JUDICIAL DISHA

CONTENT

CPC-1 Introduction and History of The Code

Introduction

- The Code of Civil Procedure is an adjective law. It neither creates nor takes away any right. It is intended to regulate the procedure to be followed by civil courts.
- The Code can be divided into two parts
  - **(i) The body of the Code containing 158 Sections**
  - **(ii) The first schedule contains 51 orders and Rules.**
- The Sections deal with provision of substantive nature, laying down the general principles of Jurisdiction, while the first schedule relates to the method, manner and mode in which the Jurisdiction may be exercised. **The body of the Code containing Sections is fundamental and cannot be amended except by the legislature**. The body of Code containing **orders and Rules on the other hand can be amended by High Courts.**

Difference Between Procedural Law and Substantive Law

- It can be divided into two groups –
  - (a) Substantive Law
  - (b) Adjective as Procedural Law
- **Substantive Law: -** Determines rights and liabilities of parties. The efficacy of substantive laws, to a large extent, depends upon the quality of procedural laws
- **Procedural Law: -** Prescribe the practice, procedure and machinery for the enforcement of those Rights and liability.
- Unless the procedure is simple, expeditious and inexpensive substantive laws, however good are bound to fall in achieving their object and reaching the goal.
- The difference between procedural law and substantial law has been stated in the "Halsbury Law of England" –
- ***"There is at the outset a vital and essential distinction between substantive law and procedural law. The function of substantive law is to define, create or confer substantial legal rights and status to impose and define the nature and extent of legal duties. The function of procedural law is to provide the machinery or the manner in which the legal rights or status and legal duty may be enforced or recognized by a court of law or other recognized or properly constituted tribunal."***

Historical Background of The Code

- Before the 1stday of July 1959, there was no uniform Code of Civil Procedure in India. There were different systems of Civil Procedure in different parts of the country. The evil arising from the state of affairs had been felt , hence the 1st Uniform Civil Code was enacted in the year 1859, which remedied to certain extent the evils of numerous procedure Codes.
- But the problem with the Code of 1859 was that it did not apply to Supreme Courts or to the presidency small cause courts, nor did it extend to non-regulation provinces. Later on, the Code was extended to the whole of British India.
- However, the Code suffered from many defects as it was "ill drawn, ill arranged and incomplete". This necessitated the passing of a fresh Code of 1877. After five years another Code was enacted in 1882. The Code of 1882 was supplemented by present Code in the year 1908.
- In the course of time, it was thought necessary to make certain amendments in the provisions of the Code of 1908, so as to make it more meaning full and subserve the cause of the administration of civil justice better. Hence in 1976, an extensive amendment was made in the provision of the Code of Civil Procedure of 1908.

Object of The Code

- The object of the Code is to consolidate and amend the cause relating to the Procedure of Courts of Civil Judicature. To consolidate means to collect all the laws relating to a particular subject and to bring it down up to date in order that it may form a useful Code applicable to the circumstances existing at the time when the consolidating Act is enacted.

- It is designed to facilitate Justice and further its ends and is not a penal enactment for punishment and penalty, not a thing designed to trip up people for the interpretation of the procedural law. It is said that the provisions of the Code, therefore, should be construed liberally and technical objections should not be allowed to defeat substantial Justice. A "Hyper technical view" should be avoided by the court.
- In the case of **Saiyad Mohd. Bakar v. Abdul Habib Hasan 19984 SCC 343**
- The Supreme Court stated "A procedural law is always in aid of Justice, not in contradiction or to defeat the any object which is sought to be achieved. A procedural law is always subservient to the substantive law. Nothing can be given by a procedural law what is not sought to be given by a substantive law and nothing can be taken away by the procedural law what is given by the substantive law".
- The Principle underlying interpretation of procedural laws has been subsequently laid down by the Supreme Court in the case of **State of Punjab v. Shamlal Murari 1076 SCC 719.**

