

Important judgements under civil procedure

Introduction

This article will be listing out a few notable Supreme Court, and High Court judgments ranging from the year 2020 to 2021, which have had a greater impact on a better understanding of the Code of Civil Procedure, 1908. It stands obvious that this article does not cover all such important judgments delivered by the Supreme Court of India, and the various High Courts of the country, but it does provide some of the important judgments which are necessary for every law professionals, or student to know.

Supreme Court judgments

The judgments discussed below majorly throws light on the ratio decidendi of the case in comparison to the obiter dictum. The facts and the contention of the parties in the suit have been briefly discussed as well.

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Government of Maharashtra (Water Resources Department) represented by Executive Engineer v. M/s Borse Brothers Engineers & Contractors Pvt. Ltd. (2021)

This present case (2021) takes into account whether the judgment delivered by the Apex Court in the case of N.V. International v. State of Assam (2020) provides a correct, and justified interpretation of Section 37 of the Arbitration and Conciliation Act, 1996 or not. In the 2020 case, the Supreme Court had observed that if an appeal had been filed beyond the prescribed period of 120 days as provided by Section 37 of the Arbitration and Conciliation Act 1996, then the same will not be accepted. This decision was taking into consideration two grounds which were;

Speedy disposal of arbitral disputes; and

Generally in a suit, a defendant is provided with a period of 120 days to file a written statement, and therefore an appeal which is a continuation of such a suit should be following the same pattern (Order 8 Rule 9).

The two issues that the Court dealt with in the 2021 case were:

Whether the judgment delivered in the case of N.V. International v. State of Assam (2020) laid down the law in a justified way?

Whether an appellate court can accept a delay in filing an appeal under the provision of Section 37 of the Arbitration and Conciliation Act, 1996?

Justices R. F. Nariman, B.R. Gavai, and Hrishikesh Roy while delivering the judgment took into account different statutes namely the Arbitration and Conciliation Act, 1996, the Limitation Act, 1963, and the Commercial Courts Act, 2015. And throughout the judgment, the Court took into consideration the key provision which functions as a crux of the mentioned statutes, that is Order 8 Rule 1 of the Code of Civil Procedure, 1908 that restricts the right of defense after a provided period of limitation is over. The observations by the Apex Court has been presented hereunder;

The underlying principle of both the Arbitration Act, 1996, and the Commercial Courts Act, 2015 is speedy disposal of disputes with minimal interference by the courts.

Section 37 of the Arbitration and Conciliation Act, 1996 neither prescribed a limitation period within which an appeal is supposed to be filed nor did it lay down an acceptance period beyond which delay in filing an appeal would not be entertained. Along with this, the Court noted that Section 43 of the Act of 1996 expressly provides that provisions of the Limitation Act will be applicable in arbitral proceedings just the way it applies to court proceedings.

Taking into account the important principle provided in the first bullet, the Court observed that when Section 5 of the Limitation Act comes into play to accept the delay beyond 90 days and/or 30

days of filing appeal depending upon whether Articles 116(a) or 116(b) or 117 of the Limitation Act applies, the governing principle of the Arbitration Act must not be ignored.

Putting Public Sector Companies on equal footing with the Private Sector Companies, the Court upheld the Dicean principle of “equality before the law” thereby rejecting the acceptance of delay in cases associated with the former branch of companies.

The Court noted that Order 8 Rule 1 of the Code of Civil Procedure, 1908 is a mandatory provision, and therefore applying the same opinion that delay in filing of appeals was not to be accepted.

This decision of the Apex Court left a progressive imprint in commercial matters.

Dahiben v. Arvindbhai Kalyanji Bhanusali (2020)

The case of Dahiben v. Arvindbhai Kalyanji Bhanusali (2020) is an appeal case brought before the Supreme Court of India to challenge a judgment delivered by the Gujarat High Court that declared a suit filed by the appellate to be barred by limitation under Rule 11 (d), Order 7 of the Code of Civil Procedure, 1908. The concerned suit revolved around an agricultural plot of land which was sold by the appellate to the respondent who failed to pay the consideration of the sale deed in 2009 thereby forcing the appellate to cancel the same along with the filing of a suit against the respondent on 15th December, 2014.

The Apex Court while deciding on the case took into account the application of the law in deciding a matter brought before it under Order 7 Rule 11 of the Code of 1908. The observations made by the top court have been provided hereunder;

The remedy provided under Order 7 Rule 11 is special in nature as it allows a civil court to dismiss a suit summarily without recording the evidence presented before it, and conducting a trial.

An application under Order 7 Rule 11 of the Code should consist of a plaint, a bare reading of which shows that no further inspection or inquiry is needed to be conducted as the allegations laid down in the plaint is sufficient to show the existence of a cause of action against the defendant.

The Court took into account Article 59 of the Limitation Act, 1963 which lays down three years as the period of limitation while throwing light to the facts of the case. The Court reiterated the principles governing adjudication of an application under Order 7 Rule 11 and opined that the plaintiff should be proactive in securing his legal rights by ensuring that the legal proceedings are filed within the prescribed period of limitation that is three years. Taking into concern the facts of the case, the suit filed by the appellate, in this case, will be barred by the prescribed limitation.

