharma, wants to file a lawsuit against the Government of India for not compensating him for land acquired for a public project.

Application of Rule 3: Instead of naming specific government officials or departments, Mr. Sharma's complaint (the formal written statement of his claim) will simply name "The Government of India" as the defendant. This simplifies the process and ensures that the lawsuit is directed at the appropriate entity.

Example 2:

Scenario: The Government of Maharashtra wants to sue a contractor, Mr. Verma, for failing to complete a public infrastructure project on time.

Application of Rule 3: In the complaint, the Government of Maharashtra will be named as the plaintiff. There is no need to list the names and addresses of individual government officials involved. The complaint will state "The Government of Maharashtra" as the plaintiff, making it clear that the lawsuit is initiated by the state government.

Rule 4: Agent for Government to receive process.

The Government pleader in any Court shall be the agent of the Government for the purpose of receiving processes against the Government issued by such Court.

Simplified act

The Government lawyer in any Court will act as the representative of the Government.

This means the Government lawyer will receive any legal documents or notices from the Court on behalf of the Government.

Explanation using Example

Example 1:

Scenario: A citizen, Mr. Sharma, files a lawsuit against the State Government of Maharashtra for not compensating him for land acquired for a public project.

Application of Rule 4: When Mr. Sharma files the lawsuit, the court issues a summons to notify the State Government of Maharashtra about the case. According to Rule 4, the Government Pleader appointed in the court where the lawsuit is filed will be the official agent to receive this summons on behalf of the State Government. This means Mr. Sharma does not need to serve the summons directly to the government offices; the Government Pleader will handle it.

Example 2:

Scenario: An NGO, "Clean Air Initiative," files a public interest litigation (PIL) against the Central Government for failing to enforce air quality standards in Delhi.

Application of Rule 4: Upon filing the PIL, the court issues a notice to the Central Government. As per Rule 4, the Government Pleader in the court where the PIL is filed will receive this notice on behalf of the Central Government. The NGO does not need to worry about delivering the notice to various government departments; the Government Pleader will take responsibility for receiving and processing it.

Rule 5: Fixing of day for appearance on behalf of Government.

The Court, in fixing the day for the Government to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channel, and for the issue of instructions to the Government pleader to appear and answer on behalf of the Government * * *, and may extend the time at its discretion but the time so extended shall not exceed two months in the aggregate.

Simplified act

When the Court sets a date for the Government to respond to a lawsuit, it must give enough time for the Government to be informed through the correct channels.

The Court must also allow time for the Government's lawyer to receive instructions and prepare to respond on behalf of the Government.

The Court can extend this time if needed, but the total extension cannot be more than two months.

Explanation using Example

Example 1:

Scenario: A private contractor files a lawsuit against the Government of India for breach of contract related to a construction project.

Application of Rule 5: The court receives the complaint (formal written complaint) from the contractor. Before setting a date for the Government to respond, the court considers the time needed for the complaint to be communicated through the proper governmental channels. The court allows a reasonable period for the Government to review the complaint and issue instructions to the Government pleader (lawyer representing the Government). The court initially sets a response date 45 days from the filing of the complaint. If the Government requests more time due to the complexity of the case, the court may extend the deadline, but the total extension cannot exceed two months.

Example 2:

Scenario: A citizen files a public interest litigation (PIL) against a state government for failing to implement environmental regulations.

Application of Rule 5: Upon receiving the PIL, the court must fix a date for the state government to respond. The court acknowledges that the state government needs time to communicate with various departments and gather relevant information. The court sets a response date 30 days from the filing of the PIL. If the state government finds it challenging to compile the necessary data within this period, it can request an extension. The court, at its discretion, may grant an extension, but the total time allowed for the government to respond, including any extensions, cannot exceed two months.

Rule 5A: Government to be joined as a party in a suit against a public officer.

Where a suit is instituted against a public officer for damages or other relief in respect of any act alleged to have been done by him in his official capacity, the Government shall be joined as a party to the suit.

Simplified act

If someone files a lawsuit against a public officer asking for money or other help because of something the officer did while doing their job, the Government must also be included as a party in the lawsuit.

Explanation using Example

Example 1:

Ravi, a resident of Mumbai, files a lawsuit against Mr. Sharma, a police officer, claiming that Mr. Sharma wrongfully detained him and caused him mental distress. Since Mr. Sharma was acting in his official capacity as a police officer, the lawsuit must also include the Government of Maharashtra as a party to the suit. This ensures that the government is aware of the allegations and can provide legal support to Mr. Sharma or take responsibility if required.

Example 2:

Meena, a shop owner in Delhi, sues Mr. Verma, a municipal officer, for demolishing her shop without proper notice, causing her significant financial loss. Since Mr. Verma was performing his duties as a municipal officer, the lawsuit must include the Government of Delhi as a party. This inclusion allows the government to address the claims and defend the actions of its officer, ensuring that the public officer is not personally liable for actions taken in their official capacity.

Rule 5B: Duty of Court in suits against the Government or a public officer to assist in arriving at a settlement.

Settlement in Suits Involving Government or Public Officers

(1) In every suit or proceeding to which the Government, or a public officer acting in his official capacity, is a party, it shall be the duty of the Court to make, in the first instance, every endeavour, where it is possible to do so consistently with the nature and circumstances of the case, to assist the parties in arriving at a settlement in respect of the subject-matter of the suit.

(2) If, in any such suit or proceeding, at any stage, it appears to the court that there is a reasonable possibility of a settlement between the parties, the Court

may adjourn the proceeding for such period as it thinks fit, to enable attempts to be made to effect such a settlement.

(3) The power conferred under sub-rule (2) is in addition to any other power of the Court to adjourn proceedings.

Simplified act

Settlement in Suits Involving Government or Public Officers

(1) In any lawsuit or legal case where the Government or a public officer (acting in their official role) is involved, the Court must first try to help both sides reach an agreement about the issue being disputed, if it is possible given the nature and details of the case.

(2) If at any point during such a lawsuit or legal case, the Court believes there is a good chance that both sides can come to an agreement, the Court can pause the case for a period of time it considers appropriate to allow for attempts to settle the matter.

(3) The ability of the Court to pause the case as mentioned in point (2) is in addition to any other powers the Court has to delay proceedings.

Explanation using Example

Example 1:

Scenario: A citizen, Mr. Sharma, files a lawsuit against the Municipal Corporation of Delhi (MCD) for not properly maintaining a public park, which he claims has caused him injury.

Application of Rule 5B:

Initial Duty of the Court: The court, upon receiving the suit, first attempts to facilitate a settlement between Mr. Sharma and the MCD. The judge arranges a meeting where both parties can discuss the issue and potentially agree on a solution, such as the MCD committing to repair and maintain the park and compensating Mr. Sharma for his injury.

Adjournment for Settlement: If the court sees a reasonable chance that Mr. Sharma and the MCD can reach an agreement, it may adjourn the proceedings for a few weeks to allow both parties to negotiate and settle the matter out of court.

Additional Powers: The court can use its general powers to adjourn the case further if it believes more time is needed for a settlement.

Example 2:

Scenario: A government employee, Ms. Gupta, sues the Ministry of Railways for wrongful termination, claiming that her dismissal was unjust and without proper cause.

Application of Rule 5B:

Initial Duty of the Court: The court initially tries to help Ms. Gupta and the Ministry of Railways reach a settlement. The judge may suggest mediation where both parties can discuss the possibility of reinstating Ms. Gupta or agreeing on a compensation package.

Adjournment for Settlement: If the court believes there is a reasonable chance of settlement, it may adjourn the case for a month to allow Ms. Gupta and the Ministry to negotiate terms. During this period, both parties might engage in discussions facilitated by a mediator.

Additional Powers: If more time is needed for the negotiations, the court can use its general powers to further adjourn the proceedings, ensuring that both parties have ample opportunity to reach a mutually acceptable agreement.

Example 3:

Scenario: A local NGO files a lawsuit against the State Government for not implementing a promised welfare scheme for underprivileged children.

Application of Rule 5B:

Initial Duty of the Court: The court, upon receiving the suit, makes an effort to assist the NGO and the State Government in reaching a settlement. The judge may organize a meeting where representatives from both sides can discuss the implementation of the welfare scheme and possibly agree on a timeline and action plan.

Adjournment for Settlement: If the court sees a reasonable possibility of settlement, it may adjourn the proceedings for a few weeks to allow the NGO and the State Government to negotiate and finalize the details of the welfare scheme's implementation.

Additional Powers: The court can use its general powers to adjourn the case further if it believes more time is needed for the parties to reach a settlement, ensuring that the welfare scheme is implemented effectively and to the satisfaction of both parties.

Rule 6: Attendance of person able to answer questions relating to suit against Government.

Court may also, in any case in which the Government pleader is not accompanied by any person on the part of the Government who may be able to answer any material questions relating to the suit, direct the attendance of such a person.

Simplified act

If the government lawyer is in court without someone from the government who can answer important questions about the case, the court can order that such a person must come to court.

Explanation using Example

Example 1:

Scenario: A citizen files a lawsuit against the Government of India for not compensating him for land acquired for a public project.

Application of Rule 6: During the court proceedings, the Government pleader (the lawyer representing the Government) attends the hearing. However, the pleader does not have detailed information about the compensation process or the specific reasons for the delay in payment. The court, noticing this, directs the Government to ensure that an official from the Land Acquisition Department, who has the necessary information, attends the next hearing. This official can then provide accurate answers to the court's questions regarding the compensation process and the specific case details.

Example 2:

Scenario: A public officer is sued for alleged misuse of funds allocated for a government welfare scheme.

Application of Rule 6: In the court hearing, the Government pleader represents the public officer but lacks detailed knowledge about the financial transactions and the implementation of the welfare scheme. The court, recognizing the need for specific information, orders the attendance of the head of the department

responsible for the welfare scheme. This department head can provide detailed answers about the fund allocation, usage, and the measures taken to ensure proper implementation of the scheme, thereby assisting the court in understanding the case better.

Rule 7: Extension of time to enable public officer to make reference to Government.

1. Where the defendant is a public officer and, on receiving the summons, considers it proper to make a reference to the Government before answering the plaint, he may apply to the Court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel.

2. Upon such application the Court shall extend the time for so long as appears to it to be necessary.

Simplified act

1. If the person being sued is a public officer and thinks it's important to check with the Government before responding to the lawsuit, he can ask the Court for more time. This extra time will allow him to consult with the Government and get their instructions.

2. When the public officer makes this request, the Court will give him as much extra time as it thinks is needed.

Explanation using Example

Example 1:

Scenario: A government officer, Mr. Sharma, working in the Public Works Department (PWD), receives a summons related to a civil suit filed by a contractor alleging non-payment for completed work.

Application of Rule 7:

Receiving Summons: Mr. Sharma receives the summons and believes it is necessary to consult with the Government before responding to the allegations.

Application for Extension: Mr. Sharma applies to the court for an extension of time to make a reference to the Government and receive instructions.

Court's Decision: The court reviews Mr. Sharma's application and grants an extension of 30 days, considering it a reasonable period for him to consult with the relevant government authorities and obtain the necessary directives.

Outcome: Mr. Sharma uses the extended time to communicate with the Government, gather relevant information, and prepare an appropriate response to the suit.

Example 2:

Scenario: Ms. Verma, a District Collector, is sued by a local resident for alleged wrongful demolition of property. She receives a summons to appear in court.

Application of Rule 7:

Receiving Summons: Ms. Verma receives the summons and determines that she needs to refer the matter to the State Government for guidance before responding.

Application for Extension: Ms. Verma files an application with the court requesting an extension of the time specified in the summons to enable her to make the necessary reference to the Government.

Court's Decision: The court considers the application and grants an extension of 45 days, recognizing the need for Ms. Verma to consult with higher authorities and obtain a clear directive.

Outcome: During the extended period, Ms. Verma communicates with the State Government, receives the required instructions, and prepares a well-informed response to the court.

Example 3:

Scenario: A police officer, Inspector Rao, is named as a defendant in a civil suit alleging misuse of power during an investigation. He receives a summons to respond to the allegations.

Application of Rule 7:

Receiving Summons: Inspector Rao receives the summons and decides that it is prudent to seek advice from the Home Department before responding.

Application for Extension: Inspector Rao submits an application to the court requesting additional time to make a reference to the Home Department and obtain their orders.

Court's Decision: The court evaluates the application and grants an extension of 20 days, considering it sufficient for Inspector Rao to consult with the Home Department and receive the necessary guidance.

Outcome: Inspector Rao uses the extended time to communicate with the Home Department, gather relevant information, and formulate an appropriate response to the suit.

Example 4:

Scenario: Dr. Patel, a government hospital administrator, is sued by a patient for alleged medical negligence. He receives a summons to appear in court.

Application of Rule 7:

Receiving Summons: Dr. Patel receives the summons and believes it is essential to refer the matter to the Health Ministry before responding.

Application for Extension: Dr. Patel applies to the court for an extension of time to make a reference to the Health Ministry and receive their orders.

Court's Decision: The court reviews the application and grants an extension of 25 days, considering it a reasonable period for Dr. Patel to consult with the Health Ministry and obtain the necessary directives.

Outcome: Dr. Patel uses the extended time to communicate with the Health Ministry, gather relevant information, and prepare an appropriate response to the suit.

Rule 8: Procedure in suits against public officer.

(1) Where the Government undertakes the defence of a suit against a public officer, the Government pleader upon being furnished with authority to appear and answer the plaint, shall apply to the court, and upon such application the Court shall cause a note of his authority to be entered in the register of civil suits.

(2) Where no application under sub-rule (1) is made by the Government pleader on or before the day fixed in the notice for the defendant to appear and answer, the case shall proceed as in a suit between private parties:

Provided that the defendant shall not be liable to arrest, nor his property to attachment, otherwise than in execution of a decree.

Simplified act

(1) If the Government decides to defend a lawsuit against a public officer, the Government's lawyer, once given permission to represent the officer, must ask the court to officially record this permission. The court will then make a note of this in its records.

(2) If the Government's lawyer does not make this request by the date given in the notice for the defendant (the public officer) to respond, the case will continue as if it were between private individuals:

However, the defendant cannot be arrested, and their property cannot be taken, except if it is to enforce a court's decision.

Explanation using Example

Example 1:

Scenario: A government officer, Mr. Sharma, is sued by a private contractor for alleged breach of contract related to a government project.

Application of Rule 8:

Government Undertakes Defence: The government decides to defend Mr. Sharma in the lawsuit.

Government Pleader's Role: The government pleader, Mr. Verma, is given the authority to represent Mr. Sharma in court.

Court Procedure: Mr. Verma applies to the court to note his authority to represent Mr. Sharma. The court records this authority in the register of civil suits.

Proceedings: The case proceeds with Mr. Verma representing Mr. Sharma, and the court treats it as a suit involving a public officer defended by the government.

Example 2:

Scenario: Ms. Gupta, a public officer, is sued by a citizen for alleged misuse of power in her official capacity.

Application of Rule 8:

Government Does Not Undertake Defence: The government decides not to defend Ms. Gupta in this lawsuit.

No Government Pleader Application: No application is made by a government pleader to represent Ms. Gupta by the day fixed for her to appear and answer the suit.

Proceedings: The case proceeds as if it were a suit between private parties.

Protections for Defendant: Ms. Gupta cannot be arrested, nor can her property be attached, except in execution of a decree (i.e., after a court judgment is made against her).

Example 3:

Scenario: A public officer, Mr. Rao, is sued for damages by a resident for an alleged wrongful demolition of property.

Application of Rule 8:

Government Undertakes Defence: The government decides to defend Mr. Rao.

Government Pleader's Role: The government pleader, Ms. Singh, is authorized to represent Mr. Rao.

Court Procedure: Ms. Singh applies to the court to note her authority to represent Mr. Rao. The court makes a note of this in the register of civil suits.

Proceedings: The case proceeds with Ms. Singh representing Mr. Rao, and the court treats it as a suit involving a public officer defended by the government.

Example 4:

Scenario: A public officer, Ms. Patel, is sued for negligence in her official duties by a local business owner.

Application of Rule 8:

Government Does Not Undertake Defence: The government decides not to defend Ms. Patel.

No Government Pleader Application: No application is made by a government pleader to represent Ms. Patel by the day fixed for her to appear and answer the suit.

Proceedings: The case proceeds as if it were a suit between private parties.

Protections for Defendant: Ms. Patel cannot be arrested, nor can her property be attached, except in execution of a decree (i.e., after a court judgment is made against her).

Rule 8A: No security to be required from Government or a public officer in certain cases.

No such security as is mentioned in rules 5 and 6 of Order XLI shall be required from the Government or, where the Government has undertaken the defence of the suit, from any public officer sued in respect of an act alleged to be done by him in his official capacity.

Simplified act

The Government does not need to provide the security mentioned in rules 5 and 6 of Order XLI.

If the Government is defending a lawsuit, any public officer being sued for actions done as part of their job also does not need to provide this security.

Explanation using Example

Example 1:

Scenario: A citizen files a lawsuit against a District Collector for allegedly misusing his power in an official capacity.

Application of Rule 8A: In this case, the District Collector, being a public officer, is defended by the Government. According to Rule 8A, the District Collector is not required to provide any security as mentioned in rules 5 and 6 of Order XLI. This means that the District Collector does not need to deposit any money or provide any guarantee to the court as a condition for defending the lawsuit.

Example 2:

Scenario: A construction company sues the Government of India for breach of contract related to a public infrastructure project.

Application of Rule 8A: Since the lawsuit is directly against the Government, Rule 8A applies. The Government is not required to provide any security as mentioned in rules 5 and 6 of Order XLI. This means that the Government does not need to deposit any money or provide any guarantee to the court as a condition for defending the lawsuit.

Rule 8B: Definitions of "Government" "and" "Government pleader".

Order Provisions

In this Order unless otherwise expressly provided "Government" and "Government pleader" mean respectively:

(a) in relation to any suit by or against the Central Government, or against a public officer in the service of that Government, the Central Government and such pleader as that Government may appoint whether generally or specially for the purposes of this order;

(c) in relation to any suit by or against State Government or against a public officer in the service of a State, the State Government and the Government pleader as defined in clause (7) of section 2, or such other pleader as the State Government may appoint, whether generally or specially, for the purposes of this Order.

Simplified act

Order Provisions

In this Order, unless stated otherwise, "Government" and "Government pleader" mean:

(a) For any lawsuit involving the Central Government, or a public officer working for the Central Government, "Government" refers to the Central Government. "Government pleader" refers to the lawyer appointed by the Central Government, either generally or specifically for this order.

(c) For any lawsuit involving a State Government, or a public officer working for a State, "Government" refers to the State Government. "Government pleader" refers to the lawyer defined in clause (7) of section 2, or any other lawyer appointed by the State Government, either generally or specifically for this order.

Explanation using Example

Example 1:

Scenario: A citizen files a lawsuit against the Central Government for not providing compensation for land acquired for a public project.

Application of the Act:

Government: In this case, the "Government" refers to the Central Government.

Government Pleader: The Central Government will appoint a pleader, either generally or specifically for this case, to represent it in court.

Explanation: The citizen's lawsuit is against the Central Government, so the Central Government will appoint a legal representative (Government pleader) to handle the case in court.

Example 2:

Scenario: A state government employee is sued for alleged misconduct while performing official duties.

Application of the Act:

Government: In this case, the "Government" refers to the State Government.

Government Pleader: The State Government will appoint a Government pleader, as defined in clause (7) of section 2, or another pleader specifically for this case, to represent the state employee in court.

Explanation: Since the lawsuit is against a public officer in the service of the State Government, the State Government will appoint a legal representative (Government pleader) to defend the employee in court.

Example 3:

Scenario: A company files a lawsuit against the Central Government for breach of contract related to a government tender.

Application of the Act:

Government: In this case, the "Government" refers to the Central Government.

Government Pleader: The Central Government will appoint a pleader, either generally or specifically for this case, to represent it in court.

Explanation: The company's lawsuit is against the Central Government, so the Central Government will appoint a legal representative (Government pleader) to handle the case in court.

Example 4:

Scenario: A citizen files a lawsuit against a state government for not providing adequate relief during a natural disaster.

Application of the Act:

Government: In this case, the "Government" refers to the State Government.

Government Pleader: The State Government will appoint a Government pleader, as defined in clause (7) of section 2, or another pleader specifically for this case, to represent it in court.

Explanation: The citizen's lawsuit is against the State Government, so the State Government will appoint a legal representative (Government pleader) to handle the case in court.

ORDER XXVIIA: SUITS INVOLVING A SUBSTANTIAL QUESTION OF LAW AS TO THE INTERPRETATION OF THE CONSTITUTION OR AS TO THE VALIDITY OF ANY STATUTORY INSTRUMENT

Rule 1: Notice to the Attorney General or the Advocate-General.

In any suit in which it appears to the Court that any such question as is referred to in clause (1) of Article 132, read with Article 147 of the Constitution, is involved, the Court shall not proceed to determine that question until after notice has been given to the Attorney General for India if the question of law concerns the Central Government and to the Advocate-General of the State if the question of law concerns a State Government.

Simplified act

If a court case involves a question mentioned in clause (1) of Article 132, along with Article 147 of the Constitution, the court must follow certain steps.

The court cannot decide on that question until it has informed the Attorney General of India if the question is about the Central Government.

If the question is about a State Government, the court must inform the Advocate-General of that State before making a decision.

Explanation using Example

Example 1:

Scenario: A citizen files a lawsuit challenging the constitutionality of a new Central Government law that imposes restrictions on internet usage.

Application: The court identifies that the case involves a substantial question of law regarding the interpretation of the Constitution, specifically related to the

fundamental right to freedom of speech and expression under Article 19(1)(a). Before proceeding to determine this question, the court issues a notice to the Attorney General for India, as the question of law concerns the Central Government.

Example 2:

Scenario: A state government passes a new regulation that changes the reservation policy in state-run educational institutions. A group of students files a lawsuit claiming that the new regulation violates the equality clause under Article 14 of the Constitution.

Application: The court recognizes that the case involves a substantial question of law regarding the interpretation of the Constitution, particularly the right to equality. Before making any determination on this question, the court sends a notice to the Advocate-General of the State, as the question of law pertains to the State Government's regulation.

Rule 1A: Procedure in suits involving validity of any statutory instrument.

In any suit in which it appears to the Court that any question as to the validity of any statutory instrument, not being a question of the nature mentioned in rule 1, is involved, the Court shall not proceed to determine that question except after giving notice:

- (a) to the Government pleader, if the question concerns the Government, or
- (b) to the authority which issued the statutory instrument, if the question concerns an authority other than Government.

Simplified act

In any lawsuit where the Court needs to decide if a legal document (not covered by rule 1) is valid, the Court must first give notice:

- (a) to the Government lawyer, if the issue involves the Government, or
- (b) to the authority that created the legal document, if the issue involves an authority other than the Government.

Explanation using Example

Example 1:

Scenario: A local business owner, Mr. Sharma, files a suit challenging a new municipal regulation that imposes additional taxes on small businesses. Mr. Sharma believes that the regulation is invalid because it was not properly enacted.

Application of Rule 1A:

The court identifies that the validity of the municipal regulation (a statutory instrument) is in question.

Before making any decision on the validity of the regulation, the court must notify the municipal authority that issued the regulation.

The municipal authority is given an opportunity to present its case or provide relevant information regarding the regulation's validity.

Only after this notice and subsequent proceedings can the court determine whether the regulation is valid or not.

Example 2:

Scenario: Ms. Gupta, a resident of Delhi, files a suit challenging a new traffic rule issued by the Delhi Traffic Police, which mandates the use of helmets for all pillion riders on motorcycles. She argues that the rule is invalid as it was not published in the official gazette.

Application of Rule 1A:

The court recognizes that the validity of the traffic rule (a statutory instrument) is being questioned.

The court must notify the Delhi Traffic Police, the authority that issued the rule, about the suit.

The Delhi Traffic Police is given a chance to respond and provide evidence that the rule was properly enacted and published.

The court will then proceed to determine the validity of the traffic rule based on the information provided by both parties.

Example 3:

Scenario: A group of environmental activists files a suit against a new regulation issued by the Ministry of Environment, which allows for the

deforestation of certain protected areas for industrial development. The activists claim that the regulation violates existing environmental laws.

Application of Rule 1A:

The court notes that the validity of the regulation issued by the Ministry of Environment is in question.

The court must notify the Government pleader, as the question concerns a regulation issued by a government ministry.

The Government pleader is given the opportunity to defend the regulation and provide justification for its enactment.

The court will then decide on the validity of the regulation after considering the arguments from both the activists and the Government pleader.

Rule 2: Court may add Government as party.

The Court may at any stage of the proceedings order that the Central Government or a State Government shall be added as a defendant in any suit involving any such question as is referred to in clause (1) of Article 132 read with Article 147, of the Constitution, if the Attorney General for India or the Advocate-General of the State, as the case may be, whether upon receipt of notice under rule 1, or otherwise, applies for such addition and the Court is satisfied that such addition is necessary or desirable for the satisfactory determination of the question of law involved.

Simplified act

At any point during a court case, the court can decide to add the Central Government or a State Government as a defendant.

This can happen if the case involves a specific type of legal question mentioned in Article 132(1) and Article 147 of the Constitution.

The Attorney General of India or the Advocate-General of the State can request this addition.

They can make this request either after receiving a notice or on their own.

The court must be convinced that adding the government is necessary or helpful to properly resolve the legal question in the case.

Explanation using Example

Example 1:

Scenario: A private company files a lawsuit challenging the constitutionality of a new tax law imposed by the State Government, claiming it violates their fundamental rights under the Constitution of India.

Application of the Act:

During the proceedings, the court realizes that the case involves a substantial question of law regarding the interpretation of the Constitution.

The court decides that the State Government should be added as a defendant to provide their perspective and defend the validity of the tax law.

The Advocate-General of the State applies for the addition of the State Government as a party to the suit.

The court, being satisfied that the inclusion of the State Government is necessary for a satisfactory determination of the constitutional question, orders the addition of the State Government as a defendant.

Example 2:

Scenario: A group of citizens files a public interest litigation (PIL) challenging the validity of a statutory instrument issued by the Central Government, arguing that it infringes upon their constitutional rights.

Application of the Act:

The court identifies that the case involves a substantial question of law concerning the interpretation of the Constitution and the validity of the statutory instrument.

The Attorney General for India, upon receiving notice of the proceedings, applies for the Central Government to be added as a defendant in the suit.

The court, after considering the application, determines that the presence of the Central Government is essential for a comprehensive and satisfactory resolution of the legal questions involved.

Consequently, the court orders that the Central Government be added as a defendant in the suit to ensure that all relevant arguments and perspectives are considered.

Example 3:

Scenario: An NGO files a lawsuit challenging a state law that allegedly discriminates against a particular community, claiming it violates the equality provisions of the Constitution.

Application of the Act:

The court recognizes that the case involves a significant constitutional question regarding the interpretation of equality rights under the Constitution.

The Advocate-General of the State, upon becoming aware of the proceedings, applies for the State Government to be added as a defendant to defend the law.

The court, satisfied that the inclusion of the State Government is necessary for a thorough and fair determination of the constitutional issues, orders the addition of the State Government as a defendant in the suit.

Example 4:

Scenario: A tech company challenges a new data privacy regulation issued by the Central Government, arguing that it violates their right to conduct business freely under the Constitution.

Application of the Act:

The court notes that the case involves a substantial question of law regarding the interpretation of constitutional rights related to business and privacy.

The Attorney General for India applies for the Central Government to be added as a defendant to defend the regulation.

The court, upon being satisfied that the inclusion of the Central Government is necessary for a satisfactory determination of the constitutional question, orders the addition of the Central Government as a defendant in the suit.

Rule 2A: Power of Court to add Government or other authority as a defendant in a suit relating to the validity of any statutory instrument.

The Court may, at any stage of the proceedings in any suit involving any such question as is referred to in rule 1A, order that the Government or other authority shall be added as a defendant if the Government pleader or the pleader appearing in the case for the authority which issued the instrument, as the case may be, whether upon receipt of notice under rule 1A or otherwise, applies for such addition, and the Court is satisfied that such addition is necessary or desirable for the satisfactory determination of the question.

Simplified act

At any point during a lawsuit, the Court can decide to add the Government or another authority as a defendant.

This can happen if the lawyer representing the Government or the authority asks for it.

The request can be made after receiving a notice or at any other time.

The Court must believe that adding the Government or authority is necessary or helpful to properly resolve the issue in the lawsuit.

Explanation using Example

Example 1:

Scenario: A group of residents in a small town files a lawsuit challenging the validity of a new municipal regulation that imposes restrictions on the use of loudspeakers during festivals. The residents argue that the regulation violates their constitutional right to freedom of speech and expression.

Application of Rule 2A: During the proceedings, the residents' lawyer argues that the municipal regulation is unconstitutional. The court, recognizing that the case involves a substantial question of law regarding the interpretation of the Constitution, decides to add the State Government as a defendant. The Government pleader applies for this addition, and the court agrees that the involvement of the State Government is necessary to adequately address the constitutional question raised by the residents.

Example 2:

Scenario: A company files a lawsuit against a regulatory authority challenging the validity of a new environmental regulation that imposes stringent emission standards. The company claims that the regulation is arbitrary and exceeds the authority granted to the regulatory body under the relevant statute.

Application of Rule 2A: The court, during the proceedings, identifies that the case involves a substantial question of law regarding the validity of the statutory instrument (the environmental regulation). The regulatory authority's lawyer requests the court to add the Central Government as a defendant, arguing that the regulation was issued under the authority of a central statute. The court, satisfied that the Central Government's involvement is necessary for

a satisfactory determination of the question, orders the addition of the Central Government as a defendant in the suit.

Rule 3: Costs.

Where, under rule 2 or rule 2A the Government or any other authority is added as a defendant in a suit, the Attorney-General, Advocate-General, or Government Pleader or Government or other authority shall not be entitled to, or liable for, costs in the Court which ordered the addition unless the Court, having regard to all the circumstances of the case for any special reason, otherwise orders.

Simplified act

If the Government or any other authority is added as a defendant in a lawsuit under rule 2 or rule 2A, the Attorney-General, Advocate-General, Government Pleader, or the Government or other authority will not automatically have to pay or receive legal costs in the court that added them. However, the court can decide differently if there is a special reason based on the circumstances of the case.

Explanation using Example

Example 1:

Scenario: A citizen, Mr. Sharma, files a lawsuit challenging the constitutionality of a new state law that imposes restrictions on internet usage. The court, under Rule 2A, adds the State Government as a defendant to the suit to address the substantial question of law regarding the interpretation of the Constitution.

Application: In this case, the Advocate-General representing the State Government will not be entitled to claim legal costs from Mr. Sharma, nor will the State Government be liable to pay Mr. Sharma's legal costs, unless the court finds a special reason to order otherwise. For instance, if the court finds that the State Government acted in bad faith or with gross negligence, it may order the State Government to bear the costs.

Example 2:

Scenario: An NGO files a public interest litigation (PIL) questioning the validity of a statutory instrument issued by the Central Government that affects environmental regulations. The court, under Rule 2, adds the Central

Government as a defendant to address the substantial question of law regarding the validity of the statutory instrument.

Application: In this scenario, the Attorney-General representing the Central Government will not be entitled to claim legal costs from the NGO, nor will the Central Government be liable to pay the NGO's legal costs, unless the court, considering all circumstances, decides otherwise. For example, if the court determines that the statutory instrument was issued without proper legal authority, it may order the Central Government to pay the costs incurred by the NGO.

Rule 4: Application of Order to appeals.

In the application of this Order to appeals the word "defendant" shall be held to include a respondent and the word "suit" an appeal.

Explanation: In this Order, "statutory instrument" means a rule, notification, bye-law, order, scheme or form made as specified under any enactment.

Simplified act

When this Order talks about appeals, the word "defendant" also means "respondent," and the word "suit" also means "appeal."

Explanation: In this Order, "statutory instrument" refers to any rule, notification, bye-law, order, scheme, or form that is created under any law.

Explanation using Example

Example 1:

Scenario: A High Court is hearing an appeal regarding the interpretation of a constitutional provision related to the right to privacy.

Application: In this appeal, the appellant (who was the plaintiff in the original suit) argues that a certain government notification violates their right to privacy under the Constitution. The respondent (who was the defendant in the original suit) defends the notification's validity.

Explanation: According to Rule 4 of Order XXVIIA, the term "defendant" in the original suit is now considered to include the "respondent" in the appeal. Similarly, the term "suit" is now considered to include the "appeal." Therefore, the procedural rules that applied to the original suit will also apply to the appeal.

Example 2:

Scenario: An appeal is filed in the Supreme Court challenging the validity of a municipal bye-law that imposes restrictions on street vendors.

Application: The appellant (originally the plaintiff) claims that the bye-law is unconstitutional as it violates their right to livelihood. The municipal corporation, now the respondent (originally the defendant), argues that the bye-law is a valid statutory instrument under the relevant municipal act.

Explanation: Under Rule 4 of Order XXVIA, the term "defendant" in the original suit is interpreted to include the "respondent" in the appeal, and the term "suit" is interpreted to include the "appeal." This means that the procedural rules and considerations that applied to the original suit will also apply to the appeal, ensuring consistency in the legal process.

ORDER XXVIII: SUITS BY OR AGAINST MILITARY OR NAVAL MEN OR AIRMEN

Rule 1: Officers, soldiers, sailors or airmen who can not obtain leave may authorize any person to sue or defend for them.

Order for Officers, Soldiers, Sailors, and Airmen

(1) Where any officer, soldier, sailor or airman actually serving under the Government in such capacity is a party to a suit, and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorise any person to sue or defend in his stead.

(2) The authority shall be in writing and shall be signed by the officer, soldier, sailor or airman in the presence of:

(a) his commanding officer, or the next subordinate officer, if the party is himself the commanding officer, or

(b) where the officer, soldier, sailor or airman is serving in military, naval, or air force staff employment, the head or other superior officer of the office in which he is employed.

Such commanding or other officer shall countersign the authority, which shall be filed in Court.

(3) When so filed, the countersignature shall be sufficient proof that the authority was duly executed, and that the officer, soldier, sailor or airman by

whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the suit in person.

Explanation: In this Order, the expression "commanding officer" means the officer in actual command for the time being of any regiment, corps, ship, detachment or depot to which the officer, soldier, sailor or airman belongs.

Simplified act

Order for Officers, Soldiers, Sailors, and Airmen

(1) If an officer, soldier, sailor, or airman who is currently serving the government is involved in a lawsuit and cannot get time off to handle the lawsuit personally, they can authorize someone else to handle it for them.

(2) This authorization must be written down and signed by the officer, soldier, sailor, or airman in front of:

(a) their commanding officer, or the next officer in charge if they are the commanding officer, or

(b) if they are working in a military, naval, or air force office, the head or superior officer of that office.

The commanding or superior officer must also sign the authorization, and it must be submitted to the court.

(3) Once submitted, the signature of the commanding or superior officer will be enough proof that the authorization was properly made and that the officer, soldier, sailor, or airman could not get time off to handle the lawsuit personally.

Explanation: In this Order, "commanding officer" refers to the officer who is currently in charge of the regiment, corps, ship, detachment, or depot to which the officer, soldier, sailor, or airman belongs.

Explanation using Example

Example 1:

Captain Rajesh, an officer in the Indian Army, is involved in a property dispute in his hometown of Jaipur. Due to his deployment on a critical mission in a remote area, he cannot obtain leave to attend court proceedings. Captain Rajesh authorizes his brother, Ramesh, to represent him in the court. He signs

the authorization letter in the presence of his commanding officer, Colonel Sharma, who countersigns it. The authorization letter is then filed in the Jaipur court. The court accepts the countersigned letter as sufficient proof that Captain Rajesh could not obtain leave and allows Ramesh to represent him in the property dispute case.

Example 2:

Sergeant Priya, serving in the Indian Air Force, is named as a defendant in a civil suit regarding a contractual dispute in Mumbai. She is currently stationed at an airbase in another state and cannot get leave to attend the court hearings. Sergeant Priya authorizes her friend, Anjali, to defend the case on her behalf. She signs the authorization in the presence of her immediate superior officer, Wing Commander Verma, who then countersigns the document. The authorization is filed in the Mumbai court, which accepts it as valid proof that Sergeant Priya could not attend the proceedings, allowing Anjali to defend the case for her.

Example 3:

Petty Officer Arun, a sailor in the Indian Navy, is involved in a legal dispute over a loan in Chennai. He is currently on a long-term deployment at sea and cannot get leave to appear in court. Petty Officer Arun authorizes his wife, Meera, to handle the case on his behalf. He signs the authorization letter in the presence of his ship's commanding officer, Captain Nair, who countersigns it. The letter is then filed in the Chennai court. The court accepts the countersigned letter as sufficient proof that Petty Officer Arun could not obtain leave, allowing Meera to represent him in the loan dispute case.

Example 4:

Flight Lieutenant Anil, serving in the Indian Air Force, is a plaintiff in a lawsuit regarding a land dispute in Delhi. He is currently on a training mission abroad and cannot get leave to attend the court sessions. Flight Lieutenant Anil authorizes his father, Mr. Kumar, to prosecute the case on his behalf. He signs the authorization in the presence of his commanding officer, Group Captain Singh, who countersigns it. The authorization is filed in the Delhi court, which accepts it as valid proof that Flight Lieutenant Anil could not attend the proceedings, allowing Mr. Kumar to prosecute the case for him.

Rule 2: Person so authorized may act personally or appoint pleader.

Any person authorised by an officer, soldier, sailor or airman to prosecute or defend a suit in his stead may prosecute or defend it in person in the same manner as the officer, soldier, sailor or airman could do if present; or he may appoint a pleader to prosecute or defend the suit on behalf of such officer, soldier, sailor or airman.

Simplified act

If an officer, soldier, sailor, or airman gives someone permission to handle a lawsuit for them, that person can take care of the lawsuit just like the officer, soldier, sailor, or airman would if they were there.

The authorized person can either handle the lawsuit themselves or hire a lawyer to do it for the officer, soldier, sailor, or airman.

Explanation using Example

Example 1:

Captain Rajesh, an officer in the Indian Army, is stationed at a remote border post and cannot attend a civil court case in Delhi regarding a property dispute. He authorizes his brother, Amit, to handle the case on his behalf. Amit can either represent Captain Rajesh personally in court or appoint a lawyer (pleader) to prosecute or defend the case. Amit chooses to appoint a lawyer, Advocate Sharma, who then represents Captain Rajesh in all court proceedings.

Example 2:

Sergeant Priya, a soldier in the Indian Air Force, is deployed on a mission and is unable to attend a court hearing for a lawsuit filed against her regarding a contractual dispute. She authorizes her friend, Neha, to manage the case. Neha decides to represent Priya personally in court. Neha attends all the hearings, submits necessary documents, and argues the case just as Priya would have done if she were present.

Rule 3: Service on person so authorized, or on his pleader, to be good service.

Processes served upon any person authorised by an officer, soldier, sailor, or airman under rule 1 or upon any pleader appointed as aforesaid by such person shall be as effectual as if they had been served on the party in person.

Simplified act

If legal documents are given to someone who is allowed to receive them on behalf of a military officer, soldier, sailor, or airman, or to a lawyer appointed by that person, it is just as valid as if the documents were given directly to the officer, soldier, sailor, or airman themselves.

Explanation using Example

Example 1:

Scenario: Captain Rajesh, an officer in the Indian Army, is involved in a civil lawsuit regarding a property dispute. Due to his military duties, he cannot attend court proceedings regularly. He authorizes his friend, Mr. Sharma, to receive all legal documents on his behalf.

Application of Rule 3: The court sends a notice regarding the next hearing date to Mr. Sharma. According to Rule 3, this service of notice to Mr. Sharma is considered as effective as if Captain Rajesh himself had received it. Therefore, Captain Rajesh is legally bound by the notice served to Mr. Sharma.

Example 2:

Scenario: Lieutenant Priya, a naval officer, is sued for breach of contract. She appoints Advocate Mehta as her pleader to handle the case while she is on duty at sea.

Application of Rule 3: The court issues a summons for Lieutenant Priya to appear in court. The summons is served to Advocate Mehta. Under Rule 3, this service of summons to Advocate Mehta is deemed as effective as serving it directly to Lieutenant Priya. Consequently, Lieutenant Priya is expected to comply with the summons based on the service to her pleader.

ORDER XXIX: SUITS BY OR AGAINST CORPORATIONS

Rule 1: Subscription and verification of pleading.

In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.

Simplified act

In lawsuits involving a corporation, any legal document can be signed and confirmed as true by:

The secretary of the corporation, or

Any director or main officer of the corporation who knows the details of the case.

Explanation using Example

Example 1:

Scenario: A customer files a lawsuit against XYZ Pvt. Ltd. for breach of contract.

Application: In this case, XYZ Pvt. Ltd. needs to respond to the lawsuit with a written statement (pleading). According to Rule 1 of Order XXIX of The Code Of Civil Procedure 1908, the written statement can be signed and verified by the company's secretary, a director, or any principal officer who has knowledge of the facts of the case.

Example: Mr. Sharma, the secretary of XYZ Pvt. Ltd., signs and verifies the written statement on behalf of the company, stating that the company did not breach the contract as alleged by the customer.

Example 2:

Scenario: ABC Corporation is suing a supplier for delivering defective goods.

Application: ABC Corporation needs to file a complaint (pleading) in court. According to Rule 1 of Order XXIX of The Code Of Civil Procedure 1908, the complaint can be signed and verified by a director or any principal officer who knows the details of the case.

Example: Ms. Gupta, a director of ABC Corporation, signs and verifies the complaint, providing details about the defective goods and the losses incurred by the company due to the supplier's actions.

Rule 2: Service on corporation.

Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served -

(a) on the secretary, or on any director, or other principal officer of the corporation, or

(b) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business.

Simplified act

If there are laws about how to deliver legal documents, follow those rules. If you are suing a corporation, you can deliver the summons (legal notice) in the following ways:

(a) Give it to the secretary, any director, or another main officer of the corporation, or

(b) Leave it at or mail it to the corporation's registered office. If there is no registered office, then send it to the place where the corporation does business.

Explanation using Example

Example 1:

Rajesh files a lawsuit against XYZ Pvt. Ltd., a corporation based in Mumbai, for breach of contract. According to Rule 2 of the Code of Civil Procedure 1908, the court issues a summons to XYZ Pvt. Ltd. The summons can be served in the following ways:

The court sends the summons to the secretary of XYZ Pvt. Ltd. at their registered office in Mumbai.

Alternatively, the court sends the summons by post to the registered office of XYZ Pvt. Ltd.

If XYZ Pvt. Ltd. does not have a registered office, the court sends the summons to the place where XYZ Pvt. Ltd. conducts its business operations.

Example 2:

Meera is suing ABC Corporation, which has its registered office in Delhi, for damages due to a defective product. According to Rule 2 of the Code of Civil Procedure 1908, the court can serve the summons in the following ways:

The court serves the summons directly to the managing director of ABC Corporation at the registered office in Delhi.

The court leaves the summons at the registered office of ABC Corporation in Delhi.

The court sends the summons by post to the registered office of ABC Corporation in Delhi.

If ABC Corporation does not have a registered office, the court sends the summons to the location where ABC Corporation conducts its business activities.

Rule 3: Power to require personal attendance of officer of corporation.

The Court may, at any stage of the suit, require the personal appearance of the secretary or of any director, or other principal officer of the corporation who may be able to answer material questions relating to the suit.

Simplified act

The Court can, at any point during the case, ask the secretary, a director, or any main officer of the company to show up in person if they can provide important information about the case.

Explanation using Example

Example 1:

Scenario: A consumer files a lawsuit against a large electronics corporation for selling a defective product.

Application of Rule 3: During the proceedings, the court finds that the written responses from the corporation are insufficient to clarify certain key issues about the product's manufacturing process. The court then exercises its power under Rule 3 to require the personal attendance of the corporation's Chief Technical Officer (CTO). The CTO is summoned to answer specific questions about the product's design and quality control measures.

Example 2:

Scenario: A small business sues a bank for wrongful termination of a loan agreement, causing financial losses.

Application of Rule 3: The court needs detailed information about the bank's decision-making process regarding the loan termination. The written statements provided by the bank's legal team do not adequately address the court's concerns. Therefore, the court invokes Rule 3 to require the personal appearance of the bank's Director of Loan Operations. The director is required to attend the court and provide detailed explanations and answer material

questions about the bank's policies and the specific reasons for terminating the loan agreement.

ORDER XXX: SUITS BY OR AGAINST FIRMS AND PERSONS CARRYING ON BUSINESS IN NAMES OTHER THAN THEIR OWN

Rule 1: Suing of partners in name of firm.

(1) Any two or more persons claiming or being liable as partners and carrying on business in India may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the Court may direct.

(2) Where persons sue or are sued as partners in the name of their firm under sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice if such pleading or other document is signed, verified or certified by any one of such persons.

Simplified act

(1) If two or more people are working together as business partners in India, they can file a lawsuit or be sued using the business name they were using when the issue happened. Anyone involved in the lawsuit can ask the Court to provide a list of the names and addresses of the partners who were in the business at the time the issue occurred. The Court will tell them how to provide and verify this information.

(2) When partners are suing or being sued using their business name as mentioned in point (1), any legal documents that need to be signed, verified, or certified by the plaintiff (the person suing) or the defendant (the person being sued) can be signed, verified, or certified by any one of the partners.

Explanation using Example

Example 1:

Scenario: A partnership firm named "ABC Traders" is involved in a business dispute.

Details:

Partners: Raj, Simran, and Karan

Business: Wholesale trading of electronics

Cause of Action: A supplier, XYZ Electronics, claims that ABC Traders has not paid for a large consignment of goods delivered.

Application of Rule 1:

XYZ Electronics can file a lawsuit against "ABC Traders" instead of individually naming Raj, Simran, and Karan.

During the lawsuit, XYZ Electronics can request the court to provide the names and addresses of the partners of ABC Traders at the time the goods were delivered.

The court will direct ABC Traders to furnish and verify the names and addresses of Raj, Simran, and Karan.

Legal Document Signing:

Any legal documents required in the lawsuit, such as the written statement or affidavit, can be signed by any one of the partners (e.g., Raj) on behalf of ABC Traders.

Example 2:

Scenario: A partnership firm named "Sunrise Builders" is suing a client for non-payment.

Details:

Partners: Anil, Sunita, and Ravi

Business: Construction and real estate development

Cause of Action: A client, Mr. Sharma, has not paid for the construction work completed by Sunrise Builders.

Application of Rule 1:

Sunrise Builders can file a lawsuit against Mr. Sharma in the name of the firm "Sunrise Builders" instead of individually naming Anil, Sunita, and Ravi.

Mr. Sharma can request the court to provide the names and addresses of the partners of Sunrise Builders at the time the construction work was completed.

The court will direct Sunrise Builders to furnish and verify the names and addresses of Anil, Sunita, and Ravi.

Legal Document Signing:

Any legal documents required in the lawsuit, such as the complaint or affidavit, can be signed by any one of the partners (e.g., Sunita) on behalf of Sunrise Builders.

Rule 2: Disclosure of partners ' names.

(1) Where a suit is instituted by partners in the name of their firm, the plaintiffs or their pleader shall, on demanding writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted.

(2) Where the plaintiffs or their pleader fail to comply with any demand made under sub-rule (1) all proceedings in the suit may, upon an application for that purpose, be stayed upon such terms as the Court may direct.

(3) Where the names of the partners are declared in the manner referred to in sub-rule (1) the suit shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as plaintiffs in the plaint:

Provided that all proceedings shall nevertheless continue in the name of the firm, but the name of the partners disclosed in the manner specified in sub-rule (1) shall be entered in the decree.

Simplified act

(1) If a lawsuit is started by partners using their business name, the partners or their lawyer must, if asked in writing by any defendant, quickly provide a written list of the names and addresses of all the partners involved in the business.

(2) If the partners or their lawyer do not provide this information when asked, the court can pause the lawsuit until the information is given, based on the court's instructions.

(3) Once the names of the partners are provided as mentioned in point (1), the lawsuit will continue as if the partners were named individually in the lawsuit papers:

However, all legal actions will still be carried out in the business name, but the names of the partners will be included in the final court decision.

Explanation using Example

Example 1:

Scenario: A suit is filed by a partnership firm named "Sharma & Sons" against a supplier for breach of contract.

Details:

Plaintiffs: Sharma & Sons (a partnership firm)

Defendant: ABC Suppliers

Application of Rule 2:

Demand for Disclosure: ABC Suppliers, the defendant, demands in writing that Sharma & Sons disclose the names and places of residence of all partners constituting the firm.

Compliance: The plaintiffs (Sharma & Sons) or their pleader must promptly provide a written declaration listing all partners, e.g., Rajesh Sharma (residing in Delhi), Suresh Sharma (residing in Mumbai), and Anil Sharma (residing in Bangalore).

Failure to Comply: If Sharma & Sons fail to provide this information, ABC Suppliers can apply to the court to stay the proceedings until the information is disclosed.

Proceeding with Suit: Once the names are disclosed, the suit continues as if Rajesh Sharma, Suresh Sharma, and Anil Sharma were named as plaintiffs in the original complaint. The proceedings will still be in the name of "Sharma & Sons," but the partners' names will be included in the decree.

Example 2:

Scenario: A partnership firm named "Gupta Traders" files a lawsuit against a customer for non-payment of dues.

Details:

Plaintiffs: Gupta Traders (a partnership firm)

Defendant: XYZ Enterprises

Application of Rule 2:

Demand for Disclosure: XYZ Enterprises, the defendant, requests in writing that Gupta Traders disclose the names and places of residence of all partners.

Compliance: The plaintiffs (Gupta Traders) or their pleader must immediately provide a written declaration listing all partners, e.g., Ramesh Gupta (residing in Kolkata), Mahesh Gupta (residing in Chennai), and Naresh Gupta (residing in Hyderabad).

Failure to Comply: If Gupta Traders do not comply with the demand, XYZ Enterprises can request the court to stay the proceedings until the required information is provided.

Proceeding with Suit: Once the names are disclosed, the suit will proceed as if Ramesh Gupta, Mahesh Gupta, and Naresh Gupta were named as plaintiffs in the original complaint. The proceedings will continue in the name of "Gupta Traders," but the partners' names will be included in the final decree.

Rule 3: Service.

Where persons are sued as partners in the name of their firm, the summons shall be served either -

(a) upon any one or more of the partners, or

(b) at the principal place at which the partnership business is carried on within India upon any person having, at the time of service, the control or management of the partnership business, there.

as the Court may direct; and such service shall be deemed good service upon the firm so sued, whether all or any of the partners are within or without India:

Provided that, in the case of a partnership which has been dissolved to the knowledge of the plaintiff before the institution of the suit, the summons shall be served upon every person within India whom it is sought to make liable.

Simplified act

When people are sued as partners using their business name, the court can order the summons (legal notice) to be delivered in one of the following ways:

(a) to any one or more of the partners, or

(b) to the main place where the business operates in India, to anyone who is in charge or managing the business at that time.

This delivery will be considered valid for the whole partnership, whether all or some of the partners are in India or not.

However, if the partnership has been dissolved (ended) and the person suing knows this before starting the lawsuit, the summons must be delivered to every person in India who is being held responsible.

Explanation using Example

Example 1:

Scenario: A textile business named "Elegant Fabrics" is a partnership firm with three partners: Raj, Simran, and Karan. The firm is being sued by a supplier for non-payment of dues.

Application of Rule 3:

The court issues a summons to "Elegant Fabrics."

The summons can be served to any one or more of the partners, say Raj and Simran.

Alternatively, the summons can be served at the principal place of business of "Elegant Fabrics" in Mumbai to the manager, Mr. Sharma, who has control over the business operations.

This service is considered valid for the entire firm, even if Karan is currently in the USA.

Example 2:

Scenario: A law firm named "Justice Partners" was dissolved six months ago. The firm had four partners: Ayesha, Vikram, Neha, and Arjun. A former client is suing the firm for professional negligence.

Application of Rule 3:

The client, aware of the dissolution, files a suit against the former partners of "Justice Partners."

The court issues a summons to each partner individually within India.

Summons are served to Ayesha in Delhi, Vikram in Bangalore, and Neha in Chennai.

Arjun, who has moved to Canada, is not served as he is outside India.

The service is valid for Ayesha, Vikram, and Neha, making them liable in the suit.

Rule 4: Rights of suit on death of partner.

(1) Notwithstanding anything contained in section 45 of the Indian Contract Act, 1872 (9 of 1872) where two or more persons may sue or be sued in the name of a firm under the foregoing provisions and any of such persons dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit.

(2) Nothing in sub-rule (1) shall limit or otherwise affect any right which the legal representative of the deceased may have -

(a) to apply to be made a party to the suit, or

(b) to enforce any claim against the survivor or survivors.

Simplified act

(1) Even though section 45 of the Indian Contract Act, 1872 (9 of 1872) says otherwise, if two or more people are suing or being sued in the name of a business, and one of them dies (either before or during the lawsuit), you don't have to include the deceased person's legal representative in the lawsuit.

(2) However, this rule does not take away any rights that the deceased person's legal representative might have -

(a) to ask to be included in the lawsuit, or

(b) to make any claims against the remaining people involved in the lawsuit.

Explanation using Example

Example 1:

Scenario: A partnership firm named "ABC Traders" consists of three partners: Arjun, Bhavesh, and Chitra. They file a lawsuit against a supplier for breach of contract. During the pendency of the suit, Bhavesh passes away.

Application of Rule 4:

According to Rule 4(1) of Order XXX, it is not necessary to join Bhavesh's legal representative as a party to the ongoing suit. The lawsuit can continue with Arjun and Chitra representing the firm "ABC Traders."

However, under Rule 4(2), Bhavesh's legal representative has the right to apply to be made a party to the suit if they wish to be involved. Additionally, they can enforce any claim Bhavesh had against the surviving partners, Arjun and Chitra.

Example 2:

Scenario: A partnership firm named "XYZ Enterprises" consists of two partners: Deepak and Esha. They are sued by a client for non-delivery of goods. Before the case is filed, Esha dies.

Application of Rule 4:

According to Rule 4(1) of Order XXX, the client can still sue "XYZ Enterprises" without needing to join Esha's legal representative as a party to the suit. Deepak can represent the firm in the lawsuit.

Under Rule 4(2), Esha's legal representative retains the right to apply to be made a party to the suit if they choose. They also have the right to enforce any claim Esha had against Deepak, the surviving partner.

Example 3:

Scenario: A partnership firm named "MNO Services" consists of four partners: Farhan, Geeta, Harish, and Indira. They are involved in a lawsuit against a competitor for defamation. During the trial, Geeta dies.

Application of Rule 4:

According to Rule 4(1) of Order XXX, the lawsuit can proceed without adding Geeta's legal representative as a party. Farhan, Harish, and Indira can continue to represent "MNO Services" in the defamation case.

Under Rule 4(2), Geeta's legal representative has the right to apply to be made a party to the suit if they wish to participate. They can also enforce any claim Geeta had against the surviving partners, Farhan, Harish, and Indira.

Example 4:

Scenario: A partnership firm named "PQR Solutions" consists of three partners: Karan, Lata, and Meera. They are sued by a former employee for wrongful termination. Before the case is filed, Karan dies.

Application of Rule 4:

According to Rule 4(1) of Order XXX, the former employee can sue "PQR Solutions" without needing to join Karan's legal representative as a party to the suit. Lata and Meera can represent the firm in the lawsuit.

Under Rule 4(2), Karan's legal representative retains the right to apply to be made a party to the suit if they choose. They also have the right to enforce any claim Karan had against the surviving partners, Lata and Meera.

Rule 5: Notice in what capacity served.

Where a summons is issued to a firm and is served in the manner provided by rule 3, every person upon whom it is served shall be informed by notice in writing given at the time of such service, whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters, and, in default of such notice, the person served shall be deemed to be served as a partner.

Simplified act

When a legal notice (summons) is sent to a business partnership (firm) and delivered according to the rules,

Each person who receives the notice must be told in writing at the time of delivery whether they are being served because they are:

a partner in the business, or

someone who controls or manages the business, or

both a partner and a manager.

If this written notice is not given, the person who receives the summons will be considered to have been served as a partner.

Explanation using Example

Example 1:

Scenario: A legal dispute arises between a supplier and a firm named "ABC Traders." The supplier files a lawsuit against "ABC Traders" for non-payment of dues. The court issues a summons to "ABC Traders."

Application of Rule 5: When the court's process server delivers the summons to "ABC Traders," it is handed over to Mr. Sharma, who is present at the firm's office. At the time of service, Mr. Sharma is informed in writing that he is being served as a partner of "ABC Traders." This written notice clarifies Mr. Sharma's capacity in the firm, ensuring he understands his role in the legal proceedings.

Example 2:

Scenario: A customer files a lawsuit against "XYZ Enterprises" for breach of contract. The court issues a summons to "XYZ Enterprises."

Application of Rule 5: The court's process server goes to the office of "XYZ Enterprises" and serves the summons to Ms. Gupta, who is the office manager. At the time of service, Ms. Gupta is informed in writing that she is being served as a person having control or management of the partnership business. This written notice ensures that Ms. Gupta is aware of her responsibility in the legal matter, even though she is not a partner in the firm.

Example 3:

Scenario: A former employee files a lawsuit against "LMN Associates" for wrongful termination. The court issues a summons to "LMN Associates."

Application of Rule 5: The court's process server delivers the summons to Mr. Verma, who is both a partner and the managing director of "LMN Associates." At the time of service, Mr. Verma is informed in writing that he is being served in both capacities—as a partner and as a person having control or management of the partnership business. This dual notice ensures that Mr. Verma understands his comprehensive role in the legal proceedings.

Example 4:

Scenario: A client files a lawsuit against "PQR Consultants" for professional negligence. The court issues a summons to "PQR Consultants."

Application of Rule 5: The court's process server serves the summons to Mr. Khan, who is an employee at "PQR Consultants." However, the process server fails to provide a written notice specifying whether Mr. Khan is being served as a partner or as a person having control or management of the business. Due to

this default, Mr. Khan is deemed to be served as a partner, as per Rule 5. This means Mr. Khan will be considered a partner in the legal proceedings unless proven otherwise.

Rule 6: Appearance of partners.

Where persons are sued as partners in the name of their firm, they shall appear individually in their own names, but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

Simplified act

If people are being sued as part of a business partnership, they need to show up in court using their own personal names.

However, after that, all the legal steps and documents will still use the business's name.

Explanation using Example

Example 1:

Scenario: A textile business named "Elegant Fabrics" is run by two partners, Mr. Raj and Mr. Amit. A supplier sues "Elegant Fabrics" for non-payment of dues.

Application of Rule 6:

When the supplier files the lawsuit, they name "Elegant Fabrics" as the defendant.

Mr. Raj and Mr. Amit, as partners, must appear in court individually as Mr. Raj and Mr. Amit.

Despite their individual appearances, the case will continue to be referred to as the case against "Elegant Fabrics."

Example 2:

Scenario: A law firm named "Justice Partners" is sued by a former client for professional negligence. The firm is composed of three partners: Ms. Priya, Mr. Arjun, and Ms. Neha.

Application of Rule 6:

The former client files the lawsuit against "Justice Partners."

Ms. Priya, Mr. Arjun, and Ms. Neha must each appear in court under their own names.

The court proceedings, filings, and judgments will still be in the name of "Justice Partners," even though the partners are appearing individually.

Rule 7: No appearance except by partners.

Where a summons is served in the manner provided by rule 3 upon a person having the control or management of the partnership business, no appearance by him shall be necessary unless he is a partner of the firm sued.

Simplified act

If a summons (a legal notice to appear in court) is delivered to someone who manages or controls a partnership business, that person does not need to show up in court unless they are actually a partner in the business being sued.

Explanation using Example

Example 1:

Rajesh and Suresh are partners in a firm called "RS Traders." They are sued by a supplier for non-payment of dues. The court issues a summons to the firm's manager, Mr. Kumar, who handles the day-to-day operations of RS Traders. According to Rule 7 of the Code of Civil Procedure 1908, Mr. Kumar does not need to appear in court because he is not a partner of the firm. Only Rajesh and Suresh, the actual partners, are required to appear.

Example 2:

A firm named "ABC Enterprises," run by partners Anil and Sunil, is involved in a legal dispute over a breach of contract. The court sends a summons to Ms. Priya, the firm's accountant, who manages the financial records. Since Ms. Priya is not a partner but merely an employee, she is not required to appear in court. Anil and Sunil, being the partners, must handle the court proceedings themselves.

Rule 8: Appearance under protest.

Any person served with summons as a partner under rule 3 may enter an appearance under protest, denying that he was a partner at any material time.

(2) On such appearance being made, either the plaintiff or the person entering the appearance may, at any time before the date fixed for hearing and final disposal of the suit, apply to the Court for determining whether that person was a partner of the firm and liable as such.

(3) If, on such application, the Court holds that he was a partner at the material time, that shall not preclude the person from filing a defence denying the liability of the firm in respect of the claim against the defendant.

(4) If the Court, however, holds that such person was not a partner of the firm and was not liable as such that shall not preclude the plaintiff from otherwise serving a summons on the firm and proceeding with the suit; but in that event, the plaintiff shall be precluded from alleging the liability of that person as a partner of the firm in execution of any decree that may be passed against the firm.

Simplified act

Anyone who is given a court summons as a partner under rule 3 can show up in court and argue that they were not a partner at the important time.

(2) When this happens, either the person who filed the lawsuit (plaintiff) or the person who showed up in court can ask the Court, before the hearing date, to decide if that person was actually a partner of the firm and responsible as such.

(3) If the Court decides that the person was a partner at the important time, the person can still argue that the firm is not responsible for the claim made against them.

(4) If the Court decides that the person was not a partner and not responsible, the plaintiff can still serve a summons to the firm and continue with the lawsuit. However, the plaintiff cannot claim that the person is responsible as a partner if the Court rules against the firm.

Explanation using Example

Example 1:

Scenario: Ramesh receives a court summons claiming he is a partner in a firm called "ABC Traders" and is liable for a debt the firm owes to a supplier.

Application of Rule 8:

Appearance under Protest: Ramesh appears in court but denies that he was ever a partner in "ABC Traders."

Application to Determine Partnership: Ramesh files an application to the court to determine whether he was a partner at the material time.

Court's Decision: The court examines the evidence and determines that Ramesh was indeed a partner at the relevant time.

Further Defense: Despite the court's decision, Ramesh is still allowed to present a defense denying the firm's liability for the debt.

Example 2:

Scenario: Priya is served with a summons as a partner of "XYZ Enterprises" in a lawsuit filed by a client for breach of contract. Priya claims she was never a partner in the firm.

Application of Rule 8:

Appearance under Protest: Priya appears in court and denies her partnership in "XYZ Enterprises."

Application to Determine Partnership: Priya or the plaintiff applies to the court to determine whether Priya was a partner at the material time.

Court's Decision: The court finds that Priya was not a partner of "XYZ Enterprises."

Proceeding with the Suit: The plaintiff can still proceed with the lawsuit against "XYZ Enterprises" but cannot claim Priya's liability as a partner in the execution of any decree that may be passed against the firm.

Rule 9: Suits between co-partners.

This Order shall apply to suits between a firm and one or more of the partners therein and to suits between firms having one or more partners in common; but no execution shall be issued in such suits except by leave of the Court, and, on an application for leave to issue such execution, all such accounts and inquiries may be directed to be taken and made and directions given as may be just.

Simplified act

This rule applies to lawsuits between a business partnership and one or more of its partners, as well as lawsuits between different business partnerships that share one or more partners.

No court order to enforce a judgment (called "execution") can be issued in these lawsuits unless the court gives permission.

When asking the court for permission to enforce a judgment, the court can order any necessary financial reviews and investigations, and give any instructions that are fair and appropriate.

Explanation using Example

Example 1:

Scenario: A partnership firm named "ABC Traders" consists of three partners: Arjun, Bhavesh, and Chitra. Arjun believes that Bhavesh has been misappropriating funds from the firm.

Application of Rule 9: Arjun decides to file a suit against Bhavesh for the recovery of the misappropriated funds. Since this is a suit between co-partners within the same firm, Rule 9 of Order XXX of the Code of Civil Procedure, 1908, applies. Arjun files the suit in the appropriate civil court. The court, before issuing any execution orders (such as orders to recover the funds), will require Arjun to seek leave (permission) from the court. The court may also direct that a thorough accounting and inquiry be conducted to determine the extent of the misappropriation and ensure that justice is served.

Example 2:

Scenario: Two partnership firms, "XYZ Enterprises" and "LMN Associates," share a common partner, Deepak. XYZ Enterprises believes that LMN Associates has breached a business agreement that affects both firms.

Application of Rule 9: XYZ Enterprises decides to file a suit against LMN Associates for breach of contract. Since both firms have a common partner (Deepak), Rule 9 of Order XXX of the Code of Civil Procedure, 1908, applies. XYZ Enterprises files the suit in the appropriate civil court. Before any execution orders can be issued, XYZ Enterprises must obtain leave from the court. The court may also order an accounting and inquiry to determine the extent of the breach and the appropriate remedy, ensuring that the interests of all parties, including the common partner, are considered.

Rule 10: Suit against person carrying on business in name other than his own.

Any person carrying on business in a name or style other than his own name, or a Hindu undivided family carrying on business under any name, may be sued in such name or style as if it were a firm name, and, in so far as the nature of such case permits, all rules under this Order shall apply accordingly.

Simplified act

If someone is running a business using a name that is not their own personal name, or if a Hindu undivided family is running a business under any name, they can be taken to court using that business name, just like a company can be sued.

All the rules that apply to suing a company will also apply to suing a business run by an individual or a Hindu undivided family under a different name, as long as it makes sense for the case.

Explanation using Example

Example 1:

Rajesh Kumar runs a small electronics shop in Delhi under the name "Bright Electronics." He does not use his personal name for the business. One day, a customer, Anil, buys a television from "Bright Electronics," but the television turns out to be defective. Anil tries to contact Rajesh for a replacement or refund, but Rajesh refuses to cooperate. Anil decides to file a lawsuit for compensation. According to Rule 10 of the Code of Civil Procedure 1908, Anil can sue "Bright Electronics" as if it were a firm name, even though it is not Rajesh's personal name. The court will treat "Bright Electronics" as the defendant in the case.

Example 2:

A Hindu Undivided Family (HUF) in Mumbai runs a textile business under the name "Sharma Textiles." The business is managed by the eldest member, Mr. Ramesh Sharma. One of their suppliers, Vinod, delivers a large consignment of fabric to "Sharma Textiles," but the payment is not made on time. Vinod decides to take legal action to recover his dues. Under Rule 10 of the Code of Civil Procedure 1908, Vinod can sue "Sharma Textiles" in that name, even though it is not the personal name of any individual member of the HUF. The court will consider "Sharma Textiles" as the entity being sued.

ORDER XXXI: SUITS BY OR AGAINST TRUSTEES, EXECUTORS AND ADMINISTRATORS

Rule 1: Representation of beneficiaries in suits concerning property vested in trustees, etc.

In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made parties.

Simplified act

In any legal case about property that is managed by a trustee, executor, or administrator, where the dispute is between the people who benefit from the property and someone else, the trustee, executor, or administrator will represent the people who benefit from the property.

Usually, it is not necessary to include the people who benefit from the property as parties in the case.

However, the Court can decide to include them as parties if it thinks it is appropriate.

Explanation using Example

Example 1:

Scenario: A dispute arises over a piece of land that was left in a will to several beneficiaries. The land is currently managed by an executor named Mr. Sharma. A third party, Mr. Verma, claims that he has a right to a portion of this land based on an old agreement with the deceased.

Application of the Act: In this case, Mr. Sharma, the executor, will represent the interests of all the beneficiaries in the lawsuit against Mr. Verma. The beneficiaries do not need to be individually named or involved in the suit unless the court specifically orders them to be included.

Example 2:

Scenario: A trust has been established to manage a commercial property in Mumbai, with the income from the property intended to support a local charity.

