intention or *mens rea* in such offences. As is well known, intention is very difficult to prove in such cases and keeping in view the sensitivity of the securities market, the revised regulations seek to make offences against the market as one of strict liability. The regulations have also outlined commonly observed offences and the scopes of penalties that can be imposed have also been increased.

Separate regulations for conducting enquiry have been framed to provide for a uniform procedure prior to imposition of penalties on intermediaries. These regulations also provide for summary proceedings in cases of defaults such as violation of conditions of registration *etc.,* since summary proceedings greatly reduce the time taken for enforcement actions.

Significant penalties have been imposed by SEBI since the recent amendment to the SEBI Act. These include imposition of penalties upto Rs.2 crores and also penalties for non response to summons issued by the investigating authority. During the current financial year, significant orders against persons, who indulged in insider trading, fraudulent and unfair trade practices, were passed debarring them from the securities market.

SEBI is also mooting the setting up of special Criminal Courts to speed up criminal proceedings.

With the enhanced penalties and a better streamlined procedure, SEBI has been enabled to a great extent in initiating effective enforcement actions and better compliance with the rules and regulations governing the securities market, thereby also ensuring that the investors in the securities market are protected.

JUDICIAL APPROACH IN WRITING JUDGMENTS AND ORDERS IN PARTICULAR APPEAL SUITS AND MISCELLANEOUS - APPEALS WITH REFERENCE TO THE SETTLED PRINCIPLES AND PROCEDURE

By

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Law is a mighty ocean. The laws we deal with are procedural and substantive. The procedural law known as adjectival law facilitates the results to be obtained since the rights conferred on persons by substantive law will reach them through the process of procedural law.

As per *M.C. Shetalwad* the Civil Procedural Law is based on the theory that there must be a full disclosure by each party of his case to the other, that rival contentions must be reduced as quickly as possible to the form of clear and precise points or issues for decision and there must be a prompt adjudication by the Court on those points. Justice delays not so much due to defects in procedure, it is by faulty application.

- In AIR 1955 SC 425 it was held that CPC is designed to facilitate Justice but not to penalise.

- In AIR 2001 SC 1273 it was held that no Court ought to base its decision on technicalities alone.

- In 2003(3) SCC Pages 26 and 31 and AIR 1978 SC 484 (B) it was held that procedural law is intended to facilitate as the hand maid of justice and not to obstruct or hamper cause of substantive justice or to sanctify its miscarriage.

To argue a case looking to only one side of the case is different from taking of a balanced view from case of both sides, which is expected of a Judge to do. In order to effectively conduct the proceedings of the Court, effective grip over the procedural law besides substantive law is required. The need to be in quest of learning begins on one takes to judicial robes. The process is endless. If one has the urge to learn, he can know where to look for or seek help from. According to Rudyard kipling "I kept six honest serving men they taught me all I know- Their names are "what and why, when and how and where and who". The more you learn, the more is realised, there are ever more widening fields yet to be covered. A Judge must follow the standards of integrity, morality and behaviour, which he sets for others. To keep an open mind is a judicial virtue. The combined discourse of the pros and cons by hearing and considering the case of both sides whether represented by an efficient advocate or not, mind to appreciate, weigh, balance and decide the correct means to apply, it is here a Judge's basic legal equipment sharpens his practical perception, application and judgment. Unswerving- devotion to justice and impartial, bold and fearless delivering of justice will automatically be recognized and respected. The Judgeship is in fact an office of public trust and Judges discharge divine functions though they are not divine themselves. According to Lord *Hewert an independent judiciary is the very heart of a republic.* A Judge should be conscientious, studious, thorough, Courteous, patient, punctual, just, impartial, regardless of public clamour or praise and indifferent to any private, political or partisan influences. If he tips the scales of justice, its rippling effect would be disastrous and deleterious. Thus, upright conduct, character, absolute integrity, great learning, compassion and dispassionate adjudication are the hall marks of a Judge. Court is an agency and legal entity created by the sovereign for purposes of administration of justice. When a Judge takes his seat in Court, the Court is said to have assembled for administration of justice. Thus, Court is a generic term and embraces a Judge. Judge is an essential constituent of a Court. Judge and Lawyer are the two sides of the coin "Justice" in the administration of justice-held in 1994(3) Crimes-644 (SC).

The term Judge arisen from the Latin term *judex* which means the judicial power which examines the truth of the fact, the law arising upon it and apply remedy for the same. Trial is a voyage, in which truth is the quest. A passion for truth requires an open mind until demonstration is clear beyond doubt. Thus a Judge is one who is empowered to decide truth, apply equity, declare law and administer justice by pronouncing of a judicial decision. It is the famous saying that a Judge first searches the facts, then searches the law and lastly searches the soul. The bane of justice (blind folded) is that Court shall merely regard litigants as they appear from their claims put forward in the Courts. It can not mean that Courts are to act so blindly that they do not even see the cause they are pursuing -observed in AIR 1930 Rangoon - 337.

In "Mrchchakatika" (Arka-9: Sloka 5) says that - A Judge must be thoroughly conversant

with the code of the law; expert in detecting deceit and an eloquent speaker. He must never lose his temper and must be impartial to friends, strangers or relatives. He must base his decision on the examination of actual happenings. He must have regard for higher morality and must not be swayed by greed; at the same time he must be strong enough to protect the weak and instill fear into the hearts of the wicked. His mind must be set on discovering the highest truth by every possible avenue. And he must avoid the anger of the king".

Lord *Bacon* said that "Judges" ought to be more learned than witty, more relevant than plausible and more advised than Confidant, above all things integrity is their portion and proper virtue. *Moral turpitude* means conduct which is inherently base, vile and depraved. He must be perfect to ensure that he leads a disciplined life confirming his worldly activities to the moral law. Simplicity, humility, compassion and serenity are his needed virtues.

In 2003(7) SCC 750 at Para 35 it was held by the Apex Court that *'Justice has no favorite, except the truth ".*

Cottanham said that" A Judge must not have the slightest interest in a case pending before him as no person must have an interest in conflict with his duties".

Socrates suggested that 'Give your attention to the question "Is what I say just or is not just"? That is what makes a good Judge'. According to him the 4 things required for a good Judge are (a) to hear Courteously,(b) to answer wisely,(c) to consider soberly and (d) to decide impartially.

According to *Ronald Reagan* "when I have heard all I need to make a decision, I do not take a vote, I must make a decision"

As per *David Pannick* in his book "Judges" - the Judge has burdensome responsibilities to discharge. He has power over the lives and livelihood of all those litigants who enter his Court.... His decisions may well affect the interests of individuals and groups who are not present or represented in Court. If he is not careful, the Judge may precipitate a civil war.... or he may accelerate a revolution... He may accidentally cause a peaceful but fundamental change in the political complexion of the country.

As per 'Vyasa-Kosa' (Arka-3) the requirements of a judgment (jayapatra) are "purvottaram (plaint), kriyapadam (written-statement), pramanam-Tatparishanam (appreciation of evidence), Nigadam (arguments), smrutivakyadam (application of Law and precedents), yadhasabhyam (strength of Judges), vinichutam (decision making process with reasons) yetatsarvam-samasena (all put together is the) jayapatrabhi-lekhaye (judgment writing)"

Lord *Watley* said that "The judgment is like a pair of scales and evidence like the weights, the Judge holds the balance in its hands in the noble cause of justice delivery system where there shall not even be a slightest jerk to make the lighter side appear heavier".

A Judgment thus is an end product of the judicial exercise and effort and makes the terminal point of litigation at that Court. The Judge shall take every care in writing a judgment. It reflects the majesty of law and it should evoke a sense of respect. The image of judiciary is dependant upon delivery of good judgments. A Judge neither rewards virtue nor chastises vice. He only administers even handed justice. Sentiment is a dangerous one to take it guide. He shall not allow himself to be carried by his sympathy for either party. He should not allow any relationship or friendship to influence his judicial conduct. It is easy to be kind but difficult to be just, both must combine in

equal proportion. A Judge should not have any policy, but shall have philosophy. Awareness that Judges are students always has to be there. A judgment which is a solemn document must be clear with coherence of thought, sober, balanced, well considered besides well reasoned with simple language in simple sentences as far as possible and shall not be satirical. A clear and positive finding based on sound reasons arrived from discussion of evidence (grouping it point wise) is the very soul of a judgment. No judicial decision is honest unless it is decided in response to an honest opinion formed in the matrix of the Judge's perceptions of law and facts.

B.Lizington said that "If Judges would make their decisions just, they should be held neither plaintiff, nor pleader, but only the cause itself.

Benjamin N. Cardozo in his book 'The nature of the Judicial Process' quotes that 'Every judgment has a generative power and it begets in its own image.' The Judge even when he is free, is still not wholly free. He is not to innovate at pleasure; he is not a knight-errant at will in pursuit of his own ideal beauty or goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system and subordinated to the primordial necessity of order in social life. Wide enough in all conscience is the field of discretion that remains. If you ask how he is to know when one interest outweighs another, I can only answer that "he must get his knowledge just as the legislator gets it, from experience, study and reflection, in brief, from life itself."

In 2002(5) SCC 1 at Para-7 it was held that the qualities desired of a Judge can be stated that 'if he be a good one and that he be thought to be so'. Such credentials are not easily acquired; the Judge needs to have the strength to put an end to injustice and the faculties that are demanded of the historian, the philosopher and the prophet.

In 2002(4) SCC 388 at Para 41 it was held that the role of judiciary is merely interpret and declare the law was the concept of a bygone age, it is fairly the settled concept that Courts can so mould and lay down the law formulating principles and guidelines to adopt and adjust to the changing conditions of society in dispensation of justice.

In *Shakila.A.G.Khan v Vasant.R.Dhoble*, 2003(7) SCC-749-It was held that Courts exist for doing justice to the persons who are affected. The trial/first appellate Courts cannot get swayed by abstract technicalities and close their eyes to factors which need to be positively probed and noticed. The Court is not merely to act as a tape recorder recording evidence, overlooking the object of trial *i.e.,* to get at the truth, and oblivious to the achieve role to be played for which there is not only ample scope but sufficient powers conferred under the procedural codes.

As per Justice *R.P. Sethi* in *Arundhati Roy* Case 2002(3) SCC 343 - Para 1 - it was that if the Judiciary is to perform its duties and functions effectively and true to the spirit with which they are sacredly entrusted, the dignity and authority of the Courts have to be respected and protected by all costs.

Coming to the topic Civil Appeals, appeal is not defined in CPC. The word appeal is derived from the Latin word *'appellare'* its meaning is to address. As per *Oxford dictionary* appeal is the transference of a case from inferior to a higher forum in the hope of reversing or modifying the decision of the former. As per *Sweet's law dictionary* 'appeal is a proceeding taken to rectify an erroneous

decision of a Court by submitting the question to higher Court. As per *Bevier's law dictionary* appeal is removal of a case from inferior to superior Court for review or retrial or re-examination both on facts and law. *As per Stroud's law dictionary* 5th edition appeal is the right of entering and invoking the aid of a superior Court to redress the error of the lower Court. The appellate Court has to decide as to the order of the lower Court was right on the material that was before the lower Court. In AIR 1968 SC 488 it was held that an appeal is the judicial examination of decision of an inferior Court by a Higher Court which invited for decision the grounds of objection in a memorandum of appeal.

- In AIR 1932 PC 165 (*Nagendra Nath Dey's* case) it was held that appeal is an application by a party to an appellate Court asking it to set a side or revise or modify the decision of a Subordinate Court.

- In 2003(8) SCC-50 at para 10 page 57 it was held that 'Appeal' is removal of the cause of an inferior to one of superior jurisdiction, *i.e.,* submission of a lower Court's decision to a higher Court for purposes of obtaining a review or reversal or retrial to rectify the decision.

- In AIR 1967 AP 265 - it was held that power to hear appeal is the Judicial Power conferred by a statute, likewise right of appeal is vested by a statute.

- In 2002 (7) SCC 456 - it was held that an appeal is a Substantive and statutory right created and conferred by a statute. It is not an inherent or common law or Constitutional right. See also AIR 1974 SC 126, 1957 SC 540 & 1956 SC 29.

- In AIR 1999 SC 1747 - it was held that cross appeal and cross objections will have all the trappings of an appeal.

- In AIR 1970 SC 1 it was held that right of appeal is one of entering and invoking the aid of a superior Court who got right, to review the decision of a Subordinate Court see also AIR 1979 SC 745.