Wherein, Speaking For the Court Krishna Aiyer J. Observed –

- *"We must always remember that procedural law is not to be a tyrant but a servant, not an obstruction but an aid to Justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant not a resistant in the administration of Justice.*
- *Where the non-compliance, though procedural, will thwart fair hearing or prejudice doing of justice to parties, the rules are mandatory. But, grammar apart, if the breach can be corrected without injury to a just disposal of the case, we should not enthrone a regulatory requirement into dominant desideratum. After all courts are to do justice not to wreck this end product of technicalities."*

Jurisprudential Essence of CPC

- The Code of Civil Procedure in its preamble, quoted, "An Act to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature." Civil Procedure Code is a procedural law and the purpose is to deliver justice and therefore it cannot be applied in the extremely rigid manner. Rather a general rule should be strictly interpreted but whenever an interest of justice so requires the provisions can be made flexible in order to do complete justice in the case. If there is ambiguity about the provisions then that interpretation shall be applied which serves the purpose of the Civil Procedure Code that is to meet ends of justice.
- The jurisprudential aspect of the Code of Civil Procedure carries with itself the essence of the civil procedural rights of the citizens which enables them to claim their right and cause of action with its violation thereof expediently and with best effort till end of the suit to meet the ends of justice. The civil procedure therefore walks hand in hand and shoulder to shoulder with the spirits of social process and society at large and cannot be ignored keeping in view, it rather protects the procedural interests of the citizens for a better social arena.

Commencement Extent and Applicability of The Code

- The Code of Civil Procedural enacted in 21ST MARCH 1908 and came into force with effect from 1 January 1909.
- Code of Civil Procedure (amendment) Act 104 of 1976 enacted on 9 September 1976 and came in to force from 1 February 1977 (Except Section 12, 13, 50)Section 12 and 50 came into force on 1 May 1977 and Section 13 came into force on 1 July 1977.
- The Code of Civil Procedure (Amendment) Act 1999 received the assent of the president on 30 December 1999 and came in to force from 1 July 2002.
- The Code of Civil Procedure (Amendment) Act 2002 received the assent of the president on 23 May 2002 and came into force on 1 July 2002.
- The Code extends to the whole of India, except

  (a) The state of Jammu and Kashmir

  (b) The state of Nagaland and Tribal Areas.

  It also extends to the Amindivi Islands and the East Godavari and Vishakhapatnam Agencies in the State of Andhra Pradesh and the union territory of Lakshadweep by the amendments act of 1976 the application of the provisions of the Code have been extended to schedule Areas also.

General Outlines of The Code

- Substantive part of the Code includes 150 Sections. The first schedule comprises 51 orders and Rules providing procedure. Appendices contain model farms of pleading & processes decrees, Appeals, Execution proceedings, etc.

Section 1 Provides	Commencement And Applicability of The Code.
Section 2 Provides	Definition Clause
Section 3-8 Deal With	The Constitution of Different Types of Courts and This Jurisdiction.
Part I (Section 9 to 35 – B) and orders 1 to 20 of the first schedule Deals With	The Suits in General
Section 9 Provides	Jurisdiction Clause
Section 10 Provides	Res Sub judice
Section 11 Provides	Res judicata
Section – 12 Provides	Bar On Suits
Section 13, 14 Provides	Foreign Judgments
Section 15 to 21 A Regulate	The Place of Suing and Rules as To Jurisdiction of Courts Objection of Jurisdiction
Section 22, to 25 Provides	Provision For Transfer and Withdrawal of Suits, Appeals, and Other Proceeding From One Court To Another.
Order 1 to 4 Deals With	Institution And Frame Of Suits, Parties To Suits And Recognized Agents And Pleaders.
Order 5 Provision As	To Issue And Service Of Summons
Order 6 Deals With	The Pleadings.
Order 7 and 8	Plaints, Written Statement Set Off, Counter Claim.
Order 9 Relates To	Requires Parties To The Suit To Appear Before That Court And Enumerates Consequences Of Non Appearance Provide Remedy *Ex parte*.
Order 10 Enjoins	The Court To Examine Parties With A View To Ascertaining Matters In Controversy In The Suit.
Order 11 to 13 Deal With	Discovery, Inspection And Production Of Document And Also Admissions By Parties.
Order 14 Requires	The Court To Frame Issues
Order 15 Enables	The Court To Pronounce Judgment At The "First Hearing" In Certain Cases.
Order 16 to 18 Provisions For	Summary, Attendance And Examination Of Witnesses, And Adjournment .
Order 19 Embowers	The Court To Make An Order As To Prove Facts On The Basis Of An Affidavit Of A Party.
Part II (Section 36 to 74) And Cover	Execution Proceeding Order 21
Part III (Section 75 to 78) and order 26 Make Provisions	To Issue Of Commissions
Part IV (Section 94 and 95) and order 38 Provides For	Arrest Of A Defendant And Attachment Before Judgment.
Order 39 Lays Dower	The Procedure For Issuing Temporary Injunction And Passing Interlocutory Orders.
Order 40 Deals With	Appointment Of Receives.
Order 25 Provides For	Security For Costs
Order 23 Deals With	Withdrawal And Compromise Of Suits.
Order 22 Declares	Effect Of Death, Marriage As Insolvency Of A Party To The Suit
Section 33 and order 20 Deal With	Judgment And – Decree

