



Chapter-8 :
**Civil
Procedure
Code,
1908**

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Introduction

→ Cause of Action

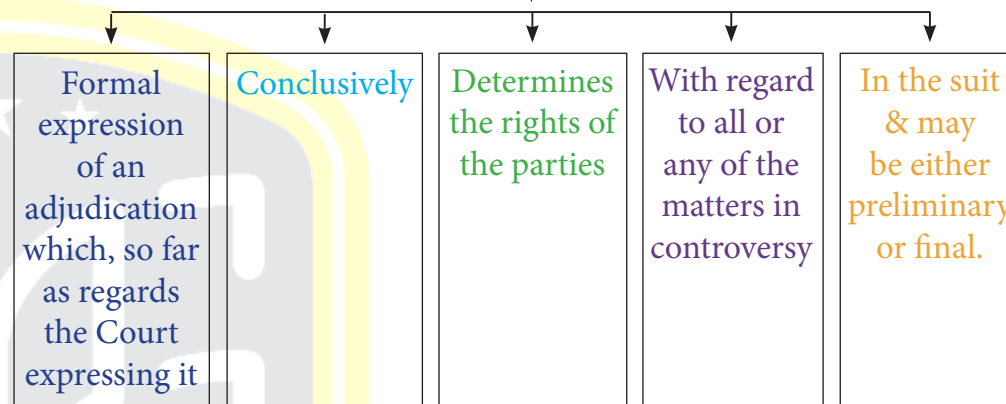
- Means,
Every fact that it would be necessary for the plaintiff to prove in order to support his right to the judgement of Court.
- All the essential facts constituting its rights & infringement.
- Every fact which will be necessary for the plaintiff to prove in order to support his right to the judgement.

→ Judgement [Section2(9)]

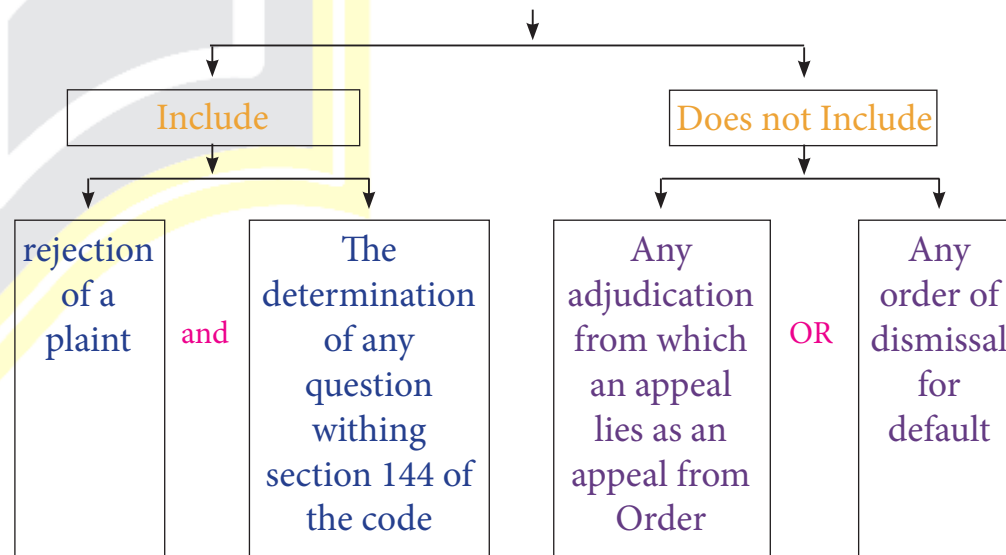
- Means,
- The statement given by the Judge on the grounds of decree or order.
- It must set out the grounds and reasons for the Judge to have arrived to the decision.
- It is the decision of a Court of justice upon the respective rights and claims of the party to an action in a suit submitted to it for an determination.

→ Decree [Section-2(2)]

Essentials of Decree



The decree shall be deemed to





Note :

	Preliminary decree	Final Decree
1.	When further proceedings have to be taken before the suit can be completely disposed of	It is dependent and subordinate to the preliminary decree
2.	It is not dependent on the final	States the result achieved by means of preliminary decree
3.	Ascertain what is to be done	
4.	It is set aside the final decree is automatically superseded.	

→ **Order [Section-2(14)]**

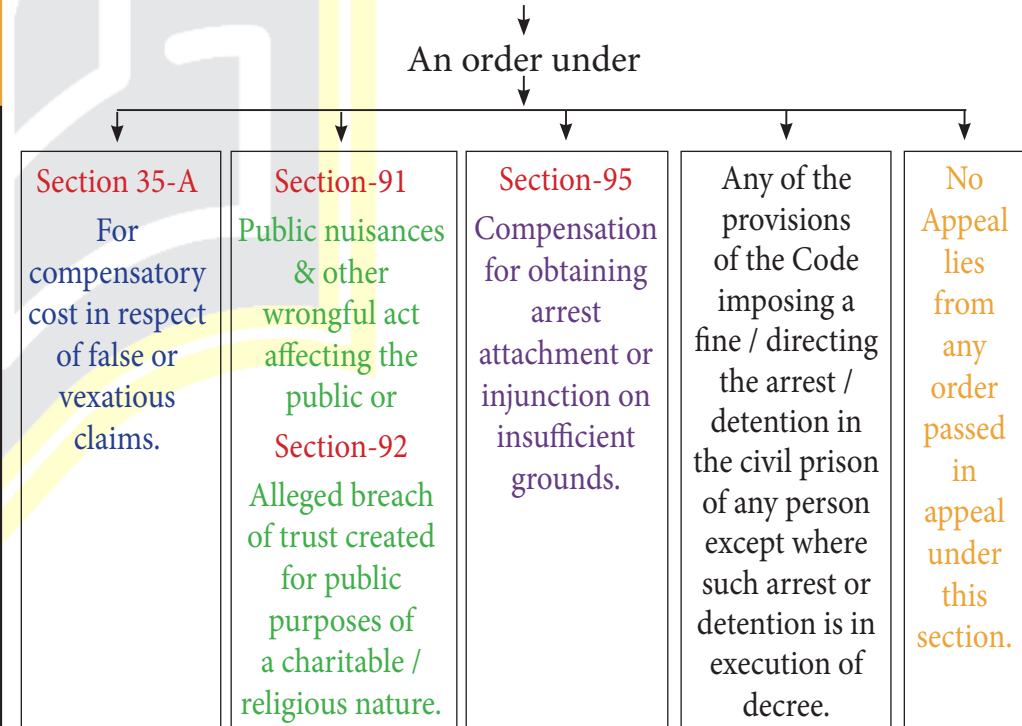
Means,

Formal expression of any decision of a Civil Court which is not a decree.

Q. All orders made by a court are not appealable under the code of civil procedure, 1908. What are appealable order under code of Civil Procedure, 1908.

Ans. According to Section 104, No appeal lies against the order other than what is expressly provided in the Code or any other law for the time being in force.

Under the Code appealable orders are -



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	Order	Decree
1.	There can be any number of orders in a Suit	In General, there can only be one Decree or at the most one preliminary & one final Decree in a Suits.
2.	Only those orders which are specified as Appealable in the court are appealable	Every decree is appealable unless on appeal is expressly barred
3.	Order may or may not finally determine a right.	It contains the convulsive determination of right.
4.	Order can not be an preliminary order	Decree may be final, preliminary, partly preliminary or partly final.

Note : Interlocutory Order

- The Court may, on the application of any party to a suit, pass orders on different applications and any order which is not the final order is called an “interlocutory order”.
- It does not dispose of the suit but is a merely a direction to procedure.
- It reserves some questions for further determination.

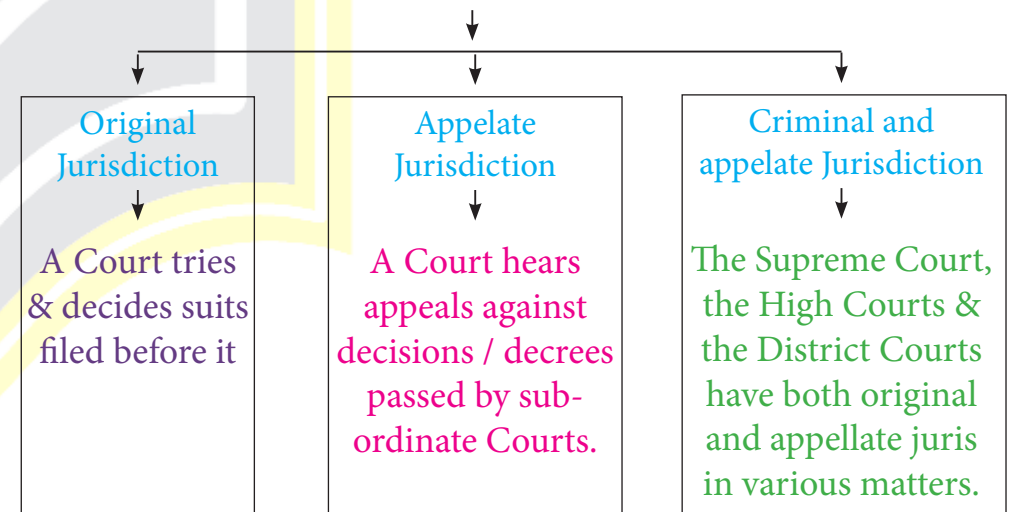
→ Decree-holder [Section-2(3)]

- Means any person favour whom a decree has been passed or an order capable of execution has been made.

→ Judgement-debtor [Section-2(10)]

- Means any person against whom a decree has been passed or order capable of execution has been made.
- It does not include the legal representative of a deceased Judgement-Debtor.

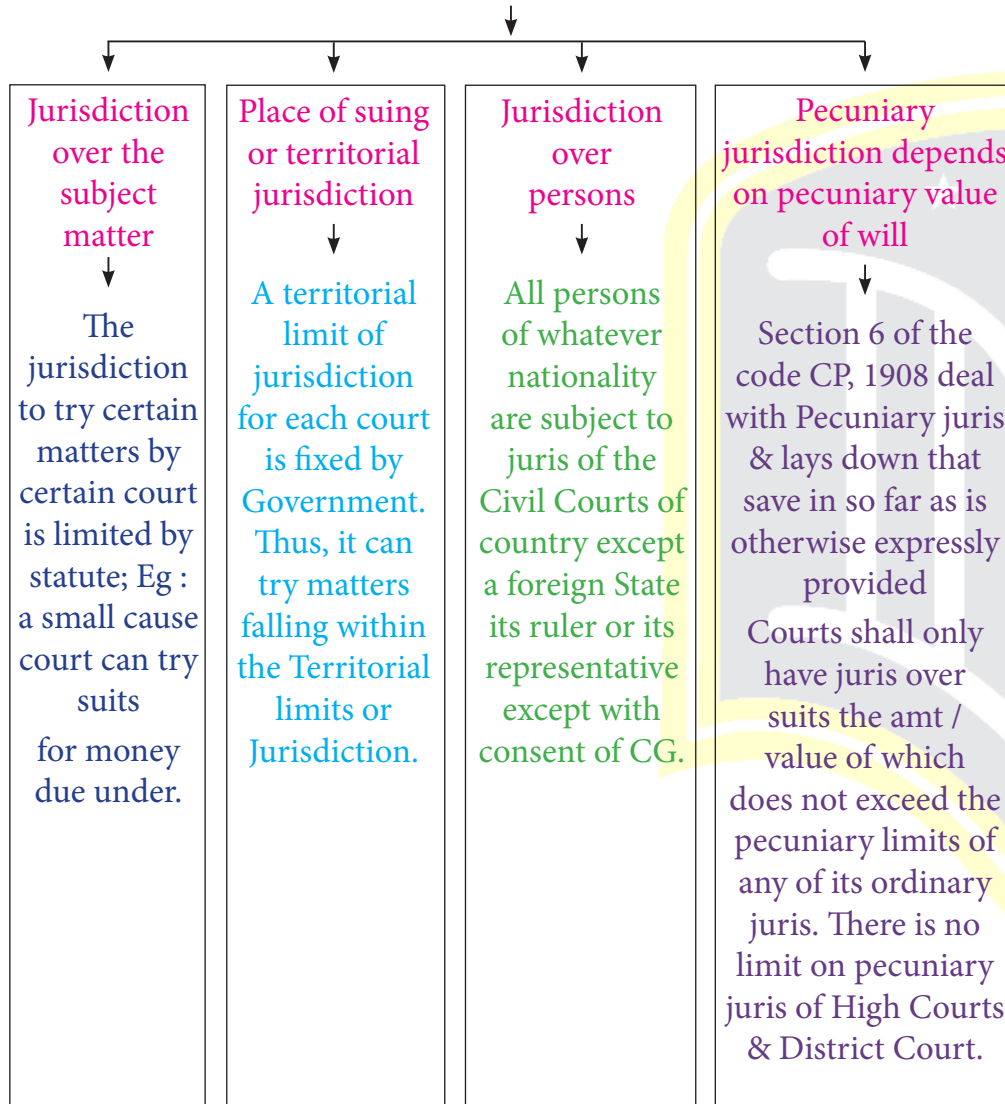
* Jurisdiction may be further classified into following categories depending upon their powers