Appeal whether continuation of original proceeding, if so what is the extent of application of the Doctrine of Merger :

It was held in AIR 1957 SC 540, 1965 Mad 188,1967 Born 514 and 1967 All. 214(FB) that an appeal is the continuation of an original proceeding and not a fresh suit.

- In *Racha Konda Narayana's* case 2001(8) SCC 173, it was held that an appeal is a continuation of suit. When an appellate Court hears an appeal, the whole matter is at large. The appellate Court can go into any question relating to the rights of the parties which a trial Court was entitled to dispose off.

- In AIR 1987 SC 1304 and AIR 1985 SC 109 - it was held that when a decree of trial Court is either confirmed, modified or reversed by the appellate decree, (except when the decree is passed without notice to the parties) the trial Court decree gets merged in the appellate decree. See also AIR 1968 Mad 137 (followed 30 MLJ 379) wherein it was held that an appeal being a continuation of the original proceeding, the appellate Courts decree is the decree in the suit.

- In AIR 1987 Pat 133, it was held that when appeal filed and disposed off the suit is disposed of truly and finally by the appellate decree and not by the original suit decree. Thus it is the

appellate decree that subsists and enforceable.

- In AIR 1967 SC 681 - it was held that While deciding on the question of orders under doctrine of merger in decrees it was held that there is no universal rule that every interlocutory orders lapses with the passing of final decree or that it merges with it. For **ex.** attachment before judgment. The doctrine of merger is not a doctrine of rigid and universal application and it cannot be said that wherever there are two orders one by inferior authority and the other by superior authority passed in an appeal or revision, there is a fusion or merger of two orders irrespective of the subject matter of the appellate or revisional order.

The provisions governing civil appeals (including rent Control appeals and other miscellaneous appeals) for entertaining, deciding and delivering of judgments and orders are the following:

In CPC-Order 41, Order 43 and Order 44, Sections 33, 96, 97, 99,99A, 104, 105, 106, 107 and 108 and Section 21- objections regarding jurisdiction. Sections 96, 97.99A deal with 1st appeals and Sections 104 to 108 also deal with appeals from orders. Order 41 deals with appeals from original decrees and procedure. It contains Rules 1 to 37 and also 3A, 11A, 23A and 26A. Order 44 deals with appeals by indigent persons. It contains only 3 Rules. Order 43 deals with appeals from orders. It contains Rules 1, 1A and 2.

In Limitation Act Section 3, 5, 12 and 14, Article 1 16, for an appeal (a) to HC (90 days), (b) to any other Courts (30 days) and (c) from any decree/order (30 days) from date of decree/order. Article 130 for leave to appeal as a pauper (a) to H.C. 60 days and (b) to other Courts 30 days from date of decree appealed from. Article 124 review 30 days from date of decree or order.

A.P. Buildings (Lease, Rent and Eviction) Control Act and Rules - Sections 20, 17, Rules 9 to 11. Rule 11 (2) is power to take additional evidence or require such additional evidence to be taken by the rent controller.

A.P. Public Premises eviction of unauthorised occupants Act 1968 - Section 9 Appeal against order of estate officer shall lie to District Court or Chief Judge who can entertain or may designate any judicial officer of 10 years experience on their behalf. Rule 9 of the rules 1968 prescribes the procedure.

Civil Rules of Practice: Rules 166 to 171 :-(1) 166(new) says that the memorandum of appeal shall specify concisely and under District heads, the grounds of objections to the decree appealed from, the precise relief which the appellant proposes to ask the appellate Court to grant.

(2)Rule 167 (New): says all appeals arising against the orders made on petitions under special acts like AP Buildings (lease, Rent and Eviction) Control Act, A.P. Municipalities Act *etc.,* shall be registered as CMAs and enter in Civil register No.4

(3) Rule 168 (New): says all material papers in every suit or proceeding in which an appeal has been made shall be transmitted to the appellate Court immediately on receipt of intimation that an appeal has been registered and calling for records, without waiting for service of notice on respondent. (Read with Order 41, Rule 9 of amended CPC and old Rule 9, Section 96 CPC Rule 1(1) proviso as per A.P. Amendment and Rule 13 old omitted)

(4) Rule 169 (New): says the Court shall while returning by calling for a finding as per Order 41, Rule 25 or while remanding, certify the amount of costs incurred by each of the parties to the case.

(5) Rule 170 (New): says in appeals against interlocutory order which held up the progress of suit or other proceeding in the Trial Court, shall be given precedence over all civil work other than that of a specifically urgent nature and such appeals shall be disposed of expeditiously.

(6) Rule 171 (New): says 'the appellate Court may formulate suitable points for determination in appeals in accordance with the same principles on which issues are framed in the Trial Court and record its distinct findings on all questions of fact as is sufficient to show that the Court has dealt with each ground of appeal.

A.P. CIVIL COURT ACT: Sections 9,17,18,27, 32(6) and 33:- For determining in which Court appeal lies, the value of the suit or proceeding and not value of the appeal criteria held in 1979(1) APLJ 444. Provisions of the Act and amendments are only prospective held in 1973 (2) APLJ 250 and 1975 AIR AP 65. The latest position of law from *Motichand's* case 2004 (1) ALT 250 (FB), is that the amendment Act 30/89 to the Civil Courts Act 1972 raising the pecuniary jurisdiction from Rs.30,000/- to one lakh for entertaining an appeal by Chief Judge, City Civil Court/Dist. Judge is retrospective in operation hence applicable even to pending suits by the time the amendment came into force, to file appeals against it later. Right to appeal though statutory and vested right-forum of appeal is only a procedural aspect. NB: It appears the correctness of the same is pending before Larger Bench of the High Court.

Section 9:(1) of Chief Judge or Addl. Chief Judge of the City Civil Court, of the District Courts to the High Court. (2) of the Senior Civil Judge of City Civil Court to the Chief Judge Court up to certain pecuniary value of the subject-matter of the suit or proceeding and in other cases to High Court of Sr. Civil Judge in a District to the District Court up to certain pecuniary value and in other cases to High Court. (3) of Junior Civil Judge of City Civil Court to the Chief Judge Court of Junior Civil Judge in a District for disposal to the District Court.

Section 17: The Chief Judge may transfer any appeal filed before Chief Judge Court to any Additional Chief Judge or Senior Civil Judge. Section 17(3): Where a Senior Civil Judge Court is established in any District at a place remote from the seat of the District Court, the appeal from Junior Civil Judge there lies instead to District Court to Senior Civil Judge Court. Provided that, the District Judge may transfer any such appeal to its own Court and dispose of.

Section27: (1) No Judicial Officer, shall try any suit to which he is a party or in which he is personally interested nor he shall adjudicate upon any proceeding connected with or arising out of such suit. (2) No such officer shall try any appeal against a judgment, decree or order passed by him in another capacity (3) such Officer shall report about it to his superior officer who shall transfer it like under Section 24 CPC.

Section 32 (6): Not withstanding clause 5, any appeal from judgment, decree or order of the Court of the vacation Civil Judge, shall when such appeal is allowed by law, lies to the High Court — See 1991 (2) LS 138.

Section 33: When District Court or Senior Civil Judge or Junior Civil Judge to which a suit or appeal or other proceeding lies is adjourned during vacation under Section 31 and when no vacation Civil Judge is appointed under Section 32(1) the *High Court shall have the power* to receive such suit or appeal or other proceedings.

Decree - Order - judgment Distinction - Difference of meaning between the wording of Section 2, Section 33 and Order 20 - Judicial Pronouncements: As per CPC Section 2(2) decree means the formal expression of an adjudication which, so far as regards the Court expressing it. Conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final.

It shall be deemed to include the (a) rejection of a plaint and (b) determination of any question within Section 144CPC; but shall not include (a) any adjudication from which an appeal lies as an appeal from an order or (b) any order of dismissal for default.

Explanation: (1) A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of (2) It is final when such adjudication completely disposes of the suit (3) It may be partly preliminary and partly final.

As per CPC Section 2(14) order means the formal expression of any decision of a Civil Court which is not a decree.

As per CPC Section 2(9) judgment means the statement given by the Judge on the grounds of a decree or order.

In practice decree drafting is for judgments and orders appealable. Thus in practice an adjudication which is not judgment is order. From the above definitions adjudication is decree and judgment is the statement on the grounds of a decree or order. A reading of the above indicates that what we are calling as decrees are judgments and *vice versa* so also for order and decree.

Coming to Order 20 and Section 33, which deals with judgment and decree- If we read Section 2(2), (14) and (9) and Section 33 read with Order 20 Rules 4 to 6A. It conveys the meaning of what we are adopting.

Section 33 CPC says that the Court after the case has been heard shall pronounce judgment and on such Judgment decree shall follow.

Order 20, Rule 6: Reads that decree shall agree with judgment. It shall contain number of suit, description of parties, particulars of claim and shall specify clearly the relief granted or other determination.

Order 20, Rule 6 A: says decree be drawn up within 15 days after judgment. If appeal filed without decree, once decree is drawn up, the (operative portion of) judgment shall cease the effect of decree.

Order 20 Rule 5: Says that the Court shall state its finding or decision for judgment or order, with the reason therefor upon each separate issue (or point for consideration) unless the finding upon any one or more of the issues is sufficient for decision.

Order 20, Rule 5A: Further says that If parties not represented by pleaders, the Court shall inform the parties (and place on record about such intimation) as to the Court to which an appeal lies and the period of limitation to file appeal.

Order 20, Rule 4: Says that the judgment of a Court (Other than small Causes Court judgment where no need to contain more than points for determination and decision there on), shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision. The above cloud is cleared in the below legal position.

Requirements and Precautions in writing Judgments and Orders:

- In AIR 1999 SC 3381 *Balraj Taneja v. Sunil Madan's* Case the Apex Court defined what judgment constitutes (Order 20 Rule 4 and Section 2 (9)) as follows: judgment should be a self contained document from which it

should appear as to what were the facts of the case and what was the controversy which was tried to be settled by the Court and in what manner.

The process of reasoning by which the Court came to the ultimate conclusion and decreed the suit should be reflected clearly in the judgment. Whether, it is a case which is contested by the defendants by filing a written statement, or a case which proceeds *ex parte* and is ultimately decided as an *ex parte* case, or is a case in which the written statement is not filed and the case is decided under Order 8 Rule 10 CPC, the Court has to write a judgment which must be in conformity which the provisions of the code or at least set out reasoning by which the controversy is resolved.

Even if the definition were not contained in Section 2(9), of the contents there of were not indicated in Order 20 Rule 1, CPC, the judgment would still mean the process of reasoning by which a Judge decides a case in favour of one party and against the other. The whole process of reasoning has to be set out for deciding the case one way or the other. A Judge can not merely say 'Suit decreed or dismissed'. In Judicial proceedings there cannot be arbitrary orders.

- In AIR 1954 SC 194 It was held that a judgment is a final decision of the Court being delivered and pronounced in open Court (as per Order 20 Rules 1 to 3) intimating the parties and to the world at large.
- In 2002(1) Civil Law Journal 293: It was held that a judgment must be a speaking one with reasons for the findings of the Court on all issues or points for determination.
- In AIR 1974 AP 1 and 1963(1) An.W.R. 111: it was held that a judgment without reasons and not in conformity to Order 20 Rules 4 & 5 is no Judgment.
- In 1993(1) SCC 531: *Rameshwar Dayal's* case held that even the order of a Small Causes Court dismissing eviction suit *ex parte* without rendering any findings on point in controversy for decision is no judgment to bind anyone
- In AIR 1951 SC 189 it was held that where a decree is ambiguous, it has to be interpreted in the light of judgment and pleadings.
- In AIR 1969 SC 1167 it was held that, granting a decree without judgment is illegal.
- In 2003(1) LS 29 SC - it was held that mere observations that suit decreed or appeal allowed either under Order 20 or Order 41 - It tantamounts to failure on the part of the author of the judgment in discharge of the obligations cast as per CPC. The Court decreeing suit must examine the reliefs and construct the operative part of judgment in such manner as to bring reliefs granted in conformity with the findings arrived at different issues. A self contained decree drawn up in conformity with judgment would exclude objections and complexities arising at stage of execution.
- In AIR 1990 SC 1737 it was held that, unnecessary or derogatory remarks should not be made in the judgment. — See also AIR 1963 SC 1728, (AIR 1963 SC 1728: Need for use of temperate language in recording Judicial conclusions is stressed by the Apex Court in saying that use of unduly strong words in expressing conclusions or adoption of intemperate or extravagant criticism, against contrary view, and on evidence witnesses are to be avoided.