The trustee, Ms. Kapoor, is responsible for managing the property. A construction company, ABC Builders, files a suit claiming that they have a contract to develop part of the property, which the trustee disputes.

Application of the Act: Ms. Kapoor, as the trustee, will represent the interests of the charity in the lawsuit against ABC Builders. The charity itself does not need to be made a party to the suit unless the court decides that it is necessary for them to be included.

Rule 2: Joinder of trustees, executors and administrators.

Where there are several trustees, executors or administrators, they shall all be made parties to a suit against one or more of them:

Provided that the executors who have not proved their testator's will, and trustees, executors and administrators outside India, need not be made parties.

Simplified act

If there are multiple trustees, executors, or administrators, all of them must be included in a lawsuit against any one or more of them:

However, executors who have not validated the will of the person who passed away, and trustees, executors, and administrators who are outside India, do not need to be included in the lawsuit.

Explanation using Example

Example 1:

Ravi, Suresh, and Meena are trustees of a charitable trust in Mumbai. A dispute arises regarding the management of the trust's funds, and a beneficiary decides to file a lawsuit. According to Rule 2 of the Code of Civil Procedure 1908, the beneficiary must include Ravi, Suresh, and Meena as parties to the suit. This ensures that all trustees are involved in the legal proceedings and can collectively address the issues raised.

Example 2:

Anita, Raj, and Priya are executors of their late father's will, which includes significant property and assets in Delhi. A family member contests the will, claiming it was not executed properly. Under Rule 2 of the Code of Civil Procedure 1908, the family member must include Anita, Raj, and Priya as

parties to the lawsuit. However, if Raj has not yet proved the will in court, he does not need to be included as a party to the suit. Additionally, if Priya is currently residing in the United States, she also does not need to be made a party to the suit.

Rule 3: Husband of married executrix not to join.

Unless the Court directs otherwise, the husband of a married trustee, administratrix or executrix shall not as such be a party to a suit by or against her.

Simplified act

Unless the Court says something different, the husband of a married woman who is a trustee, administratrix, or executrix cannot be involved in a lawsuit just because he is her husband.

Explanation using Example

Example 1:

Scenario: Anita is appointed as the executrix of her late father's will. She is married to Rajesh. A dispute arises regarding the distribution of the assets mentioned in the will, and a lawsuit is filed against Anita in her capacity as the executrix.

Application of the Act: According to Rule 3 of Order XXXI of The Code of Civil Procedure, 1908, Rajesh, Anita's husband, cannot be made a party to the lawsuit simply because he is her husband. The court will only involve Anita in her official capacity as the executrix unless it specifically directs otherwise.

Example 2:

Scenario: Meera is a trustee of a charitable trust. She is married to Suresh. The trust is involved in a legal dispute over the ownership of a piece of land. A lawsuit is filed against Meera in her capacity as a trustee.

Application of the Act: Under Rule 3 of Order XXXI of The Code of Civil Procedure, 1908, Suresh, Meera's husband, cannot be included as a party to the lawsuit merely because he is married to Meera. The legal proceedings will focus solely on Meera in her role as a trustee unless the court decides otherwise.

ORDER XXXII: SUITS BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND

Rule 1: Minor to sue by next friend.

Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor.

2 of that Act or to any other matter.

Simplified act

Every lawsuit involving a minor must be started in the minor's name by an adult, who will be referred to as the minor's "next friend" in the lawsuit.

2 of that Act or to any other matter.

Explanation using Example

Example 1:

Ravi is a 15-year-old boy who was injured in a car accident caused by a negligent driver. Ravi's parents want to file a lawsuit to claim compensation for his medical expenses and suffering. Since Ravi is a minor, he cannot file the lawsuit on his own. Therefore, his father, Mr. Sharma, files the lawsuit on Ravi's behalf. In this case, Mr. Sharma is referred to as the "next friend" of Ravi in the legal proceedings.

Example 2:

Anita, a 16-year-old girl, has inherited a piece of land from her deceased grandfather. A neighbor, Mr. Verma, unlawfully encroaches on this land and starts construction. Anita wants to take legal action to reclaim her property. Since she is a minor, she cannot initiate the lawsuit herself. Her mother, Mrs. Gupta, steps in to file the lawsuit on Anita's behalf. Here, Mrs. Gupta acts as the "next friend" of Anita in the court case.

Rule 2: Where suit is instituted without next friend, plaint to be taken off the file.

(1) Where a suit is instituted by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented.

(2) Notice of such application shall be given to such person, and the Court, after hearing his objections (if any) may make such order in the matter as it thinks fit.

Simplified act

(1) If a lawsuit is started by or for a minor (a person under 18) without an adult representative, the person being sued can ask the court to remove the lawsuit from its records. The person who filed the lawsuit (like a lawyer or another person) will have to pay the costs.

(2) The person who filed the lawsuit will be notified about this request. The court will listen to any objections they have and then decide what to do based on what it thinks is fair.

Explanation using Example

Example 1:

Rahul, a 15-year-old boy, wants to file a lawsuit against a neighbor for damaging his bicycle. Rahul goes to court and files the suit on his own, without involving any adult or guardian. The neighbor, upon receiving the court notice, realizes that Rahul is a minor and has filed the suit without a "next friend" (a responsible adult representing him). The neighbor's lawyer files an application to the court, requesting that the plaint (the written complaint) be removed from the court records. The court, after notifying Rahul and hearing any objections he might have, decides to remove the plaint from the file and orders Rahul's lawyer to pay the legal costs incurred by the neighbor.

Example 2:

Anita, a 16-year-old girl, wants to sue a local shop for selling her defective goods. She files the lawsuit without involving her parents or any guardian. The shop owner, upon receiving the lawsuit notice, realizes that Anita is a minor and has filed the suit without a "next friend." The shop owner's lawyer submits an application to the court to have the plaint removed from the file. The court sends a notice to Anita, informing her of the application. After hearing Anita's objections, if any, the court decides to remove the plaint from the file and orders the person who helped Anita file the suit to pay the shop owner's legal costs.

Rule 2A: Security to be furnished by next friend when so ordered.

(1) Where a suit has been instituted on behalf of the minor by his next friend, the Court may, at any stage of the suit, either of its own motion or on the application of any defendant, and for reasons to be recorded, order the next friend to give security for the payment of all costs incurred or likely to be incurred by the defendant.

(2) Where such a suit is instituted by an indigent person, the security shall include the court-fees payable to the Government.

(3) The provisions of rule 2 of Order XXV shall, so far as may be, apply to a suit where the Court makes an order under this rule directing security to be furnished.

Simplified act

Order XXV - Security for Costs

(1) If a lawsuit is started on behalf of a minor (a person under 18) by their guardian or representative, the Court can, at any point during the lawsuit, either on its own or if a defendant asks, and after giving reasons, order the guardian or representative to provide a guarantee to cover all the costs that the defendant has paid or might have to pay.

(2) If the lawsuit is started by a person who cannot afford to pay (an indigent person), this guarantee must also cover the court fees that need to be paid to the Government.

(3) The rules mentioned in rule 2 of Order XXV will also apply to any lawsuit where the Court orders a guarantee to be provided under this rule.

Explanation using Example

Example 1:

Ravi, a 10-year-old boy, is involved in a property dispute. His mother, Sita, acts as his "next friend" and files a lawsuit on his behalf to claim his share of the property. The defendant, Ravi's uncle, believes that the lawsuit is frivolous and requests the court to order Sita to provide security for the costs he will incur in defending the suit. The court, after considering the request and recording the reasons, orders Sita to furnish a security amount of ₹50,000 to cover the potential legal costs of the defendant.

Example 2:

Meera, a 15-year-old girl, is suing a company for compensation due to an accident that caused her injury. Her father, Rajesh, acts as her "next friend" and files the suit. The company argues that the lawsuit is baseless and requests the court to order Rajesh to provide security for the costs. The court, recognizing that Rajesh is an indigent person and cannot afford the court fees, orders him to furnish security that includes the court fees payable to the government, amounting to ₹30,000.

Example 3:

Anita, a 12-year-old girl, is involved in a legal battle over her inheritance. Her elder brother, Ramesh, acts as her "next friend" and files a suit against their relatives. The relatives, who are the defendants, file an application requesting the court to order Ramesh to provide security for their legal costs. The court, after reviewing the case, orders Ramesh to furnish a security amount of ₹40,000 to cover the defendants' potential costs.

Example 4:

Vikram, a 14-year-old boy, is suing a neighbor for damages caused to his bicycle in an accident. His guardian, Priya, acts as his "next friend" and files the lawsuit. The neighbor, who is the defendant, argues that the lawsuit is without merit and requests the court to order Priya to provide security for the costs. The court, considering the financial status of Priya and the merits of the case, orders her to furnish a security amount of ₹20,000 to cover the defendant's legal costs.

Rule 3: Guardian for the suit to be appointed by Court for minor defendant.

Guardians for Minors in Legal Proceedings

- (1) Where the defendant is a minor the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor.
- (2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.
- (3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed.

(4) Order shall be made on any application under this rule except upon notice *
* * to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian upon notice to the father or where there is no father, to the mother, or where there is no father or mother, to other natural guardian of the minor, or, where there is no father, mother or other natural guardian, to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule.

4A The Court may, in any case, if it thinks fit, issue notice under sub-rule (4) to the minor also.

(5) A person appointed under sub-rule (1) to be guardian for the suit for a minor shall, unless his appointment is terminated by retirement, removal or death, continue as such throughout all proceedings arising out of the suit including proceedings in any Appellate or Revisional Court and any proceedings in the execution of a decree.

Simplified act

Guardians for Minors in Legal Proceedings

(1) If the person being sued is a minor (under 18), the Court will appoint a suitable guardian to represent the minor in the case.

(2) You can request the Court to appoint a guardian for the minor either on behalf of the minor or by the person suing (the plaintiff).

(3) This request must include a sworn statement (affidavit) confirming that the proposed guardian has no conflicting interests with the minor and is a suitable person for the role.

(4) The Court will notify the minor's existing guardian (if there is one) or, if there isn't one, the minor's father, or if there is no father, the mother, or if there are no parents, another natural guardian. If none of these are available, the person currently caring for the minor will be notified. The Court will consider any objections from these people before making a decision.

4A The Court can also choose to notify the minor directly if it thinks it's appropriate.

(5) The appointed guardian will continue to represent the minor throughout all related legal proceedings, including appeals and enforcement of the Court's decision, unless they retire, are removed, or pass away.

Explanation using Example

Example 1:

Scenario: A Property Dispute

Ravi, a 15-year-old boy, is named as a defendant in a property dispute case. The plaintiff, Mr. Sharma, claims that Ravi's family has encroached on his land. Since Ravi is a minor, the court needs to appoint a guardian to represent him in the lawsuit.

Application:

The court verifies Ravi's age and confirms that he is a minor.

Ravi's uncle, Mr. Verma, applies to the court to be appointed as Ravi's guardian for the suit.

Mr. Verma submits an affidavit stating that he has no conflicting interest in the property dispute and is a suitable person to represent Ravi.

The court issues a notice to Ravi's father, who is his natural guardian, informing him about the application.

After hearing any objections from Ravi's father and ensuring that Mr. Verma is fit for the role, the court appoints Mr. Verma as Ravi's guardian for the duration of the lawsuit.

Example 2:

Scenario: A Personal Injury Case

Anita, a 12-year-old girl, is injured in a car accident and is named as a defendant in a lawsuit filed by the driver of the other vehicle, Mr. Kumar, who claims that Anita's negligence caused the accident.

Application:

The court confirms Anita's age and her status as a minor.

Anita's mother, Mrs. Singh, applies to the court to be appointed as Anita's guardian for the suit.

Mrs. Singh provides an affidavit confirming that she has no adverse interest in the case and is a suitable person to represent Anita.

The court issues a notice to Anita's father, who is her natural guardian, informing him about the application.

After considering any objections from Anita's father and verifying Mrs. Singh's suitability, the court appoints Mrs. Singh as Anita's guardian for the lawsuit.

Example 3:

Scenario: A Contract Dispute

Rahul, a 17-year-old boy, is sued by a company for allegedly breaching a contract he signed. Since Rahul is a minor, the court must appoint a guardian to represent him in the legal proceedings.

Application:

The court verifies Rahul's age and confirms his minority status.

The plaintiff company applies to the court to appoint a guardian for Rahul.

The company proposes Mr. Gupta, a family friend of Rahul, as the guardian and submits an affidavit stating that Mr. Gupta has no conflicting interest in the contract dispute and is a suitable person to represent Rahul.

The court issues a notice to Rahul's mother, who is his natural guardian, informing her about the application.

After hearing any objections from Rahul's mother and ensuring Mr. Gupta's suitability, the court appoints Mr. Gupta as Rahul's guardian for the duration of the lawsuit.

Rule 3A: Decree against minor not to be set aside unless prejudice has been caused to his interests.

(1) No decree passed against a minor shall be set aside merely on the ground that the next friend or guardian for the suit of the minor had an interest in the subject-matter of the suit adverse to that of the minor. But the fact that by reasons of such adverse interest of the next friend or guardian for the suit, prejudice has been caused to the interests of the minor, shall be a ground for setting aside the decree.

(2) Nothing in this rule shall preclude the minor from obtaining any relief available under any law by reason of the misconduct or gross negligence on the part of the next friend or guardian for the suit resulting in prejudice to the interests of the minor.

Simplified act

(1) A court decision against a minor (a person under 18) will not be canceled just because the person representing the minor (next friend or guardian) had a conflicting interest in the case. However, if this conflict of interest caused harm to the minor's interests, the decision can be canceled.

(2) This rule does not stop the minor from getting any help they are entitled to under the law if the person representing them acted wrongly or was very careless, causing harm to the minor's interests.

Explanation using Example

Example 1:

Ravi, a 15-year-old minor, is involved in a property dispute case. His uncle, who has a conflicting interest in the property, is appointed as his guardian for the suit. The court passes a decree against Ravi, favoring the opposing party. Later, it is discovered that Ravi's uncle did not present crucial evidence that could have benefited Ravi's case because it would have harmed his own interests. Ravi's lawyer argues that the decree should be set aside because the uncle's adverse interest caused prejudice to Ravi's interests. The court agrees and sets aside the decree, allowing Ravi to have a fair trial with a new guardian.

Example 2:

Meena, a 16-year-old minor, is involved in a lawsuit regarding her inheritance. Her father, who is also a party to the suit and has a conflicting interest, is appointed as her guardian. The court issues a decree against Meena. Later, it is found that her father acted negligently by not attending important court hearings and failing to submit necessary documents, which resulted in a loss for Meena. Meena's new lawyer files a petition to set aside the decree, arguing that her father's gross negligence caused prejudice to her interests. The court reviews the case and decides to set aside the decree, allowing Meena to seek relief with a competent guardian.

Example 3:

Arjun, a 14-year-old minor, is involved in a legal dispute over a family business. His elder brother, who has a competing interest in the business, is appointed as his guardian for the suit. The court passes a decree against Arjun. It is later revealed that the elder brother intentionally withheld information that would have supported Arjun's claim because it would have negatively impacted his own share in the business. Arjun's legal representative argues that the decree should be set aside due to the elder brother's adverse interest causing prejudice to Arjun's interests. The court finds merit in the argument and sets aside the decree, appointing a neutral guardian for Arjun.

Example 4:

Sita, a 17-year-old minor, is involved in a case concerning her educational trust fund. Her mother, who has a conflicting interest in the trust fund, is appointed as her guardian. The court issues a decree against Sita. It is later discovered that her mother mismanaged the case by not hiring a competent lawyer and failing to present key financial records, which led to an unfavorable outcome for Sita. Sita's new legal counsel files a motion to set aside the decree, citing her mother's gross negligence and misconduct. The court reviews the evidence and decides to set aside the decree, allowing Sita to pursue the case with a new guardian.

Example 5:

Rahul, a 13-year-old minor, is involved in a legal battle over a piece of ancestral land. His grandfather, who has a vested interest in the land, is appointed as his guardian for the suit. The court rules against Rahul. It is later found that the grandfather did not disclose certain documents that would have strengthened Rahul's case because it would have diminished his own claim to the land. Rahul's attorney argues that the decree should be set aside due to the grandfather's adverse interest causing prejudice to Rahul's interests. The court agrees and sets aside the decree, appointing an impartial guardian to represent Rahul.

Rule 4: Who may act as next friend or be appointed guardian for the suit.

Legal Provisions for Next Friend and Guardian for the Suit

(1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit:

Provided that the interest of such person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant, or, in the case of a guardian for the suit, a plaintiff.

(2) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or be appointed his guardian for the suit unless the Court considers, for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act or be appointed, as the case may be.

(3) No person shall without his consent in writing be appointed guardian for the suit.

(4) Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian, and may direct that the costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interested or out of the property of the minor, and may give directions for the repayment or allowance of such costs as justice and the circumstances of the case may require.

Simplified act

Legal Provisions for Next Friend and Guardian for the Suit

(1) Any adult who is mentally sound can act as a next friend or guardian for a minor in a lawsuit:

However, this person must not have conflicting interests with the minor. Also, if acting as a next friend, they cannot be a defendant, and if acting as a guardian, they cannot be a plaintiff.

(2) If a minor already has a guardian appointed by a competent authority, no one else can act as the next friend or guardian for the minor unless the Court decides, for specific reasons, that it is better for the minor to have someone else.

(3) No one can be appointed as a guardian for a lawsuit without their written consent.

(4) If there is no suitable person willing to act as a guardian for the lawsuit, the Court can appoint one of its officers to be the guardian. The Court can also

decide who will pay for the costs incurred by this officer, whether it be the parties involved in the lawsuit, from any fund in Court that the minor is interested in, or from the minor's property. The Court can also give instructions on how these costs should be repaid or covered based on what is fair and necessary in the situation.

Explanation using Example

Example 1:

Ravi, a 16-year-old boy, is involved in a property dispute after his father's death. Ravi's uncle, Suresh, who is 45 years old and of sound mind, wishes to act as Ravi's next friend in the lawsuit to ensure Ravi's interests are protected. Suresh is not a defendant in the case, and his interests align with Ravi's. Therefore, under Rule 4(1) of the Code of Civil Procedure 1908, Suresh can act as Ravi's next friend in the suit.

Example 2:

Meena, a 14-year-old girl, has a legal guardian appointed by the court after her parents passed away. This guardian, Mr. Sharma, is responsible for her welfare. Meena is involved in a legal dispute over her inheritance. Although Mr. Sharma is her legal guardian, Meena's aunt, Mrs. Gupta, believes she can better represent Meena's interests in this particular case. Mrs. Gupta petitions the court to be appointed as Meena's guardian for the suit. The court reviews the situation and records reasons that it is in Meena's best interest for Mrs. Gupta to act as her guardian for this specific lawsuit, as per Rule 4(2).

Example 3:

Arjun, a 15-year-old boy, is involved in a legal case regarding a car accident. His elder brother, Raj, is willing to act as his guardian for the suit. However, Raj is currently out of the country and cannot provide written consent immediately. The court cannot appoint Raj as the guardian for the suit without his written consent, as stipulated in Rule 4(3).

Example 4:

Priya, a 13-year-old girl, is involved in a legal dispute over a trust fund. Her parents are deceased, and there is no relative willing or fit to act as her guardian for the suit. The court decides to appoint one of its officers, Mr. Kumar, to act as Priya's guardian for the suit. The court also directs that the

costs incurred by Mr. Kumar in performing his duties will be borne out of the trust fund in which Priya has an interest, as per Rule 4(4).

Rule 5: Representation of minor by next friend or guardian for the suit.

Application on Behalf of a Minor

(1) Every application to the Court on behalf of a minor, other than an application under rule 10, sub-rule (2), shall be made by his next friend or by his guardian for the suit.

(2) Every order made in a suit or on any application, before the Court in or which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit, as the case may be, may be discharged, and, where the pleader of the party at whose instance such order was obtained knew, or might reasonably have known, the fact of such minority, with costs to be paid by such pleader.

Simplified act

Application on Behalf of a Minor

(1) Any request to the Court on behalf of a minor (a person under 18 years old), except for a request under rule 10, sub-rule (2), must be made by the minor's next friend (a person who represents the minor in legal matters) or by the minor's guardian for the case.

(2) Any decision made in a case or on any request before the Court that involves or affects a minor, without the minor being represented by a next friend or guardian, can be canceled. If the lawyer who got the decision knew or should have known that the person was a minor, they may have to pay the costs.

Explanation using Example

Example 1:

Scenario: A minor named Rohan, aged 15, is involved in a property dispute where his share of ancestral property is being contested by his uncle.

Application: Rohan's mother, as his next friend, files an application in the court on behalf of Rohan to claim his rightful share of the property.

Court's Action: The court accepts the application because it is made by Rohan's next friend, his mother, as required by Rule 5 of Order XXXII of The Code of Civil Procedure, 1908.

Outcome: The court proceeds with the case, ensuring that Rohan's interests are represented by his mother throughout the legal proceedings.

Example 2:

Scenario: A minor named Priya, aged 12, is involved in a lawsuit where she is being sued for damages caused by an accident.

Application: Priya's father, acting as her guardian for the suit, files an application to defend Priya in the court.

Court's Action: The court acknowledges the application because it is made by Priya's guardian for the suit, as stipulated by Rule 5 of Order XXXII of The Code of Civil Procedure, 1908.

Outcome: The court allows Priya's father to represent her in the lawsuit, ensuring that her legal rights are protected during the trial.

Example 3:

Scenario: A minor named Anjali, aged 14, is involved in a legal dispute over a scholarship fund that she is entitled to receive.

Application: Anjali's elder brother, as her next friend, files an application in the court to secure the scholarship fund for her.

Court's Action: The court accepts the application because it is made by Anjali's next friend, her elder brother, in compliance with Rule 5 of Order XXXII of The Code of Civil Procedure, 1908.

Outcome: The court proceeds with the case, ensuring that Anjali's interests are represented by her elder brother throughout the legal proceedings.

Example 4:

Scenario: A minor named Arjun, aged 16, is involved in a legal dispute over a contract he allegedly entered into.

Application: Arjun's legal guardian, his uncle, files an application to nullify the contract on the grounds that Arjun is a minor and cannot legally enter into contracts.

Court's Action: The court accepts the application because it is made by Arjun's guardian for the suit, as required by Rule 5 of Order XXXII of The Code of Civil Procedure, 1908.

Outcome: The court proceeds with the case, ensuring that Arjun's interests are represented by his uncle, and examines the validity of the contract in light of Arjun's minority status.

Rule 6: Receipt by next friend or guardian for the suit of property under decree for minor.

A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other movable property on behalf of a minor either -

(a) by way of compromise before decree or order, or

(b) under a decree or order in favour of the minor.

(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability known to the Court to receive the money or other movable property, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application:

Provided that the Court may, for reasons to be recorded, dispense with such security while granting leave to the next friend or guardian for the suit to receive money or other movable property under a decree or order, where such next friend or guardian -

(a) is the manager of a Hindu undivided family and the decree or order relates to the property or business of the family; or

(b) is the parent of the minor.

Simplified act

A next friend or guardian for the lawsuit cannot receive any money or other movable property on behalf of a minor without the Court's permission, either:

(a) through a settlement before a decree or order, or

(b) under a decree or order in favor of the minor.

(2) If the next friend or guardian for the lawsuit has not been officially appointed or declared by a competent authority as the guardian of the minor's property, or if they have been appointed but are unable to receive the money or property due to a known disability, the Court will, if it allows them to receive the property, require certain security measures and give directions to protect the property from being wasted and to ensure it is used properly:

However, the Court may decide not to require such security measures while granting permission to the next friend or guardian to receive money or other movable property under a decree or order, if the next friend or guardian:

(a) is the manager of a Hindu undivided family and the decree or order relates to the property or business of the family; or

(b) is the parent of the minor.

Explanation using Example

Example 1:

Scenario: A minor named Rohan is involved in a property dispute case. His uncle, Rajesh, acts as his next friend in the lawsuit. The court issues a decree awarding Rohan a sum of ₹5,00,000 as compensation.

Application of Rule 6:

Rajesh, as the next friend, cannot receive the ₹5,00,000 on behalf of Rohan without the court's permission.

Rajesh must apply to the court for leave to receive the money.

The court will evaluate whether Rajesh is fit to manage the money. If Rajesh has not been appointed as the guardian of Rohan's property or has any known disability, the court will require Rajesh to provide security or give directions to protect the money.

If Rajesh is the manager of a Hindu undivided family or Rohan's parent, the court may dispense with the requirement for security, provided it records the reasons for doing so.

Example 2:

Scenario: A minor named Priya is involved in a legal case regarding a family business. Her father, Suresh, is acting as her guardian in the lawsuit. The

court issues an order awarding Priya a sum of ₹10,00,000 as part of a settlement.

Application of Rule 6:

Suresh, as the guardian, cannot receive the ₹10,00,000 on behalf of Priya without the court's permission.

Suresh must apply to the court for leave to receive the money.

Since Suresh is Priya's parent and the decree relates to the family business, the court may decide to dispense with the requirement for security.

The court will record the reasons for dispensing with the security requirement and grant Suresh permission to receive the money on behalf of Priya.

Rule 7: Agreement or compromise by next friend or guardian for the suit.

(1) No next friend or guardian for the suit shall, without the leave of the Court, expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian.

(1A) An application for leave under sub-rule (1) shall be accompanied by an affidavit of the next friend or the guardian for the suit, as the case may be, and also, if the minor is represented by a pleader, by the certificate of the pleader, to the effect that the agreement or compromise proposed is, in his opinion, for the benefit of the minor:

Provided that the opinion so expressed, whether in the affidavit or in the certificate shall not preclude the Court from examining whether the agreement or compromise proposed is, for the benefit of the minor.

(2) Any such agreement or compromise entered into without the leave of the Court so recorded shall be voidable against all parties other than the minor:

Simplified act

(1) A person acting as a next friend or guardian in a lawsuit for a minor cannot make any agreement or settlement on behalf of the minor without getting permission from the Court. This permission must be clearly recorded in the court documents.

(1A) To get this permission, the next friend or guardian must submit an application along with a sworn statement (affidavit). If the minor has a lawyer, the lawyer must also provide a certificate stating that the proposed agreement or settlement is, in their opinion, beneficial for the minor. However, even if the next friend, guardian, or lawyer believes the agreement is good for the minor, the Court will still review it to make sure it is indeed in the minor's best interest.

(2) If any agreement or settlement is made without the Court's recorded permission, it can be canceled by anyone except the minor.

Explanation using Example

Example 1:

Ravi, a 15-year-old boy, is involved in a property dispute case. His uncle, Rajesh, acts as his next friend in the lawsuit. During the proceedings, the opposing party offers a settlement that seems beneficial. Rajesh believes the settlement is in Ravi's best interest and wants to accept it. However, before Rajesh can agree to the settlement, he must seek the court's permission. Rajesh files an application for leave, accompanied by an affidavit stating that the settlement is beneficial for Ravi. Additionally, Ravi's lawyer provides a certificate supporting the settlement. The court reviews the application, affidavit, and certificate, and after ensuring the settlement is indeed in Ravi's best interest, grants permission. Rajesh can now legally accept the settlement on Ravi's behalf.

Example 2:

Meena, a 12-year-old girl, is involved in a lawsuit regarding a family inheritance. Her mother, Sita, is acting as her guardian in the case. The other party proposes a compromise that Sita thinks is favorable. Sita applies for the court's leave to accept the compromise, submitting an affidavit explaining why the compromise is beneficial for Meena. Meena's lawyer also provides a certificate supporting the compromise. However, upon reviewing the documents, the court finds that the compromise is not in Meena's best interest and denies the application. As a result, Sita cannot legally accept the compromise on Meena's behalf, ensuring Meena's rights and interests are protected.

Example 3:

Arjun, a 17-year-old boy, is involved in a lawsuit over a car accident. His father, Vikram, is acting as his next friend in the case. The insurance company offers a settlement, and Vikram believes it is a good deal for Arjun. Vikram applies for the court's permission to accept the settlement, providing an affidavit and a certificate from Arjun's lawyer stating that the settlement is beneficial. The court reviews the application and documents, and after confirming that the settlement is in Arjun's best interest, grants permission. Vikram can now legally accept the settlement on Arjun's behalf.

Example 4:

Priya, a 14-year-old girl, is involved in a lawsuit concerning a medical malpractice claim. Her aunt, Anjali, is acting as her guardian in the case. The hospital offers a settlement, and Anjali thinks it is a fair offer. Anjali applies for the court's leave to accept the settlement, submitting an affidavit and a certificate from Priya's lawyer. The court examines the documents and finds that the settlement is not in Priya's best interest. The court denies the application, and Anjali cannot accept the settlement, ensuring Priya's interests are safeguarded.

Rule 8: Retirement of next friend.

(1) Unless otherwise ordered by the Court, a next friend shall not retire without first procuring a fit person to be put in his place and giving security for the costs already incurred.

(2) The application for the appointment of a new next friend shall be supported by an affidavit showing the fitness of the person proposed and also that he has no interest adverse to that of the minor.

Simplified act

(1) Unless the Court says otherwise, a next friend (someone who helps a minor in a legal case) cannot step down without first finding a suitable replacement and making sure that the costs already spent are covered.

(2) To appoint a new next friend, you need to submit a sworn statement (affidavit) that proves the new person is suitable for the role and does not have any conflicting interests with the minor.

Explanation using Example

Example 1:

Ravi, a 10-year-old boy, is involved in a civil lawsuit regarding a property dispute. His uncle, Rajesh, is acting as his next friend in the case. Rajesh, due to personal reasons, wants to retire from this responsibility. According to Rule 8 of The Code of Civil Procedure 1908, Rajesh cannot simply step down. He must first find a suitable person to replace him, such as Ravi's elder cousin, Suresh, who is willing to take on the role. Rajesh must also provide security for the legal costs already incurred. Rajesh files an application in the court, supported by an affidavit that shows Suresh is fit for the role and has no conflicting interests with Ravi. The court reviews the application and, if satisfied, appoints Suresh as the new next friend.

Example 2:

Meena, a 15-year-old girl, is involved in a lawsuit concerning her inheritance. Her mother, Priya, is acting as her next friend. Priya gets a job transfer to another city and finds it difficult to continue managing the lawsuit. Priya decides to retire as Meena's next friend. According to Rule 8, Priya must first find a suitable replacement, such as Meena's aunt, Anjali, who agrees to take over. Priya must also provide security for the costs already incurred in the lawsuit. Priya submits an application to the court, along with an affidavit that demonstrates Anjali's fitness for the role and confirms that Anjali has no adverse interests against Meena. The court evaluates the application and, if it finds everything in order, appoints Anjali as the new next friend.

Rule 9: Removal of next friend.

(1) Where the interest of the next friend of a minor is adverse to that of the minor or where he is so connected with a defendant whose interest is adverse to that of the minor as to make it unlikely that the minor's interest will be properly protected by him, or where he does not do his duty, or, during the pendency of the suit, ceases to reside within India, or for any other sufficient cause, application may be made on behalf of the minor or by a defendant for his removal; and the Court, if satisfied of the sufficiency of the cause assigned, may order the next friend to be removed accordingly, and make such other order as to costs as it thinks fit.

(2) Where the next friend is not a guardian appointed or declared by an authority competent in this behalf, and an application is made by a guardian so appointed or declared, who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor, and shall thereupon appoint the applicant to be next

friend in his place upon such terms as to the costs already incurred in the suit as it thinks fit.

Simplified act

Removal of Next Friend of a Minor

(1) If the person representing a minor (called the "next friend") has interests that conflict with the minor's interests, or if they are connected to someone whose interests conflict with the minor's, making it unlikely that they will protect the minor's interests properly, or if they fail to do their job, or if they move out of India while the case is ongoing, or for any other good reason, an application can be made to remove them. This application can be made on behalf of the minor or by a defendant. If the court agrees that there is a good reason, it can order the removal of the next friend and decide who should pay the costs.

(2) If the next friend is not a guardian officially appointed by a competent authority, and an application is made by such an officially appointed guardian who wants to take over as the next friend, the court must remove the current next friend unless it has a good reason not to, which it must record. The court will then appoint the guardian as the new next friend and decide who should pay the costs already incurred in the case.

Explanation using Example

Example 1:

Scenario: Ramesh, a minor, is involved in a property dispute case. His uncle, Suresh, is acting as his next friend in the lawsuit. However, Suresh has a financial interest in the property that conflicts with Ramesh's interest.

Application: Ramesh's mother, who is concerned about Suresh's conflicting interest, files an application to the court for the removal of Suresh as the next friend. The court reviews the application and finds that Suresh's interest is indeed adverse to Ramesh's interest. The court orders the removal of Suresh as the next friend and appoints Ramesh's mother as the new next friend to ensure Ramesh's interests are properly protected.

Example 2:

Scenario: Priya, a minor, is involved in a lawsuit regarding her inheritance. Her next friend, her elder brother Raj, has been neglecting his duties and has

recently moved to the United States, making it difficult for him to represent Priya effectively.

Application: The defendant in the case, who is concerned about the proper representation of Priya, files an application for the removal of Raj as the next friend. The court examines the situation and finds that Raj's relocation and neglect of duties are sufficient causes for his removal. The court orders Raj's removal and appoints Priya's maternal aunt, who resides in India and is willing to take on the responsibility, as the new next friend.

Example 3:

Scenario: Aarav, a minor, is involved in a legal dispute over a trust fund. His next friend, his neighbor Mr. Sharma, is not a guardian appointed by any competent authority. Aarav's legal guardian, appointed by the court, wishes to take over as the next friend.

Application: Aarav's legal guardian files an application to the court to be appointed as the next friend in place of Mr. Sharma. The court reviews the application and, unless it finds any compelling reason to the contrary, removes Mr. Sharma and appoints the legal guardian as the new next friend. The court also decides on the costs already incurred in the suit and makes an appropriate order regarding them.

Rule 10: Stay of proceedings on removal, etc., of next friend.

(1) On the retirement, removal or death of the next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his place.

(2) Where the pleader of such minor omits, within a reasonable time, to take steps to get a new next friend appointed, any person interested in the minor or in the matter in issue may apply to the Court for the appointment of one, and the Court may appoint such person as it thinks fit.

Simplified act

(1) If the person who is helping a minor in a legal case retires, is removed, or dies, the case will be paused until a new helper is appointed.

(2) If the lawyer of the minor does not quickly find a new helper, anyone who cares about the minor or the case can ask the Court to appoint a new helper. The Court will then choose someone it thinks is suitable.

Explanation using Example

Example 1:

Rahul, a 15-year-old minor, is involved in a civil lawsuit regarding a property dispute. His uncle, Mr. Sharma, is acting as his next friend in the case. Unfortunately, Mr. Sharma passes away during the proceedings. According to Rule 10 of the Code of Civil Procedure 1908, the court will halt all further proceedings until a new next friend is appointed for Rahul. If Rahul's lawyer does not take steps to appoint a new next friend within a reasonable time, Rahul's mother, who is interested in the matter, can apply to the court to be appointed as the new next friend. The court will then review her application and, if deemed fit, appoint her as Rahul's next friend to continue the proceedings.

Example 2:

Anita, a 17-year-old girl, is involved in a lawsuit concerning her inheritance. Her father, Mr. Verma, is acting as her next friend. Mr. Verma decides to retire from his role due to health issues. As per Rule 10 of the Code of Civil Procedure 1908, the court will stay the proceedings until a new next friend is appointed. Anita's lawyer fails to take timely action to appoint a new next friend. Seeing the delay, Anita's elder brother, who is also interested in the inheritance matter, applies to the court to be appointed as her next friend. The court evaluates his application and, if it finds him suitable, appoints him as the new next friend, allowing the lawsuit to proceed.

Rule 11: Retirement, removal or death of guardian for the suit.

Where the guardian for the suit desires to retire or does not do his duty, or where other sufficient ground is made to appear, the Court may permit such guardian to retire or may remove him, and may make such order as to costs as it thinks fit.

(2) Where the guardian for the suit, retires, dies or is removed by the Court during the pendency of the suit, the Court shall appoint a new guardian in his place.

Simplified act

If the guardian for a lawsuit wants to step down or isn't doing their job properly, or if there's another good reason, the Court can allow the guardian to

step down or can remove them. The Court can also decide who should pay any related costs.

If the guardian for a lawsuit steps down, dies, or is removed by the Court while the lawsuit is still going on, the Court must appoint a new guardian to take their place.

Explanation using Example

Example 1:

Ravi, a minor, is involved in a property dispute case. His uncle, Mr. Sharma, is appointed as his guardian for the suit. However, Mr. Sharma falls seriously ill and is unable to continue his duties. Mr. Sharma informs the court of his inability to continue as Ravi's guardian. The court, after verifying the situation, permits Mr. Sharma to retire and appoints Ravi's elder brother, Raj, as the new guardian for the suit. The court also decides that Mr. Sharma will not bear any costs related to the change of guardianship.

Example 2:

Anita, a minor, is represented by her aunt, Mrs. Verma, in a lawsuit concerning her inheritance. During the proceedings, it is discovered that Mrs. Verma is not acting in Anita's best interests and is neglecting her duties as a guardian. The opposing party brings this to the court's attention, providing sufficient evidence. The court decides to remove Mrs. Verma as the guardian and appoints a court-appointed guardian, Mr. Kumar, to represent Anita for the remainder of the suit. The court also orders Mrs. Verma to pay the costs incurred due to her removal.

Rule 12: Course to be followed by minor plaintiff or applicant on attaining majority.

(1) A minor plaintiff or a minor not a party to a suit on whose behalf an application is pending shall, on attaining majority, elect whether he will proceed with the suit or application.

(2) Where he elects to proceed with the suit or application, he shall apply for an order discharging the next friend and for leave to proceed in his own name.

(3) The title of the suit or application shall in such case be corrected so as to read henceforth thus:

"A.B., late a minor by C.D., his next friend, but now having attained majority."

(4) Where he elects to abandon the suit or application, he shall, if a sole plaintiff or sole applicant, apply for an order to dismiss the suit or application on repayment of the costs incurred by the defendant or opposite party or which may have been paid by his next friend.

(5) Any application under this rule may be made ex parte but no order discharging a next friend and permitting a minor plaintiff to proceed in his own name shall be made without notice to the next friend.

Simplified act

(1) If a person who started a lawsuit or has an application pending is a minor (under 18) and then becomes an adult, they need to decide if they want to continue with the lawsuit or application.

(2) If they decide to continue, they must ask the court to remove their "next friend" (the adult who was helping them) and allow them to continue the case in their own name.

(3) The title of the case will then be changed to show that the person is now an adult. It will read:

"A.B., who was a minor represented by C.D., their next friend, but is now an adult."

(4) If they decide to drop the lawsuit or application, and they are the only person who started it, they must ask the court to dismiss the case and repay any costs that the other side or their next friend has paid.

(5) Any request under this rule can be made without notifying the other side, but the court will not remove the next friend and let the former minor continue on their own without informing the next friend first.

Explanation using Example

Example 1:

Scenario: Ramesh, a minor, files a lawsuit through his uncle, Suresh, as his next friend, seeking compensation for an injury caused by a negligent driver.

Details:

Ramesh is 17 years old when the lawsuit is filed.

The case is still pending when Ramesh turns 18 and attains majority.

Application of Rule 12:

Election to Proceed: Upon turning 18, Ramesh decides to continue with the lawsuit.

Application for Order: Ramesh applies to the court for an order to discharge his uncle, Suresh, as his next friend and seeks permission to proceed in his own name.

Correction of Title: The title of the lawsuit is corrected to read: "Ramesh, late a minor by Suresh, his next friend, but now having attained majority."

Court Notice: The court issues a notice to Suresh about the discharge order.

Proceeding in Own Name: Ramesh continues the lawsuit in his own name.

Example 2:

Scenario: Priya, a minor, has an application pending in court for the partition of family property, filed through her mother, Meena, as her next friend.

Details:

Priya is 16 years old when the application is filed.

The application is still pending when Priya turns 18 and attains majority.

Application of Rule 12:

Election to Abandon: Upon turning 18, Priya decides to abandon the application.

Application for Dismissal: Priya applies to the court for an order to dismiss the application.

Repayment of Costs: Priya arranges to repay the costs incurred by the opposite party or which may have been paid by her mother, Meena.

Court Order: The court issues an order dismissing the application after ensuring the costs are repaid.

Example 3:

Scenario: Arjun, a minor, files a lawsuit through his father, Rajesh, as his next friend, seeking recovery of a debt owed to him.

Details:

Arjun is 15 years old when the lawsuit is filed.

The case is still pending when Arjun turns 18 and attains majority.

Application of Rule 12:

Election to Proceed: Upon turning 18, Arjun decides to continue with the lawsuit.

Application for Order: Arjun applies to the court for an order to discharge his father, Rajesh, as his next friend and seeks permission to proceed in his own name.

Correction of Title: The title of the lawsuit is corrected to read: "Arjun, late a minor by Rajesh, his next friend, but now having attained majority."

Court Notice: The court issues a notice to Rajesh about the discharge order.

Proceeding in Own Name: Arjun continues the lawsuit in his own name.

Example 4:

Scenario: Kavita, a minor, has an application pending in court for the guardianship of her younger sibling, filed through her elder sister, Anjali, as her next friend.

Details:

Kavita is 17 years old when the application is filed.

The application is still pending when Kavita turns 18 and attains majority.

Application of Rule 12:

Election to Abandon: Upon turning 18, Kavita decides to abandon the application.

Application for Dismissal: Kavita applies to the court for an order to dismiss the application.

Repayment of Costs: Kavita arranges to repay the costs incurred by the opposite party or which may have been paid by her sister, Anjali.

Court Order: The court issues an order dismissing the application after ensuring the costs are repaid.

Rule 13: Where minor co-plaintiff attaining majority desires to repudiate suit.

- (1) Where a minor co-plaintiff on attaining majority desires to repudiate the suit, he shall apply to have his name struck out as co-plaintiff; and the Court, if it finds that he is not a necessary party, shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit.
- (2) Notice of the application shall be served on the next friend, on any co-plaintiff and on the defendant.
- (3) The costs of all parties of such application, and of all or any proceedings theretofore had in the suit, shall be paid by such persons as the Court directs.
- (4) Where the applicant is a necessary party to the suit, the Court may direct him to be made a defendant.

Simplified act

- (1) If a minor (someone under 18) who is part of a lawsuit decides to leave the lawsuit after turning 18, they need to ask the court to remove their name from the lawsuit. The court will remove them if it decides they are not essential to the case, and it will decide who pays any related costs.
- (2) The request to leave the lawsuit must be sent to the minor's legal guardian, any other plaintiffs, and the defendant.
- (3) The court will decide who pays the legal costs for everyone involved in the request and any previous proceedings in the lawsuit.
- (4) If the person leaving the lawsuit is essential to the case, the court may change their role from plaintiff to defendant.

Explanation using Example

Example 1:

Ravi, a 16-year-old minor, is a co-plaintiff in a property dispute case along with his elder brother, Rajesh. Their next friend, their uncle, filed the suit on their behalf. When Ravi turns 18, he decides that he no longer wants to be part of the lawsuit. Ravi applies to the court to have his name removed as a co-plaintiff. The court reviews the application and determines that Ravi is not a necessary party to the suit. The court dismisses Ravi from the case and orders

that the costs incurred by Ravi up to this point be paid by Rajesh, as the court deems fit.

Example 2:

Priya, a 17-year-old minor, is a co-plaintiff in a lawsuit seeking compensation for damages caused by a neighbor's construction activities. Her father, acting as her next friend, filed the suit. Upon turning 18, Priya decides she does not want to continue with the lawsuit. She applies to the court to have her name struck out as a co-plaintiff. The court serves notice of her application to her father, the other co-plaintiffs, and the defendant. After reviewing the case, the court finds that Priya is a necessary party to the suit because her testimony and claims are crucial for the case. The court directs that Priya be made a defendant instead, ensuring that her interests are still represented in the proceedings.

Rule 14: Unreasonable or improper suit.

Minor Attaining Majority

(1) A minor on attaining majority may, if a sole plaintiff, apply that a suit instituted in his name by his next friend be dismissed on the ground that it was unreasonable or improper.

(2) Notice of the application shall be served on all the parties concerned; and the Court, upon being satisfied of such unreasonableness or impropriety, may grant the application and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit, or make such other order as it thinks fit.

Simplified act

Minor Attaining Majority

(1) When a minor becomes an adult, they can ask the court to dismiss a lawsuit that was started in their name by their guardian if they believe the lawsuit was not reasonable or proper.

(2) Everyone involved in the lawsuit must be informed about this request. If the court agrees that the lawsuit was unreasonable or improper, it can dismiss the case and make the guardian pay for the legal costs of everyone involved. The court can also make any other decision it thinks is appropriate.

Explanation using Example

Example 1:

Scenario: Ramesh, a 16-year-old minor, had a property dispute. His uncle, acting as his "next friend," filed a lawsuit on Ramesh's behalf against a neighbor, claiming the neighbor had encroached on Ramesh's land.

Situation: When Ramesh turned 18, he reviewed the case and found that the lawsuit was based on incorrect information and was causing unnecessary legal expenses and stress.

Action: Ramesh, now an adult, applied to the court to dismiss the lawsuit, arguing that it was unreasonable and improper.

Outcome: The court served notice to all parties involved. After reviewing the case, the court agreed with Ramesh and dismissed the lawsuit. The court also ordered Ramesh's uncle to pay the legal costs incurred by all parties due to the improper suit.

Example 2:

Scenario: Priya, a 17-year-old minor, was involved in a business dispute. Her father, acting as her "next friend," filed a lawsuit against a business partner, alleging breach of contract.

Situation: Upon turning 18, Priya discovered that the lawsuit was based on a misunderstanding and that continuing the legal battle would harm her business relationships and reputation.

Action: Priya applied to the court to dismiss the lawsuit, stating that it was unreasonable and improper.

Outcome: The court notified all parties involved. After examining the details, the court found the lawsuit to be without merit and dismissed it. The court also ordered Priya's father to cover the legal costs incurred by all parties due to the unreasonable suit.

Rule 15: Rules 1 to 14 (except rule 2A) to apply to persons of unsound mind.

1 to 14 (except rule 2A) shall, so far as may be, apply to persons adjudged, before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the Court on enquiry to be incapable, by reason of any mental infirmity, of protecting their interest when being sued.

Simplified act

1 to 14 (except rule 2A) will apply, as much as possible, to people who have been declared by a court, either before or during a lawsuit, to be mentally unfit. These rules will also apply to people who, even if not officially declared mentally unfit, are found by the court to be unable to protect their own interests in a lawsuit due to any mental weakness.

Explanation using Example

Example 1:

Scenario: Ramesh, a 45-year-old man, has been diagnosed with severe schizophrenia. His condition makes it difficult for him to understand legal proceedings or make decisions in his best interest.

Application: Ramesh is involved in a property dispute with his neighbor. During the court proceedings, the judge notices Ramesh's erratic behavior and orders a medical examination. The medical report confirms that Ramesh is of unsound mind.

Outcome: Based on Rule 15 of Order XXXII, the court appoints a legal guardian to represent Ramesh in the lawsuit. The guardian ensures that Ramesh's interests are protected throughout the legal process.

Example 2:

Scenario: Priya, a 30-year-old woman, suffers from a severe cognitive impairment due to a traumatic brain injury. She is unable to comprehend complex information or make informed decisions.

Application: Priya is being sued by a financial institution for defaulting on a loan. During the trial, Priya's lawyer presents evidence of her mental condition, including medical records and expert testimony.

Outcome: The court conducts an inquiry and finds that Priya is incapable of protecting her interests due to her mental infirmity. In accordance with Rule 15 of Order XXXII, the court appoints a legal representative to act on Priya's behalf, ensuring that her rights are safeguarded during the legal proceedings.

Rule 16: Savings.

(1) Nothing contained in this Order shall apply to the Ruler foreign State suing or being sued in the name of his State, or being sued by the direction of the Central Government in the name of an agent or in any other name.

(2) Nothing contained in this Order shall be construed as affecting or in any way, derogating from the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind.

Simplified act

(1) This Order does not apply to a foreign ruler who is suing or being sued in the name of their country, or being sued by the Central Government using an agent or any other name.

(2) This Order does not change or affect any local laws that are currently in place about lawsuits involving minors, people with mental illnesses, or other individuals who are not of sound mind.

Explanation using Example

Example 1:

Scenario: A foreign ruler wants to file a lawsuit in India.

Details: The King of a foreign country, let's call it "Kingdom A," wants to file a lawsuit in India against an Indian company for breach of contract. According to Rule 16 of Order XXXII of the Code of Civil Procedure, 1908, the provisions that apply to suits by or against minors and persons of unsound mind do not apply to the ruler of a foreign state. Therefore, the King of Kingdom A can file the lawsuit in the name of his state without being subject to the special rules that apply to minors or persons of unsound mind.

Outcome: The King of Kingdom A files the lawsuit in the name of his state, and the case proceeds under the general rules of civil procedure, not the special rules for minors or persons of unsound mind.

Example 2:

Scenario: A minor wants to file a lawsuit in a state with specific local laws.

Details: A 16-year-old minor named Rohan wants to file a lawsuit in the state of Maharashtra for a property dispute. Maharashtra has specific local laws that govern how minors can file lawsuits. According to Rule 16 of Order XXXII of the

Code of Civil Procedure, 1908, the provisions of Order XXXII do not override any local laws that are in force. Therefore, Rohan must follow the specific local laws of Maharashtra regarding suits by minors.

Outcome: Rohan consults a lawyer who advises him on the local laws of Maharashtra. He follows the required procedures under the local laws, such as having a legal guardian represent him in court, and successfully files the lawsuit.

Example 3:

Scenario: A person of unsound mind is being sued in a state with specific local laws.

Details: A person named Suresh, who has been declared of unsound mind, is being sued for a debt in the state of Tamil Nadu. Tamil Nadu has specific local laws that govern how lawsuits against persons of unsound mind should be handled. According to Rule 16 of Order XXXII of the Code of Civil Procedure, 1908, the provisions of Order XXXII do not affect or override any local laws in force. Therefore, the lawsuit against Suresh must comply with the specific local laws of Tamil Nadu.

Outcome: The plaintiff consults a lawyer who advises them on the local laws of Tamil Nadu. They follow the required procedures under the local laws, such as appointing a legal guardian for Suresh, and proceed with the lawsuit.

Example 4:

Scenario: The Central Government directs a lawsuit against a foreign ruler.

Details: The Central Government of India directs a lawsuit against the ruler of a foreign state, "Kingdom B," for violating an international trade agreement. According to Rule 16 of Order XXXII of the Code of Civil Procedure, 1908, the provisions that apply to suits by or against minors and persons of unsound mind do not apply to the ruler of a foreign state. Therefore, the lawsuit can be filed in the name of an agent or any other name as directed by the Central Government.

Outcome: The Central Government appoints an agent to file the lawsuit against the ruler of Kingdom B. The case proceeds under the general rules of civil procedure, not the special rules for minors or persons of unsound mind.

ORDER XXXIIA: SUITS RELATING TO MATTERS CONCERNING THE FAMILY

Rule 1: Application of the Order.

(1) The provisions of this Order shall apply to suits or proceedings relating to matters concerning the family.

(2) In particular, and without prejudice to the generality of the provisions of sub-rule (1), the provisions of this Order shall apply to the following suits or proceedings concerning the family, namely:

(a) a suit or proceeding for matrimonial relief, including a suit or proceedings for declaration as to the validity of a marriage or as to the matrimonial status of any person;

(b) a suit or proceeding for a declaration as to legitimacy of any person;

(c) a suit or proceeding in relation to the guardianship of the person or the custody of any minor or other member of the family, under a disability;

(d) a suit or proceeding for maintenance;

(e) a suit or proceeding as to the validity or effect of an adoption;

(f) a suit or proceeding, instituted by a member of the family, relating to wills, intestacy and succession;

(g) a suit or proceeding relating to any other matter concerning the family in respect of which, the parties are subject to their personal law.

(3) So much of this Order as relates to a matter provided for by a special law in respect of any suit or proceeding shall not apply to that suit or proceeding.

Simplified act

(1) The rules in this Order apply to legal cases or proceedings that deal with family matters.

(2) Specifically, and without limiting the general rule in (1), these rules apply to the following types of family-related cases or proceedings:

(a) Cases or proceedings for marriage-related issues, including cases about whether a marriage is valid or about someone's marital status;

- (b) Cases or proceedings to determine if someone is legally recognized as legitimate;
 - (c) Cases or proceedings about guardianship or custody of a minor or another family member who cannot take care of themselves;
 - (d) Cases or proceedings for financial support (maintenance);
 - (e) Cases or proceedings about whether an adoption is valid or its effects;
 - (f) Cases or proceedings started by a family member that deal with wills, inheritance without a will (intestacy), and succession;
 - (g) Cases or proceedings about any other family matter that is governed by the personal law of the parties involved.
- (3) If there is a special law that covers a specific type of case or proceeding, the rules in this Order do not apply to that case or proceeding.

Explanation using Example

Example 1:

Scenario: Ramesh and Sita are married, but due to irreconcilable differences, they decide to file for a divorce. Ramesh files a suit for matrimonial relief under Order XXXIIA of the Code of Civil Procedure, 1908.

Application: This suit falls under Rule 1(2)(a) as it is a proceeding for matrimonial relief. The court will apply the provisions of Order XXXIIA to handle the case, ensuring that the process is in accordance with the rules laid out for family matters.

Example 2:

Scenario: Priya, a minor, lost her parents in an accident. Her uncle, Rajesh, files a suit for guardianship to become her legal guardian and take custody of her.

Application: This suit falls under Rule 1(2)(c) as it is a proceeding in relation to the guardianship of a minor. The court will apply the provisions of Order XXXIIA to determine the best interests of Priya and decide on the guardianship accordingly.

Example 3:

Scenario: Anil and Sunita are disputing the legitimacy of their cousin, Ravi, who claims a share in the family property. Anil files a suit for a declaration as to the legitimacy of Ravi.

Application: This suit falls under Rule 1(2)(b) as it is a proceeding for a declaration as to the legitimacy of a person. The court will apply the provisions of Order XXXIIA to resolve the dispute regarding Ravi's legitimacy.

Example 4:

Scenario: Meera, a widow, files a suit for maintenance against her in-laws who have refused to support her financially after her husband's death.

Application: This suit falls under Rule 1(2)(d) as it is a proceeding for maintenance. The court will apply the provisions of Order XXXIIA to determine Meera's entitlement to maintenance and the amount to be provided by her in-laws.

Example 5:

Scenario: Rohit, an adopted child, files a suit to challenge the validity of his adoption after discovering discrepancies in the adoption process.

Application: This suit falls under Rule 1(2)(e) as it is a proceeding as to the validity or effect of an adoption. The court will apply the provisions of Order XXXIIA to examine the legality of Rohit's adoption and make a ruling.

Example 6:

Scenario: After the death of their father, siblings Arjun and Kavita are in dispute over the distribution of his estate. Arjun files a suit relating to the will and succession.

Application: This suit falls under Rule 1(2)(f) as it is a proceeding relating to wills, intestacy, and succession. The court will apply the provisions of Order XXXIIA to resolve the dispute and ensure the estate is distributed according to the will or the law of succession.

Example 7:

Scenario: Ayesha and her brother are in conflict over the interpretation of their personal law regarding family property. Ayesha files a suit to resolve the matter.

Application: This suit falls under Rule 1(2)(g) as it is a proceeding relating to a matter concerning the family in respect of which the parties are subject to their personal law. The court will apply the provisions of Order XXXIIA to interpret the personal law and resolve the dispute.

Rule 2: Proceedings to be held in camera.

In every suit or proceeding to which this Order applies, the proceedings may be held in camera if the Court so desires and shall be so held if either party so desires.

Simplified act

In any legal case or process that this rule applies to, the court can decide to hold the proceedings in private (in camera).

If either side involved in the case wants the proceedings to be private, the court must hold them in private.

Explanation using Example

Example 1:

Scenario: Divorce Proceedings

Ravi and Priya are going through a divorce. During the court proceedings, Priya feels uncomfortable discussing personal matters in a public courtroom. She requests the court to hold the proceedings in camera, meaning in private, to protect her privacy and dignity. The court agrees, and the divorce proceedings are conducted in a private setting where only the involved parties, their lawyers, and the judge are present.

Example 2:

Scenario: Child Custody Battle

Anita and Rajesh are fighting for the custody of their 5-year-old son. The details of their family life, including sensitive information about their child's well-being, are being discussed. Rajesh requests the court to hold the proceedings in camera to ensure that these sensitive details are not made public. The court grants the request, and the custody hearings are conducted privately to protect the child's interests and the family's privacy.

Rule 3: Duty of Court to make efforts for settlement.

Order for Settlement

(1) In every suit or proceeding to which this Order applied, an endeavour shall be made by the Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist the parties in arriving at a settlement in respect of the subject-matter of the suit.

(2) If, in any such suit or proceeding, at any stage it appears to the Court that there is a reasonable possibility of a settlement between the parties, the Court may adjourn the proceeding for such period as it thinks fit to enable attempts to be made to effect such a settlement.

(3) The power conferred by sub-rule (2) shall be in addition to, and not in derogation of, any other power of the Court to adjourn the proceedings.

Simplified act

Order for Settlement

(1) In every lawsuit or legal case that this rule applies to, the Court should first try to help the parties involved reach an agreement or settlement about the issue at hand, if it is possible given the nature and details of the case.

(2) If at any point during the lawsuit or legal case, the Court thinks there is a good chance that the parties can settle the matter, the Court can pause the case for a period of time it considers appropriate to allow the parties to try to reach a settlement.

(3) The ability given by rule (2) is in addition to any other power the Court has to pause the case.

Explanation using Example

Example 1:

Scenario: Divorce and Child Custody Dispute

Ravi and Priya have filed for divorce and are in a dispute over the custody of their 8-year-old son, Aryan. The case is brought before the Family Court under Order XXXIIA of the Code of Civil Procedure, 1908.

Application of Rule 3:

Initial Effort for Settlement: The judge, recognizing the emotional and psychological impact on Aryan, first attempts to mediate between Ravi and

Priya. The judge arranges a meeting with a court-appointed mediator to help Ravi and Priya discuss and possibly agree on a joint custody arrangement.

Adjournment for Settlement: During the proceedings, it becomes apparent that Ravi and Priya might reach an amicable settlement if given more time. The judge adjourns the case for two months, allowing both parties to attend counseling sessions and mediation meetings to work out a mutually agreeable custody plan.

Additional Powers: Even if the mediation does not result in a settlement, the judge retains the power to adjourn the proceedings further if there is a reasonable possibility that more time might lead to a settlement.

Example 2:

Scenario: Property Dispute Among Siblings

Three siblings, Anil, Sunil, and Meena, are involved in a legal dispute over the division of their deceased parents' property. The case is filed in the Civil Court under Order XXXIIA of the Code of Civil Procedure, 1908.

Application of Rule 3:

Initial Effort for Settlement: The judge, understanding the familial nature of the dispute, encourages the siblings to settle the matter amicably. The judge suggests that they engage in a family meeting facilitated by a neutral third party to discuss the division of the property.

Adjournment for Settlement: During the initial hearings, the judge notices that the siblings are open to negotiation but need more time to discuss the terms. The judge adjourns the case for three months, allowing the siblings to negotiate and possibly reach a settlement without further litigation.

Additional Powers: If the siblings show progress but need additional time, the judge can use the power to adjourn the proceedings again, ensuring that every reasonable opportunity for settlement is explored before proceeding with a full trial.

Example 3:

Scenario: Dispute Over Family Business

A family-owned business is facing a dispute between two brothers, Raj and Vijay, over the management and profit-sharing of the business. The case is

brought before the Civil Court under Order XXXIIA of the Code of Civil Procedure, 1908.

Application of Rule 3:

Initial Effort for Settlement: The judge, recognizing the importance of maintaining family harmony and the business's stability, first attempts to mediate between Raj and Vijay. The judge arranges for a business mediator to help the brothers discuss and possibly agree on a new management and profit-sharing arrangement.

Adjournment for Settlement: During the proceedings, it becomes apparent that Raj and Vijay might reach an amicable settlement if given more time. The judge adjourns the case for two months, allowing both parties to attend mediation sessions to work out a mutually agreeable business plan.

Additional Powers: Even if the mediation does not result in a settlement, the judge retains the power to adjourn the proceedings further if there is a reasonable possibility that more time might lead to a settlement.

Rule 4: Assistance of welfare expert.

In every suit or proceeding to which this Order applies, it shall be open to the Court to secure the services of such person (preferably a woman where available), whether related to the parties or not, including a person professionally engaged in promoting the welfare of the family as the Court may think fit, for the purpose of assisting the Court in discharging the functions imposed by rule 3 of this Order.

Simplified act

In every case or legal process that this rule applies to, the Court can choose to get help from a person (preferably a woman if available). This person can be someone related to the people involved in the case or not, and can also be a professional who works to support family welfare. The Court will decide who is suitable to help them carry out the duties required by rule 3 of this Order.

Explanation using Example

Example 1:

Raj and Priya are going through a divorce and have a 5-year-old daughter, Ananya. The court is concerned about Ananya's well-being and wants to ensure that her best interests are taken into account during the proceedings.

Under Rule 4 of Order XXXIIA of The Code of Civil Procedure 1908, the court decides to appoint a child welfare expert, Ms. Sharma, who is a professional child psychologist. Ms. Sharma meets with Ananya, Raj, and Priya to understand the family dynamics and Ananya's needs. She then provides a report to the court with her recommendations on custody and visitation rights, ensuring that Ananya's welfare is prioritized.

Example 2:

Sunil and Meera are involved in a legal dispute over the guardianship of Sunil's elderly mother, who is suffering from dementia. The court recognizes that the case involves sensitive family matters and decides to seek the assistance of a welfare expert. The court appoints Mrs. Kapoor, a social worker with extensive experience in elder care, to evaluate the situation. Mrs. Kapoor visits Sunil's and Meera's homes, speaks with the elderly mother, and assesses the care provided by both parties. She submits a detailed report to the court, helping the judge make an informed decision that ensures the elderly mother's well-being and proper care.

Rule 5: Duty to inquire into facts.

In every suit or proceeding to which this Order applies, it shall be the duty of the Court to inquire, so far it reasonably can, into the facts alleged by the plaintiff and into any facts alleged by the defendant.

Simplified act

In every lawsuit or legal case that this rule applies to, the Court must try its best to look into the facts that the person bringing the case (plaintiff) and the person defending the case (defendant) say are true.

Explanation using Example

Example 1:

Rajesh files a suit against his wife, Priya, seeking a divorce on the grounds of cruelty under Order XXXIIA of the Code of Civil Procedure, 1908. Rajesh alleges that Priya has been verbally abusive and has caused him mental distress. Priya, in her defense, denies these allegations and claims that Rajesh is making false accusations to get a quick divorce.

In this scenario, it is the duty of the Court to inquire into the facts presented by both Rajesh and Priya. The Court will examine evidence such as witness

testimonies, medical records, and any other relevant documents to determine the validity of Rajesh's claims and Priya's defense. The Court's inquiry will help ensure that the decision is based on a thorough understanding of the facts from both parties.

Example 2:

Sunita files a suit for child custody against her estranged husband, Anil, under Order XXXIIA of the Code of Civil Procedure, 1908. Sunita alleges that Anil is unfit to take care of their child due to his erratic behavior and substance abuse. Anil, on the other hand, claims that Sunita is trying to alienate him from their child and that he is fully capable of providing a stable environment.

In this case, the Court has the duty to inquire into the facts alleged by both Sunita and Anil. The Court may order a psychological evaluation of Anil, interview the child, and review any evidence of Anil's behavior and substance use. Additionally, the Court may consider testimonies from family members, teachers, and other individuals who can provide insight into the child's well-being. This thorough inquiry will help the Court make an informed decision regarding the child's best interests.

Rule 6: "Family" meaning of.

For the purposes of this Order, each of the following shall be treated as constituting a family, namely:

(a)

(i) a man and his wife living together,

(ii) any child or children, being issue of theirs; or of such man or such wife,

(iii) any child or children being maintained by such man and wife;

(b) a man not having a wife or not living together with his wife, any child or children, being issue of his, and any child or children being maintained by him;

(c) a woman not having a husband or not living together with her husband, any child or children being issue of hers, and any child or children being maintained by her;

(d) a man or woman and his or her brother, sister, ancestor, or lineal descendant living with him or her; and

(e) any combination of one or more of the groups specified in clause (a), clause (b), clause (c), or clause (d) of this rule.

Explanation. - For the avoidance of doubts, it is hereby declared that the provisions of rule 6 shall be without any prejudice to the concept of "family" in any personal law or in another law for the time being in force.

Simplified act

For this Order, the following groups will be considered as a family:

(a)

(i) A man and his wife living together,

(ii) Any child or children they have together, or from either the man or the wife,

(iii) Any child or children they are taking care of;

(b) A man who does not have a wife or is not living with his wife, and any child or children he has, and any child or children he is taking care of;

(c) A woman who does not have a husband or is not living with her husband, and any child or children she has, and any child or children she is taking care of;

(d) A man or woman and their brother, sister, parent, or direct descendant living with them; and

(e) Any combination of one or more of the groups mentioned in (a), (b), (c), or (d).

Explanation. - To avoid any confusion, it is stated that this rule does not change the definition of "family" in any personal law or other laws currently in effect.

Explanation using Example

Example 1:

Scenario: Rajesh and Priya are married and live together in Mumbai. They have two children, Ananya and Aarav. Additionally, they are also taking care of Priya's niece, Meera, who lives with them and is financially dependent on them.

Application of the Act:

Rajesh and Priya living together as husband and wife fall under clause (a)(i).

Ananya and Aarav, being their biological children, fall under clause (a)(ii).

Meera, being maintained by Rajesh and Priya, falls under clause (a)(iii).

Conclusion: Rajesh, Priya, Ananya, Aarav, and Meera together constitute a "family" as per Rule 6 of the Code of Civil Procedure 1908.

Example 2:

Scenario: Suman is a single mother living in Delhi with her two children, Rohan and Riya. She also takes care of her younger brother, Amit, who is living with her and is financially dependent on her.

Application of the Act:

Suman, not having a husband, and her children Rohan and Riya fall under clause (c).

Amit, being Suman's brother and living with her, falls under clause (d).

Conclusion: Suman, Rohan, Riya, and Amit together constitute a "family" as per Rule 6 of the Code of Civil Procedure 1908.

Example 3:

Scenario: Arjun is a widower living in Bangalore with his son, Karan. Arjun's elderly mother, who is dependent on him, also lives with them.

Application of the Act:

Arjun, not having a wife, and his son Karan fall under clause (b).

Arjun's mother, being his ancestor and living with him, falls under clause (d).

Conclusion: Arjun, Karan, and Arjun's mother together constitute a "family" as per Rule 6 of the Code of Civil Procedure 1908.

Example 4:

Scenario: Meera and her husband, Ravi, live together in Chennai. They have no children. Meera's younger sister, Neha, who is financially dependent on them, also lives with them.

Application of the Act:

Meera and Ravi living together as husband and wife fall under clause (a)(i).

Neha, being Meera's sister and living with them, falls under clause (d).

Conclusion: Meera, Ravi, and Neha together constitute a "family" as per Rule 6 of the Code of Civil Procedure 1908.

ORDER XXXIII: SUITS BY INDIGENT PERSONS

Rule 1: Suits may be instituted by indigent persons.

Subject to the following provisions, any suit may be instituted by an indigent person.

Explanation 1

A person is an indigent person,

(a) If he is not possessed of sufficient means (other than property exempt from attachment in execution of a decree and the subject-matter of the suit) to enable him to pay the fee prescribed by law for the plaint in such suit, or

(b) where no such fee is prescribed, if he is not entitled to property worth one thousand rupees other than the property exempt from attachment in execution of a decree, and the subject-matter of the suit.