* Jurisdiction of Courts and Venue of Suits



→ A limitation on Jurisdiction of a Civil court may be of four kinds. These are as follows -



→ Courts to try all civil suits unless barred. [Section-9]

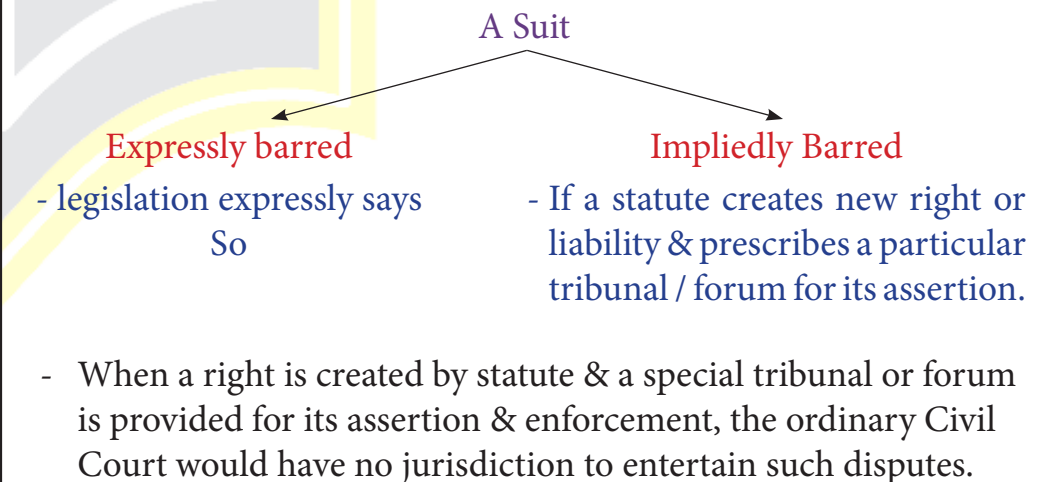
- The Civil Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognisance is either expressly or impliedly barred.
- Every person has an inherent right to bring a suit of civil nature.

- Civil Court has jurisdiction to decide the question of its jurisdiction although as a result of the enquiry it may be found that it has no jurisdiction over the matter.

Jurisdiction depends not on the truth or falsehood of facts, but upon their nature.

Jurisdiction is determinable at the commencement not on conclusion of inquiry

Ref : Rex v/s Boltan.





Stay Of Suit (Doctrine Of RES SUB JUDICE)

[Section 10]

- 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
- Litigating under the same title
- Such suit is pending in the same or any other Court in India.
- Any Court beyond the limits of India established or continued by the CG & having like jurisdiction or before the Supreme Court.

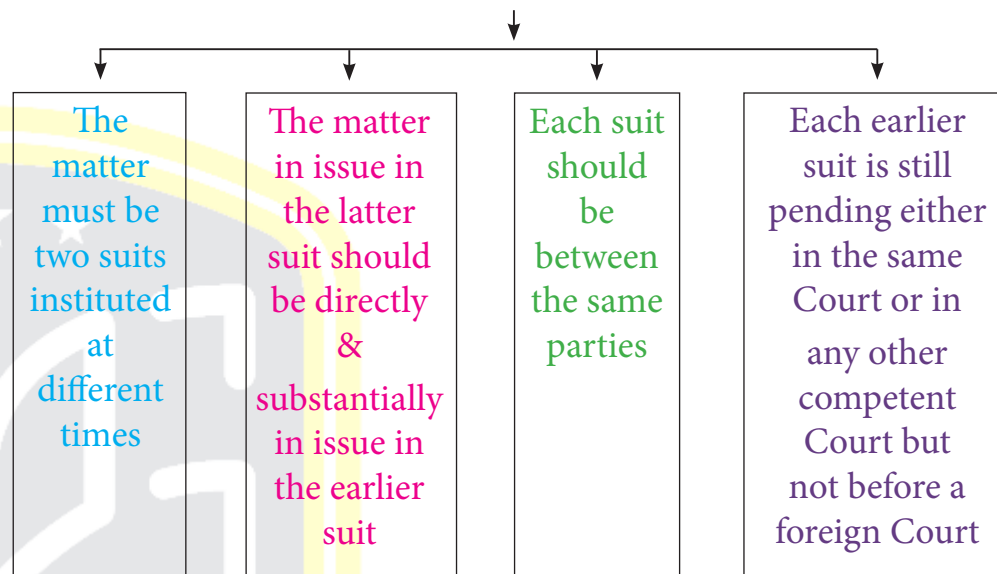
- Object

1. To prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of same matter in issue.
2. To avoid conflict of decision.

Note : The institution of second suit is not barred by Section 10, but it says that the trial cannot be proceeded with.

Ref : M/s. Wings Pharmaceuticals (P) Ltd. & another v/s M/s. Swan Pharmaceuticals & others.

→ Essential conditions for stay of suits



- If these conditions exist, the later suit should be stayed till the disposal of earlier suit, the findings of which operate as res judicata on the later suit.

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Place of Suing (Territorial)

Section	headings	Details
Section 15	Court in which suit to be instituted	Every suit shall be instituted in the Court of lowest grade competent to try it
Section 16	Suit to be instituted where subject matter situated.	<p>The following suits relating to property shall be instituted in the Court within the local limits of whose jurisdiction the property is situated</p> <div style="text-align: center;"> </div>

Section 17	Where immovable property is situated within the jurisdiction of different Courts	Where immovable property situated within the local limits of jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction the property is situated wholly or partly
Section 18	Where the local limits of jurisdiction of Courts are uncertain	<p>When jurisdiction is alleged to be uncertain as within the local limits of jurisdiction of which two or more Courts any immovable property is situated</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">then,</p> <p>Any of the said Courts may proceed to entertain the suit after having record a statement to effect that it is satisfied that there is ground for such alleged uncertainty.</p>
Section 19	Where wrong done to the person or to movable property	<p>Where a suit is for compensation for wrong done to the person or to movable property</p> <p style="text-align: center;">↓</p> <p>The suit may be instituted at the option of the plaintiff in either of the Courts</p>

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(a) In jurisdiction of court where the wrong was done

(b) In jurisdiction of court where the defendant resides (OR) Carries on business (OR) personally work for Gain.

Example : A resides in Delhi, Beats B in Calcutta. B may sue A either in Calcutta or in Delhi

or carry on business or personally work for Gain - Suit can also be instituted where the cause of action, wholly or in part arises.

(c) In case of body corporate / company Suit can instituted, where it shall be deemed to be carry on business at its sole or principal office in India

OR

In case of cause of action at any other place - if it has subordinate office, at such place.

Example : Ajit resides at Bhopal, Balijit at Indore and Charanjit at Lucknow. A,B,C, being together at Calcutta, B & C make a joint promissory not payable on demand & delivery to A where can A Sue B & C for amount of Promissory Note.

- According to section 20, Ajit can file suit in Indore, Lucknow, and Kolkata.

Section 20

Other Suits

Subject Subject to provision to Sec. 15 to 19
(a) Every suit shall be instituted in Court within the local limits of whose jurisdiction the defendant actually resides or carries on an business as personally work for Gain

(b) **If there ar more than one defendant :** Suit shall be instituted in the court within the local limit of whose jurisdiction any of the defendant resides or carries on business or personally works for Gain.

Conditions : Either the leave of court is obtain
OR
The defendant who do not reside

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RES JUDICATA

[Section-11]

- No Court shall try any suit or issue in which the matter has been directly & substantially in issue in a former suit, **between the same parties, in a Court competent to try such subsequent suit**

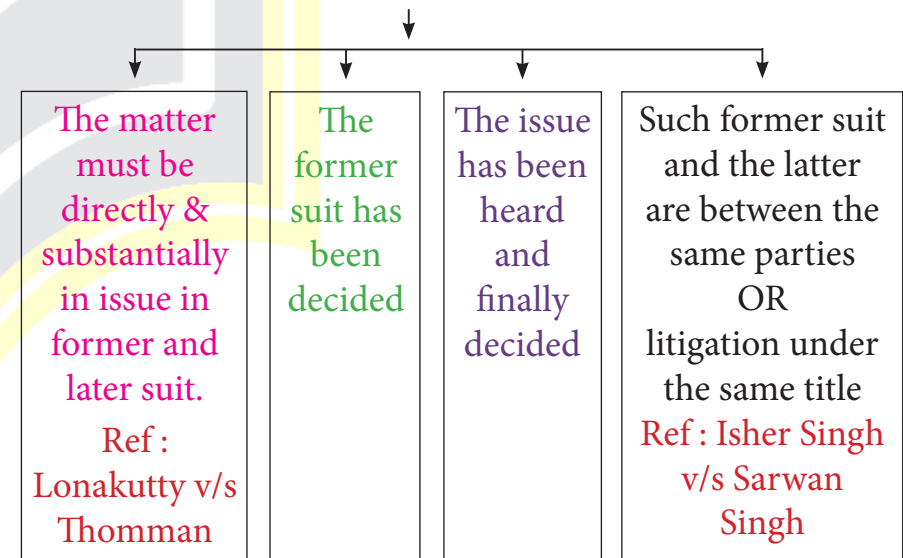
OR

The suit in which such issue has been subsequently raised and finally decided by such Court.

“No one shall be twice vexed for the same cause”

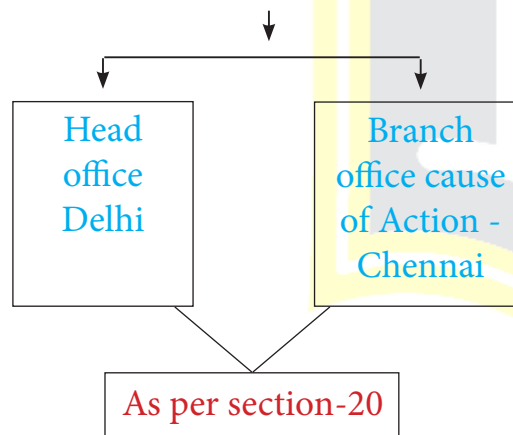
Ref : S.B. Temple v/s V.V.B. Charyulu.

- Requirements of RES JUDICATA



Example : A transport company has its head office in Delhi and its Branch office in Chennai, Jaipur & Mumbai. A dispute Cropped up between Sam and the company in respect of transaction made through Chennai office. Sams files the Suit in respect of this dispute against eh company in a court at a Jaipur.

Sam Suit file - Jaipur (X)



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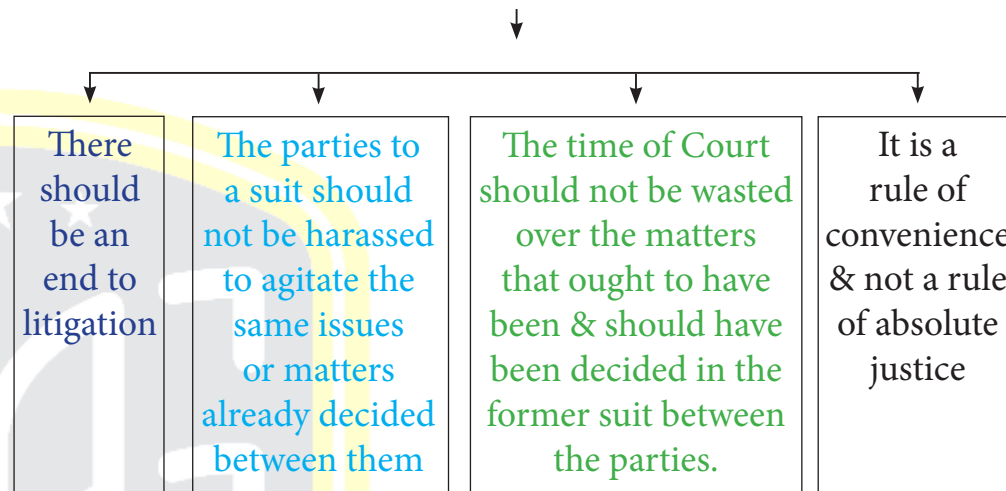
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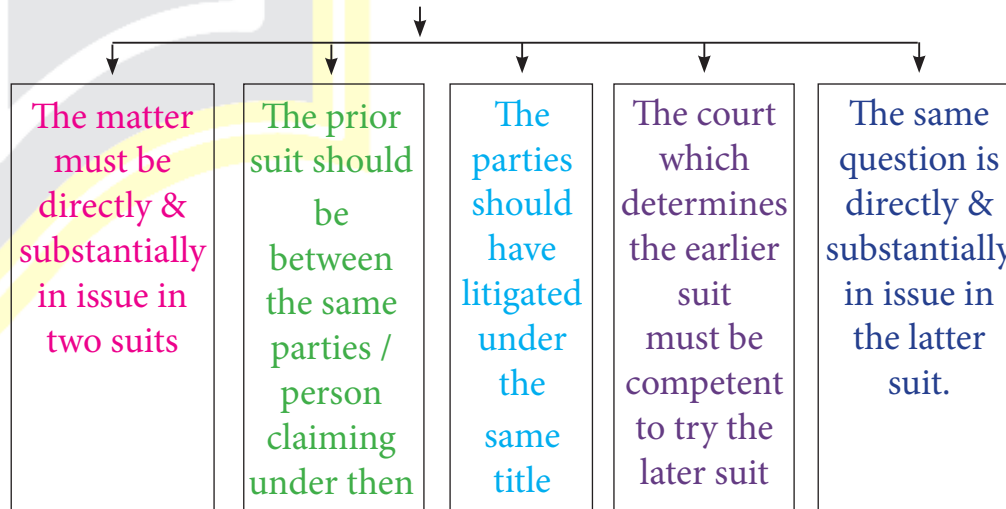