Section 34 Making Provision For	Interest
Section 35, 35-A, 35-B and order 20 A Deal With	Costs.
Parts (IV – V) (Section 79-93) and order 27 to 37 Lay Down Procedure For	Suits In Special Cases.
Section 79 to 82 and order 27 provides	Suits By As Against Government As Public Officers
Section (83 to 87-B) order 28 provides	Suits By As Against Aliens, Foreign Rules, Ambassadors And Envoys
Order 28 provides	Suits By As Against Soldiers, Sailors And Airmen.
Order 29 provides	Suits By As Against Corporations
Order 30 provides	Suits By As Against Partnership Firms
Order 31 provides	Suits By As Against Trusts, Executers And Administrators.
Order 32 provides	Suits By As Against Minors, Lunatics And Persons Of Unsound Mind.
Order 32-A provides	Suits Relating To Family Matters.
Order 33 provides	Suits By Indigent Persons
Order 34 provides	Suits Relating To Mortgages
Section 88 and order 35	Inter Pleader Suits
Section 90 and order 36	Friendly Suits
Order 37 provides	Summary Suits
Section 91 provides	Suit Relating To Public Nuisance
Section 92 provides	Suit Relating To Public Trust.
Section 89 (Act 1999 introduced this new provision)(Added from 1 July 2000) Provides For	Provides For Settlements Of Disputes Out Of Court Through Arbitration, Conciliation, Mediation And Lok Adalats.
Parts VII and VIII (Section 96 to 115) and order 41 to 47 Detail Provisions For	Detail Provisions For Appeals, Reference, Review And Revision.
Section 96 to 99-A and order 41	First Appeal
Section 100 to 103 and order 42	Law Relating To Second Appeal.
Section 104 to 108 and order 43	Provisions As To Appeals From Orders.
Section 109, 112 and order 45	Appeals To The Supreme Court
Order 44	Special Law Concerning Appeals By Indigent Persons.
Section 113 and order 46	Reference To Be Made To A High Court By A Subordinate court, when A Question Of Constitutional Validity Of An Act Arises.
Section 114 and order 47	Review Of Judgments In Certain Circumstances
Section 115	Revisional Jurisdiction On High Courts Over Subordinate Courts.
Part X (Section 121 to 131)	Enables High Courts – To Frame Rules For Regulating Their Own Procedure And The Procedure Of Civil Courts Subject To Their Superintendence.
Part XI – (Section 132 to 158)	Relates To Miscellaneous Proceedings
Section 144	Embodies The Doctrine Of Restitution And Deals With The Power Of The Court To Grant Relief Of Restitution In Case A Decree Is Set Aside or Modified By A Superior Court.