Explanation II

Any property which is acquired by a person after the presentation of his application for permission to sue as an indigent person, and before the decision of the application, shall be taken into account in considering the question whether or not the applicant is an indigent person.

Explanation III

Where the plaintiff sues in a representative capacity, the question whether he is an indigent person shall be determined with reference to the means possessed by him in such capacity.

Simplified act

Subject to the following rules, anyone who cannot afford to pay can start a lawsuit.

Explanation 1

A person is considered unable to afford to pay (indigent) if:

- (a) They do not have enough money or assets (excluding certain protected property and the subject of the lawsuit) to pay the legal fees required to file the lawsuit, or
- (b) If no legal fee is required, they do not own property worth more than one thousand rupees, excluding certain protected property and the subject of the lawsuit.

Explanation II

If a person gets any new property after they have applied to sue as an indigent person but before the court decides on their application, this new property will be considered when deciding if they are indigent.

Explanation III

If the person filing the lawsuit is doing so on behalf of someone else, whether they are indigent will be determined based on the resources they have in that representative role.

Explanation using Example

Example 1:

Ramesh, a daily wage laborer in a small village in India, wants to file a lawsuit against a local contractor who has not paid him for his work. Ramesh does not have any significant savings or property, except for a small piece of land that is exempt from attachment under the law. The court fee for filing the lawsuit is Rs. 5,000, which Ramesh cannot afford. Under Rule 1 of Order XXXIII of The Code of Civil Procedure, 1908, Ramesh can apply to the court to be allowed to file the suit as an indigent person. If the court finds that Ramesh does not have sufficient means to pay the court fee, it will permit him to file the suit without paying the fee.

Example 2:

Sita, a widow, wants to file a lawsuit to claim her deceased husband's property, which is being wrongfully occupied by his relatives. Sita's only source of income is a small pension, and she does not own any property other than her modest home, which is exempt from attachment. The court fee for filing the lawsuit is Rs. 10,000, which Sita cannot afford. She applies to the court to file the suit as an indigent person. While her application is pending, Sita receives a

small inheritance from a distant relative. The court will consider this new inheritance when deciding whether Sita qualifies as an indigent person. If the inheritance is not sufficient to cover the court fee, Sita may still be allowed to file the suit without paying the fee.

Example 3:

A group of farmers, represented by their leader Mohan, wants to file a lawsuit against a company that has polluted their water source, causing damage to their crops. Mohan, in his representative capacity, does not have sufficient means to pay the court fee for the lawsuit. The court will assess whether Mohan, in his capacity as the representative of the farmers, qualifies as an indigent person. If the court finds that Mohan does not have the means to pay the court fee, it will allow the group of farmers to file the suit as indigent persons.

Example 4:

Lakshmi, a school teacher, wants to file a lawsuit to recover a loan she gave to a friend. Lakshmi's only assets are her modest salary and a small house, which is exempt from attachment. The court fee for filing the lawsuit is Rs. 3,000, which Lakshmi cannot afford. She applies to the court to file the suit as an indigent person. During the pendency of her application, Lakshmi receives a bonus from her employer. The court will take this bonus into account when deciding whether Lakshmi qualifies as an indigent person. If the bonus is not sufficient to cover the court fee, Lakshmi may still be allowed to file the suit without paying the fee.

Rule 1A: Inquiry into the means of an indigent person

Every inquiry into the question whether or not a person is an indigent person shall be made, in the first instance, by the chief ministerial officer of the Court, unless the Court otherwise directs, and the Court may adopt the report of such officer as its own finding or may itself make an inquiry into the question.

Simplified act

To find out if someone is a poor person who can't afford legal costs, the main administrative officer of the Court will usually look into it first.

However, the Court can decide to handle it differently if it wants to.

The Court can either accept the officer's report as its own decision or do its own investigation into whether the person is poor.

Explanation using Example

Example 1:

Scenario: Ramesh, a daily wage laborer, wants to file a civil suit for compensation against a company for wrongful termination. However, he does not have the financial means to pay the court fees.

Application of Rule 1A:

Ramesh applies to the court to be allowed to file the suit as an indigent person.

The chief ministerial officer of the court conducts an initial inquiry into Ramesh's financial status. This involves checking his income, assets, and any other financial resources.

The officer finds that Ramesh has no significant assets and his income is barely enough to meet his daily needs.

The officer submits a report to the court stating that Ramesh qualifies as an indigent person.

The court reviews the report and decides to adopt the officer's findings, allowing Ramesh to proceed with his suit without paying the court fees.

Example 2:

Scenario: Sita, a widow with no source of income, wants to file a suit for the recovery of her deceased husband's property from his relatives who have unlawfully taken possession of it.

Application of Rule 1A:

Sita files an application to be recognized as an indigent person to avoid paying the court fees.

The court directs the chief ministerial officer to conduct an inquiry into Sita's financial situation.

The officer investigates and finds that Sita has no income, no savings, and is dependent on charity for her survival.

The officer submits a detailed report to the court confirming Sita's indigent status.

The court, after reviewing the report, decides to conduct its own brief inquiry to verify the findings.

The court's inquiry corroborates the officer's report, and the court officially declares Sita as an indigent person, allowing her to file the suit without the burden of court fees.

Rule 2: Contents of application.

Every application for permission to sue as an indigent person shall contain the particulars required in regard to complaints in suits:

A schedule of any movable or immovable property belonging to the applicant, with the estimated value thereof, shall be annexed thereto.

It shall be signed and verified in the manner prescribed for the signing and verification of pleadings.

Simplified act

Every application to sue as a person who cannot afford the court fees must include the following details required for lawsuits:

A list of any property (both movable and immovable) that the applicant owns, along with its estimated value, must be attached.

The application must be signed and confirmed in the same way as other legal documents.

Explanation using Example

Example 1:

Rajesh, a daily wage laborer in Mumbai, wants to file a lawsuit against his landlord for illegal eviction. Rajesh does not have sufficient funds to pay the court fees. He decides to apply for permission to sue as an indigent person under Order XXXIII of the Code of Civil Procedure, 1908.

In his application, Rajesh includes the following details:

A detailed description of the eviction incident and the relief he seeks.

A schedule listing his assets, which includes:

A small plot of land in his village valued at ₹10,000.

Household items such as a bed, a table, and some utensils, collectively valued at ₹2,000.

The application is signed and verified by Rajesh in the same manner as required for pleadings.

The court reviews Rajesh's application and, after verifying his financial status, grants him permission to sue as an indigent person, waiving the court fees.

Example 2:

Meena, a widow living in Chennai, wants to file a suit for the recovery of her late husband's pension benefits, which have been wrongfully withheld by the employer. Meena has no source of income and relies on her relatives for basic needs. She decides to apply for permission to sue as an indigent person.

In her application, Meena includes:

A detailed account of her husband's employment, the pension benefits due, and the relief she seeks.

A schedule of her assets, which includes:

A small gold chain valued at ₹5,000.

A second-hand mobile phone valued at ₹1,500.

The application is signed and verified by Meena as per the prescribed manner for pleadings.

The court examines Meena's application, verifies her financial condition, and grants her permission to sue as an indigent person, allowing her to proceed without paying the court fees.

Rule 3: Presentation of application.

Notwithstanding anything contained in these rules the application shall be presented to the Court by the applicant in person, unless he is exempted from appearing in Court in which case the application may be presented by an authorised agent who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person:

Provided that, where there are more plaintiffs than one, it shall be sufficient if the application is presented by one of the plaintiffs.

Simplified act

Even if other rules say differently, the person applying must go to the Court in person to submit their application.

If the person applying is allowed not to appear in Court, they can send an authorized agent instead. This agent must be able to answer all important questions about the application and can be questioned just like the person applying would have been if they were there in person.

If there is more than one person applying (more than one plaintiff), it is enough if just one of them goes to the Court to submit the application.

Explanation using Example

Example 1:

Scenario: Ramesh, a poor farmer from a remote village in Maharashtra, wants to file a civil suit for a land dispute but cannot afford the court fees.

Application of Rule 3: Ramesh decides to file the suit as an indigent person under Order XXXIII of the Code of Civil Procedure, 1908. According to Rule 3, Ramesh must present his application to the court in person. However, Ramesh is bedridden due to a severe illness and cannot travel to the court.

Solution: Ramesh can be exempted from appearing in court due to his illness. In this case, he can authorize his brother, Suresh, to present the application on his behalf. Suresh, as the authorized agent, must be able to answer all material questions related to the application and may be examined by the court in the same manner as Ramesh would have been if he had attended in person.

Example 2:

Scenario: A group of five indigent women from a rural area in Tamil Nadu wants to file a civil suit against a local factory for polluting their water source.

Application of Rule 3: The women decide to file the suit as indigent persons under Order XXXIII of the Code of Civil Procedure, 1908. According to Rule 3, the application must be presented to the court by the applicants in person. However, it is not practical for all five women to travel to the court due to financial constraints and family responsibilities.

Solution: As per the proviso in Rule 3, it is sufficient if the application is presented by one of the plaintiffs. Therefore, one of the women, Lakshmi, can present the application on behalf of all five plaintiffs. Lakshmi must be able to answer all material questions related to the application and may be examined by the court in the same manner as the other plaintiffs would have been if they had attended in person.

Rule 4: Examination of applicant.

(1) Where the application is in proper form and duly presented, the Court may, if it thinks fit, examine the applicant, or his agent when the applicant is allowed to appear by agent regarding the merits of the claim and the property of the applicant.

(2)

Simplified act

(1) If the application is filled out correctly and submitted properly, the Court can choose to talk to the person who applied, or their representative if they are allowed to have one, to understand more about the claim and the applicant's situation.

(2)

Explanation using Example

Example 1:

Ravi, a daily wage laborer, wants to file a lawsuit against his landlord for illegal eviction. However, Ravi does not have the financial means to pay the court fees. He applies to the court to be allowed to sue as an indigent person under Order XXXIII of the Code of Civil Procedure, 1908.

Ravi's application is in proper form and duly presented. The court, considering the application, decides to examine Ravi to understand the merits of his claim and to verify his financial status. During the examination, Ravi explains his situation, provides evidence of his eviction, and submits proof of his financial condition, such as his income certificate and bank statements. The court, satisfied with Ravi's explanations and evidence, allows him to proceed with the lawsuit as an indigent person.

Example 2:

Meena, a widow with no steady income, wishes to file a suit for the recovery of her late husband's property, which is being unlawfully occupied by her brother-in-law. Meena cannot afford the court fees and applies to sue as an indigent person.

Meena's application is properly filled out and submitted. The court decides to examine Meena's agent, her lawyer, who is representing her in this matter. The lawyer presents Meena's case, detailing the unlawful occupation of the property and providing documents that show Meena's financial incapacity, such as her husband's death certificate, her bank statements, and an affidavit declaring her lack of income. The court, after examining the lawyer and the submitted documents, finds the claim to be genuine and allows Meena to file the suit without paying the court fees.

If presented by agent, Court may order applicant to be examined by commission.

Where the application is presented by an agent, the Court may, if it thinks fit, order that the applicant be examined by a commission in the manner in which the examination of an absent witness may be taken.

5.

Simplified act

If someone applies to the court through a representative, the court can decide to have the applicant questioned by a special group, similar to how they would question a witness who is not present.

5.

Explanation using Example

Example 1:

Ravi, an indigent person, wants to file a lawsuit but cannot afford the court fees. He appoints his friend, Suresh, as his agent to present the application on his behalf. The court, upon receiving the application, decides that it needs to verify Ravi's financial status and other details. Since Ravi is currently residing in a remote village and cannot travel to the court, the court orders that Ravi be examined by a commission. A local commissioner is appointed to visit Ravi's village, gather the necessary information, and report back to the court.

Example 2:

Meena, who is financially unable to pay the court fees, wishes to file a suit for recovery of her property. She authorizes her lawyer, Mr. Sharma, to present the application as her agent. The court, considering the application, decides that it needs to confirm Meena's indigent status. Since Meena is bedridden and cannot appear in court, the court orders a commission to examine her. A court-appointed commissioner visits Meena's home, interviews her, and collects evidence regarding her financial condition. The commissioner then submits a report to the court, which helps the court decide whether to allow Meena to proceed as an indigent person.

If presented by agent, Court may order applicant to be examined by commission.

Rule 5: Rejection of application.

The Court shall reject an application for permission to use as an indigent person

(a) where it is not framed and presented in the manner prescribed by rules 2 and 3, or

(b) where the applicant is not an indigent person, or

(c) where he has, within two months next before the presentation of the application, disposed of any property fraudulently or in order to be able to apply for permission to use as an indigent person:

Provided that no application shall be rejected if, even after the value of the property disposed of by the applicant is taken into account, the applicant would be entitled to sue as an indigent person.

(d) where his allegations do not show a cause of action, or

(e) where he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter; or

(f) where the allegations, made by the applicant in the application show that the suit would be barred by any law for the time being in force, or

(g) where any other person has entered into an agreement with him to finance the litigation.

Simplified act

The Court will reject an application to sue as a poor person if:

- (a) the application is not filled out and submitted correctly according to the rules, or
- (b) the person applying is not actually poor, or
- (c) the person has sold or given away any property in a dishonest way or to qualify as poor within two months before applying:

Note: The application will not be rejected if, even after considering the value of the property given away, the person still qualifies as poor.

- (d) the person's claims do not show a valid reason to sue, or
- (e) the person has made an agreement about the subject of the lawsuit that gives someone else an interest in it, or
- (f) the person's claims show that the lawsuit would be blocked by any current law, or
- (g) someone else has agreed to pay for the lawsuit.

Explanation using Example

Example 1:

Ravi, a farmer from a small village in Maharashtra, wants to file a lawsuit against a large corporation for polluting his farmland. Ravi claims he cannot afford the court fees and applies to sue as an indigent person. However, the court rejects his application because:

- (a) Ravi's application was not framed and presented according to the prescribed rules.
- (b) Upon investigation, it was found that Ravi owns a significant amount of land and other assets, disqualifying him as an indigent person.
- (c) It was discovered that Ravi had sold a piece of his land to his brother just a month before applying, which the court deemed as an attempt to appear indigent fraudulently.

Example 2:

Meena, a widow from Delhi, seeks to file a lawsuit for her deceased husband's unpaid insurance claim. She applies to sue as an indigent person. The court rejects her application because:

(d) Meena's application did not show a valid cause of action; the insurance company had already settled the claim, but Meena was unaware.

(e) Meena had entered into an agreement with a third party, giving them a share of any potential settlement from the lawsuit.

(f) The court found that the lawsuit would be barred by the statute of limitations, as the claim was filed too late.

(g) Meena had an agreement with a local NGO to finance her litigation, which disqualified her from being considered indigent.

Rule 6: Notice of day for receiving evidence of applicant's indigency.

Where the Court sees no reason to reject the application on any of the grounds stated in rule 5, it shall fix a day (of which at least ten day's clear notice shall be given to the opposite party and the Government pleader) for receiving such evidence as the applicant may adduce in proof of his indigency, and for hearing any evidence which may be adduced in disproof thereof.

7.

Simplified act

If the Court does not find any reason to deny the application based on the reasons listed in rule 5, it will set a date (with at least ten days' clear notice given to the other party and the Government lawyer) to hear the evidence that the applicant can provide to prove they are poor, and to hear any evidence that may be provided to prove they are not poor.

7.

Explanation using Example

Example 1:

Ravi, a resident of Mumbai, wishes to file a lawsuit but claims he cannot afford the court fees due to his financial condition. He files an application to be allowed to sue as an indigent person under Order XXXIII of the Code of Civil Procedure, 1908. The court reviews his application and finds no immediate

reason to reject it based on the grounds stated in Rule 5. Consequently, the court schedules a hearing for the 15th of the next month to receive evidence of Ravi's indigency. The court ensures that a notice of this hearing is sent to the opposite party and the Government pleader at least ten days before the scheduled date. On the day of the hearing, Ravi presents his financial documents and witnesses to prove his indigency, while the opposite party presents their evidence to challenge Ravi's claim.

Example 2:

Meena, a widow from Chennai, seeks to file a civil suit for property rights but lacks the financial means to pay the court fees. She submits an application to proceed as an indigent person. The court, after preliminary examination, does not find any grounds to reject her application under Rule 5. The court then sets a hearing date for the 20th of the following month and ensures that a notice is sent to the opposite party and the Government pleader at least ten days before the hearing. On the hearing day, Meena provides her bank statements, income certificates, and testimonies from neighbors to establish her financial incapacity. The opposite party, however, brings forward evidence suggesting that Meena has undisclosed assets, aiming to disprove her claim of indigency.

Rule 7: Procedure at hearing.

(1) On the day so fixed or as soon thereafter as may be convenient the Court shall examine the witnesses (if any) produced by either party, and may examine the applicant or his agent, and shall make a full record of their evidence.

(1A) The examination of the witnesses under sub-rule (1) shall be confined to the matters specified in clause (b), clause (c) and clause (e) of rule 5 but the examination of the applicant or his agent may relate to any of the matters specified in rule 5.

(2) The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court under rule 6 or under this rule, the applicant is or is not subject to any of the prohibitions specified in rule 5.

(3) The Court shall then either allow or refuse to allow the applicant to sue as an indigent person.

Simplified act

(1) On the scheduled day or as soon as possible after that, the Court will listen to the witnesses (if any) brought by either side. The Court may also talk to the applicant or their representative and will keep a detailed record of what everyone says.

(1A) The questioning of the witnesses mentioned in point (1) will be limited to the topics listed in parts (b), (c), and (e) of rule 5. However, the questioning of the applicant or their representative can cover any topic listed in rule 5.

(2) The Court will also listen to any arguments from both sides about whether, based on the application and the evidence (if any) collected by the Court under rule 6 or this rule, the applicant is or isn't restricted by any of the rules mentioned in rule 5.

(3) The Court will then decide whether to allow or not allow the applicant to proceed as a person who cannot afford the legal fees.

Explanation using Example

Example 1:

Scenario: Ramesh, a poor farmer, wants to file a lawsuit against a large corporation for illegally seizing his land. He does not have the financial means to pay the court fees.

Application: Ramesh applies to the court to sue as an indigent person under Order XXXIII of The Code of Civil Procedure, 1908.

Procedure:

Initial Application: Ramesh submits an application to the court stating his financial inability to pay the court fees.

Court Hearing: The court schedules a hearing to examine Ramesh's application.

Examination of Witnesses: On the scheduled day, the court examines the witnesses presented by Ramesh and the corporation. The court also examines Ramesh to verify his financial status and the merits of his case.

Arguments: Both parties present their arguments regarding Ramesh's financial status and the validity of his claim.

Decision: After considering the evidence and arguments, the court decides whether Ramesh qualifies to sue as an indigent person. If the court finds that

Ramesh is indeed indigent and his case has merit, it allows him to proceed without paying the court fees.

Example 2:

Scenario: Sita, a widow with no income, wants to file a lawsuit for the wrongful termination of her deceased husband's pension benefits by a government agency.

Application: Sita applies to the court to sue as an indigent person under Order XXXIII of The Code of Civil Procedure, 1908.

Procedure:

Initial Application: Sita submits an application to the court, detailing her lack of income and inability to pay the court fees.

Court Hearing: The court sets a date for a hearing to review Sita's application.

Examination of Witnesses: On the hearing day, the court examines the witnesses brought by Sita and the government agency. The court also questions Sita to assess her financial situation and the legitimacy of her claim.

Arguments: Both Sita and the government agency present their arguments regarding Sita's financial status and the merits of her case.

Decision: Based on the evidence and arguments, the court decides whether Sita can sue as an indigent person. If the court concludes that Sita is indigent and her case is valid, it permits her to proceed without paying the court fees.

Rule 8: Procedure if application admitted.

Where the application is granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted in the ordinary manner, except that the plaintiff shall not be liable to pay any court-fee or fees payable for service of process in respect of any petition, appointment of a pleader or other proceeding connected with the suit.

Simplified act

If the application is approved, it will be given a number and officially recorded.

The application will be treated as the main complaint in the lawsuit.

The lawsuit will continue just like any other regular lawsuit.

However, the person who filed the lawsuit (the plaintiff) will not have to pay any court fees or fees for serving legal documents.

This includes not having to pay for any petitions, hiring a lawyer, or any other steps related to the lawsuit.

Explanation using Example

Example 1:

Scenario: Ramesh, a poor farmer from a small village in Maharashtra, wants to file a lawsuit against a large corporation that has illegally taken over his land. Ramesh does not have the financial means to pay the court fees required to file the suit.

Application: Ramesh applies to the court to be allowed to file the suit as an indigent person under Order XXXIII of the Code of Civil Procedure, 1908. The court examines his application and finds that he genuinely lacks the financial resources to pay the court fees.

Outcome: The court grants Ramesh's application. His application is then numbered and registered as a plaint (formal statement of the claim). The lawsuit proceeds as if it were filed in the ordinary manner, but Ramesh is not required to pay any court fees or fees for the service of process, appointment of a lawyer, or any other proceedings related to the suit.

Example 2:

Scenario: Sita, a widow from a rural area in Uttar Pradesh, wants to file a suit for the recovery of her late husband's property, which has been wrongfully occupied by her brother-in-law. Sita has no source of income and cannot afford the court fees.

Application: Sita submits an application to the court to sue as an indigent person. The court reviews her financial status and verifies that she does not have the means to pay the court fees.

Outcome: The court admits Sita's application. Her application is then treated as a plaint and registered. The suit proceeds in the same manner as any other suit, but Sita is exempted from paying any court fees or fees for the service of process, appointment of a lawyer, or any other related proceedings.

Rule 9: Withdrawal of permission to sue as an indigent person.

The Court may, on the application of the defendant, or of the Government pleader, of which seven days, clear notice in writing has been given to the plaintiff, order that the permission granted to the plaintiff to sue as an indigent person be withdrawn:

- (a) if he is guilty of vexatious or improper conduct in the course of the suit;
- (b) if it appears that his means are such that he ought not to continue to sue as an indigent person; or
- (c) if he has entered into any agreement with reference to the subject-matter of the suit under which any other person has obtained an interest in such subject-matter.

9A.

Simplified act

The Court can, if asked by the defendant or the Government lawyer, and after giving the plaintiff a clear seven days' written notice, decide to take back the permission given to the plaintiff to sue as a poor person:

- (a) if the plaintiff behaves badly or improperly during the case;
- (b) if it looks like the plaintiff has enough money and should not be suing as a poor person; or
- (c) if the plaintiff has made any deal about the case that gives someone else an interest in the case.

9A.

Explanation using Example

Example 1:

Scenario: Ramesh, a farmer from a small village in Maharashtra, files a lawsuit against a large corporation for polluting his farmland. Due to his financial condition, he is granted permission by the court to sue as an indigent person.

Application of Rule 9:

Vexatious or Improper Conduct: During the proceedings, Ramesh repeatedly makes baseless allegations against the corporation's lawyers and disrupts

court sessions. The corporation's lawyer files an application under Rule 9(a) to withdraw Ramesh's permission to sue as an indigent person, citing his vexatious conduct.

Court's Decision: The court reviews the conduct and finds Ramesh's behavior to be improper and disruptive. Consequently, the court withdraws his permission to sue as an indigent person.

Example 2:

Scenario: Sita, a widow from Uttar Pradesh, files a lawsuit to claim her deceased husband's property. She is initially granted permission to sue as an indigent person due to her lack of financial resources.

Application of Rule 9:

Change in Financial Means: During the course of the lawsuit, Sita receives a substantial inheritance from a distant relative, significantly improving her financial situation. The Government pleader files an application under Rule 9(b) to withdraw her permission to sue as an indigent person, arguing that her financial means have changed.

Court's Decision: The court examines Sita's new financial status and determines that she now has sufficient means to bear the costs of the lawsuit. Therefore, the court withdraws her permission to sue as an indigent person.

Example 3:

Scenario: Rajesh, a small shop owner in Delhi, files a lawsuit against a supplier for breach of contract. He is allowed to sue as an indigent person due to his limited income.

Application of Rule 9:

Agreement with Third Party: During the lawsuit, it is discovered that Rajesh has entered into an agreement with another businessman, under which the businessman has obtained a financial interest in the outcome of the lawsuit. The defendant files an application under Rule 9(c) to withdraw Rajesh's permission to sue as an indigent person.

Court's Decision: The court investigates the agreement and finds that Rajesh has indeed transferred an interest in the subject matter of the suit to a third party. As a result, the court withdraws his permission to sue as an indigent person.

Rule 9A: Court to assign a pleader to an unrepresented indigent person.

- (1) Where a person, who is permitted to sue as an indigent person, is not represented by a pleader, the Court may, if the circumstances of the case so require, assign a pleader to him.
- (2) The High Court may, with the previous approval of the State Government, make rules providing for -
 - (a) the mode of selecting pleaders to be assigned under sub-rule (1);
 - (b) the facilities to be provided to such pleaders by the Court;
 - (c) any other matter which is required to be or may be provided by the rules for giving effect to the provisions of sub-rule (1).

Simplified act

- (1) If a person who is allowed to sue without paying court fees (because they can't afford it) does not have a lawyer, the Court can assign a lawyer to them if needed.
- (2) The High Court, with the State Government's approval, can make rules about:
 - (a) How to choose lawyers for people who can't afford one as mentioned in point (1);
 - (b) What support and facilities the Court should give to these lawyers;
 - (c) Any other details needed to make sure the rules in point (1) are followed properly.

Explanation using Example**Example 1:**

Ramesh, a poor farmer from a small village in Maharashtra, has been wrongfully evicted from his land by a wealthy landlord. Ramesh wants to file a lawsuit to reclaim his land but cannot afford the legal fees. He applies to the court to sue as an indigent person under Order XXXIII of the Code of Civil Procedure, 1908. The court permits him to sue as an indigent person but notices that Ramesh does not have a lawyer to represent him. Given the complexity of the case and Ramesh's lack of legal knowledge, the court decides to assign a pleader to represent him. The High Court, with the approval of the

State Government, has already established rules for selecting such pleaders and providing them with necessary facilities. As a result, Ramesh is assigned a competent lawyer who will represent him in court without any cost to him.

Example 2:

Seema, a widow living in Delhi, is struggling to make ends meet and has no financial resources. She has a legal dispute with a large corporation that has encroached on her small piece of land. Seema wants to file a suit but cannot afford the legal expenses. She applies to the court to be allowed to sue as an indigent person. The court grants her application but realizes that Seema does not have a lawyer. Considering the power imbalance between Seema and the corporation, the court decides to assign a pleader to her. The High Court has pre-approved rules for selecting pleaders and providing them with necessary support. Consequently, Seema is assigned a skilled lawyer who will handle her case, ensuring that she has a fair chance in the legal proceedings.

Rule 10: Costs where indigent person succeeds.

Where the plaintiff succeeds in the suit, the Court shall calculate the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as an indigent person; such amount shall be recoverable by the State Government from any party ordered by the decree to pay the same and shall be a first charge on the subject-matter of the suit.

Simplified act

If the person who filed the lawsuit wins the case, the Court will figure out how much they would have paid in court fees if they hadn't been allowed to file the case for free because they were poor.

This amount of money will be collected by the State Government from the person who is ordered by the Court to pay it.

This money will be the first thing that needs to be paid from any money or property involved in the lawsuit.

Explanation using Example

Example 1:

Ravi, a poor farmer from a small village in Maharashtra, files a lawsuit against a large corporation for illegally seizing his land. Ravi does not have the financial means to pay the court fees, so he applies to sue as an indigent

person under Order XXXIII of the Code of Civil Procedure, 1908. The court permits him to proceed without paying the court fees upfront.

After a lengthy trial, Ravi wins the case. The court calculates that the court fees Ravi would have paid, had he not been allowed to sue as an indigent person, amount to ₹50,000. The court orders the corporation to pay this amount to the State Government. This ₹50,000 becomes a first charge on the land that was the subject matter of the suit, meaning it must be paid before any other claims on the land are settled.

Example 2:

Meena, a widow from Tamil Nadu, files a lawsuit against her late husband's relatives who are unlawfully occupying her house. Meena has no source of income and cannot afford the court fees, so she applies to sue as an indigent person. The court grants her application, allowing her to proceed without paying the court fees.

Meena wins the lawsuit, and the court determines that the court fees she would have paid amount to ₹30,000. The court orders her husband's relatives, who were ordered to vacate the house, to pay this ₹30,000 to the State Government. This amount is treated as a first charge on the house, meaning it must be paid before any other financial obligations related to the house are addressed.

Rule 11: Procedure where indigent person fails.

Where the plaintiff fails in the suit or the permission granted to him to sue as an indigent person has been withdrawn, or where the suit is withdrawn or dismissed, -

(a) because the summons for the defendant to appear and answer has not been served upon him in consequence of the failure of the plaintiff to pay the court-fee or postal charges (if any) chargeable for such service or to present copies of the plaint or concise statement, or

(b) because the plaintiff does not appear when the suit is called on for hearing, the Court shall order the plaintiff, or any person added as a co-plaintiff to the suit, to pay the court-fees which would have been paid by the plaintiff if he had not been permitted to sue as an indigent person.

Simplified act

If the person who started the lawsuit (the plaintiff) loses the case, or if the permission given to them to sue without paying fees (as an indigent person) is taken away, or if the lawsuit is withdrawn or dismissed, then:

(a) If the lawsuit is dismissed because the defendant (the person being sued) did not receive the court summons due to the plaintiff not paying the required court fees or postal charges, or not providing copies of the complaint or a summary of it, or

(b) If the lawsuit is dismissed because the plaintiff did not show up when the case was scheduled for a hearing, the court will order the plaintiff, or anyone added as a co-plaintiff, to pay the court fees that they would have had to pay if they had not been allowed to sue without paying fees.

Explanation using Example

Example 1:

Ravi, an indigent person, files a lawsuit against his landlord for wrongful eviction. The court grants him permission to sue without paying the court fees due to his financial condition. However, Ravi fails to pay the postal charges required to serve the summons to the landlord. As a result, the summons is not served, and the case cannot proceed. According to Rule 11 of the Code of Civil Procedure 1908, the court orders Ravi to pay the court fees that he would have been required to pay if he had not been permitted to sue as an indigent person.

Example 2:

Meena, an indigent widow, files a suit against a company for not paying her deceased husband's insurance claim. The court allows her to file the suit without paying the court fees. On the day of the hearing, Meena does not appear in court, and the suit is dismissed due to her absence. Under Rule 11 of the Code of Civil Procedure 1908, the court orders Meena to pay the court fees that she would have had to pay if she had not been allowed to sue as an indigent person.

Rule 11A: Procedure where indigent persons suit abates.

Where the suit abates by reason of the death of the plaintiff or of any person added as a co-plaintiff, the Court shall order that the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue

as an indigent person shall be recoverable by the State Government from the estate of the deceased plaintiff.

Simplified act

If a lawsuit stops because the person who started it (the plaintiff) or someone added to the lawsuit (a co-plaintiff) dies, the Court will make an order about the court fees.

The court fees that the plaintiff would have paid if they were not allowed to sue for free (as an indigent person) must be paid back to the State Government.

This money will be taken from the property or assets of the deceased plaintiff.

Explanation using Example

Example 1:

Ramesh, an indigent person, files a lawsuit against a company for wrongful termination. Since Ramesh cannot afford the court fees, he is permitted to sue as an indigent person under Order XXXIII of the Code of Civil Procedure, 1908. Unfortunately, during the course of the trial, Ramesh passes away. According to Rule 11A, the court will order that the amount of court fees, which Ramesh would have paid if he had not been allowed to sue as an indigent person, be recovered from Ramesh's estate by the State Government.

Example 2:

Sita, who is financially unable to pay court fees, files a suit for property dispute against her relatives. She is allowed to proceed as an indigent person. Later, her brother Ram, who was added as a co-plaintiff, dies during the litigation process. As per Rule 11A, the court will direct that the court fees, which would have been payable by Ram if he had not been permitted to sue as an indigent person, be recovered from Ram's estate by the State Government.

Rule 12: State Government may apply for payment of court-fees.

The State Government shall have the right at any time to apply to the Court to make an order for the payment of court-fees under rule 10, rule 11 or rule 11A.

Simplified act

The State Government can ask the Court at any time to order someone to pay court fees according to rule 10, rule 11, or rule 11A.

Explanation using Example

Example 1:

Scenario: Ramesh, an indigent person, files a lawsuit for property dispute.

Details: Ramesh, who has no sufficient means to pay the court fees, files a lawsuit under Order XXXIII of the Code of Civil Procedure, 1908, as an indigent person. The court allows him to proceed without paying the court fees initially. However, during the proceedings, the State Government learns that Ramesh has recently inherited a substantial amount of money from a distant relative.

Application of Rule 12: The State Government applies to the court under Rule 12, requesting an order for Ramesh to pay the court fees now that he has the means to do so. The court, upon verifying the change in Ramesh's financial status, orders him to pay the court fees as per the rules.

Example 2:

Scenario: Sita, an indigent widow, files a lawsuit for maintenance against her in-laws.

Details: Sita, who has no income and is unable to pay the court fees, files a lawsuit under Order XXXIII of the Code of Civil Procedure, 1908, seeking maintenance from her in-laws. The court permits her to proceed without paying the court fees initially. Later, the State Government discovers that Sita has received a substantial amount of money as compensation from a government scheme for widows.

Application of Rule 12: The State Government applies to the court under Rule 12, requesting an order for Sita to pay the court fees now that she has received the compensation. The court, after confirming the receipt of the compensation, orders Sita to pay the court fees as per the applicable rules.

Rule 13: State Government to be deemed a party.

All matters arising between the State Government and any party to the suit under rule 10, rule 11, rule 11A or rule 12 shall be deemed to be questions arising between the parties to the suit within the meaning of section 47.

Simplified act

Any issues that come up between the State Government and any person involved in a lawsuit under rule 10, rule 11, rule 11A, or rule 12 will be considered as issues between the parties involved in the lawsuit, as described in section 47.

Explanation using Example

Example 1:

Scenario: Ramesh, an indigent person, files a lawsuit against a private company for wrongful termination. He applies to sue as an indigent person under Order XXXIII of the Code of Civil Procedure, 1908. The court accepts his application and allows him to proceed without paying court fees.

Application of Rule 13: During the proceedings, it is discovered that the private company had acted under the directives of a State Government department. Ramesh then amends his lawsuit to include the State Government as a party to the suit. According to Rule 13, the State Government is now deemed a party to the suit, and any matters arising between Ramesh and the State Government will be treated as questions arising between the parties to the suit under section 47.

Example 2:

Scenario: Sita, an indigent widow, files a suit for the recovery of her deceased husband's pension benefits from a State Government department. She applies to sue as an indigent person under Order XXXIII, and the court permits her to proceed without paying court fees.

Application of Rule 13: During the trial, the State Government department argues that the pension benefits were already disbursed to another claimant. Sita contends that the disbursement was fraudulent and seeks to challenge the department's decision. Under Rule 13, the dispute between Sita and the State Government regarding the pension benefits is treated as a question arising between the parties to the suit, as per section 47. This means the court will address and resolve this issue as part of the ongoing lawsuit.

Rule 14: Recovery of amount of court-fees.

Where an order is made under rule 10, rule 11 or rule 11A, the court shall forthwith cause a copy of the decree or order to be forwarded to the Collector who may, without prejudice to any other mode of recovery, recover the amount

of court-fees specified therein from the person or property liable for the payment as if it were an arrear or land revenue.

Simplified act

If the court makes an order under rule 10, rule 11, or rule 11A, the court must immediately send a copy of that order to the Collector.

The Collector can then collect the court fees mentioned in the order from the person or property responsible for paying it.

The Collector can collect these fees in the same way they would collect unpaid land taxes.

This does not affect any other ways the fees might be collected.

Explanation using Example

Example 1:

Ravi, an indigent person, files a lawsuit in a civil court seeking compensation for damages caused by a road accident. Since Ravi cannot afford the court fees, he applies to sue as an indigent person under Order XXXIII of the Code of Civil Procedure, 1908. The court accepts his application and allows him to proceed without paying the court fees upfront. However, after the trial, the court dismisses Ravi's case and issues an order under Rule 11, stating that Ravi is liable to pay the court fees. The court then forwards a copy of this order to the Collector. The Collector, treating the unpaid court fees as an arrear of land revenue, initiates recovery proceedings against Ravi's property to collect the due amount.

Example 2:

Meena, an indigent widow, files a suit for partition of ancestral property. She is unable to pay the court fees and is permitted to file the suit as an indigent person. The court eventually rules in her favor and grants her a share of the property. However, the court also issues an order under Rule 11A, requiring Meena to pay the court fees now that she has received a valuable property. The court sends a copy of this order to the Collector. The Collector, without prejudice to any other recovery methods, treats the court fees as an arrear of land revenue and proceeds to recover the amount from Meena's newly acquired property.

Rule 15: Refusal to allow applicant to sue as indigent person to bar subsequent application of like nature.

An order refusing to allow the applicant to sue as an indigent person shall be a bar to any subsequent application of the like nature by him in respect of the sole right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right; provided that the plaint shall be rejected if he does not pay, either at the time of the institution of the suit or within such time thereafter as the Court may allow, the costs (if any) incurred by the State Government and by the opposite party in opposing his application for leave to sue as an indigent person.

Simplified act

If a person is not allowed to sue as a poor person, they cannot apply again to sue as a poor person for the same issue.

However, they can still file a lawsuit in the regular way for that issue.

But, their lawsuit will be rejected if they do not pay the costs (if any) that the government and the other party spent to oppose their request to sue as a poor person. This payment must be made either when they file the lawsuit or within the time allowed by the court.

Explanation using Example

Example 1:

Ravi, a farmer from a small village in Maharashtra, wants to file a lawsuit against a large corporation for illegally encroaching on his farmland. Ravi has no substantial income or assets and applies to the court to sue as an indigent person, meaning he cannot afford the court fees. The court examines his application and finds that Ravi has not provided sufficient evidence to prove his indigent status. Consequently, the court refuses his application.

According to Rule 15 of Order XXXIII of The Code of Civil Procedure, 1908, Ravi cannot make another application to sue as an indigent person for the same issue. However, Ravi is still allowed to file the lawsuit in the ordinary manner, provided he pays the necessary court fees. If Ravi decides to proceed with the lawsuit, he must also pay any costs incurred by the State Government and the corporation in opposing his initial application to sue as an indigent person.

Example 2:

Meena, a widow from Tamil Nadu, wishes to file a lawsuit against her late husband's employer for not releasing his pending salary and benefits. Meena has no source of income and applies to the court to sue as an indigent person. The court reviews her application and finds that she has some hidden assets that she did not disclose. As a result, the court denies her application to sue as an indigent person.

Under Rule 15 of Order XXXIII of The Code of Civil Procedure, 1908, Meena cannot submit another application to sue as an indigent person for the same matter. However, she can still file the lawsuit in the ordinary manner if she pays the required court fees. Additionally, Meena must cover any costs incurred by the State Government and the employer in opposing her initial application to sue as an indigent person if she decides to proceed with the lawsuit.

Rule 15A: Grant of time for payment of court-fee.

Nothing contained in rule 5, rule 7 or rule 15 shall prevent a Court, while rejecting an application under rule 5 or refusing an application under rule 7, from granting time to the applicant to pay the requisite court-fee within such time as may be fixed by the Court or extended by it from time to time; and upon such payment and on payment of the costs referred to in rule 15 within that time, the suit shall be deemed to have been instituted on the date on which the application for permission to sue as an indigent person was presented.

Simplified act

If a court rejects an application under rule 5 or refuses an application under rule 7, it can still give the applicant more time to pay the required court fee.

The court can set a deadline for this payment and can extend this deadline if needed.

If the applicant pays the court fee and any costs mentioned in rule 15 within the given time, the lawsuit will be considered to have started on the date the application to sue as a poor person was originally submitted.

Explanation using Example

Example 1:

Scenario: Ramesh, a farmer from a small village in Maharashtra, wants to file a civil suit against a large corporation for damaging his crops due to pollution. However, Ramesh does not have the financial means to pay the court fees.

Application: Ramesh applies to the court to sue as an indigent person under Order XXXIII of the Code of Civil Procedure, 1908. The court examines his application and finds that he indeed qualifies as an indigent person. However, the court also finds some procedural issues with his application and decides to reject it under Rule 5.

Grant of Time: While rejecting the application, the court grants Ramesh a period of 30 days to arrange and pay the requisite court fees. Ramesh manages to gather the required amount within the given time and pays the court fees.

Outcome: Upon payment of the court fees within the stipulated time, Ramesh's suit is deemed to have been instituted on the date he originally presented his application to sue as an indigent person. This ensures that his case is not delayed due to the initial rejection of his application.

Example 2:

Scenario: Seema, a widow from Delhi, wants to file a suit for the partition of her late husband's property. She does not have sufficient funds to pay the court fees and applies to the court to sue as an indigent person.

Application: Seema's application is initially accepted, but during the proceedings, the court finds discrepancies in her financial statements and decides to refuse her application under Rule 7.

Grant of Time: Despite refusing her application, the court grants Seema 45 days to pay the requisite court fees. Seema receives financial help from her relatives and manages to pay the court fees within the given time frame.

Outcome: Upon payment of the court fees within the specified period, Seema's suit is considered to have been instituted on the date she originally filed her application to sue as an indigent person. This allows her to proceed with her case without any further delays.

Example 3:

Scenario: An NGO in Bangalore wants to file a public interest litigation (PIL) against a construction company for illegal encroachment on public land. The

NGO lacks the funds to pay the court fees and applies to sue as an indigent entity.

Application: The court reviews the NGO's application and finds it incomplete, leading to its rejection under Rule 5. However, the court acknowledges the public interest involved and grants the NGO 60 days to pay the court fees.

Grant of Time: The NGO organizes a fundraising campaign and successfully collects the required amount within the 60-day period. They pay the court fees as directed by the court.

Outcome: The PIL is deemed to have been instituted on the date the NGO initially presented its application to sue as an indigent entity. This ensures that the case can proceed without being affected by the initial rejection of the application.

Example 4:

Scenario: Rajesh, a small shop owner in Kolkata, wants to file a suit against a supplier for breach of contract. Rajesh is facing financial difficulties and applies to the court to sue as an indigent person.

Application: The court initially accepts Rajesh's application but later finds that he has some undisclosed assets, leading to the refusal of his application under Rule 7.

Grant of Time: The court grants Rajesh 20 days to pay the requisite court fees. Rajesh sells some of his assets and manages to pay the court fees within the given time.

Outcome: Upon payment of the court fees within the specified period, Rajesh's suit is considered to have been instituted on the date he originally filed his application to sue as an indigent person. This allows him to continue with his legal proceedings without any further delays.

Rule 16: Costs.

The costs of an application for permission to sue as an indigent person and of an inquiry into indigency shall be costs in the suit.

17.

Simplified act

The costs of an application for permission to sue as an indigent person and of an inquiry into indigency shall be costs in the suit.

17.

If someone wants to sue but can't afford the legal fees, they can apply to be recognized as an indigent person. The costs for this application and the investigation to confirm their financial status will be included as part of the overall costs of the lawsuit.

Explanation using Example

Example 1:

Rajesh, a daily wage laborer, wants to file a lawsuit against his landlord for illegal eviction. However, Rajesh does not have the financial means to pay the court fees. He applies to the court for permission to sue as an indigent person under Order XXXIII of the Code of Civil Procedure, 1908. The court conducts an inquiry into Rajesh's financial status to determine if he qualifies as an indigent person. The costs incurred during this application process and the inquiry are added to the overall costs of the lawsuit. If Rajesh wins the case, the court may order the landlord to pay these costs. If Rajesh loses, he may be required to bear these costs himself.

Example 2:

Meena, a widow with no source of income, wishes to file a suit for the recovery of her late husband's property, which is being unlawfully occupied by her brother-in-law. Meena applies to the court to sue as an indigent person because she cannot afford the court fees. The court appoints a commission to examine Meena's financial condition and verify her claim of indigency. The expenses for this examination and the application process are considered part of the lawsuit's costs. Depending on the outcome of the case, these costs will either be borne by Meena or the opposing party, as decided by the court.

Rule 17: Defence by an indigent person.

Any defendant, who desires to plead a set-off or counterclaim, may be allowed to set up such claim as an indigent person, and the rules contained in this Order shall, so far as may be, apply to him as if he were a plaintiff and his written statement were a plaint.

Simplified act

If someone being sued (the defendant) wants to make a claim against the person suing them (like saying the person suing them owes them money too), they can do this even if they don't have much money.

The same rules that apply to the person suing (the plaintiff) will also apply to the defendant when they make their claim.

The defendant's written response will be treated like a new lawsuit.

Explanation using Example

Example 1:

Ravi, a farmer from a small village in Maharashtra, is sued by a local merchant for an unpaid debt of ₹50,000. Ravi, who has been struggling financially due to a poor harvest, wishes to counterclaim that the merchant had supplied him with defective seeds, which led to his crop failure. Ravi cannot afford the legal fees to file this counterclaim. Under Rule 17 of Order XXXIII of The Code of Civil Procedure 1908, Ravi can apply to the court to be allowed to defend himself as an indigent person. If the court accepts his application, Ravi can file his counterclaim without paying the court fees, and the rules applicable to indigent plaintiffs will apply to him.

Example 2:

Meena, a widow living in Delhi, is sued by her landlord for non-payment of rent amounting to ₹1,00,000. Meena claims that the landlord has not carried out necessary repairs in the apartment, making it uninhabitable, and she wishes to set off the cost of repairs against the rent due. Meena has no source of income and cannot afford the legal expenses to file this set-off. Under Rule 17 of Order XXXIII of The Code of Civil Procedure 1908, Meena can request the court to allow her to defend herself as an indigent person. If the court grants her request, she can proceed with her set-off claim without paying the court fees, and the rules for indigent plaintiffs will apply to her.

Rule 18: Power of Government to provide for free legal services to indigent persons.

Supplementary Provisions for Free Legal Services

(1) Subject to the provisions of this Order, the Central or State Government may make such supplementary provisions as it thinks fit for providing free legal services to those who have been permitted to sue as indigent persons.

(2) The High Court may, with the previous approval of the State Government, make rules for carrying out the supplementary provisions made by the Central or State Government for providing free legal services to indigent persons referred to in sub-rule (1), and such rules may include:

The nature and extent of such legal services

The conditions under which they may be made available

The matters in respect of which such services may be rendered

The agencies through which such services may be rendered

Simplified act

Supplementary Provisions for Free Legal Services

(1) According to this Order, the Central or State Government can create additional rules to provide free legal services to people who cannot afford to pay for them and have been allowed to sue as poor persons.

(2) The High Court, with the State Government's prior approval, can make rules to implement these additional provisions for free legal services. These rules can cover:

What kind of legal services will be provided and how much

The conditions under which these services will be available

The specific issues these services will address

The organizations or agencies that will provide these services

Explanation using Example

Example 1:

Ravi, a daily wage laborer in a small village in Maharashtra, was wrongfully terminated from his job without any severance pay. Ravi, unable to afford a lawyer, approached the local court to file a lawsuit against his employer. The court, recognizing Ravi's financial situation, permitted him to sue as an indigent person under Order XXXIII of the Code of Civil Procedure, 1908.

The State Government, exercising its power under Rule 18, provided Ravi with free legal services. A government-appointed lawyer was assigned to Ravi's case, who helped him draft the necessary legal documents, represent him in court,

and argue his case. The High Court, with the approval of the State Government, had previously established rules detailing the nature and extent of such legal services, ensuring that Ravi received comprehensive legal assistance throughout his case.

Example 2:

Meena, a widow living in a remote village in Tamil Nadu, was denied her rightful share of her late husband's property by her in-laws. With no source of income and unable to afford legal representation, Meena sought help from the local legal aid center. The center, recognizing her indigent status, guided her to file a suit under Order XXXIII of the Code of Civil Procedure, 1908.

The Central Government, under Rule 18, had made supplementary provisions for providing free legal services to indigent persons like Meena. The High Court, with the State Government's approval, had established rules specifying that such services would include legal advice, representation in court, and assistance with legal documentation. An advocate from a government-recognized legal aid agency was assigned to Meena's case, ensuring she received the necessary legal support to fight for her property rights in court.

Example 3:

Arjun, a farmer from Uttar Pradesh, was involved in a land dispute with a wealthy landowner who had encroached on his small piece of farmland. Arjun, struggling financially due to a poor harvest season, could not afford to hire a lawyer. He approached the district court to file a suit as an indigent person under Order XXXIII of the Code of Civil Procedure, 1908.

The State Government, leveraging its authority under Rule 18, provided Arjun with free legal services. The High Court, with the State Government's prior approval, had framed rules that included the provision of legal representation, assistance with filing court documents, and legal advice. A lawyer from a state-run legal aid organization was assigned to Arjun's case, helping him navigate the legal process and represent his interests in court effectively.

Example 4:

Sita, a single mother from West Bengal, was facing eviction from her rented home due to a dispute with her landlord. With limited financial resources and unable to afford legal fees, Sita applied to the court to sue as an indigent person under Order XXXIII of the Code of Civil Procedure, 1908.

The Central Government, under Rule 18, had established supplementary provisions to provide free legal services to indigent persons. The High Court, with the State Government's approval, had created rules outlining the conditions and extent of such services. Sita was provided with a government-appointed lawyer who assisted her in preparing her case, representing her in court, and negotiating with the landlord's legal team. This ensured that Sita had access to justice despite her financial constraints.

ORDER XXXIV: SUITS RELATING TO MORTGAGES OF IMMOVABLE PROPERTY

Rule 1: Parties to suits for foreclosure, sale and redemption.

Subject to the provisions of this Code, all persons having an interest either in the mortgage-security or in the right of redemption shall be joined as parties to any suit relating to the mortgage.

Explanation. - A puisne mortgagee may sue for foreclosure or for sale without making the prior mortgagee a party to the suit; and a prior mortgagee need not be joined in a suit to redeem a subsequent mortgage.

Simplified act

Subject to the rules in this Code, anyone who has an interest in the mortgage or the right to get the property back should be included in any lawsuit about the mortgage.

Explanation. - A later mortgage holder can sue to take over or sell the property without including the earlier mortgage holder in the lawsuit; and an earlier mortgage holder does not need to be included in a lawsuit to reclaim a later mortgage.

Explanation using Example

Example 1:

Ravi took a loan from Bank A and mortgaged his house as security. Later, he took another loan from Bank B using the same house as security. Ravi failed to repay the loan to Bank B, and Bank B decided to file a suit for foreclosure to recover the loan amount. According to Rule 1 of Order XXXIV of the Code of Civil Procedure 1908, Bank B can file the suit for foreclosure without making

Bank A (the prior mortgagee) a party to the suit. This means Bank B can proceed with the foreclosure process independently of Bank A.

Example 2:

Sita mortgaged her property to Lender X and later took another loan from Lender Y using the same property as collateral. Sita defaulted on her loan to Lender Y, and Lender Y decided to file a suit for the sale of the property to recover the loan amount. According to Rule 1 of Order XXXIV of the Code of Civil Procedure 1908, Lender Y can file the suit for sale without including Lender X (the prior mortgagee) as a party to the suit. This allows Lender Y to proceed with the sale of the property without involving Lender X in the legal proceedings.

Rule 2: Preliminary decree in foreclosure-suit.

Foreclosure Suit Decree

(1) In a suit for foreclosure, if the plaintiff succeeds, the Court shall pass a preliminary decree:

(a) ordering that an account be taken of what was due to the plaintiff at the date of such decree for:

(i) principal and interest on the mortgage,

(ii) the costs of suit, if any, awarded to him, and

(iii) other costs, charges and expenses properly incurred by him up to that date in respect of his mortgage-security, together with interest thereon;

(b) declaring the amount so due at that date; and

(c) directing:

(i) that, if the defendant pays into Court the amount so found or declared due on or before such date as the Court may fix within six months from the date on which the Court confirms and countersigns the account taken under clause (a), or from the date on which such amount is declared in Court under clause (b), as the case may be, and thereafter pays such amount as may be adjudged due in respect of subsequent costs, charges and expenses as provided in rule 10, together with subsequent interest on such sums respectively as provided in rule 11, the plaintiff shall deliver up to the defendant, or to such person as the defendant appoints, all documents in his possession or power relating to the

mortgaged property, and shall, if so required, re-transfer the property to the defendant at his cost free from the mortgage and from all encumbrances created by the plaintiff or any person claiming under him, or, where the plaintiff claims by derived title, by those under whom he claims, and shall also, if necessary, put the defendant in possession of the property; and

(ii) that, if payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed, or the defendant fails to pay, within such time as the Court may fix, the amount adjudged due in respect of subsequent costs, charges, expenses and interest, the plaintiff shall be entitled to apply for a final decree debarring the defendant from all right to redeem the property.

(2) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, at any time before a final decree is passed, extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest.

(3) Where, in a suit for foreclosure, subsequent mortgagees or persons deriving title from, or subrogated to the rights of, any such mortgagees are joined as parties, the preliminary decree shall provide for the adjudication of the respective rights and liabilities of the parties to the suit in the manner and form set forth in Form No. 9 or Form No. 10, as the case may be, of Appendix D with such variations as the circumstances of the case may require.

Simplified act

Foreclosure Suit Decree

(1) In a foreclosure lawsuit, if the person who filed the lawsuit (the plaintiff) wins, the Court will issue a preliminary decision:

(a) ordering a calculation of what the defendant owes the plaintiff as of the date of the decision, including:

(i) the main loan amount and interest on the mortgage,

(ii) any legal costs awarded to the plaintiff, and

(iii) other costs and expenses properly incurred by the plaintiff related to the mortgage, with interest on these amounts;

(b) stating the total amount owed as of that date; and

(c) directing:

(i) that if the defendant pays the total amount owed into the Court by a date set by the Court (within six months from the date the Court confirms the calculation), and also pays any additional costs, charges, and interest that arise after that date, the plaintiff must give the defendant all documents related to the mortgaged property, and if needed, transfer the property back to the defendant free from the mortgage and any other claims. The plaintiff must also help the defendant take possession of the property if necessary; and

(ii) that if the defendant does not pay the amount owed by the set date, or fails to pay any additional costs, charges, and interest within the time set by the Court, the plaintiff can ask the Court for a final decision that prevents the defendant from reclaiming the property.

(2) The Court can extend the time for payment if there is a good reason, and it can set new terms for the payment before making a final decision.

(3) If there are other mortgage holders or people with rights related to the mortgage involved in the lawsuit, the preliminary decision will address the rights and responsibilities of all parties involved, following the format in Form No. 9 or Form No. 10 of Appendix D, with any necessary changes based on the specific case.

Explanation using Example

Example 1:

Mr. Sharma took a loan from Mr. Verma by mortgaging his house. Mr. Sharma failed to repay the loan, and Mr. Verma filed a foreclosure suit. The court, after hearing the case, passed a preliminary decree stating:

An account should be taken to determine the amount due to Mr. Verma, including the principal loan amount, interest, and any legal costs incurred.

The court declared that Mr. Sharma owed Mr. Verma ₹10,00,000 as of the date of the decree.

The court directed Mr. Sharma to pay ₹10,00,000 within six months. If Mr. Sharma pays this amount, Mr. Verma must return all documents related to the mortgaged house and re-transfer the property to Mr. Sharma.

If Mr. Sharma fails to pay within the stipulated time, Mr. Verma can apply for a final decree, which would bar Mr. Sharma from redeeming the property.

Example 2:

Ms. Gupta mortgaged her commercial property to secure a loan from a bank. She defaulted on the loan, and the bank initiated a foreclosure suit. The court issued a preliminary decree with the following orders:

An account should be taken to determine the total amount due to the bank, including the principal, interest, and any additional costs incurred by the bank.

The court declared that Ms. Gupta owed the bank ₹25,00,000 as of the decree date.

The court directed Ms. Gupta to pay ₹25,00,000 within six months. If she pays this amount, the bank must return all documents related to the mortgaged property and re-transfer the property to Ms. Gupta.

If Ms. Gupta fails to pay within the given time, the bank can apply for a final decree, which would prevent Ms. Gupta from reclaiming the property.

Example 3:

Mr. Khan mortgaged his farmland to Mr. Singh to secure a loan. Mr. Khan defaulted on the loan, and Mr. Singh filed a foreclosure suit. The court passed a preliminary decree stating:

An account should be taken to determine the amount due to Mr. Singh, including the principal, interest, and any legal costs incurred.

The court declared that Mr. Khan owed Mr. Singh ₹15,00,000 as of the decree date.

The court directed Mr. Khan to pay ₹15,00,000 within six months. If Mr. Khan pays this amount, Mr. Singh must return all documents related to the mortgaged farmland and re-transfer the property to Mr. Khan.

If Mr. Khan fails to pay within the stipulated time, Mr. Singh can apply for a final decree, which would bar Mr. Khan from redeeming the property.

Example 4:

Mr. Patel mortgaged his shop to secure a loan from a cooperative bank. He defaulted on the loan, and the bank filed a foreclosure suit. The court issued a preliminary decree with the following orders:

An account should be taken to determine the total amount due to the bank, including the principal, interest, and any additional costs incurred by the bank.

The court declared that Mr. Patel owed the bank ₹30,00,000 as of the decree date.

The court directed Mr. Patel to pay ₹30,00,000 within six months. If he pays this amount, the bank must return all documents related to the mortgaged shop and re-transfer the property to Mr. Patel.

If Mr. Patel fails to pay within the given time, the bank can apply for a final decree, which would prevent Mr. Patel from reclaiming the property.

Rule 3: Final decree in foreclosure-suit.

(1)

Where, before a final decree debarring the defendant from all right to redeem the mortgaged property has been passed, the defendant makes payment into Court of all amounts due from him under sub-rule (1) of rule 2, the Court shall, on application made by the defendant in this behalf, pass a final decree -

(a) ordering the plaintiff to deliver up the documents referred to in the preliminary decree, and, if necessary, -

(b) ordering him to re-transfer at the cost of the defendant the mortgaged property as directed in the said decree, and also, if necessary, -

(c) ordering him to put the defendant in possession of the property.

(2)

Where payment in accordance with sub-rule (1) has not been made, the Court shall, on application made by the plaintiff in this behalf, pass a final decree declaring that the defendant and all persons claiming through or under him are debarred from all right to redeem the mortgaged property and also, if necessary, ordering the defendant to put the plaintiff in possession of the property.

(3)

On the passing of a final decree under sub-rule (2), all liabilities to which the defendant is subject in respect of the mortgage or on account of the suit shall be deemed to have been discharged.

4. Preliminary decree in suit for sale.

(1) In a suit for sale, if the plaintiff succeeds, the Court shall pass a preliminary decree to the effect mentioned in clauses (a), (b) and (c) (i) of sub-rule (1) of rule 2, and further directing that, in default of the defendant paying as therein mentioned, the plaintiff shall be entitled to apply for a final decree directing that the mortgaged property or a sufficient part thereof be sold, and the proceeds of the sale (after deduction therefrom of the expenses of the sale) be paid into Court and applied in payment of what has been found or declared under or by the preliminary decree due to the plaintiff, together with such amount as may have been adjudged due in respect of subsequent costs, charges, expenses and interest, and the balance, if any, be paid to the defendant or other persons entitled to receive the same.

(2) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, at any time before a final decree for sale is passed, extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest.

(3)

Simplified act

(1)

If, before the final decision that stops the defendant from reclaiming the mortgaged property is made, the defendant pays all the money he owes into the Court, the Court will, upon the defendant's request, issue a final decision that:

(a) orders the plaintiff to give back the documents mentioned in the initial decision, and, if needed, -

(b) orders the plaintiff to transfer the mortgaged property back to the defendant at the defendant's expense, and also, if needed, -

(c) orders the plaintiff to give the defendant possession of the property.

(2)

If the defendant does not make the payment as required, the Court will, upon the plaintiff's request, issue a final decision stating that the defendant and anyone claiming through him lose all rights to reclaim the mortgaged property

and also, if needed, orders the defendant to give the plaintiff possession of the property.

(3)

Once the final decision under sub-rule (2) is made, all the defendant's obligations related to the mortgage or the lawsuit are considered to be settled.

4. Preliminary decree in suit for sale.

(1) In a lawsuit for the sale of the mortgaged property, if the plaintiff wins, the Court will issue an initial decision as described in clauses (a), (b), and (c) (i) of sub-rule (1) of rule 2. This decision will also state that if the defendant does not pay as required, the plaintiff can request a final decision for the sale of the mortgaged property or part of it. The money from the sale (after deducting sale expenses) will be paid into the Court and used to pay what the defendant owes the plaintiff, including any additional costs, charges, expenses, and interest. Any remaining money will be given to the defendant or other entitled persons.

(2) The Court can, for a good reason and under terms it sets, extend the time for the defendant to pay the amount owed or any additional costs, charges, expenses, and interest, at any time before the final decision for sale is made.

(3)

[No content provided in the original act data for this section.]

Explanation using Example

Example 1:

Ravi took a loan from a bank by mortgaging his house. He failed to repay the loan, and the bank filed a foreclosure suit. The court passed a preliminary decree stating the amount Ravi owed. Before the final decree was passed, Ravi managed to gather the money and paid the entire amount due into the court. Ravi then applied to the court to pass a final decree. The court, upon verifying the payment, ordered the bank to return all the mortgage documents to Ravi, re-transfer the property back to him, and put Ravi back in possession of his house.

Example 2:

Sita mortgaged her farmland to a moneylender, Raj, to secure a loan. Sita defaulted on the loan, and Raj filed a foreclosure suit. The court issued a

preliminary decree specifying the amount Sita owed. Sita could not pay the amount within the stipulated time. Raj then applied for a final decree. The court passed a final decree declaring that Sita and anyone claiming through her had no right to redeem the farmland. The court also ordered Sita to hand over possession of the farmland to Raj. Once the final decree was passed, Sita's liabilities concerning the mortgage and the suit were considered discharged.

Rule 4: Preliminary decree in suit for sale. Power to decree sale in foreclosure-suit.

In a suit for foreclosure in the case of an anomalous mortgage, if the plaintiff succeeds, the Court may, at the instance of any party to the suit or of any other person interested in the mortgage-security or the right of redemption, pass a like decree (in lieu of a decree for foreclosure) on such terms as it thinks fit, including the deposit in Court of a reasonable sum fixed by the Court to meet the expenses of the sale and to secure the performance of the terms.

(4) Where, in a suit for sale or a suit foreclosure in which sale is ordered, subsequent mortgages or persons deriving title from, or subrogated to the rights of any such mortgagees are joined as parties, the preliminary decree referred to in sub-rule (1) shall provide for the adjudication of the respective rights and liabilities of the parties to the suit in the manner and form set forth in Form No. 9, Form No. 10 or Form No. 11 as the case may be, of Appendix D with such variations as the circumstances of the case may require.

Simplified act

In a lawsuit to take back property due to a special type of mortgage (called an anomalous mortgage), if the person who filed the lawsuit wins, the Court can, if asked by anyone involved in the lawsuit or anyone with an interest in the mortgage or the right to get the property back, make a similar decision (instead of taking back the property) with conditions it thinks are fair. This can include asking for a reasonable amount of money to be deposited in Court to cover the costs of selling the property and ensuring the terms are followed.

In a lawsuit to sell the property or take it back where a sale is ordered, if there are later mortgages or people who have taken over the rights of those mortgages, they must be included in the lawsuit. The initial decision by the Court will outline the rights and responsibilities of everyone involved in the lawsuit, using the format provided in Form No. 9, Form No. 10, or Form No. 11 from Appendix D, with any changes needed based on the specific situation.

Explanation using Example

Example 1:

Scenario: Rajesh has taken a loan from a bank by mortgaging his house. He fails to repay the loan, and the bank files a suit for foreclosure.

Application of the Act:

Foreclosure Suit: The bank files a suit for foreclosure against Rajesh.

Court's Decision: The court finds in favor of the bank (plaintiff).

Decree for Sale: Instead of ordering foreclosure, the court decides to order the sale of the mortgaged property.

Terms of Sale: The court sets terms for the sale, including the deposit of a reasonable sum to cover the expenses of the sale.

Involvement of Other Parties: If there are other parties interested in the mortgage security, such as subsequent mortgagees, they are joined in the suit.

Preliminary Decree: The court issues a preliminary decree that outlines the rights and liabilities of all parties involved, using the appropriate form from Appendix D.

Example 2:

Scenario: Priya has mortgaged her commercial property to secure a loan from a financial institution. She defaults on the loan, and the financial institution files a suit for sale of the property.

Application of the Act:

Suit for Sale: The financial institution files a suit for the sale of Priya's mortgaged property.

Court's Decision: The court rules in favor of the financial institution.

Decree for Sale: The court orders the sale of the commercial property.

Terms of Sale: The court specifies the terms for the sale, including the deposit of a reasonable sum to cover the sale expenses.

Involvement of Other Parties: If there are other mortgagees or individuals with an interest in the property, they are included in the suit.

Preliminary Decree: The court issues a preliminary decree that details the rights and liabilities of all parties, using the appropriate form from Appendix D.

Example 3:

Scenario: Suresh has an anomalous mortgage on his agricultural land. He defaults on the mortgage, and the mortgagee files a suit for foreclosure.

Application of the Act:

Foreclosure Suit: The mortgagee files a suit for foreclosure against Suresh.

Court's Decision: The court rules in favor of the mortgagee.

Decree for Sale: Instead of foreclosure, the court orders the sale of the agricultural land.

Terms of Sale: The court sets terms for the sale, including the deposit of a reasonable sum to cover the sale expenses.

Involvement of Other Parties: If there are other parties with an interest in the mortgage security, they are included in the suit.

Preliminary Decree: The court issues a preliminary decree that outlines the rights and liabilities of all parties, using the appropriate form from Appendix D.

Example 4:

Scenario: Anil has mortgaged his apartment to secure a loan from a private lender. He fails to repay the loan, and the lender files a suit for foreclosure.

Application of the Act:

Foreclosure Suit: The private lender files a suit for foreclosure against Anil.

Court's Decision: The court rules in favor of the private lender.

Decree for Sale: The court decides to order the sale of the mortgaged apartment instead of foreclosure.

Terms of Sale: The court specifies the terms for the sale, including the deposit of a reasonable sum to cover the sale expenses.

Involvement of Other Parties: If there are other mortgagees or individuals with an interest in the property, they are included in the suit.

Preliminary Decree: The court issues a preliminary decree that details the rights and liabilities of all parties, using the appropriate form from Appendix D.

Rule 5: Final decree in suit for sale.

(1) Where, on or before the day fixed or at any time before the confirmation of a sale made in pursuance of a final decree passed under sub-rule (3) of this rule, the defendant makes payment into Court of all amounts due from him under sub-rule (1) of rule 4, the Court shall, on application made by the defendant in this behalf, pass a final decree or, if such decree has been passed, an order -

(a) ordering the plaintiff to deliver up the documents referred to in the preliminary decree, and, if necessary, -

(b) ordering him to transfer the mortgaged property as directed in the said decree, and, also, if necessary, -

(c) ordering him to put the defendant in possession of the property.

(2) Where the mortgaged property or part thereof has been sold in pursuance of a decree passed under sub-rule (3) of this rule, the Court shall not pass an order under sub-rule (1) of this rule, unless the defendant, in addition to the amount mentioned in sub-rule (1), deposits in Court for payment to the purchaser a sum equal to five per cent. of the amount of the purchase-money paid into Court by the purchaser.

Where such deposit has been made, the purchaser shall be entitled to an order for repayment of the amount of the purchase-money paid into Court by him, together with a sum equal to five per cent. thereof.

(3) Where payment in accordance with sub-rule (1) has not been made, the Court shall, on application made by the plaintiff in this behalf, pass a final decree directing that the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale be dealt with in the manner provided in sub-rule (1) of rule 4.

6.

Simplified act

(1) If the defendant pays all the money he owes before the sale is confirmed or by the deadline set by the court, the court will, upon the defendant's request, issue a final decision or, if a final decision has already been made, an order to:

(a) Tell the plaintiff to give back the documents mentioned in the initial decision, and if needed, -

(b) Tell the plaintiff to transfer the mortgaged property as stated in the initial decision, and also, if needed, -

(c) Tell the plaintiff to give the defendant possession of the property.