Reference	Details	Whether RES JUDICAIA
(Municipal Corporation v/s Madan Mohan)	In the matter of taxation for levy of municipal taxes, there is no question of res judicata as each year's assessment is final for that year and does not govern latter years	No Res Judicata
Mysore State E. Board v/s Bangalore	The issue or the suit itself is heard and finally decided, then it operates as res judicata & not the reasons leading to the decision	Res Judicata
Prafulla Chandra v/s Surat Roit	However, no res judicata operates when the points could not have been raised in earlier suit	Not Res Judicata
Mukunda Jana v/s Kanta Mandal	But when a suit has been decided on merits, and the appeal is dismissed on a preliminary point, it amounts to the appeal being heard & finally decided & the decision operates as res judicata	Res Judicata

→ Doctrine is Based on the following grounds of public policy in RES JUDICATA



→ Conditions of RES JUDICATA





Explanation	Details									
I	<p>The expression former suit shall denote a suit which has been decided prior to the suit in question whether or not. It was instituted prior thereto.</p> <p>Eg :</p> <table border="1"> <thead> <tr> <th>Suit filed on</th> <th>Suit Decided on</th> <th>Former suit</th> </tr> </thead> <tbody> <tr> <td>1/10/12</td> <td>suit pending</td> <td>No</td> </tr> <tr> <td>1/10/13</td> <td>10/11/17</td> <td>Yes</td> </tr> </tbody> </table>	Suit filed on	Suit Decided on	Former suit	1/10/12	suit pending	No	1/10/13	10/11/17	Yes
Suit filed on	Suit Decided on	Former suit								
1/10/12	suit pending	No								
1/10/13	10/11/17	Yes								
II	The Competence of a court shall be determined perspective of any provisions as to right of appeal from decision of such court.									
III	That the matters must have been alleged by one party and either denied or admitted expressly or impliedly by the other.									
IV Section 11 Explanation 4	<p>“Constructive RES JUDICATA”</p> <p>- Any matter which might or ought to have been made a ground of defence or attach in such former suit shall be deemed to have been a matter directly & substantially in issue in such (former) suit.</p>									

Eg : The suit filed by Ram against Sohan for getting house “X” on the ground that it was given to him by deceased kumar under his will. The suit dismissed as Ram failed to prove the will. Now he files the another suit against sohan to house “X” on the ground that he is entitled to get the house because he is the nearest heir of deceased kumar



Here fresh suit shall be barred by the application of doctrine of constructions RES JUDICATA
Thus Ram will not succeed.

Example 2 Anil was a trustee of a trust. After Anil’s death, brijesh wrongfully takes the possession of trust property. Chandan, the son of Anil files the suit for recovery of possession of the property against breach as the legal heir of Anil in his individual capacity. But Chandan did not succeed. Then Chandan file another suit for recovery of possession against Brijesh in the capacity of trustee as he was appointed as a trustee after the death of Anil -



The two suits filed by Chandan are in

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	two different capacity. So Second suit is not barred.
V	Any relief claimed in the plaint but not expressly granted shall be deemed to have been refused.
VI	<p>Representative Suits</p> <p>↓</p> <p>- In the case of a representation suit / class action all persons interested in any public / private right claimed in common for themselves and others are to be deemed to claim under the persons So, litigating & Res judicata shall apply to them.</p>
VII Example	<p>Execution Proceedings</p> <p>- Suppose A filed suit against B relating to Recovery of Rs. 50 lakh from B. Decree passed in favour of A. Now A further went for execution of decree and the time limit for such execution is 12 year. Suppose "A" went after 2 years relating to execution of decree the Amt. of recovery from B. But, B somehow proved in court that he has already payed amount to A and now he is not liable to pay anything. Now A want to file</p>

	against the same regarding the execution of decree, but the second suit so filled is barred and A cannot file a suit.					
VIII	<p>"Former Court incompetent to Try Subsequent Suit"</p> <p>"Court of limited jurisdiction competent to decide such issue"</p> <p>Operates as res judicata in a subsequent suit though the former Court had no jurisdiction to try the subsequent suit.</p>					
Example	<p>Suppose A suit filled by A against B in recovery of property in 2004. The value of property was Rs. 2 lakh. In a Court whose pecuniary jurisdiction was Rs. 2 lakh. So the court is competent to take case. In 2019, A again filed a suit against B relating to same property whose valued increased to Rs. 20 lakh. He filed a case in a court whose pecuniary jurisdiction is Rs. 20 lakh. But if compare to former suit the earlier would have been become incompetent to the same parties.</p>					
Former Court incompetent to try subsequent suit	<table border="0"> <tr> <td>- Due to limited pecuniary jurisdiction</td> <td rowspan="2">} Res Judicata will not apply</td> </tr> <tr> <td>- Due to limited subject matters jurisdiction</td> </tr> <tr> <td>- Otherwise</td> <td>- Res Judicata will not apply</td> </tr> </table>	- Due to limited pecuniary jurisdiction	} Res Judicata will not apply	- Due to limited subject matters jurisdiction	- Otherwise	- Res Judicata will not apply
- Due to limited pecuniary jurisdiction	} Res Judicata will not apply					
- Due to limited subject matters jurisdiction						
- Otherwise	- Res Judicata will not apply					



SET-OFF COUNTER-CLAIM AND EQUITABLE SET-OFF

→ SET-OFF [order VII, Rule 6]

- It is a reciprocal acquittal of debts between the plaintiff & defendant.
- It has the effect of extinguishing the plaintiff's claim to the extent of the amount claimed by the defendant as a court claim

Suit → Recovery of money 1

Defendant → claim set of → Ascertained money 2
legally Recoverable 3

4 Not exceeding pecuniary
Jurisdiction of court

5 Same character

- In a suit for the recovery of money / the defendant claims to set off / against the plaintiff is demand / any ascertained sum of money / legally recoverable by him from the plaintiff / not exceeding the pecuniary jurisdiction of the court / and where both parties fill the same character / as in plaintiff's suit.
- The defendant may at the first hearing of the suit, but not afterwards unless permitted by the court, a present a written statement containing the particulars of the debt sought to be set-off.

→ Effect of Set-of

The written statement shall the same effect as a plaint in a cross-suit



As to enable the Court to pronounce a final judgement

→ Counter-claim [order 8, Rule 6A]

- 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 filling 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 claim for damages or not.



Such counter-claim must be within the pecuniary jurisdiction of Court.

Eg : After a bank has suit a customer for an unpaid debt, the customer counter claims against the bank for fraud in the procuring the debt. The court will sortout different claim in one suit.

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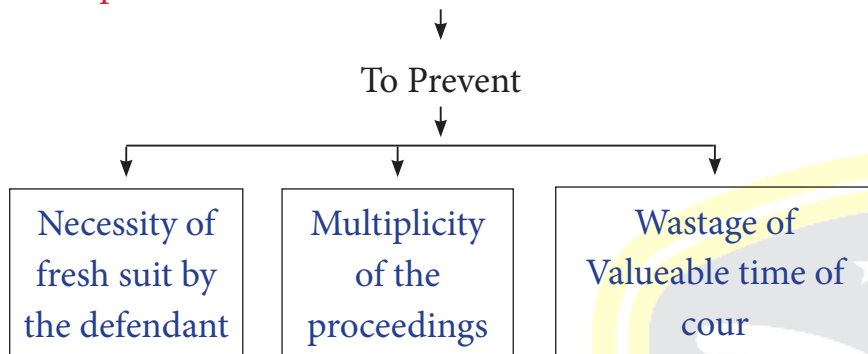
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Note : Purpose of setoff and counter claim



→ Equitable set-off

- Sometimes, the defendant is permitted to claim set-off in respect of an unascertained sum of money, where the claim arises out of the same transaction,
- Generally the suits emerge from cross-demands in the same transaction and this doctrine is intended to save the defendant from having to take recourse to a separate cross-suit

Eg : There is a contract between x and y. For supply of 7000 machine within 2 months → x supply 700 machine within 2 months → x sue y for recovery of price of 700 machine, y claims the compensation for loss sustain due to non supply of 300 machines → The court may apply the principal of equitable set off and may allow the compensation of non-supply of 300 machine which in unascertained.

→ Difference

Sr No	Set-off	Equitable Se-off	Counter claim
1	It is applied in case of ascertainable sum of money	It is applied even in case of unascertained sum of money	-
2	Need not to be orginated from same transaction	must be originated from same transaction	Need not arise of same transaction
3	legal set off can be claimed as a right by the defendant & the court is bound to Adjudicate upon the claim	It cannot be claimed as a right But, by the court's discretion	-
4	-	An Equitable Set-off is a claim by the defendant in defence which generally can not exceed the claim	counter claim by the defendant may exceed plaintiff claim.
5	Order VIII Rule 6 deals with set-off	Order XX, Rule 19(3) deals with equitable set-off	Order VIII Rule 6(A) to 6(G) deals with counter claim.
7	Define	Define	Define

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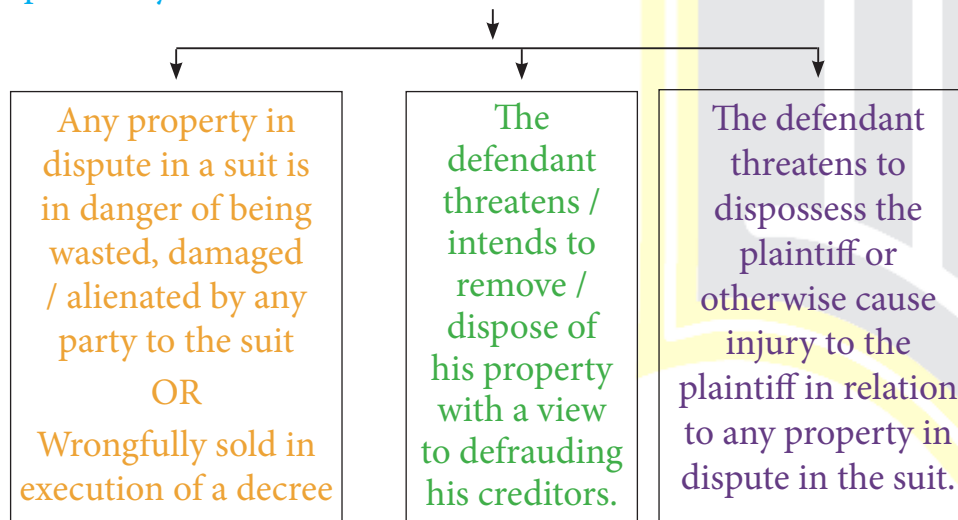
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TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS

→ Temporary injunction

- The Court may grant temporary injunction to restrain any such act or make such order for the purpose of staying and preventing the wasting, damaging, alienation / sale / removal / disposition the property / dispossession of the plaintiff, otherwise causing injury to the plaintiff
- In relation to any problem in dispute in the suit where it is proved by affidavit that -



- It would be necessary for the plaintiff to satisfy the Court that substantial and irreparable harm or injury would be suffered by him if such temporary injunction is not granted & that such loss / damage / harm cannot be compensated by damages.

→ 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,
 - ↓
 - in such manner and such terms as it thinks fit
 - ↓
 - of any movable property
 - ↓
 - Which is subject to speedy & natural decay
 - OR
 - Due to any other reasons it is desirable to be sold at once.