On the aspect of judicial immunity from torts for statements made in the course of judicial proceedings in 1985-Kerala-233 at paras 11-16 following 1943-Madras-350 and other several decisions held that the common law principle that Judges, advocates, attorneys, witnesses and parties for statements made in the course of a judicial proceeding are entitled to absolute privilege in an action for slander has been followed in India, however, while statements in order to be protected though not be absolutely relevant, must have some reference to enquiry and not entirely irrelevant. The expression *reference to enquiry must* be given a very wide and comprehensive application. Thus the statements not having any earthly connection with the case may not be protected.

As per Justice Fasul Ali, the approach of a Judge is three dimensional *viz.,* 1) hearing of parties 2) marshalling of facts and evidence and application of judicial mind to the facts of the case and 3) the last and most important and difficult task is decision making process, for that a Judge should apply his mind slowly, carefully and think over the problem, ponder over, deliberate and concentrate over them before coming to a decision. Writing a judgment is an art. After marshalling of facts a Judge has to draw his tentative conclusion from facts, which appears to have been proved and divide into parts.

(1) Narration of facts by categorization taking sequence of the events short, simple and pointed to get a clear idea to one and all as to what the case is about.

(2) Mention about the issues involved and refer the evidence led on those points

(3) Discuss the evidence with respect to each point and briefly indicate his views.

(4) Exposition of various points of law involved without any confusion in application and then, to reach

(5) conclusion think over once again as to the correctness of the conclusion and only after satisfaction of the correctness write out the conclusion which is then a judgment that reflects the Judges conscience.

Why reasons are necessary from different perspectives stated by the Apex Court in *Hindustan Times v. Union of India*, 1998 (2) SCC 242 & 248 (quoting from the Article of Justice Michael Kirby of Australia and decision of Justice *Asprey* 1971 Australia in *Pettect v. Donklay* in the year 1990) from the point of view of the (a) litigant (b) Legal profession (c) the Judges own conscience and (d) the appellate Courts testing of correctness therefrom Held. It is the duty of the Judge to uphold his own integrity and let the loosing party know why he lost the case.

It is the duty of the Judge, since the legal profession is entitled to have it demonstrated that the Judge had the correct principles in mind. had properly applied them and is entitled to examine the body of the judgment for learning the precedent that they can provide, and for the reassurance of the quality of the Judiciary which is still the center-piece of administration of Justice.

It doesn't take long for the legal profession to come known, including from the Judgments the Lazy Judge, the Judge prone to errors of fact *etc.*

The reputational considerations are important for the exercise of appellate rights, for the Judge's own self-discipline, for attempts at improvement and the maintenance of integrity and quality of our Judiciary. The failure of a Court to give reasons is an encroachment upon the rights of appeal given to a litigant.

The Apex Court held further that the satisfaction which a reasoned Judgment gives to the loosing party or his lawyer is the test

of a good judgment. Disposal of cases is no doubt important but quality of judgment is equally, if not more important.

From the point of scrutiny by Appellate Court:- Held there is no point in shifting the burden to the Higher Court either to support the judgment by supply of reasons if not reversed.

Following *Fauja Singh's* case 1996(4) SCC 461 - it was held that, the lower Court ought to have given reasons while dismissing at least briefly. The absence of reasons has deprived the appellate Court from knowing the circumstances which weighed the Trial Court to dismiss. It is thus an unsatisfactory method of disposal. Obligation to give reasons introduces clarity and excludes or at least minimises the chances of arbitrariness and the higher forum can test the correctness of those reasons.

It becomes difficult for the appellate Court in all such cases to remit or remand the matters, inasmuch as by the time the case reaches, considerable time would pass and it prolongs the life of litigation.

The Apex Court also cautioned the appellate Judges, for the practice of frequent and casual remands.

- The Apex Court also laid stress for assigning reasons even in cases of default disposals. > See also AIR 1984 SC 1268, AIR 1981 SC 2095, AIR 1976 SC 2037 and AIR 1964 SC 993.
- In AIR 2000 SC 2626 - it was held that contents of a judgment must be confined to facts and legal points involved in the matter.
- In 2004(1) S.C.C.547 paras 5 & 6 it was held that reasons introduce clarity and substitute subjectivity by objectivity. Right to reasons is an indispensable part of a sound judicial system thus reasons atleast sufficient to indicate an application of mind to the matter before Court are required.

These essential requirements of giving of findings on points for determination in controversy and reasons in support of it are equally applicable even to appeal judgments and orders in view of Order 41 Rule 30, 31 & 33.

In *Roopkumar's* case 2003(6) SCC-595(K) para-11 and *Central Bank v V.K.Gandhi's* case 2003(6) SCC 573, it was held that Regarding happenings in Court - recorded are conclusive if a party feels that the happenings have been wrongly recorded in judgment, it is incumbent upon the party, while the matter is still fresh in the mind of the Judges to promptly call attention of the some Judges who had or have made the record. This is the only way to have the record corrected. Otherwise the matter must necessarily end there. It would not be open to the party to raise the matter in appeal or revision. Further in AIR 2001 SC 1237-*Chitre Kumar's* case it was held that Docket proceedings of Court not open for challenge later. See also other decisions on this respect. Thus the essential facets or requirements of an appellate Court in a Civil 1st appeal to deliver Judgments/orders are:

(1) Giving of reasonable hearing to the relevancy and context on the facts and legal points involved, in the matter of understanding of the case. It doesn't mean a Judge should tolerate repetition or irrelevant submissions or allow to be browbeaten by some lawyers. In 1995(3) ALT 873, it was held that Judgment of any Court must be clear, specific meaningful and capable of conveying reason with sufficient clarity. The reasons must be based on analysis and discussion. Clarity from language and expression are equally important.

(2) Points for determination keeping in view the issues framed as per Order 41

Rule 31 (A) and decision there on as to whether any relief granted or not and any decree reversed or varied and reasons for the decision.

- In AIR 1967 SC 1124, 2003(1) ALD 375, 2000(3) MLJ 657 and 824 it was held that in the absence of prejudice non-framing of points for determination itself not fatal.

- In 2003(2) ALD 523, it was held at para 9 page 526 that it is the duty of the appellate Court to consider all relevant and tenable contentions raised in the grounds of appeal at the time of oral or written arguments and to decide an appeal on merits.

On facts held that, had the first appellate Court considered the crucial contentions advanced before it from the point of view on which the judgment of Trial Court was challenged, the appellate Court would have at least framed the points for consideration in this regard with reference to the contentions to appreciate from the evidence on record oral and documentary, it could have lessened the burden of the second appellate Court since there would be no need for the second appellate Court generally to interfere with the findings of fact recorded by the first appellate Court. Since the first appellate Court failed in its duty, if the approach of the first appellate Court is approved by this High Court (in second appeal), in many of the appeals there may be possibility of no discussion of any evidence on record and in simply to say that it agrees with findings of the Trial Court and confirm Trial Court judgment. Therefore it is necessary to set aside the judgment of the first appellate Court and remit back the appeal to it for fresh consideration and disposal on merits (not on the mere ground that no points for consideration framed), with a direction to frame appropriate points for consideration in the appeal and to consider, every tenable contention advanced by both parties and decide the appeal on merits since the first appellate Court judgment in confirming the judgment of Trial Court is without any discussion of the evidence of record in the suit for removal of encroachment where the Trial Court having held that there is encroachment dismissed the suit only on the ground that the extent and location of encroachment not proved, though there is commissioner's report and oral evidence on record regarding the area of encroachment, which did not consider by the appellate Court in dismissing the first appeal which is bad in law. Cases referred 2000(5) ALD 172, 1996 AP 373, 1996 SC 3521, 1967 SC 1124, 1954 Madras 375.

(3) Appreciation afresh of oral and documentary evidence - which is essential in first appeals since first appellate Court is the final Court of fact > See AIR 1998 AP 38.

- In 2003(5) SCC 89 *Madanlal (by LRs) v. Yoga Bai (by LRs)* held that the 1st appellate Court can go into all questions of fact and appreciate the evidence on record.

In Civil appeal appreciation of evidence is at large like appreciation of evidence in suit. Apart from it, the burden of showing that the judgment or even a finding there in under challenge in appeal is wrong or incorrect either wholly or in part lies upon the appellant. The appreciation of evidence no doubt is from experience, knowledge of human affairs, depending upon facts and circumstances and regard have to the credibility of the witnesses, probative value of documents, besides consistency to the material on the record to draw wherever required necessary inferences and conclusions as to extent of reliability and the weight to be given in coming to a conclusion from the broad probabilities and from overall view of the entire case to Judge as to any fact is proved or not proved or disproved." > See 1998(5) ALT 234(5) = ALD 349 *Naval K. Somani v. Poonam Somani*,

R.V.E.V.Gounder's case 2003(8) Supreme Today 194(iii) at page 196, AIR 1980 Cal-374 at para 9-376) *Saroj Kumar's* case, AIR 1987 AP 139(FB) *G.Vasu's* case and AIR 1961 SC 1316 *Kundulal's* case.

- In 2002(8) SCC 381 at para 17 it was held that vague hunches cannot take the place of judicial evaluation. Doubts would be called reasonable if they are free from a zest.

(4) Discussion where Trial Court had gone wrong, if findings are to be reversed or varied and reasons relating to it as per Order 41, Rule 31 CPC.A Judgment contains no reasons or a lengthy judgment simply referring to contentions of parties and submissions, without application of mind won't stand to scrutiny.

(5) While affirming the findings of Trial Court also reasons to be given as to where view of Trial Court was upheld. It is not by mere expression of general agreement without application of mind consciously.

- In *Santosh Hazaria's* case 2001(3) SCC 179, it was held that the first appeal is a valuable right of the parties and unless restricted by law, the whole case is open for re-hearing both on questions of fact and law. The appellate Court Judgment must reflect the Court's conscious application of mind to record findings supported by reasons on all issues arising along with the contentions put forth.

(6) The whole evidence of both sides is to be considered rather than merely relying upon some isolated piece of evidence. In AIR 2001 SC 217, it was held that in a first appeal, it is the duty of the Court to deal with all issues or points for decision from entire evidence on record before recording a finding. In AIR 1987 Madras 102 - It was held that the appellate Court has to scrutinize any finding of fact by making a fresh analysis of evidence.

(7) The evidence should not be approached with prejudice or suspicion by the appellate Court.

(8) Appellate Court should not interfere in routine or so casually with Trial Court's findings unless such a decision is illogical or suffered from procedural impropriety or was shocking to the conscience of the appellate Court. The appellate Court should take into consideration the basic principles as to (a) whether the Trial Court's finding was contrary to law or based on irrelevant factors or the decision was one which no reasonable prudent man could have arrived. The scope of Judicial review in appeal is limited to the deficiency in decision making process and not the decision.

(9) The appellate Court cannot reverse the findings of the Trial Court which were based on reasons and by consideration of contents of a document and of all factors, merely because some other view is possible.

- In AIR 1977 SC 1481, in AIR 1991 AP 47 and in AIR 1969 SC 395 at Para's 10 and 11 it was held that where the Trial Court rely on facts and probabilities basing on credibility and demonair, the appellate Court shall not rushly interfere with the findings of the Trial Court. In case the appellate Court desires to reverse the judgment and decree of the Lower Court, it should discuss each and every finding and set a side the findings which are contrary to law held in 2001(1) GCD 491 in *Vikas Mazdoor v. FCI.* > See also 2002(1) SCC 134 Para 14.

- In AIR 1955 SC 481 and AIR 1965 AP 177, it was held that under Order 41, Rule 31 that reversal of Trial Court judgment by first appellate Court without referring to material evidence and relevant pleadings, invalidates the appellate judgment.

(10) The first appellate Court can interfere with the findings of a Trial Court both on facts and law.

(a) where the Court below failed to consider vital evidence or relied upon inadmissible evidence. Held in 2000(1) SCC 434 at 437 (k)

(b) where the conclusion of the Trial Court is based on inferences and not on credibility of evidence on facts.

(c) where the conclusion of Trial Court was based on an important fact not available on record.

(d) where the Trial Court disbelieved the evidence on flimsy ground without proper application of mind.

- In AIR 1966 SC 735, it was held that even a plea not made specifically but covered by implication and evidence it can be looked into. What is necessary is parties shall aware of the pleas.