(2) If the mortgaged property or part of it has been sold based on a court decision, the court will not issue an order under point (1) unless the defendant also deposits an extra 5% of the purchase price into the court for the buyer.

If this deposit is made, the buyer can get back the purchase money he paid to the court, plus an extra 5%.

(3) If the defendant does not make the payment as described in point (1), the court will, upon the plaintiff's request, issue a final decision to sell the mortgaged property or enough of it to cover the debt, and the money from the sale will be used as described in point (1) of rule 4.

6.

Explanation using Example

Example 1:

Scenario: Rajesh has taken a loan from Suresh by mortgaging his house. Rajesh fails to repay the loan, and Suresh files a suit for the sale of the mortgaged property.

Preliminary Decree: The court passes a preliminary decree stating the amount Rajesh owes to Suresh.

Final Decree: The court sets a date for Rajesh to repay the amount. Rajesh fails to repay by the specified date.

Sale of Property: The court orders the sale of Rajesh's house to recover the loan amount.

Payment Before Confirmation: Before the sale is confirmed, Rajesh manages to gather the money and deposits the full amount due into the court.

Application by Rajesh: Rajesh applies to the court to stop the sale.

Court's Order: The court orders Suresh to return the mortgage documents to Rajesh, transfer the property back to Rajesh, and put Rajesh back in possession of the house.

Example 2:

Scenario: Priya has mortgaged her shop to Anil for a loan. Priya defaults on the loan, and Anil files a suit for the sale of the mortgaged property.

Preliminary Decree: The court issues a preliminary decree specifying the amount Priya owes.

Final Decree: The court sets a deadline for Priya to repay the amount. Priya fails to repay by the deadline.

Sale of Property: The court orders the sale of Priya's shop.

Property Sold: The shop is sold to a third party, Ramesh, in an auction.

Payment Before Confirmation: Before the sale is confirmed, Priya manages to arrange the money and deposits the full amount due, plus an additional 5% of the purchase price, into the court.

Application by Priya: Priya applies to the court to stop the sale.

Court's Order: The court orders Ramesh to be repaid the purchase money along with an additional 5%. The court also orders Anil to return the mortgage documents to Priya, transfer the property back to Priya, and put Priya back in possession of the shop.

Example 3:

Scenario: Mohan has mortgaged his farmland to Ravi for a loan. Mohan defaults on the loan, and Ravi files a suit for the sale of the mortgaged property.

Preliminary Decree: The court issues a preliminary decree specifying the amount Mohan owes.

Final Decree: The court sets a deadline for Mohan to repay the amount. Mohan fails to repay by the deadline.

Sale of Property: The court orders the sale of Mohan's farmland.

Property Sold: The farmland is sold to a third party, Sunil, in an auction.

No Payment Before Confirmation: Mohan is unable to arrange the money before the sale is confirmed.

Court's Order: The court confirms the sale, and the proceeds from the sale are used to pay off the loan amount owed to Ravi. Mohan loses possession of the farmland permanently.

Example 4:

Scenario: Anjali has mortgaged her apartment to Neha for a loan. Anjali defaults on the loan, and Neha files a suit for the sale of the mortgaged property.

Preliminary Decree: The court issues a preliminary decree specifying the amount Anjali owes.

Final Decree: The court sets a deadline for Anjali to repay the amount. Anjali fails to repay by the deadline.

Sale of Property: The court orders the sale of Anjali's apartment.

Payment Before Confirmation: Before the sale is confirmed, Anjali manages to gather the money and deposits the full amount due into the court.

Application by Anjali: Anjali applies to the court to stop the sale.

Court's Order: The court orders Neha to return the mortgage documents to Anjali, transfer the property back to Anjali, and put Anjali back in possession of the apartment.

Rule 6: Recovery of balance due on mortgage in suit for sale.

Where the net proceeds of any sale held under rule 5 are found insufficient to pay the amount due to the plaintiff, the Court, on application by him may, if the balance is legally recoverable from the defendant otherwise than out of the property sold, pass a decree for such balance.

7.

Simplified act

If the money made from selling something under rule 5 isn't enough to pay what the plaintiff is owed, the Court can help. The plaintiff can ask the Court to make the defendant pay the remaining amount, as long as it's legal to get that money from the defendant in other ways besides selling the property.

7.

Explanation using Example

Example 1:

Rajesh took a loan of ₹10,00,000 from a bank and mortgaged his house as security. Due to financial difficulties, Rajesh was unable to repay the loan. The bank filed a suit for the sale of the mortgaged house under Rule 5 of Order XXXIV. The court ordered the sale of the house, and it was sold for ₹8,00,000. However, the amount due to the bank was ₹10,00,000, leaving a balance of ₹2,00,000. The bank applied to the court under Rule 6 for recovery of the remaining ₹2,00,000. The court, finding the balance legally recoverable from Rajesh, passed a decree for the recovery of ₹2,00,000 from Rajesh's other assets.

Example 2:

Sunita borrowed ₹15,00,000 from a financial institution and mortgaged her commercial property. She defaulted on the loan, and the financial institution initiated a suit for the sale of the mortgaged property. The property was sold for ₹12,00,000, but the outstanding loan amount was ₹15,00,000, resulting in a shortfall of ₹3,00,000. The financial institution applied to the court under Rule 6 to recover the remaining ₹3,00,000. The court, after verifying that the balance was legally recoverable from Sunita, issued a decree for the recovery of ₹3,00,000 from Sunita's other assets or income.

Rule 7: Preliminary decree in redemption suit.

Redemption Suit Preliminary Decree

(1) In a suit for redemption, if the plaintiff succeeds, the Court shall pass a preliminary decree -

(a) ordering that an account be taken of what was due to the defendant at the date of such decree for -

(i) principal and interest on the mortgage,

(ii) the costs of suit, if any, awarded to him, and

(iii) other costs, charges and expenses properly incurred by him up to that date, in respect of mortgage-security, together with interest thereon;

(b) declaring the amount so due at that date; and

(c) directing -

(i) that, if the plaintiff pays into Court the amount so found or declared due on or before such date as the Court may fix within six months from the date on which the Court confirms and countersigns the account taken under clause (a), or from the date on which such amount is declared in Court under clause (b), as the case may be, and thereafter pays such amount as may be adjudged due in respect of subsequent costs, charges and expenses as provided in rule 10, together with subsequent interest on such sums respectively as provided in rule 11, the defendant shall deliver up to the plaintiff, or to such person as the plaintiff appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, retransfer the property to the plaintiff at his cost free from the mortgage and from all encumbrances created by the defendant or any person claiming under him where the defendant claims by derived title, by those under whom he claims, and shall also, if necessary, put the plaintiff in possession of the property; and

(ii) that, if payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed, or the plaintiff fails to pay, within such time as the Court may fix, the amount adjudged due in respect of subsequent costs, charges, expenses and interest, the defendant shall be entitled to apply for a final decree -

(a) in the case of a mortgage other than a usufructuary mortgage, a mortgage by conditional sale, or an anomalous mortgage the terms of which provide for foreclosure only and not for sale, that the mortgaged property be sold, or

(b) in the case of a mortgage by conditional sale or such an anomalous mortgage as aforesaid, that the plaintiff be debarred from all right to redeem the property.

(2) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, at any time before the passing of a final decree for foreclosure or sale, as the case may be, extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest.

Simplified act

Redemption Suit Preliminary Decree

(1) In a case where someone wants to get their property back from a mortgage (called a redemption suit), if the person who filed the case (the plaintiff) wins,

the Court will issue an initial decision (preliminary decree) that includes the following:

(a) The Court will order a calculation of how much money the plaintiff owes the defendant (the person holding the mortgage) as of the date of the decree. This includes:

(i) The original loan amount and any interest,

(ii) Any legal costs awarded to the defendant,

(iii) Other reasonable costs and expenses related to the mortgage, including interest on these amounts;

(b) The Court will declare the total amount owed as of that date; and

(c) The Court will direct:

(i) If the plaintiff pays the total amount owed into the Court within a time frame set by the Court (within six months from the date the Court confirms the amount), and also pays any additional costs, charges, and interest that come up later, the defendant must:

Hand over all documents related to the mortgaged property to the plaintiff or someone the plaintiff chooses,

If needed, transfer the property back to the plaintiff free of the mortgage and any other claims made by the defendant or anyone else claiming through the defendant,

If necessary, put the plaintiff in possession of the property;

(ii) If the plaintiff does not pay the amount owed by the set date or fails to pay any additional costs, charges, and interest within the time set by the Court, the defendant can ask for a final decision (final decree):

(a) For most types of mortgages, the property will be sold,

(b) For certain types of mortgages (like conditional sales), the plaintiff will lose the right to get the property back.

(2) The Court can, if there is a good reason and under certain conditions, extend the time for the plaintiff to pay the amount owed or any additional costs, charges, and interest, as long as this is done before the final decision for foreclosure or sale is made.

Explanation using Example

Example 1:

Scenario: Ramesh had mortgaged his house to Suresh for a loan of ₹10,00,000. After a few years, Ramesh decides to repay the loan and redeem his house.

Court Proceedings:

Ramesh files a redemption suit in the court to reclaim his mortgaged house.

Court's Preliminary Decree:

The court orders an account to be taken of what is due to Suresh, including:

Principal amount of ₹10,00,000.

Interest on the mortgage, calculated to be ₹2,00,000.

Costs of the suit awarded to Suresh, ₹50,000.

Other costs and expenses incurred by Suresh, ₹20,000.

The court declares the total amount due to Suresh as ₹12,70,000.

The court directs Ramesh to pay ₹12,70,000 into the court within six months.

Outcome:

If Ramesh pays the amount within the stipulated time, Suresh must hand over all documents related to the mortgaged property to Ramesh and retransfer the property free from the mortgage.

If Ramesh fails to pay, Suresh can apply for a final decree to sell the mortgaged property.

Example 2:

Scenario: Priya had mortgaged her farmland to Anil for a loan of ₹5,00,000. Priya wants to redeem her farmland but is unable to pay the entire amount within the initially fixed period.

Court Proceedings:

Priya files a redemption suit in the court to reclaim her mortgaged farmland.

Court's Preliminary Decree:

The court orders an account to be taken of what is due to Anil, including:

Principal amount of ₹5,00,000.

Interest on the mortgage, calculated to be ₹1,00,000.

Costs of the suit awarded to Anil, ₹30,000.

Other costs and expenses incurred by Anil, ₹10,000.

The court declares the total amount due to Anil as ₹6,40,000.

The court directs Priya to pay ₹6,40,000 into the court within six months.

Extension of Time:

Priya shows good cause for her inability to pay within the fixed period and requests an extension.

The court, upon good cause shown, extends the time for payment by an additional three months.

Outcome:

If Priya pays the amount within the extended period, Anil must hand over all documents related to the mortgaged property to Priya and retransfer the property free from the mortgage.

If Priya fails to pay even within the extended period, Anil can apply for a final decree to sell the mortgaged property.

Rule 8: Final decree in redemption suit.

(1) Where, before a final decree debarring the plaintiff from all right to redeem the mortgaged property has been passed or before the confirmation of a sale held in pursuance of a final decree passed under sub-rule (3) of this rule, the plaintiff makes payment into Court of all amounts due from him under sub-rule (1) of rule 7, the Court shall, on application made by the plaintiff in this behalf, pass a final decree or, if such decree has been passed, an order -

(a) ordering the defendant to deliver up the documents referred to in the preliminary decree, and, if necessary, -

(b) ordering him to re-transfer at the cost of the plaintiff the mortgaged property as directed in the said decree, and, also, if necessary, -

(c) ordering him to put the plaintiff in possession of the property.

(2) Where the mortgaged property or a part thereof has been sold in pursuance of a decree passed under sub-rule (3) of this rule, the Court shall not pass an order under sub-rule (1) of this rule, unless the plaintiff, in addition to the amount mentioned in sub-rule (1), deposits in Court for payment to the purchaser a sum equal to five per cent. of the amount of the purchase-money paid into Court by the purchaser.

Where such deposit has been made, the purchaser shall be entitled to an order for repayment of the amount of the purchase-money paid into Court by him, together with a sum equal to five per cent. thereof.

(3) Where payment in accordance with sub-rule (1) has not been made, the Court shall, on application made by the defendant in this behalf, -

(a) in the case of a mortgage by conditional sale or of such an anomalous mortgage as is hereinbefore referred to in rule 7, pass a final decree declaring that the plaintiff and all persons claiming under him are debarred from all right to redeem the mortgaged property and, also, if necessary, ordering the plaintiff to put the defendant in possession of the mortgaged property; or

(b) in the case of any other mortgage, not being a usufructuary mortgage, pass a final decree that the mortgaged property or a sufficient part thereof be sold, and the proceeds of the sale (after deduction therefrom of the expenses of the sale) be paid into Court and applied in payment of what is found due to the defendant, and the balance, if any, be paid to the plaintiff or other persons entitled to receive the same.

8A.

Simplified act

Simplified act in Layman's English

(1) If, before a final decision is made that stops the plaintiff (the person who brought the case) from reclaiming the mortgaged property, or before the sale of the property is confirmed, the plaintiff pays all the money he owes to the court, the court will, upon the plaintiff's request:

(a) Order the defendant (the person being sued) to give back the documents mentioned in the initial court decision, and if needed,

(b) Order the defendant to transfer the mortgaged property back to the plaintiff at the plaintiff's expense, and if needed,

(c) Order the defendant to give the plaintiff possession of the property.

(2) If the mortgaged property or part of it has been sold based on a court decision, the court will not issue an order as described in (1) unless the plaintiff also deposits an additional amount equal to 5% of the purchase price into the court for the buyer.

If this deposit is made, the buyer is entitled to get back the purchase money they paid, plus an extra 5%.

(3) If the plaintiff does not make the payment as required in (1), the court will, upon the defendant's request:

(a) In the case of a conditional sale mortgage or a special type of mortgage mentioned in rule 7, issue a final decision stating that the plaintiff and anyone claiming through him cannot reclaim the mortgaged property, and if needed, order the plaintiff to give the defendant possession of the property; or

(b) In the case of any other type of mortgage (except a usufructuary mortgage), issue a final decision that the property or part of it be sold, and the money from the sale (after deducting sale expenses) be paid into the court and used to pay what the plaintiff owes the defendant, with any remaining balance given to the plaintiff or other entitled persons.

8A.

Explanation using Example

Example 1:

Scenario: Ramesh has mortgaged his house to Suresh for a loan. Ramesh fails to repay the loan on time, and Suresh files a redemption suit to recover the loan amount.

Application of Rule 8:

Before Final Decree: Before the court passes a final decree that would prevent Ramesh from redeeming his house, Ramesh manages to gather the money he owes and deposits it into the court.

Court's Action: Ramesh applies to the court, and the court orders Suresh to:
Deliver all the mortgage documents back to Ramesh.

Re-transfer the house back to Ramesh at Ramesh's cost.

Put Ramesh back in possession of the house.

Example 2:

Scenario: Priya has mortgaged her shop to Anil. Priya fails to repay the loan, and Anil gets a final decree from the court to sell the shop. The shop is sold to a third party, Rajesh.

Application of Rule 8:

After Sale but Before Confirmation: Before the sale is confirmed, Priya manages to arrange the money she owes, including an additional 5% of the purchase money paid by Rajesh.

Court's Action: Priya deposits the total amount into the court, and the court orders:

Rajesh to be repaid the purchase money he paid, plus an additional 5%.

The shop to be re-transferred to Priya.

Priya to be put back in possession of the shop.

Example 3:

Scenario: Sunita has mortgaged her farmland to Vijay. Sunita fails to repay the loan, and Vijay gets a final decree from the court to sell the farmland. Sunita does not make any payment to the court.

Application of Rule 8:

No Payment Made: Since Sunita does not make the required payment, Vijay applies to the court.

Court's Action: The court:

Declares that Sunita and anyone claiming under her have no right to redeem the farmland.

Orders Sunita to hand over possession of the farmland to Vijay.

Example 4:

Scenario: Arjun has mortgaged his apartment to Neha. Arjun fails to repay the loan, and Neha gets a final decree from the court to sell the apartment. The apartment is sold, and Arjun does not make any payment to the court.

Application of Rule 8:

No Payment Made: Since Arjun does not make the required payment, Neha applies to the court.

Court's Action: The court:

Orders the sale proceeds (after deducting sale expenses) to be paid into the court.

Uses the sale proceeds to pay Neha what she is owed.

Pays any remaining balance to Arjun or other entitled persons.

Rule 8A: Recovery of balance due on mortgage in suit for redemption.

Where the net proceeds of any sale held under rule 8 are found insufficient to pay the amount due to the defendant, the Court, on application by him in execution, may, if the balance is legally recoverable from the plaintiff otherwise than out of the property sold, pass a decree for such balance.

Simplified act

If the money made from a sale (done under rule 8) isn't enough to pay what the defendant is owed, the Court can help. The defendant can ask the Court to make the plaintiff pay the remaining amount, as long as it's legally allowed and not from the sold property.

Explanation using Example

Example 1:

Ravi took a loan of ₹10,00,000 from a bank and mortgaged his house as security. After a few years, Ravi was unable to repay the loan, and the bank filed a suit for the sale of the mortgaged house under Rule 8. The house was sold for ₹8,00,000, but the outstanding loan amount, including interest and penalties, had grown to ₹12,00,000. The net proceeds from the sale were insufficient to cover the total amount due.

In this scenario, the bank (defendant) can apply to the court under Rule 8A for the recovery of the remaining ₹4,00,000 from Ravi (plaintiff). The court, upon verifying that the balance is legally recoverable, may pass a decree ordering Ravi to pay the remaining ₹4,00,000 to the bank.

Example 2:

Sunita borrowed ₹5,00,000 from a private lender and mortgaged her agricultural land as collateral. Due to financial difficulties, Sunita defaulted on the loan, and the lender initiated a suit for the sale of the mortgaged land under Rule 8. The land was auctioned and sold for ₹3,50,000, but the total amount due to the lender, including interest, was ₹6,00,000.

Since the sale proceeds were insufficient to cover the debt, the lender (defendant) can file an application in court under Rule 8A to recover the remaining ₹2,50,000 from Sunita (plaintiff). If the court finds that the balance is legally recoverable, it may issue a decree directing Sunita to pay the ₹2,50,000 balance to the lender.

Rule 9: Decree where nothing is found due or where mortgagee has been overpaid.

Notwithstanding anything hereinbefore contained, if it appears, upon taking the account referred to in rule 7, that nothing is due to the defendant or that he has been overpaid, the Court shall pass a decree directing the defendant, if so required, to re-transfer the property and to pay to the plaintiff the amount which may be found due to him; and the plaintiff shall, if necessary, be put in possession of the mortgaged property.

Simplified act

Even if the previous rules say otherwise, if after reviewing the account mentioned in rule 7, it turns out that:

The defendant doesn't owe any money, or

The defendant has been paid too much,

The Court will issue an order that:

Requires the defendant to give back the property if needed, and

Pay the plaintiff any money that is owed to them.

Additionally, if needed, the plaintiff will be given possession of the mortgaged property.

Explanation using Example

Example 1:

Scenario: Rajesh took a loan of ₹10,00,000 from Suresh by mortgaging his house. Over the years, Rajesh has been making regular payments to Suresh. After a detailed account review as per Rule 7, it is found that Rajesh has already paid ₹10,50,000, which is ₹50,000 more than the loan amount.

Application of Rule 9: The court will pass a decree stating that Suresh has been overpaid by ₹50,000. Suresh will be required to re-transfer the mortgaged house back to Rajesh and also pay ₹50,000 to Rajesh. If necessary, Rajesh will be put back in possession of his house.

Example 2:

Scenario: Priya mortgaged her farmland to Anil for a loan of ₹5,00,000. After a few years, Priya repaid ₹4,00,000 and then stopped making payments. Anil filed a suit to recover the remaining amount. Upon taking the account as per Rule 7, it is found that Priya still owes ₹1,00,000 to Anil.

Application of Rule 9: The court will pass a decree stating that Priya still owes ₹1,00,000 to Anil. Since nothing is overpaid, Anil is not required to re-transfer the property. Priya will be directed to pay the remaining ₹1,00,000 to Anil. If Priya fails to pay, Anil may continue to hold the mortgage on the farmland.

Rule 10: Costs of mortgagee subsequent to decree.

In finally adjusting the amount to be paid to a mortgagee in case of a foreclosure, sale or redemption, the Court shall, unless in the case of costs of the suit the conduct of the mortgagee has been such as to disentitle him thereto, add to the mortgage-money such costs of the suit and other costs, charges and expenses as have been properly incurred by him since the date of the preliminary decree for foreclosure, sale or redemption up to the time of actual payment:

Provided that where the mortgagor, before or at the time of the institution of the suit, tenders or deposits the amount due on the mortgage, or such amount as is not subsequently deficient in the opinion of the Court, he shall not be

ordered to pay the costs of the suit to the mortgagee and the mortgagor shall be entitled to recover his own costs of the suit from the mortgagee, unless the Court, for reasons to be recorded, otherwise directs.

10A.

Simplified act

When the Court is deciding how much money should be paid to a mortgage lender (mortgagee) in case of a foreclosure, sale, or redemption, it will usually add the costs of the lawsuit and other related expenses to the mortgage amount. This is unless the mortgage lender has acted in a way that makes them undeserving of these costs. These additional costs include any expenses that the mortgage lender has properly incurred from the date of the initial court decision until the actual payment is made.

However, if the borrower (mortgagor) pays or deposits the amount due on the mortgage before or at the time the lawsuit starts, and this amount is not considered insufficient by the Court, the borrower will not have to pay the costs of the lawsuit to the mortgage lender. Instead, the borrower can recover their own lawsuit costs from the mortgage lender, unless the Court decides otherwise and provides reasons for this decision.

10A.

Explanation using Example

Example 1:

Scenario: Ramesh took a loan from a bank by mortgaging his house. He failed to repay the loan, and the bank filed a suit for foreclosure.

Application of Rule 10:

The court issues a preliminary decree for foreclosure.

Ramesh does not repay the loan even after the preliminary decree.

The bank incurs additional costs for legal fees, property maintenance, and other related expenses after the preliminary decree.

When the court finally adjusts the amount Ramesh has to pay, it includes these additional costs incurred by the bank.

However, if the court finds that the bank acted improperly during the suit, it may decide not to add these costs to the mortgage money.

Example 2:

Scenario: Sita mortgaged her land to a private lender and later defaulted on the loan. The lender filed a suit for the sale of the mortgaged property.

Application of Rule 10:

The court issues a preliminary decree for the sale of the property.

Sita manages to gather the required amount and deposits it in the court before the final decree.

The court finds that the amount deposited by Sita is sufficient to cover the mortgage debt.

Since Sita deposited the amount due before the final decree, the court orders that she does not have to pay the lender's legal costs.

Additionally, Sita is entitled to recover her own legal costs from the lender unless the court decides otherwise for specific reasons.

Example 3:

Scenario: Mohan mortgaged his shop to a finance company and defaulted on the loan. The finance company filed a suit for redemption.

Application of Rule 10:

The court issues a preliminary decree for redemption.

Mohan does not repay the loan even after the preliminary decree.

The finance company incurs additional costs for legal fees and other related expenses after the preliminary decree.

When the court finally adjusts the amount Mohan has to pay, it includes these additional costs incurred by the finance company.

However, if Mohan had tendered or deposited the due amount before or at the time of the suit, he would not be liable for the finance company's legal costs, and he could recover his own legal costs from the finance company unless the court decides otherwise.

Rule 10A: Power of Court to direct mortgagee to pay mesne profits.

Mesne profits. - Where in a suit for foreclosure, the mortgagor has, before or at the time of the institution of the suit, tendered or deposited the sum due on the mortgage, or such sum as is not substantially deficient in the opinion of the Court, the Court shall direct the mortgagee to pay to the mortgagor mesne profits for the period beginning with the institution of the suit.

Simplified act

Mesne profits. - In a foreclosure lawsuit, if the person who borrowed money (the mortgagor) has offered or deposited the amount owed on the mortgage before or when the lawsuit starts, or if the amount is close enough according to the Court, the Court will order the person who lent the money (the mortgagee) to pay the borrower (the mortgagor) any profits made from the property starting from the time the lawsuit was filed.

Explanation using Example

Example 1:

Ravi took a loan from Suresh by mortgaging his house. Due to financial difficulties, Ravi was unable to repay the loan on time. Suresh then filed a suit for foreclosure to take possession of the house. However, before the court proceedings began, Ravi managed to gather the required amount and deposited it in the court. The court found that the amount deposited by Ravi was not substantially deficient. As a result, the court directed Suresh to pay mesne profits to Ravi for the period starting from the date Suresh filed the foreclosure suit until the date Ravi deposited the amount.

Example 2:

Priya mortgaged her farmland to Anil to secure a loan. When Priya defaulted on the loan, Anil filed a foreclosure suit to take possession of the farmland. Before the court could pass a final order, Priya deposited the outstanding loan amount in the court, which the court deemed sufficient. Consequently, the court ordered Anil to pay mesne profits to Priya for the period from the date Anil filed the foreclosure suit until the date Priya deposited the loan amount in the court.

Rule 11: Payment of interest.

In any decree passed in a suit for foreclosure, sale, or redemption, where interest is legally recoverable, the Court may order payment of interest to the mortgagee as follows, namely:

(a) Interest up to the date on or before which payment of the amount found or declared due is under the preliminary decree to be made by the mortgagor or other person redeeming the mortgage:

(i) On the principal amount found or declared due on the mortgage, at the rate payable on the principal, or, where no such rate is fixed, at such rate as the Court deems reasonable,

(ii) On the amount adjudged due to the mortgagee for costs, charges, and expenses properly incurred by the mortgagee in respect of the mortgage-security up to the date of the preliminary decree and added to the mortgage-money, at the rate agreed between the parties or, failing such rate, at such rate not exceeding six per cent per annum as the Court deems reasonable;

(b) Subsequent interest up to the date of realization or actual payment on the aggregate of the principal sums specified in clause (a) as calculated in accordance with that clause at such rate as the Court deems reasonable.

Simplified act

In any court decision involving the foreclosure, sale, or redemption of a mortgage, where interest can be legally collected, the Court can order the payment of interest to the mortgage lender as follows:

(a) Interest up to the date by which the borrower or another person redeeming the mortgage must pay the amount due, as stated in the initial court decision:

(i) On the main amount owed on the mortgage, at the interest rate agreed upon, or if no rate is set, at a rate the Court considers fair,

(ii) On the amount owed to the mortgage lender for costs, charges, and expenses properly incurred related to the mortgage up to the date of the initial court decision, at the agreed rate, or if no rate is set, at a rate not exceeding six percent per year that the Court considers fair;

(b) Interest after the initial payment date up to the date the full amount is paid, on the total of the principal amounts mentioned in clause (a), calculated at a rate the Court considers fair.

Explanation using Example

Example 1:

Scenario: Mr. Sharma took a loan of ₹10,00,000 from ABC Bank by mortgaging his house. The loan agreement specified an interest rate of 8% per annum. Mr. Sharma failed to repay the loan, and ABC Bank filed a suit for foreclosure.

Court's Decision:

Preliminary Decree: The court passed a preliminary decree stating that Mr. Sharma must pay the principal amount of ₹10,00,000 along with the interest accrued up to the date specified in the decree.

Interest Calculation: The court ordered that interest on the principal amount of ₹10,00,000 be calculated at the agreed rate of 8% per annum up to the date specified in the preliminary decree.

Costs and Charges: The court also adjudged that Mr. Sharma must pay ₹50,000 towards costs, charges, and expenses incurred by ABC Bank. Since no specific rate was agreed upon for these costs, the court deemed a reasonable rate of 6% per annum.

Subsequent Interest: The court ordered that subsequent interest on the total amount (₹10,00,000 principal + ₹50,000 costs) be calculated at a reasonable rate of 7% per annum until the date of realization or actual payment.

Outcome: Mr. Sharma is required to pay:

₹10,00,000 (principal) + interest at 8% per annum up to the date specified in the preliminary decree.

₹50,000 (costs) + interest at 6% per annum up to the date specified in the preliminary decree.

Subsequent interest at 7% per annum on the total amount (₹10,50,000) until the date of realization or actual payment.

Example 2:

Scenario: Mrs. Gupta borrowed ₹5,00,000 from XYZ Finance by mortgaging her shop. The loan agreement did not specify an interest rate. Mrs. Gupta defaulted on the loan, and XYZ Finance filed a suit for sale of the mortgaged property.

Court's Decision:

Preliminary Decree: The court passed a preliminary decree stating that Mrs. Gupta must pay the principal amount of ₹5,00,000 along with interest accrued up to the date specified in the decree.

Interest Calculation: Since no interest rate was specified in the loan agreement, the court deemed a reasonable rate of 9% per annum on the principal amount of ₹5,00,000 up to the date specified in the preliminary decree.

Costs and Charges: The court adjudged that Mrs. Gupta must pay ₹30,000 towards costs, charges, and expenses incurred by XYZ Finance. The court deemed a reasonable rate of 6% per annum for these costs.

Subsequent Interest: The court ordered that subsequent interest on the total amount (₹5,00,000 principal + ₹30,000 costs) be calculated at a reasonable rate of 8% per annum until the date of realization or actual payment.

Outcome: Mrs. Gupta is required to pay:

₹5,00,000 (principal) + interest at 9% per annum up to the date specified in the preliminary decree.

₹30,000 (costs) + interest at 6% per annum up to the date specified in the preliminary decree.

Subsequent interest at 8% per annum on the total amount (₹5,30,000) until the date of realization or actual payment.

Rule 12: Sale of property subject to prior mortgage.

Where any property the sale of which is directed under this Order is subject to a prior mortgage, the Court may, with the consent of the prior mortgagee, direct that the property be sold free from the same, giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold.

Simplified act

If a property that needs to be sold according to this Order has an existing mortgage on it, the Court can decide to sell the property without the mortgage, but only if the mortgage holder agrees.

The mortgage holder will then have the same rights to the money from the sale as they had to the property itself.

Explanation using Example

Example 1:

Ravi owns a piece of land in Mumbai, which he mortgaged to Bank A for a loan. Later, Ravi took another loan from Bank B and mortgaged the same land again. Ravi defaulted on the loan from Bank B, and Bank B approached the court to sell the land to recover its dues. Under Rule 12 of Order XXXIV of The Code Of Civil Procedure 1908, the court can order the sale of the land. However, since the land is already mortgaged to Bank A, the court, with the consent of Bank A, can direct that the land be sold free from Bank A's mortgage. Bank A will then have the same interest in the proceeds from the sale as it had in the land itself. This means Bank A will be paid from the sale proceeds before Bank B or any other creditors.

Example 2:

Sita owns a commercial property in Delhi, which she mortgaged to Lender X for a business loan. Later, she took another loan from Lender Y and mortgaged the same property again. Sita failed to repay Lender Y, who then filed a suit to sell the property to recover the loan amount. According to Rule 12 of Order XXXIV of The Code Of Civil Procedure 1908, the court can order the sale of the property. Since the property is already under a prior mortgage to Lender X, the court, with Lender X's consent, can direct that the property be sold free from Lender X's mortgage. Lender X will then receive the same interest in the sale proceeds as it had in the property, ensuring that Lender X is paid from the sale proceeds before Lender Y or any other creditors.

Rule 13: Application of proceeds.

(1) Such proceeds shall be brought into Court and applied as follows:

first, in payment of all expenses incident to the sale or properly incurred in any attempted sale;

secondly, in payment of whatever is due to the prior mortgagee on account of the prior mortgage, and of costs, properly incurred in connection therewith;

thirdly, in payment in all interest due on account of the mortgage in consequence whereof the sale was directed, and of the costs of the suit in which the decree directing the sale was made;

fourthly, in payment of the principal money due on account of that mortgage; and

lastly, the residue (if any) shall be paid to the person proving himself to be interested in the property sold, or if there are more such persons than one, then to such persons according to their respective interests therein or upon their joint receipt.

(2) Nothing in this rule or in rule 12 shall be deemed to affect the powers conferred by section 57 of the Transfer of Property Act, 1882 (4 of 1882).

Simplified act

(1) The money from the sale will be used in this order:

first, to pay for all the costs related to the sale or any attempts to sell;

second, to pay off any money owed to the first mortgage lender, including any related costs;

third, to pay any interest owed on the mortgage that led to the sale, and the legal costs of the case that ordered the sale;

fourth, to pay the main amount of money owed on that mortgage; and

lastly, any leftover money will be given to the person who proves they have an interest in the sold property. If there are multiple people, the money will be divided among them based on their share of interest or given to them together.

(2) This rule and rule 12 do not change the powers given by section 57 of the Transfer of Property Act, 1882 (4 of 1882).

Explanation using Example

Example 1:

Scenario: Ramesh has taken a mortgage loan from Bank A using his house as collateral. Later, he also takes a second mortgage loan from Bank B using the same house as collateral. Ramesh defaults on both loans, and Bank A initiates a legal process to sell the house to recover the loan amount.

Application of Rule 13:

Expenses of Sale: The court orders the sale of Ramesh's house. The proceeds from the sale are first used to cover the expenses related to the sale, such as auction fees, legal fees, and any other costs incurred during the sale process.

Payment to Prior Mortgagee: After covering the sale expenses, the remaining proceeds are used to pay off the amount due to Bank A (the prior mortgagee), including any interest and costs incurred by Bank A in connection with the mortgage.

Interest on Subsequent Mortgage: If there are still funds left after paying Bank A, the next priority is to pay the interest due on the mortgage held by Bank B (the subsequent mortgagee).

Principal of Subsequent Mortgage: After paying the interest, the remaining funds are used to pay the principal amount due to Bank B.

Residue: If there is any money left after paying both Bank A and Bank B, the residue is paid to Ramesh or any other person who proves to have an interest in the property, such as a co-owner or a legal heir.

Example 2:

Scenario: Sita has mortgaged her farmland to Bank X. Later, she takes another loan from Bank Y using the same farmland as collateral. Sita fails to repay both loans, and Bank X files a suit to sell the farmland to recover the loan amount.

Application of Rule 13:

Expenses of Sale: The court orders the sale of Sita's farmland. The proceeds from the sale are first used to cover the expenses related to the sale, such as auction fees, legal fees, and any other costs incurred during the sale process.

Payment to Prior Mortgagee: After covering the sale expenses, the remaining proceeds are used to pay off the amount due to Bank X (the prior mortgagee), including any interest and costs incurred by Bank X in connection with the mortgage.

Interest on Subsequent Mortgage: If there are still funds left after paying Bank X, the next priority is to pay the interest due on the mortgage held by Bank Y (the subsequent mortgagee).

Principal of Subsequent Mortgage: After paying the interest, the remaining funds are used to pay the principal amount due to Bank Y.

Residue: If there is any money left after paying both Bank X and Bank Y, the residue is paid to Sita or any other person who proves to have an interest in the property, such as a co-owner or a legal heir.

Rule 14: Suit for sale necessary for bringing mortgaged property to sale.

Mortgage Decree

(1) Where a mortgagee has obtained a decree for the payment of money in satisfaction of a claim arising under the mortgage, he shall not be entitled to bring the mortgaged property to sale otherwise than by instituting a suit for sale in enforcement of the mortgage, and he may institute such suit notwithstanding anything contained in Order II, rule 2.

(2) Nothing in sub-rule (1) shall apply to any territories to which the Transfer of Property Act, 1882 (4 of 1882), has not been extended.

Simplified act

Mortgage Decree

(1) If a lender (mortgagee) wins a court case to get money they are owed from a mortgage, they cannot sell the property used as security for the loan without filing a separate lawsuit specifically to sell the property. They can file this lawsuit even if other rules might suggest they can't.

(2) The rule in (1) does not apply to areas where the Transfer of Property Act, 1882, does not apply.

Explanation using Example

Example 1:

Scenario: Rajesh, a resident of Mumbai, took a loan of ₹10 lakhs from ABC Bank by mortgaging his house. Due to financial difficulties, Rajesh defaulted on the loan repayment. ABC Bank obtained a decree from the court for the payment of the outstanding loan amount.

Application of Rule 14: ABC Bank cannot directly sell Rajesh's mortgaged house to recover the loan amount. Instead, the bank must file a separate suit for the sale of the mortgaged property in the court. This suit will be specifically for enforcing the mortgage and bringing the property to sale. Only after

obtaining a court order through this suit can the bank proceed with the sale of Rajesh's house.

Example 2:

Scenario: Priya, a businesswoman in Delhi, borrowed ₹20 lakhs from XYZ Finance by mortgaging her commercial property. Priya failed to repay the loan, and XYZ Finance obtained a court decree for the repayment of the loan amount.

Application of Rule 14: XYZ Finance cannot directly auction Priya's commercial property to recover the loan amount. They must first file a suit for the sale of the mortgaged property in the court. This suit is necessary to enforce the mortgage and obtain a court order for the sale. Once the court grants the order, XYZ Finance can proceed with the sale of Priya's commercial property to recover the outstanding loan amount.

Rule 15: Mortgages by the deposit of title-deeds and charges.

1. All the provisions contained in this Order which apply to a simple mortgage shall, so far as may be, apply to a mortgage by deposit of title-deeds within the meaning of section 58, and to a charge within the meaning of section 100 of the Transfer of Property Act, 1882 (4 of 1882);
2. Where a decree orders payment of money and charges it on immovable property on default of payment, the amount may be realised by sale of that property in execution of that decree.

Simplified act

1. All the rules in this Order that apply to a simple mortgage also apply to a mortgage where you deposit your property documents as security (as explained in section 58) and to a charge on property (as explained in section 100) of the Transfer of Property Act, 1882.
2. If a court orders someone to pay money and says that if they don't pay, their property can be used to cover the debt, then the property can be sold to get the money owed.

Explanation using Example

Example 1:

Scenario: Rajesh needs a loan to expand his business. He approaches a bank for a loan of ₹10,00,000. The bank agrees to provide the loan on the condition that Rajesh deposits the title-deeds of his house as security.

Application of the Act:

Rajesh deposits the title-deeds of his house with the bank, creating a mortgage by deposit of title-deeds as per Section 58 of the Transfer of Property Act, 1882.

The bank provides Rajesh with the loan amount of ₹10,00,000.

Rajesh fails to repay the loan within the stipulated time.

The bank files a suit under Order XXXIV of the Code of Civil Procedure, 1908, seeking to recover the loan amount by selling Rajesh's house.

The court issues a decree ordering Rajesh to repay the loan amount. The decree also states that if Rajesh fails to repay, the bank can sell the house to recover the loan amount.

Rajesh defaults on the payment as per the decree.

The bank proceeds to sell the house in execution of the decree to recover the loan amount.

Example 2:

Scenario: Priya borrows ₹5,00,000 from her friend Anil and agrees to create a charge on her agricultural land as security for the loan.

Application of the Act:

Priya and Anil create a charge on Priya's agricultural land as per Section 100 of the Transfer of Property Act, 1882.

Priya fails to repay the loan amount within the agreed period.

Anil files a suit under Order XXXIV of the Code of Civil Procedure, 1908, seeking to recover the loan amount by selling Priya's agricultural land.

The court issues a decree ordering Priya to repay the loan amount. The decree also states that if Priya fails to repay, Anil can sell the agricultural land to recover the loan amount.

Priya defaults on the payment as per the decree.

Anil proceeds to sell the agricultural land in execution of the decree to recover the loan amount.

ORDER XXXV: INTERPLEADER

Rule 1: Plaint in interpleader-suit.

Interpleader Suit

In every suit of interpleader the plaintiff shall, in addition to the other statements necessary for plaints, state:

- (a) that the plaintiff claims no interest in the subject-matter in dispute other than for charges or costs;
- (b) the claims made by the defendants severally; and
- (c) that there is no collusion between the plaintiff and any of the defendants.

2.

Simplified act

Interpleader Suit

In every interpleader lawsuit, the complaint must include, besides the usual information, the following details:

- (a) that the person filing the lawsuit (plaintiff) does not have any personal interest in the matter being disputed, except for any fees or costs;
- (b) the individual claims made by each of the people being sued (defendants); and
- (c) that the plaintiff is not secretly working together with any of the defendants.

2.

Explanation using Example

Example 1:

Scenario: A bank holds a fixed deposit of ₹10,00,000. Two individuals, Mr. A and Mr. B, both claim to be the rightful owner of the fixed deposit.

Application of Rule 1:

Plaintiff: The bank

Defendants: Mr. A and Mr. B

Plaint:

(a) The bank (plaintiff) states that it has no interest in the fixed deposit other than to recover any charges or costs associated with maintaining the deposit.

(b) The bank details the claims made by Mr. A and Mr. B. Mr. A claims that the fixed deposit was made by him and should be returned to him. Mr. B claims that the fixed deposit was made by his deceased father and should be inherited by him.

(c) The bank asserts that there is no collusion between itself and either Mr. A or Mr. B.

Example 2:

Scenario: A landlord receives a rent payment of ₹50,000 for a property. Two tenants, Ms. X and Ms. Y, both claim to have paid the rent and demand a receipt.

Application of Rule 1:

Plaintiff: The landlord

Defendants: Ms. X and Ms. Y

Plaint:

(a) The landlord (plaintiff) states that he has no interest in the rent payment other than to ensure that the rightful payer is acknowledged and any administrative costs are covered.

(b) The landlord outlines the claims made by Ms. X and Ms. Y. Ms. X claims that she paid the rent in cash directly to the landlord. Ms. Y claims that she transferred the rent amount via bank transfer.

(c) The landlord confirms that there is no collusion between himself and either Ms. X or Ms. Y.

Example 3:

Scenario: A jeweler holds a diamond necklace worth ₹5,00,000. Two customers, Mr. C and Mr. D, both claim ownership of the necklace.

Application of Rule 1:

Plaintiff: The jeweler

Defendants: Mr. C and Mr. D

Plaint:

(a) The jeweler (plaintiff) states that he has no interest in the diamond necklace other than to recover any charges or costs associated with holding the necklace.

(b) The jeweler describes the claims made by Mr. C and Mr. D. Mr. C claims that he purchased the necklace and has a receipt to prove it. Mr. D claims that the necklace was a gift from his grandmother and was mistakenly left at the jeweler's shop.

(c) The jeweler asserts that there is no collusion between himself and either Mr. C or Mr. D.

Rule 2: Payment of thing claimed into Court.

Where the thing claimed is capable of being paid into Court or placed in the custody of the Court, the plaintiff may be required to so pay or place it before he can be entitled to any order in the suit.

Simplified act

If the item being claimed can be given to the Court or kept by the Court, the person making the claim might have to give it to the Court before they can get any decision in their favor in the case.

Explanation using Example

Example 1:

Ravi owns a piece of land, but both Suresh and Mahesh claim that they have the right to the land. Ravi, not wanting to be caught in the middle of the dispute, files an interpleader suit under Order XXXV of the Code of Civil Procedure, 1908. The court orders Ravi to deposit the title deed of the land into the court's custody. This ensures that the title deed is secure while the court determines who the rightful owner is. Ravi complies and deposits the title deed, allowing the court to proceed with the case.

Example 2:

A bank holds a fixed deposit account in the name of Mr. Sharma, who has recently passed away. Both Mr. Sharma's son, Raj, and his daughter, Priya, claim that they are the rightful heirs to the fixed deposit. The bank, unsure of whom to release the funds to, files an interpleader suit under Order XXXV of the Code of Civil Procedure, 1908. The court instructs the bank to deposit the fixed deposit amount into the court's custody. The bank complies, and the court then proceeds to determine the rightful heir to the fixed deposit.

Rule 3: Procedure where defendant is suing plaintiff.

Where any of the defendants in an interpleader-suit is actually suing the plaintiff in respect of the subject-matter of such suit, the Court in which the suit against the plaintiff is pending shall, on being informed by the Court in which the interpleader-suit has been instituted, stay the proceedings as against him:

and his costs in the suit so stayed may be provided for in such suit; but if and in so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader-suit.

Simplified act

If someone is suing you (the plaintiff) about something that is also being disputed in another case (an interpleader-suit), the court handling the lawsuit against you must pause that case once it is informed about the interpleader-suit.

The costs you incur in the paused lawsuit can be covered in that lawsuit. If they are not covered there, they can be added to the costs you incur in the interpleader-suit.

Explanation using Example

Example 1:

Scenario: Ravi owns a piece of land. Both Suresh and Mahesh claim that they are the rightful owners of the land. Ravi, unsure of who the real owner is, files an interpleader suit in Court A, asking the court to decide who the rightful owner is.

Application: While the interpleader suit is pending in Court A, Suresh files a separate lawsuit against Ravi in Court B, claiming ownership of the same piece of land.

Outcome: According to Rule 3 of Order XXXV of The Code Of Civil Procedure 1908, Court B, upon being informed by Court A about the interpleader suit, will stay the proceedings of Suresh's lawsuit against Ravi. This means that Court B will pause the case until the interpleader suit in Court A is resolved. Additionally, any costs incurred by Suresh in the stayed suit may be covered in the interpleader suit or added to his costs in the interpleader suit.

Example 2:

Scenario: Meena has a valuable painting. Both Anil and Sunita claim that the painting belongs to them. Meena, not knowing who the true owner is, files an interpleader suit in Court X to resolve the ownership issue.

Application: While the interpleader suit is ongoing in Court X, Sunita files a separate lawsuit against Meena in Court Y, demanding the painting.

Outcome: According to Rule 3 of Order XXXV of The Code Of Civil Procedure 1908, Court Y, upon being informed by Court X about the interpleader suit, will stay the proceedings of Sunita's lawsuit against Meena. This means that Court Y will halt the case until the interpleader suit in Court X is decided. Additionally, any costs incurred by Sunita in the stayed suit may be covered in the interpleader suit or added to her costs in the interpleader suit.

Rule 4: Procedure at first hearing.

(1) At the first hearing the Court may-

(a) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the suit; or

(b) if it thinks that justice or convenience so require, retain all parties until the final disposal of the suit.

(2) Where the Court finds that the admission of the parties or other evidence enable it to do so, it may adjudicate the title to the thing claimed.

(3) Where the admissions of the parties do not enable the Court so to adjudicate, it may direct -

(a) that an issue or issues between the parties be framed and tried, and

(b) that any claimant be made a plaintiff in lieu of or in addition to the original plaintiff,

and shall proceed to try the suit in the ordinary manner.

Simplified act

(1) At the first hearing the Court may-

(a) declare that the plaintiff (the person who brought the case) is free from any responsibility to the defendants (the people being sued) regarding the issue in question, make the defendants pay the plaintiff's legal costs, and remove the plaintiff from the case; or

(b) if it thinks it is fair or convenient, keep all parties involved until the case is fully resolved.

(2) If the Court finds that the admissions (statements) of the parties or other evidence allow it to do so, it may decide who has the right to the thing being claimed.

(3) If the admissions of the parties do not allow the Court to make a decision, it may order -

(a) that specific issues between the parties be identified and resolved, and

(b) that any claimant (someone who claims a right to something) be made a plaintiff instead of or in addition to the original plaintiff,

and will continue to handle the case in the usual way.

Explanation using Example

Example 1:

Scenario: A dispute over a piece of land.

Parties Involved:

Plaintiff: Mr. Sharma, a landowner who is unsure about the rightful owner of a piece of land.

Defendants: Mr. Verma and Mr. Gupta, both claiming ownership of the same piece of land.

Application of Rule 4:

First Hearing:

The court examines the initial evidence and statements from Mr. Sharma, Mr. Verma, and Mr. Gupta.

Option (a): The court may decide that Mr. Sharma has no further liability regarding the land dispute, award him his legal costs, and dismiss him from the case. Mr. Verma and Mr. Gupta will then continue the case without Mr. Sharma.

Option (b): Alternatively, the court may decide that it is more just or convenient to keep Mr. Sharma involved until the final resolution of the case.

Adjudication of Title:

If the court finds sufficient evidence or admissions from Mr. Verma and Mr. Gupta, it may directly adjudicate and decide who the rightful owner of the land is.

Framing Issues:

If the court cannot determine ownership based on the initial evidence, it may frame specific issues to be tried, such as:

Who has the legal title to the land?

Who has been in possession of the land?

The court may also decide to make Mr. Verma or Mr. Gupta a plaintiff in addition to or instead of Mr. Sharma, and proceed with the trial in the usual manner.

Example 2:

Scenario: A dispute over a sum of money held by a bank.

Parties Involved:

Plaintiff: State Bank of India (SBI), holding a sum of money in a disputed account.

Defendants: Mr. Reddy and Ms. Singh, both claiming the money in the account.

Application of Rule 4:

First Hearing:

The court reviews the initial submissions from SBI, Mr. Reddy, and Ms. Singh.

Option (a): The court may declare that SBI is discharged from any liability regarding the money, award SBI its legal costs, and dismiss it from the case. Mr. Reddy and Ms. Singh will then continue the dispute without SBI.

Option (b): Alternatively, the court may decide that it is more just or convenient to keep SBI involved until the final resolution of the case.

Adjudication of Title:

If the court finds sufficient evidence or admissions from Mr. Reddy and Ms. Singh, it may directly adjudicate and decide who is entitled to the money.

Framing Issues:

If the court cannot determine the rightful claimant based on the initial evidence, it may frame specific issues to be tried, such as:

Who deposited the money into the account?

Who has the legal right to withdraw the money?

The court may also decide to make Mr. Reddy or Ms. Singh a plaintiff in addition to or instead of SBI, and proceed with the trial in the usual manner.

Rule 5: Agents and tenants may not institute interpleader-suits.

Nothing in this Order shall be deemed to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords.

Illustrations

(a) A deposits a box of jewels with B as his agent. C alleges that the jewels were wrongfully obtained from him by A, and claims them from B. B cannot institute an interpleader-suit against A and C.

(b) [Text missing]

Simplified act

This Order does not allow agents to sue their principals, or tenants to sue their landlords, to force them to resolve disputes with anyone other than those who have claims through the principals or landlords.

Examples

(a) A leaves a box of jewels with B, who is A's agent. C says that A took the jewels from him wrongfully and wants them back from B. B cannot start a legal case to make A and C settle the dispute.

(b) [Text missing]

Explanation using Example

Example 1:

Ravi is a tenant living in an apartment owned by Mr. Sharma. One day, Mr. Gupta comes to Ravi and claims that he is the rightful owner of the apartment and that Mr. Sharma has no legal right to rent it out. Ravi is confused and wants to resolve the issue by filing an interpleader suit to make Mr. Sharma and Mr. Gupta settle the dispute in court. However, under Rule 5 of Order XXXV of The Code of Civil Procedure 1908, Ravi, as a tenant, cannot file an interpleader suit against Mr. Sharma (his landlord) and Mr. Gupta. Ravi must wait for Mr. Sharma and Mr. Gupta to resolve their dispute through other legal means.

Example 2:

Priya works as an agent for a jewelry company owned by Ms. Kapoor. Priya is given a set of diamond necklaces to sell. However, Mr. Verma approaches Priya and claims that the necklaces were stolen from him and demands their return. Priya is unsure whether to return the necklaces to Mr. Verma or keep them for Ms. Kapoor. Priya thinks of filing an interpleader suit to make Ms. Kapoor and Mr. Verma resolve the issue in court. According to Rule 5 of Order XXXV of The Code of Civil Procedure 1908, Priya, as an agent, cannot file an interpleader suit against Ms. Kapoor (her principal) and Mr. Verma. Priya must wait for Ms. Kapoor and Mr. Verma to resolve their dispute through other legal channels.

Rule 6: Charge for plaintiff's costs.

Where the suit is properly instituted the Court may provide for the costs of the original plaintiff by giving him a charge on the thing claimed or in some other effectual way.

A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for a debt due from himself to C. A

afterwards alleges that C's debt is satisfied, and C alleges the contrary. Both claim the jewels from B. B may institute an interpleader-suit against A and C.

Simplified act

If a lawsuit is started correctly, the Court can decide who will pay the original plaintiff's legal costs. This can be done by giving the plaintiff a right to the thing being claimed or in some other effective way.

Example: A leaves a box of jewels with B, who is A's agent. A then writes to C to use the jewels as security for a debt A owes to C. Later, A says the debt to C is paid off, but C disagrees. Both A and C want the jewels from B. In this case, B can start a special type of lawsuit called an interpleader-suit against both A and C to let the Court decide who should get the jewels.

Explanation using Example

Example 1:

A owns a valuable painting and deposits it with B, an art gallery owner, for safekeeping. Later, A borrows money from C and uses the painting as collateral for the loan. A claims that he has repaid the loan to C, but C disputes this and insists that the loan is still outstanding. Both A and C demand that B return the painting to them. B, unsure of who the rightful owner is, files an interpleader suit against A and C. The court, after determining that the suit is properly instituted, may order that the costs incurred by B in filing the suit be charged against the painting or in some other effective manner.

Example 2:

D deposits a set of antique coins with E, a collector, for safekeeping. D then takes a loan from F and uses the antique coins as security for the loan. Later, D claims that he has repaid the loan, but F denies this and claims that the loan is still unpaid. Both D and F demand that E return the antique coins to them. E, not knowing who has the rightful claim, files an interpleader suit against D and F. The court, recognizing that the suit is properly instituted, may decide to cover E's legal costs by placing a charge on the antique coins or through another effective method.

ORDER XXXVI: SPECIAL CASE

Rule 1: Power to state case for Court's opinion.

(1) Parties claiming to be interested in the decision of any question of fact or law may enter into an agreement in writing stating such question in the form of a case for the opinion of the Court, and providing that, upon the finding of the Court with respect to such question, -

(a) a sum of money fixed by the parties or to be determined by the Court shall be paid by one of the parties to the other of them; or

(b) some property, movable or immovable, specified in the agreement, shall be delivered by one of the parties to the other of them; or

(c) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.

(2) Every case stated under this rule shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and specify such documents as may be necessary to enable the Court to decide the question raised thereby.

Simplified act

(1) If two or more people have a disagreement about a fact or a law, they can make a written agreement that explains the issue and asks the Court to decide on it. The agreement should also state what will happen based on the Court's decision, such as:

(a) One person will pay a certain amount of money to the other person, either a fixed amount or an amount decided by the Court; or

(b) One person will give a specific item or property (which can be something you can move or something you can't move, like land) to the other person; or

(c) One or more people will do, or not do, a specific action mentioned in the agreement.

(2) The written agreement must be organized into numbered paragraphs. Each paragraph should clearly state the necessary facts and list any important documents needed for the Court to make a decision on the issue.

Explanation using Example

Example 1:

Scenario: Dispute over Property Ownership

Parties Involved:

Mr. A (Claimant)

Mr. B (Defendant)

Agreement: Mr. A and Mr. B have a dispute over the ownership of a piece of land. They decide to resolve this dispute by entering into a written agreement under Rule 1 of Order XXXVI of the Code of Civil Procedure, 1908. The agreement states the following:

The question of law and fact to be decided by the Court is: "Who is the rightful owner of the land located at XYZ address?"

Upon the Court's decision:

(a) If the Court decides in favor of Mr. A, Mr. B shall pay Mr. A a sum of ₹5,00,000.

(b) If the Court decides in favor of Mr. B, Mr. A shall vacate the land and hand over possession to Mr. B.

(c) Both parties agree to refrain from selling or transferring the property until the Court's decision is made.

Court's Role: The Court will review the facts and documents presented by both parties, such as property deeds, tax receipts, and witness statements, to determine the rightful owner of the land.

Example 2:

Scenario: Dispute over Contractual Payment

Parties Involved:

Company X (Service Provider)

Company Y (Client)

Agreement: Company X and Company Y have a dispute regarding the payment for services rendered. They decide to resolve this dispute by entering into a written agreement under Rule 1 of Order XXXVI of the Code of Civil Procedure, 1908. The agreement states the following:

The question of law and fact to be decided by the Court is: "Is Company Y liable to pay Company X the outstanding amount of ₹10,00,000 for the services provided?"

Upon the Court's decision:

(a) If the Court decides in favor of Company X, Company Y shall pay Company X the outstanding amount of ₹10,00,000.

(b) If the Court decides in favor of Company Y, Company X shall waive the outstanding amount and issue a no-dues certificate to Company Y.

(c) Both parties agree to refrain from taking any further legal action regarding this payment until the Court's decision is made.

Court's Role: The Court will review the facts and documents presented by both parties, such as the service contract, invoices, and correspondence, to determine whether Company Y is liable to pay the outstanding amount to Company X.

Rule 2: Where value of subject-matter must be stated.

Where the agreement is for the delivery of any property, or for the doing, or the refraining from doing, any particular act, the estimated value of the property to be delivered, or to which the act specified has reference, shall be stated in the agreement.

Simplified act

If the agreement involves delivering any property, doing something, or not doing something specific, the estimated value of the property or the act must be mentioned in the agreement.

Explanation using Example

Example 1:

Rahul and Priya enter into an agreement where Rahul agrees to deliver a piece of land to Priya. The agreement must state the estimated value of the land. For instance, if the land is valued at ₹50 lakhs, the agreement should explicitly mention this value.

Example 2:

An agreement is made between a construction company and a homeowner, where the company agrees to build a house for the homeowner. The agreement must state the estimated value of the construction work. If the construction is estimated to cost ₹1 crore, this value should be clearly mentioned in the agreement.

Rule 3: Agreement to be filed and registered as suit.

(1) The agreement, if framed in accordance with the rules hereinbefore contained, may be filed with an application in the Court which would have jurisdiction to entertain a suit, the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement.

(2) The application when so filed, shall be numbered and registered as a suit between one or more of the parties claiming to be interested as plaintiff or plaintiffs, and the other or the others of them as defendant or defendants; and notice shall be given to all the parties to the agreement, other than the party or parties by whom the application was presented.

Simplified act

(1) If the agreement follows the rules mentioned earlier, it can be submitted to the Court that has the authority to handle cases involving the same amount or value as the agreement.

(2) Once the application is submitted, it will be treated as a lawsuit. The parties who claim to have an interest will be called plaintiffs, and the others will be called defendants. Everyone involved in the agreement, except those who submitted the application, will be notified.

Explanation using Example

Example 1:

Scenario: Business Partnership Dispute

Parties Involved:

Rajesh (Plaintiff)

Suresh (Defendant)

Agreement: Rajesh and Suresh entered into a business partnership agreement to run a textile business. The agreement specified that any disputes arising from the partnership would be resolved through a special case filed in court.

Dispute: Rajesh claims that Suresh has been misappropriating funds from the business. Rajesh decides to file an application in the court to resolve the dispute as per their agreement.

Application Filing:

Rajesh files the agreement along with an application in the District Court, which has jurisdiction over the area where the business operates.

The court accepts the application, numbers it, and registers it as a suit.

The court issues a notice to Suresh, informing him about the suit filed by Rajesh.

Outcome: The court hears the case, examines the evidence, and makes a decision based on the merits of the case and the terms of the agreement.

Example 2:

Scenario: Property Division Among Siblings

Parties Involved:

Anjali (Plaintiff)

Ravi (Defendant)

Sunita (Defendant)

Agreement: Anjali, Ravi, and Sunita, siblings, entered into an agreement to divide their ancestral property. The agreement included a clause that any disagreements regarding the division would be resolved through a special case filed in court.

Dispute: Anjali believes that Ravi and Sunita are not adhering to the terms of the agreement and are unfairly claiming a larger share of the property. Anjali decides to file an application in the court to resolve the dispute.

Application Filing:

Anjali files the agreement along with an application in the Family Court, which has jurisdiction over the area where the property is located.

The court accepts the application, numbers it, and registers it as a suit.

The court issues notices to Ravi and Sunita, informing them about the suit filed by Anjali.

Outcome: The court hears the case, examines the evidence, and makes a decision based on the merits of the case and the terms of the agreement.

Example 3:

Scenario: Employment Contract Dispute

Parties Involved:

Priya (Plaintiff)

XYZ Pvt. Ltd. (Defendant)

Agreement: Priya entered into an employment contract with XYZ Pvt. Ltd. The contract included a clause that any disputes arising from the employment would be resolved through a special case filed in court.

Dispute: Priya claims that XYZ Pvt. Ltd. has wrongfully terminated her employment without following the due process outlined in the contract. Priya decides to file an application in the court to resolve the dispute.

Application Filing:

Priya files the agreement along with an application in the Labour Court, which has jurisdiction over employment disputes in the area.

The court accepts the application, numbers it, and registers it as a suit.

The court issues a notice to XYZ Pvt. Ltd., informing them about the suit filed by Priya.

Outcome: The court hears the case, examines the evidence, and makes a decision based on the merits of the case and the terms of the agreement.

Rule 4: Parties to be subject to Court's jurisdiction.

Where the agreement has been filed, the parties to it shall be subject to the jurisdiction of the Court and shall be bound by the statements contained therein.

Simplified act

If the agreement has been submitted to the Court, the people involved in the agreement must follow the Court's rules and are obligated to stick to what is written in the agreement.

Explanation using Example

Example 1:

Rajesh and Suresh are business partners who have a dispute over the distribution of profits from their joint venture. They decide to resolve their dispute by filing an agreement in the civil court, outlining the terms of their settlement. According to Rule 4 of Order XXXVI of The Code Of Civil Procedure 1908, once this agreement is filed, both Rajesh and Suresh are bound by the terms of the agreement and must adhere to the jurisdiction of the court. This means that if either party fails to comply with the agreement, the court has the authority to enforce the terms and take necessary legal action.

Example 2:

Meera and Anil are neighbors who have a disagreement over the boundary line between their properties. To avoid a prolonged legal battle, they mutually agree to a boundary line and file this agreement in the civil court. Under Rule 4 of Order XXXVI of The Code Of Civil Procedure 1908, once the agreement is filed, both Meera and Anil are subject to the court's jurisdiction and must follow the terms of the agreement. If Meera later decides to build a fence that violates the agreed boundary, Anil can approach the court to enforce the agreement, and the court can order Meera to remove the fence.

Rule 5: Hearing and disposal of case.

(1) The case shall be set down for hearing as a suit instituted in the ordinary manner, and the provisions of this Code shall apply to such suit so far as the same are applicable.

(2) Where the Court is satisfied, after examination of the parties, or after taking such evidence as it thinks fit -

- (a) that the agreement was duly executed by them,
- (b) that they have a bona fide interest in question stated therein, and
- (c) that the same is fit to be decided.

it shall proceed to pronounce judgment thereon, in the same way as in an ordinary suit, and upon the judgment so pronounced a decree shall follow.

Simplified act

(1) The case will be scheduled for a hearing just like any regular lawsuit, and the rules of this Code will apply to the case as long as they are relevant.

(2) If the Court is convinced, after talking to the parties involved or reviewing any evidence it considers necessary -

(a) that the agreement was properly signed by them,

(b) that they have a genuine interest in the issue mentioned in the agreement, and

(c) that the issue is suitable to be decided by the Court,

it will then give a judgment on the case, just like in a regular lawsuit, and a formal decision will be made based on that judgment.

Explanation using Example

Example 1:

Scenario: Two business partners, Raj and Simran, have a dispute over the interpretation of a clause in their partnership agreement. They decide to resolve the matter through a special case under Order XXXVI of the Code of Civil Procedure, 1908.

Process:

Filing the Case: Raj and Simran jointly file a special case in the civil court, presenting their partnership agreement and the specific clause in question.

Court Hearing: The court sets the case down for hearing as it would for any ordinary suit.

Examination: The judge examines Raj and Simran and reviews the partnership agreement.

Evidence: The court may take additional evidence if necessary to understand the context and the bona fide interest of both parties in the dispute.

Satisfaction of Conditions: The court is satisfied that:

The agreement was duly executed by Raj and Simran.

Both have a genuine interest in resolving the dispute.

The matter is appropriate for judicial determination.

Judgment: The court pronounces a judgment interpreting the disputed clause.

Decree: Based on the judgment, a decree is issued, which is binding on both Raj and Simran.

Example 2:

Scenario: A landowner, Priya, and a tenant, Arjun, have a disagreement over the terms of a lease agreement. They agree to submit their dispute to the court as a special case under Order XXXVI.

Process:

Filing the Case: Priya and Arjun file a special case in the civil court, including the lease agreement and the specific terms in dispute.

Court Hearing: The court schedules the case for hearing as it would for any ordinary civil suit.

Examination: The judge examines Priya and Arjun and reviews the lease agreement.

Evidence: The court may gather additional evidence, such as testimonies or documents, to understand the bona fide interest of both parties.

Satisfaction of Conditions: The court is satisfied that:

The lease agreement was duly executed by Priya and Arjun.

Both have a genuine interest in resolving the lease terms dispute.

The matter is suitable for judicial determination.

Judgment: The court pronounces a judgment clarifying the disputed lease terms.

Decree: A decree is issued based on the judgment, which is binding on both Priya and Arjun.

Rule 6: No appeal from a decree passed under rule 5.

No appeal shall lie from a decree passed under rule 5.

ORDER XXXVII: SUMMARY PROCEDURE

Rule 1: Courts and classes of suits to which the Order is to apply.

Order Application

(1) This Order shall apply to the following Courts, namely:

(a) High Courts, City Civil Courts and Courts of Small Causes;

(b) other Courts:

Provided that in respect of the Courts referred to in clause (b), the High Court may, by notification in the Official Gazette, restrict the operation of this Order only to such categories of suits as it deems proper, and may also, from time to time, as the circumstances of the case may require, by subsequent notification in the Official Gazette, further restrict, enlarge or vary, the categories of suits to be brought under the operation of this Order as it deems proper.

(2) Subject to the provisions of sub-rule (1), the Order applies to the following classes of suits, namely:

(a) suits upon bills of exchange, hundies and promissory notes;

(b) suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising, -

(i) on a written contract, or

(ii) on an enactment, where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or

(iii) on a guarantee, where the claim against the principal is in respect of a debt or liquidated demand only.

2.

Simplified act

Order Application

(1) This Order applies to the following Courts:

(a) High Courts, City Civil Courts, and Courts of Small Causes;

(b) other Courts:

However, for the Courts mentioned in (b), the High Court can decide, through an official announcement, to limit the application of this Order to certain types of cases as it sees fit. The High Court can also, when needed, make further announcements to either limit, expand, or change the types of cases that fall under this Order.

(2) Based on the above rule, this Order applies to the following types of cases:

(a) cases involving bills of exchange, hundies, and promissory notes;

(b) cases where the plaintiff is only trying to recover a debt or a specific amount of money from the defendant, with or without interest, that comes from:

(i) a written contract, or

(ii) a law, where the amount to be recovered is a fixed sum or a debt (not a penalty); or

(iii) a guarantee, where the claim against the main person responsible is only for a debt or a specific amount of money.

Explanation using Example

Example 1:

Scenario: A business owner in Mumbai lends ₹5,00,000 to another business owner through a promissory note, with an agreement that the amount will be repaid within six months. The borrower fails to repay the amount within the stipulated time.

Application of the Act:

The lender can file a suit in the City Civil Court of Mumbai under Order XXXVII of the Code of Civil Procedure, 1908.

Since the suit is based on a promissory note, it falls under the category of suits mentioned in sub-rule (2)(a).

The summary procedure allows for a faster resolution as the defendant has limited grounds to contest the suit.

Example 2:

Scenario: A supplier delivers goods worth ₹2,00,000 to a retailer in Delhi under a written contract. The retailer fails to pay the amount due within the agreed period.

Application of the Act:

The supplier can file a suit in the High Court of Delhi under Order XXXVII of the Code of Civil Procedure, 1908.

The suit is based on a written contract, making it eligible under sub-rule (2)(b)(i).

The summary procedure will expedite the recovery process, as the retailer will have limited defenses available.

Example 3:

Scenario: A person in Chennai guarantees a loan of ₹1,00,000 taken by his friend from a bank. The friend defaults on the loan, and the bank seeks to recover the amount from the guarantor.

Application of the Act:

The bank can file a suit in the City Civil Court of Chennai under Order XXXVII of the Code of Civil Procedure, 1908.

The suit is based on a guarantee, making it eligible under sub-rule (2)(b)(iii).