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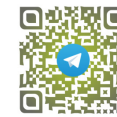
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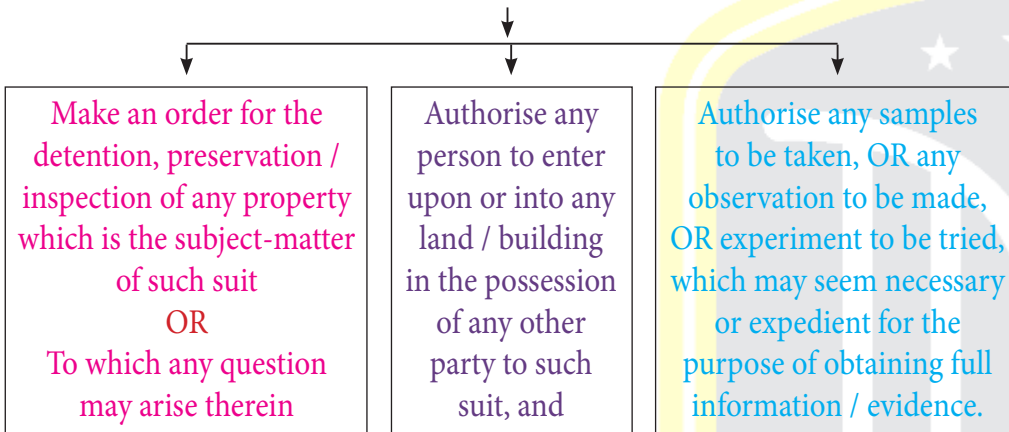
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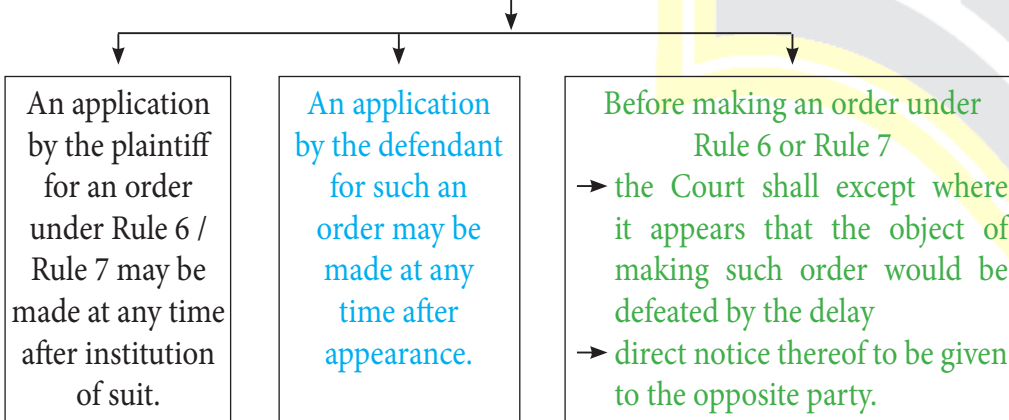
Detention, Preservation, Inspection Etc. of Subject-Matter of Suit

[Rule-7]

The Court may, on application of any party to a suit



Application of such order to after -



→ Deposit of money etc. in the Court

- Where the subject-matter of 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

The Court may order the same to be deposited in Court

- In any suit for restraining the defendant from committing a breach of contract



The plaintiff may, at any time after commencement of the suit

and

Either before / after judgement, apply to the court for a temporary injunction to restrain the defendant

- “The grant of a temporary injunction is a matter of discretion of Courts.
- Such injunction may be granted if the Court finds that there is substantial question to be investigated & that matter should be preserved in status until final disposal of that question. In granting injunction, the Court has to see the balance of convenience & inconvenience of both sides. If the object of granting a temporary injunction is liable to be defeated by the delay, the Court while passing an order granting interim / temporary injunction, has a notice served on the defendant to show cause why the order granting the interim injunction should not be confirmed. On hearing the objection of the defendant to such injunction, the Court either confirms the interim injunction / cancels the order of injunction.

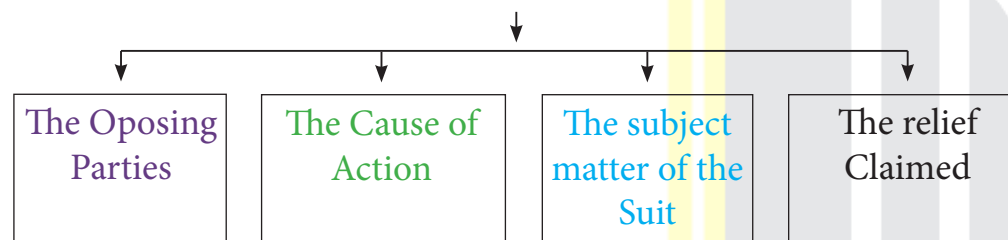


Institution Of Suit

[Order IV]

- Suit is a civil action - Start by presenting a plaint in duplicate
- Containing statement of material facts on which party pleading relief for his claim / defence.
- In every plaint the facts must be proved by affidavit.

ESSENTIALS OF SUIT



CONTENT OF SUITS

- The plaint consists of heading & title, the body of plaint & relief(s) claimed
- Filing of Suit : Every suit shall be instituted in the Court of the lowest grade competent to try it, as to determined with regard to the subject matter being either movable / immovable property or the place of abode or business or the defendant.

	Type of Suit	Place of Suit Related to that matter
1	A Suit for tort	May be brought either where the wrong was committed OR where the defendant resides OR Carries on his business.
2	A suit for breach of contract + Regarding other Suits they	(a) May be instituted in Court within the local limits of whose jurisdiction the defendant OR (b) Each of the defendants (where there are more than one) at the time of commencement of the suit actually OR Carries on business OR Voluntarily resides OR personally works for gain OR where any of the defendants so resident OR Works for Gain OR Carries on business provided the leave of the Court is given OR that the other defendants acquiesce in such situation ↓

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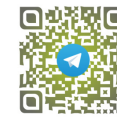
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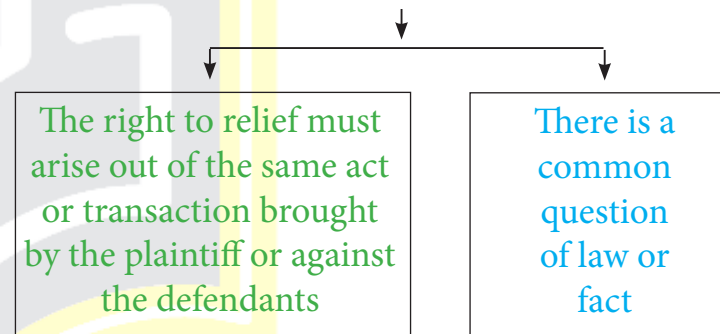


	<p>(c) May also be instituted where the cause of action arises that is, where the contract was made</p> <p style="text-align: center;">OR</p> <p>Where the breach was committed</p>
<p>A Suit for the Recovery of Immovable Property</p>	<p>A can be instituted in a Court within the local limits of whose jurisdiction the property</p> <p style="text-align: center;">OR</p> <p>Any property of it is situate</p> <p style="text-align: center;">CLAIM FOR RECOVERY OF ANY IMMOVABLE PROPERTY COULD BE FOR</p> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="border: 1px solid black; padding: 5px; width: 30%;">Mesne profits or arrear's of rent</div> <div style="border: 1px solid black; padding: 5px; width: 30%;">Damages for breach of contract</div> <div style="border: 1px solid black; padding: 5px; width: 30%;">Claims in which the relief sought is based on the same cause of action</div> </div> <p>Note : Where a plaintiff omits to sue in respect of</p> <p style="text-align: center;">OR</p> <p>Intentionally relinquishes any portion of his claim,</p> <p>he shall not afterwards sue in respect of portion so omitted or relinquished.</p>

→ Misjoinder of Parties

- Where more than one parties / persons joined in one suit as plaintiff or defendants in whom or against whom any right to relief does not arise or against whom separate suits are brought, no common question of law or fact would arise, it is a case of 'misjoinder of parties'

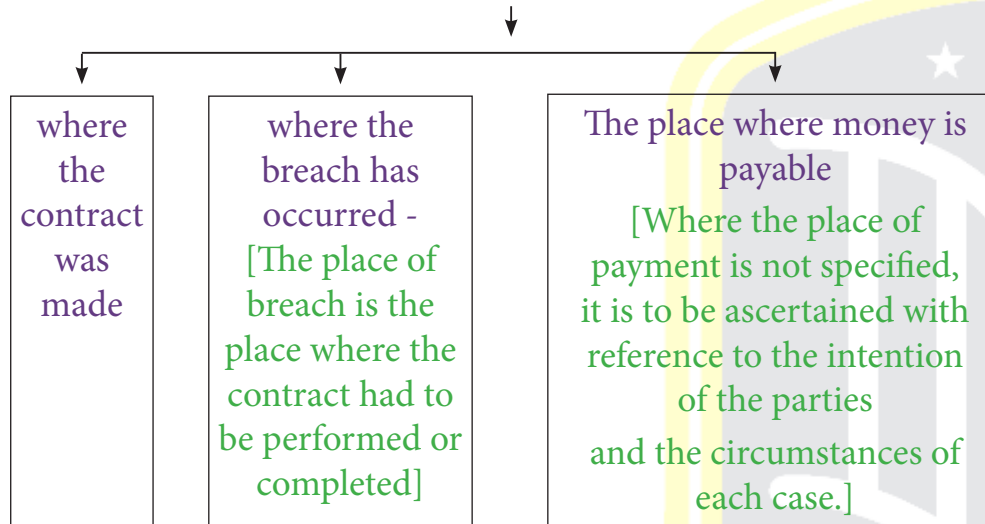
- To avoid such misjoinder two factors





→ Cause of action

- Refer the definition (as on first page)
- Every breach of contract gives rise to cause of action and suit may be instituted to secure the proper relief in the place –



→ Misjoinder of Causes of Action –

- If the plaintiffs are not jointly interested in all the causes of action there is misjoinder of causes of action
- All objections regarding misjoinder of parties or of cause of action should be taken at the first hearing of the suit & before the settlement of causes unless the ground for objections had subsequently arisen

Important Stages in Proceedings of a Suit

Sr No	Stages	Details
1.	Presentation of plaint	Every suit shall be instituted by presentation of plaint
2.	Service of Summons	When a suit has duly been instituted a summon may be issued to the defendant by the court.
3.	Filing of written statement, set off & counter claims	The defendant shall, within 30 days from the date of service of summon on him present a written statement to his defence. - This is subject to the proviso to said ruler, which may allow to file within 120 days on payment of cost.
4.	Appearance of parties	The parties should appear on the day fixed by summons.
5.	Examination of parties	The court examines the parties to the court
6.	Framing of Issue	The court frames the Issue
7.	Hearing	The court hears the parties
8.	Judgement	The court pronounces the decree

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Delivery of Summon by Court

- When the suit has been duly instituted, the Court issues an order / summon to the defendant

To appear and answer the claim and to file the written statement of his defence

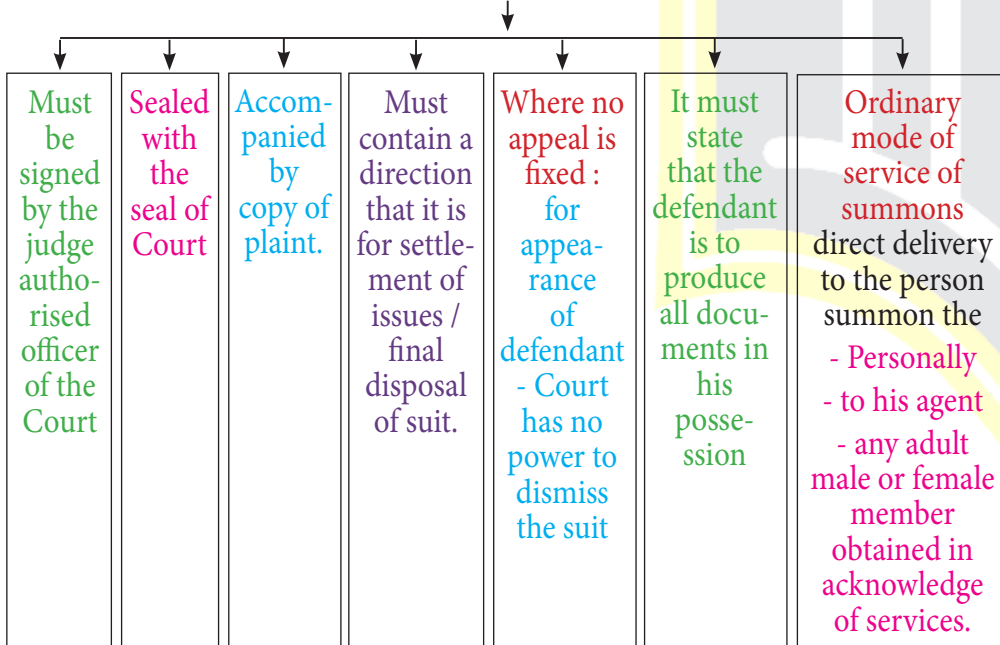
If any within the period of 30 days from the date of service of summon.

Note : No summon is to be issued when the defendant has appeared at the presentation of plaint & admitted the plaintiff's claim.