Manish Kumar v. Union Of India (2021)

The Supreme Court in the recent case of Manish Kumar vs Union Of India (2021) took into account the interplay of Order 1 Rule 8 of the Code of Civil Procedure, 1908, and the Consumer Protection Act, 2019. This was because the petitioner, in this case, had resorted to these two provisions while laying down his contentions. The case which concerned amendments brought in the Insolvency and the Bankruptcy Code, 2016 was being heard by Justice K.M. Joseph.

The explanation provided to Order 1 Rule 8 of the Code reads as, “Explanation.— For the purpose of determining whether the persons who sue or are sued, or defend, have the same interest in one suit, it is not necessary to establish that such persons have the same cause of action as the persons on whose behalf, or for whose benefit, they sue or are sued, or defend the suit, as the case may be.” Therefore, the interests of all the persons who have the same interest are protected by means of this provision. The petitioner, in this case, had further submitted that Section 12 of the Consumer Protection Act, 2019 adopts the principle laid down by Order 1 Rule 8 of the Code as it provides the manner in which a complaint should be made. Further, Section 2(b)(iv) of the Consumer Protection Act, 2019 mentions that a complaint “includes one or more consumers, where there are numerous persons having the same interest.” To conclude, it can be said that the procedure laid down under

Order 1 Rule 8 of the Code can be applied in the Consumer Protection Act, 2019 where a situation of more than one consumer having the same interests arises.

Thus once an application is moved under Order 1 Rule 8 of the Code of 1908, a single plaintiff or a consumer depending on the facts of the case, in a civil suit or a consumer complaint respectively, having the same interest, are free to be a part of the proceedings. Irrespective of the fact whether they join the proceeding or not, a Decree or order, which is pronounced by the court, will bind all the persons who have the same interest.

H.S. Goutham v. Rama Murthy (2021)

The present case (2021) of an appeal involves a mortgagee and an auction purchaser who had purchased the mortgaged property in concern. The defendant, in this case, had defaulted in making the entire payment to the appellate in consequence of which the latter instituted a suit for recovering the payment from the latter. Further, a compromise took place between the appellate and the defendant where the latter agreed to pay the amount by installment in three years. A sale certificate was also granted to the auction purchaser thereby registering the sale. Further, the High Court of judicature at Karnataka had set aside the sale on the application of Order 21 Rule 90 of the Code of Civil Procedure, 1908 stating the compromise to be fraudulent by nature. The Supreme Court of India while observing that when the concerned mortgaged property was already sold in the auction by means of the execution proceedings, the sale was confirmed in favor of the purchaser, and the sale certificate was issued, the High Court's decision of quashing and setting the consent decree aside was not justified.

The Bench of Justices R. Subhash Reddy, M. R. Shah, and Ashok Bhushan held that if Order 21 Rule 92 of the Code of 1908 is read with Order 21 Rule 94 of the Code what can be obtained is that once the sale has been confirmed along with the issue of the sale certificate in favor of the purchaser, the same becomes final, and therefore cannot be set aside. By observing this, the Apex Court confirmed that the High Court had acted beyond its limits.

Rahul S Shah v. Jinendra Kumar Gandhi & Ors. (2021)

The Supreme Court in a recent judgment of *Rahul S Shah v. Jinendra Kumar Gandhi & Ors. (2021)* laid down directions for speedy enforcement proceedings to take place taking into account the difficulties involved in an enforcement proceeding. The facts of the present case involve a property dispute where the judgment debtor had raised hurdles in enforcement by creating conflicting rights over the concerned property.

It is the responsibility of the courts that they must identify the property and the status of any third-party rights before delivering the judgment in order to avoid delay in enforcement proceedings. Courts may require defendants to disclose their assets through affidavits, and after the judgment is delivered, courts must invariably arrest the judgment debtor to ensure immediate execution of the same.

Courts should not be entertaining any applications against a decree made by it if it is observed that the issues surrounding such application could have been taken into account before the court delivered the judgment.

Courts may attach properties of persons from whom a judgment debtor can derive share, profit, or property.

The Apex Court held that an enforcement proceeding must be completed within 6 months, and if an extension is needed then the reasons must be provided in a formal expression.

The taking of evidence during enforcement proceedings should be allowed only in cases of exception.

Courts must award costs and even arrest in frivolous cases.

High Court judgments

The judgments discussed below have been taken from various High Courts across India. With more focus on the ratio decidendi, the cases have been detailed below with brief facts, and contention of the parties involved in a case.

Virender Singh v. the Delhi State Cooperative Bank Limited (2021)

The Delhi High Court in the notable case of Virender Singh v. the Delhi State Cooperative Bank Limited (2021) opined that although there lies no complete bar on the maintainability of a suit, the court's scope of interference in such a suit in conducting a disciplinary inquiry or Show Cause Notice stands limited by nature. The respondent in the present case had filed an application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 challenging the suit instituted by the plaintiff on the ground that the same will not be maintainable under the Delhi Cooperative Societies Act, 2003. This application was rejected by the trial court.