The summary procedure will facilitate a quicker judgment, allowing the bank to recover the debt from the guarantor efficiently.

Example 4:

Scenario: A company in Kolkata issues a bill of exchange to another company for ₹3,00,000, payable within three months. The drawee company fails to honor the bill of exchange upon maturity.

Application of the Act:

The drawer company can file a suit in the High Court of Kolkata under Order XXXVII of the Code of Civil Procedure, 1908.

The suit is based on a bill of exchange, making it eligible under sub-rule (2)(a).

The summary procedure will ensure a swift resolution, as the drawee company will have limited grounds to contest the suit.

Example 5:

Scenario: A contractor in Bangalore completes a construction project for a client based on a written contract. The client refuses to pay the remaining balance of ₹4,00,000.

Application of the Act:

The contractor can file a suit in the City Civil Court of Bangalore under Order XXXVII of the Code of Civil Procedure, 1908.

The suit is based on a written contract, making it eligible under sub-rule (2)(b)(i).

The summary procedure will expedite the recovery process, providing the contractor with a quicker resolution.

Rule 2: Institution of summary suits.

Order XXXVII of the Code of Civil Procedure, 1908

(1) A suit, to which this Order applies, may if the plaintiff desires to proceed hereunder, be instituted by presenting a plaint which shall contain, -

(a) a specific averment to the effect that the suit is filed under this Order ;

(b) that no relief, which does not fall within the ambit of this rule, has been claimed in the plaint ; and

(c) the following inscription, immediately below the number of the suit in the title of the suit, namely : -

"(Under Order XXXVII of the Code of Civil Procedure, 1908)."

(2) The summons of the suit shall be in Form No. 4 in Appendix B or in such other Form as may, from time to time, be prescribed.

(3) The defendant shall not defend the suit referred to in sub-rule (1) unless he enters an appearance and in default of his entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, up to the date of the decree and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf and such decree may be executed forthwith.

Simplified act

Order XXXVII of the Code of Civil Procedure, 1908

(1) If you want to file a lawsuit under this specific rule, you need to do the following in your complaint:

- (a) Clearly state that the lawsuit is being filed under Order XXXVII.
- (b) Make sure you are only asking for things that are allowed under this rule.
- (c) Include the following note right below the case number in the title:

"(Under Order XXXVII of the Code of Civil Procedure, 1908)."

(2) The notice (summons) sent to the person you are suing must be in Form No. 4 from Appendix B or in any other form that may be prescribed from time to time.

(3) The person being sued (defendant) cannot defend themselves in this type of lawsuit unless they formally respond. If they don't respond, everything you claimed in your complaint will be considered true, and you will win the case. You will then be entitled to the amount of money mentioned in the summons, plus any interest up to the date of the judgment, and any legal costs determined by the High Court. This judgment can be enforced immediately.

Explanation using Example

Example 1:

Scenario: Rajesh, a businessman in Mumbai, supplied goods worth ₹10,00,000 to a retailer named Suresh. Despite repeated reminders, Suresh failed to pay the amount due. Rajesh decides to file a summary suit under Order XXXVII of the Code of Civil Procedure, 1908.

Steps:

Plaint Presentation: Rajesh's lawyer drafts a plaint that includes:

A specific statement that the suit is filed under Order XXXVII.

A declaration that no relief outside the scope of this rule is claimed.

The inscription "(Under Order XXXVII of the Code of Civil Procedure, 1908)" below the suit number.

Summons Issuance: The court issues a summons in Form No. 4 of Appendix B, notifying Suresh of the suit.

Defendant's Appearance: Suresh must enter an appearance within 10 days of receiving the summons. If he fails to do so, the allegations in the plaint are deemed admitted.

Decree: Since Suresh does not enter an appearance, the court grants Rajesh a decree for ₹10,00,000 plus interest and costs. Rajesh can execute this decree immediately to recover the amount.

Example 2:

Scenario: Meena, a software developer in Bangalore, lent ₹5,00,000 to her friend Anil for his startup. Anil promised to repay the amount within six months but defaulted. Meena decides to file a summary suit under Order XXXVII of the Code of Civil Procedure, 1908.

Steps:

Plaint Presentation: Meena's lawyer drafts a plaint that includes:

A specific statement that the suit is filed under Order XXXVII.

A declaration that no relief outside the scope of this rule is claimed.

The inscription "(Under Order XXXVII of the Code of Civil Procedure, 1908)" below the suit number.

Summons Issuance: The court issues a summons in Form No. 4 of Appendix B, notifying Anil of the suit.

Defendant's Appearance: Anil must enter an appearance within 10 days of receiving the summons. If he fails to do so, the allegations in the plaint are deemed admitted.

Decree: Since Anil does not enter an appearance, the court grants Meena a decree for ₹5,00,000 plus interest and costs. Meena can execute this decree immediately to recover the amount.

Rule 3: Procedure for the appearance of defendant.

(1) In a suit to which this Order applies, the plaintiff shall, together with the summons under rule 2, serve on the defendant a copy of the plaint and annexures thereto and the defendant may, at any time within ten days of such

service, enter an appearance either in person or by pleader and, in either case, he shall file in Court an address for service of notices on him.

(2) Unless otherwise ordered, all summonses, notices and other judicial processes, required to be served on the defendant, shall be deemed to have been duly served on him if they are left at the address given by him for such service.

(3) On the day of entering the appearance, notice of such appearance shall be given by the defendant to the plaintiff's pleader, or, if the plaintiff sues in person, to the plaintiff himself, either by notice delivered at or sent by a pre-paid letter directed to the address of the plaintiff's pleader or of the plaintiff, as the case may be.

(4) If the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summons for judgment in Form No. 4A in Appendix B or such other Form as may be prescribed from time to time, returnable not less than ten days from the date of service supported by an affidavit verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the suit.

(5) The defendant may, at any time within ten days from the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court or Judge to be just:

Provided that leave to defend shall not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious:

Provided further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in Court.

(6) At the hearing of such summons for judgment, -

(a) if the defendant has not applied for leave to defend, or if such application has been made and is refused, the plaintiff shall be entitled to judgment forthwith; or

(b) if the defendant is permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give such security and within such time as may be fixed by the Court or Judge and that, on failure to give such security within the time specified by the Court or Judge or to carry out such other directions as may have been given by the Court or Judge, the plaintiff shall be entitled to judgment forthwith.

(7) The Court or Judge may, for sufficient cause shown by the defendant, excuse the delay of the defendant in entering an appearance or in applying for leave to defend the suit.

Simplified act

(1) In a lawsuit covered by this Order, the person suing (plaintiff) must give the person being sued (defendant) a copy of the complaint and any attached documents along with the court summons. The defendant has ten days to respond by appearing in court either personally or through a lawyer and must provide an address for receiving court notices.

(2) Unless the court says otherwise, all court documents and notices will be considered properly delivered to the defendant if they are left at the address he provided.

(3) On the day the defendant responds, he must inform the plaintiff's lawyer or the plaintiff directly (if the plaintiff is representing himself) by delivering a notice or sending a pre-paid letter to the plaintiff's address.

(4) If the defendant responds, the plaintiff must then serve the defendant with a summons for judgment, which must be returned within at least ten days. This summons must be supported by an affidavit stating the reason for the lawsuit and the amount claimed, and that the plaintiff believes the defendant has no defense.

(5) The defendant has ten days from receiving the summons for judgment to apply for permission to defend the lawsuit. This can be done by affidavit or other means showing enough facts to justify a defense. The court may grant permission to defend either unconditionally or with certain conditions:

Permission to defend will not be denied unless the court believes the defendant's facts do not show a strong defense or that the defense is trivial or meant to cause delay.

If the defendant admits to owing part of the claimed amount, permission to defend will not be granted unless the admitted amount is deposited in court.

(6) At the hearing for the summons for judgment:

(a) If the defendant has not applied for permission to defend, or if the application is denied, the plaintiff will win the judgment immediately; or

(b) If the defendant is allowed to defend all or part of the claim, the court may require him to provide security within a set time. If the defendant fails to provide the security or follow other court directions, the plaintiff will win the judgment immediately.

(7) The court may excuse the defendant's delay in responding or applying for permission to defend if the defendant shows a good reason.

Explanation using Example

Example 1:

Scenario: Ramesh lends Rs. 1,00,000 to Suresh and Suresh signs a promissory note agreeing to repay the amount within six months. However, Suresh fails to repay the amount even after the due date.

Application of Rule 3:

Plaintiff's Action: Ramesh files a suit under Order XXXVII of the Code of Civil Procedure, 1908, for the recovery of the amount. Along with the summons, Ramesh serves Suresh a copy of the plaint and annexures.

Defendant's Appearance: Suresh receives the summons and within ten days, he appears in court either in person or through his lawyer and provides an address for service of notices.

Service of Notices: All subsequent notices and judicial processes are sent to the address provided by Suresh.

Notice of Appearance: On the day Suresh enters his appearance, he notifies Ramesh's lawyer about his appearance by sending a pre-paid letter to the lawyer's address.

Summons for Judgment: Ramesh then serves Suresh a summons for judgment, returnable not less than ten days from the date of service, supported by an affidavit verifying the cause of action and the amount claimed.

Defendant's Response: Suresh, within ten days of receiving the summons for judgment, applies for leave to defend the suit by filing an affidavit disclosing facts that he believes entitle him to defend the suit.

Court's Decision: The court reviews Suresh's application. If the court finds that Suresh has a substantial defense, it grants him leave to defend, possibly with conditions such as providing security. If the court finds Suresh's defense frivolous, it refuses leave to defend, and Ramesh is entitled to judgment forthwith.

Example 2:

Scenario: Meena sells goods worth Rs. 50,000 to Anita on credit. Anita agrees to pay within 30 days but fails to do so.

Application of Rule 3:

Plaintiff's Action: Meena files a summary suit under Order XXXVII for the recovery of the amount. She serves Anita with the summons, a copy of the plaint, and annexures.

Defendant's Appearance: Anita receives the summons and appears in court within ten days, providing an address for service of notices.

Service of Notices: All subsequent judicial processes are sent to the address provided by Anita.

Notice of Appearance: Anita notifies Meena's lawyer of her appearance by sending a pre-paid letter to the lawyer's address.

Summons for Judgment: Meena serves Anita a summons for judgment, returnable not less than ten days from the date of service, supported by an affidavit verifying the cause of action and the amount claimed.

Defendant's Response: Anita, within ten days of receiving the summons for judgment, applies for leave to defend the suit by filing an affidavit. She admits owing Rs. 30,000 but disputes the remaining Rs. 20,000.

Court's Decision: The court reviews Anita's application. Since Anita admits part of the claim, the court grants her leave to defend the suit on the condition that she deposits the admitted amount of Rs. 30,000 in court. If Anita fails to deposit the amount, Meena is entitled to judgment for the admitted amount.

Rule 4: Power to set aside decree.

After decree the Court may, under special circumstances, set aside the decree, and if necessary stay or set aside execution, and may give leave to the defendant to appear to the summons and to defend the suit, if it seems reasonable to the Court so to do, and on such terms as the Court thinks fit.

Simplified act

After a court has made a decision (decree), the court can, in special situations, cancel that decision. If needed, the court can also pause or cancel the enforcement of the decision. The court can allow the defendant (the person being sued) to respond to the summons and defend themselves in the case, if the court thinks it is fair to do so. The court can set any conditions it thinks are appropriate.

Explanation using Example

Example 1:

Scenario: Ramesh, a small business owner in Mumbai, was sued by a supplier for non-payment of dues. The court issued a decree against Ramesh because he did not appear in court to defend himself. Ramesh later discovered that the court summons was sent to an incorrect address, and he was unaware of the lawsuit.

Application of Rule 4: Ramesh can file an application under Rule 4 of Order XXXVII of the Code of Civil Procedure, 1908, requesting the court to set aside the decree. He can argue that he did not receive the summons due to the incorrect address and that he has a valid defense against the supplier's claim. If the court finds Ramesh's reasons reasonable and justifiable, it may set aside the decree, stay the execution, and allow Ramesh to appear and defend the suit.

Example 2:

Scenario: Priya, a resident of Delhi, was involved in a summary suit regarding a property dispute. The court passed a decree in favor of the plaintiff because Priya failed to file her appearance and defense within the stipulated time. Priya later fell seriously ill and was hospitalized during the period she was supposed to respond to the summons.

Application of Rule 4: Priya can approach the court under Rule 4 of Order XXXVII of the Code of Civil Procedure, 1908, to set aside the decree. She can present medical records and other evidence to show that her illness prevented

her from responding to the summons. If the court is convinced that Priya's illness was a valid reason for her non-appearance, it may set aside the decree, stay the execution, and permit Priya to defend the suit on terms it deems fit.

Rule 5: Power to order bill, etc., to be deposited with officer of Court.

In any proceeding under this Order the Court may order the bill, hundi or note on which the suit is founded to be forthwith deposited with an officer of the Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

Simplified act

In any case under this Order, the Court can require the bill, hundi, or note that the lawsuit is based on to be immediately handed over to a Court officer.

The Court can also decide to pause all proceedings until the person who started the lawsuit provides a guarantee to cover the costs.

Explanation using Example

Example 1:

Scenario: Rajesh, a businessman in Mumbai, files a suit against Suresh for non-payment of a bill of exchange worth ₹5,00,000.

Application of Rule 5: The court, upon reviewing the case, orders Rajesh to deposit the original bill of exchange with the court officer. Additionally, the court instructs that all further proceedings in the case will be paused until Rajesh provides a security deposit to cover the potential legal costs. This ensures that the document in question is safeguarded and that Rajesh is serious about pursuing the case.

Example 2:

Scenario: Priya, a supplier in Delhi, sues a company for non-payment of a promissory note amounting to ₹2,00,000.

Application of Rule 5: The court orders Priya to immediately deposit the original promissory note with the court officer. Furthermore, the court mandates that all legal proceedings will be halted until Priya furnishes a security deposit for the costs associated with the lawsuit. This measure is taken to ensure that the promissory note is preserved and to prevent frivolous litigation.

Rule 6: Recovery of cost of noting non-acceptance of dishonoured bill or note.

The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this Order for the recovery of the amount of such bill or note.

Simplified act

If someone has a bill of exchange or promissory note that is not accepted or not paid, they can get back the costs they spent on noting this non-acceptance or non-payment.

They can use the same methods to recover these costs as they would use to recover the amount of the bill or note itself.

Explanation using Example

Example 1:

Rajesh, a businessman in Mumbai, issues a promissory note to Suresh, promising to pay ₹1,00,000 on a specific date. When the due date arrives, Rajesh fails to make the payment. Suresh takes the promissory note to a notary public to get it officially noted for non-payment, incurring a cost of ₹2,000 for the notary services. Under Rule 6 of Order XXXVII of the Code of Civil Procedure 1908, Suresh can file a summary suit not only to recover the ₹1,00,000 from Rajesh but also the ₹2,000 he spent on the notary services.

Example 2:

Meena, a supplier in Delhi, sells goods to Anil, a retailer, and accepts a bill of exchange for ₹50,000, payable in 30 days. When the bill matures, Anil refuses to accept and pay the bill. Meena then gets the bill noted for non-acceptance by a notary, which costs her ₹1,500. According to Rule 6 of Order XXXVII of the Code of Civil Procedure 1908, Meena can initiate a summary procedure to recover not only the ₹50,000 from Anil but also the ₹1,500 she spent on noting the non-acceptance of the bill.

Rule 7: Procedure in suits.

As provided by this Order, the procedure in suits hereunder shall be the same as the procedure in suits instituted in the ordinary manner.

Simplified act

The process for handling cases under this Order will follow the same steps as cases started in the usual way.

Explanation using Example

Example 1:

Scenario: Rajesh, a businessman, lends ₹5,00,000 to his friend Suresh with a written agreement that Suresh will repay the amount within six months. However, Suresh fails to repay the loan even after repeated reminders.

Application of Rule 7: Rajesh decides to file a suit under Order XXXVII (Summary Procedure) of the Code of Civil Procedure, 1908, to recover the money. According to Rule 7, the procedure for this suit will be the same as the procedure for suits instituted in the ordinary manner. This means that Rajesh will follow the same steps as any other civil suit, such as filing a plaint, serving a summons to Suresh, and presenting evidence, but the process will be expedited due to the summary nature of the procedure.

Example 2:

Scenario: Meena sells goods worth ₹2,00,000 to a retailer, Anil, on credit. Anil signs a promissory note agreeing to pay the amount within three months. When Anil defaults on the payment, Meena decides to take legal action.

Application of Rule 7: Meena files a suit under Order XXXVII (Summary Procedure) to recover the amount from Anil. As per Rule 7, the procedure Meena follows will be the same as that for ordinary suits. This includes filing a plaint, serving a summons to Anil, and presenting her case in court. However, because it is a summary procedure, the case is likely to be resolved more quickly than a regular civil suit, ensuring that Meena can recover her money without unnecessary delays.

ORDER XXXVIII: ARREST AND ATTACHMENT BEFORE JUDGMENT

Arrest before Judgment

Rule 1: Where defendant may be called upon to furnish security for appearance.

Where at any stage of a suit, other than a suit of the nature referred to in section 16, clauses (a) to (d), the Court is satisfied, by affidavit or otherwise, -

(a) that the defendant, with intent to delay the plaintiff, or to avoid any process of the Court or to obstruct or delay the execution of any decree that may be passed against him, -

(i) has absconded or left the local limits of the jurisdiction of the Court, or

(ii) is about to abscond or leave the local limits of the jurisdiction of the Court, or

(iii) has disposed of or removed from the local limits of the jurisdiction of the Court his property or any part thereof, or

(b) that the defendant is about to leave India under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the Court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not furnish security for his appearance :

Provided that the defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiff's claim; and such sum shall be held in deposit by the Court until the suit is disposed of or until the further order of the Court.

Simplified act

If at any point during a lawsuit (except for certain types of cases mentioned in section 16, clauses (a) to (d)), the Court believes, based on evidence or a sworn statement, that:

(a) The defendant is trying to delay the plaintiff, avoid the Court, or make it hard to enforce any decision against them by:

(i) Running away or leaving the area where the Court has authority, or

(ii) Planning to run away or leave the area where the Court has authority, or

(iii) Getting rid of or moving their property out of the area where the Court has authority, or

(b) The defendant is planning to leave India in a way that makes it likely the plaintiff will have trouble enforcing any decision against the defendant,

the Court can issue a warrant to arrest the defendant and bring them to Court to explain why they shouldn't have to provide a guarantee to ensure they will appear in Court.

However, the defendant won't be arrested if they pay the officer carrying out the warrant an amount specified in the warrant that is enough to cover the plaintiff's claim. This money will be held by the Court until the lawsuit is resolved or until the Court decides otherwise.

Explanation using Example

Example 1:

Rajesh, a businessman in Mumbai, files a lawsuit against his former business partner, Suresh, claiming that Suresh owes him ₹10 lakhs. During the proceedings, Rajesh learns that Suresh is planning to leave India for an indefinite period. Rajesh fears that if Suresh leaves, it will be difficult to enforce any court decree in his favor. Rajesh submits an affidavit to the court, stating his concerns and providing evidence of Suresh's travel plans. The court, satisfied with the evidence, issues a warrant for Suresh's arrest to ensure he appears in court and does not leave the country without furnishing security for his appearance.

Example 2:

Meena, a resident of Delhi, sues her tenant, Ravi, for unpaid rent amounting to ₹2 lakhs. During the lawsuit, Meena discovers that Ravi has sold his car and is planning to move to another city to avoid the court process. Meena submits an affidavit to the court, detailing Ravi's actions and her belief that he is trying to evade the legal proceedings. The court, convinced by Meena's affidavit, issues a warrant for Ravi's arrest to ensure he does not abscond and is present for the court hearings. Ravi is given the option to pay the amount specified in the warrant to avoid arrest, which will be held by the court until the case is resolved.

Rule 2: Security.

(1) Where the defendant fails to show such cause the Court shall order him either to deposit in Court money or other property sufficient to answer the claim against him, or to furnish security for his appearance at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the suit, or make such order as it thinks fit in

regard to the sum which may have been paid by the defendant under the proviso to the last preceding rule.

(2) Every surety for the appearance of a defendant shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit.

Simplified act

(1) If the defendant does not provide a good reason, the Court will order him to either:

Deposit money or property in the Court to cover the claim against him, or

Provide a guarantee that he will appear in Court whenever required while the case is ongoing and until any judgment against him is fulfilled, or

Follow any other order the Court thinks is appropriate regarding any money the defendant has already paid according to the previous rule.

(2) Any person who guarantees the defendant's appearance in Court must agree to pay any amount of money the defendant is ordered to pay if the defendant does not show up.

Explanation using Example

Example 1:

Scenario: Ramesh, a businessman, is sued by Suresh for failing to deliver goods worth ₹5 lakhs. Suresh fears that Ramesh might abscond to avoid the court proceedings and payment.

Application of Rule 2:

Court Order: The court orders Ramesh to either deposit ₹5 lakhs in the court or provide a security (like property papers) to ensure his appearance in court whenever required.

Failure to Show Cause: Ramesh fails to show a valid reason why he should not comply with the court's order.

Security Deposit: Ramesh deposits ₹5 lakhs in the court as security.

Surety: Alternatively, Ramesh's friend, Rajesh, agrees to be a surety. Rajesh signs a bond stating that if Ramesh fails to appear in court, Rajesh will pay the ₹5 lakhs.

Example 2:

Scenario: Priya files a lawsuit against her tenant, Anil, for unpaid rent amounting to ₹1 lakh. Priya is concerned that Anil might vacate the premises and disappear without paying the dues.

Application of Rule 2:

Court Order: The court orders Anil to either deposit ₹1 lakh in the court or provide a security to ensure his appearance in court until the case is resolved.

Failure to Show Cause: Anil fails to provide a satisfactory reason for not complying with the court's order.

Security Deposit: Anil deposits ₹1 lakh in the court as security.

Surety: Alternatively, Anil's brother, Sunil, agrees to be a surety. Sunil signs a bond stating that if Anil fails to appear in court, Sunil will pay the ₹1 lakh.

Example 3:

Scenario: Meena sues her business partner, Ravi, for misappropriating company funds amounting to ₹10 lakhs. Meena is worried that Ravi might flee to another city to avoid legal consequences.

Application of Rule 2:

Court Order: The court orders Ravi to either deposit ₹10 lakhs in the court or provide a security to ensure his appearance in court whenever required.

Failure to Show Cause: Ravi fails to show a valid reason why he should not comply with the court's order.

Security Deposit: Ravi deposits ₹10 lakhs in the court as security.

Surety: Alternatively, Ravi's father, Mohan, agrees to be a surety. Mohan signs a bond stating that if Ravi fails to appear in court, Mohan will pay the ₹10 lakhs.

Rule 3: Procedure on application by surety to be discharged.

(1) A surety for the appearance of a defendant may at any time apply to the Court in which he became such surety to be discharged from his obligation.

(2) On such application being made, the Court shall summon the defendant to appear or, if it thinks fit, may issue a warrant for his arrest in the first instance.

(3) On the appearance of the defendant in pursuance of the summons or warrant, or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security.

Simplified act

(1) If someone has promised to make sure a defendant shows up in court, they can ask the court to release them from this promise at any time.

(2) When this request is made, the court will either ask the defendant to come to court or, if it thinks it's necessary, issue a warrant to arrest the defendant.

(3) When the defendant shows up in court, either because they were asked to or because they were arrested, or if they come to court on their own, the court will release the person who made the promise from their obligation and will ask the defendant to provide a new guarantee.

Explanation using Example

Example 1:

Scenario: Rajesh is a businessman who has been sued by a supplier for non-payment of dues. The court has ordered Rajesh to appear before it, and his friend, Suresh, has agreed to be his surety, guaranteeing Rajesh's appearance in court.

Application of Rule 3:

Application by Surety: Suresh later realizes that he cannot continue to be Rajesh's surety due to personal reasons. He applies to the court to be discharged from his obligation.

Court Summons: Upon receiving Suresh's application, the court issues a summons for Rajesh to appear.

Defendant's Appearance: Rajesh appears in court as summoned.

Discharge of Surety: The court discharges Suresh from his obligation and asks Rajesh to provide a new surety.

Example 2:

Scenario: Priya is involved in a civil dispute over property and has been ordered to appear in court. Her brother, Anil, has agreed to be her surety. However, Anil is moving abroad and can no longer fulfill his obligation.

Application of Rule 3:

Application by Surety: Anil applies to the court to be discharged from his obligation as Priya's surety.

Court Issues Warrant: Considering the urgency of Anil's request and the possibility that Priya might not appear voluntarily, the court issues a warrant for Priya's arrest.

Defendant's Appearance: Priya is arrested and brought to court.

Discharge of Surety: The court discharges Anil from his obligation and instructs Priya to find a new surety.

Example 3:

Scenario: Sunita is a defendant in a civil case and her friend, Meena, has agreed to be her surety. Meena later faces financial difficulties and cannot continue as surety.

Application of Rule 3:

Application by Surety: Meena applies to the court to be discharged from her obligation.

Court Summons: The court issues a summons for Sunita to appear.

Defendant's Voluntary Surrender: Before the summons is served, Sunita voluntarily surrenders herself to the court.

Discharge of Surety: The court discharges Meena from her obligation and asks Sunita to provide a new surety.

Rule 4: Procedure where defendant fails to furnish security or find fresh security.

Where the defendant fails to comply with any order under rule 2 or rule 3, the Court may commit him to the civil prison until the decision of the suit or, where a decree is passed against the defendant, until the decree has been satisfied:

Provided that no person shall be detained in prison under this rule in any case for a longer period than six months, nor for a longer period than six weeks when the amount or value of the subject-matter of the suit does not exceed fifty rupees:

Provided also that no person shall be detained in prison under this rule after he has complied with such order.

Simplified act

If the defendant does not follow any order under rule 2 or rule 3, the Court can send them to civil prison until the case is decided or, if a decision is made against the defendant, until they fulfill the decision:

However, no one can be kept in prison under this rule for more than six months, or for more than six weeks if the amount or value involved in the case is fifty rupees or less.

Also, no one can be kept in prison under this rule once they have followed the order.

Explanation using Example

Example 1:

Scenario: Ramesh, a businessman, is sued by Suresh for failing to repay a loan of ₹5,00,000. Suresh fears that Ramesh might abscond to avoid repayment.

Application of Rule 4:

Court Order: The court orders Ramesh to furnish security (a guarantee or collateral) under Rule 2 to ensure he will not abscond and will be available for the court proceedings.

Failure to Comply: Ramesh fails to provide the required security.

Court Action: The court, under Rule 4, decides to commit Ramesh to civil prison until the decision of the suit is made or until Ramesh complies with the order.

Duration: Ramesh can be detained for a maximum of six months if the suit is not decided within that period. If the amount involved was less than ₹50, he could only be detained for up to six weeks.

Example 2:

Scenario: Priya files a suit against her tenant, Raj, for not paying rent for several months amounting to ₹45. Priya fears Raj might vacate the premises and disappear without paying the dues.

Application of Rule 4:

Court Order: The court orders Raj to provide fresh security under Rule 3 to ensure he will not vacate the premises and will be available for the court proceedings.

Failure to Comply: Raj fails to provide the required security.

Court Action: The court, under Rule 4, decides to commit Raj to civil prison until the decision of the suit is made or until Raj complies with the order.

Duration: Since the amount involved is less than ₹50, Raj can only be detained for a maximum of six weeks if the suit is not decided within that period.

Example 3:

Scenario: Anil is sued by his business partner, Sunil, for misappropriating funds amounting to ₹1,00,000. Sunil is concerned that Anil might transfer his assets to avoid paying the potential judgment.

Application of Rule 4:

Court Order: The court orders Anil to furnish security under Rule 2 to ensure he will not transfer his assets and will be available for the court proceedings.

Failure to Comply: Anil fails to provide the required security.

Court Action: The court, under Rule 4, decides to commit Anil to civil prison until the decision of the suit is made or until Anil complies with the order.

Duration: Anil can be detained for a maximum of six months if the suit is not decided within that period. If Anil complies with the order by furnishing the required security, he will be released from prison immediately.

Rule 5: Where defendant may be called upon to furnish security for production of property.

(1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him, -

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court.

The Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

(4) If an order of attachment is made without complying with the provisions of sub-rule (1) of this rule, such attachment shall be void.

Simplified act

(1) If, at any point during a lawsuit, the Court believes, based on evidence or a sworn statement, that the defendant is trying to avoid or delay the enforcement of a decision against them by:

(a) planning to sell or give away all or part of their property, or

(b) planning to move all or part of their property out of the area controlled by the Court,

The Court can order the defendant to either:

provide a guarantee (in an amount specified by the Court) to ensure the property or its value is available if needed, or

explain why they should not have to provide such a guarantee.

(2) The person who filed the lawsuit (the plaintiff) must usually list the property they want to be secured and estimate its value, unless the Court says otherwise.

(3) The Court can also order that the specified property be temporarily secured (attached) until a final decision is made.

(4) If the Court orders the property to be secured without following the rules in section (1), the order will be invalid.

Explanation using Example

Example 1:

Scenario: Ramesh has filed a lawsuit against Suresh for non-payment of a loan amounting to ₹10 lakhs. During the course of the trial, Ramesh learns that Suresh is planning to sell his house and move to another city to avoid paying the loan if the court rules against him.

Application of Rule 5:

Ramesh's Action: Ramesh submits an affidavit to the court, stating that Suresh is about to sell his house to obstruct the execution of any potential decree.

Court's Decision: The court, satisfied with the affidavit, directs Suresh to either:

Furnish security equivalent to the value of the house within a specified time, or

Appear in court to explain why he should not be required to furnish such security.

Conditional Attachment: The court also orders the conditional attachment of Suresh's house to ensure it remains available to satisfy the decree if Ramesh wins the case.

Example 2:

Scenario: Priya has sued her business partner, Anil, for misappropriation of funds amounting to ₹5 lakhs. Priya discovers that Anil is planning to transfer his bank account funds to an overseas account to avoid any court judgment.

Application of Rule 5:

Priya's Action: Priya files a petition with the court, supported by an affidavit, indicating that Anil is about to transfer his funds out of the country.

Court's Decision: The court, convinced by the evidence, orders Anil to:

Provide security in the amount of ₹5 lakhs within a specified period, or

Appear in court to show cause why he should not be required to provide such security.

Conditional Attachment: The court also issues an order for the conditional attachment of Anil's bank account to prevent the transfer of funds until the case is resolved.

Example 3:

Scenario: Meena has filed a civil suit against her tenant, Raj, for unpaid rent amounting to ₹1 lakh. Meena learns that Raj is planning to move out of the city and take all his belongings with him to avoid paying the rent if the court rules in Meena's favor.

Application of Rule 5:

Meena's Action: Meena submits an affidavit to the court, stating that Raj is about to remove his belongings from the jurisdiction of the court.

Court's Decision: The court, satisfied with the affidavit, directs Raj to either:

Furnish security equivalent to the value of the belongings within a specified time, or

Appear in court to explain why he should not be required to furnish such security.

Conditional Attachment: The court also orders the conditional attachment of Raj's belongings to ensure they remain available to satisfy the decree if Meena wins the case.

Rule 6: Attachment where cause not shown or security not furnished.

(1) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Court, the Court may order that the property specified, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, be attached.

(2) Where the defendant shows such cause or furnishes the required security, and the property specified or any portion of it has been attached, the Court shall order the attachment to be withdrawn, or make such other order as it thinks fit.

Simplified act

(1) If the defendant does not give a good reason why they shouldn't provide security, or if they don't provide the required security within the time set by the Court, the Court can order that the specified property, or enough of it to cover any potential judgment, be seized.

(2) If the defendant gives a good reason or provides the required security, and the property or part of it has already been seized, the Court will order the property to be released or make another appropriate order.

Explanation using Example

Example 1:

Scenario: Rajesh, a businessman, has borrowed ₹10 lakhs from Suresh, another businessman, and has failed to repay the amount. Suresh files a suit in the court to recover the money.

Application of Rule 6:

Court's Order for Security: The court asks Rajesh to provide security for the ₹10 lakhs to ensure that he will pay the amount if the court rules in favor of Suresh.

Failure to Provide Security: Rajesh fails to show any valid reason why he should not provide the security and also fails to furnish the required security within the time fixed by the court.

Attachment of Property: The court orders that Rajesh's property, which is worth ₹10 lakhs, be attached to secure the amount that may be decreed in favor of Suresh.

Example 2:

Scenario: Priya has filed a suit against her tenant, Anil, for non-payment of rent amounting to ₹2 lakhs. Priya fears that Anil might sell his assets and leave the city to avoid paying the rent.

Application of Rule 6:

Court's Order for Security: The court directs Anil to furnish security for ₹2 lakhs to ensure that he will pay the rent if the court rules in favor of Priya.

Providing Security: Anil shows valid reasons and furnishes the required security within the time fixed by the court.

Withdrawal of Attachment: Since Anil has provided the required security, the court orders the withdrawal of any attachment that might have been placed on Anil's property, or makes any other suitable order as it deems fit.

Rule 7: Mode of making attachment.

Save as otherwise expressly provided, the attachment shall be made in the manner provided for the attachment of property in execution of a decree,

Simplified act

Unless stated otherwise, property will be seized in the same way as it is when enforcing a court judgment.

Explanation using Example

Example 1:

Rajesh has filed a lawsuit against his business partner, Suresh, claiming that Suresh owes him a significant amount of money. Rajesh is worried that Suresh might sell off his assets to avoid paying the debt if the court rules in Rajesh's favor. To prevent this, Rajesh requests the court to attach Suresh's property before the judgment is passed. The court agrees and orders the attachment of Suresh's commercial property in the manner provided for the attachment of property in execution of a decree. This means that the property will be legally secured and cannot be sold or transferred by Suresh until the court makes a final decision on the case.

Example 2:

Meena has a pending lawsuit against her tenant, Ravi, for unpaid rent amounting to several lakhs. Meena fears that Ravi might abscond or dispose of his valuable assets to avoid paying the dues. Meena approaches the court and requests an attachment before judgment of Ravi's assets. The court orders the attachment of Ravi's bank accounts and a piece of land he owns. The attachment is carried out in the same manner as it would be if Meena had

already won a decree against Ravi. This ensures that Ravi's assets are secured and available to satisfy any potential judgment in Meena's favor.

Rule 8: Adjudication of claim to property attached before judgment.

Where any claim is preferred to property attached before judgment, such claim shall be adjudicated upon in the manner hereinbefore provided for the adjudication of claim to property attached in execution of a decree for the payment of money.

Simplified act

If someone makes a claim on property that has been seized before a court decision, that claim will be handled in the same way as claims on property seized to pay off a debt after a court decision.

Explanation using Example

Example 1:

Rajesh files a lawsuit against Suresh for non-payment of a loan amounting to ₹5,00,000. Rajesh fears that Suresh might sell his property to avoid paying the debt if the court rules in Rajesh's favor. Therefore, Rajesh requests the court to attach Suresh's property before the judgment is passed. The court agrees and attaches Suresh's house.

However, Priya, Suresh's sister, claims that the house actually belongs to her and not to Suresh. She files a claim in the court stating that the property should not have been attached as it is her property. The court will then adjudicate Priya's claim in the same manner as it would for a property attached in execution of a decree for the payment of money. This means the court will examine the evidence and decide whether the property indeed belongs to Priya or if it can be attached to satisfy Rajesh's potential decree.

Example 2:

Meena sues her business partner, Anil, for misappropriation of funds amounting to ₹10,00,000. To ensure that Anil does not dispose of his assets, Meena requests the court to attach Anil's car before the judgment is delivered. The court orders the attachment of Anil's car.

Ravi, a friend of Anil, steps forward and claims that the car is actually his and not Anil's. Ravi provides documents and evidence to support his claim. The court will then adjudicate Ravi's claim in the same manner as it would for a

property attached in execution of a decree for the payment of money. The court will review the evidence and decide whether the car belongs to Ravi or if it can be used to satisfy Meena's potential decree against Anil.

Rule 9: Removal of attachment when security furnished or suit dismissed.

Where an order is made for attachment before judgment, the Court shall order the attachment to be withdrawn when the defendant furnishes the security required, together with security for the cost of the attachment, or when the suit is dismissed.

Simplified act

If the court orders to seize someone's property before the final decision of a case, the court will cancel this order if: a. The defendant provides the required security deposit, including an additional deposit to cover the costs of seizing the property, or b. The case is dismissed.

Explanation using Example

Example 1:

Rajesh, a businessman, files a lawsuit against his supplier, Anil, claiming that Anil owes him Rs. 10 lakhs for goods delivered. Rajesh is concerned that Anil might sell off his assets to avoid paying the debt. Rajesh requests the court to attach Anil's property before the judgment to secure the claim. The court orders the attachment of Anil's warehouse.

Anil, wanting to avoid the attachment, provides the court with a bank guarantee of Rs. 10 lakhs as security and also covers the costs associated with the attachment process. The court, satisfied with the security provided, orders the withdrawal of the attachment on Anil's warehouse.

Example 2:

Meena files a lawsuit against her tenant, Ravi, for unpaid rent amounting to Rs. 2 lakhs. Meena fears that Ravi might vacate the premises and abscond without paying the dues. She requests the court to attach Ravi's car before the judgment to ensure he pays the rent. The court orders the attachment of Ravi's car.

During the trial, the court finds that Meena's claims are baseless and dismisses the suit. Consequently, the court orders the withdrawal of the attachment on Ravi's car, as the suit has been dismissed.

Rule 10: Attachment before judgment not to affect rights of strangers, nor bar decree-holder from applying for sale.

Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.

Simplified act

If someone's property is seized before a court judgment, it won't affect the rights of people who are not involved in the lawsuit and already had rights to the property. Also, if someone else has a court order against the defendant, they can still ask to sell the seized property to satisfy their court order.

Explanation using Example

Example 1:

Scenario: Rajesh files a lawsuit against Suresh for non-payment of a loan amounting to ₹5,00,000. Rajesh is worried that Suresh might sell his property to avoid paying the debt, so he requests the court to attach Suresh's property before the judgment is passed.

Application of Rule 10:

The court orders the attachment of Suresh's property.

However, Suresh's friend, Anil, had already lent Suresh ₹2,00,000 and has a legal agreement stating that Suresh's property is collateral for this loan.

According to Rule 10, Anil's rights to the property, which existed before the attachment, are not affected by the court's order. Anil can still claim his ₹2,00,000 from the property.

Additionally, if another person, Priya, has a court decree against Suresh for a different matter, she can apply for the sale of the attached property to recover her dues, even though the property is under attachment due to Rajesh's lawsuit.

Example 2:

Scenario: Meena sues her business partner, Ravi, for misappropriation of funds amounting to ₹10,00,000. To ensure Ravi does not dispose of his assets, Meena requests the court to attach Ravi's commercial property before the judgment.

Application of Rule 10:

The court orders the attachment of Ravi's commercial property.

Ravi's tenant, Sunil, has a lease agreement that was signed before the attachment order. Sunil's right to continue occupying the property as per the lease agreement is not affected by the attachment.

Meanwhile, another creditor, Kiran, who has a court decree against Ravi for ₹3,00,000, can still apply for the sale of the attached commercial property to recover her dues, despite the property being under attachment due to Meena's lawsuit.

Rule 11: Property attached before judgment not to be re-attached in execution of decree.

Where property is under attachment by virtue of the provisions of this order decree is subsequently passed in favour of the plaintiff, it shall not be necessary upon an application for execution of such decree to apply for a re-attachment of the property.

Simplified act

If a property is already seized because of this order and later the court decides in favor of the person who filed the case (the plaintiff),

The plaintiff does not need to request to seize the property again when they ask the court to enforce the decision.

Explanation using Example

Example 1:

Ravi filed a lawsuit against Shyam for non-payment of a loan amounting to ₹5,00,000. During the lawsuit, Ravi was concerned that Shyam might sell his property to avoid paying the debt. Therefore, Ravi requested the court to attach Shyam's property before the judgment. The court agreed and attached Shyam's property.

After several months, the court ruled in favor of Ravi and ordered Shyam to pay the ₹5,00,000. Since Shyam's property was already attached before the judgment, Ravi did not need to apply for a re-attachment of the property to execute the court's decree. The previously attached property could now be used to satisfy the court's order.

Example 2:

Meera sued her business partner, Anil, for misappropriation of funds amounting to ₹10,00,000. Fearing that Anil might dispose of his assets to evade the court's decision, Meera requested the court to attach Anil's commercial property before the judgment. The court granted her request and attached Anil's commercial property.

Eventually, the court ruled in Meera's favor and ordered Anil to pay the ₹10,00,000. Since the commercial property was already under attachment, Meera did not need to go through the process of re-attaching the property to enforce the court's decree. The attached property could be used to recover the amount awarded by the court.

Rule 11A: Provisions applicable to attachment.

(1) The provisions of this Code applicable to an attachment made in execution of a decree shall, so far as may be, apply to an attachment made before judgment which continues after the judgment by virtue of the provisions of rule 11.

(2) An attachment made before judgment in a suit which is dismissed for default shall not become revived merely by reason of the fact that the order for the dismissal of the suit for default has been set aside and the suit has been restored.

Simplified act

(1) The rules in this Code that apply to seizing property to enforce a court decision also apply to seizing property before a court decision, if that seizure continues after the decision because of rule 11.

(2) If property was seized before a court decision in a case that was dismissed because no one showed up, that seizure does not automatically start again just because the dismissal was canceled and the case was reopened.

Explanation using Example

Example 1:

Scenario: Rajesh files a lawsuit against Suresh for non-payment of a loan amounting to ₹5,00,000. Rajesh is concerned that Suresh might sell his property to avoid paying the debt if the court rules in Rajesh's favor.

Application of Rule 11A:

Rajesh requests the court to attach Suresh's property before the judgment to ensure that the property remains available to satisfy the potential decree.

The court orders the attachment of Suresh's property.

The provisions applicable to an attachment made in execution of a decree will also apply to this pre-judgment attachment.

After the court passes the judgment in favor of Rajesh, the attachment continues, ensuring that Suresh's property can be used to satisfy the decree.

Example 2:

Scenario: Priya files a lawsuit against her business partner, Anil, for misappropriation of funds amounting to ₹10,00,000. Priya fears that Anil might transfer his assets to third parties to evade the court's judgment.

Application of Rule 11A:

Priya requests the court to attach Anil's bank accounts and other assets before the judgment.

The court orders the attachment of Anil's assets.

The lawsuit is dismissed for default because Priya fails to appear in court.

Later, Priya successfully gets the dismissal order set aside and the suit is restored.

According to Rule 11A(2), the attachment made before the judgment does not automatically revive just because the suit has been restored. Priya would need to request a fresh attachment order from the court.

Rule 12: Agricultural produce not attachable before judgment.

Nothing in this Order shall be deemed to authorise the plaintiff to apply for the attachment of any agricultural produce in the possession of an agriculturist, or to empower the Court to order the attachment or production of such produce.

Simplified act

This Order does not allow the plaintiff (the person who brings a case to court) to request the attachment (seizure) of any agricultural produce (crops or farm products) that an agriculturist (farmer) has.

This Order also does not give the Court the power to order the attachment or production of such agricultural produce.

Explanation using Example

Example 1:

Ramesh, a farmer in Maharashtra, took a loan from a local moneylender, Suresh, to buy seeds and fertilizers for his crops. Due to unforeseen circumstances, Ramesh was unable to repay the loan on time. Suresh decided to file a lawsuit against Ramesh to recover the money. Suresh also requested the court to attach Ramesh's harvested crops as security before the judgment was passed. However, under Rule 12 of the Code of Civil Procedure 1908, the court denied Suresh's request, stating that agricultural produce in the possession of an agriculturist cannot be attached before judgment.

Example 2:

Priya, a farmer in Punjab, borrowed money from a bank to purchase new farming equipment. Unfortunately, due to a poor monsoon season, Priya's crop yield was significantly lower than expected, and she struggled to repay the loan. The bank initiated legal proceedings to recover the outstanding amount and sought an order from the court to attach Priya's wheat harvest as collateral before the judgment. The court, referencing Rule 12 of the Code of Civil Procedure 1908, ruled that the bank could not attach Priya's agricultural produce before the judgment, as it is protected under this provision.

Rule 13: Small Cause Court not to attach immovable property.

Nothing in this Order shall be deemed to empower any Court of Small Causes to make an order for the attachment of immovable property.

Simplified act

This rule does not give the Court of Small Causes the power to order the seizure of real estate.

Explanation using Example

Example 1:

Ravi, a tenant, owes Rs. 50,000 to his landlord, Suresh. Suresh files a case in the Small Cause Court to recover the amount. During the proceedings, Suresh requests the court to attach Ravi's house to ensure that Ravi does not sell or transfer the property before the judgment is passed. However, under Rule 13 of the Code of Civil Procedure 1908, the Small Cause Court does not have the authority to attach immovable property like Ravi's house. Therefore, the court denies Suresh's request for attachment of the house.

Example 2:

Meena runs a small business and has borrowed Rs. 1,00,000 from her friend, Priya. Meena fails to repay the loan, and Priya files a suit in the Small Cause Court to recover the money. Priya is worried that Meena might sell her shop to avoid repayment and requests the court to attach the shop. According to Rule 13 of the Code of Civil Procedure 1908, the Small Cause Court cannot order the attachment of immovable property such as Meena's shop. Consequently, Priya's request for attachment of the shop is not granted by the court.

ORDER XXXIX: TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS

TEMPORARY INJUNCTIONS

Rule 1: Cases in which temporary injunction may be granted.

Where in any suit it is proved by affidavit or otherwise -

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in

relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders.

Simplified act

If in any lawsuit it is shown through an affidavit or other means that:

- (a) any property involved in the lawsuit is at risk of being wasted, damaged, sold off, or wrongly sold because of a court order, or
- (b) the defendant is threatening or planning to remove or sell their property to cheat their creditors, or
- (c) the defendant is threatening to take away the plaintiff's property or harm the plaintiff in relation to the property involved in the lawsuit,

the Court can issue a temporary order to stop these actions. The Court can also make any other order it thinks is necessary to prevent the property from being wasted, damaged, sold, removed, or disposed of, or to stop the defendant from taking away the plaintiff's property or causing harm to the plaintiff regarding the property involved in the lawsuit. This order will last until the lawsuit is resolved or until the Court issues another order.

Explanation using Example

Example 1:

Scenario: Rajesh owns a piece of agricultural land in his village. He has filed a lawsuit against his neighbor, Suresh, claiming that Suresh is trying to encroach upon his land. Rajesh provides evidence that Suresh has started constructing a wall on the disputed land.

Application of the Act: Rajesh can file an application for a temporary injunction under Rule 1 of Order XXXIX of the Code of Civil Procedure, 1908. He can argue that the property in dispute is in danger of being wasted or damaged by Suresh's construction activities. The court, upon being satisfied with the evidence, may grant a temporary injunction to restrain Suresh from continuing the construction until the final decision of the suit.

Example 2:

Scenario: Meena has a jewelry shop and has supplied a large consignment of gold jewelry to a retailer, Ravi, on credit. Meena learns that Ravi is planning to

sell off his shop and move to another city without paying her dues. She fears that Ravi is trying to defraud her and other creditors.

Application of the Act: Meena can file a suit and simultaneously apply for a temporary injunction under Rule 1 of Order XXXIX of the Code of Civil Procedure, 1908. She can present evidence that Ravi intends to dispose of his property to defraud his creditors. The court may grant a temporary injunction to prevent Ravi from selling his shop or disposing of his assets until the suit is resolved.

Example 3:

Scenario: Anil has rented out his commercial property to Vijay. Anil files a suit against Vijay for non-payment of rent and provides evidence that Vijay is threatening to vacate the property and leave it in a damaged condition.

Application of the Act: Anil can seek a temporary injunction under Rule 1 of Order XXXIX of the Code of Civil Procedure, 1908. He can argue that Vijay's actions threaten to cause injury to the property in dispute. The court may issue a temporary injunction to prevent Vijay from vacating the property and causing any damage until the suit is decided.

Example 4:

Scenario: Priya has a legal dispute with her business partner, Arjun, over the ownership of a valuable piece of machinery. Priya learns that Arjun is planning to sell the machinery to a third party.

Application of the Act: Priya can file a suit and request a temporary injunction under Rule 1 of Order XXXIX of the Code of Civil Procedure, 1908. She can provide evidence that the machinery is in danger of being wrongfully sold. The court may grant a temporary injunction to restrain Arjun from selling the machinery until the final resolution of the dispute.

Rule 2: Injunction to restrain repetition or continuance of breach.

Temporary Injunctions

(1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or

injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.

Simplified act

Temporary Injunctions

(1) If you are suing someone to stop them from breaking a contract or causing any other kind of harm, whether you are asking for money or not, you can ask the Court for a temporary order to stop them from doing so. You can make this request at any time after you start the lawsuit, and either before or after the Court makes a final decision. This temporary order can also stop them from doing similar harmful things related to the same contract, property, or rights.

(2) The Court can grant this temporary order and decide how long it will last. The Court can also set conditions, like keeping records, providing a guarantee, or any other terms it thinks are appropriate.

Explanation using Example

Example 1:

Scenario: A Construction Contract Dispute

Facts:

Rajesh enters into a contract with a construction company, BuildWell Ltd., to construct a commercial building on his property.

The contract specifies that the construction must be completed within 12 months.

After 8 months, Rajesh notices that BuildWell Ltd. is using substandard materials, which is a breach of the contract terms.

Rajesh files a suit against BuildWell Ltd. for breach of contract and seeks a temporary injunction to stop the use of substandard materials.

Application of the Act:

Rajesh, the plaintiff, applies to the Court for a temporary injunction to restrain BuildWell Ltd. from continuing the use of substandard materials.

The Court, after considering the evidence, grants the temporary injunction, ordering BuildWell Ltd. to cease using substandard materials immediately.

The Court also sets terms for the injunction, such as requiring BuildWell Ltd. to provide a security deposit to ensure compliance and to keep an account of the materials used.

Example 2:

Scenario: Intellectual Property Infringement

Facts:

Priya is a fashion designer who has created a unique design for a saree.

She discovers that a local boutique, Trendy Threads, is selling sarees with her design without her permission.

Priya files a suit against Trendy Threads for infringement of her intellectual property rights and seeks a temporary injunction to stop the boutique from selling the sarees.

Application of the Act:

Priya, the plaintiff, applies to the Court for a temporary injunction to restrain Trendy Threads from continuing to sell the sarees with her design.

The Court, after reviewing the evidence, grants the temporary injunction, ordering Trendy Threads to stop selling the infringing sarees immediately.

The Court also sets terms for the injunction, such as requiring Trendy Threads to keep an account of the sales made and to provide security to cover potential damages.

Example 3:

Scenario: Property Dispute

Facts:

Suresh owns a piece of agricultural land that he has leased to Ramesh for farming.

The lease agreement specifies that Ramesh cannot construct any permanent structures on the land.

Suresh discovers that Ramesh has started constructing a permanent shed on the land, which is a breach of the lease agreement.

Suresh files a suit against Ramesh for breach of contract and seeks a temporary injunction to stop the construction.

Application of the Act:

Suresh, the plaintiff, applies to the Court for a temporary injunction to restrain Ramesh from continuing the construction of the shed.

The Court, after considering the evidence, grants the temporary injunction, ordering Ramesh to stop the construction immediately.

The Court also sets terms for the injunction, such as requiring Ramesh to provide a security deposit to ensure compliance and to keep an account of any construction activities.

Example 4:

Scenario: Nuisance and Environmental Harm

Facts:

A residential community, Green Valley Society, is located near a factory owned by Industrial Co.

The factory starts emitting harmful pollutants, causing health issues for the residents.

The residents of Green Valley Society file a suit against Industrial Co. for causing environmental harm and seek a temporary injunction to stop the emissions.

Application of the Act:

The residents, as plaintiffs, apply to the Court for a temporary injunction to restrain Industrial Co. from continuing the harmful emissions.

The Court, after reviewing the evidence, grants the temporary injunction, ordering Industrial Co. to stop the emissions immediately.

The Court also sets terms for the injunction, such as requiring Industrial Co. to install pollution control measures and to provide a security deposit to cover potential damages.

Example 5:

Scenario: Breach of Non-Compete Agreement

Facts:

Anil works for a software company, TechSolutions, and has signed a non-compete agreement that prohibits him from working for a competitor for one year after leaving the company.

Anil resigns from TechSolutions and immediately joins a competitor, SoftTech.

TechSolutions files a suit against Anil for breach of the non-compete agreement and seeks a temporary injunction to stop him from working for SoftTech.

Application of the Act:

TechSolutions, the plaintiff, applies to the Court for a temporary injunction to restrain Anil from continuing to work for SoftTech.

The Court, after considering the evidence, grants the temporary injunction, ordering Anil to stop working for SoftTech immediately.

The Court also sets terms for the injunction, such as requiring Anil to provide a security deposit to ensure compliance and to keep an account of his employment activities.

Rule 2A: Consequence of disobedience or breach of injunction.

(1) In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award

such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.

Simplified act

(1) If someone disobeys a court order or breaks the rules of an injunction (a court order to do or not do something), the court that issued the order, or any court handling the case, can take the following actions:

They can seize the property of the person who disobeyed.

They can also put that person in jail for up to three months, unless the court decides to release them earlier.

(2) The property that is seized cannot be held for more than one year. If the person continues to disobey after one year, the court can sell the property. The money from the sale can be used to compensate the person who was harmed by the disobedience. Any leftover money will be given to the person who is legally entitled to it.

Explanation using Example

Example 1:

Scenario: Rajesh owns a piece of land in Delhi. He files a civil suit against his neighbor, Suresh, claiming that Suresh is illegally constructing a building on Rajesh's land. The court grants a temporary injunction under Order XXXIX, Rule 1, restraining Suresh from continuing the construction until the case is resolved.

Disobedience: Despite the court's injunction, Suresh continues the construction work on the disputed land.

Consequence: Rajesh informs the court about Suresh's disobedience. The court, under Rule 2A, orders the attachment of Suresh's property and detains Suresh in civil prison for a term of two months. The court also warns that if the disobedience continues, the attached property may be sold after one year, and the proceeds will be used to compensate Rajesh for any damages.

Example 2:

Scenario: Priya runs a small business in Mumbai. She enters into a contract with a supplier, Anil, who agrees to supply goods exclusively to her. Priya learns that Anil is also supplying the same goods to her competitor. She files a

suit and obtains a temporary injunction under Order XXXIX, Rule 2, preventing Anil from supplying goods to her competitor.

Breach: Anil breaches the terms of the injunction and continues to supply goods to Priya's competitor.

Consequence: Priya brings the breach to the court's attention. The court, under Rule 2A, orders the attachment of Anil's warehouse and detains Anil in civil prison for one month. The court also states that if Anil continues to breach the injunction, the attached warehouse may be sold after one year, and the proceeds will be used to compensate Priya for her losses, with any remaining balance returned to Anil.

Rule 3: Before granting injunction, Court to direct notice to opposite party.

The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party:

Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay, and require the applicant -

(a) to deliver to the opposite party, or to send to him by registered post, immediately after the order granting the injunction has been made, a copy of the application for injunction together with -

(i) a copy of the affidavit filed in support of the application;

(ii) a copy of the plaint; and

(iii) copies of documents on which the applicant relies, and

(b) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent.

Simplified act

The Court must usually notify the other party before granting an injunction, unless doing so would defeat the purpose of the injunction due to delay.

However, if the Court decides to grant an injunction without notifying the other party, it must:

(a) Require the person asking for the injunction to immediately deliver or send by registered mail to the other party:

(i) A copy of the application for the injunction;

(ii) A copy of the affidavit supporting the application;

(iii) A copy of the complaint; and

(iv) Copies of any documents the applicant is relying on.

(b) Require the person asking for the injunction to file an affidavit on the same day or the next day, confirming that these copies have been delivered or sent.

Explanation using Example

Example 1:

Scenario: A property dispute between two neighbors, Mr. Sharma and Mr. Verma.

Situation: Mr. Sharma notices that Mr. Verma is constructing a wall that encroaches on his property. Mr. Sharma files a suit in the court seeking a temporary injunction to stop the construction immediately.

Application of Rule 3:

Notice to Opposite Party: The court, before granting the injunction, directs that a notice of the application be given to Mr. Verma.

Exception: If Mr. Sharma argues that the construction will be completed soon and the purpose of the injunction will be defeated by the delay, the court may consider granting the injunction without prior notice to Mr. Verma.

Court's Duty: If the court decides to grant the injunction without notice, it must record the reasons for its decision.

Applicant's Responsibility: Mr. Sharma must immediately deliver or send by registered post a copy of the application for the injunction, the supporting affidavit, the plaint, and any other relevant documents to Mr. Verma.

Affidavit Filing: Mr. Sharma must file an affidavit on the same day or the next day, stating that he has delivered or sent the required documents to Mr. Verma.

Example 2:

Scenario: A business dispute between two companies, ABC Pvt. Ltd. and XYZ Pvt. Ltd.

Situation: ABC Pvt. Ltd. discovers that XYZ Pvt. Ltd. is about to launch a product that infringes on its patented technology. ABC Pvt. Ltd. files a suit seeking a temporary injunction to prevent the launch.

Application of Rule 3:

Notice to Opposite Party: The court, before granting the injunction, directs that a notice of the application be given to XYZ Pvt. Ltd.

Exception: ABC Pvt. Ltd. argues that the product launch is scheduled for the next day, and any delay in granting the injunction will render the relief ineffective. The court may consider granting the injunction without prior notice to XYZ Pvt. Ltd.

Court's Duty: If the court decides to grant the injunction without notice, it must record the reasons for its decision.

Applicant's Responsibility: ABC Pvt. Ltd. must immediately deliver or send by registered post a copy of the application for the injunction, the supporting affidavit, the plaint, and any other relevant documents to XYZ Pvt. Ltd.

Affidavit Filing: ABC Pvt. Ltd. must file an affidavit on the same day or the next day, stating that it has delivered or sent the required documents to XYZ Pvt. Ltd.

Rule 3A: Court to dispose of application for injunction within thirty days.

Where an injunction has been granted without giving notice to the opposite party, the Court shall make an endeavour to finally dispose of the application within thirty days from the date on which the injunction was granted; and where it is unable so to do, it shall record its reasons for such inability.

Simplified act

If a court gives an injunction (a court order to do or not do something) without informing the other party involved, the court should try to make a final decision on the application within 30 days from the date the injunction was given.

If the court cannot make a final decision within 30 days, it must explain why it couldn't do so.

Explanation using Example

Example 1:

Rajesh owns a piece of land in Mumbai. One day, he notices that his neighbor, Suresh, has started constructing a building that encroaches on his land. Rajesh immediately files a suit in the civil court and requests a temporary injunction to stop the construction. The court grants the injunction without notifying Suresh to prevent further encroachment. According to Rule 3A of the Code of Civil Procedure 1908, the court must try to resolve Rajesh's application for the injunction within thirty days. If the court cannot do so, it must provide a valid reason for the delay.

Example 2:

Meera runs a small boutique in Delhi. She discovers that a competitor, Anjali, has started using a similar name and logo, causing confusion among customers. Meera files a lawsuit and requests a temporary injunction to stop Anjali from using the similar name and logo. The court grants the injunction without informing Anjali to prevent further damage to Meera's business. As per Rule 3A of the Code of Civil Procedure 1908, the court is required to make an effort to finalize the decision on Meera's application within thirty days. If the court is unable to do so, it must document the reasons for the delay.

Rule 4: Order for injunction may be discharged, varied or set aside.

Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order:

Provided that if in an application for temporary injunction or in any affidavit supporting such application, a party has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite party, the Court shall vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary so to do in the interests of justice:

Provided further that where an order for injunction has been passed after giving to a party an opportunity of being heard, the order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in the circumstances, or unless the Court is satisfied that the order has caused undue hardship to that party.

Simplified act

If someone is unhappy with a court order for an injunction (a court order that tells someone to do or not do something), they can ask the court to cancel, change, or set aside the order.

If a person asking for a temporary injunction or supporting it with an affidavit (a written statement confirmed by oath) has knowingly made a false or misleading statement about an important detail, and the injunction was granted without informing the other party, the court must cancel the injunction. However, the court can decide not to cancel it if it records reasons why it is necessary for justice.

If the court gave an injunction order after hearing from both parties, the order cannot be canceled, changed, or set aside just because one party asks for it. This can only happen if there has been a change in circumstances or if the court believes the order has caused significant hardship to that party.

Explanation using Example

Example 1:

Scenario: Rajesh owns a piece of land in Mumbai. He discovers that his neighbor, Suresh, has started constructing a building that encroaches on his land. Rajesh files a suit and obtains a temporary injunction from the court to stop Suresh from continuing the construction.

Application of Rule 4:

Discharge or Variation: Suresh can apply to the court to discharge (cancel) or vary (modify) the injunction if he believes it was wrongly granted. For instance, if Suresh can prove that the construction does not encroach on Rajesh's land, the court may discharge the injunction.

False Statement: If Rajesh had knowingly made a false statement in his application for the injunction, such as falsely claiming the extent of the

encroachment, and the injunction was granted without notifying Suresh, the court is required to vacate (cancel) the injunction.

Change in Circumstances: If the court had initially heard both parties before granting the injunction, Suresh can only apply to discharge or vary the injunction if there is a significant change in circumstances, such as Rajesh selling the land to a third party, or if the injunction is causing undue hardship to Suresh, like financial losses due to halted construction.

Example 2:

Scenario: Priya runs a small boutique in Delhi. She finds out that her competitor, Anjali, is using a logo that is very similar to hers, causing confusion among customers. Priya files a suit and obtains a temporary injunction to stop Anjali from using the logo.

Application of Rule 4:

Discharge or Variation: Anjali can apply to the court to discharge or vary the injunction if she believes it was wrongly granted. For example, if Anjali can prove that her logo is significantly different and does not cause confusion, the court may discharge the injunction.

False Statement: If Priya had knowingly made a false statement in her application, such as exaggerating the similarity between the logos, and the injunction was granted without notifying Anjali, the court must vacate the injunction.

Change in Circumstances: If the court had initially heard both parties before granting the injunction, Anjali can only apply to discharge or vary the injunction if there is a significant change in circumstances, such as Priya changing her logo, or if the injunction is causing undue hardship to Anjali, like loss of business due to rebranding.

Rule 5: Injunction to corporation binding on its officers.

An injunction directed to a corporation is binding not only on the corporation itself, but also on all members and officers of the corporation whose personal action it seeks to restrain.

Simplified act

If a court orders a corporation to stop doing something (an injunction), this order applies not only to the corporation itself but also to all its members and officers who are personally involved in the action that the court wants to stop.

Explanation using Example

Example 1:

Scenario: A local environmental NGO, "Green Earth," files a lawsuit against a large manufacturing corporation, "EcoTech Industries," for polluting a nearby river. The court issues a temporary injunction ordering EcoTech Industries to stop discharging waste into the river.

Application of Rule 5: The injunction is not only binding on EcoTech Industries as a corporate entity but also on its CEO, factory managers, and any other officers who are responsible for the waste discharge. If the CEO or any factory manager continues to allow waste to be discharged into the river, they can be held personally liable for violating the court's order.

Example 2:

Scenario: A group of residents files a lawsuit against a construction company, "BuildWell Constructions," for illegal encroachment on public land. The court issues a temporary injunction directing BuildWell Constructions to halt all construction activities on the disputed land.

Application of Rule 5: The injunction is binding on BuildWell Constructions as well as its directors, project managers, and site supervisors. If any of these officers continue construction activities on the disputed land, they can be held in contempt of court and face legal consequences, including fines or imprisonment.

Interlocutory orders

Rule 6: Power to order interim sale.

The Court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any movable property, being the subject-matter of such suit, or attached before judgment in such suit, which is subject to speedy and natural delay, or which for any other just and sufficient cause, it may be desirable to have sold at once.

Simplified act

If someone involved in a lawsuit asks, the Court can order the sale of any movable property (like goods or items) that is part of the lawsuit.

The Court can choose who will sell the property, how it will be sold, and under what conditions.

This can happen if the property is likely to spoil or lose value quickly, or if there is another good reason to sell it immediately.

Explanation using Example

Example 1:

Ravi and Suresh are in a legal dispute over a consignment of perishable goods, specifically a large shipment of mangoes. Ravi claims that Suresh owes him money for the mangoes, while Suresh disputes the quality and refuses to pay. The case is brought before the court. Given that the mangoes are perishable and will spoil if not sold quickly, Ravi applies to the court under Rule 6 of Order XXXIX of the Code of Civil Procedure, 1908, requesting an interim sale of the mangoes. The court, recognizing the urgency and the perishable nature of the goods, orders the sale of the mangoes by a court-appointed agent. The proceeds from the sale are then held by the court until the final resolution of the dispute.

Example 2:

Meena and Raj are involved in a lawsuit over the ownership of a collection of antique furniture. The furniture is currently stored in a warehouse, but the storage conditions are not ideal, and there is a risk of damage due to humidity and pests. Meena, concerned about the potential deterioration of the valuable antiques, files an application under Rule 6 of Order XXXIX of the Code of Civil Procedure, 1908, requesting an interim sale of the furniture. The court, considering the just and sufficient cause presented by Meena, orders the sale of the antique furniture through a reputable auction house. The proceeds from the auction are held by the court until the ownership dispute is resolved.

Rule 7: Detention, preservation, inspection, etc., of subject-matter of suit.

(1) The Court may, on the application of any party to a suit, and on such terms as it thinks fit, -

(a) make an order for the detention, preservation or inspection of any property which is the subject-matter of such suit, or as to which any question may arise therein;

(b) for all or any of the purposes aforesaid authorise any person to enter upon or into any land or building in the possession of any other party to such suit; and

(c) for all or any of the purposes aforesaid authorise any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

(2) The provisions as to execution of process shall apply, mutatis mutandis, to persons authorised to enter under this rule.

Simplified act

(1) The Court can, if asked by any party involved in a lawsuit, and under conditions it finds appropriate, -

(a) order that any property involved in the lawsuit be kept safe, checked, or looked at;

(b) allow someone to go onto or into any land or building that another party in the lawsuit owns, for the purposes mentioned above; and

(c) allow samples to be taken, observations to be made, or experiments to be conducted if needed to get complete information or evidence.

(2) The rules for carrying out court orders will also apply, with necessary changes, to people allowed to enter under this rule.

Explanation using Example

Example 1:

Scenario: Property Dispute Over Agricultural Land

Context: Ramesh and Suresh are involved in a legal dispute over the ownership of a piece of agricultural land. Ramesh claims that Suresh has been illegally occupying the land and damaging the crops.

Application of Rule 7:

Ramesh files an application under Rule 7 to the court, requesting an order for the inspection and preservation of the agricultural land.

The court, considering the application, orders the detention and preservation of the land to prevent further damage to the crops.

The court authorizes an agricultural expert to enter the land, take soil samples, and inspect the condition of the crops to gather evidence.

The expert's report is submitted to the court, providing crucial information for resolving the dispute.

Example 2:

Scenario: Intellectual Property Dispute Over a Prototype

Context: Priya and Anil are in a legal battle over the ownership of a prototype for a new technology. Priya alleges that Anil has been using the prototype without permission and making modifications to it.

Application of Rule 7:

Priya files an application under Rule 7, requesting the court to order the detention and inspection of the prototype.

The court, after reviewing the application, orders the preservation of the prototype to ensure it is not tampered with during the litigation.

The court authorizes a technical expert to enter Anil's premises, inspect the prototype, and take necessary samples or conduct experiments to verify Priya's claims.

The expert's findings are presented to the court, aiding in the determination of the rightful owner and the extent of any unauthorized modifications.

Example 3:

Scenario: Construction Dispute Over Building Quality

Context: A housing society files a lawsuit against a construction company, alleging that the newly constructed building has several structural defects and does not meet the agreed-upon standards.

Application of Rule 7:

The housing society files an application under Rule 7, requesting the court to order an inspection of the building.

