

**“Civil Procedure Code - Appeals<sup>1</sup>”**

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**INTRODUCTION:**

An appeal is a process by which a judgment/order of a subordinate Court is challenged before its superior court. The person filing or continuing an appeal is called the appellant and the concerned Court is termed as the appellate Court. A party to a case does not have any inherent right to challenge the judgment/order of a Court before its Superior Court. Appeal can be filed only if it is specifically allowed by any law and has to be filed in the specified manner in the specified Courts.

The expression appeal has not been defined in the Code of Civil Procedure 1908. It is an application or petition to appeal higher Court for are consideration of the decision of appeal lower court. It is a proceeding for review to be carried out by higher authority of appeal decision given by lower one<sup>2</sup>. An appeal is a creature of statute and right to appeal is neither an inherent nor natural right. Section 96 of the Civil Procedure Code gives right to litigant to appeal from an original decree. Section 100 gives him right to appeal from an appellate decree in certain cases. Section 109 gives him right to appeal to the Supreme Court in certain cases. Section 104 gives him right to appeal from orders as distinguished from decrees.

**PROCEDURE FOR FILING AN APPEAL:****Who Can File an Appeal?**

- Any party to the original proceeding or his/her legal representatives.
- Any person claiming under such party or a transferee of interests of such party.
- Any person appointed by the court as the legal guardian of a minor.
- Any other aggrieved person after taking leave of the court.

In **Krishna v. Mohesh**<sup>3</sup>, the court observed that “the question who may appeal is determinable by the common sense consideration that there can be no appeal where there is nothing to appeal about”

**Who Cannot?**

- A party which has relinquished its right of appeal as per an agreement which is clear and unambiguous.
- A party which has availed the benefits under a decree<sup>4</sup>.

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<sup>2</sup> Sita Ram V. State of U.P. AIR 1979 SC 745

<sup>3</sup> (1905) 9 CWN 584.

<sup>4</sup> Dexters Ltd. v. Hill Crest Oil Co., (1926) I KB 348 (CA)

- Parties with a consent decree. Consent, in this case, could be a lawful agreement or compromise, or could even be presumed from the conduct of the parties.
- Parties, whose factum or compromise is in dispute or hasn't been formulated.
- Parties involved in petty cases.
- No legal representatives are entitled to file an appeal against a deceased person.

**Kaleidoscope India Pvt. Ltd. v. Phoolan Devi**<sup>5</sup>, In this case, the Trial Court judge prohibited the exhibition of film both in India and abroad. Session Judge permitted the exhibition of film in abroad. Subsequently, a party who moved in appeal did not have locus standi. It was reversed by division bench saying that its not proper on the part of judge as he entertained the suit on which party has no locus standi.

**Delhi Cloth & General Mills v. I T Commissioner**<sup>6</sup>, Where right to appeal is created subsequently shall not be available to a litigant if the suit was instituted prior to such creation.

**Veeraya v. Subbia Choudhry**,<sup>7</sup> In this case the court held that Right to appeal get vested on the date suit is instituted. A new right to appeal gets created can't be availed by the parties to a proceeding which commenced earlier during the creation of new rights.

#### **Memorandum of Appeal (Order XLI, Rule 1):**

An appeal must be supported with a memorandum of appeal, which is a document comprising of the grounds of appeal. The constituents of a valid memorandum of appeal include:

- The grounds for filing an appeal.
- Signature of the appellant or his/her pleader.
- The attachment of the certified copy of the original judgement.
- The remittance of the decretal amount or security (in case of a money decree).

The appellant, with respect to this provision, is not entitled to take any grounds or objection except the ones mentioned in the memorandum. However, the court may accept such objections on its own accord, provided the opposite party is provided with adequate opportunities to contest such grounds. The memorandum of appeal must contain the grounds of objections to the decree appealed from, concisely, under distinct heads, without any arguments or narrative and should be numbered consecutively<sup>8</sup>. The court has the right to reject or amend any memorandum which it finds to be inappropriate. The court shall record the reasons for such rejection.

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<sup>5</sup> AIR 1995 Delhi 316

<sup>6</sup> AIR 1927 PC 242

<sup>7</sup> AIR 1957 SC 540

<sup>8</sup> R. I (2).