(a) where the finding of the Trial Court is arbitrary or capricious or perverse or superficial or not based on oral and documentary evidence on record." > See 2000(6) SCC 120 (b)

- In AIR 1978 All. 547, it was held that a perverse finding is one which is not sustainable since no reasonable person would arrive from the material on record.

(a) where it is against to the settled position of law or in disregard to the sound legal principles. > 2000(5) SCC 652 (b)

For ex-In civil cases proof is by preponderance of probabilities and not strict proof beyond doubt like in criminal cases where, there is a presumption of innocence of accused borrowed from common law though in appreciation of evidence under Indian Evidence Act more particularly from Section 3 there is no such distinction between Civil and Criminal Cases held in AIR 1980 Calcutta 374 at (page 376).

- In 2001 (8) SCC 233, it was held that under Sections 56 to 58 Evidence Act Judicial notice can be taken of the laws in force in India and not for foreign laws. Section 38 relevancy of statement as to any law contained in law books. Sections 40 to 44 Evidence Act deals with relevancy of judgments in evidence.

- In 1995(2) ALT 651, it was held that xerox copies of documents are inadmissible in evidence.

- In AIR 1973 AP 168 and 1992 AP 300, it was held that report of Court Commissioner is part of record and should be considered as evidence without examination of Commissioner.

- In 2000(1) ALT (Cri.) 197, it was held that *bona fide* Certificate issued by head of a school from school record is admissible in evidence.

Where there is no denial in pleadings by written statement that tantamounts to admission under Order 8, Rules 3 to 5. Admitted facts need not be proved Section 58 Evidence Act. In a suit for declaration of title and ajectment plaintiff must establish his right to win or loose on his own strength and not on weakness of defence, mere denial of plaintiffs right and title since enough for the defendant to non-suit him held in 1946 PC 59, 1954 SC 526, 1973 AP 149.

(a) where it is opposed to the normal experience of life and course of business. Section 32 clauses 2 to 8 and Sections 33 to 38, presumption for official acts and official records Section 114.

(b) where it involves damages or maintenance and the like capable of

estimation in money, the finding of a Trial Court can be interfered on quantum where it is inadequate or extremely high or arbitrary > See 2001(1) ALD 750, a case of maintenance where in stated the considerations to be taken in fixing the quantum and interference in appeal.

- In *Santosh Hazari's* Case 2001(3) SCC 179 = AIR 2001 SC 965. It was held that while writing appeal Judgment upholding the evidence or reiterate the reasons given by Trial Court, the conscious application of mind by appellate Court to the whole matter independently is necessary while expressing general agreement with the reasons given by the Trial Court, while writing judgment of reversal, the appellate Court must remain conscious of two principals

(a) firstly, the finding of fact based on conflicting evidence arrived at by the Trial Court must weigh with the appellate Court, more so, when the findings are based on oral evidence recorded by the same Trial Judge who authors the judgment. However, it does not mean that when an appeal lies on facts, the appellate Court is not competent to reverse a finding of fact arrived at by Trial Judge.

As a matter of law if the appraisal of evidence by Trial Judge suffers from material irregularity or is based on inadmissible evidence or on conjectures and surmises, the appellate Court is entitled to interfere with the finding of fact.

When there is a conflict of oral evidence on any issue and the decision hings upon credibility of witnesses, the appellate Court should not interfere with finding on fact on a Trial Judge unless, there is some special feature about the evidence of a particular witness which has escaped the Trial Judge's notice or there is sufficient balance of improbability so as to invite displacement of the Trial Judges opinion by the appellate Court as to where the credibility lie.

(b) secondly while reversing a finding of fact, the appellate Court must assign its own reasons for arriving at a different finding. An additional obligation has been casted on the first appellate Court by the scheme of CPC since, the first appellate Court continues, as before to be a final Court of facts, pure findings of fact there by remain immune from challenge in second appeal. Relied on AIR 1951 SC 120, *Sarju Prasad* case where it was held that appellate Court should not easily brush a side the Trial Court's findings based on appraisal of oral evidence.

- In *Madhukar's* Case 2001 (4) SCC 756, held that it is the duty of first appellate Court to record its findings with reasons in support of it only after dealing with the issues of law and fact and with the evidence oral and documentary led by both sides. If the Court doesn't fulfill its obligation, the parties who got a valuable right to be heard on questions of fact and law would not get the true benefit of a first appeal.

Question of Law:- In *Ratan dev* case 2002 (7) SCC 441, *Kulwant Kaur* case 2001(4) SCC 262, *Deena nath* case 2001(5) SCC 705, *Beanra Kumar Dubey's* Case 2001(6) SCC 767 and *Hafzat Hussein* case 2001(7) SCC 189 - It was held under Section 100 CPC that framing of a substantial question of law involved for disposal is a necessity in second appeal. The rule of non-interference on concurrent findings of lower Courts on facts is not at all an absolute rule of universal application. The legality of a finding of fact cannot but be termed as question of law. Where concurrent finding of facts based on wrong test, reasoning vitiated by perversity or patently finding on wrong conclusions or not on statutory mandate, misreading of evidence by

non- application of mind or on surmises or assumptions or conjunctures and finding of fact tainted by any element of perversity that itself is a substantial question of law for second appellate Court to interfere > See also 2000(5) SCC 652, 2001(6) SCC 652 and 2000(3) MLJ 761. (This principle as to what is question of law equally applicable to Section 96 C.P.C.)

It is thus also to be taken note of by the first appellate Courts that they can not adopt casual approach by simply supporting the Trial Court's findings and views under a notion that first appellate Court is the final Court on facts and nobody including the second appellate Courts can interfere with the concurrent findings on fact.

Subsequent events:

(1) In AIR 2003 SC 624 - *Atma S. Berar v. Mukhtiar Singh* para 15 it was held while referring Section 57 Evidence Act and Order 41, Rule 23 CPC about the well settled concept on power of the Court to take subsequent events, that the three riders on such power are 1) the subsequent event should be brought promptly to the notice of the Court. 2) It should be brought to the notice of the Court consistently with rules of procedure enabling Court to take note of such events and affording the opposite party an opportunity of meeting or explaining such events, and 3) The subsequent event must have a material bearing on right to relief of any party.

The other decisions on the principle are: AIR 1979 SC 1309, AIR 1985 SC 111 and AIR 1980 SC 1334, it was held that, appellate Court can take notice of subsequent events and shall take notice of subsequent changed legal position to grant or refuse relief accordingly.

- In 2002(2) SCC 256 - *Omprakash Gupta's* case it was held that the appellate Court got power to take note of subsequent events and mould the relief accordingly subject to certain conditions 2004(2) SCC 297- *D.D.A. and others v. Joginder S.Monga etc.* - (D) - Court can though mould the relief, having regard to the subsequent events - it cannot thereby substitute a new relief based on fresh cause of action.

- In AIR 1974 SC 2068 and 1994 SC 800 - it was held that appeal being a re-hearing of the case appellate Court has jurisdiction to take into account facts and events subsequent to passing of decree appealed against only to safeguard the rights of both parties, > see also 1992(1) APLJ 245, AIR 1981 SC 1113, AIR 1973 SC 171.

Previous depositions - admissibility 2001(5) ALT 123 - *G.L. Murthy's* case Order 41 and Sections 96 and 107 - it was held that objection for first time in appeal cannot be raised regarding the admissibility of a certified copy of deposition of a witness in a previous suit when not raised in Trial Court. > See AIR 1966 SC 1072, to the effect that previous deposition of a living person cannot be admissible without consent, the exception is for contradiction and confrontation as per Sections 145 and 155(3) Evidence Act.

Order 41, Rules 30 to 32 require pronouncement of the appeal judgment in open Court on points for determination and decision there on with reasons, whether by confirming or by varying or by reversing the Trial Courts decree and judgment and copy of whole judgment pronounced, be immediately made available for perusal of parties or their pleaders. > 1997(4) ALT 258 and 1992(1) ALT 256.

Order 41, Rule 35 says that the Appellate decree shall contain day and date of judgment, number of appeal, description of parties, costs awarded if any, specification of relief granted and other adjudication made with signature of the Judge.

Order 41, Rules 36 and 37 speak about granting of certified copies of decree and judgment in appeal at the expense of parties and sending of a copy of decree and Judgment by appellate Court to lower Court to enter in the Civil suit register and to file with the original proceedings in the suit.

The other procedure from entertaining till disposal- envisaged in Order 41, Rules 1 to 29 Order 41, Rule 9 (before amendment by Act 46/99) reads that where a memorandum of appeal is admitted, the appellate Court or the proper officer of it, shall endorse thereon the date of presentation and shall register it in the register of appeals.

Order 41, Rule 9 amended by Act 46/99 reads that the Court from whose decree, (Trial Court or first appellate Court as the case may be), an appeal lies, shall entertain the memorandum of appeal and shall endorse there on the date of presentation and shall register the appeal in the register of appeals. This registering is only at S.R. stage of pre-admission in proof of entertainment *i.e.,* proof of receipt of appeal presented to entertain and send to appellate Court for admission.

The word admitted in old Rule 9 is different to the word entertain in the new Rule 9. Thus though the old Rule is deleted and new Rule substituted in its place, the new Rule is only at best, an enabling provision to the litigent public either to file or present an appeal in appellate Court or in lower Court. Where an appeal to be filed, though not specifically stated either in the old Rule or in the new Rule. It is need less to say that it is the duty of the appellate Court to admit an appeal. The power of entertaining and admitting an appeal by the appellate Court no way taken away therefrom. It is infact by virtue of power to decide, which is only after appeal ones admitted. It is because in AIR 1955 SC 425, it was held that the CPC is designed to facilitate justice but not to penalise. In 2000(3) MLJ 739, it was held that the technicalities should not be allowed to stifle justice in civil matters. Max well on interpretation quoted that where an Act confers jurisdiction it impliedly grants power of doing all such acts or empowering all such means which are necessary.

- In AIR 1977 SC 1348, it was held that the every Court constituted is to render justice and must be deemed to posses necessary and inherent powers in its very constitution, to exercise.

- In AIR 1966 Allahabad 84 at 87, held that the Courts are to act on the principal that every procedure is permitted unless expressly prohibited. From this a reading of the old rule shows the appellate Court to admit an appeal and it impliedly says appeal can be filed there to admit and the new Rule appears from a casual reading that once the party appellant wants to file appeal and if filed in lower Court it shall entertain and register. The word shall includes may. In fact even from that it gives no power of admission by lower Court. Then virtually it is a post office duty of the Court which passed the decree under appeal to forward or submit to the appellate Court the said memorandum of appeal if entertained.

Now the cloud is cleared by the Apex Court in the case of *Salem Advocates Association vs. Union of India* AIR 2003 SC 189 = (1) SCC 49, holding that the CPC amendments do not suffer from any constitutional infirmity. It was held in Cl (J) para 23 at page 191 and 195 that Order 41, Rule 9 amended provisions do not require that appeal be filed in the Court from whose decree the appeal is sought to be filed. 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 lower Court and endorsement there of shall be made by the decreeing Court in the register of appeals. Merely because a memorandum of it is not filed under Order 41, Rule 9 it will not make the appeal filed in the appellate Court as a defective one.

- (In 2002(3) LS 451 In *Parbanna's* Case it was held that the Order 41, Rule 9 is not applicable to second appeals.) In this context it can be referred Rule 168 of Civil Rules of Practice which says all material papers in every suit or proceeding in which an appeal has been made shall be transmitted to the appellate Court immediately on receipt of intimation that an appeal has been registered and calling for records, without waiting for service of notice on respondent.

Order 41, Rule 1 says every appeal accompanied by a copy of judgment to be presented to the Court or its officer (here the Court refers to the Appellate Court) in the form of memorandum of appeal signed by party or his pleader containing grounds of objection to the decree appealed from. Where two or more suits tried together covered by a common judgment and 2 or more appeals filed against any decree covered by that judgment, whether by same or by different appellants, the appellate Court may dispense with the filing of more than one copy of the judgment, (in AIR 1961 SC 832 and AIR 1969 SC 575), it was held that the only copy of judgment may be dispensed with but not decree, since without decree appeal is invalid. > See also AIR 1992 SC 1977.

Where the appeal is against a decree for payment of money, the appellant shall deposit the amount under dispute in the appeal or furnish security, as the Court thinks fit and within the time allowed by the appellate Court.