The court orders the detention and preservation of the building to prevent any further construction or modifications that could affect the evidence.

The court authorizes a civil engineer to enter the building, inspect the structural integrity, and take samples of construction materials.

The engineer's report, detailing the defects and deviations from the agreed standards, is submitted to the court, providing essential evidence for the case.

Example 4:

Scenario: Environmental Damage Dispute

Context: A group of villagers files a lawsuit against a factory, claiming that the factory's waste disposal practices are polluting the local river and harming their crops and health.

Application of Rule 7:

The villagers file an application under Rule 7, requesting the court to order the inspection and preservation of the river and surrounding land.

The court orders the detention and preservation of the affected areas to prevent further pollution.

The court authorizes environmental experts to enter the factory premises and the affected areas, take water and soil samples, and conduct necessary experiments to assess the pollution levels.

The experts' findings are presented to the court, providing critical evidence to support the villagers' claims and determine the factory's liability.

Example 5:

Scenario: Dispute Over Antique Artifacts

Context: Two museums are in a legal dispute over the ownership of a set of antique artifacts. Museum A claims that Museum B has illegally acquired and displayed the artifacts.

Application of Rule 7:

Museum A files an application under Rule 7, requesting the court to order the detention and inspection of the artifacts.

The court orders the preservation of the artifacts to ensure they are not moved or altered during the litigation.

The court authorizes an art historian to enter Museum B, inspect the artifacts, and take necessary samples or conduct tests to verify their authenticity and origin.

The historian's report is submitted to the court, providing essential information to resolve the ownership dispute.

Rule 8: Application for such orders to be after notice.

(1) An application by the plaintiff for an order under rule 6 or rule 7 may be made at any time after the institution of the suit.

(2) An application by the defendant for a like order may be made at any time after appearance.

(3) Before making an order under rule 6 or rule 7 on an application made for the purpose, the Court shall, except where it appears that the object of making such order would be defeated by the delay, direct notice thereof to be given to the opposite party.

Simplified act

(1) The person who starts the lawsuit (plaintiff) can ask the court for an order under rule 6 or rule 7 at any time after they have filed the lawsuit.

(2) The person being sued (defendant) can ask the court for a similar order at any time after they have responded to the lawsuit.

(3) Before the court makes an order under rule 6 or rule 7 based on such a request, it must usually notify the other party, unless doing so would ruin the purpose of the order due to the delay.

Explanation using Example

Example 1:

Scenario: Property Dispute Between Neighbors

Context: Rajesh and Suresh are neighbors. Rajesh files a suit against Suresh claiming that Suresh has encroached on his land by building a wall. Rajesh wants the court to issue a temporary injunction to stop Suresh from continuing the construction until the case is resolved.

Application:

Plaintiff's Application: Rajesh, the plaintiff, files an application for a temporary injunction under Rule 6 or Rule 7 after instituting the suit.

Notice to Defendant: The court, before granting the temporary injunction, directs that a notice be given to Suresh, the defendant, to inform him about the application.

Court's Decision: The court schedules a hearing where both parties can present their arguments. If the court finds that delaying the order would defeat its purpose (e.g., if Suresh might complete the construction before the hearing), it may issue the injunction immediately without notice.

Example 2:

Scenario: Business Partnership Dispute

Context: Priya and Anil are business partners. Priya files a suit against Anil alleging that Anil is misappropriating company funds. Priya seeks an interlocutory order to freeze the company's bank accounts to prevent further misuse of funds.

Application:

Plaintiff's Application: Priya, the plaintiff, files an application for an interlocutory order under Rule 6 or Rule 7 after instituting the suit.

Notice to Defendant: The court, before making the order to freeze the bank accounts, directs that a notice be given to Anil, the defendant, to inform him about the application.

Court's Decision: The court schedules a hearing where both parties can present their arguments. If the court believes that notifying Anil might lead to him withdrawing the funds before the hearing, it may issue the order to freeze the accounts immediately without notice.

Example 3:

Scenario: Intellectual Property Dispute

Context: A software company, TechSoft, files a suit against a former employee, Ravi, alleging that Ravi is using their proprietary software code in his new startup. TechSoft seeks a temporary injunction to prevent Ravi from using or distributing the software code until the case is resolved.

Application:

Plaintiff's Application: TechSoft, the plaintiff, files an application for a temporary injunction under Rule 6 or Rule 7 after instituting the suit.

Notice to Defendant: The court, before granting the temporary injunction, directs that a notice be given to Ravi, the defendant, to inform him about the application.

Court's Decision: The court schedules a hearing where both parties can present their arguments. If the court finds that delaying the order would allow Ravi to distribute the software code widely, it may issue the injunction immediately without notice.

Rule 9: When party may be put in immediate possession of land the subject-matter of suit.

Where land paying revenue to Government, or a tenure liable to sale, is the subject-matter of a suit, if the party in possession of such land or tenure neglects to pay the Government revenue, or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure is consequently ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may, upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the Court), be put in immediate possession of the land or tenure:

and the Court in its decree may award against the defaulter the amount so paid, with interest thereon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereon at such rate as the Court orders, in any adjustment of accounts which may be directed in the decree passed in the suit.

Simplified act

If there is a lawsuit about land that pays taxes to the government or a property that can be sold, and the person who currently has the land or property doesn't pay the required taxes or rent, and the land or property is ordered to be sold because of this, then:

Any other person involved in the lawsuit who claims to have an interest in the land or property can pay the overdue taxes or rent before the sale happens. They might also need to provide security (like a guarantee) if the court decides it's necessary.

Once they pay, they can take immediate possession of the land or property.

The court can then make the person who didn't pay the taxes or rent repay the amount that was paid by the other party, with interest. The court will decide the interest rate.

Alternatively, the court can include the amount paid, with interest, in any financial adjustments it orders in its final decision on the lawsuit.

Explanation using Example

Example 1:

Scenario: Rajesh owns a piece of agricultural land in Maharashtra that pays revenue to the government. He is currently in possession of the land but has neglected to pay the government revenue for the past year. As a result, the government has ordered the land to be sold.

Application of Rule 9: Suresh, who is Rajesh's cousin and also a party to a suit involving the same piece of land, claims to have an interest in the land. Suresh approaches the court and offers to pay the overdue government revenue before the land is sold. The court, at its discretion, allows Suresh to pay the overdue amount and puts him in immediate possession of the land. The court also decides that Rajesh must reimburse Suresh for the amount paid, along with interest, as part of the final decree in the suit.

Example 2:

Scenario: Priya holds a tenure in a commercial property in Delhi, which is liable to be sold due to non-payment of rent to the proprietor, Mr. Sharma. Priya has been neglecting to pay the rent for several months, and Mr. Sharma has initiated legal proceedings to recover the dues and sell the tenure.

Application of Rule 9: Anita, who is a business partner of Priya and also a party to the suit, claims to have an interest in the tenure. Anita approaches the court and offers to pay the overdue rent to Mr. Sharma before the tenure is sold. The court, at its discretion, allows Anita to pay the overdue rent and puts her in immediate possession of the tenure. The court also decides that Priya must

reimburse Anita for the amount paid, along with interest, as part of the final decree in the suit.

Example 3:

Scenario: Arjun owns a piece of land in Karnataka that is subject to government revenue. He has failed to pay the revenue for two consecutive years, and the government has ordered the land to be sold.

Application of Rule 9: Vikram, who is Arjun's brother and a party to a suit involving the same land, claims to have an interest in the land. Vikram approaches the court and offers to pay the overdue government revenue before the land is sold. The court, at its discretion, allows Vikram to pay the overdue amount and puts him in immediate possession of the land. The court also decides that Arjun must reimburse Vikram for the amount paid, along with interest, as part of the final decree in the suit.

Example 4:

Scenario: Meera holds a tenure in a residential property in Chennai, which is liable to be sold due to non-payment of rent to the landlord, Mr. Reddy. Meera has been neglecting to pay the rent for several months, and Mr. Reddy has initiated legal proceedings to recover the dues and sell the tenure.

Application of Rule 9: Ravi, who is Meera's friend and also a party to the suit, claims to have an interest in the tenure. Ravi approaches the court and offers to pay the overdue rent to Mr. Reddy before the tenure is sold. The court, at its discretion, allows Ravi to pay the overdue rent and puts him in immediate possession of the tenure. The court also decides that Meera must reimburse Ravi for the amount paid, along with interest, as part of the final decree in the suit.

Rule 10: Deposit of money, etc., in Court.

When the subject-matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.

Simplified act

If a lawsuit is about money or something that can be handed over, and one of the people involved admits that they are holding that money or item for someone else, or that it rightfully belongs to someone else, the Court can take action.

The Court can order that the money or item be given to the Court or directly to the person it belongs to.

The Court can decide if this should be done with or without any additional guarantees or conditions.

The Court can also give further instructions on what should happen next.

Explanation using Example

Example 1:

Rajesh files a lawsuit against his business partner, Suresh, claiming that Suresh owes him ₹5,00,000 from their joint venture. During the court proceedings, Suresh admits that he indeed holds ₹5,00,000 that belongs to Rajesh. The court, under Rule 10 of the Code of Civil Procedure 1908, orders Suresh to deposit the ₹5,00,000 in the court. The court will then decide whether the money should be handed over to Rajesh or if any other conditions need to be met.

Example 2:

Meena and Priya are in a legal dispute over a piece of jewelry that Meena claims belongs to her but is currently in Priya's possession. Priya admits in court that the jewelry indeed belongs to Meena. The court, applying Rule 10 of the Code of Civil Procedure 1908, orders Priya to deposit the jewelry with the court. The court will then determine the appropriate course of action, which could include returning the jewelry to Meena or imposing certain conditions before the transfer.

ORDER XL: APPOINTMENT OF RECEIVERS

Rule 1: Appointment of receivers.

Order for Appointment of Receiver

(1) Where it appears to the Court to be just and convenient, the Court may by order -

(a) appoint a receiver of any property, whether before or after decree;

- (b) remove any person from the possession or custody of the property;
 - (c) commit the same to the possession, custody or management of the receiver; and
 - (d) confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit.
- (2) Nothing in this rule shall authorise the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove.

Simplified act

Order for Appointment of Receiver

- (1) If the Court thinks it is fair and useful, it can make an order to:
- (a) appoint a receiver to take care of any property, either before or after a court decision;
 - (b) remove anyone who is currently in possession or control of the property;
 - (c) give the receiver control, custody, or management of the property; and
 - (d) give the receiver all the powers needed to handle legal actions, manage, protect, improve the property, collect rents and profits, and handle documents just like the owner would, or as much power as the Court thinks is necessary.
- (2) This rule does not allow the Court to remove someone from the property if the person who is suing does not have the right to remove them at this time.

Explanation using Example

Example 1:

Scenario: Dispute over Family Property

Ravi and his brother Suresh are in a legal dispute over their ancestral property. The property includes a large piece of agricultural land and a residential house. Both brothers claim ownership and are unable to come to an agreement. The case is brought before the court.

Application of the Act: The court finds it just and convenient to appoint a receiver to manage the property until the dispute is resolved. The court issues an order under Rule 1 of Order XL of the Code of Civil Procedure, 1908, appointing a receiver.

Court Order:

The receiver is given the authority to take possession of the agricultural land and the residential house.

The receiver is tasked with managing the property, including collecting rent from tenants living in the house and overseeing the agricultural activities on the land.

The receiver is also empowered to take necessary actions to protect and preserve the property, such as making repairs to the house or ensuring the land is properly cultivated.

The receiver will collect all profits and rents from the property and hold them until the court makes a final decision on the ownership dispute.

Example 2:

Scenario: Business Partnership Dispute

Anita and Meera are business partners running a successful retail store. Due to irreconcilable differences, they decide to dissolve the partnership. However, they cannot agree on how to divide the assets and profits of the business. The matter is taken to court.

Application of the Act: The court determines that it is just and convenient to appoint a receiver to manage the business assets and operations until the partnership dissolution is finalized. The court issues an order under Rule 1 of Order XL of the Code of Civil Procedure, 1908, appointing a receiver.

Court Order:

The receiver is appointed to take control of the retail store, including all inventory, cash, and other assets.

The receiver is authorized to continue running the store, including making decisions about purchasing inventory, managing staff, and handling daily operations.

The receiver is responsible for collecting all profits from the store and maintaining accurate financial records.

The receiver is empowered to take any necessary legal actions to protect the business assets, such as defending against lawsuits or pursuing claims on behalf of the business.

The receiver will hold all profits and assets until the court issues a final order on the division of the partnership assets.

Example 3:

Scenario: Mortgage Default

Rajesh has taken a loan from a bank and mortgaged his commercial property as security. Due to financial difficulties, Rajesh defaults on the loan payments. The bank initiates legal proceedings to recover the loan amount.

Application of the Act: The court finds it just and convenient to appoint a receiver to manage the commercial property until the loan recovery process is completed. The court issues an order under Rule 1 of Order XL of the Code of Civil Procedure, 1908, appointing a receiver.

Court Order:

The receiver is appointed to take possession of the commercial property.

The receiver is authorized to manage the property, including leasing it out to tenants and collecting rent.

The receiver is responsible for maintaining the property and ensuring it remains in good condition.

The receiver is empowered to take any necessary actions to protect and preserve the property, such as making repairs or improvements.

The receiver will collect all rents and profits from the property and apply them towards the outstanding loan amount until the court makes a final decision on the loan recovery.

Example 4:

Scenario: Dispute over Inherited Property

After the death of their father, siblings Priya and Amit inherit a large estate, including several rental properties. They cannot agree on how to manage the properties and distribute the rental income. The dispute is brought before the court.

Application of the Act: The court finds it just and convenient to appoint a receiver to manage the rental properties until the inheritance dispute is resolved. The court issues an order under Rule 1 of Order XL of the Code of Civil Procedure, 1908, appointing a receiver.

Court Order:

The receiver is appointed to take possession of the rental properties.

The receiver is authorized to manage the properties, including collecting rent from tenants and handling maintenance issues.

The receiver is responsible for ensuring the properties are well-maintained and any necessary repairs are made.

The receiver is empowered to take any necessary legal actions to protect the properties, such as evicting non-paying tenants or defending against legal claims.

The receiver will collect all rental income and hold it until the court issues a final order on the distribution of the inherited estate.

Rule 2: Remuneration.

The Court may by general or special order fix the amount to be paid as remuneration for the services of the receiver.

Simplified act

The Court can decide how much money a receiver should be paid for their services. This can be done through a general rule or a specific order.

Explanation using Example

Example 1:

Rajesh owns a piece of land that is currently under dispute between him and his brother, Suresh. The court decides to appoint a receiver to manage the land until the dispute is resolved. The receiver's duties include collecting rent from

tenants and maintaining the property. The court issues a special order fixing the receiver's remuneration at ₹20,000 per month for these services.

Example 2:

A company, XYZ Pvt. Ltd., is undergoing a financial dispute among its shareholders. The court appoints a receiver to manage the company's assets and operations during the litigation process. The receiver is responsible for overseeing the company's financial transactions and ensuring that the business continues to operate smoothly. The court issues a general order stating that the receiver will be paid 2% of the company's monthly revenue as remuneration for their services.

Rule 3: Duties.

Every receiver so appointed shall -

- (a) furnish such security (if any) as the Court thinks fit, duly to account for what he shall receive in respect of the property;
- (b) submit his accounts at such periods and in such form as the Court directs;
- (c) pay the amount due from him as the Court directs; and
- (d) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

Simplified act

Every receiver appointed by the Court must -

- (a) provide any security (if required) that the Court thinks is necessary to ensure they properly account for the property they receive;
- (b) submit their financial accounts at the times and in the format that the Court specifies;
- (c) pay any amounts they owe as directed by the Court; and
- (d) be responsible for any loss to the property caused by their intentional wrongdoing or serious carelessness.

Explanation using Example

Example 1:

Scenario: A family dispute over ancestral property.

Details: Ravi and his siblings are in a legal battle over their ancestral property in Chennai. The court decides to appoint a receiver to manage the property until the dispute is resolved.

Application of Rule 3:

(a) Security: The court requires the appointed receiver, Mr. Sharma, to furnish a security deposit of ₹2,00,000 to ensure he will manage the property responsibly.

(b) Accounts Submission: Mr. Sharma is directed to submit detailed accounts of the property's income and expenses every three months in a specified format.

(c) Payment: The court orders Mr. Sharma to pay any income generated from the property, such as rent, into a designated bank account every month.

(d) Responsibility for Loss: If Mr. Sharma fails to maintain the property properly and it results in damage or loss, he will be held personally responsible for the loss due to his negligence.

Example 2:

Scenario: Management of a commercial complex during a partnership dispute.

Details: Two business partners, Anil and Sunil, are in a dispute over the management of their jointly-owned commercial complex in Mumbai. The court appoints a receiver to manage the complex until the dispute is settled.

Application of Rule 3:

(a) Security: The court requires the receiver, Ms. Kapoor, to provide a security bond of ₹5,00,000 to ensure she will manage the complex diligently.

(b) Accounts Submission: Ms. Kapoor is instructed to submit monthly financial reports detailing the income from tenants and the expenses incurred for maintenance.

(c) Payment: The court directs Ms. Kapoor to deposit the net income from the complex into a joint account held by Anil and Sunil every month.

(d) Responsibility for Loss: If Ms. Kapoor fails to collect rent on time or neglects necessary repairs, leading to financial loss or property damage, she will be held accountable for the loss due to her gross negligence.

Example 3:

Scenario: Preservation of a disputed agricultural land.

Details: Two farmers, Raj and Mohan, are in a legal dispute over the ownership of a piece of agricultural land in Punjab. The court appoints a receiver to manage the land until the ownership issue is resolved.

Application of Rule 3:

(a) Security: The court requires the receiver, Mr. Singh, to provide a security of ₹1,00,000 to ensure he will manage the land properly.

(b) Accounts Submission: Mr. Singh is directed to submit quarterly reports on the crop yield, expenses for seeds, fertilizers, and labor.

(c) Payment: The court orders Mr. Singh to sell the crops and deposit the proceeds into a court-monitored account.

(d) Responsibility for Loss: If Mr. Singh fails to take necessary agricultural measures, resulting in poor crop yield or damage to the land, he will be held responsible for the loss due to his wilful default or gross negligence.

Rule 4: Enforcement of receiver's duties.

Where a receiver -

(a) fails to submit his accounts at such periods and in such form as the Court directs, or

(b) fails to pay amount due from him as the Court directs, or

(c) occasions loss to the property by his wilful default or gross negligence,

the Court may direct his property to be attached and may sell such property, and may apply the proceeds to make good any amount found to be due from him or any loss occasioned by him, and shall pay the balance (if any) to the receiver.

Simplified act

If a receiver -

(a) does not submit his accounts when and how the Court tells him to, or

(b) does not pay the amount he owes as the Court tells him to, or

(c) causes loss to the property because of his intentional wrongdoing or serious carelessness,

the Court can order that his property be taken and sold. The money from the sale can be used to cover any amount he owes or any loss he caused. Any leftover money will be given back to the receiver.

Explanation using Example

Example 1:

Scenario: Ravi is appointed as a receiver by the court to manage a disputed property in Mumbai. The court directs Ravi to submit detailed accounts of the property's income and expenses every three months.

Issue: Ravi fails to submit the accounts for two consecutive periods despite multiple reminders from the court.

Application of Rule 4: The court finds Ravi in violation of his duties under Rule 4(a) of the Code of Civil Procedure 1908. As a result, the court orders the attachment of Ravi's personal property. The court then sells Ravi's property and uses the proceeds to cover any potential losses or discrepancies in the accounts that Ravi failed to submit. Any remaining balance from the sale is returned to Ravi.

Example 2:

Scenario: Priya is appointed as a receiver to manage a commercial building in Delhi. The court instructs her to pay the collected rent to the court every month.

Issue: Priya collects the rent but fails to deposit the amount with the court for several months.

Application of Rule 4: The court determines that Priya has failed to pay the amount due as directed under Rule 4(b). Consequently, the court orders the attachment of Priya's personal bank account. The court then withdraws the necessary funds from Priya's account to cover the unpaid rent and any associated penalties. Any remaining funds in the account are returned to Priya.

Example 3:

Scenario: Amit is appointed as a receiver to manage an agricultural land in Punjab. He is responsible for ensuring the land is properly cultivated and maintained.

Issue: Amit neglects the land, leading to significant crop failure and financial loss. It is found that Amit's gross negligence and wilful default caused the loss.

Application of Rule 4: The court finds Amit responsible for the loss under Rule 4(c). The court orders the attachment of Amit's personal property, including his car and house. The court sells Amit's property and uses the proceeds to compensate for the loss incurred due to his negligence. Any remaining balance from the sale is returned to Amit.

Rule 5: When Collector may be appointed receiver.

Where the property is land paying revenue to the Government, or land of which the revenue has been assigned or redeemed, and the Court considers that the interests of those concerned will be promoted by the management of the Collector, the Court may, with the consent of the Collector, appoint him to be receiver of such property.

Simplified act

If the property is land that pays taxes to the Government, or land where the taxes have been assigned to someone else or paid off, and

The Court thinks that having the Collector manage the land will benefit everyone involved,

The Court can, with the Collector's agreement, appoint the Collector to be in charge of managing that land.

Explanation using Example

Example 1:

Rajesh owns a large piece of agricultural land in Maharashtra that pays revenue to the government. Due to a family dispute, Rajesh's siblings file a lawsuit claiming their share of the property. The court, after reviewing the case, decides that the best way to manage the property during the litigation is to appoint a receiver. Since the land pays revenue to the government, the court considers that the Collector, who is already familiar with the land and its

revenue, would be the most suitable person to manage it. With the consent of the Collector, the court appoints him as the receiver to ensure that the land is properly managed and the revenue is collected and accounted for during the ongoing legal proceedings.

Example 2:

Sita and her brother Ramesh inherit a piece of land in Uttar Pradesh from their late father. The land has its revenue assigned to a local government body. Sita and Ramesh cannot agree on how to divide the land and decide to take the matter to court. The court finds that appointing a neutral party to manage the land would be in the best interest of both siblings until a final decision is made. Given that the land's revenue is already assigned to the government, the court seeks the consent of the local Collector to act as the receiver. The Collector agrees, and the court appoints him to manage the land, ensuring that the revenue continues to be collected and the property is maintained during the legal dispute.

ORDER XLI: APPEALS FROM ORIGINAL DECREES

Rule 1: Form of appeal.

What to accompany memorandum

(1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the Judgment.

Provided that where two or more suits have been tried together and a common judgment has been delivered therefor and two or more appeals are filed against any decree covered by that judgment, whether by the same appellant or by different appellants, the Appellate Court may dispense with the filing of more than one copy of the judgment.

Contents of memorandum

(2) The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and such grounds shall be numbered consecutively.

(3) Where the appeal is against a decree for payment of money, the appellant shall, within such time as the Appellate Court may allow, deposit the amount

disputed in the appeal or furnish such security in respect thereof as the Court may think fit.

Simplified act

What to include with the appeal document

(1) Every appeal must be submitted as a written document called a memorandum. This document should be signed by the person making the appeal (the appellant) or their lawyer. It should be given to the Court or an officer appointed by the Court. The memorandum must include a copy of the judgment being appealed.

However, if multiple cases were decided together with a single judgment and multiple appeals are filed against that judgment, the Appellate Court may allow only one copy of the judgment to be filed.

What should be in the appeal document

(2) The memorandum should clearly and briefly list the reasons for objecting to the decision being appealed. These reasons should be listed separately and numbered one after the other, without any detailed explanations or stories.

(3) If the appeal is about a decision that involves paying money, the person appealing must either deposit the disputed amount or provide some form of security (like a guarantee) within the time allowed by the Appellate Court.

Explanation using Example

Example 1:

Scenario: Rajesh loses a civil case in the District Court where the court orders him to pay ₹5,00,000 to the plaintiff, Suresh. Rajesh believes the judgment is unfair and decides to appeal to the High Court.

Application of the Act:

Form of Appeal: Rajesh must file an appeal in the form of a memorandum. This memorandum must be signed by Rajesh or his lawyer and presented to the High Court or an officer appointed by the court.

Accompanying Documents: The memorandum must be accompanied by a copy of the judgment from the District Court.

Contents of Memorandum: The memorandum should clearly list the grounds on which Rajesh is appealing the decision, without any detailed arguments or narratives. Each ground should be numbered.

Deposit or Security: Since the appeal is against a decree for payment of money, Rajesh must either deposit the disputed amount of ₹5,00,000 or provide a security as directed by the High Court within the time allowed by the court.

Example 2:

Scenario: Two separate civil suits are filed in the District Court by Anil and Sunil against the same defendant, Ramesh, for breach of contract. The District Court tries both suits together and delivers a common judgment. Both Anil and Sunil decide to appeal the judgment in the High Court.

Application of the Act:

Form of Appeal: Both Anil and Sunil must file their appeals in the form of separate memorandums, each signed by the respective appellant or their lawyer, and presented to the High Court or an officer appointed by the court.

Accompanying Documents: Each memorandum must be accompanied by a copy of the common judgment from the District Court. However, since the judgment is common to both suits, the High Court may allow Anil and Sunil to file only one copy of the judgment for both appeals.

Contents of Memorandum: Each memorandum should list the grounds of objection to the decree concisely and under distinct heads, without any arguments or narratives, and each ground should be numbered.

Deposit or Security: If either Anil or Sunil's appeal involves a decree for payment of money, they must deposit the disputed amount or provide security as directed by the High Court within the time allowed by the court.

Rule 2: Grounds which may be taken in appeal.

The appellant shall not, except by leave of the Court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal; but the Appellate Court, in deciding the appeal, shall not be confined to the grounds of objections set forth in the memorandum of appeal or taken by leave of the Court under this rule:

Provided that the Court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground.

Simplified act

The person who is appealing (the appellant) cannot bring up new reasons for their appeal unless the Court gives permission.

However, the Court can consider other reasons for the appeal, even if they were not mentioned in the original appeal document or allowed by the Court.

But, the Court cannot make a decision based on these new reasons unless the other party involved has had a fair chance to argue against them.

Explanation using Example

Example 1:

Rajesh filed a civil suit against his neighbor, Suresh, for encroaching on his property. The trial court ruled in favor of Suresh, and Rajesh decided to appeal the decision. In his memorandum of appeal, Rajesh listed three grounds for his objection: (1) the trial court misinterpreted the property boundaries, (2) the trial court ignored key evidence, and (3) the trial court was biased.

During the appeal hearing, Rajesh's lawyer wanted to introduce a new ground of objection, claiming that the trial court judge had a conflict of interest. According to Rule 2 of Order XLI of the Code of Civil Procedure 1908, Rajesh's lawyer could not introduce this new ground without the leave (permission) of the appellate court. The appellate court, however, is not limited to the grounds listed in the memorandum of appeal and can consider other relevant issues if they arise during the hearing.

In this case, the appellate court decided to consider the new ground of objection after ensuring that Suresh had a sufficient opportunity to contest this new claim. The court then ruled on the appeal based on all the grounds presented.

Example 2:

Meena filed a lawsuit against a construction company for not completing her house on time. The trial court dismissed her case, and Meena decided to appeal. In her memorandum of appeal, she listed two grounds: (1) the trial

court did not consider the contract terms properly, and (2) the trial court ignored the evidence of delays caused by the construction company.

During the appeal, Meena's lawyer discovered new evidence showing that the construction company had used substandard materials. Meena's lawyer sought the appellate court's permission to add this new ground of objection. The appellate court granted permission and allowed the new ground to be argued.

However, the appellate court also found another issue during the hearing: the construction company had not obtained the necessary building permits. Although this issue was not raised in the memorandum of appeal, the court decided to consider it because it was relevant to the case. The court ensured that the construction company had a fair chance to respond to this new issue before making its final decision.

In the end, the appellate court ruled in favor of Meena, considering both the original and new grounds of objection.

Rule 3: Rejection or amendment of memorandum.

(1) Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there.

(2) Where the Court rejects any memorandum, it shall record the reasons for such rejection.

(3) Where a memorandum of appeal is amended, the judge, or such officer as he appoints in this behalf, shall sign or initial the amendment.

Simplified act

(1) If the appeal document is not prepared as required, the Court can either reject it, send it back to the person who filed it to make corrections within a set time, or allow it to be corrected immediately.

(2) If the Court rejects the appeal document, it must explain why it was rejected.

(3) If the appeal document is corrected, the judge or an appointed officer must sign or initial the changes.

Explanation using Example

Example 1:

Scenario: Ramesh files an appeal against a lower court's decision in a property dispute case. However, his memorandum of appeal does not follow the prescribed format.

Application of Rule 3:

The court reviews Ramesh's memorandum of appeal and finds that it is not in the correct format.

The court decides to return the memorandum to Ramesh, giving him 15 days to correct the format and resubmit it.

Ramesh amends the memorandum as per the court's instructions and resubmits it within the given time frame.

The judge reviews the amended memorandum, signs it, and allows the appeal to proceed.

Example 2:

Scenario: Sita files an appeal against a judgment in a family court case regarding child custody. Her memorandum of appeal is missing crucial information and is not properly formatted.

Application of Rule 3:

The court examines Sita's memorandum of appeal and determines that it lacks essential details and is not in the correct format.

The court decides to reject the memorandum outright due to its deficiencies.

The court records the reasons for rejecting the memorandum, noting that it did not comply with the required format and was missing key information.

Sita is informed of the rejection and the reasons behind it, allowing her to understand the mistakes and potentially file a new, correctly formatted memorandum of appeal.

Example 3:

Scenario: Mohan files an appeal against a criminal conviction. His memorandum of appeal is mostly correct but contains a few minor errors.

Application of Rule 3:

The court reviews Mohan's memorandum of appeal and notices the minor errors.

Instead of rejecting or returning the memorandum, the court allows Mohan to amend the errors on the spot.

Mohan corrects the errors in the presence of the court.

The judge or an appointed officer initials the amendments, and the appeal is allowed to proceed without further delay.

Rule 3A: Application for condonation of delay.

Appeal Presentation and Limitation

(1) When an appeal is presented after the expiry of the period of limitation specified therefore, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period.

(2) If the Court sees no reason to reject the application without the issue of a notice to the respondent, notice hereof shall be issued to the respondent and the matter shall be finally decided by the Court before it proceeds to deal with the appeal under rule 11 or rule 13, as the case may be.

(3) Where an application has been made under sub-rule (1), the Court shall not make an order for the stay of execution of the decree against which the appeal is proposed to be filed so long as the Court does not, after hearing under rule 11, decide to hear the appeal.

Simplified act

Appeal Presentation and Limitation

(1) If you want to file an appeal after the deadline has passed, you need to include an application with an affidavit (a written statement confirmed by oath) explaining why you couldn't file the appeal on time.

(2) If the Court thinks your reason might be valid, it will notify the other party involved (the respondent) and will make a final decision on whether to accept your late appeal before moving forward with the appeal process.

(3) If you have submitted an application to file a late appeal, the Court will not stop the enforcement of the original decision (decree) until it decides, after a preliminary hearing, whether to hear your appeal.

Explanation using Example

Example 1:

Scenario: Ramesh, a resident of Mumbai, received a court decree on January 1, 2023, which he believes is unjust. The period of limitation for filing an appeal is 30 days. However, due to a severe illness, Ramesh was hospitalized and could not file the appeal within the stipulated time. He finally recovered and filed the appeal on March 1, 2023.

Application for Condonation of Delay: Ramesh's lawyer submits the appeal along with an application for condonation of delay, supported by an affidavit. The affidavit details Ramesh's illness, hospitalization, and the medical certificates as evidence to show that he had a sufficient cause for not filing the appeal within the 30-day period.

Court's Decision: The court reviews the application and finds the reasons for the delay to be genuine. It issues a notice to the respondent (the other party in the case) and decides to hear the matter of condonation of delay before proceeding with the appeal.

Example 2:

Scenario: Priya, a businesswoman from Delhi, received a court decree on February 1, 2023. She intended to file an appeal but was delayed due to a major fire in her office, which destroyed important documents. She managed to gather the necessary documents and filed the appeal on April 15, 2023, well beyond the limitation period.

Application for Condonation of Delay: Priya's lawyer files the appeal along with an application for condonation of delay, supported by an affidavit. The affidavit explains the circumstances of the fire, the loss of documents, and the efforts made to retrieve and reconstruct the necessary paperwork, providing sufficient cause for the delay.

Court's Decision: The court examines the application and finds the reasons for the delay credible. It issues a notice to the respondent and decides to address the condonation of delay before considering the appeal itself.

Example 3:

Scenario: Anil, a farmer from a rural area in Uttar Pradesh, received a court decree on December 1, 2022. Due to a lack of legal knowledge and the remote location of his village, he was unaware of the appeal process and the limitation period. He learned about the appeal process from a legal aid camp in March 2023 and filed the appeal on March 20, 2023.

Application for Condonation of Delay: Anil's lawyer submits the appeal along with an application for condonation of delay, supported by an affidavit. The affidavit outlines Anil's lack of legal knowledge, the remote location of his village, and the information he received from the legal aid camp, demonstrating sufficient cause for the delay.

Court's Decision: The court reviews the application and finds the reasons for the delay reasonable. It issues a notice to the respondent and decides to hear the matter of condonation of delay before proceeding with the appeal.

Example 4:

Scenario: Sunita, a teacher from Bangalore, received a court decree on November 1, 2022. She intended to file an appeal but was delayed due to the sudden demise of her father, which required her to travel to her hometown and manage family affairs. She filed the appeal on January 15, 2023.

Application for Condonation of Delay: Sunita's lawyer files the appeal along with an application for condonation of delay, supported by an affidavit. The affidavit explains the circumstances of her father's death, her travel, and the family responsibilities that prevented her from filing the appeal within the limitation period.

Court's Decision: The court examines the application and finds the reasons for the delay to be genuine. It issues a notice to the respondent and decides to address the condonation of delay before considering the appeal itself.

Rule 4: One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all.

Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the Appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be.

Simplified act

If there are multiple people suing (plaintiffs) or being sued (defendants) in a case, and the court's decision is based on a reason that affects all of them, any one of the plaintiffs or defendants can appeal the entire decision. When this happens, the higher court can change or overturn the decision for all the plaintiffs or defendants involved.

Explanation using Example

Example 1:

Scenario: A group of five landowners (plaintiffs) files a lawsuit against a construction company (defendant) for illegal encroachment on their properties. The trial court issues a decree dismissing the suit on the grounds that the landowners failed to prove their ownership.

Application of Rule 4: One of the landowners, Mr. Sharma, decides to appeal the decree. Since the decree was based on a ground common to all the plaintiffs (failure to prove ownership), Mr. Sharma's appeal can potentially benefit all five landowners. If the appellate court finds in favor of Mr. Sharma and reverses the decree, the decision will apply to all the landowners, not just Mr. Sharma.

Example 2:

Scenario: Three business partners (plaintiffs) sue a supplier (defendant) for breach of contract, claiming that the supplier delivered defective goods. The trial court rules against the business partners, stating that the contract terms were not clear enough to hold the supplier liable.

Application of Rule 4: One of the business partners, Ms. Gupta, decides to appeal the trial court's decision. Since the decree was based on a ground common to all the plaintiffs (unclear contract terms), Ms. Gupta's appeal can lead to a reversal or variation of the decree for the benefit of all three business partners. If the appellate court agrees with Ms. Gupta and reverses the decree, the decision will apply to all the business partners, not just Ms. Gupta.

Stay of proceedings and of execution

Rule 5: Stay by Appellate Court.

Stay of Execution

(1) General Rule

An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree: but the Appellate Court may for sufficient cause order stay of execution of such decree.

A statement by the appellant, based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the Appellate Court shall, pending the receipt from the Appellate Court of the order for the stay of execution or any order to the contrary, be acted upon by the Court of first instance.

(2) Stay by Court which passed the decree

Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(3) Conditions for Stay

No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied:

- (a) that substantial loss may result to the party applying for stay of execution unless the order is made;
- (b) that the application has been made without unreasonable delay; and
- (c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) Ex Parte Order

Subject to the provisions of sub-rule (3), the Court may make an ex parte order for stay of execution pending the hearing of the application.

(5) Failure to Comply with Conditions

Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in sub-rule (3) of rule 1, the Court shall not make an order staying the execution of the decree.

Simplified act

Pause on Carrying Out a Court Decision

(1) General Rule

Filing an appeal does not automatically pause the enforcement of a court decision or order. The higher court (Appellate Court) has to specifically order a pause. Just because an appeal is filed doesn't mean the decision will be paused. However, the higher court can decide to pause the enforcement if there is a good reason.

If the person appealing (appellant) says that the higher court has ordered a pause, the lower court should act on this statement until it receives the official order from the higher court.

(2) Pause by the Court that Made the Decision

If someone asks for a pause on enforcing a decision before the time to appeal runs out, the court that made the original decision can pause the enforcement if there is a good reason.

(3) Conditions for Pause

The court will only pause the enforcement if:

- (a) The person asking for the pause will suffer significant harm if the pause is not granted;
- (b) The request for the pause was made promptly without unnecessary delay; and
- (c) The person asking for the pause provides a guarantee (security) to ensure they will follow the final decision or order.

(4) Temporary Pause Without Hearing Both Sides

Following the conditions in section (3), the court can temporarily pause the enforcement without hearing from the other side until the full application is heard.

(5) Failure to Meet Conditions

If the person appealing does not provide the required deposit or security as mentioned in section (3), the court will not pause the enforcement of the decision.

Explanation using Example

Example 1:

Scenario: Ramesh vs. Suresh

Ramesh won a civil case against Suresh in the trial court, and the court passed a decree ordering Suresh to pay Rs. 5 lakhs to Ramesh. Suresh, dissatisfied with the judgment, decided to appeal to the High Court.

Application for Stay: Suresh filed an application for stay of execution of the decree in the trial court, arguing that if he paid the amount immediately, he would suffer substantial financial loss, and he might not be able to recover the money if he won the appeal. He also provided security in the form of a bank guarantee for the amount decreed.

Court's Decision: The trial court, after considering the application, found that Suresh had shown sufficient cause and that he had applied without unreasonable delay. The court was satisfied with the security provided and ordered a stay of execution of the decree until the appeal was decided by the High Court.

Example 2:

Scenario: Meena vs. Anil

Meena obtained a decree from the trial court ordering Anil to vacate a property and hand it over to her. Anil decided to appeal the decision and filed an application for stay of execution of the decree in the appellate court.

Application for Stay: Anil argued that vacating the property immediately would cause him and his family substantial hardship as they had no alternative accommodation. He also stated that he had filed the appeal promptly and was willing to provide security for the due performance of the decree.

Court's Decision: The appellate court reviewed Anil's application and found that he had demonstrated substantial loss and had applied without unreasonable delay. Anil provided a security deposit as required. The appellate court granted a stay of execution of the decree, allowing Anil to remain in the property until the appeal was resolved.

Example 3:

Scenario: Priya vs. Raj

Priya won a case against Raj, and the court ordered Raj to demolish an illegal construction on Priya's land. Raj appealed the decision and sought a stay of execution of the decree.

Application for Stay: Raj claimed that demolishing the construction would cause him significant financial loss and that he had filed the appeal promptly. He also offered to provide a security deposit.

Court's Decision: The appellate court considered Raj's application and found that he had shown sufficient cause and had applied without unreasonable delay. However, Raj failed to provide the required security deposit. As a result, the court denied the stay of execution, and Raj was required to comply with the original decree and demolish the construction.

Example 4:

Scenario: Kavita vs. Manoj

Kavita won a case against Manoj, and the court ordered Manoj to pay Rs. 2 lakhs to Kavita. Manoj appealed the decision and sought a stay of execution of the decree.

Application for Stay: Manoj argued that paying the amount immediately would cause him financial hardship and that he had filed the appeal promptly. He also provided a security deposit.

Court's Decision: The appellate court reviewed Manoj's application and found that he had shown sufficient cause and had applied without unreasonable delay. The court was satisfied with the security provided and granted a stay of execution of the decree until the appeal was decided.

Example 5:

Scenario: Arjun vs. Neha

Arjun won a case against Neha, and the court ordered Neha to transfer ownership of a piece of land to Arjun. Neha appealed the decision and sought a stay of execution of the decree.

Application for Stay: Neha argued that transferring the land immediately would cause her substantial loss and that she had filed the appeal promptly. She also provided a security deposit.

Court's Decision: The appellate court considered Neha's application and found that she had shown sufficient cause and had applied without unreasonable delay. The court was satisfied with the security provided and granted a stay of execution of the decree until the appeal was resolved.

Rule 6: Security in case of order for execution of decree appealed from.

Execution of Decree Pending Appeal

(1) Where an order is made for the execution of a decree from which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be taken for the restitution of any property which may be or has been taken in execution of the decree or for the payment of the value of such property and for the due performance of the decree or order of the Appellate Court, or the Appellate Court may for like cause direct the Court which passed the decree to take such security.

(2) Where an order has been made for the sale of immovable property in execution of a decree, and an appeal is pending from such decree, the sale shall, on the application of the judgment-debtor to the Court which made the order, be stayed on such terms as to giving security or otherwise as the Court thinks fit until the appeal is disposed of.

Simplified act

Execution of Decree Pending Appeal

(1) If a court orders the enforcement of a decision (decree) while an appeal is still ongoing, the court that made the original decision must, if the person appealing (appellant) shows a good reason, require a guarantee. This guarantee is to ensure that any property taken because of the decision will be returned or its value paid back, and that the decision of the higher court (Appellate Court) will be followed. Alternatively, the higher court can also instruct the original court to take such a guarantee.

(2) If a court has ordered the sale of real estate (immovable property) to enforce a decision, and an appeal against that decision is still ongoing, the sale must be paused if the person who owes money (judgment-debtor) asks the court that

made the order. The court will decide the conditions for pausing the sale, which may include providing a guarantee, until the appeal is resolved.

Explanation using Example

Example 1:

Rajesh owns a piece of land in Mumbai. A court case between Rajesh and his neighbor, Suresh, results in a decree ordering Rajesh to transfer a portion of his land to Suresh. Rajesh decides to appeal this decision. However, before the appeal is heard, Suresh requests the court to execute the decree and transfer the land to him immediately.

Rajesh, fearing that he might lose his land permanently if the appeal is successful, approaches the court and shows sufficient cause for why the execution should be stayed. The court, considering Rajesh's appeal, orders that Suresh must provide security to ensure that if the appeal is successful, the land or its value will be returned to Rajesh. This security acts as a safeguard for Rajesh's property during the appeal process.

Example 2:

Meena wins a court case against her business partner, Anil, and the court decrees that Anil must pay Meena ₹10 lakhs. Anil decides to appeal the decision but is concerned that Meena might execute the decree and take the money before the appeal is resolved. Anil requests the court to stay the execution of the decree.

The court, upon Anil showing sufficient cause, orders that Meena must provide security equivalent to ₹10 lakhs. This ensures that if Anil's appeal is successful, the money or its value will be returned to him. Additionally, if the decree involves the sale of Anil's immovable property, the court may stay the sale until the appeal is disposed of, provided Anil gives appropriate security as directed by the court.

Rule 7: No security to be required from the Government or a public officer in certain cases. Repealed.

Repealed by the A.O. 1937.

Rule 8: Exercise of powers in appeal from order made in execution of decree.

The powers conferred by rules 5 and 6 shall be exercisable where an appeal may be or has been preferred not from the decree but from an order made in execution of such decree.

Simplified act

The powers given by rules 5 and 6 can be used when an appeal is made, or can be made, not against the main decision (decree) but against an order made while carrying out that decision.

Explanation using Example

Example 1:

Rajesh obtained a decree from the court stating that his neighbor, Suresh, must vacate a piece of land that Rajesh owns. Suresh did not comply with the decree, so Rajesh filed for execution of the decree to enforce it. The court issued an order for the execution of the decree, directing the police to assist in vacating the land. Suresh, unhappy with this order, decided to appeal against the execution order, not the original decree itself. Under Rule 8 of the Code of Civil Procedure 1908, the appellate court has the power to hear Suresh's appeal against the execution order and decide whether the execution should proceed or be stayed.

Example 2:

Meena won a monetary decree against her business partner, Anil, requiring him to pay her a sum of ₹5 lakhs. Anil failed to pay the amount, so Meena sought execution of the decree by attaching Anil's bank account. The court issued an order to freeze Anil's bank account to recover the amount. Anil, disagreeing with the freezing of his account, filed an appeal against the execution order. According to Rule 8 of the Code of Civil Procedure 1908, the appellate court can exercise its powers to review the execution order and decide whether to uphold the freezing of the account or provide some relief to Anil while the appeal is pending.

Rule 9: Registry of memorandum of appeal.

(1) The Court from whose decree an appeal lies shall entertain the memorandum of appeal and shall endorse thereon the date of presentation and shall register the appeal in a book of appeal kept for that purpose.

(2) Such book shall be called the register of appeal.

Simplified act

(1) The Court that issued the decision you want to appeal must accept your appeal document, note the date it was submitted, and record the appeal in a special book for appeals.

(2) This special book is called the register of appeal.

Explanation using Example

Example 1:

Rajesh, a resident of Mumbai, filed a civil suit against his neighbor, Suresh, for encroaching on his property. The trial court ruled in favor of Suresh, and Rajesh decided to appeal the decision. Rajesh's lawyer prepared a memorandum of appeal and submitted it to the appellate court. The appellate court clerk received the memorandum, endorsed the date of presentation as "15th March 2023," and registered the appeal in the "register of appeal" book maintained for this purpose. Rajesh's appeal was now officially recorded and would be scheduled for a hearing.

Example 2:

Meena, a businesswoman in Delhi, lost a civil case against her former business partner, Anil, over a contract dispute. Dissatisfied with the trial court's judgment, Meena decided to appeal. Her lawyer drafted a memorandum of appeal and submitted it to the appropriate appellate court. The court clerk accepted the memorandum, marked the date of presentation as "10th April 2023," and entered the details into the "register of appeal" book. Meena's appeal was now formally registered, and she awaited further instructions from the court regarding the next steps in the appeal process.

Rule 10: Appellate Court may require appellant to furnish security for costs. Where appellant resides out of India.

(1) The Appellate Court may in its discretion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both:

Where appellant resides out of India. - Provided that the Court shall demand such security in all cases in which the appellant is residing out of India, and is

not possessed of any sufficient immovable property within India other than the property (if any) to which the appeal relates.

(2) Where such security is not furnished within such time as the Court orders, the Court shall reject the appeal.

Simplified act

(1) The higher court (Appellate Court) can ask the person who is appealing (appellant) to provide money as a guarantee to cover the costs of the appeal or the original case. This can be done either before the other party (respondent) is asked to respond or after the respondent requests it.

If the appellant lives outside India. - The court must always ask for this money guarantee if the person appealing lives outside India and does not own any valuable property in India, except for the property involved in the appeal.

(2) If the appellant does not provide this money guarantee within the time set by the court, the court will dismiss the appeal.

Explanation using Example

Example 1:

Scenario: Rajesh, an Indian citizen, files an appeal in the High Court of Delhi against a lower court's decision. Rajesh currently resides in the United States and does not own any immovable property in India except for the property involved in the appeal.

Application of Rule 10:

The High Court, before asking the respondent (the party who won in the lower court) to appear, decides to exercise its discretion and demands that Rajesh provide security for the costs of the appeal.

Since Rajesh resides outside India and does not possess any other immovable property in India, the court mandates that he must furnish security.

Rajesh is given a specific time frame to provide this security. If he fails to do so within the stipulated time, the High Court will reject his appeal.

Example 2:

Scenario: Priya, an Indian citizen, files an appeal in the Madras High Court against a lower court's decision. Priya currently resides in Singapore and owns no immovable property in India other than the property involved in the appeal.

Application of Rule 10:

The respondent in the case, who won in the lower court, applies to the Madras High Court requesting that Priya be asked to furnish security for the costs of the appeal.

The court, considering Priya's residence outside India and her lack of other immovable property in India, orders her to provide security for the costs.

Priya is given a deadline to furnish the required security. If she does not comply within the given time, the court will reject her appeal.

Example 3:

Scenario: Anil, an Indian citizen, files an appeal in the Bombay High Court against a lower court's decision. Anil currently resides in Canada but owns a commercial building in Mumbai, apart from the property involved in the appeal.

Application of Rule 10:

The Bombay High Court, before calling the respondent to appear, considers whether to demand security for costs from Anil.

Since Anil resides outside India but owns sufficient immovable property in Mumbai, the court may use its discretion and decide not to demand security for costs.

If the court decides to demand security and Anil fails to provide it within the specified time, his appeal will be rejected.

Example 4:

Scenario: Sunita, an Indian citizen, files an appeal in the Calcutta High Court against a lower court's decision. Sunita currently resides in Australia and does not own any immovable property in India.

Application of Rule 10:

The respondent in the case requests the Calcutta High Court to demand security for costs from Sunita.

The court, noting that Sunita resides outside India and lacks any immovable property in India, orders her to furnish security for the costs of the appeal.

Sunita is given a deadline to provide the security. If she does not meet this requirement within the specified time, the court will reject her appeal.

Rule 11: Power to dismiss appeal without sending notice to Lower Court.

(1) The appellate Court, after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day, may dismiss the appeal.

(2) If on the day fixed or any other day to which the hearing may be adjourned the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

(3) The dismissal of an appeal under this rule shall be notified to the Court from whose decree the appeal is preferred.

(4) Where an Appellate Court, not being the High Court, dismisses an appeal under sub-rule (1), it shall deliver a judgment, recording in brief its grounds for doing so, and a decree shall be drawn up in accordance with the judgment.

Simplified act

(1) The appeals court will set a date to hear from the person appealing (the appellant) or their lawyer. If the appellant or their lawyer shows up on that date, the court will listen to them and may decide to reject the appeal.

(2) If the appellant does not show up on the scheduled date or any rescheduled date, the court can decide to reject the appeal.

(3) If the appeal is rejected, the court that made the original decision will be informed about the rejection.

(4) If an appeals court (other than the High Court) rejects an appeal as described in point (1), it must write a brief explanation of why it rejected the appeal and issue a formal decision based on that explanation.

Explanation using Example

Example 1:

Ravi filed an appeal in the District Court against a decree passed by the Civil Court in a property dispute case. The District Court fixed a date for hearing

Ravi's appeal. On the scheduled date, Ravi's lawyer presented his arguments, but the District Court found no substantial grounds to proceed with the appeal. Consequently, the District Court dismissed Ravi's appeal without sending any notice to the Civil Court. The dismissal was then notified to the Civil Court, and a brief judgment was recorded explaining the reasons for the dismissal.

Example 2:

Meena filed an appeal in the Sessions Court challenging a decree related to a family inheritance dispute. The Sessions Court scheduled a hearing date for Meena's appeal. However, on the day of the hearing, neither Meena nor her lawyer appeared in court. The Sessions Court waited for a reasonable time and then decided to dismiss the appeal due to non-appearance. The dismissal was communicated to the original court that issued the decree, and a brief judgment was recorded by the Sessions Court explaining the grounds for the dismissal.

Rule 11A: Time within which hearing under rule 11 should be concluded.

Every appeal shall be heard under rule 11 as expeditiously as possible and endeavour shall be made to conclude such hearing within sixty days from the date on which the memorandum of appeal is filed.

Simplified act

Every appeal should be heard as quickly as possible according to rule 11.

Efforts should be made to finish the hearing within 60 days from the date the appeal is filed.

Explanation using Example

Example 1:

Rajesh, a resident of Mumbai, filed a civil suit against his neighbor for encroaching on his property. The trial court ruled in favor of Rajesh, but his neighbor, dissatisfied with the decision, decided to appeal the judgment. The neighbor filed a memorandum of appeal on January 1, 2023. According to Rule 11A of the Code of Civil Procedure 1908, the appellate court is required to hear the appeal as quickly as possible and make an effort to conclude the hearing within sixty days. Therefore, the court should aim to complete the hearing by March 2, 2023.

Example 2:

Meera, a businesswoman in Delhi, won a lawsuit against a supplier who had breached a contract. The supplier, unhappy with the trial court's decision, filed an appeal on April 15, 2023. Under Rule 11A of the Code of Civil Procedure 1908, the appellate court must strive to hear and conclude the appeal within sixty days from the filing date. Hence, the court should aim to finish the hearing by June 14, 2023, ensuring a swift resolution to the case.

Rule 12: Day for hearing appeal.

- (1) Unless the Appellate Court dismisses the appeal under rule 11, it shall fix a day for hearing the appeal.
- (2) Such day shall be fixed with reference to the current business of the Court

Simplified act

- (1) If the Appellate Court does not reject the appeal right away under rule 11, it will set a date to hear the appeal.
- (2) The date for the hearing will be chosen based on the Court's current schedule.

Explanation using Example

Example 1:

Rajesh filed an appeal against a civil court's decision that ruled in favor of his neighbor, Suresh, in a property dispute. The appellate court, after reviewing the initial appeal documents, decided not to dismiss the appeal under Rule 11. Consequently, the court fixed a date for the hearing of Rajesh's appeal. The date was chosen based on the current schedule and workload of the court, ensuring that the hearing could be conducted without unnecessary delay.

Example 2:

Meena, a small business owner, lost a lawsuit regarding a breach of contract with her supplier. Dissatisfied with the judgment, she filed an appeal. The appellate court reviewed her appeal and found it to be substantial enough not to dismiss it under Rule 11. The court then scheduled a hearing date for Meena's appeal, taking into account the court's existing caseload and ensuring that the hearing would be held at the earliest possible date without disrupting the court's ongoing business.

13. [Appellate Court to give notice to Court whose decree appealed from.] Omitted by Code of Civil Procedure (Amendment) Act 1999, (46 of 1999), s. 31 (w.e.f. 1-7-2002.)

Rule 14: Publication and service of notice of day for hearing appeal.

Notice of the Day Fixed Under Rule 12

(1) Notice of the day fixed under rule 12 shall be affixed in the Appellate Court-house, and a like notice shall be sent by the Appellate Court to the Court from whose decree the appeal is preferred, and shall be served on the respondent or on his pleader in the Appellate Court in the manner provided for the service on a defendant of a summons to appear and answer, and all the provisions applicable to such summons, and to proceedings with reference to the service thereof, shall apply to the service of such notice.

(2) Appellate Court may itself cause notice to be served. - Instead of sending the notice to the Court from whose decree the appeal is preferred, the Appellate Court may itself cause the notice to be served on the respondent or his pleader under the provisions above referred to.

(3) The notice to be served on the respondent shall be accompanied by a copy of the memorandum of appeal.

(4) Notwithstanding anything to the contrary contained in sub-rule (1), it shall not be necessary to serve notice of any proceeding incidental to an appeal on any respondent other than a person impleaded for the first time in the Appellate Court, unless he has appeared and filed an address for the service in the Court of first instance or has appeared in the appeal.

(5) Nothing in sub-rule (4) shall bar the respondent referred to in the appeal from defending it.

Simplified act

Notice of the Day Fixed Under Rule 12

(1) A notice about the scheduled day under rule 12 will be posted in the Appellate Court building. The same notice will be sent by the Appellate Court to the original court from which the appeal came. This notice will also be served to the respondent (the person responding to the appeal) or their lawyer in the Appellate Court, in the same way a summons is served to a defendant. All rules that apply to serving a summons will also apply to serving this notice.

(2) The Appellate Court can serve the notice itself. - Instead of sending the notice to the original court, the Appellate Court can directly serve the notice to the respondent or their lawyer as described above.

(3) The notice served to the respondent must include a copy of the appeal memorandum.

(4) Despite what is said in sub-rule (1), it is not necessary to serve notice of any incidental proceedings related to an appeal to any respondent, except for someone who is being involved for the first time in the Appellate Court, unless they have appeared and provided an address for service in the original court or have appeared in the appeal.

(5) Sub-rule (4) does not prevent the respondent mentioned in the appeal from defending themselves.

Explanation using Example

Example 1:

Scenario: Ramesh files an appeal against a civil court decree.

Details:

Ramesh lost a property dispute case in the District Court and decides to appeal the decision in the High Court.

The High Court fixes a date for hearing Ramesh's appeal.

Application of Rule 14:

Notice Affixed in Court-house: The High Court affixes a notice of the hearing date on its notice board.

Notice Sent to Lower Court: The High Court sends a similar notice to the District Court, informing them of the appeal and the hearing date.

Service on Respondent: The High Court ensures that the notice is served to Suresh (the respondent) or his lawyer in the same manner as a summons is served to a defendant.

Copy of Memorandum of Appeal: The notice served to Suresh includes a copy of Ramesh's memorandum of appeal.

No Notice for Incidental Proceedings: If there are any incidental proceedings related to the appeal, Suresh will not receive a separate notice unless he was not part of the original case or has not appeared in the appeal.

Example 2:

Scenario: Seema appeals a family court decision regarding child custody.

Details:

Seema lost a child custody case in the Family Court and decides to appeal the decision in the High Court.

The High Court schedules a date for the appeal hearing.

Application of Rule 14:

Notice Affixed in Court-house: The High Court posts a notice of the hearing date on its notice board.

Notice Sent to Lower Court: The High Court sends a similar notice to the Family Court, informing them of the appeal and the hearing date.

Service on Respondent: The High Court ensures that the notice is served to Raj (the respondent) or his lawyer in the same manner as a summons is served to a defendant.

Copy of Memorandum of Appeal: The notice served to Raj includes a copy of Seema's memorandum of appeal.

Appellate Court Serving Notice: Instead of sending the notice to the Family Court, the High Court may choose to directly serve the notice to Raj or his lawyer.

No Notice for Incidental Proceedings: If there are any incidental proceedings related to the appeal, Raj will not receive a separate notice unless he was not part of the original case or has not appeared in the appeal.

15. [Contents of notice.] Omitted by Code of Civil Procedure (Amendment) Act 1999, (46 of 1999), s. 31 (w.e.f. 1-7-2002.)

Rule 16: Right to begin.

(1) On the day fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal.

(2) The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

Simplified act

(1) On the scheduled day, or any other day the hearing is postponed to, the person who filed the appeal (appellant) will present their case.

(2) After that, if the Court does not immediately reject the appeal, it will listen to the other party (respondent) who is against the appeal. In this situation, the person who filed the appeal (appellant) will have a chance to respond.

Explanation using Example

Example 1:

Scenario: Rajesh files an appeal against a lower court's decision that ruled in favor of Suresh in a property dispute.

Day of Hearing:

Rajesh (Appellant) is Heard First: On the scheduled day of the hearing, Rajesh's lawyer presents arguments and evidence to support the appeal, explaining why the lower court's decision should be overturned.

Court's Initial Decision: The court listens to Rajesh's arguments. If the court finds the appeal to be without merit, it may dismiss the appeal immediately.

Suresh (Respondent) is Heard: If the court does not dismiss the appeal right away, Suresh's lawyer is given the opportunity to present counterarguments and evidence to support the original decision.

Rajesh's Right to Reply: After Suresh's arguments, Rajesh's lawyer has the right to reply to any new points raised by Suresh's lawyer.

Example 2:

Scenario: Meena appeals a judgment that awarded custody of her child to her ex-husband, Ravi.

Day of Hearing:

Meena (Appellant) is Heard First: On the appointed day, Meena's lawyer argues that the lower court's decision was flawed and presents evidence showing why Meena should have custody of the child.

Court's Initial Decision: The court reviews Meena's arguments. If the court finds no substantial grounds in the appeal, it may dismiss it immediately.

Ravi (Respondent) is Heard: If the court does not dismiss the appeal, Ravi's lawyer is given the chance to argue why the original custody decision was correct and should be upheld.

Meena's Right to Reply: After Ravi's arguments, Meena's lawyer can respond to any new issues or evidence presented by Ravi's lawyer.

Rule 17: Dismissal of appeal for appellant's default.

(1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

Explanation. - Nothing in this sub-rule shall be construed as empowering the Court to dismiss the appeal on the merits.

(2) Hearing appeal ex parte. - Where the appellant appears and the respondent does not appear, the appeal shall be heard ex parte.

Simplified act

(1) If the person who filed the appeal (the appellant) does not show up on the scheduled day or any other day the hearing is postponed to, the Court can decide to dismiss the appeal.

Explanation. - This rule does not allow the Court to dismiss the appeal based on its content or merits.

(2) Hearing appeal without the other party. - If the appellant shows up but the other party (the respondent) does not, the Court will hear the appeal without the respondent being present.

Explanation using Example

Example 1:

Scenario: Rajesh files an appeal against a civil court decree that ordered him to pay damages to Suresh. The court schedules a hearing for the appeal on 15th March.

Application of Rule 17:

On 15th March, Rajesh does not appear in court for the hearing.

The court waits for a reasonable amount of time but Rajesh still does not show up.

As per Rule 17(1), the court decides to dismiss the appeal due to Rajesh's absence.

Outcome: Rajesh's appeal is dismissed because he did not appear in court on the scheduled date. However, the dismissal is not based on the merits of the case but solely on Rajesh's failure to appear.

Example 2:

Scenario: Priya files an appeal against a civil court decree that ordered her to vacate a property. The court schedules a hearing for the appeal on 20th April.

Application of Rule 17:

On 20th April, Priya appears in court, but the respondent, the property owner, does not appear.

As per Rule 17(2), the court decides to hear the appeal ex parte (in the absence of the respondent).

Outcome: The court proceeds with the hearing of Priya's appeal without the respondent being present. The court will make a decision based on the arguments and evidence presented by Priya.

Example 3:

Scenario: Anil files an appeal against a civil court decree that ordered him to pay alimony to his ex-wife, Sunita. The court schedules a hearing for the appeal on 10th May.

Application of Rule 17:

On 10th May, neither Anil nor Sunita appears in court for the hearing.

The court waits for a reasonable amount of time but neither party shows up.

As per Rule 17(1), the court decides to dismiss the appeal due to Anil's absence.

Outcome: Anil's appeal is dismissed because he did not appear in court on the scheduled date. The dismissal is not based on the merits of the case but solely on Anil's failure to appear. Sunita's absence does not affect the dismissal since it is Anil's responsibility as the appellant to be present.

Example 4:

Scenario: Meera files an appeal against a civil court decree that ordered her to pay compensation to her neighbor, Ramesh. The court schedules a hearing for the appeal on 5th June.

Application of Rule 17:

On 5th June, Meera appears in court, but Ramesh does not appear.

As per Rule 17(2), the court decides to hear the appeal ex parte (in the absence of Ramesh).

Outcome: The court proceeds with the hearing of Meera's appeal without Ramesh being present. The court will make a decision based on the arguments and evidence presented by Meera.

Example 5:

Scenario: Sanjay files an appeal against a civil court decree that ordered him to demolish an illegal construction. The court schedules a hearing for the appeal on 25th July.

Application of Rule 17:

On 25th July, Sanjay does not appear in court for the hearing.

The court waits for a reasonable amount of time but Sanjay still does not show up.

As per Rule 17(1), the court decides to dismiss the appeal due to Sanjay's absence.

Outcome: Sanjay's appeal is dismissed because he did not appear in court on the scheduled date. The dismissal is not based on the merits of the case but solely on Sanjay's failure to appear.

18. [Dismissal of appeal where notice not served in consequence of appellant's failure to deposit cost.]omitted by the Code of Civil Procedure (Amendment)Act,1999 (46 of 1999) s. 31 (w.e.f. 1-7-2002).

Rule 19: Re-admission of appeal dismissed for default.

Where an appeal is dismissed under rule 11, sub-rule (2) or rule 17, the appellant may apply to the Appellate Court for the re-admission of the appeal; and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit.

Simplified act

If an appeal is dismissed under rule 11, sub-rule (2) or rule 17, the person who filed the appeal (the appellant) can ask the Appellate Court to reconsider the appeal. If the appellant can show a good reason for not being able to attend the hearing or for not being able to pay the required amount, the Court will reconsider the appeal. The Court may set conditions, such as covering costs, as it sees appropriate.

Explanation using Example

Example 1:

Ravi filed an appeal against a civil court's decision, but he missed the hearing date because he was hospitalized due to a severe illness. The appellate court dismissed his appeal for default under Rule 17. Once Ravi recovered, he applied to the Appellate Court for the re-admission of his appeal, providing medical certificates and hospital records as proof of his illness. The court, satisfied with the evidence, re-admitted his appeal and set a new hearing date, imposing a nominal cost on Ravi for the delay.

Example 2:

Sita filed an appeal challenging a property dispute judgment. However, she failed to deposit the required court fee on time due to a sudden financial crisis caused by her business partner's fraud. Consequently, her appeal was dismissed under Rule 11, sub-rule (2). Sita then approached the Appellate Court, explaining her situation and providing evidence of the fraud and her financial constraints. The court, finding her reasons valid, re-admitted her

appeal, allowing her additional time to deposit the court fee and imposing a small penalty for the delay.

Rule 20: Power to adjourn hearing, and direct persons appearing interested to be made respondents.

(1) Where it appears to the Court at the hearing that any person who was a party to the suit in the Court from whose decree the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court and direct that such person be made a respondent.

(2) No respondent shall be added under this rule, after the expiry of the period of limitation for appeal, unless the Court, for reasons to be recorded, allows that to be done, on such terms as to costs as it thinks fit.

Simplified act

(1) If the Court finds out during the hearing that someone who was involved in the original case but is not included in the appeal is interested in the outcome, the Court can postpone the hearing to a later date and order that this person be included in the appeal as a respondent.

(2) A new respondent cannot be added after the deadline for filing an appeal has passed, unless the Court records the reasons and allows it, possibly with conditions about who pays the costs.

Explanation using Example

Example 1:

Scenario: Ramesh files a lawsuit against Suresh in the District Court regarding a property dispute. The District Court rules in favor of Ramesh. Suresh, dissatisfied with the decision, files an appeal in the High Court. During the hearing, the High Court realizes that Geeta, who was a co-owner of the disputed property and a party in the original suit, has not been made a party to the appeal.

Application of Rule 20: The High Court decides to adjourn the hearing to a later date and directs that Geeta be made a respondent in the appeal. This ensures that all interested parties are present and can present their case, leading to a fair decision.

Example 2:

Scenario: Anil files a lawsuit against Sunil for breach of contract in the Civil Court. The Civil Court rules in favor of Anil. Sunil appeals the decision in the High Court. During the appeal hearing, the High Court notices that Raj, who was a guarantor in the original contract and a party in the original suit, has not been included in the appeal.

Application of Rule 20: The High Court adjourns the hearing and directs that Raj be made a respondent in the appeal. However, the period of limitation for filing the appeal has expired. The High Court, after recording its reasons, allows Raj to be added as a respondent, imposing certain costs on Sunil for the delay.

Example 3:

Scenario: Priya wins a lawsuit against Meera in the Family Court regarding child custody. Meera appeals the decision in the High Court. During the appeal hearing, the High Court realizes that Ravi, the child's father and a party in the original suit, has not been made a party to the appeal.

Application of Rule 20: The High Court adjourns the hearing and directs that Ravi be made a respondent in the appeal. This ensures that all parties with a vested interest in the child's custody are present, allowing the court to make a well-informed decision.

Example 4:

Scenario: A company, XYZ Ltd., wins a lawsuit against ABC Ltd. in the Commercial Court over a breach of contract. ABC Ltd. appeals the decision in the High Court. During the appeal hearing, the High Court notices that DEF Ltd., a subcontractor involved in the original contract and a party in the original suit, has not been included in the appeal.

Application of Rule 20: The High Court adjourns the hearing and directs that DEF Ltd. be made a respondent in the appeal. However, the period of limitation for filing the appeal has expired. The High Court, after recording its reasons, allows DEF Ltd. to be added as a respondent, imposing certain costs on ABC Ltd. for the delay.

Rule 21: Re-hearing on application of respondent against whom ex parte decree made.

Ex Parte Decree Made

Where an appeal is heard ex parte and judgment is pronounced against the respondent, he may apply to the Appellate Court to rehear the appeal:

If he satisfies the Court that the notice was not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.