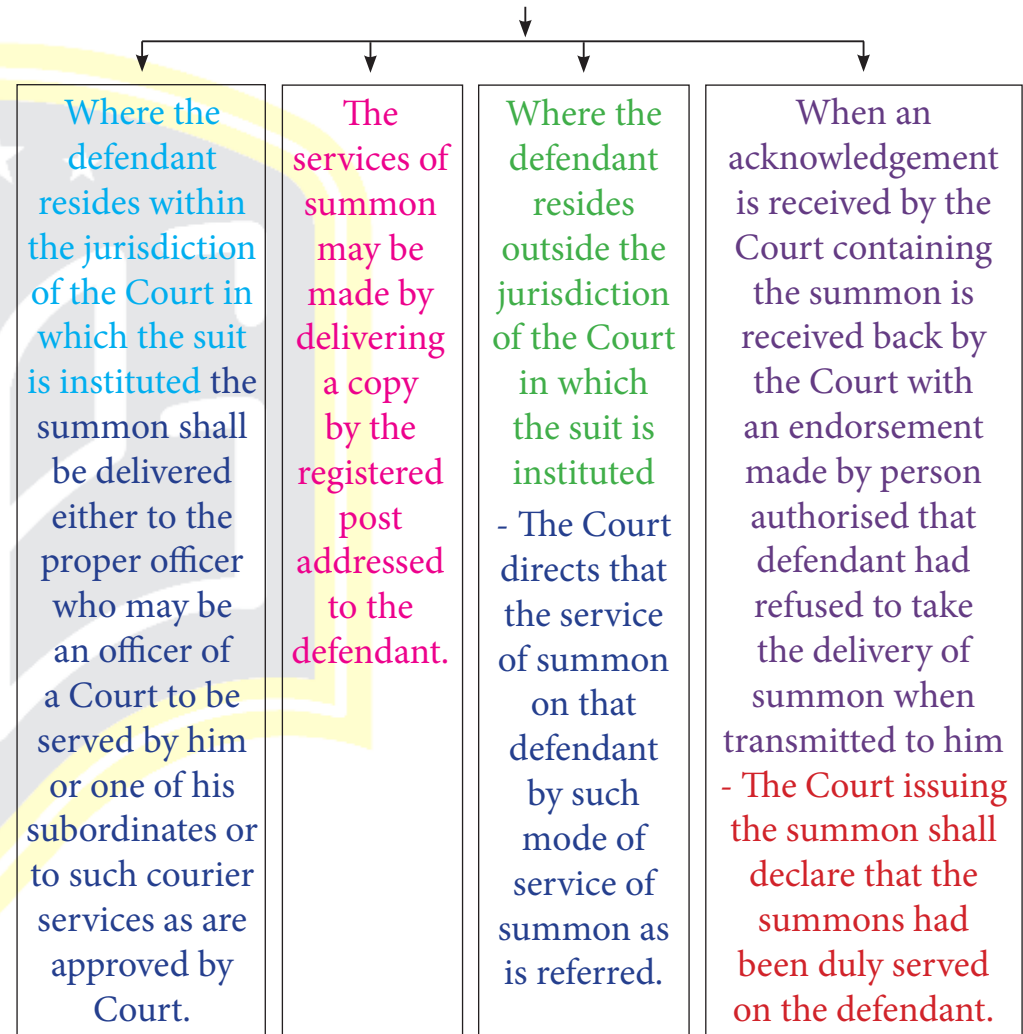
The defendant may appear, in person

by a duly instructed pleader by pleader accompanied by some person to be able to answer all material questions relating to suit.

SUMMONS



→ Order 5, Rule 9 substituted by the Code of Civil Procedure (Amendment) Act, 2002 provides that –





	Situations	Summon where to be executed
1	Where the Court is satisfied that there is reasons to believe that the person summoned is keeping of the way for the purpose of avoiding service.	shall order the service of 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 in which the person summoned is known to have last resided / carried on business or personally worked for gain OR In such other manner as the Court thinks fit.
2	Where defendant resides in another province	A summon 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.
3	In case of defendant who is a public officer, servant of railways / local authority.	summon to the head of the office in which he is employed.
4	In case of a suit being instituted against a corporation	(a) On the secretary or any director or other principal officer of the corporation (b) By leaving it or sending it post addressed to the corporation at registered office OR If there is no registered office then at the place where the corporation carries on business.
4	Where persons are to be sued as partners in the name of firm	(a) Upon one or more of the partners OR (b) At the principal place at which the partnership business is carried on within India OR Upon any person having the control / management of the partnership business. Where the partnership has been dissolved the summon shall be served upon every person whom it is sought to make liable.

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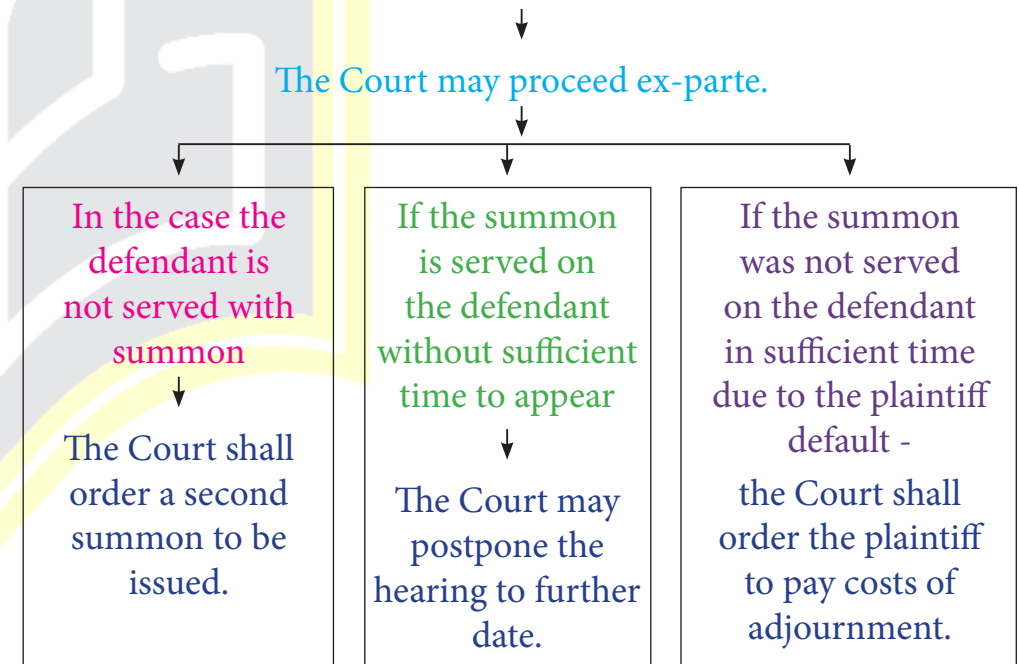
→ Defence

- The defendant has to file a written statement of his defence
- Within a period of 30 days from the date of service of summon.
- If he fails to file within specified period it may be allowed by the court on such other day, but it should not exceed 90 days.
- In case of disputes covered under Commercial Courts Act, 2015 - If defendant fails to file written statement within 30 days she shall be allowed to file it on such other day not exceeding 120 days from the date of service of summon.
- Where the defendant bases his defence upon a document
 - he has to enter such document in a list and produce Lesson it in the Court while presenting his written statement
- Any document which ought to be produced in the Court but is not so produced, such document shall not be received in evidence at the time of hearing of suit without the leave of the Court.

Note : This rule does not apply to documents produced for the cross-examination of the plaintiff witnesses

→ Appearance of parties & consequence of Non-Appearance

- If both the parties do not appear
- The Court may make an order that suit is dismissed
- If the defendant is absent and the plaintiff appears, in spite of due service of summon





Note : Where the hearing of the suit is adjourned ex-parte and the defendant appears at or before such hearing



The defendant may be heard in answer to the suit on such terms as to costs / otherwise.

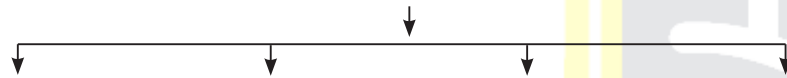
- If the plaintiff is absent & the defendant is present



The Court shall make an order for the dismissal at the suit

- In any case in which decree is passed exparte against a defendant, he may apply for setting aside a decree on the ground that summon was not duly served on him or he was prevented by sufficient cause.

- A defendant has 4 remedies available if an ex-parte decree is passed against him

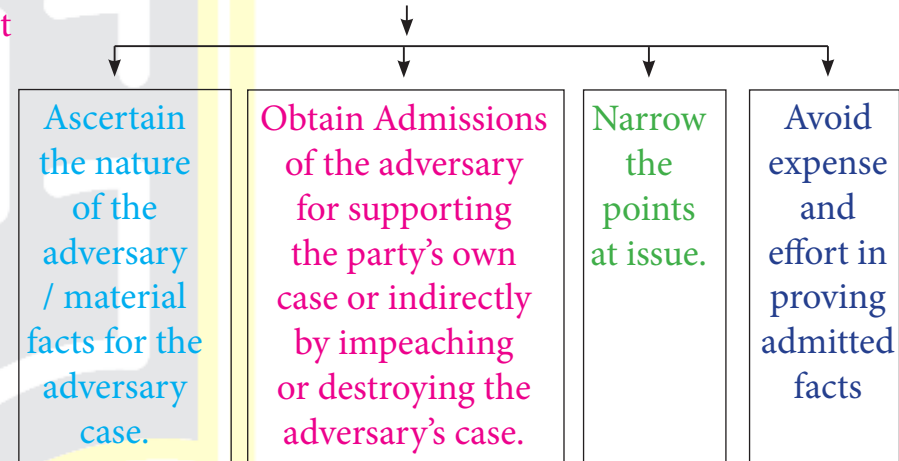


- He may file on appeal against the ex-parte decree
- He may file an application for review of the judgement
- He may file an apply for setting aside the ex-parte decree.
- A suit can also be filed to set aside an ex-parte decree obtained by fraud but no suit shall lie for non-service of summons

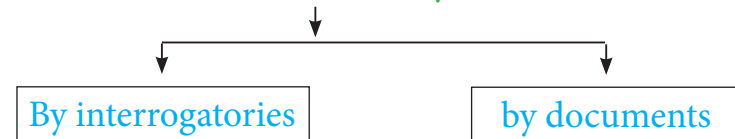
→ **Discovery and Interrogatories & Production of Documents**

Means : Discovery - Finding out material facts and documents from an adversary in order to known an ascertain the nature of the case in order to support his own case or in order to narrow the points at issue or to avoid proving admitted facts.

Object



- The two kinds of Discovery



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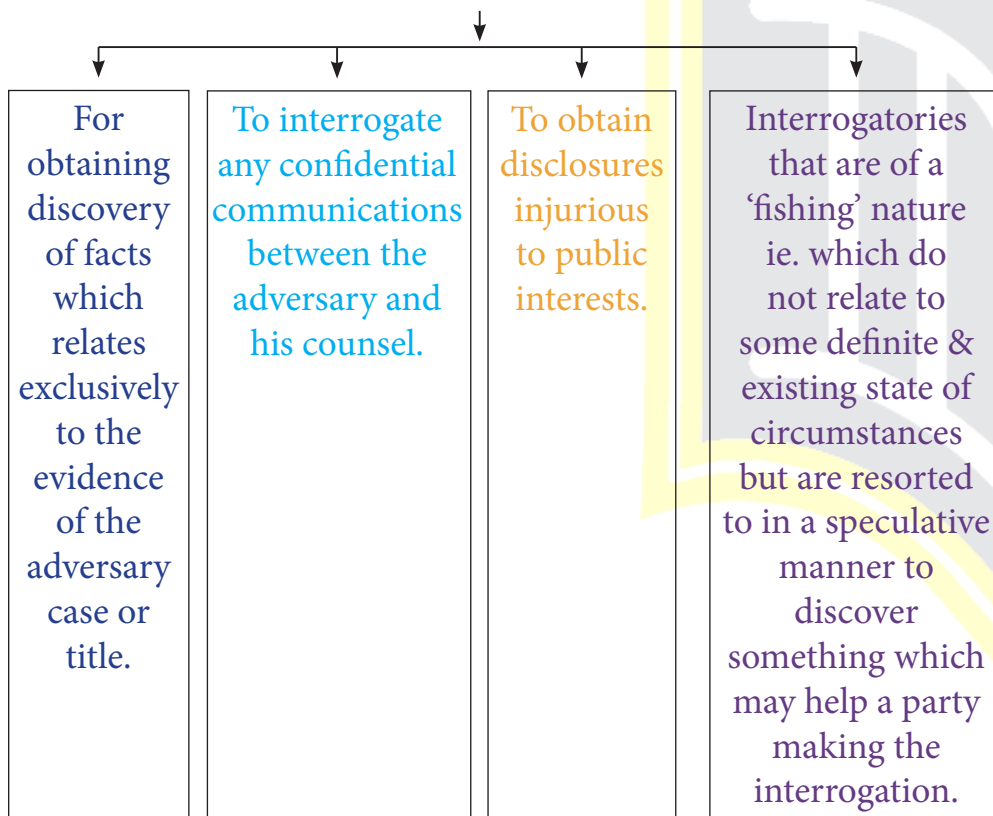
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(A) Discovery By Interrogation -

- Any party to a suit, by leave of the Court, may deliver interrogatories in writing for the examination of the opposite parties.
- But interrogatories will not be allowed for the following purposes



(B) Discovery by Documents

- All documents relating to the matters in issue in the possession or power of any adversary can be inspected by means of discovery by documents.