Section 148-A (Added by 1976 amendment)	Provision Which Permits A Person To Lodge A Caveat In A Suit or Proceeding Instituted As About To Be Instituted Against Him.
Section (148 to 153A)	Confer Inherent Powers In Every Civil Court
Section 148	Enables A Court To Enlarge A Time Fixed As Granted By It For Doing Any Act.
Section 149	Authorizes A Court To Permit A Party To Make Up Deficiency Of Court Fees On Plaint, Memorandum Of Appeal, Etc.
Section 151	Inherent Powers In Every Court To Secure The Ends Of Justice And Also To Prevent The Abuse Of Process Of The Court.
Section 152 to 153A	Empowers A Court To Amend Judgments, Decrees, Orders And Other Records Arising From Accidental Slip or Omission.
Section 153B (as added by 1976)	The Place Of Trial Shall Be Open To The Public

Major Amendments in The Code of Civil Procedure 1908

- The Code Civil Procedure, 1908 was subjected to amendment in 1951 and then 1956. Later on, by Code of Civil Procedure (Amendment) Act, 1976, the Code was again amended.
- After carefully considering the recommendations made by the law commission in its 27th, 40th , 54th and 55th reports, the Government has decided to bring forward the present bill of 1976 for the amendment of Code of Civil Procedure 1908, keeping amongst others, the following basic considerations, namely –
  - That a litigant should get a fair trial and in accordance with the accepted principles of natural justice.
  - That every effort should be made to expedite the disposal of civil suits and proceeding, so that Justice may not be delayed.
  - That the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the pauper Sections of the community who do not have the means to engage a pleader to defend their cases.

Some New Changes Made by Amendment Act No. 104 OF 1976

(1) The doctrine of Res Judicata is made more effective.

(2) Power to transfer the proceeding one High court to another was conferred upon the Supreme Court.

(3) Restrictions imposed on Right to Appeal – when value is less than 3000/- the appeal against a decree passed by the Small Cause Court can be preferred on only question of law.
- Second appeal only on certification of High Court on substantial question of Law.
- No further appeal can be filed against the decision of a single judge of High Court in second Appeal.

(4) Some provision are sought to be omitted –
- Section 115 (power in 227 Constitution)
- Section 132 (inconsistent with the social philosophy of the Constitution)

(5) New order XVI – A and order XXX II – A have been inserted.

Some New Changes Brought by Amendment Act of 1999

- This Act revived the assent of president on 30 December 1999. It was brought into force from 1 July, 2002 except clause (iii) of Section 18 so for it relates to rules 9 and 10 of order VIII of the first schedule to Code of Civil Procedure 1908.

Object and Reasons of This Amending Act

- With a view to implement the recommendations of Justice Malimath Committee, 129th Report of Law Commission of India and the recommendation of the Committee on Subordinate Legislation (11th Lok Shabha) this Amendment was proposed. The object is that every effort should be made to expedite the disposal of civil suits and proceeding so that justice may not be delayed.

Following are the Important Changes

- Plaint shall be filed in duplicate and shall be accompanied by all the documents on which the Plaintiff relies upon in support of his claim with the support of Affidavit.

- Written statements will be filed within 30 days with affidavit.
- It is directed that plaintiff shall take the summons from the court and send it to the parties, within two days of receipt thereof, by post, fax, e-mail, speed post, courier service or by such other means as directed by the court.
- It is proposed to make it obligatory for the court to refer the dispute after the issues are framed for settlement by the mode prescribed by Code.
- Makes provision for filing of Examination – in – chief of every witness in the form of an affidavit for the cross and Re-examination commissioner to be appointed by the court. Such document shall become part of the Record of the suit.
- Relating to steps to reduce unnecessary adjournments, it is proposed to make it obligatory for a Judge to record reasons for adjournment of a case as well as award of actual or higher Cost and not merely notional cost against the parties seeking an adjournment in favour of the opposite party.
- No further appeal against the Judgment of a single judge shall lie even in petition under Article 226 or 227 of the constitution.
- The Court shall, on the date of pronouncement of Judgment, simultaneously provide authenticated copies of the judgment to the parties.

Some New Changes Brought by Amendment 2002

- The amendment Act received the assent of president on 23 May 2002. It was brought into force with effect from July 1, 2002.