Order 41, Rule 3 says that the above compliance under Rule 1 is not made, the Court may reject stating reasons for rejection or return to amend. The rejection cannot be on ground of delay AIR 1983 SC 43. The admission of appeal in part and rejection in part is illegal. It can be admitted or rejected as a whole AIR 1982 SC 1223. It was held that in 1983(1) APLJ 31, against money decrees that deposit of money is not a condition precedent for filing an appeal.

- In AIR 1998 SC 2354, it was held that, creditor bank as appellant can ask for attachment of security and Court can direct.

- In Order 41, Rule 10 says that the appellate Court may require the appellant to furnish security for costs refer 1978(2) ALT 44 NRC.

- Order 41, Rule 2 says (a) the appellant shall not except by leave of the Court, urge to be heard in support of any ground of objection not set forth in the memorandum of appeal, but (b) the appellate Court in deciding the appeal shall not be confined to the grounds of objections set forth in the Memorandum of appeal or grounds taken by leave of the Court under this rule.

  Provided, the Court shall not rest its decision on any other ground unless the party who may be effected there by has had a sufficient opportunity of contesting the case on that ground.

- It was held in the under mentioned cases that raising of additional ground on question of law permitted in appeal is valid - AIR 1987 SC 2014 and AIR 1994 SC 1513 and AIR 1954 SC 263 and 165.

Raising of a (new) plea not taken in trial or in appeal grounds not be allowed in appeal- AIR 1971 SC 97.

- If new plea contrary to case of both parties and no pleadings, issue or evidence on it, it cannot be allowed AIR 1970 SC 1351 and AIR 1967 SC 1193.

- New plea without factual foundation on record cannot be raised for 1st time in appeal 1993(1) APLJ SC 10.

- If new plea based on construction of letter which is a bearing, it can be allowed if the conditions of the letter under construction not vague or uncertain under Section 93 Evidence Act, *i.e.,* only from language of the document alone to decide the question held in AIR 1958 SC 512.

- In 2003(4) ALT 376 - Held for want of plea and issue at Trial Court such new plea cannot be allowed to raise in appeal since it be treated as waived.

Order 41, Rule 3-A: An appeal presented after limitation period be supported by application to condone delay in filing, by sufficient cause to the satisfaction of the Court, the same is held in AIR 1987 SC 1353. In AIR 1955 Mad 102, it was held that if not rejected the Court shall issue notice to respondent and decide finally before it proceeds to deal with under Order 41, Rule 11 or Rule 13. Before that the Court shall not pass any order granting stay of execution of the decree under appeal proposed held in 1997(4) ALD 269 = 1997 (3)ALT 721= 1981(1) ALT 422 =1997 (2) LS 484, that it is a mandatory provision and no stay can be granted. In 2001(6) SCC 683 - it was held that against *ex parte* money decree - defendant made out earlier case for setting aside the decree, the appellate Court not justified to entertain by liberal approach a time barred appeal to consider on merits by condoning delay in filing appeal. Hence appeal dismissed as time barred.

Abatement of appeal in whole or part by death of parties and granting of relief to the parties not appealed :

Order 41, Rule 4 (Order 41, Rule 4 read with Rule 33): Where more plaintiffs or more defendants than one in a suit are there and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or defendants may appeal from whole decree and thereupon the appellate Court may reverse or vary the decree in favour of all plaintiffs or defendants as the case may be

- In AIR 1977 SC 789: it was held that, where there is joint eviction decree against several defendants, even by death of one, appeal by reaming defendants against the whole decree - sustainable.

- In 2003(3) ILD 737 SC *Banarasi v. Ramphal*, it was held that, Rule 4 seeks to achieve one of the several objects sought to be achieved by Rule 33 *i.e.,* avoiding a situation of conflicting decrees coming into existence in same suit.

- In AIR 1975 SC 733: it was held that, where each of plaintiffs could have filed a suit for his share, mere fact that all of them joined together as plaintiffs in one suit, that if for one reason or other, the suit of one fails or abates, the suit of the others doesn't fail or abate since, the decree is in substance the combination of several decrees in favour of several plaintiffs and with no any conflict between the decrees. If in an appeal against the decree one of plaintiffs is not added as respondent, it only means that, the decree in his favour cannot be set a side or modified even if the appeal succeeds against other plaintiffs in respect of their interest.

When one of appellants died and his LR's not brought on record, the decree being a joint one and part of it having became final by abatement, the entire appeal held to have been abated. However though decree is one and where 3 appeals filed by 3 sets of parties, if one of appellants died. and his LR's not brought on record, the appeal might abate so far as he was concerned, but not as regards the other appellants.

If in one appeal one N was impleaded as a party but not in other 2 appeals, it was possible to have allowed the appeal in full (under Rule 33) and given relief also to the appellants in other appeals assuming that they did not file these appeals.

- In *Chandra Mohan R. Patil's* Case 2003(2) Supreme 388 - it was held that under Order 41, Rules 4 and 33 that in suit for partition by death of plaintiff, even only some of his LRs filed appeal, merely because some of plaintiffs not appealed, the appeal won't go. The object of Order 41, Rule 4 is to enable one of parties to a suit to obtain relief in appeal when decree appealed from proceeds on a ground common to him and others. The Court of appeal in such case under Order 41, Rule 4 read with 33 can reverse or vary the decree in favour of all parties who are having the same interest as the appellant, to grant relief to the non-appealing plaintiffs, to do complete Justice between parties by passing such decree or order which can be passed. In such situation, it is not open to the defendants that the decree of dismissal of suit passed by Trial Court had become final intense between the non-appealing plaintiffs and the defendants. Relied on AIR 1970 SC 108 and 1971 SC 742.

- The other cases for reference are AIR 1963 SC 1901, AIR 1964 SC 1305, 1425, AIR 1966 SC 1427, AIR 1972 SC 1181, AIR 1973 SC 655- > See also 1988(1) LS 56, AIR 2000 AP 263, 1977(5) SCC 95, AIR 1963 AP 168-*It is therefore always imperative for the Courts to see the nature of the matter that fallen for consideration.*

Order 41, Rule 5: Stay by Appellate Court and Trial Court:-

(1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from, except so far as the appellate Court may order. Execution of decree shall not be stayed by reason only of an appeal having been preferred from the decree. The appellate Court may for sufficient cause (and on such terms and conditions as it deems fit) order stay of execution of such decree (and when appeal is against preliminary decree stay of making final decree or execution of final decree if already made.) Stay order shall be effective from date of communication of the order to the Court of 1st instance, but an affidavit sworn by the appellant based on his personal knowledge stating that an order for stay made be acted upon.

(2) Stay by Court which passed the decree - Before expiry of appeal time, the Court passed the decree, on application and on sufficient cause being shown can order stay of execution of the decree.

(3) For stay, the Court must satisfy that (a) substantial loss may result unless stay order is made (b) Stay petition filed without unreasonable delay and (c) on security given for due performance of the decree or order that may untimely be binding.

(I) The Court may even make an *ex parte* order for stay of execution pending hearing on stay application.

(II) Where appellant fails to make deposit or furnish security, the Court shall not make an order staying execution of the decree.

Order 41, Rule 6 deals with power of appellate Court to direct lower Court or the lower Court passed the decree under appeal, to require security for restitution of property or payment of property value and for due performance of the decree or order under appeal.

Order 41, Rule 8: (since Rule 7 deleted) says that the power conferred by Order 41, Rules 5 and 6 shall be exercisable even in case of appeal preferred from orders and not from decrees.

Order 41, Rules 5 and 6 read with Rule 8: 1984(1) APLJ or 1984(1) ALT 387: Held since permanent injunction decree is executable under Order 21, Rule 32, the appellate Court can grant stay of execution of such decree as per Order 41, Rule 5 (1) CPC. In 2002(1) An.W.R. 397 *Rampati S.H. Prasad c*ase it was held that a perceptual injunction decree can be stayed by appellate Court if that decree having serious consequences. Followed *Mulchand* case 1982 (3) SCC 484 and 1984(1) ALT 387 > See contra in 1997(2) LS 535 = 1997(5) ALD 574 = 1997(5) ALT 766 it was held that granting stay of execution of injunction decree by appellate Court without proper application of mind to matters in controversy and evidence in record is illegal. In 1998(1) ALT 92 = 1998(1) ALD 251 *P.Polaiah's* Case it was held that there is no question of granting stay of injunction decree and the remedy is by way of temporary injunction pending appeal if there is material to the satisfaction of the appellate Court to grant.

- In 1982(2) An.W.R. 240, it was held that in appeal against money decree - Deposit of decree amount or furnishing of security for stay - the word shall is to be construed as may.

- AIR 1980 AP 290, it was held that security bond to be given under Order 41, Rules 5 and 6 requires registration.

- AIR 1970 AP 210, it was held that furnishing of security for due performance of decree or order that may be ultimately binding upon the appellant, is a condition precedent for granting stay. See also other decisions on stay by Appellate Court-AIR 1987 SC 2320, 1982 AP 80 and 1991 Delhi 104.

A declaratory decree cannot be stayed. It is based on the principle that there is no question of its executability held in AIR 1959 AP 39 at 40; 1959 ALT 260, 1958 ALT NRC 17, 1937 ALL 528 and 1945 Oudh 96 at 101.

Violation of stay order - Consequences: AIR 1966 AP 73 at 74(B) - it was held that no party shall be prejudiced by Act of Court not sanctioned.

- AIR 1953 Cal 467: An order passed by lower Court in contravention of stay order by appellate Court is illegal or irregular.

- It was held in 1986(1) APLJ (DNC) Cal 46, AIR 1975 Mad 270(A), AIR 1956 All-48, AIR 1975 All 48(A), AIR 1963 Raj. 3, and AIR 1956 Pat. 455 that the Courts got power to restore the possession or *status quo* ante by annulling the steps taken ignoring stay orders.

- Even parties and non-parties knowingly violated the Court orders, non-party also liable for contempt held in AIR 1934 Bombay 452, 1940 Nagpur 203.

- See also 2003(4) ALD 780 in *Thota Mallikharjuna Rao etc. v. M.N. Purnachandra Rao etc.* a case under Section 2 and 12 of C.C. Act, 1971 - Held that, persons though not parties to the proceedings for disobedience of the *status quo* orders' regarding possession of property - if the 3rd parties act in such a way as to renders

the proceedings nugatory they are also liable for contempt. Dates and stages of hearing of appeal and consequences of non-appearance;

(1) **Order 41 Rule 11 to 21 read with Rule 33 and Section 107:** Order 41 Rule 11 and 11(A) say that the appellate Court after fixing the date of hearing the appellant or his pleader (which shall be concluded within 60 days) if he does not appear or on hearing him if he appears on that day, may dismiss the appeal and deliver judgment in brief with the grounds for dismissal and decree also be drawn up and notify the dismissal to the lower Court. See 2002(3) SCC 609 on the scope of Order 41, Rule 11. In AIR 1972 SC 1932 - held that where an appeal raising triable issues, it should not be dismissed summarily. In 2002(6) ALD 415 - it was held that in partition suit by plaintiff against his son and two sisters who filed written statement and later the sisters remained *ex parte* and on dismissal of suit, in his appeal he did not show his sisters as respondents by endorsement that since they remained *ex parte* in suit, no need to implead them to appeal, it was held that the appeal is not maintainable for non-joinder of the necessary parties *i.e.,* sisters who got right to participate in the appeal. The decisions relied with reference to Order 1, Rule 9 CPC are AIR 1965 SC 271, 1994(2) ALT 190. The decisions referred are AIR 1972 SC 1181, 1991(3) SCC 647, 1990(3) ALT 628(DB), 1988(1) APLJ 107 and 1996(2) An.W.R. 126.

(2) **(Since Rules 13, 15 and 18 are omitted, now coming to) Order 41 Rules 12 and 14** which say that, if the appeal not dismissed under Rule 11. the appellate Court shall fix a day. as per current business of the Court, for hearing the appeal and notice of the said hearing date shall be affixed in the Court house and a like notice with copy of appeal memorandum may either cause served by the appellate Court or it shall be sent to the lower Court who shall cause serve it (like in defendants summons) on the respondent or his pleader. ***(provided that the appellate Court may dispense with service of notice*** on the respondents, against whom the suit has proceeded *ex parte* in the lower Court from whose decree the appeal is preferred.)

It shall not be necessary to serve notice of any proceedings incidental to an appeal on any respondent other than a person impleaded for first time in the appellate Court, unless he has appeared and filed an address for service in the Court of 1st instance or has appeared in the appeal. > In 1988(1) APLJ 107 = 1988(1) ALT 4 it was held that notice to respondents or defendants who remained *ex parte*, cannot be dispensed with in appeal.