Any party may apply to the Court for an order directing any other party to the suit to make discovery on oath the documents which are or which have been in possession or powers relating to any matter in question.

- The Court may on hearing the application either refuse / adjourn it
- Every party to a suit may give notice to the other party at or before the settlement of issues to produce for his inspection any document referred to in the pleadings or affidavits of the other party.

If the other party refuses to comply with this order he shall not be allowed to put any such document is evidence

- A party may refuse to produce the document -
- (a) where it discloses a party's evidence
 - (b) when it enjoys a legal professional privilege
 - (c) when it is injurious to public interest
 - (d) denial of possession of document



- If a party denies by an affidavit the possession of any document, the party claiming discovery cannot cross examine upon it / adduce evidence to contradict it, because in all questions of discovery the oath of the party making the discovery is conclusive

Res : Kedarnath v/s Vishwanath

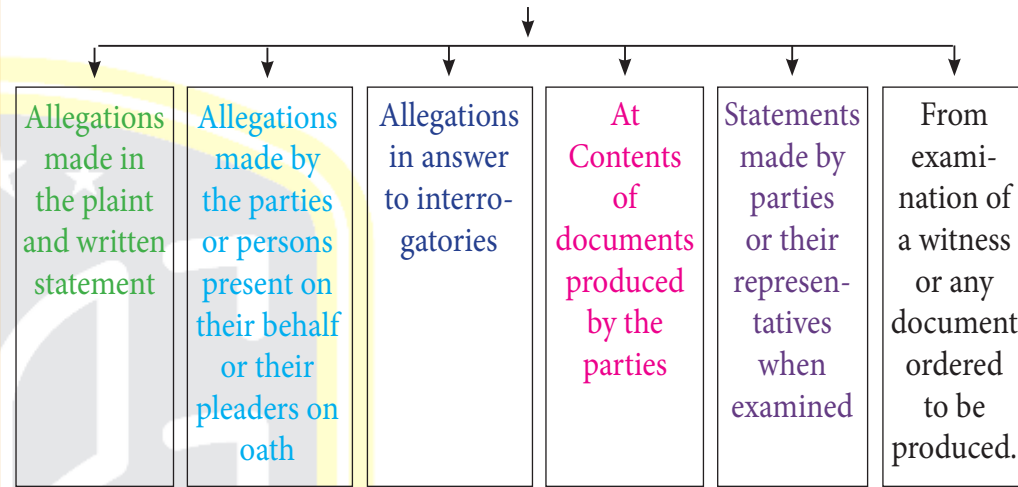
→ **Admission by parties**

- It means that one party accepts the case of the other party in whole or in part to be true.
- Admission may be either in proceedings, or by answer to interrogatories, by agreement of the parties / admission by notice.

→ **Issues**

- Issues arise when a material proposition of fact / law is affirmed by one party and denied by the other.
- Issues may be either of fact or of law.
- It is incumbent on the Court at the first hearing of the suit after reading the plaint & the written statement and after ascertaining and examination of parties if necessary regarding the material propositions of law and facts, to frame the issues thereon for decision of the case.

- Issues are to be framed on material proportions of fact or law which are to be gathered from the following –



→ **Execution**

- Execution is the enforcement of decrees / orders of the Court.
- A decree may be executed either by the Court which passed it or by the Court to which it is sent for execution.

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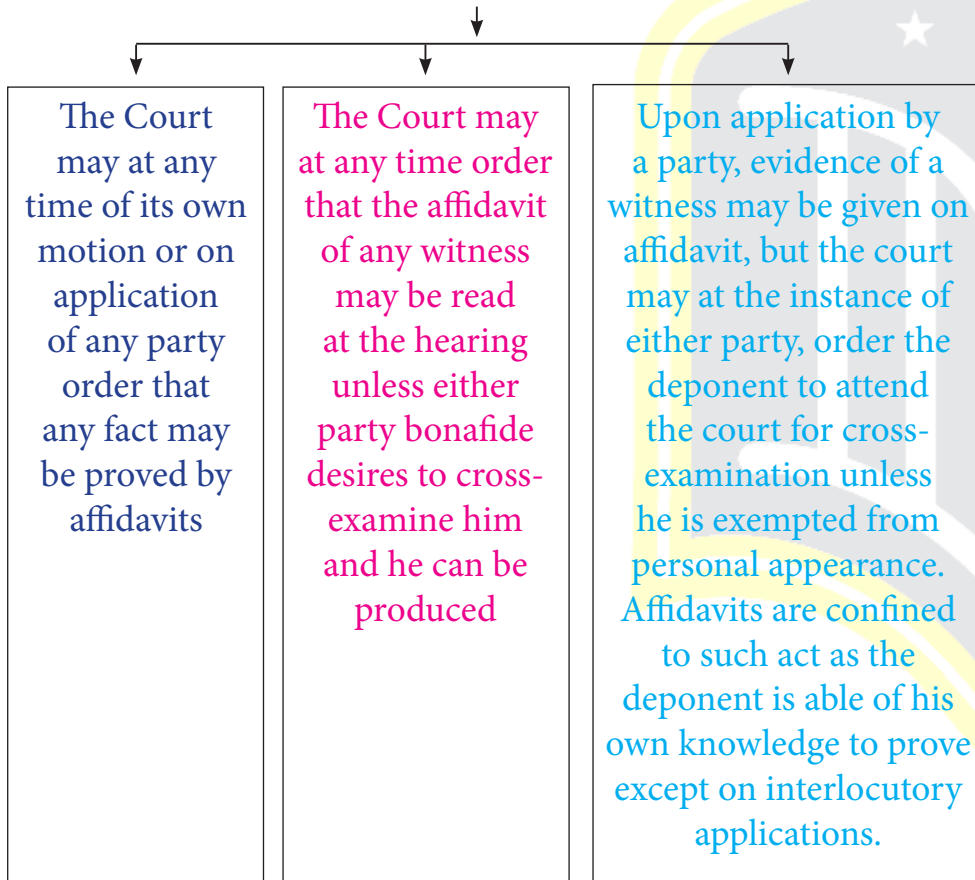
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→ **Affidavit**

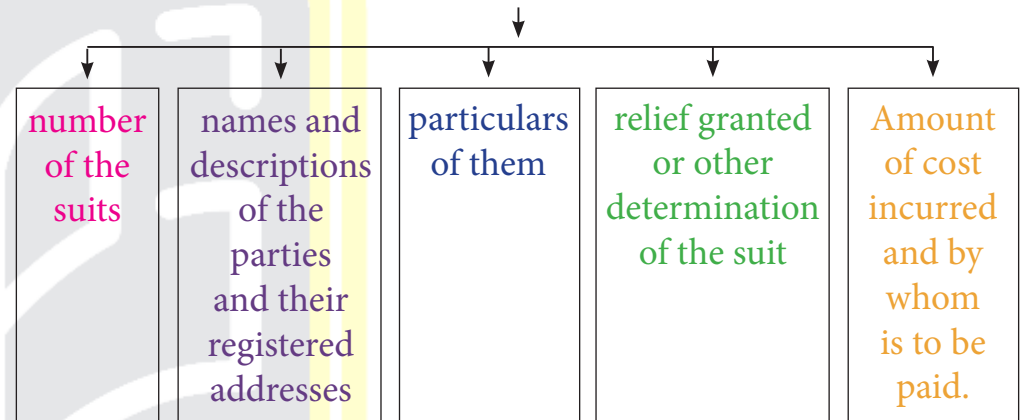
- An affidavit is a written statement of the deponent on oath duly affirmed before any Court / Magistrate / any Oath Commissioner appointed by Public Oth / before the Notary
- An affidavit can be used in the following cases.



→ **Decree**

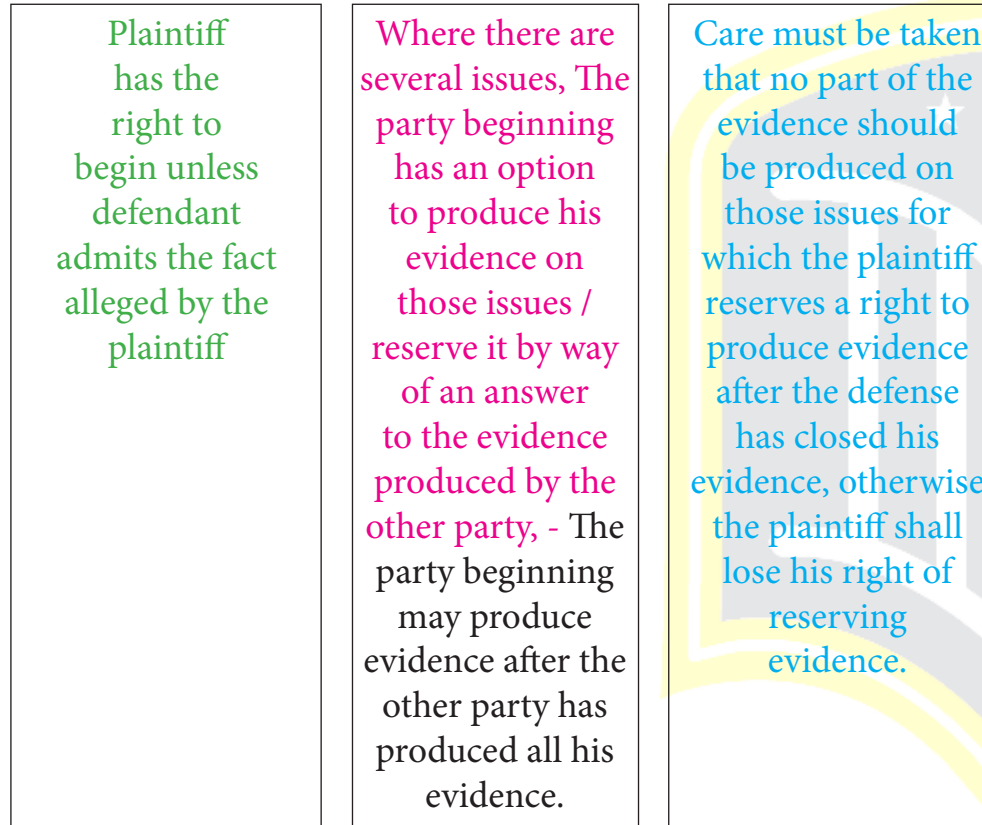
- On judgement a decree follows. Every endeavour must be made to ensure that decree is drawn up expeditiously and in any case within a period of 15 days from the date on which the judgement is pronounced.

It should contain the -

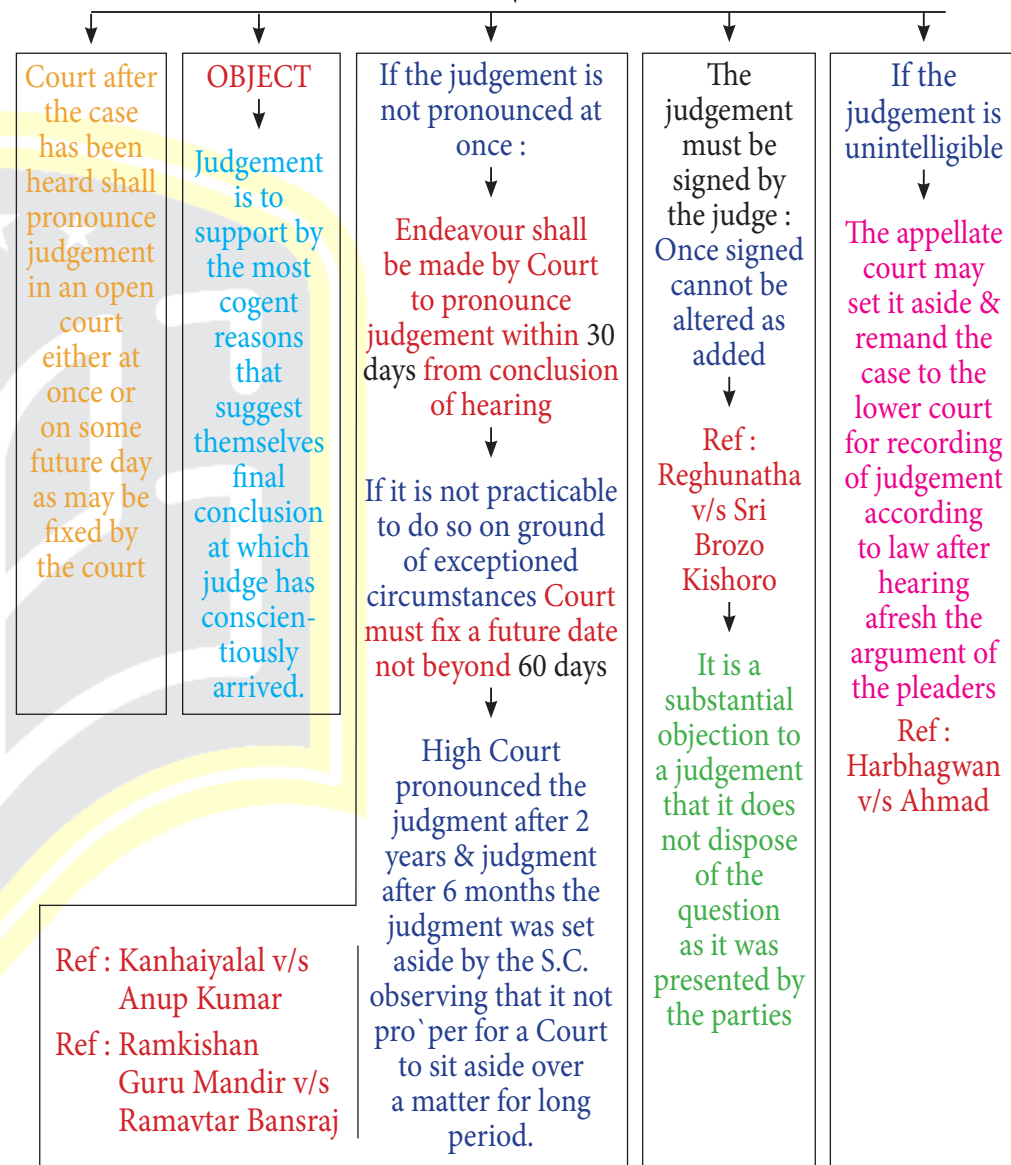




→ **Hearing of the Suit**



Judgement



Ref : Kanhaiyalal v/s Anup Kumar
Ref : Ramkishan Guru Mandir v/s Ramavtar Bansraj



Appeal

- Right of Appeal is not a natural or inherent right attached to litigation.



