

SYNOPSIS

9. Courts to try all civil suits unless barred
10. Stay of suit
11. Res judicata
12. Bar to further suit
13. When foreign judgment not conclusive
14. Presumption as to foreign judgments
15. Court in which suits to be instituted
16. Suits to be instituted where subject-matter situate
17. Suits for immovable property situate within jurisdiction of different Courts
18. Place of institution of suit where local limits of jurisdiction of Courts are uncertain
19. Suits for compensation for wrongs to person or movables
20. Other suits to be instituted where defendants reside or cause of action arises
21. Objections to jurisdiction
- 21A. Bar on suit to set aside decree on objection as to place of suing
22. Power to transfer suits which may be instituted in more than one Court
23. To what Court application lies
24. General power of transfer and withdrawal
25. Power of Supreme Court to transfer suits, etc
26. Institution of suits
27. Summons to defendants
28. Service of summons where defendant resides in another State
29. Service of foreign summonses
30. Power to order discovery and the like
31. Summons to witness
32. Penalty for default
33. Judgment and decree
34. Interest
35. Costs
- 35A. Compensatory costs in respect of false or vexatious claims or defences
- 35B. Costs for causing delay

9. Courts to try all civil suits unless barred

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

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

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

## **10. Stay of suit**

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

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

## **11. Res judicata**

No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between

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parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.*¹

Explanation I.—The expression “former suit” shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.

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

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

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

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

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

Explanation VII.—The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as

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references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

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

## **12. Bar to further suit**

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

## **13. When foreign judgment not conclusive**

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

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

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(e) where it has been obtained by fraud;

(f) where it sustains a claim founded on a breach of any law in force in India.

14. Presumption as to foreign judgments

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

15. Court in which suits to be instituted

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

16. Suits to be instituted where subject-matter situate

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

(a) for the recovery of immovable property with or without rent or profits,

(b) for the partition of immovable property,

(c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,

(d) or the determination of any other right to or interest in immovable property,

(e) for compensation for wrong to immovable property,

(f) for the recovery of movable property actually under distraint or attachment, shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

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

Explanation.—In this section “property” means property situate in India

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

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

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

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

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

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

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

19. Suits for compensation for wrongs to person or movables

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

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

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

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

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

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

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

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

Explanation.—A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

21. Objections to jurisdiction

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

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

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

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

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

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

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

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

23. To what Court application lies

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

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

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

24. General power of transfer and withdrawal

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

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

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

(i) try or dispose of the same; or

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

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

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which is thereafter to

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try or dispose of such suit or proceeding may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section,—

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court; (b) “proceeding” includes a proceeding for the execution of a decree or order.

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

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

25. Power of Supreme Court to transfer suits, etc

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

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

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

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

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

## **26. Institution of suits**

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

(2) In every plaint, facts shall be proved by affidavit.

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

## **27. Summons to defendants**

Where a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and may be served in manner prescribed 3[on such day not beyond thirty days from date of the institution of the suit.

## **28. Service of summons where defendant resides in another State**

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

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

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

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

(b) in Hindi or English where the language of such record is other than Hindi or English, shall also be sent together with the record sent under that sub-section.

## **29. Service of foreign summonses**

Summonses and other processes issued by—

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

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

(c) any other Civil or Revenue Court outside India to which the Central Government has, by notification in the Official Gazette, declared the provisions of this section to apply, may be sent to the Courts in the territories to which this Code extends, and served as if they were summonses issued by such Courts.

## **30. Power to order discovery and the like**

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

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

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

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

### **31. Summons to witness**

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

### **32. Penalty for default**

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

(a) issue a warrant for his arrest;

(b) attach and sell his property;

(c) impose a fine upon him 1[not exceeding five thousand rupees;

(d) order him to furnish security for his appearance and in default commit him to the civil prison.

### **33. Judgment and decree**

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

### **34. Interest**

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

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

Explanation I.—In this sub-section, “nationalised bank” means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).

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

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

## 35. Costs

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

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

<sup>1</sup>[**35. Costs.**

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

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

Explanation.—For the purpose of clause (a), the expression “costs” shall mean reasonable costs relating to—

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

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<sup>1</sup> Shall be applicable to commercial disputes of a specified value by Act 4 of 2016, s. 16 and the Schedule (w.e.f. 23-10-2015).

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

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

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

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

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

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

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

- (a) a proportion of another party's costs;

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- (b) a stated amount in respect of another party's costs;
- (c) costs from or until a certain date;
- (d) costs incurred before proceedings have begun;
- (e) costs relating to particular steps taken in the proceedings;
- (f) costs relating to a distinct part of the proceedings; and
- (g) interest on costs from or until a certain date.]<sup>2</sup>

### **35A. Compensatory costs in respect of false or vexatious claims or defences**

(1) If in any suit or other proceedings including an execution proceeding but excluding an appeal or a revision any party objects to the claim or defence on the ground that the claim or defence or any part of it is, as against the objector, false or vexatious to the knowledge of the party by whom it has been put forward, and if thereafter, as against the objector, such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the Court, if it so thinks fit, may, after recording its reasons for holding such claim or defence to be false or vexatious, make an order for the payment to the object or by the party by whom such claim or defence has been put forward, of cost by way of compensation.

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

Provided that where the pecuniary limits of the jurisdiction of any Court exercising the jurisdiction of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887 (9 of 1887),

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<sup>2</sup> Shall be applicable to commercial disputes of a specified value by Act 4 of 2016, s. 16 and the Schedule (w.e.f. 23-10-2015).

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or under a corresponding law in force in any part of India to which the said Act does not extend and not being a Court constituted under such Act or law, are less than two hundred and fifty rupees, the High Court may empower such Court to award as costs under this section any amount not exceeding two hundred and fifty rupees and not exceeding those limits by more than one hundred rupees :

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

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

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

### **35B. Costs for causing delay**

(1) If, on any date fixed for the hearing of a suit or for taking any step therein, a party to the suit—

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

(b) obtains an adjournment for taking such step or for producing evidence or on any other ground,

the Court may, for reasons to be recorded, make an order requiring such party to pay to the other party such costs as would, in the opinion of the Court, be reasonably sufficient to reimburse the other party in respect of the expenses incurred by him in

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attending the Court on that date, and payment of such costs, on the date next following the date of such order, shall be a condition precedent to the further prosecution of—

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

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

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