Simplified act

Ex Parte Decree Made

If an appeal is heard without the respondent (the person responding to the appeal) being present and the decision goes against them, they can ask the Appellate Court to hear the appeal again:

If the respondent can prove to the Court that they did not receive the notice properly or had a good reason for not being able to attend when the appeal was heard, the Court will agree to hear the appeal again. The Court may set conditions, such as who will pay the costs, as it sees fit.

Explanation using Example

Example 1:

Scenario: Rajesh, a businessman, was involved in a civil dispute with his supplier, Suresh. Suresh filed an appeal against a lower court's decision in favor of Rajesh. The appellate court scheduled a hearing, but Rajesh did not receive the notice due to a clerical error at the post office. As a result, the court heard the appeal ex parte (in Rajesh's absence) and ruled in favor of Suresh.

Application of Rule 21: Rajesh, upon learning about the ex parte decree, can apply to the appellate court for a re-hearing. He must demonstrate that he did not receive the notice due to the postal error. If the court is satisfied with Rajesh's explanation, it will re-hear the appeal and may impose certain conditions, such as payment of costs, on Rajesh.

Example 2:

Scenario: Priya, a software engineer, was involved in a property dispute with her neighbor, Anil. Anil appealed a lower court's decision that was in Priya's favor. The appellate court scheduled a hearing, but on the day of the hearing, Priya was hospitalized due to a sudden illness and could not attend. The court proceeded with the hearing ex parte and ruled in favor of Anil.

Application of Rule 21: Priya, after recovering, can apply to the appellate court for a re-hearing of the appeal. She needs to provide medical records and other evidence to show that her absence was due to a sufficient cause (her sudden illness). If the court is convinced, it will re-hear the appeal and may impose terms regarding costs or other conditions on Priya.

Rule 22: Upon hearing respondent may object to decree as if he had preferred a separate appeal. Form of objection and provisions applicable thereto.

Legal Provisions

Cross-Objections by Respondents

(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross-objection to the decree which he could have taken by way of appeal provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

Explanation: A respondent aggrieved by a finding of the Court in the judgment on which the decree appealed against is based may, under this rule, file cross-objection in respect of the decree in so far as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the decree, is, wholly or in part, in favour of that respondent.

(2) Form of objection and provisions applicable thereto: Such cross-objection shall be in the form of a memorandum, and the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

(3) * * * * *

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

(5) The provisions relating to appeals by indigent persons shall, so far as they can be made applicable, apply to an objection under this rule.

Simplified act

Legal Provisions

Cross-Objections by Respondents

(1) If you are a respondent (the person responding to an appeal), even if you haven't appealed any part of the decision, you can still support the decision. You can also argue that the lower court should have ruled in your favor on any issue. Additionally, you can file a cross-objection (a counter-appeal) to the decision, as long as you do this within one month from the date you or your lawyer received notice of the appeal hearing date. The court may allow more time if it sees fit.

Explanation: If you are a respondent unhappy with a specific finding in the court's judgment that led to the appealed decision, you can file a cross-objection against that part of the decision. This is true even if the overall decision was in your favor because of other findings by the court.

(2) Form of objection and provisions applicable thereto: Your cross-objection should be in the form of a written statement (memorandum). The rules about how to write and what to include in an appeal also apply to your cross-objection.

(3) * * * * *

(4) If the original appeal is withdrawn or dismissed because the appellant (the person who filed the appeal) didn't follow through, your cross-objection can still be heard and decided upon. The court will notify the other parties as it sees fit.

(5) The rules that apply to appeals by people who can't afford to pay (indigent persons) will also apply to cross-objections as much as possible.

Explanation using Example

Example 1:

Scenario: A property dispute case between Mr. Sharma and Mr. Verma.

Details:

Mr. Sharma filed a suit against Mr. Verma claiming ownership of a piece of land.

The trial court ruled in favor of Mr. Sharma, but also made a finding that a certain portion of the land belonged to Mr. Verma.

Mr. Verma did not file an appeal against the decree.

Application of Rule 22:

Mr. Sharma appealed the decision, seeking full ownership of the land.

Mr. Verma, though he did not appeal, can still support the trial court's decree and also object to the finding that a portion of the land belongs to Mr. Sharma.

Mr. Verma files a cross-objection within one month from the date of service of the notice of the appeal hearing.

The appellate court will consider Mr. Verma's cross-objection as if he had filed a separate appeal.

Example 2:

Scenario: A contractual dispute between Ms. Gupta and Mr. Rao.

Details:

Ms. Gupta sued Mr. Rao for breach of contract, seeking damages.

The trial court awarded damages to Ms. Gupta but also found that Ms. Gupta had contributed to the breach.

Mr. Rao did not appeal the decree.

Application of Rule 22:

Ms. Gupta appealed the decision, seeking higher damages.

Mr. Rao, although he did not appeal, can support the trial court's decree and also object to the finding that he was solely responsible for the breach.

Mr. Rao files a cross-objection within one month from the date of service of the notice of the appeal hearing.

The appellate court will consider Mr. Rao's cross-objection as if he had filed a separate appeal.

Example 3:

Scenario: A family inheritance dispute between siblings, Anil and Sunita.

Details:

Anil filed a suit claiming a larger share of the family property.

The trial court ruled in favor of Anil but also granted a portion of the property to Sunita.

Sunita did not file an appeal against the decree.

Application of Rule 22:

Anil appealed the decision, seeking the entire property.

Sunita, though she did not appeal, can support the trial court's decree and also object to the finding that Anil should get a larger share.

Sunita files a cross-objection within one month from the date of service of the notice of the appeal hearing.

The appellate court will consider Sunita's cross-objection as if she had filed a separate appeal.

Rule 23: Remand of case by Appellate Court.

Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

Simplified act

If a lower court makes a decision on a case based on a preliminary issue and that decision is appealed and overturned by a higher court, the higher court can send the case back to the lower court for further consideration.

The higher court can specify which issues need to be looked at again in the case.

The higher court will send a copy of its decision and instructions to the lower court.

The lower court must then re-open the case under its original case number and continue to work on it.

Any evidence that was recorded during the original trial can be used again in the new trial, unless there are valid reasons not to use it.

Explanation using Example

Example 1:

Scenario: Ravi filed a civil suit against Shyam for breach of contract in the District Court. The District Court dismissed the suit on a preliminary point, stating that Ravi did not have the legal standing to sue. Ravi appealed this decision to the High Court.

Application of Rule 23: The High Court, upon reviewing the case, found that the District Court's decision on Ravi's legal standing was incorrect. The High Court reversed the District Court's decree and decided to remand the case back to the District Court. The High Court ordered the District Court to re-admit the suit under its original number and directed it to proceed with the trial, specifically instructing the District Court to address the issues related to the breach of contract. The evidence recorded during the original trial would be considered in the new trial, subject to any valid objections.

Example 2:

Scenario: Meera filed a lawsuit against a construction company for poor quality construction of her house. The Trial Court dismissed the suit on a preliminary point, stating that the suit was barred by limitation (filed too late). Meera appealed this decision to the Appellate Court.

Application of Rule 23: The Appellate Court found that the Trial Court's decision regarding the limitation period was incorrect and reversed the decree. The Appellate Court decided to remand the case back to the Trial Court. It ordered the Trial Court to re-admit the suit under its original number and directed it to proceed with the trial, specifically instructing the Trial Court to address the issues related to the quality of construction. The evidence recorded

during the original trial would be considered in the new trial, subject to any valid objections.

Rule 23A: Remand in other cases.

Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a re-trial is considered necessary, the Appellate Court shall have the same powers as it has under rule 23.

Simplified act

If a court makes a decision on a case (not just on a minor issue) and someone appeals that decision,

and if the appeal court overturns the original decision and thinks the case needs to be tried again,

then the appeal court has the same powers as it does under rule 23.

Explanation using Example

Example 1:

Scenario: Ravi filed a civil suit against Shyam for breach of contract in the District Court. The District Court ruled in favor of Shyam, dismissing Ravi's case on the merits rather than on a preliminary point (such as jurisdiction or limitation).

Application of Rule 23A: Ravi appealed the decision to the High Court. Upon reviewing the case, the High Court found that the District Court had made significant errors in its judgment and reversed the decree. The High Court determined that a re-trial was necessary to ensure justice.

Outcome: The High Court, using its powers under Rule 23A, ordered a re-trial of the case in the District Court. This means the case will be heard again from the beginning, allowing both parties to present their evidence and arguments afresh.

Example 2:

Scenario: Meena filed a lawsuit against a construction company for poor quality of work in the construction of her house. The Trial Court dismissed her

case after a full hearing, not on a preliminary issue but on the merits of the case.

Application of Rule 23A: Meena appealed the decision to the Appellate Court. The Appellate Court found that the Trial Court had overlooked crucial evidence and reversed the decree. The Appellate Court decided that a re-trial was necessary to properly adjudicate the matter.

Outcome: The Appellate Court, exercising its authority under Rule 23A, ordered the case to be re-tried in the Trial Court. This re-trial will allow Meena to present her case again, and the construction company will have another opportunity to defend itself.

Rule 24: Where evidence on record sufficient, Appellate Court may determine case finally.

Case Finally

Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgement, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgement of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

Simplified act

Case Finally

If the evidence in the case is enough for the Appellate Court to make a decision, the Appellate Court can make a final decision on the case. This can happen even if the original court made its decision based on different reasons than the Appellate Court.

Explanation using Example

Example 1:

Scenario: Rajesh filed a civil suit against his neighbor, Suresh, for encroaching on his property. The trial court ruled in favor of Suresh, stating that Rajesh did not provide sufficient evidence of ownership. Rajesh appealed the decision to the Appellate Court.

Application of Rule 24: Upon reviewing the case, the Appellate Court found that the trial court had overlooked key pieces of evidence, such as land records and

witness testimonies, which clearly established Rajesh's ownership. The Appellate Court determined that the evidence on record was sufficient to make a final judgment. Therefore, instead of sending the case back to the trial court for reconsideration, the Appellate Court resettled the issues and ruled in favor of Rajesh, finally determining the suit.

Example 2:

Scenario: Meena filed a lawsuit against a construction company for breach of contract. The trial court dismissed her case, stating that the contract was not valid due to a lack of consideration. Meena appealed the decision, arguing that the trial court had misunderstood the terms of the contract.

Application of Rule 24: The Appellate Court reviewed the evidence, including the contract documents and correspondence between Meena and the construction company. The Appellate Court found that the trial court had erred in its interpretation of the contract and that there was sufficient evidence to show that the contract was valid and enforceable. Instead of remanding the case back to the trial court, the Appellate Court resettled the issues and ruled in favor of Meena, awarding her damages for the breach of contract.

Rule 25: Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from.

Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required;

and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor within such time as may be fixed by the Appellate Court or extended by it from time to time.

Simplified act

If the original court (the one whose decision is being appealed) forgot to address an important issue or question of fact that is crucial for deciding the case fairly, the higher court (Appellate Court) can take action.

The Appellate Court can create new issues or questions and send them back to the original court for further examination.

The original court must then look into these new issues, gather the necessary evidence, and send this evidence back to the Appellate Court along with its findings and reasons.

The original court must do this within the time frame set by the Appellate Court, which can be extended if needed.

Explanation using Example

Example 1:

Scenario: Ravi filed a civil suit against Shyam in the District Court of Mumbai, claiming that Shyam had encroached on his property. The District Court ruled in favor of Shyam, stating that Ravi failed to prove his ownership of the disputed land. Dissatisfied with the decision, Ravi appealed to the Bombay High Court.

Application of Rule 25: Upon reviewing the case, the Bombay High Court noticed that the District Court did not frame an essential issue regarding the exact boundaries of the property in question, which is crucial for determining ownership. The High Court decided that this issue must be resolved to make a fair decision.

Action Taken: The Bombay High Court framed the issue of determining the exact boundaries of the property and referred it back to the District Court of Mumbai. The District Court was directed to gather additional evidence, such as land survey reports and testimonies from local authorities, and to make a finding on this issue. The District Court then conducted the necessary proceedings, collected the evidence, and returned its findings to the Bombay High Court within the specified time frame.

Outcome: Based on the additional evidence and the findings from the District Court, the Bombay High Court was able to make a well-informed decision on the appeal, ensuring that justice was served.

Example 2:

Scenario: Meera filed a lawsuit against a construction company in the Civil Court of Delhi, alleging that the company had breached the contract by using substandard materials in building her house. The Civil Court ruled in favor of

the construction company, stating that Meera did not provide sufficient evidence of the breach. Meera then appealed to the Delhi High Court.

Application of Rule 25: The Delhi High Court found that the Civil Court had not framed an issue regarding whether the materials used met the contractual standards, which was essential to the case. This omission needed to be addressed to reach a fair conclusion.

Action Taken: The Delhi High Court framed the issue of whether the materials used by the construction company met the contractual standards and referred it back to the Civil Court of Delhi. The Civil Court was instructed to gather additional evidence, such as expert testimonies and material quality reports, and to make a finding on this issue. The Civil Court conducted the necessary proceedings, collected the evidence, and returned its findings to the Delhi High Court within the time specified.

Outcome: With the additional evidence and the findings from the Civil Court, the Delhi High Court was able to make a comprehensive decision on the appeal, ensuring that the case was decided on its merits.

Rule 26: Findings and evidence to be put on record.

(1) Such evidence and findings shall form part of the record in the suit; and either party may, within a time to be fixed by the Appellate Court, present a memorandum of objections to any finding.

(2) Determination of appeal. - After the expiration of the period so fixed for presenting such memorandum the Appellate Court shall proceed to determine the appeal.

Simplified act

(1) The evidence and findings will be included in the case record. Either party involved in the case can submit objections to any findings within a time limit set by the Appellate Court.

(2) Deciding the appeal. - Once the time limit for submitting objections has passed, the Appellate Court will make a decision on the appeal.

Explanation using Example

Example 1:

Rajesh filed a civil suit against his neighbor, Suresh, for encroaching on his property. The trial court ruled in favor of Rajesh, ordering Suresh to remove the encroachment. Suresh, dissatisfied with the decision, appealed to the higher court.

During the appeal, the Appellate Court reviewed the evidence and findings from the original trial. The court allowed both Rajesh and Suresh to submit any objections to the findings within 30 days. Rajesh submitted a memorandum of objections, arguing that the trial court did not consider certain key pieces of evidence.

After the 30-day period expired, the Appellate Court proceeded to determine the appeal, taking into account the objections raised by Rajesh. The court ultimately upheld the original decision, reinforcing the order for Suresh to remove the encroachment.

Example 2:

Meera filed a lawsuit against a construction company for damages caused to her house due to negligent construction work. The trial court awarded her compensation, but the construction company appealed the decision.

In the appeal process, the Appellate Court examined the trial court's findings and the evidence presented. The court set a deadline of 45 days for both parties to file any objections to the findings. The construction company filed a memorandum of objections, claiming that the trial court had misinterpreted the expert testimony regarding the cause of the damage.

After the 45-day period ended, the Appellate Court reviewed the objections and determined the appeal. The court found merit in the construction company's objections and reduced the compensation amount awarded to Meera, based on a reassessment of the expert testimony.

Rule 26A: Order of remand to mention date of next hearing

Where the Appellate Court remands a case under rule 23 or rule 23A, or frames issues and refers them for trial under rule 25, it shall fix a date for the appearance of the parties before the Court from whose decree the appeal was preferred for the purpose of receiving the directions of that Court as to further proceedings in the suit.

Simplified act

If the Appellate Court sends a case back to a lower court for further action under rule 23 or rule 23A, or if it creates specific questions (issues) and sends them to the lower court for trial under rule 25, the Appellate Court must set a date for the parties involved to appear before the lower court.

The purpose of this appearance is for the parties to receive instructions from the lower court on what to do next in the case.

Explanation using Example

Example 1:

Scenario: Rajesh files a civil suit against Suresh for breach of contract in the District Court. The District Court rules in favor of Suresh. Rajesh, dissatisfied with the decision, appeals to the High Court.

Application of Rule 26A: The High Court, upon hearing the appeal, finds that the District Court did not consider certain crucial evidence. Therefore, the High Court decides to remand the case back to the District Court under Rule 23 for a fresh trial. According to Rule 26A, the High Court must fix a date for the next hearing in the District Court. The High Court orders that both Rajesh and Suresh must appear before the District Court on the 15th of the next month to receive further directions regarding the proceedings.

Example 2:

Scenario: Meena files a property dispute case against her neighbor, Anil, in the Civil Court. The Civil Court dismisses her case. Meena appeals to the Appellate Court, arguing that the Civil Court did not frame certain key issues.

Application of Rule 26A: The Appellate Court agrees with Meena and decides to frame the missing issues and refer them back to the Civil Court for trial under Rule 25. As per Rule 26A, the Appellate Court must set a date for the parties to appear before the Civil Court. The Appellate Court schedules the next hearing for the 20th of the following month, instructing Meena and Anil to appear before the Civil Court to receive further directions on how the trial will proceed.

Rule 27: Production of additional evidence in Appellate Court.

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, 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, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

Simplified act

(1) In an appeal, the parties involved are generally not allowed to present new evidence, whether it's spoken testimony or documents, in the Appellate Court. However, there are exceptions:

(a) If the lower court, whose decision is being appealed, wrongly refused to accept evidence that should have been accepted, or

(aa) If the party wanting to present new evidence can show that, despite trying hard, they didn't know about the evidence or couldn't get it in time for the original court decision, or

(b) If the Appellate Court needs a document or a witness to make a fair judgment or for any other important reason,

the Appellate Court can allow the new evidence or document to be presented, or the witness to be questioned.

(2) Whenever the Appellate Court allows new evidence, it must explain why it is allowing it.

Explanation using Example

Example 1:

Scenario: Rajesh files an appeal in the Appellate Court against a decree passed by the Trial Court in a property dispute case. During the trial, Rajesh had attempted to submit a crucial land ownership document, but the Trial Court

refused to admit it, stating it was irrelevant. Rajesh believes this document is vital to his case.

Application of Rule 27: Rajesh can request the Appellate Court to admit this additional evidence under Rule 27(1)(a), arguing that the Trial Court wrongly refused to admit the document which ought to have been admitted. If the Appellate Court finds merit in Rajesh's argument, it may allow the document to be produced as additional evidence.

Example 2:

Scenario: Priya is appealing a decree in a family inheritance case. During the original trial, she was unaware of a key witness who could testify about the deceased's intentions regarding the inheritance. Despite her due diligence, she could not locate this witness before the trial concluded. After the decree, she discovers the witness and wants to present this testimony in the Appellate Court.

Application of Rule 27: Priya can request the Appellate Court to admit the witness's testimony under Rule 27(1)(aa), demonstrating that despite her due diligence, she was unaware of the witness's existence during the original trial. If the Appellate Court is convinced that Priya exercised due diligence and the evidence is crucial, it may allow the witness to be examined.

Example 3:

Scenario: An Appellate Court is hearing an appeal in a commercial contract dispute. During the hearing, the Appellate Court realizes that a specific financial document, which was not produced in the Trial Court, is essential to understand the financial transactions between the parties and to pronounce a fair judgment.

Application of Rule 27: The Appellate Court can, on its own motion, require the production of the financial document under Rule 27(1)(b), stating that it is necessary to enable it to pronounce judgment. The Court will then record the reason for admitting this additional evidence as required by Rule 27(2).

Example 4:

Scenario: Suresh is appealing a decree in a consumer dispute case. He discovers a new piece of evidence, a receipt, which was not available during the trial because the store's records were not updated in time. Suresh had exercised due diligence but could not obtain the receipt earlier.

Application of Rule 27: Suresh can request the Appellate Court to admit the receipt as additional evidence under Rule 27(1)(aa), showing that despite his due diligence, the evidence was not available at the time of the original trial. If the Appellate Court finds his explanation satisfactory, it may allow the receipt to be produced as additional evidence.

Rule 28: Mode of taking additional evidence.

Wherever additional evidence is allowed to be produced, the Appellate Court may either take such evidence, or direct the Court from whose decree the appeal is preferred, or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court.

Simplified act

If new evidence is allowed to be presented, the Appellate Court can either:

Collect the new evidence itself, or

Instruct the Court that made the original decision, or any other lower Court, to collect the new evidence and send it to the Appellate Court.

Explanation using Example

Example 1:

Ravi filed a lawsuit against his neighbor, Suresh, claiming that Suresh had illegally constructed a wall that encroached on Ravi's property. The trial court ruled in favor of Suresh, stating that there was insufficient evidence to prove the encroachment. Ravi decided to appeal the decision in the High Court. During the appeal, Ravi discovered new evidence—an old land survey report that clearly showed the boundary lines. Under Rule 28 of the Code of Civil Procedure 1908, the High Court allowed this additional evidence to be produced. The High Court could either examine the new evidence itself or direct the trial court to do so and then send the findings back to the High Court for consideration in the appeal.

Example 2:

Meera was involved in a property dispute with her brother, Rajesh, over the division of their ancestral property. The trial court ruled in favor of Rajesh, stating that the property division was fair and equitable. Meera appealed the decision, arguing that the trial court had overlooked a crucial piece of evidence—a will left by their father that specified a different division of the

property. The Appellate Court, under Rule 28 of the Code of Civil Procedure 1908, allowed Meera to present this additional evidence. The Appellate Court could either review the will itself or instruct the trial court to examine the will and submit a report back to the Appellate Court for further consideration in the appeal.

Rule 29: Points to be defined and recorded.

Where additional evidence is directed, and allowed to be taken, the Appellate Court shall specify the points to which the evidence is to be confined, and record on its proceedings the points so specified.

Simplified act

If the higher court asks for more evidence and allows it to be collected, the court must clearly state what specific issues the new evidence should address and make a note of these issues in its records.

Explanation using Example

Example 1:

Scenario: Ramesh filed a civil suit against Suresh for breach of contract in the District Court. The court ruled in favor of Suresh. Dissatisfied with the decision, Ramesh appealed to the High Court.

Application of Rule 29: During the appeal, Ramesh requested to present additional evidence that was not submitted in the original trial. The High Court agreed to consider this new evidence but specified that it should only pertain to the authenticity of the contract documents. The court recorded this specification in its proceedings, ensuring that the additional evidence would be confined to this particular point.

Example 2:

Scenario: Meena filed a lawsuit against a construction company for poor quality work on her house. The trial court dismissed her case, stating that she failed to prove the construction was substandard. Meena then appealed to the High Court.

Application of Rule 29: In her appeal, Meena sought to introduce new expert testimony regarding the construction quality. The High Court allowed this additional evidence but restricted it to the issue of whether the construction

met the agreed-upon standards. The court documented this restriction in its records, ensuring that the new evidence would only address the specified point.

Rule 30: Judgment when and where pronounced.

(1) The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the Court from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day of which notice shall be given to the parties or their pleaders.

(2) Where a written judgment is to be pronounced, it shall be sufficient if the points for determination, the decision thereon and the final order passed in the appeal are read out and it shall not be necessary for the Court to read out the whole judgment, but a copy of the whole judgment shall be made available for the perusal of the parties or their pleaders immediately after the judgment is pronounced.

Simplified act

(1) The Appellate Court, after listening to the people involved in the case or their lawyers and looking at any necessary parts of the case records, whether from the appeal or the original court decision, will announce its decision in open court. This can happen immediately or on a later date, which will be communicated to the people involved or their lawyers.

(2) If the decision is written down, it is enough for the court to read out the main points, the decisions on those points, and the final order. The court does not need to read the entire judgment out loud, but a full copy of the judgment will be available for the people involved or their lawyers to read right after the decision is announced.

Explanation using Example

Example 1:

Scenario: Rajesh files an appeal against a lower court's decision that awarded a property dispute in favor of his neighbor, Suresh.

Application of Rule 30:

Hearing: The Appellate Court schedules a hearing where both Rajesh and Suresh, or their lawyers, present their arguments.

Reference to Proceedings: The Appellate Court reviews the proceedings and evidence from the lower court to understand the basis of the original decision.

Pronouncement of Judgment:

The judge decides to pronounce the judgment on the same day after hearing the arguments.

The judge announces the decision in open court, stating that the appeal is allowed and the lower court's decision is overturned.

Written Judgment:

The judge reads out the key points of the judgment, including the points for determination, the decision on those points, and the final order.

The full written judgment is made available to Rajesh and Suresh immediately after the pronouncement.

Example 2:

Scenario: Priya appeals a family court's decision that granted custody of her child to her ex-husband, Arjun.

Application of Rule 30:

Hearing: The Appellate Court conducts a hearing where Priya and Arjun, or their legal representatives, present their case.

Reference to Proceedings: The Appellate Court examines the records and evidence from the family court to assess the original custody decision.

Pronouncement of Judgment:

The judge decides to reserve the judgment and announces that the decision will be pronounced on a future date.

The court clerk informs Priya and Arjun of the date when the judgment will be pronounced.

Written Judgment:

On the scheduled date, the judge reads out the key points of the judgment in open court, stating that the appeal is dismissed and the original custody decision is upheld.

The full written judgment is made available to Priya and Arjun immediately after the pronouncement.

Example 3:

Scenario: Anil appeals a consumer court's decision that dismissed his complaint against a car manufacturer for selling a defective vehicle.

Application of Rule 30:

Hearing: The Appellate Court hears arguments from Anil and the car manufacturer's legal team.

Reference to Proceedings: The Appellate Court reviews the consumer court's records and evidence to understand the basis of the dismissal.

Pronouncement of Judgment:

The judge decides to pronounce the judgment on the same day after the hearing.

The judge announces in open court that the appeal is partially allowed, and the case is remanded back to the consumer court for reconsideration with specific instructions.

Written Judgment:

The judge reads out the key points of the judgment, including the points for determination, the decision on those points, and the final order.

The full written judgment is made available to Anil and the car manufacturer's legal team immediately after the pronouncement.

Rule 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,

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

Simplified act

The judgment of the Appellate Court shall be in writing and shall state:

- (a) the issues that need to be decided;
- (b) the decision on those issues;
- (c) the reasons for the decision; and
- (d) if the original decision is changed or overturned, what the person who appealed is entitled to,

and shall at the time that it is announced be signed and dated by the Judge or by the Judges who agree with it.

Explanation using Example

Example 1:

Scenario: Rajesh filed a civil suit against his neighbor, Suresh, for encroaching on his property. The trial court ruled in favor of Suresh, stating that there was no encroachment. Rajesh, dissatisfied with the decision, appealed to the High Court.

Appellate Court Judgment:

Points for determination: Whether the trial court erred in concluding that there was no encroachment by Suresh on Rajesh's property.

Decision thereon: The High Court finds that the trial court did err in its conclusion.

Reasons for the decision: The High Court reviewed the evidence, including property maps and witness testimonies, and determined that there was indeed an encroachment by Suresh.

Relief to which the appellant is entitled: The High Court reverses the trial court's decree and orders Suresh to remove the encroachment and restore the property to its original state.

The judgment is signed and dated by the Judge at the time it is pronounced.

Example 2:

Scenario: Meena filed a lawsuit against a construction company for not completing her house as per the contract. The trial court ruled in favor of Meena, awarding her compensation. The construction company appealed the decision.

Appellate Court Judgment:

Points for determination: Whether the trial court was correct in awarding compensation to Meena for the incomplete construction.

Decision thereon: The Appellate Court upholds the trial court's decision.

Reasons for the decision: The Appellate Court finds that the construction company breached the contract by not completing the house on time and as per the agreed specifications. The evidence presented, including the contract and expert testimonies, supports Meena's claims.

Relief to which the appellant is entitled: Since the trial court's decree is upheld, Meena is entitled to the compensation awarded by the trial court.

The judgment is signed and dated by the Judge at the time it is pronounced.

Rule 32: What judgment may direct.

The judgment may be for confirming, varying or reversing the decree from which the appeal is preferred, or, if the parties to the appeal agree as to the form which the decree in appeal shall take, or as to the order to be made in appeal, the Appellate Court may pass a decree or make an order accordingly.

Simplified act

The judgment can do one of three things:

Confirm the original decision.

Change the original decision.

Overturn the original decision.

If both sides in the appeal agree on what the new decision should be, the Appellate Court can make that decision or order.

Explanation using Example

Example 1:

Scenario: Rajesh filed a lawsuit against his neighbor, Suresh, for encroaching on his property. The trial court ruled in favor of Rajesh, ordering Suresh to remove the encroachment and pay damages. Suresh appealed the decision.

Application of Rule 32:

Confirming the Decree: The appellate court reviews the case and finds no error in the trial court's judgment. It confirms the original decree, meaning Suresh must still remove the encroachment and pay damages to Rajesh.

Varying the Decree: The appellate court finds that while Suresh did encroach, the damages awarded were too high. It varies the decree by reducing the amount of damages Suresh has to pay but still orders the removal of the encroachment.

Reversing the Decree: The appellate court finds that the trial court made a mistake in its judgment. It reverses the decree, ruling in favor of Suresh, and states that there was no encroachment.

Example 2:

Scenario: Priya sued a construction company for breach of contract, claiming they did not complete the work as agreed. The trial court ruled in favor of the construction company, stating that Priya did not provide sufficient evidence. Priya appealed the decision.

Application of Rule 32:

Confirming the Decree: The appellate court reviews the evidence and agrees with the trial court's decision. It confirms the original decree, meaning Priya's claim is dismissed.

Varying the Decree: The appellate court finds that the trial court was correct in dismissing part of Priya's claim but believes she should be compensated for some incomplete work. It varies the decree by ordering the construction company to pay partial damages to Priya.

Reversing the Decree: The appellate court finds that the trial court overlooked critical evidence provided by Priya. It reverses the decree, ruling in favor of Priya, and orders the construction company to complete the work or pay full damages.

Example 3:

Scenario: Anil and Sunita are involved in a property dispute. The trial court ruled in favor of Anil, granting him ownership of the disputed property. Sunita appealed the decision, and during the appeal, both parties agreed to a settlement.

Application of Rule 32:

Agreement by Parties: The appellate court acknowledges the agreement between Anil and Sunita regarding the form of the decree. Based on their agreement, the court passes a decree that reflects the settlement terms agreed upon by both parties, thereby resolving the dispute amicably.

Rule 33: Power of Court of appeal.

The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the 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 or parties, although such respondents or parties may not have filed any appeal or objection and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees:

Provided that the Appellate Court shall not make any order under section 35A in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.

Illustration

A claims a sum of money as due to him from X or Y, and in a suit against both obtains a decree against X. X, appeals and A and Y are respondents. The Appellate Court decides in favour of X. It has power to pass a decree against Y.

Simplified act

The Appellate Court has the authority to issue any decision or order that should have been made in the first place. It can also issue additional decisions or orders as needed. This power can be used even if the appeal is only about part of the original decision. The Court can make decisions that benefit any or all of the people involved in the case, even if they didn't file an appeal or

objection. This power can also be used in cases where there are multiple related decisions, even if not all of those decisions were appealed.

However, the Appellate Court cannot make an order under section 35A if the original court did not address or refused to address the objection.

Example

A claims that either X or Y owes him money. In a lawsuit against both, A wins a decision against X. X appeals, and A and Y are involved in the appeal. If the Appellate Court decides in favor of X, it can then issue a decision against Y.

Explanation using Example

Example 1:

Ravi files a lawsuit against Suresh and Mahesh, claiming that they both owe him Rs. 1,00,000. The trial court rules in favor of Ravi but only against Suresh, ordering Suresh to pay the full amount. Suresh appeals the decision, and both Ravi and Mahesh are respondents in the appeal. The Appellate Court reviews the case and finds that Suresh is not liable for the debt, but Mahesh is. The Appellate Court then has the power to pass a decree against Mahesh, even though Mahesh did not file an appeal or objection.

Example 2:

Priya sues her business partners, Anil and Sunil, for breach of contract, seeking damages of Rs. 5,00,000. The trial court issues a decree in favor of Priya but only against Anil. Anil appeals the decision, and Priya and Sunil are respondents in the appeal. The Appellate Court finds that Anil is not responsible for the breach but that Sunil is. The Appellate Court can then issue a decree against Sunil, requiring him to pay the damages, even though Sunil did not appeal the original decision.

Example 3:

Meera files a lawsuit against her neighbors, Raj and Simran, for encroaching on her property. The trial court rules in favor of Meera but only against Raj, ordering Raj to remove the encroachment. Raj appeals the decision, and both Meera and Simran are respondents in the appeal. The Appellate Court finds that Simran, not Raj, is responsible for the encroachment. The Appellate Court can then pass an order against Simran to remove the encroachment, even though Simran did not file an appeal.

Example 4:

A company, ABC Ltd., sues two suppliers, XYZ Ltd. and PQR Ltd., for delivering defective goods, seeking compensation of Rs. 10,00,000. The trial court rules in favor of ABC Ltd. but only against XYZ Ltd. XYZ Ltd. appeals the decision, and both ABC Ltd. and PQR Ltd. are respondents in the appeal. The Appellate Court finds that PQR Ltd. is actually responsible for the defective goods. The Appellate Court can then pass a decree against PQR Ltd., requiring them to pay the compensation, even though PQR Ltd. did not appeal the original decision.

Rule 34: Dissent to be recorded.

Where the Appeal is heard by more judges than one, any judge dissenting from the judgement of the Court shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reasons for the same.

Simplified act

If more than one judge is hearing an appeal and one of the judges disagrees with the court's decision, that judge must write down what decision or order they believe should be made instead.

The judge who disagrees can also explain why they think their decision or order is the right one.

Explanation using Example

Example 1:

Rajesh files an appeal in the High Court against a lower court's decision. The appeal is heard by a bench of three judges. After hearing the arguments, two judges agree that the lower court's decision should be upheld, but the third judge, Justice Kumar, disagrees. According to Rule 34 of the Code of Civil Procedure 1908, Justice Kumar must write down his dissenting opinion, explaining why he believes the lower court's decision should be overturned and what decision he thinks should be made instead. This written dissent will be included in the case records.

Example 2:

Meena is involved in a property dispute and loses her case in the trial court. She decides to appeal the decision in the appellate court, which is heard by a panel of five judges. Four judges agree to reverse the trial court's decision, but

one judge, Justice Sharma, disagrees with the majority. Justice Sharma believes the trial court's decision was correct. Under Rule 34, Justice Sharma is required to write his dissenting opinion, detailing the reasons for his disagreement and the decision he believes should be made. This dissenting opinion will be part of the official court documents for the case.

Rule 35: Date and contents of decree.

(1) The decree of the Appellate Court shall bear date the day on which the judgment was pronounced.

(2) The decree shall contain the number of the appeal, the names and descriptions of the appellant and respondent, and a clear specification of the relief granted or other adjudication made.

(3) The decree shall also state the amount of costs incurred in the appeal, and by whom, or out of what property, and in what proportions such costs and the costs in the suit are to be paid.

(4) The decree shall be signed and dated by the Judge or Judges who passed it:

Judge dissenting from judgment need not sign decree. - Provided that where there are more Judges than one and there is a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree.

Simplified act

(1) The decision made by the Appellate Court will be dated on the day the judgment was announced.

(2) The decision document will include the appeal number, the names and details of the person who appealed (appellant) and the person responding to the appeal (respondent), and a clear description of what was decided or granted.

(3) The decision document will also mention the amount of costs involved in the appeal, who has to pay these costs, from which property, and in what proportions these costs and the costs of the original case should be paid.

(4) The decision document will be signed and dated by the Judge or Judges who made the decision:

If there are multiple Judges and they do not all agree, the Judge who disagrees does not need to sign the decision document.

Explanation using Example

Example 1:

Scenario: Ramesh files an appeal against a lower court's decision in a property dispute case. The Appellate Court hears the case and pronounces its judgment on 15th March 2023.

Application of Rule 35:

Date of Decree: The decree issued by the Appellate Court will bear the date 15th March 2023, the day the judgment was pronounced.

Contents of Decree: The decree will include:

The appeal number, e.g., Appeal No. 123/2023.

Names and descriptions of the appellant (Ramesh) and the respondent (Suresh).

A clear specification of the relief granted, e.g., "The property in question is to be divided equally between Ramesh and Suresh."

Costs: The decree will state the amount of costs incurred in the appeal, e.g., Rs. 10,000, and specify that Ramesh is to bear 60% of the costs and Suresh 40%.

Signature: The decree will be signed and dated by the Judge who passed it. If there were multiple judges and one dissented, the dissenting judge does not need to sign the decree.

Example 2:

Scenario: Priya appeals a decision in a family court case regarding child custody. The Appellate Court delivers its judgment on 20th June 2023.

Application of Rule 35:

Date of Decree: The decree will bear the date 20th June 2023, the day the judgment was pronounced.

Contents of Decree: The decree will include:

The appeal number, e.g., Appeal No. 456/2023.

Names and descriptions of the appellant (Priya) and the respondent (Rahul).

A clear specification of the relief granted, e.g., "Custody of the child is awarded to Priya, with visitation rights to Rahul every alternate weekend."

Costs: The decree will state the amount of costs incurred in the appeal, e.g., Rs. 5,000, and specify that each party will bear their own costs.

Signature: The decree will be signed and dated by the Judge who passed it. If there were multiple judges and one dissented, the dissenting judge does not need to sign the decree.

Rule 36: Copies of judgment and decree to be furnished to parties.

Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the Appellate Court and at their expense.

Simplified act

If you want a certified copy of the judgment and decree from an appeal, you need to apply to the Appellate Court.

You will have to pay for these copies yourself.

Explanation using Example

Example 1:

Rajesh filed a civil suit against his neighbor, Suresh, for encroaching on his property. The trial court ruled in favor of Rajesh, and a decree was passed ordering Suresh to vacate the encroached land. Suresh, dissatisfied with the judgment, appealed to the higher court. After hearing the appeal, the appellate court upheld the trial court's decision. Rajesh, wanting to have a certified copy of the appellate court's judgment and decree for his records, applied to the appellate court. As per Rule 36 of The Code Of Civil Procedure 1908, the appellate court provided Rajesh with the certified copies of the judgment and decree upon his application and payment of the necessary fees.

Example 2:

Meena was involved in a property dispute with her brother, Ramesh, over their ancestral land. The trial court ruled in favor of Ramesh, and Meena decided to appeal the decision. The appellate court, after reviewing the case, reversed the

trial court's decision and ruled in favor of Meena. Ramesh, needing the certified copies of the appellate court's judgment and decree to consider further legal options, applied to the appellate court. Following Rule 36 of The Code Of Civil Procedure 1908, the appellate court furnished Ramesh with the certified copies of the judgment and decree after he submitted his application and paid the required fees.

Rule 37: Certified copy of decree to be sent to Court whose decree appealed from.

A copy of the judgment and of the decree, certified by the Appellate Court or such officer as it appoints in this behalf, shall be sent to the Court which passed the decree appealed from and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the register of civil suits.

Simplified act

A certified copy of the judgment and decree from the Appellate Court, or an officer appointed by the Appellate Court, must be sent to the Court that made the original decision.

This certified copy should be filed with the original case documents.

The judgment from the Appellate Court must be recorded in the civil suits register.

Explanation using Example

Example 1:

Ravi filed a civil suit against Shyam in the District Court of Mumbai, seeking compensation for breach of contract. The District Court ruled in favor of Ravi and passed a decree ordering Shyam to pay Rs. 5 lakhs as compensation. Shyam, dissatisfied with the decision, appealed to the High Court of Bombay.

The High Court, after reviewing the case, modified the decree and reduced the compensation amount to Rs. 3 lakhs. According to Rule 37 of the Code of Civil Procedure 1908, a certified copy of the High Court's judgment and the modified decree is sent to the District Court of Mumbai. The District Court then files this certified copy with the original case documents and updates its civil suits register to reflect the High Court's judgment.

Example 2:

Meera won a property dispute case in the Civil Court of Bangalore, where the court decreed that she is the rightful owner of a disputed piece of land. The opposing party, Rajesh, appealed the decision in the Karnataka High Court. The High Court upheld the Civil Court's decision but added a condition that Rajesh must vacate the property within 30 days.

As per Rule 37 of the Code of Civil Procedure 1908, the High Court sends a certified copy of its judgment and the decree to the Civil Court of Bangalore. The Civil Court then files this certified copy with the original case documents and makes an entry of the High Court's judgment in its civil suits register, ensuring that the updated decree is officially recorded and enforceable.

ORDER XLII: APPEALS FROM APPELLATE DECREES

Rule 1: Procedure.

The rules of Order XLI shall apply, so far as may be, to appeals from appellate decrees.

Rule 2: Power of Court to direct that the appeal be heard on the question formulated by it.

At the time of making an order under rule 11 of Order XLI for the hearing of a second appeal, the Court shall formulate the substantial question of law as required by section 100, and in doing so, the Court may direct that the second appeal be heard on the question so formulated and it shall not be open to the appellant to urge any other ground in the appeal without the leave of the Court, given in accordance with the provision of section 100.

Simplified act

When the Court decides to hear a second appeal under rule 11 of Order XLI, it must identify the important legal question involved, as required by section 100.

The Court can decide that the second appeal will only be heard on this specific legal question.

The person appealing (the appellant) cannot bring up any other issues in the appeal unless the Court gives permission, following the rules in section 100.

Explanation using Example

Example 1:

Scenario: Rajesh files a second appeal in the High Court challenging the decision of the lower appellate court regarding a property dispute.

Application of the Act:

The High Court, while admitting Rajesh's second appeal under Rule 11 of Order XLI, identifies a substantial question of law: "Whether the lower appellate court erred in interpreting the provisions of the Transfer of Property Act, 1882?"

The High Court formulates this question and directs that the second appeal will be heard specifically on this formulated question.

Rajesh cannot introduce any other grounds or issues in his appeal unless he obtains permission from the High Court as per Section 100 of the Code of Civil Procedure, 1908.

Example 2:

Scenario: Meena files a second appeal in the High Court after losing a case related to the enforcement of a contract.

Application of the Act:

The High Court, while making an order under Rule 11 of Order XLI, formulates a substantial question of law: "Whether the lower appellate court correctly applied the principles of contract law in determining the validity of the agreement?"

The High Court directs that Meena's second appeal will be heard only on this specific question.

Meena is restricted from raising any other issues or grounds in her appeal unless she gets explicit permission from the High Court, as mandated by Section 100 of the Code of Civil Procedure, 1908.

Rule 3: Application of rule 14 of Order XLI.

XLL-Reference in sub-rule (4) of rule 14 of Order XLI to the Court of first instance shall, in the case of an appeal from an appellate decree or order, be construed as a reference to the Court to which the appeal was preferred from the original decree or order.

Simplified act

In sub-rule (4) of rule 14 of Order XLI, when it mentions the "Court of first instance," it means:

If you are appealing a decision that was already appealed once before, "Court of first instance" refers to the court where the first appeal was made, not the original court that made the initial decision.

Explanation using Example

Example 1:

Rajesh filed a lawsuit in the District Court against his neighbor, Suresh, for encroaching on his property. The District Court ruled in favor of Rajesh. Suresh, dissatisfied with the decision, appealed to the High Court. The High Court, after reviewing the case, upheld the District Court's decision. Suresh then decided to appeal to the Supreme Court.

In this scenario, if the Supreme Court needs to refer to the original court's records or decisions, Rule 3 of Order XLII would mean that the reference to the "Court of first instance" (District Court) in Rule 14 of Order XLI should be understood as a reference to the High Court, which was the court that handled the first appeal.

Example 2:

Meena won a civil case in the Family Court regarding a property dispute with her brother, Ramesh. Ramesh appealed the decision in the High Court, which reversed the Family Court's decision and ruled in favor of Ramesh. Meena then appealed to the Supreme Court.

During the Supreme Court proceedings, if there is a need to refer to the court that handled the first appeal, Rule 3 of Order XLII clarifies that any reference to the "Court of first instance" in Rule 14 of Order XLI should be interpreted as a reference to the High Court, which was the appellate court that first reviewed the Family Court's decision.

ORDER XLIII: APPEALS FROM ORDERS

Rule 1: Appeals from orders.

An appeal shall lie from the following orders under the provisions of section 104, namely:

- (a) an order under rule 10 of Order VII returning a plaint to be presented to the proper Court except where the procedure specified in rule 10A of Order VII has been followed;
- (c) an order under rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;
- (d) an order under rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed ex parte;
- (f) an order under rule 21 of Order XI;
- (i) an order under rule 34 of Order XXI on an objection to the draft of a document or of an endorsement;
- (j) an order under rule 72 or rule 92 of Order XXI setting aside or refusing to set aside a sale;
- (ja) an order rejecting an application made under sub-rule (1) of rule 106 of Order XXI, provided that an order on the original application, that is to say, the application referred to in sub-rule (1) of rule 105 of that Order is appealable;
- (k) an order under rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit;
- (l) an order under rule 10 of Order XXII giving or refusing to give leave;
- (n) an order under rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;
- (na) an order under rule 5 or rule 7 of Order XXXIII rejecting an application for permission to sue as an indigent person;
- (p) orders in interpleader-suits under rule 3, rule 4 or rule 6 of Order XXXV;
- (q) an order under rule 2, rule 3 or rule 6 of Order XXVIII;
- (r) an order under rule 1, rule 2, rule 2A, rule 4 or rule 10 of Order XXXIX;
- (s) an order under rule 1 or rule 4 of Order XL;
- (t) an order of refusal under rule 19 of Order XLI to re-admit, or under rule 21 of Order XLI to re-hear, an appeal;
- (u) an order under rule 23 or rule 23A of Order XLI remanding a case, where an appeal would lie from the decree of the Appellate court;

(w) an order under rule 4 of Order XLVII granting an application for review.

Simplified act

You can appeal the following orders under section 104:

(a) An order under rule 10 of Order VII that sends a lawsuit back to the correct court, unless the procedure in rule 10A of Order VII was followed;

(c) An order under rule 9 of Order IX that rejects a request (in a case where you can appeal) to cancel the dismissal of a lawsuit;

(d) An order under rule 13 of Order IX that rejects a request (in a case where you can appeal) to cancel a decision made without the other party being present;

(f) An order under rule 21 of Order XI;

(i) An order under rule 34 of Order XXI about objections to the draft of a document or an endorsement;

(j) An order under rule 72 or rule 92 of Order XXI that cancels or refuses to cancel a sale;

(ja) An order rejecting a request made under sub-rule (1) of rule 106 of Order XXI, as long as the original request mentioned in sub-rule (1) of rule 105 of that Order can be appealed;

(k) An order under rule 9 of Order XXII that refuses to cancel the end or dismissal of a lawsuit;

(l) An order under rule 10 of Order XXII that gives or refuses to give permission;

(n) An order under rule 2 of Order XXV that rejects a request (in a case where you can appeal) to cancel the dismissal of a lawsuit;

(na) An order under rule 5 or rule 7 of Order XXXIII that rejects a request to sue as a poor person;

(p) Orders in interpleader-suits under rule 3, rule 4, or rule 6 of Order XXXV;

(q) An order under rule 2, rule 3, or rule 6 of Order XXVIII;

(r) An order under rule 1, rule 2, rule 2A, rule 4, or rule 10 of Order XXXIX;

(s) An order under rule 1 or rule 4 of Order XL;

(t) An order of refusal under rule 19 of Order XLI to re-admit, or under rule 21 of Order XLI to re-hear, an appeal;

(u) An order under rule 23 or rule 23A of Order XLI that sends a case back, where you can appeal the decision of the Appellate court;

(w) An order under rule 4 of Order XLVII that grants a request for review.

Explanation using Example

Example 1:

Ravi files a lawsuit in the District Court of Mumbai. However, the court finds that the case should have been filed in the District Court of Pune as per jurisdiction rules. The court issues an order under Rule 10 of Order VII to return the plaint to Ravi so he can present it to the proper court in Pune. Ravi believes this decision is incorrect and decides to appeal the order under Rule 1 of Order XLIII.

Example 2:

Meena's lawsuit is dismissed by the court due to her absence during the hearing. She files an application under Rule 9 of Order IX to set aside the dismissal, but the court rejects her application. Since this rejection is open to appeal, Meena decides to appeal the order under Rule 1 of Order XLIII.

Example 3:

Rajesh files a lawsuit against his neighbor for encroachment. The court passes an ex parte decree in favor of Rajesh because the neighbor did not appear in court. The neighbor later files an application under Rule 13 of Order IX to set aside the ex parte decree, but the court rejects the application. The neighbor can appeal this rejection under Rule 1 of Order XLIII.

Example 4:

Sita objects to the draft of a sale deed prepared by the court under Rule 34 of Order XXI. The court issues an order regarding her objection, but Sita is not satisfied with the decision. She decides to appeal the order under Rule 1 of Order XLIII.

Example 5:

Amit's property is sold in a court auction, but he believes the sale was conducted improperly. He files an application under Rule 92 of Order XXI to set

aside the sale, but the court refuses. Amit can appeal this refusal under Rule 1 of Order XLIII.

Example 6:

Priya applies to the court for permission to sue as an indigent person under Rule 5 of Order XXXIII. The court rejects her application. Since this rejection is open to appeal, Priya decides to appeal the order under Rule 1 of Order XLIII.

Example 7:

Vikram is involved in an interpleader suit where multiple parties claim the same property. The court issues an order under Rule 3 of Order XXXV regarding the claims. Vikram is dissatisfied with the order and decides to appeal it under Rule 1 of Order XLIII.

Example 8:

An order is issued under Rule 1 of Order XXXIX granting an injunction against Neha. She believes the injunction is unjust and decides to appeal the order under Rule 1 of Order XLIII.

Example 9:

The appellate court refuses to re-admit an appeal filed by Karan under Rule 19 of Order XLI. Karan believes this refusal is incorrect and decides to appeal the order under Rule 1 of Order XLIII.

Example 10:

The court grants an application for review under Rule 4 of Order XLVII, which affects the interests of Sunil. Sunil decides to appeal the order under Rule 1 of Order XLIII.

Rule 1A: Right to challenge non-appealable orders in appeal against decrees.

(1) Where any order is made under this Code against a party and thereupon any judgment is pronounced against such party and a decree is drawn up, such party may, in an appeal against the decree, contend that such order should not have been made and the judgment should not have been pronounced.

(2) In an appeal against a decree passed in a suit after recording a compromise or refusing to record a compromise, it shall be open to the appellant to contest

the decree on the ground that the compromise should, or should not, have been recorded.

Simplified act

(1) If a court makes a decision against someone and then gives a judgment and a formal order, that person can argue in an appeal that the decision and judgment were wrong.

(2) If someone appeals a court's decision made after agreeing to a settlement or refusing a settlement, they can argue that the settlement should or should not have been accepted.

Explanation using Example

Example 1:

Scenario: Ravi files a civil suit against Shyam for breach of contract. During the proceedings, the court issues an interim order directing Ravi to deposit a certain amount of money as security. Ravi believes this order is unjust but cannot appeal against it immediately because it is a non-appealable order. The court later pronounces a judgment in favor of Shyam and a decree is drawn up.

Application of Rule 1A: Ravi decides to appeal against the decree. In his appeal, Ravi can also challenge the interim order directing him to deposit the security amount, arguing that the order was incorrect and should not have been made. This is permissible under Rule 1A, which allows a party to contest non-appealable orders in an appeal against the final decree.

Example 2:

Scenario: Meena and Ramesh are involved in a property dispute. During the trial, they reach a compromise agreement, and the court records this compromise and passes a decree based on it. However, Meena later feels that the compromise was unfair and that the court should not have recorded it.

Application of Rule 1A: Meena decides to appeal against the decree. In her appeal, she can argue that the compromise should not have been recorded and that the decree based on the compromise is invalid. Rule 1A allows her to contest the decree on the grounds that the compromise should not have been recorded, even though the original order to record the compromise was non-appealable.

Example 3:

Scenario: Anita sues her neighbor, Raj, for encroachment on her property. During the trial, the court issues an order refusing to record a compromise that both parties had agreed upon, stating that the compromise was not legally valid. The court then proceeds to pronounce a judgment in favor of Raj and a decree is drawn up.

Application of Rule 1A: Anita decides to appeal against the decree. In her appeal, she can argue that the court's order refusing to record the compromise was incorrect and that the compromise should have been recorded. Rule 1A allows her to challenge the non-appealable order refusing to record the compromise in her appeal against the final decree.

Rule 2: Procedure.

ORDER XLIV

The rules of Order XLI shall apply, so far as may be to appeals from orders.

ORDER XLIV: APPEALS BY INDIGENT PERSONS

Rule 1: Who may appeal as an indigent person.

(1) Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeal, and may be allowed to appeal as an indigent person, subject, in all matters, including the presentation of such application, to the provisions relating to suits by indigent persons, in so far as those provisions are applicable.

Simplified act

(1) If someone has the right to file an appeal but cannot afford the fee for the appeal document, they can submit an application along with the appeal document. They may be allowed to appeal as a person without financial means, following the same rules that apply to lawsuits by people who cannot afford to pay, as long as those rules are relevant.

Explanation using Example

Example 1:

Scenario: Ramesh, a farmer from a small village in Maharashtra, recently lost a civil case in the district court regarding a land dispute. He believes the judgment was unfair and wants to appeal to the High Court. However, Ramesh's financial condition is dire due to a poor harvest season, and he cannot afford the court fees required for filing the appeal.

Application: Under Rule 1 of Order XLIV of The Code of Civil Procedure, 1908, Ramesh can apply to the High Court to appeal as an indigent person. He needs to submit an application along with his memorandum of appeal, stating his inability to pay the court fees. If the court is satisfied with his financial condition, it may allow him to proceed with the appeal without paying the fees.

Example 2:

Scenario: Meena, a widow living in Delhi, was awarded a small sum of money in a civil suit against a large corporation for wrongful termination. Dissatisfied with the amount, she wants to appeal to a higher court for a larger compensation. However, Meena's only source of income is a modest pension, and she cannot afford the legal fees for the appeal.

Application: Meena can take advantage of Rule 1 of Order XLIV of The Code of Civil Procedure, 1908. She can file an application to the appellate court, along with her memorandum of appeal, explaining her financial situation. If the court finds her claim of indigence valid, it will permit her to appeal without the burden of paying the court fees

Rule 2: Grant of time for payment of Court-fee.

Where an application is rejected under rule 1, the Court may, while rejecting the application, allow the applicant to pay the requisite Court-fee, within such time as may be fixed by the Court or extended by it from time to time; and upon such payment, the memorandum of appeal in respect of which such fee is payable shall have the same force and effect as if such fee had been paid in the first instance.

Simplified act

If an application is turned down under rule 1, the Court can let the applicant pay the required Court fee within a certain time frame set by the Court. This time frame can also be extended by the Court if needed. Once the fee is paid, the appeal document will be treated as if the fee had been paid from the beginning.

Explanation using Example

Example 1:

Ravi, an indigent farmer from a small village in Maharashtra, files an appeal in the District Court against a lower court's decision. He applies to proceed as an indigent person under Rule 1 of Order XLIV of the Code of Civil Procedure, 1908, claiming he cannot afford the court fees. However, the court finds that Ravi has some hidden assets and rejects his application. While rejecting the application, the court grants Ravi 30 days to pay the required court fee. Ravi manages to gather the necessary funds within the given time and pays the court fee. As a result, his appeal is accepted and proceeds as if the fee had been paid initially.

Example 2:

Meena, a widow from Delhi, files an appeal in the High Court against a property dispute judgment. She applies to be treated as an indigent person, but her application is rejected because the court finds discrepancies in her financial statements. The court, however, allows her 45 days to arrange and pay the court fee. Meena faces difficulties in arranging the money and requests an extension. The court grants her an additional 30 days. Meena finally pays the court fee within the extended period. Consequently, her appeal is processed with the same validity as if she had paid the fee at the outset.

Rule 3: Inquiry as to whether applicant is an indigent person.

(1) Where an applicant, referred to in rule 1, was allowed to sue or appeal as an indigent person in the Court from whose decree the appeal is preferred, no further inquiry in respect of the question whether or not he is an indigent person shall be necessary if the applicant has made an affidavit stating that he has not ceased to be an indigent person since the date of the decree appealed from; but if the Government pleader or the respondent disputes the truth of the statement made in such affidavit, an inquiry into the question aforesaid shall be held by the Appellate Court or, under the orders of the Appellate Court, by an officer of the Court.

(2) Where the applicant, referred to in rule 11, is alleged to have become an indigent person since the date of the decree appealed from, the inquiry into the question whether or not he is an indigent person shall be made by the Appellate Court or, under the orders of the Appellate Court, by an officer of that Court unless the Appellate Court considers it necessary in the

circumstances of the case that the inquiry should be held by the Court from whose decision the appeal is preferred.

Simplified act

(1) If someone was allowed to sue or appeal as a poor person in the original court, they don't need to prove again that they are still poor when they appeal, as long as they provide a sworn statement saying they are still poor. However, if the government lawyer or the other party questions this statement, the appeals court will investigate whether the person is still poor. This investigation can be done by the appeals court itself or by a court officer assigned by the appeals court.

(2) If someone claims to have become poor after the original court decision, the appeals court will investigate whether this is true. This investigation can be done by the appeals court itself or by a court officer assigned by the appeals court. However, if the appeals court thinks it's necessary, the original court that made the decision can also conduct the investigation.

Explanation using Example

Example 1:

Rajesh, a farmer from a small village in Maharashtra, filed a lawsuit in the District Court claiming compensation for his land that was acquired by the government. Due to his financial condition, he was allowed to sue as an indigent person, meaning he did not have to pay the court fees. The District Court ruled against him, and Rajesh decided to appeal the decision in the High Court.

Since Rajesh was already recognized as an indigent person by the District Court, he submitted an affidavit to the High Court stating that his financial condition had not improved since the District Court's decision. The High Court accepted his affidavit and did not require a further inquiry into his financial status. However, the government pleader contested Rajesh's claim, arguing that Rajesh had received some compensation money and was no longer indigent. The High Court then ordered an inquiry to verify Rajesh's financial status before proceeding with the appeal.

Example 2:

Meena, a widow from Tamil Nadu, was involved in a property dispute and was allowed to sue as an indigent person in the Civil Court. The Civil Court ruled in

favor of the other party, and Meena decided to appeal the decision in the Appellate Court.

After the Civil Court's decision, Meena's financial situation worsened as she had to sell her small piece of jewelry to cover medical expenses. When she filed her appeal, she claimed that she had become even more indigent since the Civil Court's decision. The Appellate Court, considering her claim, decided to conduct an inquiry into her financial status. The inquiry was carried out by an officer of the Appellate Court, who confirmed that Meena's financial condition had indeed deteriorated. Based on this inquiry, the Appellate Court allowed Meena to proceed with her appeal as an indigent person.

ORDER XLV: APPEALS TO THE SUPREME COURT

Rule 1: "Decree" defined.

In this Order, unless there is something repugnant in the subject or context, the expression "decree" shall include a final order.

Simplified act

In this Order, unless it clearly doesn't fit the situation, the term "decree" also means a final order.

Explanation using Example

Example 1:

Ravi filed a civil lawsuit against his neighbor, Suresh, for encroaching on his property. The trial court heard the case and issued a final judgment in favor of Ravi, ordering Suresh to remove the encroachment and pay damages. This final judgment is considered a "decree" under Rule 1 of Order XLV of The Code of Civil Procedure, 1908. If Suresh wants to challenge this decision, he can appeal to the Supreme Court of India, as the decree includes the final order of the trial court.

Example 2:

Meena filed a suit for partition of her ancestral property against her siblings. After a lengthy trial, the court passed a final order dividing the property among the siblings and specifying each person's share. This final order is treated as a "decree" under Rule 1 of Order XLV of The Code of Civil Procedure, 1908. If any of the siblings are dissatisfied with the court's decision, they have the right to

appeal to the Supreme Court of India, as the decree encompasses the final order of the court.

Rule 2: Application to Court whose decree complained of.

(1) Whoever desires to appeal to the Supreme Court shall apply by petition to the Court whose decree is complained of.

(2) Every petition under sub-rule (1) shall be heard as expeditiously as possible and endeavour shall be made to conclude the disposal of the petition within sixty days from the date on which the petition is presented to the Court under sub-rule (1).

Simplified act

(1) If someone wants to appeal to the Supreme Court, they must submit a petition to the court that made the decision they are unhappy with.

(2) The court should try to hear and decide on this petition as quickly as possible, aiming to finish within sixty days from the date the petition was submitted.

Explanation using Example

Example 1:

Rajesh, a businessman from Mumbai, loses a civil case in the Bombay High Court. The court decrees that he must pay a substantial sum of money to his business partner. Rajesh believes the judgment is unfair and wants to appeal to the Supreme Court of India. According to Rule 2 of Order XLV of The Code of Civil Procedure 1908, Rajesh must first file a petition in the Bombay High Court (the court whose decree he is complaining about). He submits his petition, and the High Court is required to hear and dispose of this petition as quickly as possible, ideally within sixty days from the date Rajesh filed it.

Example 2:

Anita, a resident of Delhi, is involved in a property dispute with her neighbor. The Delhi High Court rules in favor of her neighbor, ordering Anita to vacate the disputed property. Anita believes there has been a legal error in the judgment and decides to appeal to the Supreme Court. Following Rule 2 of Order XLV of The Code of Civil Procedure 1908, Anita files a petition in the Delhi High Court, challenging its decree. The Delhi High Court must then

expedite the hearing of Anita's petition and aim to resolve it within sixty days from the date of filing.

Rule 3: Certificate as to value or fitness.

(1) Every petition shall state the grounds of appeal and pray for a certificate -

(i) that the case involves a substantial question of law of general importance, and

(ii) that in the opinion of the Court the said question needs to be decided by the Supreme Court.

(2) Upon receipt of such petition, the Court shall direct notice to be served on the opposite party to show cause why the said certificate should not be granted.

Simplified act

(1) Every appeal request must include:

(i) the important legal question that affects many people, and

(ii) a statement that the Court believes this question should be answered by the Supreme Court.

(2) When the Court gets such a request, it will notify the other party to explain why the certificate should not be given.

Explanation using Example

Example 1:

Scenario: Rajesh, a businessman, loses a civil case in the High Court regarding a property dispute. He believes that the case involves a significant question of law that affects many similar cases across India.

Application:

Rajesh files a petition in the High Court stating the grounds of his appeal.

In his petition, he argues that:

The case involves a substantial question of law of general importance, specifically regarding the interpretation of property rights under a particular state law.

In his opinion, this question needs to be decided by the Supreme Court to ensure uniformity in the application of the law across the country.

Upon receiving Rajesh's petition, the High Court directs notice to be served on the opposite party, asking them to show cause why the certificate should not be granted.

The opposite party, represented by their lawyer, responds to the notice, arguing that the question of law is not substantial or of general importance.

After hearing both sides, the High Court decides whether to grant the certificate for appeal to the Supreme Court.

Example 2:

Scenario: Priya, an environmental activist, loses a case in the High Court where she challenged the construction of a dam on environmental grounds. She believes the case raises important legal questions about environmental protection laws.

Application:

Priya files a petition in the High Court stating the grounds of her appeal.

In her petition, she argues that:

The case involves a substantial question of law of general importance, particularly concerning the interpretation and application of environmental protection laws.

In her opinion, this question needs to be decided by the Supreme Court to set a precedent for future cases involving environmental issues.

Upon receiving Priya's petition, the High Court directs notice to be served on the opposite party, which includes the government and the construction company, asking them to show cause why the certificate should not be granted.

The opposite party responds to the notice, arguing that the High Court's decision was based on well-established legal principles and does not involve any substantial question of law.

After considering the arguments from both sides, the High Court decides whether to grant the certificate for appeal to the Supreme Court.

Rule 4: Consolidation of suits. Repealed.

Repealed by the Code of Civil Procedure (Amendment) Act, 1973 (49 of 1973)

S4 (with effect from 1-2-1977)

Simplified act

Repealed by the Code of Civil Procedure (Amendment) Act, 1973 (49 of 1973)

Section 4 (effective from February 1, 1977)

This section of the law has been removed and replaced by the changes made in the Code of Civil Procedure (Amendment) Act of 1973. These changes started being effective from February 1, 1977.

Explanation using Example

Example 1:

Rajesh has filed a lawsuit in the Delhi High Court against his business partner, Suresh, for breach of contract. Meanwhile, Suresh has filed a separate lawsuit in the same court against Rajesh for defamation. Under the original Rule 4 of the Code of Civil Procedure, 1908, the court could have consolidated these two suits into one to streamline the legal process and avoid conflicting judgments. However, since Rule 4 has been repealed by the Code of Civil Procedure (Amendment) Act, 1973, the court no longer has the authority to consolidate these suits under this specific rule. Rajesh and Suresh will have to proceed with their cases separately unless another provision of law allows for consolidation.

Example 2:

Meena and her brother, Ramesh, are involved in a property dispute over their ancestral home in Mumbai. Meena has filed a suit for partition of the property, while Ramesh has filed a separate suit for declaration of ownership. Before the repeal of Rule 4, the court could have consolidated these suits to ensure a comprehensive resolution of the property issues. However, due to the repeal of Rule 4 by the Code of Civil Procedure (Amendment) Act, 1973, the court must handle these suits independently unless another legal provision permits consolidation. This means Meena and Ramesh will have to navigate two separate legal proceedings, potentially leading to increased legal costs and time.

Rule 5: Remission of dispute to Court of first instance. Repealed.

Repealed by s. 4, ibid. (with effect from 1-2-1977)

Rule 6: Effect of refusal of certificate.

Where such certificate is refused, the petition shall be dismissed.

7.

Rule 7: Security and deposit required on grant of certificate.

(1) Where the certificate is granted, the applicant shall, within ninety days or such further period, not exceeding sixty days, as the Court may upon cause shown allow; from the date of the decree complained of, or within six weeks from the date of the grant of the certificate whichever is the later date, -

(a) furnish security in cash or in Government securities for the costs of the respondent, and

(b) deposit the amount required to defray the expense of translating, transcribing, indexing, printing, and transmitting to the Supreme Court a correct copy of the whole record of the suit, except -

(1) formal documents directed to be excluded by any Rule of the Supreme Court in force for the time being;

(2) papers which the parties agree to exclude;

(3) accounts, or portions of accounts, which the officer empowered by the Court for that purpose considers unnecessary, and which the parties have not specifically asked to be included; and

(4) such other documents as the High Court may direct to be excluded:

Provided further, that no adjournment shall be granted to an opposite party to contest the nature of such security.

Simplified act

(1) When a certificate is given, the person who applied for it must do the following within ninety days (or up to an extra sixty days if the Court allows it for a good reason) from the date of the decision they are unhappy with, or within six weeks from the date the certificate was given, whichever is later:

(a) Provide money or government bonds as security to cover the costs of the other party in the case, and

(b) Deposit the money needed to cover the costs of translating, copying, organizing, printing, and sending a correct copy of the entire case record to the Supreme Court, except for:

(1) Formal documents that the Supreme Court rules say can be left out;

(2) Papers that both parties agree can be left out;

(3) Accounts or parts of accounts that the Court officer thinks are unnecessary and that neither party specifically wants included; and

(4) Any other documents that the High Court says can be left out:

Additionally, the other party cannot ask for more time to argue about the type of security provided.

Explanation using Example

Example 1:

Scenario: Rajesh, a businessman, loses a civil case in the High Court and wants to appeal to the Supreme Court.

Application of Rule 7:

Grant of Certificate: Rajesh applies for a certificate to appeal to the Supreme Court, and the High Court grants it.

Time Frame: Rajesh has 90 days from the date of the High Court's decree or six weeks from the date of the grant of the certificate, whichever is later, to comply with the requirements.

Security for Costs: Rajesh must provide security in cash or Government securities to cover the costs that the respondent (the party who won in the High Court) might incur.

Deposit for Expenses: Rajesh must also deposit an amount to cover the expenses of translating, transcribing, indexing, printing, and transmitting the case records to the Supreme Court.

Exclusions: Certain documents, such as formal documents excluded by Supreme Court rules, papers agreed to be excluded by both parties,

unnecessary accounts, and other documents directed by the High Court, do not need to be included in the record sent to the Supreme Court.

No Adjournment: The respondent cannot request an adjournment to contest the nature of the security provided by Rajesh.

Example 2:

Scenario: Priya, a software engineer, wins a civil case in the High Court, but the losing party, Anil, wants to appeal to the Supreme Court.

