

SYNOPSIS

- 96. Appeal from original decree
- 97. Appeal from final decree where no appeal from preliminary decree
- 98. Decision where appeal heard by two or more Judges
- 99. No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction
- 99A. No order under section 47 to be reversed or modified unless decision of the case is prejudicially affected
- 100. Second appeal
- 100A. No further appeal in certain cases
- 101. Second appeal on no other grounds
- 102. No second appeal in certain cases
- 103. Power of High Court to determine issue of fact
- 104. Orders from which appeal lies
- 105. Other orders
- 106. What Courts to hear appeals
- 107. Powers of Appellate Court
- 108. Procedure in appeals from appellate decrees and orders
- 109. When appeals lie to the Supreme Court
- 112. Savings

**96. Appeal from original decree**

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

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

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

(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognisable by Courts of Small

~~~~~

Causes, when the amount or value of the subject-matter of the original suit does not exceed ten thousand rupees.

**97. Appeal from final decree where no appeal from preliminary decree**

Where any party aggrieved by a preliminary decree passed after the commencement of this Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree.

**98. Decision where appeal heard by two or more Judges**

(1) Where an appeal is heard by a Bench of two or more Judges, the appeal shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges.

(2) Where there is no such majority which concurs in a judgment varying or reversing the decree appealed from, such decree shall be confirmed :

Provided that where the Bench hearing the appeal is composed of two or other even number of Judges belonging to a Court consisting of more Judges than those constituting the Bench and the Judges composing the Bench differ in opinion on a point of law, they may state the point of law upon which they differ and the appeal shall then be heard upon that point only by one or more of the other Judges, and such point shall be decided according to the opinion of the majority (if any) of the Judges who have heard the appeal, including those who first heard it.

(3) Nothing in this section shall be deemed to alter or otherwise affect any provision of the letters to patent of any High Court.

**99. No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction**

~~~~~

~~~~~

No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder or non-joinder of parties or causes 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:

**99A. No order under section 47 to be reversed or modified unless decision of the case is prejudicially affected**

Without prejudice to the generality of the provisions of section 99, no order under section 47 shall be reversed or substantially 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.

**100. Second appeal**

(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed ex parte.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

~~~~~

~~~~~

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.

**100A. No further appeal in certain cases**

Notwithstanding anything contained in any Letters Patent for any High Court or in any instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a High Court, no further appeal shall lie from the judgment and decree of such Single Judge.

**101. Second appeal on no other grounds**

No second appeal shall lie except on the ground mentioned in section 100.

**102. No second appeal in certain cases**

No second appeal shall lie from any decree, when the subject matter of the original suit is for recovery of money not exceeding twenty-five thousand rupees.

**103. Power of High Court to determine issue of fact**

In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal,—

~~~~~

~~~~~

(a) which has not been determined by the lower Appellate Court or both by the Court of first instance and the lower Appellate Court, or

(b) which has been wrongly determined by such Court or Courts by reason of a decision on such question of law as is referred to in section 100.

#### **104. Orders from which appeal lies**

(1) An appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force, from no other orders:—

(ff) an order under section 35A;

(ffa) an order under section 91 or section 92 refusing leave to institute a suit of the nature referred to in section 91 or section 92, as the case may be;

(g) an order under section 95;

(h) an order under any of the provisions of this Code imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution of a decree;

(i) any order made under rules from which an appeal is expressly allowed by rules:

Provided that no appeal shall lie against any order specified in clause (ff) save on the ground that no order, or an order for the payment of a less amount, ought to have been made.

(2) No appeal shall lie from any order passed in appeal under this section.

#### **105. Other orders**

~~~~~

~~~~~

(1) 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.

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

### **106. What Courts to hear appeals**

Where an appeal from any order is allowed it shall lie to the Court to which an appeal would lie from the decree in the suit in which such order was made, or where such order is made by a Court (not being a High Court) in the exercise of appellate jurisdiction, then to the High Court.

### **107. Powers of Appellate Court**

(1) Subject to such conditions and limitations as may be prescribed, an 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.

### **108. Procedure in appeals from appellate decrees and orders**

The provisions of this Part 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 this Code or under any special or local law in which a different procedure is not provided.

### **109. When appeals lie to the Supreme Court**

Subject to the provisions in Chapter IV of Part V of the Constitution and such rules as may, from time to time, be made by the Supreme Court regarding appeals from the Courts of India, and to the provisions hereinafter contained, an appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court, if the High Court certifies—

- (i) that the case involves a substantial question of law of general importance; and
- (ii) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.

### **112. Savings**

- (1) Nothing contained in this Code shall be deemed—
  - (a) to affect the powers of the Supreme Court under article 136 or any other provision of the Constitution; or

~~~~~

~~~~~

(b) to interfere with any rules made by the Supreme Court, and for the time being in force for the presentation of appeals to that Court, or their conduct before that Court.

(2) Nothing herein contained applies to any matter of criminal or admiralty or vice-admiralty jurisdiction or to appeals from orders and decrees of Prize Courts.