The Single Judge Bench that consisted of Justice Navin Chawla noted that the burden of satisfying the trial court and the appellate court to decide on the fate of the case as to whether it comes under the purview of the limited scope of interference or not rests solely on the petitioner of the case. The Court went further to decide that the present suit cannot be said to be maintainable before the appellate court as it was exercising its jurisdiction to decide on the ad interim order of injunction that the trial court had granted when the petitioner's application under Order 39 Rule 1, and 2 of the Code of 1908 was pending before it.

Harjyot Singh v. Manpreet Kaur (2021)

In the case of Harjyot Singh v. Manpreet Kaur (2021), an application was filed by the plaintiff to remove the written statement submitted by the defendant on the ground that the same was submitted before the Court after the stipulated period laid down under Order 8 of the Code of Civil Procedure, 1908. Therefore, the issue in hand that was to be dealt with by the Hon'ble High Court of Delhi was whether a delay in filing of the written statement was to be accepted or not by the Court. The defendant had contended the allegations made by the plaintiff on grounds that his plaint stands were rejected under Order 7 Rule 11 of the Code of 1908.

The Delhi High Court in this case observed the following points:

The written statement was filed by the defendant on 15.02.2020 which was beyond the period 120 days from the date of receipt of summons by the defendant from the Court.

The application that was submitted by the defendant provided no reasonable grounds for delay in filing of the written statement.

The defendant herself had stated in the application that she had voluntarily refrained from filing a written statement previously within the stipulated period of time.

Taking into consideration these aspects, the Court allowed the application filed by the plaintiff.

Narayane v. S. Karthik (2021)

The Madras High Court while deciding on the case of Narayane v. S. Karthik (2021) that concerned an appeal that was directed against a decision made by a Family Court that involved dissolving a marriage between two parties. The issue before the Hon'ble High Court was whether failure on the appellate's part to take part in a divorce proceeding to which she is a party will lead to a presumption by the Court that the allegations made by the respondent against her are accepted by her. The Madras High Court while answering this issue provided two reasons which are presented hereunder;

Order 8I Rule 5(1) of the Code of Civil Procedure, 1908 states that "every allegation of fact in the plaint, if not denied specifically or by necessary implication, the same shall be taken to be admitted

as against the person who failed to deny the same". Therefore, in this case, the absence of the appellate during the divorce proceeding reflects the fact that she has admitted the allegations made by her husband who is the respondent.

The Court made a combined reading of Order 16, Rule 20, Order 15, Rule 4, and Order 22, Rule 4 of the Code of 1908 thereafter inferring that if any party whose suit is pending before the court refuses to provide evidence in support of his or her pleading then the Court can right away pronounce the judgment thereby disposing of the suit.

Prabha Surana v. Jaideep Halwasiya (2021)

The Calcutta High Court while deciding the case of Prabha Surana v. Jaideep Halwasiya (2021) laid down a proper distinction between temporary injunction under Order 39 Rule 1 and an order for attachment before judgment under Order 38 Rule 5 of the Civil Procedure Code, 1908 which were as follows;

While Order 39 Rule 1 of the Code of Civil Procedure, 1908 provides temporary relief to the petitioner who is at imminent risk to the disputed property in the suit, which was being wasted by certain actions of the respondent, Order 38 Rule 5 of the Code applies when the petitioner seeks to execute a decree provided by the Court while dealing with a suit.

The intention of the Court while applying Order 39 Rule 1 of the Code is to safeguard the petitioner from any kind of injury in relation to property in dispute that the respondent is empowered to cause prior to disposing of the suit by the Court. Whereas, the intention behind Order 38 Rule 5 of the Code is to secure the petitioner from the respondent's action of removing the former's property from the jurisdiction of the Court.

The present case was made out to be falling within the ambit of Order 39 Rule 1 of the Code and therefore, the respondent was restricted from causing any harm to the petitioner's property until the Court disposes of the suit, or provides further orders.

Arvind Jeram Kotecha v. Prabhudas Damodar Kotecha (2020)

The Bombay High Court while deciding on the case of Arvind Jeram Kotecha vs. Prabhudas Damodar Kotecha (2020) took into consideration Section 13 of the Code of Civil Procedure, 1908 which provides grounds when a foreign judgment is not conclusive. The Court stated that a bare reading of the provision reflects that for an order or a decree to be conclusive by nature, the same must have been obtained after a due judicial process that will include providing reasonable notice, and equal opportunities to the parties in the suit to be heard. The executing court will therefore not be able to enquire into the legality of the judgment if it follows a judicial process. The Court in this case concluded that as the appellate had failed to show that the decree did not fall within any of the exceptions provided under Section 13 of the Code, the appeal was dismissed.

Conclusion

The judgments discussed above provide a glimpse of the practical application of the Code of Civil Procedure, 1908 by the courts of India. All the judgments discussed upholds the underlying principle of the Code of 1908 which is *ubi jus ibi remedium* which signifies that where there is a right, there is always a remedy to safeguard the right when infringed.