Following are The Changes

- Plaintiff shall produce documents and pay requisite fees for service of summons on the defendant within seven days from the date of order by the Court.
- Summons would be served on the defendant by courts either by its process servers or through private courier approved by court plaintiff may also serve summons on the defendant.
- Written statement within 30 day but can be extended 90 days for valid reason in writing.
- Documents may be produced by the plaintiff or the defendant, as the case may be with the leave of the court at the time of hearing of suit. In 1999 it was not provided in Rule 14 of order VII and Rule 1-A of order VIII.
- Rule 17 in Order VI is being restored. This rule is omitted by clause (iii) sec 16 of CPC Amendment 1999. Court may at any stage of proceedings allow either party to alter or amend his pleadings.
- Rule 5 of order XIV of the Code, amendment of issues as framing of additional issues may be allowed. This was omitted by clause (ii) of Section 34 of CPC (Amendment) 1999.
- Time limit for oral arguments by the parties may be fixed and with the leave of the court parties may submit written arguments in a case by inserting suitable provision in order XVIII of the Code.
- Rule 4 of order XVIII as amended in year 1999 was substituted and time period fixed for the commissioner to submit report within 6 month from the date of issue of commission.
- Judgment to be pronounced within definite time court shall make an endeavor to pronounce Judgment within thirty days of the date on which hearing of the case was concluded, shall not extend 60 days
- Appeals to division Bench of High Court in writ under Articles 226 and 227 of the constitution shall be restored. In amendment 1999 it was abolished.
- No second appeal share lie in money suits when subject matter does not extend Rs. 25,000/- it was also abolished in amendment 1999.

Application of Code of Civil Procedure 1908

- The provision of the Code of Civil Procedure governs the procedures to be followed by all civil courts, except those to which any special procedure prescribed under a local or special law applies. When such local or special law does not provide for a special procedure, the provisions of the Code apply. In case of inconsistency between the provision of the Code and special or local law, the special or local law shall prevail.

Saving Clause Under Section 4

- "Savings" means that it saves all the rights the party previously had. In other words, by virtue of savings, the earlier rights are preserved.

- Saving clause are introduced into repealing Act, in order to safeguard those rights, which would have been lost, had the saving clause not been there. "Saving clause" therefore is used to preserve from destruction certain rights, remedies or privileges already existing.

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.*

In this manner, Section 4 gives validity to any local acts and saves it from obliteration. In other words, in case of conflict or inconsistency between the Code and the local law a special law, the special or local law shall prevail.

Application of The Code To Revence Courts

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 {The words " with the previous sanction of the G.G.in C." rep. by Act.38 of 1920, s.2 and Sch.I, Pt.I.} 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 {The words "with the sanction aforesaid" rep. by s.2 ancl Sch.I, Pt.I, ibid.} 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.

To fall, within the scope of the term "Revenue Court" two essential must be satisfied –

(1) Court must have authority to entertain the suits relating to the rent, revenue or profits of land used for agricultural purposes.

(2) Such authority must flow from a local law.

Application To Provincial Small Causes Court

Section 7. Provincial small cause courts.

- *The following provisions shall not extend to Courts constituted under the Provincial Small Cause Courts Act, 1887, {Ins.by Act 4 of 1941, s.2 and Sch.III.} [or under the Berar Small Cause Courts Law, 1905], or to Courts exercising the jurisdiction of a Court of Small Causes {Subs., ibid., for " under that Act ".} [under the said Act or Law], {Ins.by Act 2 of 1951, s.5.} [or to Courts in Part B States 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; and

  (b) the following Sections, that is to say-

- *Section 9,*
- *Sections 91 and 92,*
- *Sections 94 and 95 {Subs. by Act 1 of 1926, s.3, for "so far as they relate to injunctions and interlocutory orders".} [so far as they authorise 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.

- **This Section expressly Bars the application of certain provisions of the Code –**
  - To the Courts constituted under the provincial small cause courts Act 1887
  - To the c
  - Courts constituted under the Berar small cause courts laws 1905
  - To the Courts exercising the Jurisdiction of a court of small causes under the said Act.
  - To the Courts in any part of India to which the said Act does not extend.
- Therefore the position is that except the provisions mentioned in Section 7, the rest of the provision of the Code apply and must be followed by the court of small causes in all the suits and proceeding arising out of such suit.