Application of Rule 7:

Grant of Certificate: Anil applies for a certificate to appeal to the Supreme Court, and the High Court grants it.

Time Frame: Anil has 90 days from the date of the High Court's decree or six weeks from the date of the grant of the certificate, whichever is later, to comply with the requirements.

Security for Costs: Anil must provide security in cash or Government securities to cover the costs that Priya might incur as the respondent.

Deposit for Expenses: Anil must also deposit an amount to cover the expenses of translating, transcribing, indexing, printing, and transmitting the case records to the Supreme Court.

Exclusions: Certain documents, such as formal documents excluded by Supreme Court rules, papers agreed to be excluded by both parties, unnecessary accounts, and other documents directed by the High Court, do not need to be included in the record sent to the Supreme Court.

No Adjournment: Priya cannot request an adjournment to contest the nature of the security provided by Anil.

Rule 8: Admission of appeal and procedure thereon.

Such security has been furnished and deposit made to the satisfaction of the Court, the court shall:

- (a) declare the appeal admitted,
- (b) give notice thereof to the respondent,

(c) transmit to the Supreme Court under the seal of the Court a correct copy of the said record, except as aforesaid, and

(d) give to either party one or more authenticated copies of any of the papers in the suit on his applying therefore and paying the reasonable expenses incurred in preparing them.

Simplified act

Once the required security and deposit are provided to the Court's satisfaction, the Court will:

(a) officially accept the appeal,

(b) inform the other party (the respondent) about the appeal,

(c) send a certified copy of the case record to the Supreme Court, and

(d) provide either party with one or more certified copies of any documents from the case if they request them and pay the reasonable costs for making those copies.

Explanation using Example

Example 1:

Scenario: Rajesh, a businessman, loses a civil case in the High Court of Delhi and decides to appeal to the Supreme Court of India.

Security and Deposit: Rajesh furnishes the required security and makes the necessary deposit to the satisfaction of the High Court.

Admission of Appeal: The High Court, after verifying the security and deposit, declares the appeal admitted.

Notice to Respondent: The High Court then sends a notice to the respondent, Suresh, informing him that Rajesh's appeal has been admitted.

Transmission of Records: The High Court transmits a correct copy of the case record to the Supreme Court under its seal.

Authenticated Copies: Rajesh requests authenticated copies of certain papers from the suit. The High Court provides these copies after Rajesh pays the reasonable expenses for preparing them.

Example 2:

Scenario: Meera, a property owner, is dissatisfied with a judgment from the High Court of Karnataka and wishes to appeal to the Supreme Court.

Security and Deposit: Meera arranges for the required security and makes the necessary deposit to the satisfaction of the High Court.

Admission of Appeal: The High Court, upon confirming the security and deposit, declares the appeal admitted.

Notice to Respondent: The High Court sends a notice to the respondent, Ravi, informing him that Meera's appeal has been admitted.

Transmission of Records: The High Court sends a correct copy of the case record to the Supreme Court under its seal.

Authenticated Copies: Meera applies for authenticated copies of some documents from the suit. The High Court provides these copies after Meera pays the reasonable expenses for their preparation.

Rule 9: Revocation of acceptance of security.

At any time before the admission of the appeal the Court may, upon cause shown, revoke the acceptance of any such security, and make further directions thereon.

Simplified act

Before the court officially accepts an appeal, it can cancel any security (like a bond) that was accepted for the appeal if there is a good reason.

The court can also give new instructions about the security if needed.

Explanation using Example

Example 1:

Rajesh files an appeal to the Supreme Court against a judgment passed by the High Court. As part of the appeal process, he provides a security deposit to ensure that he will comply with the court's decision. Before the Supreme Court admits the appeal, the respondent, Suresh, presents evidence that the security provided by Rajesh is based on fraudulent documents. The Supreme Court, upon reviewing the evidence, decides to revoke the acceptance of the security provided by Rajesh and directs him to furnish a new, valid security deposit.

Example 2:

Meena appeals to the Supreme Court after losing a civil case in the High Court. She submits a property bond as security for her appeal. Before the appeal is admitted, the opposing party, Ramesh, informs the court that the property used for the bond is already under litigation in another case and cannot be used as security. The Supreme Court, upon verifying this information, revokes the acceptance of Meena's property bond and instructs her to provide an alternative form of security that is free from legal disputes.

Rule 9A: Power to dispense with notices in case of deceased parties.

Nothing in these rules requiring any notice to be served on or given to an opposite party or respondent shall be deemed to require any notice to be served on or given to the legal representative of any deceased opposite party or deceased respondent in a case, where such opposite party or respondent did not appear either at the hearing in the Court whose decree is complained of or at any proceedings subsequent to the decree of that Court:

Provided that notices under sub-rule (2) of rule 3 and under rule 8 shall be given by affixing the same in some conspicuous place in the court-house of the Judge of the district in which the suit was originally brought, and by publication in such newspapers as the Court may direct.

Simplified act

If the rules say you need to give notice to the other party or respondent, you don't have to give notice to the legal representative of a deceased party or respondent if that party or respondent did not show up at the original court hearing or any later proceedings.

However, notices under sub-rule (2) of rule 3 and rule 8 must be posted in a visible place in the courthouse of the district where the case was first filed, and also published in newspapers as directed by the Court.

Explanation using Example

Example 1:

Scenario: Ramesh files a civil suit against Suresh in the District Court of Mumbai. The court passes a decree in favor of Ramesh. Suresh, dissatisfied with the decree, decides to appeal to the Supreme Court. However, before the appeal is heard, Suresh passes away. Suresh did not appear at the original hearing or any subsequent proceedings.

Application of Rule 9A: According to Rule 9A, since Suresh did not appear at the original hearing or any subsequent proceedings, there is no requirement to serve notice of the appeal to Suresh's legal representatives. Instead, the notice will be affixed in a conspicuous place in the Mumbai District Court and published in newspapers as directed by the court.

Example 2:

Scenario: Priya files a lawsuit against her neighbor, Anil, for encroachment on her property in the District Court of Delhi. The court rules in favor of Priya. Anil decides to appeal the decision in the Supreme Court. Unfortunately, Anil dies before the appeal is processed. Anil did not attend the original hearing or any subsequent proceedings.

Application of Rule 9A: In this case, since Anil did not appear at the original hearing or any subsequent proceedings, Rule 9A states that there is no need to serve notice of the appeal to Anil's legal representatives. Instead, the notice will be posted in a prominent place in the Delhi District Court and published in newspapers as directed by the court.

Rule 10: Power to order further security or payment.

Where at any time after the admission of an appeal but before the transmission of the copy of the record, except as aforesaid, to the Supreme Court, such security appears inadequate, or further payment is required for the purpose of translating, transcribing, printing, indexing or transmitting the copy of the record, except as aforesaid, the Court may order the appellant to furnish, within a time to be fixed by the Court, other and sufficient security, or to make, within like time, the required payment.

Simplified act

If, at any time after an appeal has been accepted but before the case records are sent to the Supreme Court, the security provided seems insufficient or more money is needed for translating, copying, printing, organizing, or sending the records, the Court can order the person who filed the appeal to provide additional security or make the necessary payment within a specified time set by the Court.

Explanation using Example

Example 1:

Scenario: Rajesh files an appeal to the Supreme Court against a High Court judgment. The High Court admits his appeal and sets a security amount of ₹50,000 to cover the costs of translating, transcribing, printing, indexing, and transmitting the record to the Supreme Court.

Application of Rule 10: After some time, the High Court realizes that the initial security amount of ₹50,000 is inadequate due to increased costs. The High Court then orders Rajesh to provide an additional security amount of ₹20,000 within 30 days to cover the extra expenses. Rajesh must comply with this order to ensure his appeal is processed and transmitted to the Supreme Court.

Example 2:

Scenario: Priya appeals to the Supreme Court after losing a case in the High Court. The High Court admits her appeal and requires her to pay ₹30,000 as security for the costs involved in preparing and transmitting the record to the Supreme Court.

Application of Rule 10: Before the record is transmitted to the Supreme Court, the High Court finds that additional funds are needed for the translation and printing of documents. The High Court orders Priya to make an additional payment of ₹10,000 within 15 days. Priya must make this payment within the specified time to ensure her appeal proceeds without delay.

Rule 11: Effect of failure to comply with order.

Where the appellant fails to comply with such order, the proceedings shall be stayed, and the appeal shall not proceed without an order in this behalf of the Supreme Court, and in the meantime execution of the decree appealed from shall not be stayed.

Simplified act

If the person who is appealing (the appellant) does not follow the court's order, the case will be paused.

The appeal cannot continue unless the Supreme Court gives permission.

While waiting for the Supreme Court's decision, the original court's decision will still be carried out.

Explanation using Example

Example 1:

Rajesh, a businessman, files an appeal to the Supreme Court against a lower court's decision that ordered him to pay a large sum of money to his former business partner, Suresh. The Supreme Court issues an order requiring Rajesh to deposit a certain amount of money as security within 30 days. Rajesh fails to comply with this order within the stipulated time. As a result, the proceedings of his appeal are stayed, meaning the Supreme Court will not proceed with hearing his appeal until further orders. Meanwhile, the execution of the lower court's decree, which requires Rajesh to pay Suresh, is also not stayed. This means Suresh can take steps to enforce the lower court's decision and recover the money from Rajesh.

Example 2:

Anita, a property owner, loses a civil case in a lower court where the court orders her to transfer a piece of land to her neighbor, Ravi. Anita decides to appeal to the Supreme Court and the court orders her to submit certain documents and a security deposit within 15 days. Anita fails to submit the documents and the deposit within the given time frame. Consequently, the Supreme Court stays the proceedings of her appeal, meaning the appeal will not move forward until the Supreme Court issues a new order. During this period, the execution of the lower court's decree, which requires Anita to transfer the land to Ravi, is not stayed. This allows Ravi to proceed with the legal steps to get the land transferred to his name.

Rule 12: Refund of balance deposit.

When the copy of the record, except as aforesaid, has been transmitted to the Supreme Court, the appellant may obtain a refund of the balance (if any) of the amount which he has deposited under rule 7.

Simplified act

When the copy of the record (other than the exceptions mentioned earlier) has been sent to the Supreme Court, the person who appealed can get back any remaining money they deposited under rule 7.

Explanation using Example

Example 1:

Rajesh, a businessman from Mumbai, filed an appeal to the Supreme Court against a High Court judgment. As part of the appeal process, he deposited a certain amount of money with the court under Rule 7 of Order XLV. After the

High Court transmitted the necessary records to the Supreme Court, Rajesh realized that the amount he deposited was more than required. Under Rule 12, Rajesh applied for a refund of the excess amount. The court processed his request, and Rajesh received the balance of his deposit back.

Example 2:

Meera, a resident of Delhi, was involved in a property dispute that reached the High Court. Unsatisfied with the High Court's decision, she decided to appeal to the Supreme Court. Following the procedure, Meera deposited a specified amount under Rule 7. Once the High Court sent the case records to the Supreme Court, Meera noticed that she had deposited more money than necessary. She filed an application under Rule 12 to get a refund of the extra amount. The court reviewed her application and refunded the balance deposit to Meera.

Rule 13: Powers of Court pending appeal.

Notwithstanding the Grant of a Certificate for the Admission of Any Appeal

(1) Notwithstanding the grant of a certificate for the admission of any appeal, the decree appealed from shall be unconditionally executed, unless the Court otherwise directs.

(2) The Court may, if it thinks fit, on special cause shown by any party interested in the suit, or otherwise appearing to the Court:

(a) Attach any movable property in dispute or any part thereof, or

(b) Allow the decree appealed from to be executed, taking such security from the respondent as the Court thinks fit for the due performance of any order which the Supreme Court may make on the appeal, or

(c) Stay the execution of the decree appealed from, taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed from, or of any decree or order which the Supreme Court may make on the appeal, or

(d) Place any party seeking the assistance of the Court under such conditions or give such other direction respecting the subject-matter of the appeal, as it thinks fit, by the appointment of a receiver or otherwise.

Simplified act

Even if an Appeal is Allowed

- (1) Even if an appeal is allowed, the original decision will be carried out without any conditions, unless the Court says otherwise.
- (2) The Court can decide to do the following if there is a special reason shown by anyone involved in the case, or if the Court thinks it is necessary:
 - (a) Take control of any movable property that is being disputed, or part of it, or
 - (b) Allow the original decision to be carried out, but require the respondent to provide a guarantee to ensure they follow any future orders from the Supreme Court regarding the appeal, or
 - (c) Pause the execution of the original decision, but require the appellant to provide a guarantee to ensure they follow the original decision or any future orders from the Supreme Court regarding the appeal, or
 - (d) Impose conditions on anyone seeking the Court's help or give other instructions about the subject of the appeal, as it thinks necessary, which could include appointing a receiver or other measures.

Explanation using Example

Example 1:

Rajesh has won a civil lawsuit against Sunil in a lower court, and the court has issued a decree ordering Sunil to pay Rajesh Rs. 10 lakhs. Sunil decides to appeal the decision to the Supreme Court and obtains a certificate for the admission of his appeal. According to Rule 13 of the Code of Civil Procedure 1908, the decree (ordering Sunil to pay Rs. 10 lakhs) will be executed unconditionally unless the court decides otherwise.

Sunil approaches the court and shows special cause, arguing that immediate execution of the decree would cause him undue hardship. The court, considering Sunil's plea, decides to stay the execution of the decree. However, the court directs Sunil to provide a security deposit of Rs. 10 lakhs to ensure that he will comply with any order the Supreme Court may issue on the appeal.

Example 2:

Meena has a dispute with her business partner, Anil, over the ownership of certain movable property (machinery) used in their factory. The lower court rules in favor of Meena, and Anil decides to appeal the decision to the Supreme Court. Anil obtains a certificate for the admission of his appeal.

Meena is concerned that Anil might dispose of the machinery before the Supreme Court hears the appeal. She approaches the court and shows special cause, requesting the court to attach the machinery to prevent Anil from selling or transferring it. The court, considering Meena's request, orders the attachment of the machinery until the Supreme Court makes a decision on the appeal.

Additionally, the court allows the decree to be executed but requires Anil to provide a security deposit equivalent to the value of the machinery to ensure compliance with any future orders from the Supreme Court.

Rule 14: Increase of security found inadequate.

15. - Security During Pendency of Appeal

(1) Where at any time during the pendency of the appeal the security furnished by either party appears inadequate, the Court may, on the application of the other party, require further security.

(2) In default of such further security being furnished as required by the Court,
-

(a) if the original security was furnished by the appellant, the Court may, on the application of the respondent, execute the decree, appealed from as if the appellant had furnished no such security:

(b) if the original security was furnished by the respondent, the Court shall, so far as may be practicable, stay the further execution of the decree, and restore the parties to the position in which they respectively were when the security which appears inadequate was furnished, or give such direction respecting the subject-matter of the appeal as it thinks fit.

Simplified act

15. - Security During Pendency of Appeal

(1) If at any time during the appeal process, the security (like money or property) provided by either side seems insufficient, the Court can, if the other side asks, require more security.

(2) If the additional security required by the Court is not provided, then:

(a) If the appellant (the person who filed the appeal) provided the original security, the Court can, if the respondent (the other party) asks, enforce the original decision as if no security had been provided by the appellant.

(b) If the respondent provided the original security, the Court will, as much as possible, stop further enforcement of the original decision and return both parties to the situation they were in before the insufficient security was provided, or give other instructions about the appeal as it sees fit.

Explanation using Example

Example 1:

Scenario: Rajesh, the appellant, has appealed a lower court's decision to the Supreme Court. He initially provided a security deposit of ₹1,00,000 as required by the court. During the appeal process, the respondent, Sunita, discovers that the value of the disputed property has increased significantly, making the initial security inadequate.

Application of Rule 14:

Sunita files an application to the Supreme Court, requesting an increase in the security amount.

The Supreme Court reviews the application and agrees that the initial security is now inadequate.

The Court orders Rajesh to provide an additional ₹50,000 as further security.

Rajesh fails to furnish the additional security within the stipulated time.

As a result, the Court, on Sunita's application, decides to execute the original decree as if Rajesh had not provided any security at all.

Example 2:

Scenario: Priya, the respondent, has provided a security deposit of ₹2,00,000 in an appeal case filed by the appellant, Anil. During the pendency of the appeal, Anil realizes that the security provided by Priya is insufficient due to a change in the circumstances of the case.

Application of Rule 14:

Anil files an application to the Supreme Court, requesting an increase in the security amount provided by Priya.

The Supreme Court reviews the application and finds the security inadequate.

The Court orders Priya to provide an additional ₹1,00,000 as further security.

Priya fails to furnish the additional security within the given timeframe.

Consequently, the Court orders a stay on the further execution of the decree and restores both parties to their original positions before the inadequate security was furnished. The Court may also issue directions regarding the subject matter of the appeal as it deems fit.

Rule 15: Procedure to enforce orders of the Supreme Court.

Execution of Decrees and Orders of the Supreme Court

(1) Whoever desires to obtain execution of any decree or order of the Supreme Court shall apply by petition, accompanied by a certified copy of the decree passed or order made in appeal and sought to be executed, to the Court from which the appeal to the Supreme Court was preferred.

(2) Such Court shall transmit the decree or order of the Supreme Court to the Court which passed the first decree appealed from, or to such other Court as the Supreme Court by such decree or order may direct and shall (upon the application of either party) give such directions as may be required for the execution of the same; and the Court to which the said decree or order is so transmitted shall execute it accordingly, in the manner and according to the provisions applicable to the execution of its original decrees.

* * * * *

(4) Unless the Supreme Court otherwise directs, no decree or order of that Court shall be inoperative on the ground that no notice has been served on or given to the legal representative of any deceased opposite party or deceased respondent in a case where such opposite party or respondent did not appear either at the hearing in the Court whose decree was complained of or at any proceedings subsequent to the decree of that Court, but such order shall have the same force and effect as if it had been made before the death took place.

Simplified act

Execution of Decrees and Orders of the Supreme Court

(1) If you want to enforce a decision or order from the Supreme Court, you need to apply with a petition. This petition should include a certified copy of the Supreme Court's decision or order that you want to enforce. You must submit this to the court where the original case was first heard before it went to the Supreme Court.

(2) The court where you submit your petition will send the Supreme Court's decision or order to the court that made the original decision, or to another court if the Supreme Court has specified one. This court will then follow the necessary steps to enforce the decision or order, just like it would for its own original decisions.

(4) Unless the Supreme Court says otherwise, its decisions or orders will still be valid even if no notice was given to the legal representative of a deceased person who was involved in the case. This applies if the deceased person did not participate in the original court hearing or any later proceedings. The decision or order will be treated as if it was made before the person died.

Explanation using Example

Example 1:

Scenario: Rajesh wins a property dispute case in the Supreme Court against his neighbor, Suresh. The Supreme Court issues a decree in favor of Rajesh, ordering Suresh to vacate the disputed property.

Application:

Rajesh desires to enforce the Supreme Court's decree.

Rajesh applies by petition to the District Court from which the appeal to the Supreme Court was preferred, attaching a certified copy of the Supreme Court's decree.

The District Court transmits the Supreme Court's decree to the original trial court that first heard the case.

The original trial court, upon Rajesh's application, gives directions for the execution of the decree.

The original trial court executes the decree, ensuring Suresh vacates the property as ordered by the Supreme Court.

Example 2:

Scenario: Meera wins a financial dispute case in the Supreme Court against a company, XYZ Ltd. The Supreme Court orders XYZ Ltd. to pay Meera a sum of ₹10 lakhs.

Application:

Meera desires to enforce the Supreme Court's order.

Meera applies by petition to the High Court from which the appeal to the Supreme Court was preferred, attaching a certified copy of the Supreme Court's order.

The High Court transmits the Supreme Court's order to the original trial court that first heard the case.

The original trial court, upon Meera's application, gives directions for the execution of the order.

The original trial court executes the order, ensuring XYZ Ltd. pays Meera the sum of ₹10 lakhs as ordered by the Supreme Court.

Example 3:

Scenario: Anil wins a case in the Supreme Court against his business partner, Vijay, who had passed away during the proceedings. The Supreme Court issues a decree in favor of Anil.

Application:

Anil desires to enforce the Supreme Court's decree.

Anil applies by petition to the High Court from which the appeal to the Supreme Court was preferred, attaching a certified copy of the Supreme Court's decree.

The High Court transmits the Supreme Court's decree to the original trial court that first heard the case.

The original trial court, upon Anil's application, gives directions for the execution of the decree.

The original trial court executes the decree, ensuring that the decree is enforced against Vijay's legal representatives, even though no notice was served on them, as Vijay did not appear in the original proceedings.

Rule 16: Appeal from order relating to execution.

The orders made by the Court which executes the decree or order of the Supreme Court, relating to such execution, shall be appealable in the same manner and subject to the same rules as the orders of such Court relating to the execution of its own decrees.

Simplified act

If a court is carrying out a decision or order from the Supreme Court, any orders it makes about this process can be appealed.

The appeal process for these orders will follow the same rules as if the court were dealing with its own decisions.

Explanation using Example

Example 1:

Scenario: Rajesh wins a civil lawsuit in the Supreme Court against his business partner, Suresh, and the court orders Suresh to pay Rajesh ₹10 lakhs. The order is sent to the District Court in Mumbai for execution.

Application of Rule 16: The District Court in Mumbai issues an order to seize Suresh's assets to recover the ₹10 lakhs. Suresh believes that the District Court's order is unfair and decides to appeal against this execution order.

Outcome: Suresh can appeal the District Court's execution order in the same manner as he would appeal any other order from the District Court. The appeal process and rules will be identical to those used for appealing the District Court's own decrees.

Example 2:

Scenario: Meera wins a property dispute case in the Supreme Court, and the court orders the transfer of a piece of land from the defendant, Anil, to Meera. The execution of this order is assigned to the High Court of Karnataka.

Application of Rule 16: The High Court of Karnataka issues an order to the local authorities to transfer the land title to Meera. Anil feels that the High Court's execution order was issued without considering certain legal documents he possesses and decides to challenge this order.

Outcome: Anil can file an appeal against the High Court's execution order. The appeal will follow the same procedures and rules as if Anil were appealing an execution order issued by the High Court for its own decrees.

Rule 17: Appeals to Federal Court. Repealed.

Repealed by the Federal Act, 1941 (21 of 1941), s. 2.

ORDER XLVI: REFERENCE

Rule 1: Reference of question to High Court.

Where, before or on the hearing of a suit or an appeal in which the decree is not subject to appeal, or where, in the execution of any such decree, any question of law or usage having the force of law arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court.

Simplified act

If, before or during a court case or an appeal where the decision cannot be appealed, or while carrying out such a decision, a legal question or a question about a law arises and the court has reasonable doubt about it, the court can do the following:

The court can, on its own or if one of the parties involved asks, write down the facts of the case and the specific legal question causing doubt.

The court can then send this written statement, along with its own opinion on the matter, to the High Court for a decision.

Explanation using Example

Example 1:

Scenario: A property dispute case is being heard in a District Court in Mumbai. The case involves a complex question about the interpretation of a specific clause in the Transfer of Property Act, 1882.

Application of Rule 1: During the hearing, the judge realizes that the interpretation of the clause is not straightforward and could have significant implications for the case. The judge has reasonable doubt about the correct legal interpretation.

Action Taken: The judge decides to refer the question to the High Court of Bombay. The judge draws up a statement of the facts of the case, outlines the specific clause in question, and explains the doubt regarding its interpretation. This statement, along with the judge's opinion, is sent to the High Court for a definitive ruling on the matter.

Outcome: The High Court reviews the reference, provides a clear interpretation of the clause, and sends its decision back to the District Court. The District Court then proceeds with the case based on the High Court's interpretation.

Example 2:

Scenario: A family court in Delhi is handling a divorce case where the division of ancestral property is in question. The case involves a unique situation where the customary law of a particular community is being debated.

Application of Rule 1: The judge in the family court encounters a question about the customary law that has not been clearly addressed in previous cases. The judge has reasonable doubt about how to apply this customary law to the current case.

Action Taken: The judge decides to refer the question to the High Court of Delhi. The judge prepares a detailed statement of the facts, describes the specific customary law in question, and explains the doubt regarding its application. This statement, along with the judge's opinion, is forwarded to the High Court for a decision.

Outcome: The High Court examines the reference, provides a ruling on how the customary law should be applied, and sends its decision back to the family court. The family court then continues with the divorce proceedings, using the High Court's guidance to resolve the property division issue.

Example 3:

Scenario: A civil court in Chennai is executing a decree related to a commercial contract dispute. During the execution, a question arises about the interpretation of a specific term in the contract that is influenced by trade usage.

Application of Rule 1: The judge executing the decree realizes that the interpretation of the trade usage term is ambiguous and could affect the execution process. The judge has reasonable doubt about the correct interpretation.

Action Taken: The judge decides to refer the question to the High Court of Madras. The judge drafts a statement of the facts, identifies the specific term and trade usage in question, and explains the doubt regarding its interpretation. This statement, along with the judge's opinion, is sent to the High Court for a decision.

Outcome: The High Court reviews the reference, provides a clear interpretation of the trade usage term, and sends its decision back to the civil court. The civil court then proceeds with the execution of the decree based on the High Court's interpretation.

Rule 2: Court may pass decree contingent upon decision of High Court.

The Court may either stay the proceedings or proceed in the case notwithstanding such reference, and:

(i) pass a decree or make an order contingent upon the decision of the High Court on the point referred;

But no decree or order shall be executed in any case in which such reference is made until the receipt of a copy of the judgment of the High Court upon the reference.

Simplified act

The Court can either pause the case or continue with it even after sending a question to the High Court for a decision, and:

(i) make a decision or order that depends on what the High Court decides about the question;

But no decision or order will be carried out until the Court gets a copy of the High Court's judgment on the question.

Explanation using Example

Example 1:

Scenario: A property dispute case is being heard in a District Court in Mumbai. The main issue revolves around the interpretation of a specific clause in a property contract, which is ambiguous and has not been previously interpreted by the High Court.

Application of Rule 2:

The District Court decides to refer the interpretation of the ambiguous clause to the Bombay High Court for a definitive ruling.

While waiting for the High Court's decision, the District Court continues with other aspects of the case, such as hearing evidence and arguments on other issues.

The District Court then passes a decree stating that the final decision on the property dispute will depend on the High Court's interpretation of the clause.

However, the decree will not be executed until the District Court receives a copy of the High Court's judgment on the referred point.

Example 2:

Scenario: A commercial contract dispute is being heard in a District Court in Delhi. The dispute involves a complex legal question about the applicability of a particular tax law, which has not been settled by the Delhi High Court.

Application of Rule 2:

The District Court refers the question of the tax law's applicability to the Delhi High Court for clarification.

The District Court decides to stay the proceedings entirely until the High Court provides its judgment on the referred question.

Once the High Court delivers its judgment, the District Court resumes the proceedings and incorporates the High Court's decision into its final decree.

The decree is then executed based on the High Court's interpretation, ensuring that the legal question is resolved correctly.

Rule 3: Judgment of High Court to be transmitted, and case disposed of accordingly.

The High Court, after hearing the parties if they appear and desire to be heard, shall decide the point so referred, and shall transmit a copy of its judgment,

under the signature of the Registrar, to the Court by which the reference was made:

and such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court.

Simplified act

The High Court will listen to both sides if they show up and want to speak.

The High Court will then make a decision on the issue that was brought to them.

The High Court will send a copy of their decision, signed by the Registrar, to the Court that asked for their opinion.

Once the original Court gets the decision, they must handle the case according to what the High Court decided.

Explanation using Example

Example 1:

Scenario: A District Court in Mumbai is handling a complex property dispute case. During the proceedings, the District Judge encounters a legal question regarding the interpretation of a specific provision in the Transfer of Property Act, 1882, which is crucial for deciding the case. The District Judge decides to refer this legal question to the Bombay High Court for clarification.

Application of Rule 3:

The District Court formally refers the legal question to the Bombay High Court.

The parties involved in the case (the plaintiff and the defendant) are given an opportunity to present their arguments before the High Court.

After hearing the arguments, the Bombay High Court deliberates and provides a judgment on the referred legal question.

The Registrar of the Bombay High Court signs and transmits a copy of the judgment back to the District Court.

Upon receiving the High Court's judgment, the District Court proceeds to dispose of the property dispute case in accordance with the decision provided by the High Court.

Example 2:

Scenario: A Family Court in Delhi is dealing with a divorce case where there is a dispute over the interpretation of a clause in the Hindu Marriage Act, 1955, related to alimony. The Family Court Judge finds the clause ambiguous and decides to seek guidance from the Delhi High Court.

Application of Rule 3:

The Family Court refers the ambiguous clause to the Delhi High Court for interpretation.

Both parties in the divorce case (the husband and the wife) are given a chance to present their views before the High Court.

The Delhi High Court hears the arguments, interprets the clause, and delivers a judgment.

The Registrar of the Delhi High Court signs and sends a copy of the judgment to the Family Court.

The Family Court, upon receiving the judgment, proceeds to resolve the alimony dispute in line with the interpretation provided by the High Court.

Rule 4: Costs of reference to High Court.

The costs (if any) consequent on a reference for the decision of the High Court shall be costs in the case.

Simplified act

Any costs that come from asking the High Court to make a decision will be included in the overall costs of the case.

Explanation using Example

Example 1:

Rajesh is involved in a civil lawsuit regarding a property dispute with his neighbor, Suresh. During the trial, the lower court encounters a complex legal question that requires interpretation by the High Court. The lower court decides to refer this specific question to the High Court for a decision. After the High Court provides its interpretation, the case continues in the lower court. Eventually, Rajesh wins the case. According to Rule 4 of Order XLVI of the Code of Civil Procedure 1908, the costs incurred due to the reference to the

High Court (such as legal fees and court charges) will be included in the overall costs of the case. Since Rajesh won, Suresh will be responsible for paying these costs.

Example 2:

Anita files a lawsuit against a company for breach of contract. During the proceedings, the trial court finds that a particular point of law is unclear and needs clarification from the High Court. The trial court refers this point to the High Court. The High Court provides its decision, and the trial court resumes the case. Ultimately, the court rules in favor of the company. As per Rule 4 of Order XLVI of the Code of Civil Procedure 1908, the costs associated with the reference to the High Court are considered part of the overall costs of the case. Since Anita lost the case, she will have to bear these costs along with other legal expenses.

Rule 4A: Reference to High Court under proviso to section 113.

The provisions of rules 2, 3, and 4 shall apply to any reference by the Court under the proviso to section 113 as they apply to a reference under rule 1.

Simplified act

The rules mentioned in rules 2, 3, and 4 will be used by the Court when making a reference under the exception in section 113, just like they are used for a reference under rule 1.

Explanation using Example

Example 1:

Scenario: A District Court in Mumbai is handling a complex civil case involving a dispute over the interpretation of a new state law regarding property rights. The judge finds that the legal question is of significant importance and is unsure about the correct interpretation of the law.

Application of Rule 4A: The judge decides to refer the question to the High Court of Bombay for a definitive interpretation. Under Rule 4A, the provisions of rules 2, 3, and 4 will apply to this reference. This means:

The judge must frame the question of law clearly and concisely (as per Rule 2).

The parties involved in the case will be given an opportunity to be heard before the reference is made (as per Rule 3).

The High Court will provide its opinion on the question, which will then be binding on the District Court (as per Rule 4).

Outcome: The High Court of Bombay provides a clear interpretation of the state law, which the District Court then applies to resolve the property dispute.

Example 2:

Scenario: In a civil suit in the District Court of Delhi, there is a question about the constitutionality of a central government notification affecting trade practices. The judge believes that the question is significant enough to warrant a higher court's opinion.

Application of Rule 4A: The judge decides to refer the constitutional question to the High Court of Delhi. According to Rule 4A, the following steps are taken:

The judge frames the specific constitutional question that needs interpretation (as per Rule 2).

Both parties in the case are given a chance to present their arguments regarding the reference (as per Rule 3).

The High Court of Delhi examines the question and provides its opinion, which the District Court must follow (as per Rule 4).

Outcome: The High Court of Delhi rules on the constitutionality of the notification, and the District Court uses this ruling to proceed with the case.

Rule 5: Power to alter, etc., decree of Court making reference.

Where a case is referred to the High Court under rule or under the proviso to section 113, the High Court may return the case for amendment and may alter, cancel or set aside any decree or order which the Court making the reference has passed or made in the case out of which the reference arose, and make such order as it thinks fit.

Simplified act

If a case is sent to the High Court under a specific rule or section 113, the High Court can:

Send the case back for changes.

Change, cancel, or overturn any decision or order made by the lower court that sent the case.

Make any other order it thinks is appropriate.

Explanation using Example

Example 1:

Scenario: A district court in Maharashtra is handling a complex property dispute case. The judge finds that the case involves a significant question of law that requires interpretation by the High Court. The district court refers the case to the Bombay High Court under Section 113 of the Code of Civil Procedure, 1908.

Application of Rule 5: The Bombay High Court reviews the case and identifies that the district court's decree was based on an incorrect interpretation of the law. The High Court decides to return the case to the district court for amendment. Additionally, the High Court alters the original decree by setting aside the incorrect legal findings and issues a new order that correctly interprets the law. The district court then proceeds with the case based on the High Court's guidance.

Example 2:

Scenario: A family court in Delhi is dealing with a divorce case that involves a unique legal question about the division of ancestral property. The family court refers the case to the Delhi High Court for clarification under the proviso to Section 113 of the Code of Civil Procedure, 1908.

Application of Rule 5: The Delhi High Court examines the case and determines that the family court's order regarding the division of property was flawed. The High Court cancels the family court's order and provides a new interpretation of the law concerning ancestral property division. The High Court then returns the case to the family court with instructions to amend its decree in accordance with the High Court's ruling. The family court follows the High Court's directions and issues a revised decree that aligns with the correct legal principles.

Rule 6: Power to refer to High Court questions as to jurisdiction in small causes.

(1) Where at any time before judgment a Court in which a suit has been instituted doubts whether the suit is cognizable by a Court of Small Causes or is not so cognizable, it may submit the record to the High Court with a statement of its reasons for the doubt as to the nature of the suit.

(2) On receiving the record and statement, the High Court may order the Court either to proceed with the suit or to return the plaint for presentation to such other Court as it may in its order declare to be competent to take cognizance of the suit.

Simplified act

(1) If, at any time before making a final decision, a Court handling a case is unsure whether the case should be handled by a Court of Small Causes or not, it can send the case file to the High Court along with an explanation of why it is unsure.

(2) After receiving the case file and explanation, the High Court can either tell the original Court to continue with the case or instruct it to send the case to another Court that the High Court believes is the right one to handle it.

Explanation using Example

Example 1:

Scenario: A tenant files a suit in a Small Causes Court in Mumbai, seeking a reduction in rent due to poor maintenance of the property by the landlord.

Application of Rule 6:

Doubt on Jurisdiction: The Small Causes Court in Mumbai is unsure whether it has the jurisdiction to hear this case because the tenant's claim involves complex issues of property law, which might be beyond the scope of a Small Causes Court.

Referral to High Court: The Small Causes Court decides to refer the matter to the Bombay High Court. It submits the case records along with a statement explaining its doubts about jurisdiction.

High Court's Decision: The Bombay High Court reviews the submission and determines that the case involves significant property law issues that should be heard by a regular civil court. The High Court orders the Small Causes Court to return the plaint to the tenant for presentation in the appropriate civil court.

Example 2:

Scenario: A small business owner files a suit in a Small Causes Court in Delhi, seeking recovery of a small debt from a supplier.

Application of Rule 6:

Doubt on Jurisdiction: The Small Causes Court in Delhi is uncertain whether it has jurisdiction because the supplier argues that the debt involves a complex contractual dispute that should be heard by a higher court.

Referral to High Court: The Small Causes Court refers the case to the Delhi High Court, submitting the case records and a statement outlining its doubts regarding jurisdiction.

High Court's Decision: The Delhi High Court reviews the case and finds that the dispute is straightforward and falls within the monetary limits and subject matter jurisdiction of the Small Causes Court. The High Court orders the Small Causes Court to proceed with the suit.

Example 3:

Scenario: An individual files a suit in a Small Causes Court in Chennai, seeking compensation for minor injuries sustained in a road accident.

Application of Rule 6:

Doubt on Jurisdiction: The Small Causes Court in Chennai is unsure whether it has jurisdiction because the case involves personal injury, which might require a higher court's intervention.

Referral to High Court: The Small Causes Court refers the matter to the Madras High Court, submitting the case records and a statement explaining its doubts about jurisdiction.

High Court's Decision: The Madras High Court reviews the submission and determines that personal injury cases, even if minor, should be heard by a regular civil court. The High Court orders the Small Causes Court to return the plaint to the individual for presentation in the appropriate civil court.

Rule 7: Power to District Court to submit for revision proceedings had under mistake as to jurisdiction in small causes.

Jurisdiction and Orders

(1) Where it appears to a District Court that a Court subordinate thereto has, by reason of erroneously holding a suit to be cognizable by a Court of Small Causes or not to be so cognizable, failed to exercise a jurisdiction vested in it by law, or exercised a jurisdiction not so vested, the District Court may, and if

required by a party shall, submit the record to the High Court with a statement of its reasons for considering the opinion of the Subordinate Court with respect to the nature of the suit to be erroneous.

(2) On receiving the record and statement the High Court may make such order in the case as it thinks fit.

(3) With respect to any proceedings subsequent to decree in any case submitted to the High Court under this rule, the High Court may make such order as in the circumstance appears to it to be just and proper.

(4) A Court subordinate to a District Court shall comply with any requisition which the District Court may make for any record or information for the purposes of this rule.

Simplified act

Jurisdiction and Orders

(1) If a District Court finds that a lower court has made a mistake by either wrongly deciding that a case should be handled by a Court of Small Causes or not, and because of this mistake, the lower court either did not use its legal power or used a power it didn't have, the District Court can, and must if a party asks, send the case details to the High Court with an explanation of why it thinks the lower court was wrong.

(2) When the High Court gets the case details and explanation, it can make any decision it thinks is appropriate.

(3) For any actions that need to be taken after a decision in a case sent to the High Court, the High Court can make any order it thinks is fair and suitable.

(4) A lower court must provide any records or information that the District Court asks for to follow this rule.

Explanation using Example

Example 1:

Scenario: A tenant files a suit against his landlord in a Court of Small Causes for wrongful eviction.

Details:

The tenant, Mr. Sharma, files a suit in the Court of Small Causes claiming that his landlord, Mr. Verma, wrongfully evicted him from his rented apartment.

The Court of Small Causes hears the case and passes a decree in favor of Mr. Sharma, ordering Mr. Verma to pay compensation.

Issue:

Mr. Verma believes that the Court of Small Causes did not have the jurisdiction to hear the case because the matter involved complex property rights, which should be handled by a regular civil court.

Action:

Mr. Verma approaches the District Court, arguing that the Court of Small Causes erroneously held the suit to be cognizable by it.

The District Court reviews the case and agrees with Mr. Verma's contention that the Court of Small Causes did not have the proper jurisdiction.

Outcome:

The District Court submits the record to the High Court with a statement explaining why it believes the Court of Small Causes made an error in jurisdiction.

The High Court reviews the submission and decides to transfer the case to a regular civil court for proper adjudication.

Example 2:

Scenario: A small business owner files a suit for recovery of money in a regular civil court.

Details:

Ms. Gupta, a small business owner, files a suit in a regular civil court to recover money owed to her by a client, Mr. Singh.

The regular civil court hears the case and passes a decree in favor of Ms. Gupta, ordering Mr. Singh to pay the owed amount.

Issue:

Mr. Singh believes that the regular civil court did not have the jurisdiction to hear the case because the amount involved was within the limit for cases to be heard by the Court of Small Causes.

Action:

Mr. Singh approaches the District Court, arguing that the regular civil court erroneously held the suit to be non-cognizable by the Court of Small Causes.

The District Court reviews the case and agrees with Mr. Singh's contention that the regular civil court did not have the proper jurisdiction.

Outcome:

The District Court submits the record to the High Court with a statement explaining why it believes the regular civil court made an error in jurisdiction.

The High Court reviews the submission and decides to transfer the case to the Court of Small Causes for proper adjudication.

ORDER XLVII: REVIEW

Rule 1: Application for review of judgment.

Review of Judgment

(1) Any person considering himself aggrieved -

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes.

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party

except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applied for the review.

Explanation: The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.

Simplified act

Review of Judgment

(1) If you feel wronged by a court decision -

(a) because you could have appealed it but didn't,

(b) because you can't appeal it at all, or

(c) because it was a decision from a Small Claims Court,

and you have found new and important information or evidence that you didn't know about or couldn't present when the decision was made, or if there is a clear mistake in the decision, or for any other good reason, you can ask the same court to review and reconsider its decision.

(2) If you are not appealing the decision, you can still ask for a review even if someone else is appealing it, unless the reason for their appeal is the same as yours, or if you are the respondent (the person who won the original case) and you can present your case to the higher court.

Explanation: Just because a higher court has changed the law or made a different decision in another case doesn't mean you can ask for a review of your judgment based on that change.

Explanation using Example

Example 1:

Rajesh owns a small business in Mumbai. He was involved in a civil lawsuit with a supplier over a contract dispute. The court issued a decree in favor of the supplier, ordering Rajesh to pay a significant amount of money. Rajesh did not appeal the decision within the allowed time frame. However, a few months later, Rajesh discovered new evidence—an email from the supplier that was not

available during the trial, which could potentially change the outcome of the case. Rajesh, feeling aggrieved by the decree, decides to apply for a review of the judgment under Rule 1 of Order XLVII of the Code of Civil Procedure, 1908, citing the newly discovered evidence as the reason for the review.

Example 2:

Meera was involved in a property dispute with her neighbor in Chennai. The court issued an order in favor of her neighbor, and Meera did not appeal the decision. Later, Meera realized that there was a clerical error in the court's order—the property boundaries mentioned in the order were incorrect. Meera believes this mistake is apparent on the face of the record and applies for a review of the judgment under Rule 1 of Order XLVII of the Code of Civil Procedure, 1908, to correct the error.

Example 3:

Anita, a resident of Delhi, was involved in a civil case regarding a loan dispute. The court issued a decree against her, and she did not appeal. However, Anita later learned that the legal principle on which the judgment was based had been overturned by a higher court in a different case. Despite this, Anita cannot use this change in law as a ground for review of the judgment under Rule 1 of Order XLVII of the Code of Civil Procedure, 1908, as the explanation explicitly states that such a change in law is not a valid ground for review.

Example 4:

Vikram, a respondent in a civil case in Bangalore, did not appeal the court's decree against him. However, another party in the same case did file an appeal. Vikram believes there was a significant error in the court's judgment that affected him. He applies for a review of the judgment under Rule 1 of Order XLVII of the Code of Civil Procedure, 1908, even though an appeal is pending by another party. Since the grounds for the appeal are not common to both Vikram and the appellant, Vikram's application for review is considered valid.

Rule 2: To whom applications for review may be made. Repealed.

Repealed by the Code of Civil Procedure (Amendment) Act 1956 (66 of 1956)

s. 14

Rule 3: Form of applications for review.

The provisions as to the form of preferring appeals shall apply, mutatis mutandis, to applications for review.

4.

Simplified act

The rules about how to file appeals will also apply, with necessary changes, to applications for review.

4.

Explanation using Example

Example 1:

Scenario: Rajesh filed a lawsuit against his neighbor, Suresh, for encroaching on his property. The court ruled in favor of Suresh, and Rajesh believes there was a significant error in the judgment.

Application for Review: Rajesh decides to file an application for review of the court's decision. According to Rule 3 of Order XLVII of the Code of Civil Procedure, 1908, Rajesh must follow the same form and procedure as he would if he were filing an appeal. This means he needs to draft his application in a specific format, include necessary documents, and submit it within the prescribed time frame, just as he would for an appeal.

Example 2:

Scenario: Meena was involved in a civil dispute over a contract with a business partner, and the court's decision was not in her favor. She later discovered new evidence that could potentially change the outcome of the case.

Application for Review: Meena wants to request a review of the court's decision based on the new evidence. Under Rule 3 of Order XLVII of the Code of Civil Procedure, 1908, Meena must prepare her application for review in the same manner as an appeal. This includes drafting the application in the correct format, attaching the new evidence, and submitting it to the court within the allowed time period, ensuring all procedural requirements are met.

Rule 4: Application where rejected. Application where granted.

(1) Where it appears to the Court that there is not sufficient ground for a review, it shall reject the application.

(2) Application where granted. - Where the Court is of opinion that the application for review should be granted, it shall grant the same:

Provided that -

(a) no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree or order, a review of which is applied for; and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation.

Simplified act

(1) If the Court thinks there is no good reason to review a case, it will reject the request.

(2) If the Court thinks the request for review should be accepted, it will approve it:

Provided that -

(a) the request will not be approved without first notifying the other party, so they have a chance to come and support the original decision; and

(b) the request will not be approved based on new information or evidence that the person asking for the review claims they didn't know about or couldn't present when the original decision was made, unless they can strictly prove this claim.

Explanation using Example

Example 1:

Scenario: Rajesh filed a civil suit against his neighbor, Suresh, for encroaching on his property. The court ruled in favor of Suresh. Rajesh, believing that the court overlooked some crucial evidence, filed an application for review of the judgment.

Application Rejected: The court examined Rajesh's application and found that the evidence he mentioned was already considered during the initial trial. Since there was no new ground for review, the court rejected Rajesh's application.

Example 2:

Scenario: Priya was involved in a property dispute with her cousin, Anil. The court initially ruled in favor of Anil. Later, Priya discovered a registered will of her late father, which clearly stated that the property belonged to her. She filed an application for review of the court's decision.

Application Granted: The court found Priya's new evidence (the will) to be significant and not available during the initial trial. However, before granting the review, the court issued a notice to Anil, allowing him to present his arguments against the review. After hearing both parties, the court was convinced of the authenticity and relevance of the new evidence and granted Priya's application for review.

Example 3:

Scenario: Sunita lost a civil case regarding a contractual dispute with a company. She later found new documents that she believed could change the outcome of the case. She filed an application for review, claiming that these documents were not available to her during the initial trial.

Application Rejected Due to Lack of Proof: The court required Sunita to provide strict proof that the new documents were indeed unavailable to her during the initial trial. Sunita failed to provide adequate proof to support her claim. Consequently, the court rejected her application for review.

Example 4:

Scenario: Arjun filed a lawsuit against a construction company for poor workmanship. The court ruled in favor of the construction company. Arjun later found new evidence in the form of expert testimony that was not presented during the trial. He filed an application for review.

Application Granted with Notice: The court found the expert testimony to be potentially significant. Before granting the review, the court issued a notice to the construction company, allowing them to present their arguments. After considering the new evidence and hearing both parties, the court decided to grant Arjun's application for review.

Rule 5: Application for review in Court consisting of two or more Judges.

Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order a review of which is applied for, continues or continued

attached to the Court at the time when the application for a review is presented, and is not or not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same.

Simplified act

If the Judge or Judges who made the decision that someone wants to review are still working at the Court when the review request is made, and they are not unavailable for six months after the request, then:

That same Judge or Judges must handle the review request.

No other Judge or Judges can handle the review request.

Explanation using Example

Example 1:

Scenario: A property dispute case in the High Court of Delhi.

Details:

Judge A and Judge B passed a decree in a property dispute case between Mr. Sharma and Mr. Verma.

Mr. Sharma is dissatisfied with the decree and files an application for review of the decree.

At the time of filing the review application, Judge A is still attached to the High Court of Delhi, but Judge B has been transferred to another court.

Judge A is not on leave or otherwise unavailable for the next six months.

Application of Rule 5:

Since Judge A, who was part of the original bench that passed the decree, is still attached to the court and available, Judge A will hear the review application.

Judge B, who has been transferred, will not be involved in the review process.

No other judges of the High Court of Delhi will hear the review application.

Example 2:

Scenario: A commercial contract dispute in the High Court of Mumbai.

Details:

Judge X and Judge Y issued an order in a commercial contract dispute between Company A and Company B.

Company A is unhappy with the order and applies for a review.

At the time of the review application, both Judge X and Judge Y are still attached to the High Court of Mumbai.

Judge X is on a six-month sabbatical leave, but Judge Y is available.

Application of Rule 5:

Since Judge Y, who was part of the original bench that issued the order, is still attached to the court and available, Judge Y will hear the review application.

Judge X, who is on sabbatical leave, will not be involved in the review process.

No other judges of the High Court of Mumbai will hear the review application.

Example 3:

Scenario: A family law case in the High Court of Karnataka.

Details:

Judge M and Judge N passed a decree in a family law case involving divorce and child custody between Mrs. Rao and Mr. Rao.

Mr. Rao is dissatisfied with the decree and files an application for review.

At the time of the review application, both Judge M and Judge N are still attached to the High Court of Karnataka.

Judge M is on a long-term medical leave for the next eight months, but Judge N is available.

Application of Rule 5:

Since Judge N, who was part of the original bench that passed the decree, is still attached to the court and available, Judge N will hear the review application.

Judge M, who is on long-term medical leave, will not be involved in the review process.

No other judges of the High Court of Karnataka will hear the review application.

Rule 6: Application where rejected.

(1) Where the application for a review is heard by more than one Judge and the Court is equally divided, the application shall be rejected.

(2) Where there is a majority, the decision shall be according to the opinion of the majority.

Simplified act

(1) If more than one judge reviews the application and they can't agree (they are split evenly), the application will be denied.

(2) If most of the judges agree on a decision, that decision will be the final one.

Explanation using Example

Example 1:

Ravi filed a civil suit against Shyam for breach of contract in the District Court of Delhi. The court ruled in favor of Shyam. Dissatisfied with the judgment, Ravi filed an application for review of the decision. The review application was heard by a bench of three judges. Two judges found no merit in Ravi's application, while one judge believed there was an error in the original judgment. Since the majority of the judges (2 out of 3) were against the review, the application was rejected according to Rule 6(2) of Order XLVII of the Code of Civil Procedure, 1908.

Example 2:

Meera lost a property dispute case in the High Court of Mumbai and subsequently filed an application for review of the judgment. The review application was heard by a bench of two judges. One judge believed that there was a significant error in the original judgment, while the other judge found no such error. Since the court was equally divided (1-1), the application for review was rejected as per Rule 6(1) of Order XLVII of the Code of Civil Procedure, 1908.

Rule 7: Order of rejection not appealable. Objections to order granting application.

(1) An order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to at once in an appeal from the order granting the application or in an appeal from the decree or order finally passed or made in the suit.

(2) Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, where it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

(3) No order shall be made under sub-rule (2) unless notice of the application has been served on the opposite party.

Simplified act

(1) If the Court rejects your application, you cannot appeal against that decision. However, if the Court approves your application, the other party can challenge this decision either immediately or later when appealing against the final decision in the case.

(2) If your application was rejected because you did not show up, you can ask the Court to put your application back on the list. If you can prove to the Court that you had a good reason for not being there, the Court will restore your application and set a new date for the hearing. The Court may also decide if you need to pay any costs or meet other conditions.

(3) The Court will not restore your application unless the other party has been notified about your request.

Explanation using Example

Example 1:

Scenario: Rajesh files an application for review of a court order in a civil case. The court rejects his application.

Application of Rule 7:

Rajesh cannot appeal the court's decision to reject his application for review. This is because Rule 7(1) states that an order rejecting an application is not appealable.

However, if the court had granted Rajesh's application for review, the opposing party, Suresh, could have objected to this decision in an appeal.

Example 2:

Scenario: Meena files an application for review of a court order. On the day of the hearing, Meena fails to appear in court, and her application is rejected.

Application of Rule 7:

Meena can apply to have her rejected application restored to the court's file. According to Rule 7(2), she must prove that she had a sufficient cause for not appearing in court.

Meena provides evidence that she was hospitalized due to a sudden illness on the day of the hearing. The court is satisfied with her explanation and orders the application to be restored to the file.

The court also decides on the terms for restoring the application, which may include costs or other conditions.

A new hearing date is set, and notice of this application is served on the opposite party, as required by Rule 7(3).

Example 3:

Scenario: Anil files an application for review of a court order. The court grants his application, and the opposing party, Sunita, wants to object to this decision.

Application of Rule 7:

Sunita can object to the court's decision to grant Anil's application for review. She can do this either by appealing the order that granted the application or by appealing the final decree or order made in the suit, as per Rule 7(1).

Sunita decides to file an appeal against the order granting the application for review, presenting her objections to a higher court.

Example 4:

Scenario: Priya files an application for review of a court order. The court rejects her application because she did not appear for the hearing. Priya believes she had a valid reason for her absence.

Application of Rule 7:

Priya can apply to have her rejected application restored to the file by proving she had a sufficient cause for not appearing. She submits evidence that she was stuck in a traffic jam due to an accident and could not reach the court on time.

The court finds her reason satisfactory and orders the application to be restored to the file, setting a new date for the hearing.

The court also ensures that notice of this application is served on the opposite party, as required by Rule 7(3).

Example 5:

Scenario: Ravi files an application for review of a court order. The court grants his application, and the opposing party, Neha, wants to object to this decision.

Application of Rule 7:

Neha can object to the court's decision to grant Ravi's application for review. She can do this either by appealing the order that granted the application or by appealing the final decree or order made in the suit, as per Rule 7(1).

Neha decides to wait and include her objections in an appeal against the final decree of the suit, consolidating her arguments in a single appeal.

Rule 8: Registry of application granted, and order for re-hearings.

When an application for review is granted, a note thereof shall be made in the register and the Court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.

Simplified act

When a request to review a case is approved, a note will be added to the official record.

The Court can either re-hear the case immediately or decide on how the re-hearing should be conducted.

Explanation using Example

Example 1:

Rajesh filed a lawsuit against his neighbor, Suresh, for encroaching on his property. The court initially ruled in favor of Suresh. Rajesh, believing there was a significant error in the judgment, filed an application for review. The court granted Rajesh's application for review. As per Rule 8, a note of this granted application was made in the court's register. The court then decided to re-hear the case immediately. During the re-hearing, new evidence was presented, and the court ultimately ruled in favor of Rajesh, correcting the previous error.

Example 2:

Meena was involved in a civil dispute over a contract with a business partner, Anil. The court's initial decision was unfavorable to Meena. She believed that the court had overlooked crucial evidence and filed an application for review. The court reviewed her application and found merit in her claim, thus granting the review. According to Rule 8, this decision was recorded in the court's register. Instead of re-hearing the case immediately, the court issued an order scheduling the re-hearing for a later date, allowing both parties to prepare adequately. During the scheduled re-hearing, the court considered the previously overlooked evidence and revised its judgment in favor of Meena.

Rule 9: Bar of certain applications.

No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained.

Simplified act

You cannot ask for a review of a decision that was already made after a review.

You cannot request a review of a decree or order that was made after a review.

Explanation using Example

Example 1:

Ravi filed a lawsuit against Shyam for breach of contract. The court issued a decree in favor of Ravi. Shyam, dissatisfied with the decree, filed an application for review, arguing that there was a mistake in the judgment. The court reviewed the case but upheld the original decree. Shyam, still unhappy with

the outcome, attempted to file another application for review of the court's decision on his first review application. According to Rule 9 of Order XLVII of the Code of Civil Procedure, 1908, the court will not entertain Shyam's second application for review because it is barred by this rule.

Example 2:

Meera obtained a court order against her neighbor, Ramesh, for encroaching on her property. Ramesh filed an application for review, claiming new evidence had come to light. The court reviewed the order but decided to maintain the original decision. Ramesh then tried to file another application for review, hoping to challenge the court's decision on his first review application. Under Rule 9 of Order XLVII of the Code of Civil Procedure, 1908, the court will reject Ramesh's second application for review as it is not permissible to review an order made on a review application.

ORDER XLVIII: MISCELLANEOUS

Rule 1: Process to be served at expense of party issuing. Costs of service.

1. Every process issued under this Code shall be served at the expense of the party on whose behalf it is issued, unless the Court otherwise directs.

(2) Costs of service. - The court-fee chargeable for such service shall be paid within a time to be fixed before the process is issued.

2.

Simplified act

Any legal document or notice issued under this Code must be delivered at the cost of the person who requested it, unless the Court decides otherwise.

(2) Costs of service. - The fee for delivering such documents must be paid within a specified time before the document is sent out.

2.

Explanation using Example

Example 1:

Rajesh files a civil lawsuit against his neighbor, Suresh, for encroaching on his property. Rajesh's lawyer prepares the necessary legal documents (process) to notify Suresh about the lawsuit. According to Rule 1 of The Code of Civil

Procedure 1908, Rajesh is responsible for paying the court fees and any other expenses related to serving these documents to Suresh. The court sets a deadline for Rajesh to pay these fees. If Rajesh fails to pay within the specified time, the court may not issue the process, delaying the lawsuit.

Example 2:

Anita is suing a company for breach of contract. Her lawyer issues a summons to the company to appear in court. As per Rule 1, Anita must bear the cost of serving the summons to the company. The court informs Anita that she needs to pay the service fees within 10 days. Anita promptly pays the required amount, ensuring that the summons is served on time. If Anita had not paid the fees within the given timeframe, the court might have postponed the issuance of the summons, potentially delaying her case.

Rule 2: Orders and notices how served.

All orders, notices and other documents required by this Code to be given to or served on any person shall be served in the manner provided for the service of summons.

Simplified act

All orders, notices, and other documents that need to be given to or served on any person according to this Code must be delivered in the same way as a summons.

Explanation using Example

Example 1:

Rajesh filed a civil suit against his neighbor, Suresh, for encroaching on his property. The court issued an order for Suresh to appear in court. According to Rule 2 of the Code of Civil Procedure 1908, this order must be served to Suresh in the same manner as a summons. Therefore, a court officer personally delivered the order to Suresh at his residence, ensuring that he received it and acknowledged its receipt.

Example 2:

Meena filed a petition for divorce against her husband, Ramesh. The court issued a notice to Ramesh to respond to the petition. As per Rule 2 of the Code

of Civil Procedure 1908, this notice must be served in the manner provided for the service of summons. Consequently, the notice was sent to Ramesh via registered post with acknowledgment due, ensuring that there was a record of Ramesh receiving the notice.

Rule 3: Use of forms in appendices.

The Forms given in the appendices, with such variation as the circumstances or each case may require, shall be used for the purposes therein mentioned.

Simplified act

The forms provided in the appendices should be used for the purposes mentioned in them, but you can make changes to fit the specific needs of each case.

Explanation using Example

Example 1:

Scenario: Filing a Civil Suit for Recovery of Money

Context: Rajesh lent Rs. 50,000 to his friend Suresh, who promised to repay the amount within six months. Despite repeated reminders, Suresh has not repaid the money even after a year. Rajesh decides to file a civil suit for the recovery of the money.

Application of Rule 3: Rajesh's lawyer will use the specific form provided in the appendices of the Code of Civil Procedure, 1908, for filing a civil suit for recovery of money. The form will include details such as the names and addresses of the parties, the amount of money lent, the date of the loan, and the due date for repayment. The lawyer may make necessary variations to the form to fit the specific circumstances of Rajesh's case, such as including any written agreements or communications between Rajesh and Suresh.

Example 2:

Scenario: Application for Temporary Injunction

Context: Priya owns a piece of land in her village. Recently, her neighbor, Ramesh, started constructing a building that encroaches on her land. Priya wants to stop the construction immediately and decides to seek a temporary injunction from the court.

Application of Rule 3: Priya's lawyer will use the form provided in the appendices for applying for a temporary injunction. The form will require details such as the description of the property, the nature of the encroachment, and the urgency of the situation. The lawyer may modify the form to include specific details about the construction activities and any evidence of the encroachment, such as photographs or witness statements. This ensures that the application is tailored to Priya's specific circumstances while adhering to the prescribed format.

RDER XLIX: CHARTERED HIGH COURTS

Rule 1: Who may serve processes of High Court.

Notice to produce documents, summonses to witnesses, and every other judicial process, issued in the exercise of the original civil jurisdiction of the High Court, and of its matrimonial, testamentary and intestate jurisdictions, except summonses to defendants, writs of execution and notices to respondents may be served by the attorneys in the suits, or by persons employed by them, or by such other persons as the High Court, by any rule or order, directs.

Simplified act

Notices to produce documents, summonses to witnesses, and other court orders issued by the High Court in civil cases, marriage-related cases, and cases involving wills and inheritance can be delivered by:

The lawyers involved in the cases,

People hired by these lawyers,

Or any other person the High Court allows by rule or order.

However, this does not include:

Summonses to defendants,

Writs of execution (orders to enforce a court judgment),

Notices to respondents (people who need to respond to a legal action).

Explanation using Example

Example 1:

Scenario: A property dispute case is being heard in the High Court of Delhi. The plaintiff's attorney needs to serve a notice to produce certain documents to the defendant.

Application of the Act: The attorney representing the plaintiff can serve the notice to produce documents directly to the defendant. The attorney can either do this personally, employ someone to do it, or follow any specific rules or orders set by the High Court regarding the service of such notices.

Example 2:

Scenario: In a matrimonial case involving a divorce proceeding in the High Court of Mumbai, the attorney needs to summon a witness to testify.

Application of the Act: The attorney handling the divorce case can serve the summons to the witness. The attorney can serve the summons themselves, have someone else do it on their behalf, or adhere to any specific rules or orders from the High Court about how such summonses should be served.

Example 3:

Scenario: A will is being contested in the High Court of Chennai, and the attorney needs to serve a judicial process related to the testamentary jurisdiction of the court.

Application of the Act: The attorney involved in the testamentary case can serve the necessary judicial process. This can be done by the attorney personally, by someone they employ, or by following any specific directions given by the High Court through its rules or orders.

Example 4:

Scenario: In an intestate succession case in the High Court of Kolkata, the attorney needs to serve a notice to a respondent.

Application of the Act: The attorney can serve the notice to the respondent directly. This can be done by the attorney themselves, by someone they hire for this purpose, or according to any specific rules or orders issued by the High Court.

Example 5:

Scenario: A commercial dispute is being heard in the High Court of Bangalore, and the attorney needs to serve a judicial process related to the original civil jurisdiction of the court.

Application of the Act: The attorney can serve the judicial process directly. They can do this personally, employ someone to serve the process, or follow any specific rules or orders set by the High Court regarding the service of such processes.

Rule 2: Saving in respect of Chartered High Courts.

Nothing in this Schedule shall be deemed to limit or otherwise affect any rules in force at the commencement of this Code for the taking of evidence or the recording of judgments and orders by a Chartered High Court.

Simplified act

This Schedule does not change or affect any existing rules about how evidence is collected or how judgments and orders are recorded by a Chartered High Court when this Code starts.

Explanation using Example

Example 1:

Scenario: A case is being heard in the Bombay High Court, which is a Chartered High Court. The court has its own established rules for taking evidence and recording judgments.

Application: During the trial, the judge decides to follow the specific rules of the Bombay High Court for taking witness testimonies and recording the final judgment. A lawyer objects, arguing that the procedures outlined in the Code of Civil Procedure, 1908 should be followed instead.

Outcome: The judge overrules the objection, citing Rule 2 of Order XLIX from the Code of Civil Procedure, 1908. This rule states that nothing in the Schedule limits or affects the existing rules of Chartered High Courts. Therefore, the Bombay High Court can continue to follow its own established procedures.

Example 2:

Scenario: The Calcutta High Court, another Chartered High Court, has a unique rule that allows for electronic recording of judgments and orders, which was in place before the Code of Civil Procedure, 1908 was enacted.

Application: In a civil case, the court decides to record the judgment electronically. A party to the case challenges this method, claiming that the Code of Civil Procedure, 1908 does not explicitly provide for electronic recording.

Outcome: The court dismisses the challenge, referencing Rule 2 of Order XLIX from the Code of Civil Procedure, 1908. This rule ensures that the existing rules of Chartered High Courts, including those for recording judgments and orders, remain unaffected by the Code. Therefore, the Calcutta High Court's practice of electronic recording is valid and can continue.

Rule 3: Application of rules.

The following rules shall not apply to any Chartered High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, namely:

- (1) rule 10 and rule 11, clauses (b) and (c), of Order VII;
 - (2) rule 3 of Order X;
 - (3) rule 2 of Order XVI;
 - (4) rules 5, 6, 8, 9, 10, 11, 13, 14, 15 and 16 (so far as relates to the manner of taking evidence) of Order XVIII;
 - (5) rule 1 to 8 of Order XX; and
 - (6) rule 7 of Order XXXIII (so far as relates to the making of a memorandum);
- and rule 35 of Order XLI shall not apply to any such High Court in the exercise of its appellate jurisdiction.

Simplified act

The following rules do not apply to any Chartered High Court when it is handling regular or special civil cases:

- (1) rule 10 and rule 11, parts (b) and (c), of Order VII;
- (2) rule 3 of Order X;
- (3) rule 2 of Order XVI;
- (4) rules 5, 6, 8, 9, 10, 11, 13, 14, 15, and 16 (only the parts about how evidence is taken) of Order XVIII;

(5) rules 1 to 8 of Order XX; and

(6) rule 7 of Order XXXIII (only the part about making a memorandum);

Also, rule 35 of Order XLI does not apply to any such High Court when it is handling appeals.

Explanation using Example

Example 1:

Scenario: Filing a Civil Suit in the Bombay High Court

Context: Mr. Sharma wants to file a civil suit in the Bombay High Court, which is a Chartered High Court, regarding a property dispute.

Application of Rule 3:

Mr. Sharma's lawyer prepares the plaint (the written statement of the claim).

Normally, under Order VII, Rule 10, if the plaint is presented to a court that does not have jurisdiction, it should be returned to be filed in the proper court. However, since Rule 10 of Order VII does not apply to Chartered High Courts under their original civil jurisdiction, the Bombay High Court can choose to handle the matter differently.

Similarly, the requirements under Rule 11(b) and (c) of Order VII, which deal with the rejection of a plaint for not disclosing a cause of action or being barred by law, do not apply. The High Court has its own procedures for handling such issues.

Example 2:

Scenario: Summoning Witnesses in the Calcutta High Court

Context: Ms. Gupta is involved in a civil case in the Calcutta High Court, another Chartered High Court, and needs to summon witnesses to testify.

Application of Rule 3:

Normally, under Order XVI, Rule 2, a party must apply to the court to issue summons for witnesses. However, this rule does not apply to Chartered High Courts in their original civil jurisdiction.

Ms. Gupta's lawyer can follow the specific procedures laid out by the Calcutta High Court for summoning witnesses, which may be different from the general rules applicable in other courts.

Example 3:

Scenario: Recording Evidence in the Madras High Court

Context: Mr. Rao is involved in a civil litigation case in the Madras High Court, which is also a Chartered High Court.

Application of Rule 3:

During the trial, the manner of taking evidence is crucial. Normally, under Order XVIII, rules 5, 6, 8, 9, 10, 11, 13, 14, 15, and 16, there are specific procedures for how evidence should be recorded.

However, these rules do not apply to the Madras High Court in its original civil jurisdiction. The court may have its own methods for recording evidence, which Mr. Rao's lawyer will need to follow.

Example 4:

Scenario: Judgment Pronouncement in the Bombay High Court

Context: After a lengthy trial, the Bombay High Court is ready to pronounce judgment in a civil case involving Ms. Patel.

Application of Rule 3:

Normally, under Order XX, rules 1 to 8, there are detailed procedures for how judgments should be pronounced and recorded.

Since these rules do not apply to Chartered High Courts in their original civil jurisdiction, the Bombay High Court will follow its own procedures for pronouncing and recording the judgment.

Example 5:

Scenario: Appellate Jurisdiction in the Calcutta High Court

Context: Mr. Das is appealing a decision made by a lower court in the Calcutta High Court.

Application of Rule 3:

Normally, under Order XLI, Rule 35, there are specific requirements for the contents of the decree in appellate cases.

However, this rule does not apply to Chartered High Courts in their appellate jurisdiction. The Calcutta High Court will have its own rules for what must be included in the decree for appellate cases.