- See also AIR 2003 NOC 139(AP) = 2003 APHC 261 *D.Chinnabbai Reddy v. D.K.S. Reddy etc.*
- In 1988(1) APLJ DNC 15 - it was held that respondent is entitled to ignore the decree in which he had no notice.
- In 2002(6) ALD 415 and 1989(1) APLJ-SN 30 and AIR 1990 AP 160 - it was held that where one of respondents who remained *ex parte* in lower Court when not impleaded as party to appeal and no notice taken to him, the appeal is liable to be dismissed.
- In AIR 1987 Kerala 94(A) para 5 - it was held even under appeal powers, it is not possible and in fact not empowering the appellate Court to vary the lower Courts decree to the prejudice or determinant of persons who are not before the appellate Court and who are not given a hearing.
- In 1990(3) ALT 628(DB) - it was held that that when appellant filed appeal endorsing notice not being taken

to respondents remained *ex parte* in Trial Court the appeal lies and cannot be dismissed, however notice is necessarily to all respondents in appeal and if so even ordered, when appellant did not take notice to respondents, the appeal is to be dismissed.

(3) **Order 41, Rule16** says on the day fixed or on the date of hearing adjourned, the appellant shall be heard in support of the appeal and if the appeal then not dismissed, the respondent shall be heard and further the appellant can reply.

(4) **Order 41 Rule 20** says where at the hearing it appears to the Court that any party to suit of the decree under appeal has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing date and direct that such person be made a respondent, if the adding is within the period of limitation for appeal, unless the Court for reasons recorded allow to add on such terms as to costs. > See 2002(6) ALD 415, 1983 LS(SRC) 90, AIR 1971 SC 240, AIR 1990 SC 1981, AIR 1961 SC 137.

(5) Order 41 Rule 17 read with 19 and 21 say that, if the appellant doesn't appear on the date of hearing when called for hearing, the Court may make an order that the appeal be dismissed. Which does not empower dismissed on merits and on the appellants application readmit the appeal so dismissed for default on sufficient cause shown, it can be readmitted on costs or other terms. If on the date of hearing fixed for appeal, if respondent doesn't appear and appellant appears, the appeal shall be heard *ex parte*, and therefrom on judgment pronounced, the respondent by showing sufficient cause if applied to rehear, the Court shall rehear the appeal on costs or such other terms. See AIR 1993 Ori, 153, AIR 1963 SC 146, AIR 1996 SCW 3996, AIR 1981 SC 1400, AIR 1967 SC 148, 1987(Supp.) SCC 16, 1982(3) SCC 372, AIR 1983 SC 318, AIR 1958 SC 79 and 1999(5) ALT 691.

(6) Section 97 Says: Where any party aggrieved by a preliminary decree passed doesn't appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree.

- In AIR 1997 Karnataka 370 and AIR 1967 AP 51 it was held that where an appeal against a preliminary decree is not filed, the rights determined therein became final and conclusive and the same cannot be questioned in the final decree.

(7) Section 99 Says: No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal an account of any misjoinder or non-joinder of parties or cause of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court provided that nothing in this Section shall apply to non - joinder of a necessary party. (See Order 1 Rule 9 CPC also) 1997(2) ALT 625, AIR 1981 AP 250, An.W.R. 1973(2) 112, AIR 1964 AP 164.

In this context it is necessary to read Section 21 CPC on objections to jurisdiction when can be raised and allowed in appellate stage.

(8) Section 99-A Says: No order under Section 47 to be reversed or substantially be varied on account *of any error, defect or irregularity* in any proceeding relating to such order, unless such error, defect or irregularity has prejudicially affected the decision of the case.

- In AIR 1954 SC 340 it was held that the policy underlying in Sections 99 and 99A are that when a case had been tried on merits and decision given, it should not be liable to be reversed purely on technical grounds unless it had resulted in failure of justice.

(9) Section106 Says: deals with what Courts to hear appeals says appeal from Order lies to the Court to which appeal lie from decree in the suit in which such order is made, or where such order made in appellate jurisdiction, then to High Court.

(10) Section 108 says the provisions relating to appeals from original decrees shall so far as may be, apply to appeals.

(a) from appellate decrees and

(b) from orders made under CPC or any special or local law in which different procedure is not provided. *In this context please refer Rule 167 Civil Rules of Practice.*

Section 104 to be read with Order 43, Rules 1 to 5, Section 107 is powers of appellate Court.

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

Notwithstanding anything contained in sub-section (1), where any party aggrieved by an order of remand from which an appeal lies doesn't appeal therefrom, he shall thereafter be precluded from disputing its correctness.

- 1985(3) APLJ 100 and AIR 1970 SC 997 and AIR 1972 SC 1612 it was held that where no appeal filed against remand order, remand order later cannot be challenged even under Section 151 CPC.

- AIR 1953 SC 23 Since an order under Section 151 CPC is not appealable; it can be challenged under Section 105 CPC later in appeal against decree.

- 1998(3) SCC 751 and AIR 1960 SC - 941: it was held that where remand order is not appealable, it can be challenged under Section 105, in appeal from final decision.

- AIR 1974 SC 1126: it was held that the provisions of Sections 96, 100, 104(1), 105 read with Order 43(1) show that an appeal lies only against a decree or order from which an appeal is allowed by Order 43, Rule 1. No appeal lies against a mere finding for there is no appeal provision in CPC. The finding can be challenged under Sections 105 CPC in appeal from final decision.

- *1998(4) JT 459 (SC): it was held that order not appealable can be challenged in appeal from final decision. Non filing of revision against the order no bar. If* revision filed and order became final not for challenge See-1990(1) An.W.R. 190. In 1992(1) SCJ 126, 1960(1) SC 941, 1964 SC 1658, 1968(2) MLJ 266 and 1958 AP 494 it was held that once an appeal filed by defendant against the decree of the Trial Court, is entitled to challenge the correctness of any interlocutory order passed in the suit, in such appeal, by virtue of Section 105 CPC with no need to prefer an independent appeal against the order even if it was appealable. Section 105(1) applies to all orders even to appealable orders where it is open to party not to prefer appeal against the order (even if it is a final order because of Section 108. Section 105 (1) applies) and challenge the correctness later in appeal against decree on final suit disposal. What is meant by error, defect or irregularity in any order effecting the decision of case stated in AIR 1975 Goa 42, 1930 Patna 266, 1957 Raj. 367, 1984 Raj. 1, 1981 Patna 36(FB) 1931 All. 294 FB and 329.

- In 2000(1) SCC 434 at 436 para 21-e - it was held that against order passed even revision filed and dismissed, it is permissible for plaintiff appellant to raise that question in the appeal against the suit decree.

(12) Section 96: Appeals from original decrees.

(1) save as otherwise provided, an appeal shall lie from every decree passed by Court of original Jurisdiction (Trial Court) to the Court authorised to hear appeals from the decisions of such Court.

(2) An appeal may lie, from an *ex parte* decree.

(3) No appeal shall lie, from consent decree.

(4) No appeal shall lie, except on a question of law, from a decree in any suit of small cause nature unless the amount or value of the subject-matter of the original suit exceeds Rs.10,000/- (CPC 1999 amendment for Rs.3,000/-) > see 1980(2) ALT 167 and 1991 (2) APLJ 335.

- 2003(3) ILD 737 SC *Banarasi v. Ramphal* - it was held that, Section 96 provides for an appeal against decree and not against judgment thereby no appeal lies from mere finding in a judgment *but for Order 41, Rule 22 (1),* which makes it permissible to file a cross objections even against a finding.

After 1976 CPC Amendment, neither appeal nor suit lies against the order recording compromise under Order 23, Rule 3 (A). A petition to challenge the compromise lies under Section 23 Rule 3 proviso. Appeal right has been also given under Order 43 Rule 1-A (2) read with Sections 96(1) and l08(b) to a party who challenges the recording of compromise to question the validity of compromise.

Section 96 (3) is applicable to cases where factum of compromise is not in dispute held in 1993(1) SCC 581.

- In AIR 1994 AP 301 - it was held that where a consent decree is passed in the presence of the Counsel of both parties, an appeal against it won't lie.

- AIR 1974 SC 1069 - it was held that the bar to an appeal against a consent decree as per Section 96(3) CPC is based on the broad principle of estoppel. It presupposes that the parties to an action forgo their right of appeal by any lawful agreement or compromise. The decree in terms of the agreement becomes final and binding and is effective in creating an estoppel between the parties.

- In AIR 1992 Patna 153 it was held that as per Section 96 (3) no appeal from consent decree lies however, when factum of compromise or its legality is disputed, an appeal can lie under Section 96(1)

(13) Order 41, Rule 22 read with 33 and Section 107 - Cross objections.

Order 41 Rule 22:Says (1) Any respondent though not appealed from any part of the decree, may not only support the decree, but may also state that the findings against him in the Court below in respect of any issue ought to have been in his favour which he could have taken by way of appeal (though other finding in his favour suffice to decree the suit wholly or in part) may also take any cross-objection within one month from date of service of notice of the day fixed for hearing or within such further time as the appellate Court may see fit to allow. (2) which shall be in the form and contents of a memorandum of appeal as per Order 41 Rule1. (sub-rule (3) omitted by 1999 Amendment). (3) Where respondent filed

cross-objections, the original appeal is withdrawn or is dismissed for default, the cross-objections may nevertheless be heard and determined after such notice to other party as the Court thinks fit.

- In 2003(3) ILD 737 SC *Banarasi v. Ramphal* - it was held that, after 1976 amendment in Rule 22 by insertion of sub-rule 1 which is a classificatory and enabling provision, there are three situations where

  (1) the impugned decree is partly in favour of appellant and partly in favour of respondent - it is then necessary for respondent to file an appeal or cross-objections against that part of the decree which is against to him if he seeks to get rid of it though the part of decree in his favour which he is entitled to support without cross appeal.

  (2) the decree is entirely in favour of respondent though an issue has been decided against him.

  (3) the decree is entirely in favour of respondent on all issues but for a finding in the judgment which goes against him - in the case of above 2 and 3 not entitling or permitting respondent to take any cross-objection since he is not an aggrieved person by the decree, the Order 41 Rule 22 (1) and the explanation gives him right to take cross-objection to a finding against him though the decree and all issues in judgment are in his favour. This advantage of preferring cross-objection spelled out by sub-rule 4.

  (4) It is further held that prior to 1976 amendment by withdrawal or dismissal for default of original appeal disabled respondent to question the correctness of any finding recorded against him, after 1976 amendment in spite of original appeal withdrawn or dismissed for default, the cross-objections taken to any finding by respondent shall still be adjudicated by Court on merits as dismissal or withdrawal of original appeal is not a bar for deciding cross-objections on merits.

- In 1986 LS. SRC-78 AIR 1986 Guj. 56: it was held that the cross-objections wont lie when the appeal itself is incompetent and unsustainable.

- 1986(1) ALT 102: To challenge only the findings in the lower Courts decree and judgment, no petition to condone delay required. Further held, to file cross-objections, one month after service of notice of hearing of appeal fixed since the Court may allow within such further time.

- ILR 1972 AP 278: The right to urge in cross-objections by respondent is limited generally to his urging them against the appellant. The respondent in cross objection in exceptional cases like in suit for dissolution of partnership and rendition of accounts *etc.,* may urge them against the other respondents also held in AIR 1963 SC 1516 and AIR 1966 Pat 61

- In 1985(1) APLJ 246: it was held that even appeal is dismissed, cross objections can be heard.

- In *Mutyam Auguaigh v. Special Deputy Collector* in AS 153/2000 dated 16.4.2002 our High Court D.B. held that the period of limitation for cross objections of one month shall be computed from date of service of notice in appeal. Notice sent in delay condonation to appeal filed is sufficient notice for cross-objections to count one month from that date.

- ILR 2001 (Kar) 312; Respondent in an appeal can without filing cross objections sustain a decree in his favour by attacking the adverse finding recorded against him. He can assail the decree passed against him without filing cross-objections.

The first appellate Court has power to grant or pass a decree in favour of co-respondent while dealing with cross objections, but, such a power has to be exercised with care and caution. The appellate Court should not interfere with Trial Court's findings unless there is a palpable error

- In 1992(1) APLJ 108: it was held that, in an appeal by tenant under Section 20 AP Rent Control Act against order of eviction, the landlord as per Order 41, R.22 (1) without need of preferring any cross-objections, can support the order of eviction, by conversing the correctness of findings against him.