Such right is given by the statute or by rules having force of statute

Ref : Rangoon Botatoung Company v/s The Collector, Rangoon

- There are four kinds of Appeals provided under CPC.

1.	Appeal from original decree	<p>It may be preferred in the Court Superior to the Court passing decree</p> <p>An appeal may lie from an original decree passed ex-parte</p> <p>No Appeal lies - Where the decree has been passed by the consent of parties</p> <p>(+)</p> <p>In any suit of small causes when the amount of subject of original matter doesn't exceed Rs. 10,000.</p> <p>- The appeal from original decree lies on question of law.</p>
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2. Second Appeal

As per Sec. 100 of CPC, An appeal lies to high court, if it is satisfied that the case involves the substantial question of law.



Ref : Durga Choudharain v/s Jawaher Singh

- observed that there is no jurisdiction to entertain a second Appeal on the ground of an erroneous finding of fact.
- Where there is no error / defect in procedure, the finding of 1st Appellate Court upon a question of fact is final, if that Court had before it evidence proper for its consideration

3. Appeal from Orders

- (a) Order u/s 35A = Allowing Special Costs
- Order u/s 91 or 92 = Refusing leave to institute a suit.
- (b) Order u/s 95 = Compensation for obtaining attachment / injunction on insufficient grounds

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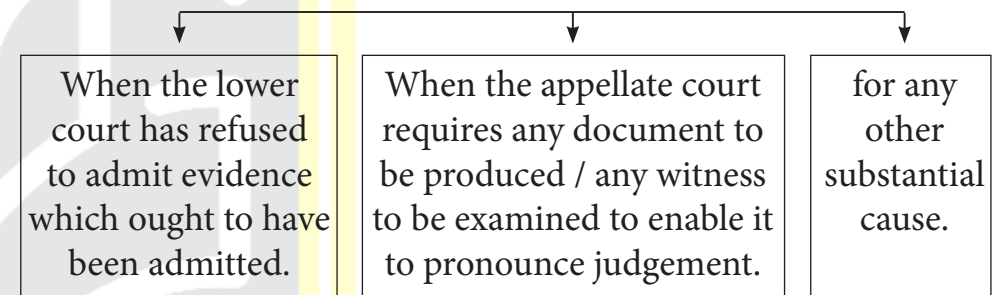
	<p>(c) An order under the Code imposing a fine or directing the detention or arrest of any person except in execution of a decree.</p> <p>(d) Appealable orders as set out under Order 43.</p> <ul style="list-style-type: none"> - No appeal shall lie from following orders - <div style="display: flex; justify-content: space-around; margin-top: 10px;"> <div style="border: 1px solid black; padding: 5px; text-align: center;">Any order specified in clause (a)</div> <div style="border: 1px solid black; padding: 5px; text-align: center;">from any order passed in appeal u/s 100.</div> </div>
4. Appeals to the Supreme Court	<p>From any decree or order of Civil Court</p> <div style="display: flex; justify-content: space-around; margin-top: 10px;"> <div style="border: 1px solid black; padding: 5px; text-align: center;">when the case is certified by the Court deciding it to be fit for appeal to the S.C.</div> <div style="text-align: center;">OR</div> <div style="border: 1px solid black; padding: 5px; text-align: center;">when special leave is granted u/s 112 by the S.C. itself.</div> </div> <p style="color: red; margin-top: 10px;">- From any judgement / decree / Order final passed on appeal by a High Court</p> <p style="text-align: center; color: red;">or</p> <p style="color: red;">by any other court of final appellate jurisdiction.</p>

	(c) From any judgement / decree / final orders passed by a High Court in exercise of original civil jurisdiction.
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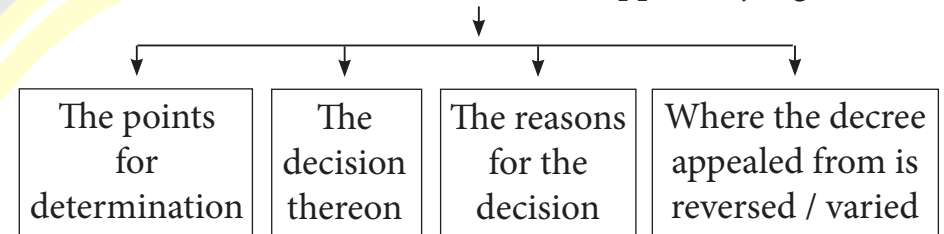
→ **General rule**

- The general rule is that the parties to an appeal shall not be entitled to produce additional evidence whether oral / documentary.

But the appellate court has a discretion to allow additional evidence in the following -



- But in all such cases the appellate court shall record its reasons for admission of additional evidence.
- Essential factors to be considered in an appellate judgement



- The judgement shall be signed & dated by the judge concurring therein.

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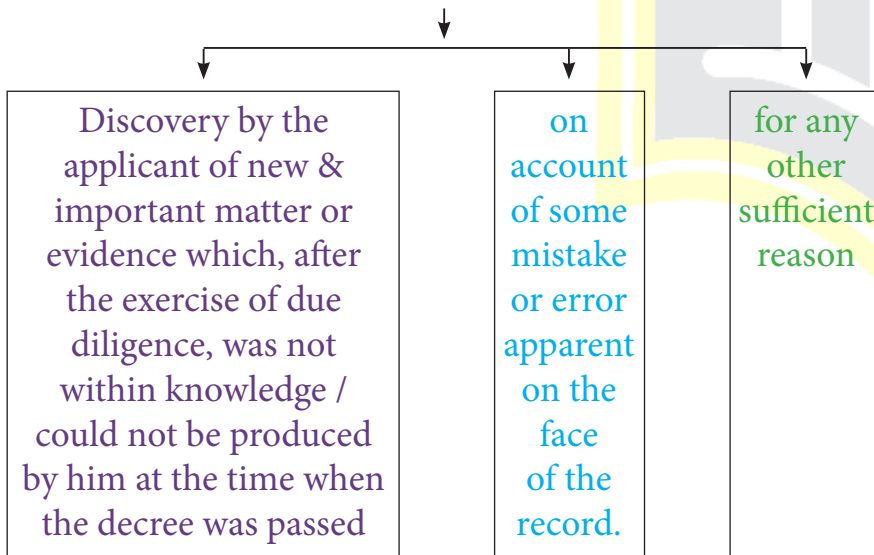
Reference, Review And Revision

→ Reference to High Court -

- At any time before judgement a court in which a suit has been instituted may state a case and refer the same for opinion of the High Court & the High Court may make such order thereon as it thinks fit

→ Review

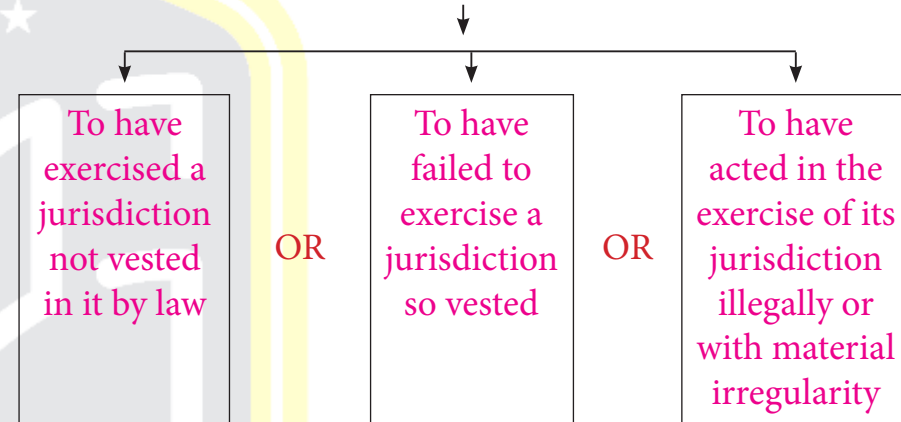
Any person considering himself aggrieved by a decree or order may apply for a review of judgement to the court which passed the decree / made the order on any of the grounds as mentioned (Order 47 Rule 1) namely -



The Court may make such order thereon as it thinks fit.

→ Revision [Sec-115]

- The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court & in which no appeal lies thereto, & if such subordinate Court appears -



- The High Court may make such order as it thinks fit

→ Conditions :

1. The case must have been decided.
2. The court which has decided the case must be a court subordinate to the H.C.
3. The order should not be an appealable one.
4. The subordinate court must have - (a) Exercise the jurisdiction not vested in it by law. (b) failed to exercise jurisdiction so vested (c) above c point



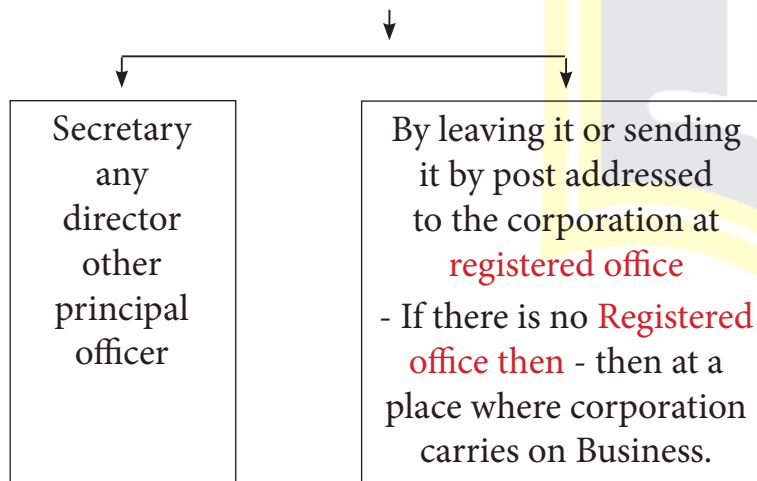
Suits By Or Against A Corporation

→ Signature or Verification of Pleading

- In suits by or against a corporation, any pleading may be signed & 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.

→ Service of Summons -

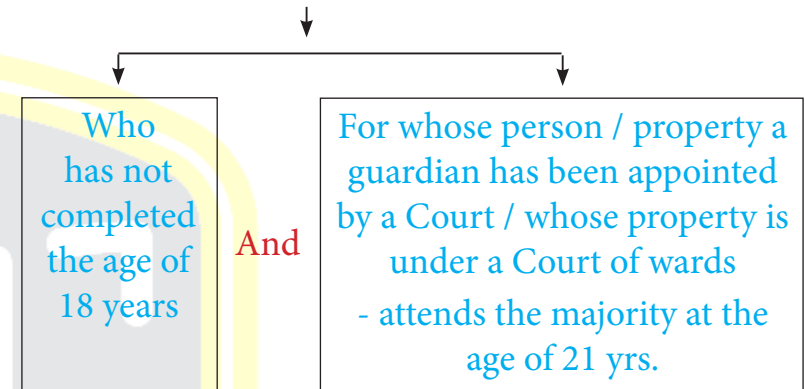
- Subject to any provision regulating service of process, where the suit is against a corporation, the summon may be served :



→ Power of the Court to require personal attendance

Suits By OR Against Minors

→ A minor is a person -



→ Important Points -

- Every suit shall be instituted by a minor in his name by a person who in such suit shall be called the next friend of the minor.
- Next friend should be a person -

(a) Sound Mind

+

(b) Attained majority

+

(c) Such person is not adverse to that of minor

+

(d) he is not in the case, defendant of a suit.

