

CIVIL PROCEDURE CODE

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Hope everyone is safe. Please be cautious and study well. May god bless you all. Feel free to mail your questions on nihar.rits@gmail.com.

APPEAL

Appeal is application by a party to an appellate court asking it to a) set aside or b) reverse a decision of a subordinate court. An appeal is a continuation of a suit. The appellate court possesses the same powers and duties as the original court.

PROVISIONS

Part VII, Sections 96-112, Order XLI-Order XLV Civil procedure code deals with it.

CPC talks about the following types of Appeal:

- First appeal- lies against original decrees
- Second appeal- lies against decree of the appellate court
- Appeal to the Supreme Court
- Appeals from order
- Appeal by indigent persons

ESSENTIALS OF APPEAL

- A decree or an order
- An aggrieved party/person
- A reviewing body

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

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

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed ten thousand rupees.

According to Section 96:

a) Appeal will lie from an original decree passed ex-parte,

b) No appeal will lie from consent decree. It is based on the principle of estoppel it presupposes that the parties to an action can, expressly or impliedly, waive or forgo their right of appeal by any lawful agreement or compromise or even by conduct. But it doesn't apply when it is challenged that the compromise was not arrived at lawfully.

c) If a decree has been passed by court of small causes where suit value does not exceed ten thousand rupees, appeal will lie only on question of law. It has been done so as to reduce appeals in petty cases. It bars appeals except on points of law.

- Sections 96-99+Section 107+Order 41 deal with first appeals.
- In first appeal parties have a right to be heard- both on questions of law and fact.
- First appellate court has to write a self-contained judgement, give reasons for its decision on the points of determination, consider all the evidence on record. Read it with Order XLI Rule 31.
- First appellate court is the final court of facts, it has to consider all the evidence on record, must consider reasons given by the trial court for its findings.
- Section 96 provides for first appeal and section 100 provides for second appeal.

RIGHT OF APPEAL

- There is no natural or inherent right to appeal. It is a statutory right and it can be conditional or qualified.
- It exists only when a statute confers it.
- The scope of such right is also determined by the statute that confers it.
- It is a substantive right.
- This vested right can be taken away only by a subsequent enactment if it so provides expressly or by necessary implication and not otherwise.

- Right to appeal is a universal requirement because all men are fallible and judges are human beings and may commit a mistake.
- Right to file a suit is an inherent right unless the suit is barred by a statute but right to file an appeal is conferred by the Statute only.
- While a suit creates a cause, an appeal reviews and corrects the proceedings in a cause already constituted.

In an appeal, the appellate court:

- i. May reverse the order
- ii. May modify the order
- iii. May merely dismiss the appeal and thus confirm the order without modification

Appeal and revision (under section 115) are different

- Appeal involves rehearing on law as well as on fact (unless limited by the Statute). The first appellate court is generally the immediate superior court. Revision lies before High Court and in cases where no appeal lies.
- Appeal is a continuation of proceeding and the appellate authority has power to review the evidence subject to the statutory limitations but in revision, there is no power to re-examine, review or reassess the evidence and substitute its own finding unless the statute expressly confers this power.

Difference between first appeal and second appeal

- First appeal lies against-decree passed by court exercising original jurisdiction. Second appeal lies against-decree passed by first appellate court.
- First appeal can be filed in a superior court which may or may not be high court. Second appeal-filed only in High Court.
- First appeal- maintained on a question of fact or law or mixed question of fact and law. Second appeal- can be filed only when a substantial question of law is involved.
- Example: the order “returning” the plaint is revisable and not appealable while the reverse is true for “rejection” of plaint.

- A memorandum of appeal may be treated as a revision if an appeal has been preferred in a case where no appeal lies.
- Right of appeal accrues in favor of the litigant on the day the *lis* commences. It is governed by the law prevailing at the date of institution of the suit.

WHO MAY APPEAL?

- Any aggrieved party to the suit or his legal representatives if such party is dead,
- Guardian *ad litem* appointed by the court,
- A person claiming under a party to the suit or a transferee of interests of such party,
- An auction-purchaser may appeal from an order in execution setting aside the sale on the ground of fraud.
- Any other person, with the leave of the court, if he is adversely affected.

WHO CANNOT APPEAL?

- A party who has agreed not to appeal or has waived his right to appeal,
 - If a party accepts the benefits under a decree, he can be estopped from questioning its legality,
 - Right of appeal is destroyed when the court to which the appeal lies is abolished without any forum being substituted at its place.
- Appeal will lie against the preliminary decree.
 - Appeal lies against a decree and not judgement but an appeal maybe preferred from a judgment if decree has not been drawn up.
 - Appeal lies against a decree or order but not against a mere finding by a court. A finding of court may or may not amount to a decree or an order. Order XLI Rule 22, Explanation allows filing of cross-objection against adverse findings recorded against a litigant.
 - An appeal cannot be filed against a dead person. An application for substitution of legal representative of the deceased can be made.

- **READ THE FOLLOWING**

1. Sections 96-99-A

2. Order XLI
3. N. Mohan v. R. Madhu, CIVIL APPEAL NO. 8898 OF 2019, [Arising out of SLP(C) No.20686 of 2018]

For more information on this refer the PDF uploaded before.