**Appeals from Original Decrees:  
Sec 96<sup>9</sup> of Civil Procedure Code:**

- Appeals from original decrees, which is performed by the appellate court, are preferred in a court which is superior in rank to the Court passing the decree.
- Appeal for such decrees may lie on an original decree passed ex parte.
- No appeals will be placed if the decree is passed with the consent of the parties.
- The appeal from original decrees lies on a question of law.
- No appeal lies in any suit of the nature cognizable by Courts of small causes if the amount or value of the subject matter of the original suit is confined to a sum of Rs. 10,000.
- The appellate court may remand a case to a trial court if the latter has dispensed of the case without recording any findings.
- The decision of the appellate authority is conclusive.
- If an appeal under this provision is heard by a bench of multiple judges, the opinion of the majority will be considered.
- In the absence of a majority, the original decree will stay.
- Where the bench digresses on any point of view, the same may be determined by any number of the remaining judges of the court, and the decision shall be taken by a majority of the judges hearing the appeal, which includes the judges who have heard it originally.
- The judgement may confirm, modify or reverse the decree.

**1. Procedure For Appeal From Original Decrees ( Order XLI):**

- The appeal shall be filed in the form prescribed, signed by the appellant, along with a true certified copy of the order.
- The appeal shall contain the grounds of objection under distinct heads, and such grounds shall be numbered consecutively.
- If the appeal is against a decree for payment of money, the court may require the appellant to deposit the disputed amount or furnish any other security.
- A ground / objection which has not been mentioned in the appeal, cannot be taken up for arguments, without the permission of court.
- Similarly any point of act which was not taken up by the Appellant, in lower court, cannot be taken up in appeal lies only against only those points which have been decided by the court rightly or wrongly.

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<sup>9</sup> (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 three thousand rupees.]

**Second Appeal:**

Sec 100 and Order XLII of Civil Procedure Code Section 100<sup>10</sup> of the Civil Procedure Code provides that an appeal can be moved to the High Court from every decree passed in appeal by any subordinate Court if the High Court finds that the case includes a substantial question of law. Taking this into context, the memorandum of appeal must clearly state the substantial question of law in this appeal. If the High Court deems it to be satisfactory, it may go on to formulate the pertinent questions, based on which the appeal would be heard. Also, the High Court may hear the appeal on any other substantial question of law not formulated by it if it feels that the case involves such question. It may be noted that a second appeal is only meant for questions of law and hence cannot be made on the grounds of an erroneous finding of fact. On the same page, in the absence of any errors or defects in the procedure, the finding of the first appellate court will be considered as final, if the particular Court produces evidence to support its findings. In another important note, second appeals cannot be made for a decree if the subject matter of the original suit is intended to recover a sum of Rs. 25,000.

**Sir Chunilal V. Mehta And Sons, Ltd. vs The Century Spinning And Manufacturing Co.**<sup>11</sup>, Ltd. laid down that “The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or call for discussion of alternative views.”

Section 100(5) gives the court the power to hear questions which were not formulated by it but they form a part of the substantial question of law if the court is satisfied that case involves such a question.

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<sup>10</sup> (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 other instrument having the force of law or in any other law for the time being in force, where any appeal from an appellate decree or order is heard and decided by a single Judge of a High Court, no further appeal shall lie from the judgment, decision or order or such single Judge in such appeal or from any decree passed in such appeal.]

<sup>11</sup> 1962 AIR 1314, 1962 SCR Supl. (3) 549.

In **Mahindra & Mahindra Ltd. v. Union of India & Anr**<sup>12</sup>, the court observed that “Under the proviso, the Court should be ‘satisfied’ that the case involves a substantial question of law and not a mere question of law. The reason for permitting the substantial question of law to be raised should be recorded by the Court.”

Further, the court clarified in **Ramji Bhagala v. Krishnarao Krirao Bagra** that an appellate court cannot partly admit and partly reject a second appeal under Section 100 and Section 101. It should either admit it wholly or reject it wholly.

### **Appeals from Orders (Order XLIII) and Sec 104 to 108 :**

Order has been defined as “the formal expression of any decision of a civil court which is not a decree”<sup>13</sup>. Thus an adjudication of a court which does not fall within decree, is an order.<sup>14</sup> Appeal can be filed only against those orders which are made appealable.<sup>15</sup>

Appeals from orders could be placed with respect to the following pronouncements on the grounds of any defect or irregularity in law:

- Any orders under Section 35A of the Code allowing special costs, and orders under section 91 or 92 refusing leave to institute a suit of the kind referred to in Section 91 or Section 92.
- Any orders under Section 95, which involves the compensation for obtaining attachment or injunction on insufficient grounds.
- Orders under the code which deals with the imposition of fine, direction of detention or arrest of any person except in execution of a decree.
- Appealable orders as prescribed under Order 43, R.I. However, appeals cannot be filed based on any order enlisted in clause (a) and from any order passed in appeal under Section 100.