- In AIR 1999 SC 1747: it was held that cross-objections will have all the trappings of an appeal and cross-objection is nothing but a cross appeal.

- In AIR 1943 Mad. 698 (FB): it was held that it is open to a respondent who has not filed any cross-objections to the Trial Court decree in part against him, to urge in opposing the appeal of plaintiff, that a contention which if accepted by the Trial Court, would have necessitated the total dismissal of the suit. Same principle also laid down in a service matter by the Apex Court recently in AIR 2000 SC 659 = 2000(1) SCC 128, > See also AIR 1999 SC 3571, 1747, AIR 1976 SC 2335, AIR 1964 SC 1425, AIR SC 1126, AIR 1983 Cal. 186, AIR 1972 AP 66, AIR 1985 Mad. 99, 1971(1) ALT 29, AIR 1988 SC 54 and 3118

- 1969(2) An.W.R. 290: Where while decreeing suit, when Trial Court gave some findings against plaintiff, if the findings not appealed amounts to *re judicata*, plaintiff in defendants appeal cannot challenge without cross-objections. > See also 1967 (2) An.W.R. 264 at 267

- The other decisions are: 2000(2) ALD 30, AIR 1998 SC 3118, AIR 1965 SC 1874, AIR 1963 SC 1516, 1982(1) SCC 232 = AIR 1982 SC 98, AIR 1960 SC 1349 and AIR 1959 SC 93 on applicability in election petitions.

- In 1987(2) APLJ SC 76: it was held that that the Appellate Court under Rule 33 got discretion to pass necessary order or grant relief *etc.,* even in the absence of cross-objections to meet the ends of justice > see also 1990(2) ALT 533, 2000(2) ALD 30, 1999(5) ALT 529 and1997(3) An.W.R-111

(14) Remand scope and powers: Order 41, Rules 23, 23A, 24, 25, 26 A read with Rule 33 and Section l07 Order 41, Rule 23 and 23 A: where the Appellate Court (on reversing or setting aside the decree under appeal considers it necessary in the interests of justice to remand the case) by order remand the suit which lower Court disposed of upon a preliminary point or otherwise and the appellate Court may further direct the lower Court to readmit the remanded suit and proceed to determine what issues shall be tried in the case. and it shall send a copy of its judgment/order to the lower Court.

Order 41, Rule 24: where the evidence on record is sufficient to enable the appellate Court to pronounce judgment, the appellate Court may, after resetting the issues, if necessary, finally determine the suit notwithstanding that the lower Court in its judgment has proceeded wholly upon some ground other than that on which the appellate Court proceeds.

Order 41, Rules 25 and 26: says where the lower Court has omitted to frame or try any issue or to determine any question of fact, which appears to the appellate Court essential to the right decision of the suit upon the merits, the appellate Court may, if necessary, frame issues, and refer the same for trial with a direction to the lower Court to take the additional evidence required and the lower Court shall try such issues and return the evidence within such time being fixed, to the appellate Court with its findings and reasons which shall form part of the record in the suit and either party may within such time to be fixed by the appellate Court present a memorandum of objections to any finding and after that the appellate Court shall proceed to determine the appeal.

Order 41 Rule 26A: The order of remand by the appellate Court shall fix a date for appearance of parties before the lower Court for purpose of receiving directions as to further proceedings in the suit.

- In 2002(2) SCC 686: *P.P. Reddy v. Pratap Steels* - it was held that an unwarranted order of remand gives the litigation an undeserved lease of life and therefore, must be avoided. > See also 2002(3) SCC 98 and 2001(3) SCC 208 and 2000(7) SCC 502.
- AIR 2001 Allahabad 275 : Order of remand - cannot be passed by appellate Court or authority as a matter of course.
- 2001(4) ALT 545: When matter remanded only to give finding on certain points - The lower Court cannot travel beyond the scope of remand order.
- In 2001(2) Gujarat Law Times 186: *R.K. Tombi's* Case it was held that, before an order of remand for retrial after framing new issues be made, the appellate Court has to see if the case entirely may be disposed off an the basis of available material on record as per Order 41 Rule 24.
- In AIR 1999 SC 1125 = 199(3) SCC 161: it was held that the appellate Courts not to ordinarily remand cases merely because it considers the reasoning of the lower Court to be wrong. > See also AIR 1996 SC 2127
- In 2002(2) SCC 686: it was held that in normal course remand order should not be made taking recourse to inherent powers.
- In 1993(2) MLJ 193: it was held that where a suit has been disposed of on all issues, appellate Court cannot remand the matter unless it reverses the decree of the Trial Court.
- In 1985(2) ALT 534: it was held that remand order without conclusion as wrong and without setting aside the decree of Trial Court is improper.
- In 2002 AIHC 886: it was held that, direction by appellate Court in remand stipulating time for expeditious disposal, cannot be construed as mandate.
- In 1988(2) APLJ (SC) 67 and AIR 1965 SC 364: it was held that when there is a total lack of evidence, it is a fit case for remand. See also on scope of remand - AIR 1965 Madras 417.

See also AIR 1992 SC 1376 and 1338, AIR 1991 SC 480.91 and 87, AIR 1981 SC 1212 and 1113, 192.

- In 1990(3) ALT 341 it was held that, it is not necessary to remand every case. The appellate Court can record evidence and decide the case based on available evidence on record and based on additional evidence placed before it.
- In AIR 1983 Orissa 149 it was held that as per Order 41 Rule 24:

Appellate Court can decide the matter after recasting issues - without remanding the matter where evidence has been let out in Trial Court. > See also AIR 1988 SC 396 and AIR 1985 SC 821

- AIR 1980 SC 591: When case remanded in the interests of justice - refund of Court fees be ordered. (Sections 63 to 66 APCF & SV Act 1956)
- AIR 1977 SC 2026 and 2047: Duties of appellate Courts while ordering remands - stated.
- In AIR 1976 SC 866: it was held that litigation long pending - Final curtain held should be drawn on the long drawn - litigation.
- 1985(2) ALT 478: High Court when remanded the case to lower appellate Court for disposal on all issues afresh, the lower appellate Court disposed of a certain issues and remanded the suit on one issue to the Trial Court, which is unsustainable.
- In 1985(2) ALT 534: it was held that order of remand without considering the evidence on record is not legal. See also 1989(1) LS 132,1986 LS 20.

(15) power to take additional evidence by appellate Court. Order 41, Rules 27, 28, 29 read with 33 and Section 107(1)(d).

Order 41 Rule 27: The parties to an appeal shall not be entitled to produce additional evidence whether oral or documentary, in the appellate Court. But, the appellate Court may for reasons to be recorded allow such evidence or document to be produced or witness to be examined if:

(a) the lower Court has refused to admit evidence which ought to have been admitted (See AIR 1974 SC 2069) or

(b) the party establishes that despite due diligence, such evidence was not within his knowledge or could not after exercise of due diligence be produced at time when lower Court decree passed.

See 1958(1) An.W.R. 335 and 1998 AP 394 or

(c) the appellate Court requires any document to be produced or any witness to be examined to enable it to produce judgment or for any other substantial cause, the appellate Court may allow such evidence or document to be produced or witness to be examined.

For substantial cause - See 2000(3) SCC 528, 2001AP 126, AIR 1964 AP 298, AIR 1957 SC 912, AIR 1965 SC 1008 and AIR 1968 SC 406.

- In 2003 I.L.D (A.P.) 668 *Gullapalli Naram Naidu v. K.K. Swami* - Held that even if 2 out of 3 requirement of Rule 27 not satisfied, notwithstanding the same, the appellate Court in exercise of inherent powers under Section 151 C.P.C., can admit additional evidence.

Order 41, Rules 28 and 29: says wherever additional evidence is allowed to be produced, the appellate Court may either take such evidence, or direct the lower Court or any other subordinate Court to take such evidence, specifying on record, the points to which the evidence is to be confined, and to send, when taken, to the appellate Court.

- In 2001(5) Supreme 689 = 2001(5) ALD 69 SC = AIR 2001 SC 2802: it was held that, to permit for additional evidence at appellate stage the 3 limbs of Rule 27 must be attracted. The Courts shall have to be cautious and must always act with great circumspection in dealing with the claims for letting in additional evidence

particularly, in the form of oral evidence at the appellate stage and that too, after a long lapse of time. Held, the lower appellate Court justified in dismissing the application for additional evidence 10 years after filing of the appeal to examine scribe of the disputed will.

- In 2003(2) ALT 47 - *P. Manemma v. B. Shivanna* - It was held by our High Court that additional evidence in appeal cannot be permitted unless the Court satisfies any of the conditions laid down in the Rule 27. The appellate Court also must record reasons as to why that additional evidence is necessary. The earlier Apex Court judgments in *Gurudev Singh* case AIR 1997 SC 3572 and *Madanlal's* Case 2002(1) ALT 46 (SC) relied.

- In AIR 2001 SC 134 = 2001(1) SCC 309 = 2001(1) ALT 60 SC: it was held that letting additional evidence in the appellate Court can be permitted only subject to compliance of conditions or limitation prescribed in Rule 27. Even if the said conditions exist, Court is not bound to grant permission. It is at the discretion of the Court to exercise and not a vested right to a party. A mere difficulty in coming to a correct decision is not sufficient for admission of additional evidence relied upon AIR 1965 SC 1008. AIR 1931 PC 143 and 1997(6) SCC 507. See also 1990(1) APLJ SN 81

- In 1991(2) APLJ 345: it was held that, inadvertence is not a ground for receiving additional evidence.

- In AIR 1991 SC 2027 it was held that when additional evidence sought to be introduced in appeal was available in the Trial Court but not produced in Trial Court, the same cannot be permitted to be adduced in appellate Court. - See also 1990(1) ALT 100 and 359

- 2001(8) SCC 133 Documents available not put to plaintiff during trial, in appeal permission to adduce additional evidence on those documents not be granted.

- In 2001(5) ALD 378 = 2001(3) LS 102 = 2001(6) ALT 224 = 2001 AIR AP 407 and AIR 2002 AP 369: *S.V. Narsaiah's* case it was held that the document by the 1st appellate Court with reasons much less order to receive or mark as additional evidence. For reception of additional evidence all the 3 conditions laid down to be satisfied first. Held there are no grounds to receive the evidence. See also 1999(6) SCC 222

- In 2001(7) SCC 503: it was held that the provisions have not been engrafted in the code so as to patch up the weak points in the case and fill up the omission in the Court of appeal. > See also AIR 1999 SC 1666, 1997 SC 3243 and 3572, AIR 1991 SC 2027, AIR 1987 SC 558 and 294, AIR 1986 SC 1957, AIR 1980 SC 446, AIR 1978 SC 798, AIR 1976 SC 1053, AIR 1974 SC 2069, AIR 1968 SC 993, AIR 1963 SC 1526, AIR 1956 SC 655, AIR 1951 SC 193, 1998(2) ALT 513 at 529, AIR 1990 AP 144, 1962 ALT 214.

(16) Order 41, Rule 33: Powers of Appellate Court: The appellate Court shall have power to pass any decree and make any order which ought to passed or made and to pass or make such further or other decree order as the case may require and this power may be exercised by the Court not withstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although they may not have filed any appeal or objections and may, whether there have

been decrees in cross suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees.

Provided that, the appellate Court shall not make any order under Section 35A in pursuance of any objection on which the Court from whose decree an appeal is preferred has omitted or refused to make such order.

Under Section 107 CPC - The Powers of appellate Court are

(1) Subject to such limitations as may be prescribed the appellate Court shall have power (a)to determine a case finally (b)to remand a case (c)to frame issues and refer them for trial (d)to take additional evidence or to require such evidence to be taken

(2) Subject as aforesaid, the appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this code on Courts of original Jurisdiction in respect of suits instituted therein.