Application to The Persidency Small Causes Court

- ***SECTION-8*** *Save as provided in Sections 24, 38 to 41, 75, clauses (a), (b) and (c), 76, 77 and 155 to 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:*

  {Ins.by Act 1 of 1914, s.2.} [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{For instance of such direction, see Calcutta Gazette, 1910, Pt.I, p 814.} 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.]

  The provisions of this Code do not extend to any suit as proceedings in any presidency small causes court established in the towns of Calcutta, Madras and Bombay with certain exceptions.

Constitutional Validity of Amendments Introduced by Amendment Acts 46 of 1999 and 22 of 2002

Provisions are in the controversy –

- Section 27 (as amended by Act 46 of 1999) – Summons to defendant to be served "on such day not beyond Thirty Days from the date of the institution of the suit
- Section 89 (as inserted by Act of 1999)
- Section 100-A (as substituted by Act 22 of 2002)
- Order 7 Rule 11(e) (inserted by Act 46 of 1999)
- Order 18 Rule 4(1) (as substituted by Act 22 of 2002)
- Order 18 Rule 4(3) (as substituted by Act 22 of 2002) ORDER 16 RULE 1 AND 1A
- Order 18 Rule 4(2) (as substituted by Act 22 of 2002)
- Order 18 Rule 17-A (omitted by Act 46 of 1999)
- Order 41 Rule 9
- In the case of **SALEM ADVOCATE BAR ASSOCIATION V. UNION OF INDIA AIR 2003 SC 109**
- In the Petitions, the amendments which were sought to be made by the aforesaid amendment Acts, have been challenged, but we do not find that the said provisions are in any way ultra vires the constitution.
- ***Parra 8.*** *Our attention was then drawn to a new Section 89 which has been introduced in the Code of Civil Procedure. This provides for settlement of disputes etc. and reads as under:*
- *"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 Lok Adalat; 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 Lok Adalat, the court shall refer the same to the Lok Adalat 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 Lok Adalat;

(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 Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat 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."

- ***Parra 9.*** *It is quite obvious that the reason why Section 89 has been inserted is to try and see that all the cases which are filed in court need not necessarily be decided by the court itself, Keeping in mind the law's delays and the limited number of Judges which are available, it has now become imperative that resort should be had to alternative dispute resolution mechanism with a view to bring to an end litigation between the parties at an early date. The alternative dispute resolution (ADR) mechanism as contemplated by Section 89 is arbitration or conciliation or judicial settlement including settlement through Lok Adalat or mediation. Sub-Section (2) of Section 89 refers to different Acts in relation to arbitration, conciliation or settlement through Lok Adalat, but with regard to mediation Section 89(2)(d) provides that the parties shall follow the procedure as may be prescribed. Section 89(2)(d), therefore, contemplates appropriate rules being framed with regard to mediation.*
- ***Parra 10.*** *In certain countries of the world where ADR has been successful to the extent that over 90 percent of the cases are settled out of court, there is a requirement that the parties to the suit must indicate the form of ADR which they would like to resort to during the pendency of the trial of the suit. If the parties agree to arbitration, then the provisions of the Arbitration and Conciliation Act, 1996 will apply and that case will go outside the stream of the court but resorting to conciliation or judicial settlement or mediation with a view to settle the dispute would not ipso facto take the case outside the judicial system. All that this means is that effort has to be made to bring about an amicable settlement between the parties but if conciliation or mediation or judicial settlement is not possible, despite efforts being made, the case will ultimately go to trial.*
- ***Parra 11.*** *Section 89 is a new provision and even though arbitration or conciliation has been in place as a mode for settling the disputes, this has not really reduced the burden on the courts. It does appear to us that modalities have to be formulated for the manner in which Section 89 and, for that matter, the other provisions which have been introduced by way of amendments, may have to be in operation. All counsel are agreed that for this purpose, it will be appropriate if a committee is constituted so as to ensure that the amendments made become effective and result in quicker dispensation of justice.*
- ***Parra 12.*** *In our opinion, the suggestion so made merits a favourable consideration. With the constitution of such a committee, any creases which require to be ironed out can be identified and apprehensions which may exist in the minds of the litigating public or the lawyers clarified. As suggested, the Committee will consist of a Judge, sitting or retired, nominated by the Chief Justice of India and the other members of the Committee will be Mr. Kapil Sibal, Senior Advocate, Mr. Arun Jaitley, Senior Advocate, Mr. C.S. Vaidyanathan, Senior Advocate and Mr. D.V. Subba Rao, Chairman, Bar Council of India. This Committee will be at liberty to co-opt any other member and to take assistance of any member of the Bar or Association. This Committee may consider devising a model case management formula as well as rules and regulations which should be followed while taking recourse to the ADR referred to in Section 89. The model rules, with or without modification, which are formulated may be adopted by the High Courts concerned for giving effect to Section 89(2)(d).*
- ***Parra 13.*** *Mr. Vaidyanathan drew our attention to Section 100-A which deals with intra-court appeals. This Section reads as follows:*
- *"100-A. No further appeal in certain cases. – Notwithstanding anything contained in any Letters Patent for any High Court or in any other 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."*