In **Nav Shakti Educational Society vs Laxman Public School Society & Ors**,<sup>16</sup> the court held that the right of appeal against an order passed under Order 41 Rule 23 or 23-A CPC is granted under Order 43 CPC and not under Order 41 CPC. Therefore, even if provisions of Order 41 CPC are made applicable to appeals under Order 43 CPC, merely the power to remand the matter (akin to Order 41 Rule 23 CPC) gets extended to the Appellate Court but in the absence of a specific provision, the right of an aggrieved party to file an appeal against such an order is not extended by the Statute. Provisions of Order 43 Rule 1(u) CPC are clear and do not allow for an expanded reading. It is settled law that a right of appeal is a statutory right and does not exist as a general common law right, unless specifically provided. Therefore, in the absence of a specific statutory

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<sup>12</sup> 1979 AIR 798, 1979 SCR (2)1038.

<sup>13</sup> Sec 2(14)

<sup>14</sup> Vidyacharan Shukla v. Khubchand Baghel, AIR 1964 SC 1099.

<sup>15</sup> Keshardeo v. Radha Kissen, AIR 1953 SC 23.

<sup>16</sup> 26th August, 2019.

provision, the right to appeal, as claimed by the Respondent cannot be allowed to an aggrieved party.

#### **Appeals by Indigent Persons (Order XLIV):**

Any person who is not capacitated to remit the fee required to file the memorandum may file an appeal as an indigent person. If the court declines the application of a person to appeal in this manner, it may necessitate the applicant to remit the required court fee within a prescribed time-frame.

In **Ram Sarup vs The Union Of India And Another**<sup>17</sup>, the court held that at the stage of hearing of an application, the question to be considered by the court is whether the applicant is an indigent person. If he is, the application will be allowed and the memorandum of appeal will be registered. If he is not, the application will be rejected.<sup>18</sup>

The period of limitation for presenting an application for leave to appeal as an indigent person to the High Court is 60 days and to other courts is 30 days. The limitation starts from the date of the decree appealed from.<sup>19</sup>

#### **Appeals to Supreme Court (Order XLV) and Sec 109 to 112:**

Appeals to India's highest jurisdictional body can be made if the former considers the case to be appropriate for an appeal to the Supreme Court or when a special leave is granted by the Supreme Court itself. Appeals can be filed to the Supreme court by filing a petition with the court which enacted the decree, upon which the petition would be heard and disposed of within a period of sixty days. Petitions submitted for this purpose must state the grounds of appeal. Also, it must include a plea for the issuance of a certificate stating that the case involves a substantial question of law which needs to be decided by the Supreme Court.

The opposite party will be provided with an opportunity for raising any objections against the issue of such certificate. The petition would be disposed of if the applicant is denied the certificate. If accepted, the appellant would be required to deposit the required security and costs within a prescribed time-frame.

After the applicant performs the above obligations, the court from whose decision an appeal is preferred shall declare the appeal as admitted, an intimation of which will be addressed to the respondent. Further to this, the jurisdictional body forwards a precise copy of the record under seal and furnishes the copies of such papers in the suit.

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<sup>17</sup> 1965 AIR 247, 1964 SCR (5) 931.

<sup>18</sup> 1965 AIR 247, 1964 SCR (5) 931

<sup>19</sup> Art.130, Limitation Act,1963.

The pendency of an appeal to the Supreme Court does not affect the right of the decree-holder to execute the decree unless the court otherwise directs<sup>20</sup>. The court may stay execution after taking sufficient security from the appellant or it may allow the decree to be executed after taking sufficient security from the respondent<sup>21</sup>.

**Conditions:**

An appeal would lie to the Supreme Court under sec 109 of the Code only if the following conditions are fulfilled:

- (i) a judgement, decree or final order must have been passed by the High Court<sup>22</sup>;
- (ii) a substantial question of law of general importance must have been involved in the case<sup>23</sup>; and
- (iii) in the opinion of the High Court, the said question needs to be decided by the Supreme Court<sup>24</sup>.

**Appeals under Constitution:**

Over and above Articles 132, 133 and 134 A, Article 136 of the Constitution confers very wide and plenary powers on the Supreme Court to grant special Leave to appeal from any Judgement, Decree, Determination, sentence or order (final as well as interlocutory) passed by any court or tribunal. Section 112 of the Code saves the powers conferred on the Supreme Court by the Constitution and declares that nothing in the Code of Civil Procedure would affect these powers.