- In AIR 2001 SC 2003: it was held that decree passed by appellate Court against a dead person is nullity.
- In 2001(5) ALD 484: it was held that if a party to an appeal dies after hearing, a judgment can be delivered.
- Order 41, Rule (1) and (3), 33 and Section 107. In AIR 1984 Gujarat 18, *Champak Vasbharam's* case it was held that in Suit on behalf of minor by next friend tried and disposed off. By date of judgment minor plaintiff became major. Despite it appeal filed as if he is still minor by next friend by wrong description of the appellant. This it can be rectified and be treated as filed by major plaintiff himself.
- Order 41, Rule 1, 33 and Section 96 - *Mallemma v. Unimanjamma* - it was held that where Cross suits filed one for specific performance and the other for eviction and the suits tried jointly and common judgment passed where separate decrees drafted. Single appeal against common judgment of both suits on both decrees not maintainable as separate appeals to be filed.
- In AIR 1970 SC 1286 and AIR 1965 SC 354 it was held that, Court will not only examine the oral testimony, but also surrounding circumstances and probabilities of a case to decide whether a fact is proved or not.
- In AIR 1971 SC 2439 it was held that evidence is to be judged by test of human probabilities.
- In AIR 1969 SC 255 - it was held that in assessing oral evidence, Judges are bound to call in aid their experience of life and test the evidence on basis of probabilities. Evidence of only one party, even when no evidence of rebuttal is led by other party, need not necessarily be accepted.
- In AIR 1966 SC 1072 at 1073 - it was held that consent of parties cannot make irrelevant evidence relevant.
- In AIR 1963 SC 1165 and 302 - it was held that an admission of Council on a point of law does not bind a party.
- In AIR 1953 SC 235, AIR 1969 SC 129, AIR 1964 SC 24 and AIR 1970 SC 1818 - it was held that decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that he to be found. No plea, no evidence can be looked into.
- In AIR 1970 SC 2025 - it was held that a party cannot be permitted to

take up a case which is wholly inconsistent to what is pleaded.

- In AIR 1966 SC 735, AIR 1954 SC 758, AIR 1956 SC 593 and AIR 1963 SC 889 - it was held that where even a plea not specifically taken is covered by an issue by implication and the parties knew that the said plea was involved in the trial, a party would not be disentitled to rely upon it.

- In AIR 1971 SC 2018 - it was held that plea of maintainability of a suit is legal plea. If the suit on the face of it is not maintainable, the fact that no specific plea was taken or no issue was framed is of little consequence.

- In AIR 1966 SC 735 and AIR 1951 SC 177 - it was held that alternative remedy though not pleaded can be granted by the Courts.

- 1971(1) An.W.R. 65 - Non-issuance of reply to registered notice served leads to adverse inference.

- AIR 1960 AP 96 d - Section 114 Evidence Act - The normal presumption is that all official acts are properly performed, must always be recognised and given effect to in the absence of evidence to the contrary.

- In 2003(5) ALD-187(DB)-it was held that where in it was also held that entries in the Register maintained under Registration of Births and Deaths Act 1969 - attracts the presumption under Section 114 Evidence Act and are admissible in evidence.

- However, in AIR-1988-SC-1796-it was held that the parents or near relatives having special knowledge are the best persons to depose about the date of birth of a person. The date of birth mentioned in school register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined. The entry contained in the admission form or school register must be shown to be made on the basis of information given by parents or persons having special knowledge about the date of birth of the person concerned. If the entry is based on the information by some one who has no special knowledge of the date of birth, such an entry has no evidentiary value. The school extracts even marked, it doesn't mean that the contents of the documents were also proved as mere proof of documents would not tantamount to proof of all the contents are correctness of the date of birth stated therein.

- In AIR 1966 SC 605 at 612, 20 CWN 371, AIR 1956 Cal. 668 and 1983 (2) APLJ- SN 72 - it was held that title either by admission or relinquishment shall not pass, that admission is no way an estoppel.

- In AIR 1963 SC 1- it was held that opinion of a Judge while hearing arguments cannot be considered as bias.

- In AIR 1978 AP 442 - it was held that Court has to frame an issue of law as per Order 14 Rule 3, even plea not taken by the parties.

- In 1997(8) Supreme Today 332 - it was held that limitation law has to be applied with all its vigour. Court have no power to extend limitation period on equitable grounds.

- In AIR 1970 SC 716: it was held that absence of plea of limitation - Legal plea not bar though new plea. Hence appellate Court could allow defendant to raise it in appeal - see *contra* AIR 1963 SC 1165.

- In AIR 2000 Karnataka 374 - it was held that though plea of limitation was not raised in written statement and there was no issue but when it was argued before Trial Court, it can be raised in appeal.
- In AIR 1960 AP 222 - it was held that though parties not raised plea of limitation from which suit barred, it is duty of the Court to give effect to it.
- In AIR 1976 SC 634, AIR 1969 SC 1144 and AIR 1965 SC 184: it was held that the appellate Court is competent to grant a relief if found appropriate on any fact though not granted by lower Court.
- In 1990(2) ALT 533 and 1987(2) APLJ (SC) 76: it was held that appellate Court can grant relief under Order 41, Rule 33 in spite of non filing of an appeal or cross-objections by the aggrieved.
- 2001 (91) CLT 238: *Krishna v. State Bank of India*: Held under Order 41, Rule 33 that, the appellate Court can entertain appeal against a portion of decree if the decree appealed is separably connected with portion which is not subject-matter of appeal and justice cannot be done unless the unappealed portion is as well interfered with.
- In AIR 1995 AP 319: it was held that the appellate Court got power to grant compensation by redetermination though no appeal or cross objections by claimants in road accident case See also 1999(5) ALT 529, See L.P.A. Case 2001(2)An.W.R.358.
- Powers of appellate Court also discussed in AIR 1993 SC 2054, 1994(2) SCC 41. In AIR 1998 SC 3118 AT 3122 and 1998(8) SCC 222 it was held that only in an exceptional case, the appellate Court can pass such decree or order as ought to have been passed even in favour of a party who had not preferred any appeal.
- In AIR 1966 SC 735: it was held that, where substantial matters relating to title were couched in issues and evidence led, simply because the matter was not expressly taken in pleadings would be a mere formal or technical objection. Hence, appellate Court can consider the evidence on record.
- AIR 1970 SC 532: power of appellate Court to give directions regarding management of private trust temple stated.
- AIR 1963 SC 1901: Discretionary powers of appellate Court cannot be exercised to nullify the effects of abatement of appeal.
- In 2002(1) SCC 475: it was held that objections as to maintainability of the appeal should be considered before proceeding with the appeal any further.
- In AIR 1971 Raj. 299 it was held that decision holding that appeal is not maintainable is a decree to appeal against it.
- In 1996 SC 869 it was held that a plea abandoned in the lower Court by a party, it cannot be raised in appeal.
- In AIR 1994 AP 72 it was held that objection as to non-joinder of necessary parties as per Order 1 Rule 9, must be taken as a defence before trial stage and it cannot be allowed to raise for 1st time in appellate stage.
- In AIR 1992 All. 115 - it was held that plea regarding mis-joinder of cause of action cannot be raised for first time in appeal.
- In AIR 1997 Delhi 79 it was held that raising of new issues of fact for the

1st time in appeal is not permissible.

- In 1993(1) APLJ 10 (SC) - it was held that new plea regarding question of law, where factual foundation is not existing on record, cannot be permitted to be raised for 1st time in an appeal.

- In AIR 1965 SC 1325 - it was held that a new plea can be for first time allowed in appeal if it is a pure question of law and not depending on facts.

- In AIR 1954 SC 73 - it was held that whether the appeal is not valid or competent like bar by limitation *etc.,* is always a question to be determined by the appellate Court.

(17) *Whether filing of a Memo a bar to appeal* In 1991(2) APLJ 25 NRC -^See also AIR 1919 Lahore 38 - it was held that filing of a memo as per Courts direction is no bar to prefer appeal or to challenge an order in appeal against decree.

(18) *Appeal by third parties - when lies* In AIR 1976 AP 134 and AIR 1962 AP 140(FB) - held that an appeal by a third party to the suit won't lie but, leave to appeal can be granted if he is prejudicially effected by the judgment. It is based on Latin Maxim "*Res inter aliesacta alterinocere non-debit' i.e.,* a transaction between two parties shall not operate to the prejudice of a third party. See also AIR 1970 SC 1354, AIR 1971 SC 374, AIR 1974 SC 994, AIR 1975 SC 2092, AIR 1967 SC 1470, AIR 1991 All. 68, AIR 1976 All. 121 - Held a party who would benefit from change in judgment being aggrieved or prejudiced has an appealable interest.

- In AIR 1977 AP 427 = 1977 ALT 352 - it was held that in a suit dismissed, even some findings are against the defendant, since those would not operate as *res judicata*, such defendant cannot prefer an appeal. However in 1969(1) APLJ 408 it was held that such defendant can file an appeal questioning those findings which are against to him.

- In 1993(1) APLJ 16 (NRC) - it was held that an appeal preferred without impleading the defendant, who remained *ex parte* in the Trial Court, is not maintainable. Notice of appeal against dismissal to defendant who remained *ex parte* is necessary held in 1988(1) ALT 4, See also 1990(3) ALT 628 and 1978(2) ALT 171.

(19) Order 41 Rules 20 and 33 lays down the power of Court to direct appellant to implead any person against whom the decree is or who is interested in the result of the appeal.

- Appeal lies on allegation of fraud - 1990(2) ALT 272: Held, where the defendant has shown no summons served and fraudulently vakalat and written statement as if he got filed, in Court by plaintiff, an appeal against the decree and judgment is sustainable.

- AIR 1996 SC 1017: Held, a party cannot change its case at appellate stage. Plea not raised on facts cannot be raised for 1st time in appeal. See also 1967(1) ALT (SC) 40, > See also AIR 1965 SC 1752.

- In AIR 1961 SC 1097: it was held that appellate Court should not make out a new case which was not pleaded by parties. See also 2001(8) SCC 133 on new plea with no issue on mixed question of law & fact impermissible.

(20) Order 43 Rules 1 to 5 Appeals against orders:

- In 2001 (5) ALD 705 = 2001(5) ALT 553 = 2001(3) LS 189 LS 189 (FB), *G.V. Ranga Rao's* case Order 43 Rule 1 it was held that no appeal lies against the order for temporary injunction filed at District Judge under Section 11 of

AP (TA) Public Societies Registration Act. Only revision lies.

- In 2002 AIHC 1101 and 2002(3) Indian Civil Cases 282 - it was held that where decree on admission for part of claim as per Order 12, Rule 6, it is appellable as per Order 43 Rule l (A)CPC.

- In AIR 1984(1) SCC 358: it was held that Order refusing amendment of pleadings - no appeal lies.

- In AIR 1978 Allahabad 88 and AIR 1974 SC 1126 - it was held that unless a decree is drawn up a party has no right of appeal against a finding.

- In 1983(1) APLJ (DNC) 34, 1986(2) APLJ 35 NRC, AIR 2000 SC 3032, 2000(5) ALT 44 SC, 1999(5) ALT 434 and AIR 1995 AP 342 - it was held that against the *ex parte* injunction order, there is choice either to prefer appeal or to approach same Court which passed it.

- In 1986(2) APLJ 35 NRC - Order 43 Rule l (r) - it was held that *Ex parte ad interim* injunction is appealable. In such case no decree copy need be filed to admit appeal.

- In AIR 1984 Karnataka 74 - Order 43 Rule (1) - it was held that when Trail Court refused to grant temporary injunction on merits after due consideration of available material, the appellate Court has no jurisdiction to interfere with discretionary order passed by Trial Court, merely because another view is reasonably possible.

- In AIR 1981 SC 1786 - it was held that Order refusing to appoint Receiver or to grant interim injunction appelable.

- In AIR 1996 Madras 224 - it was held that an order for return of plaint for want of pecuniary jurisdiction, appeal lies under Order 43 Rule 1 (a). For appeals from orders. See AIR 1993 SC 1134, AIR 1981 SC 1786, AIR 1981 AP 246 and 362, 200.

- In *S. Elisha's* Case 1997 (3) ALT 155 at 161 it was held that Order 43 Rule 1 itself specifies the nature of orders which are appealable. Thus, all orders passed by the Court are not *ipso facto* appealable under Section 43 Rule 1 CPC but may be under the provisions of the special statute itself.

- In AIR 1993 SC 1139 - *Banwarlal's* case - it was held that a party challenging a compromise can file a petition under Order 23 Rule 3 or an appeal under Section 96 (1) CPC, in which he can question the validity of the compromise in view of Order 43 Rule 1 A (2).

- In 2003(1) ALT 25 - 1 DNOHC and AIR 2002 Gujarat 368 - it was held that, appellate Court can upset the discretionary decision of the lower Court in interlocutory proceedings provided the lower Court has (a) ignored well settled principles of law (b) where non-interference by the appellate Court would result in irreparable injury to the parties. Relied AIR 1966 SC 1631 and AIR 1993 SC 276.

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