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Note : Where the suit is instituted without a next friend



The defendant may apply to have the plaint taken off the file with cost to be paid by the pleader or other person by whom it was presented.

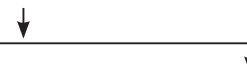
→ **Where a Defendant is a Minor**

- On being satisfied of the fact of his Minority -
The court shall appoint a proper person to be guardian for the suit
- An order for the an appointment of a guardian may be obtained upon application in the name and on behalf of minor / plaintiff
- A person appointed as a guardian shall unless its appointment is terminated by,
 - Retirement
 - Removal or
 - death

Continues throughout the proceeding [including proceedings in the appellate / Revisional court & any proceedings in the execution of a decree.

→ **When Minor Attains Majority**

- **When Minor Plaintiff Attends Majority :**



He may 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
- and
- The title of the suit will be corrected.

He may elect to abandon it

↓

he shall if a sole plaintiff

or

Sole applicant apply for an order to dismiss the suit on repayment of the costs incurred by the defendant

or

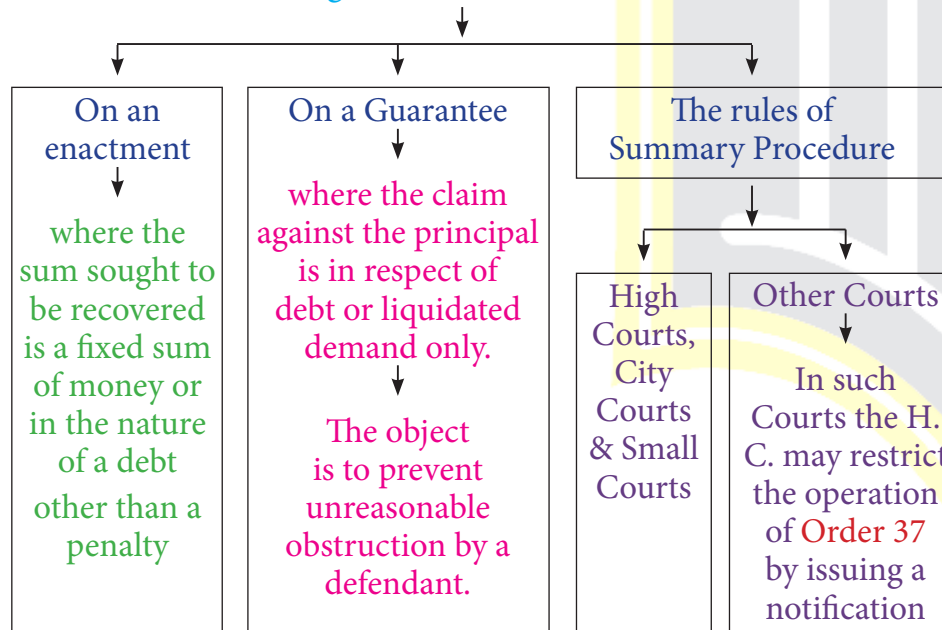
the opposite party.



Summary Procedure

[Order-37]

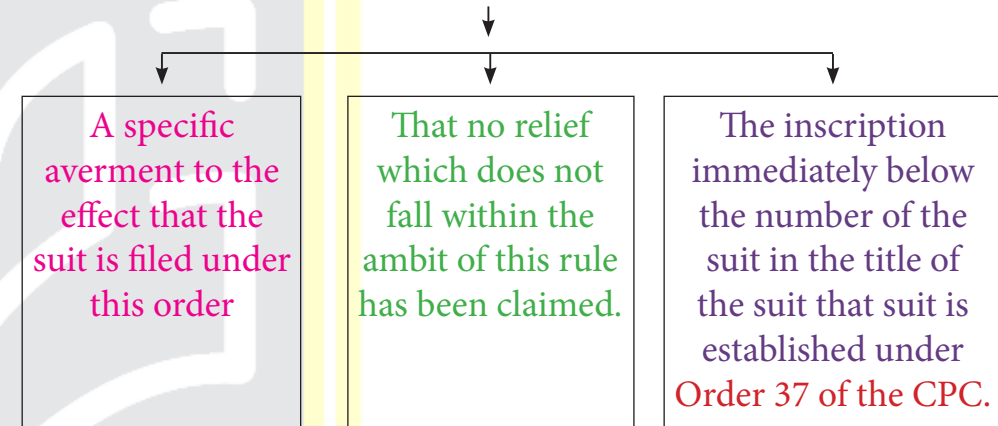
- A procedure by way of summary suit applies to the suits upon bill of exchange, hundis, or promissory notes, or suits in which the plaintiff seeks only to recover a debt / liquidated demand in money payable by the defendant with or without interest arising



- The debt / liquidated demand in money payable by the defendant should arise on a written contract or an enactment or an guarantee.

→ Institution of Summary Suits

Such suit may be instituted by presenting a plaint containing the following essentials -



→ Leave to Defend

- The defendant is not entitled to defend the suit unless he enters an appearance within 10 days from the service of summons [order 37, Rule-3]
- The summary suit must be brought within one year from the date on which the debt becomes due / payable in cash whereas the period of limitation for is 3 yrs.

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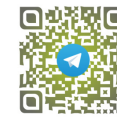
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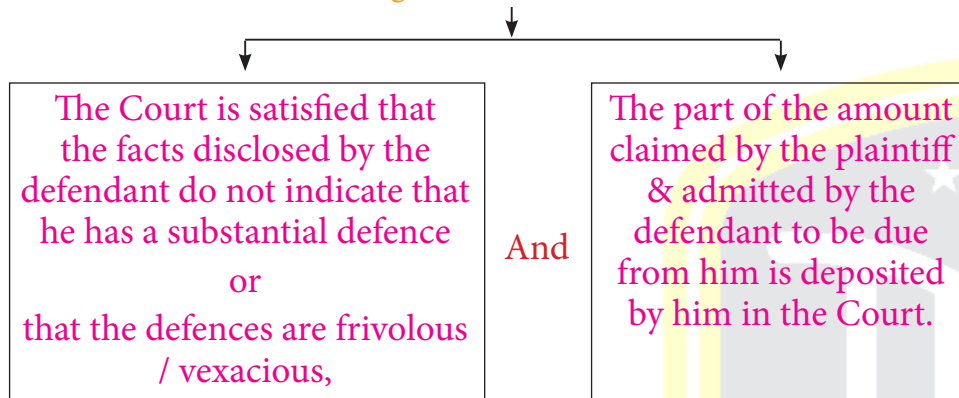
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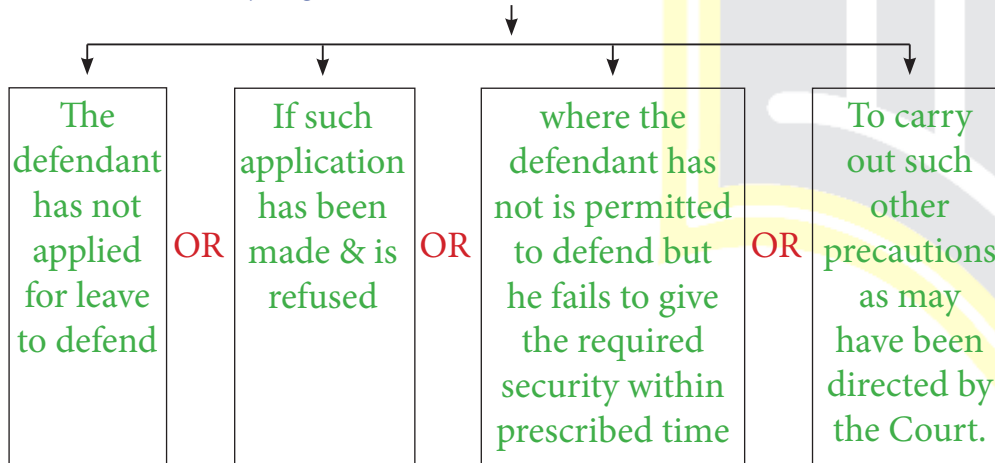
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- Such leave to defend may be granted unconditional or upon such term as the Court or the Judge may think fit.
- Such leave shall not be granted where -



- At the hearing of such summon for judgement the plaintiff shall be entitled to judgement provided



- After decree, the Court may set-aside
- Decree & if necessary stay / set-aside execution & may give leave to the defendant to appear & defend the suit.

→ **Summary Judgement**

Case 1 A Ltd. filed a summary suit against a B Ltd. The summon were served on the defendant on 10th of feb, 2010. When the CS of defendant Co. was an medical leave . He appeared on behalf of defendant on 17-03-2010. Two days after he resume his duty. State the consequences.

Ans. Conclusion : In the given case, the summon was served on the defendant on 10-2-1010. Where the CS (Company Secretary) of defendant was on medical leave & he appeared on behalf of defendant on 17-3-2020. - will beyond the aforesaid limit.

- However, if the defendant company shows the sufficient cause the court may excuse the delay of the defendant in entering an appearance.

Case-2 A and company files the suit under Order XXXVII of Civil Procedure Code, 1908 for the recovery of Rs. 50,000. Which were given by it loan to its employee against the promissory note executed by B in the court of district judge. B Receive the summon for Judgement under Order XXXVII of CPC, 1908. B fills a written statement after 20 days of Receipt of summon.



The Court of district Judge ignores the return statement and outright passes judgement & decree for Recovery of Rs. 50,000 against B.

Ans. Conclusion : Under order XXXVII, the defendant cannot defend the suit unless he enters his appearance within 10 days from the date of service of summon and obtain leave to defend. In the absence thereof the allegation in the plaintiff shall be deemed to be admitted & A & company shall be entitled to a decree.



In view of this, The Judgement against B is Justified.

Summary Judgment

[Order 13A]

- One of the significant amendments brought by CPC the is insertion of order XIII (13A) for summary judgement

Order XIII A (13A) of Commercial Court Act. 2015

- Object : It provides that disputes which are recognised as commercial dispute under Act, can be disposed off by commercial court established under Act with full-fledged trial.

Earlier : 1. Suits which had more or less a clear outcome based on merits would still have to go through the entire procedure enumerated under the CPC.

2. The technicalities led to inordinate delays for the parties concerned and also clogged the entire docket.

- The amendment is on similar lines to summary suits provided in the CPC with the primary difference that



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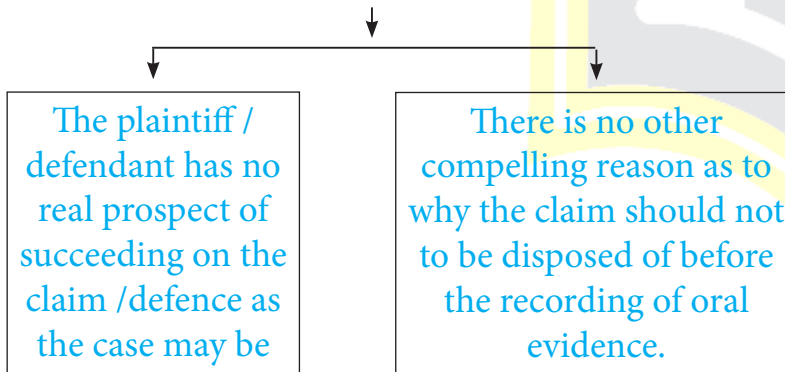
NARANPURA
VASTRAL



- (a) Application for summary judgment can be in respect of any relief in a commercial dispute
- (b) Summary suits relate to such relief relating to liquidated demand or fixed sum of debt.

→ **Under Order XIII-A,**

- Application for summary judgment can be made either party after the service of summons to the defendant & before the framing of issues
- Upon satisfaction of the Court a summary judgment may be given that



Saving of inherent powers of Court

[Sec-151]

- '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.'
- Any situation that is not cover under the Code can be brought under this Section.
- The scope of Section-151 CPC has been explained in the case **K. K. Velusamy v/s Palanisamy** as follows.

- (a) If is not a Substantive provision. It merely recognises the discretionary power inherent in every court as a necessary corollary for rendering justice in accordance to do what is "right" and undo what is "wrong".
- (b) The provisions of the Code are not exhaustive It recognises & confirms that if Code does not expressly or impliedly cover any particular procedural aspect, the inherent power can be used to deal with such situation / aspect,



- (c) The court cannot make use of the special provisions of Sec-151 of the Code, where the remedy or procedure is provided in the Code.
- (d) The inherent powers of the court being complementary to the powers specifically conferred, a court is free to exercise them for the purposes.



when the matter is not covered by any specific provision in the Code & exercise of those power would not in any way be in conflict with what has been expressly provided in the Code or be against the intention of legislature.

- (e) While exercising the inherent power, the court will be doubly cautious, as there is no legislative guidance to deal with the procedural situation & the exercise of power depends upon the discretion & wisdom of the court & in the facts & circumstances of case.
- (f) The power under Sec-151 will have to be used with circumspection & care, only where it is absolutely necessary, when there is no provision in the Code governing the matter, when the bona fides of the applicant cannot be doubted, when such exercise is to meet the ends of justice & to prevent abuse of process of court.

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