**Cross Objection (Section 41 and Order 41 Rule 22):**

- Cross objection is like an appeal. It has all the trappings of an appeal. It is filed in the form of memorandum and the provisions of Rule 1 of Order 41 of the Code, so far as these relate to the form and contents of the memorandum of appeal apply to cross-objection as well.
- Court fee is payable on cross-objection like that on the memorandum of appeal. Provisions relating to appeals by indigent person also apply to cross-objection.
- Even where the appeal is withdrawn or is dismissed for default, cross-objection may nevertheless be heard and determined.
- Respondent even though he has not appealed may support the decree on any other ground but if wants to modify it, he has to file cross-objection to the decree which objections he could have taken earlier by filing an appeal.
- Time for filing objection which is in the nature of appeal is extended by one month after service of notice on him of the day fixed for hearing the appeal. This time could also be extended by the Court like in appeal.
- Cross-objection is nothing but an appeal, a cross-appeal at that. It may be that the respondent wanted to give quietus to whole litigation by his accepting the judgment and decree or order even

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<sup>20</sup> Rr. 7,9,12.

<sup>21</sup> R. 13(2). Deochand v. Shiv Ram, AIR 1965 SC 615.

<sup>22</sup> Ramesh v. Gendalal Motilal Patni, AIR 1966 SC 1445.

<sup>23</sup> Chunilal V. Mehta & Sons Ltd v. Century Spg. & Mfg. Co. Ltd., AIR 1962 SC 1314.

<sup>24</sup> SBI v. N. Sundara Money,(1976) I SCC 822.



if it was partly against his interest. When, however, the other party challenged the same by filing an appeal statute gave the respondent a second chance to file an appeal by way of cross-objection if he still felt aggrieved by the judgment and decree or order.

In **N. Jayaram Reddy and Anr. v. Revenue Divisional Officer and Land Acquisition Officer, Kurnool**<sup>25</sup>, this Court was considering the nature of cross-appeals and cross-objections. It said: “Cross-appeal and cross-objections provide two different remedies for the same purpose and that is why under Order 41, Rule 22, cross-objections can be preferred in respect of such points on which that party could have preferred an appeal. If such be the position of cross-objections and cross-appeal a differentiation in the matter of their treatment under Rules 3 and 4 cannot be justified merely on the ground that in case of cross-objections they form part of the same record while cross-appeals are two independent proceedings”.

In **Ramasray Singh v. Bibhisan Sinha**<sup>26</sup>, the court held that in our view, where nothing is stated expressly as to the procedure of an appeal before a District Judge, the law will import that the ordinary procedure of that Court on appeal will apply. The ordinary procedure of an appeal is that the respondent has the right to file cross-objection and therefore it is quite clear that the respondent has the right to file a cross-objection.

In **Alopi Nath and Ors. v. Collector, Varanasi**,<sup>27</sup> this Court in a brief order said: “We have heard learned Counsel for the parties. The short question is as to the admissibility of the cross-objection under the provisions of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959 where an appeal against quantum has been filed and the respondent has not preferred an appeal. We have looked into the provisions of Sections 377, 379 and 381 of the Act and are inclined to take the view that the provision of Order 41 Rule 22 of the CPC would be inconsistent with the provisions of the Act inasmuch as an appeal is admissible only by a certificate or special leave as provided in provisions (a) and (b) respectively of Section 381(1). It is difficult to contend that a cross-objection is anything other than an appeal as generally understood in law. In the circumstances, benefit of Section 377 or of Sub-section (4) of Section 381 of the Act is not available. The appeal therefore fails. There is no order as to costs”.

#### **CONCLUSION:**

The expression appeal has not been defined in the Code of Civil Procedure 1908. It is an application or petition to higher Court for the consideration of the decision of lower court. It is proceeding for review to be carried out by higher authority of decision given by lower one. In is an creature of statute and right to appeal is neither an inherent nor natural right. As soon as judgment is pronounced against party, right to appeal arises. Right to appeal doesn't arise when adverse decision is given, but on the day suit is instituted i.e. proceedings commenced, right to appeal get conferred. Thus, it can be said the Right to appeal is appeal substantive right vested in parties from the date suit instituted.

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<sup>25</sup> 1979 AIR 1393, 1979 SCR (3) 599.

<sup>26</sup> AIR 1950 Cal 372.

<sup>27</sup> [1986] Supp. SCC 693.