- ***Parra 14.*** *It was submitted by Mr. Vaidyanathan that where the original decree is reversed by a Single Judge of the High Court, there should be a provision for filling a letters patent appeal.*
- ***Parra 15.*** *Section 100-A deals with two types of cases which are decided by a Single Judge. One is where the Single Judge hears an appeal from an appellate decree or order. The question of there being any further appeal in such a case cannot and should not be contemplated. Where, however, an appeal is filed before the High Court against the decree of a trial court, a question may arise whether any further appeal should be permitted or not. Even at present depending upon the value of the case, the appeal from the original decree is either heard by a Single Judge or by a Division Bench of the High Court. Where the regular first appeal so filed is heard by a Division Bench, the question of there being an intra-court appeal does not arise. It is only in cases where the value is not substantial that the rules of the High Court may provide for the regular first appeal to be heard by a Single Judge. In such a case to give a further right of appeal where the amount involved is nominal to a Division bench will really be increasing the workload unnecessarily. We do not find that any prejudice would be caused to the litigants by not providing for intra-court appeal, even where the value involved is large. In such a case, the High Court by rules, can provide that the Division Bench will hear the regular first appeal. No fault can, thus, be found with the amended provision Section 100-A*
- ***Parra 16.*** *Our attention has been drawn to Order 7 Rule 11 to which clauses (e) and (f) have been added which enable the court to reject the plaint where it is not filed in duplicate or where the plaintiff falls to comply with the provisions of Rule 9 of Order 7. It appears to us that the said clauses being procedural would not require the automatic rejection of the plaint at the first instance. If there is any defect as contemplated by Rule 11(e) or non-compliance as referred to in Rule 11(f), the court should ordinarily give an opportunity for rectifying the defects and in the event of the same not being done the court will have the liberty or the right to reject the plaint.*
- ***Parra 17.*** *In Order 18, Rule 4 has been substituted and sub-rule (1) provides that in every case examination-in-chief of the witnesses shall be on affidavits and copies thereof shall be supplied to the opposite parties by the party who calls them for evidence. It was contended by Mr. Vaidyanathan that it may not be possible for the party calling the witness to compel the witness to file an affidavit. It often happens that the witness may not be under the control of the party who wants to rely upon his evidence and that witness may have to be summoned through court. Order 16 Rule 1 provides for list of witnesses being filed and summons being issued to them for being present in court for recording their evidence. Rule 1-A, on the other hand, refers to production of witnesses without summons where any party to the suit may bring any witness to give any evidence or to produce documents. Reading the provisions of Order 16 and Order 18 together, it appears to us that Order 18 Rule 4(1) will necessarily applying for summoning under Rule 1 brings any witness to give evidence or produce any document. In such a case, examination-in-chief is not to be recorded in court but shall be in the form of an affidavit.*
- ***Parra 18.*** *In cases where the summons have to be issued under Order 16 Rule 1, the stringent provision of Order 18 Rule 4 may not apply. When summons are issued, the court can give an option to the witness summoned either to file an affidavit by way of examination-in-chief or to be present in court for his examination. In appropriate cases, the court can direct the summoned witness to file an affidavit by way of examination-in-chief. In other words, with regard to the summoned witnesses the principle incorporated in Order 18 Rule 4 can be walved. Whether a witness shall be directed to file affidavit or be required to be present in court for recording of his evidence is a matter to be decided by the court in its discretion having regard to the facts of each case.*
- ***Parra 19.*** *Order 18 Rule 4(2) gives the court the power to decide as to whether evidence of a witness shall be taken either by the court or by the commissioner. An apprehension was raised to the effect that the court has no discretion and once it decides that the evidence will be recorded by the Commissioner then evidence of other witnesses cannot be recorded in court. We do not think that this is the correct interpretation of sub-rule (2) or Rule 4. Under the said sub-rule, the court has the power to direct either all the evidence being recorded in court or all the evidence being recorded by the Commissioner or the evidence being recorded partly by the Commissioner and partly by the court. For example, if the plaintiff wants to examine 10 witnesses, then the court may direct that in respect of five witnesses evidence will be recorded by the Commissioner while in the case of the other five witnesses evidence will be recorded in court. In this connection, we may refer to Order 18 Rule 4(3) which provides that the evidence may be recorded either in writing or mechanically in the presence of the Judge or the Commissioner. The use of the word "mechanically" indicates that the evidence can be recorded even with the help of the electronic media, audio or audio-visual, and in fact whenever the evidence is recorded by the Commissioner it will be advisable that there should be simultaneously at least an audio recording of the statement of the witnesses so as to obviate any controversy at a later stage.*

- ***Parra 20.*** *Mr. Vaidyanathan drew our attention to the fact that by amendment in 1976, Rule 17-A had been inserted in Order 18 which gave an opportunity to a party to adduce additional evidence under the circumstances mentioned therein. He submitted that by the Amendment Act of 2002, this Rule has been deleted which may cause hardship to the litigants.*
- ***Parra 21.*** *We find that in the Code of Civil Procedure, 1908, a provision similar to Rule 17-A did not exist. This provision, as already noted, was inserted in 1976. The effect of the deletion of this provision in 2002 is merely to restore status quo ante, that is to say, the position which existed prior to the insertion of Rule 17-A in 1976. The remedy, if any, that was available to a litigant with regard to adducing additional evidence prior to 1976 would be available now and no more. It is quite evident that Rule 17-A has bend elated with a view that unnecessarily applications are not filed primarily with a view to prolong the trial.*
- ***Parra 22.*** *Lastly, Mr. Vaidyanathan drew our attention to Rule 9 which was inserted in Order 41 which reads as follows:*
  - *"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.*
  - *Such book shall be called the register of appeal."*
- ***Parra 23.*** *The apprehension was that this Rule requires the appeal to be filed in the court from whose decree the appeal is sought to be filed. In our opinion, this is not so. The appeal is to be filed under Order 41 Rule 1 in the court in which it is maintainable. All that Order 41 Rule 9 requires is that a copy of memorandum of appeal which has been filed in the appellate court should also be presented before the court against whose decree the appeal has been filed and endorsement thereof shall be made by the decreeing court in a book called the register of appeals. Perhaps, the intention of the legislature was that the court against whose decree an appeal has been filed should be made aware of the factum of the filing of the appeal which may or may not be relevant at a future date. Merely because a memorandum of appeal is not filed under Order 41 Rule 9 will not, to our mind, make the appeal filed in the appellate court as a defective one.*
- ***Parra 24.*** *No other contentions were raised. As already observed, if any difficulties are felt, these can be placed before the Committee constituted hereinabove. The Committee would consider the said difficulties and make necessary suggestions in its report. It is hoped that the amendments now made in the Code of Civil Procedure would help in expeditions disposal of cases in the trial courts and the appellate courts.*
- ***Parra 25.*** *It would be open to the Committee to seek directions. The Committee is requested to file its report within a period of four months. To consider the report, list these petitions after four months. Copies of this judgment be sent to the Registrars of all the High Court so that necessary action can be taken by the respective High Courts and any writ petition bending in those High Courts can be formally disposed of.*

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