APPELLATE JURISDICTION*
(First Appeal under C.P.C.)

1. **Provisions under which First Appeals are preferred:**

Against decree, as defined under Section 2(2), regular First Appeal is provided under Section 96, C.P.C.

Normally suit concludes by pronouncement of (final) judgment under Order 20 Rule 1. (Such judgment in view of its definition given under Section 2(10) means the statement given by the Judge on the grounds of the decree.) Thereafter, by virtue of Order 20 Rules 6 and 7 the decree shall be drawn which shall agree and be in accordance with the judgment and shall be signed by the judge on being satisfied about its correctness as such. The decree shall bear date, the day on which the judgment was pronounced (even though its preparation and drawing up may take some time, within 15 days as per Order 20 Rule 6-A). The main ingredient of the decree is operative portion of the judgment. According to Order 20 Rule 6 decree shall contain particulars of the claim and shall specify clearly the relief granted or other determination of the suit. Amount of costs are also to be stated therein. (Rules 6, 6-A and 7 of order 20 quoted at the end)

---

* By Justice S.U. Khan, Former Judge Allahabad High Court and at present Chairman, JTRI,UP, Lucknow

Section 2(2), 2(9) and Section 96 C.P.C. are quoted below:

"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 rejection of a plaint and the determination of any question within section 144, 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.

2 (9) *"Judgment" means the statement given by the Judge on the grounds of a decree or order."*

***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* to *the Court authorized* to *hear appeals from the decisions of such Court.*

(2) An appeal may lie form 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 cognizable by Court of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed (ten) thousand rupees."

Combined reading of both the above provisions

shows that against certain adjudications regular First Appeal is maintainable and against certain adjudications it is not. Both are given below:-

A. Appeal maintainable

a. Against a decree
b. Against preliminary decree
c. Against final decree
d. Rejection of plaint under Order 7 Rule 11 C.P.C.
e. Determination of any question within Section 144 (restitution)
f. Original decree passed ex-parte.

B. Adjudication against which regular first appeal does not lie:

a. Dismissal of suit in default
b. Determination of any question within Section 47 [prior to the amendment of 1976-77 against such determination regular first appeal was maintainable as it was included in the definition of decree under Section 2(2)]
c. Decree passed by the Court with the consent of the parties.
d. From a decree in any suit of the nature cognizable by JSCC when the amount or valuation of the subject matter of the suit does not exceed Rs. 10,000/ - except on a question of law.
e. Against decree passed by the JSCC in view

of Section 7, through which Section 96 relating to appeal is not extended to courts constituted under Provincial Small Causes Courts Act, 1887. Section 25 of the PSCC Act provides revision against decree passed by the JSCCs on a question of law.

Against certain orders passed in a suit before its final decision also appeal is provided under Section 104 read with Order 43, Rule 1 C.P.C. These appeals in the District Courts are called Miscellaneous Appeals and in Allahabad High Court as First Appeals from Orders (F AFO). Section 104 specifically provides Miscellaneous Appeals against orders granting compensatory costs in respect of false or vexatious claims or defences (Section 35-A), an order under Section 91 or 92 of C.P.C. refusing leave to institute a suit in respect of public nuisance and other wrongful acts affecting public; and public charities, an order under Section 95 C.P.C regarding compensation for obtaining arrest, attachment or injunction on insufficient grounds or against certain orders imposing fine or directing the arrest or detention in civil prison. Thereafter, under Section 104 (l)(i) C.P.C. it is provided that miscellaneous appeals may also be filed against those order which under the rules are made appealable. This refers to Order 43, Rule 1 C.P.C. under which 18 types of orders are made appealable (some orders which were earlier appealable, were deleted from Order 43 Rule

1 C.P.C. through amendment by Act No. 104 of 1976 w.e.f. 1.2.1977, hereinafter referred to as amendment of 1976-77).

Under C.P.C. third type of appeal is provided under Order 21, Rule 103 by virtue of which orders passed on the applications for dispossession of third party in execution of decree have been conferred the status of decree and made appealable. The rule is quoted below:-

0.21, R. 103

> *"Where any application has been adjudicated upon under Rule* 98 *or Rule* 100, *the order made thereon shall have the same force and be subject to the same condition as to an appeal or otherwise as if it were a decree".*

Rules 98 to 103 were substituted through amendment of 1976- 77, prior to that such types of orders were not appealable but subject to the result of the suit.

Similar is the position under O. 21 R. 58 (4) in respect of attachment.

C. <u>Appeals under, other Acts</u>

Sometimes First Appeal is provided to the District Judge or the High Court under other Acts like appeal under Section 22 of U.P. Rent Control Act (U.P. Act no. 13 of 1972), before the District Judge against order passed under Section 21 of the Act on the application of landlord for eviction / release of the tenanted building on the ground of bonafide need. Section 30 Workmen's Compensation Act

provides appeal to the High Court against certain orders of Commissioner but only on question of law. First appeal to the High Court is provided under Section 173 of Motor Vehicles Act against orders passed by District Judge/Additional District Judge for compensation in case of death or injury under the same Act.

2. Right of Appeal vested right

Right of appeal is vested right and accrues on the date on which first proceedings (suit, application, objection etc.) are initiated. If the right of appeal is taken away or restricted thereafter, it does not affect right of appeal in respect of pending proceedings, unless expressly so expressed vide Videocon v. SEBI AIR 2015 SC 1042. However this principle does not apply to revision.

3. Appeal, statutory right, can be made conditional by Statute:

In *Ganga Bai v. Vijay Kumar, AIR* 1974 SC 1126 it has been held that suit is inherent, general or common law right and it need not be provided by any statute, however, appeal is a statutory right and is maintainable only when some statute provides the remedy of appeal. Following this authority it has been held in *Gujarat Agro Industry v. Municipal Corporation Ahmadabad AIR* 1999 SC 1818 that statute providing right of appeal can make the right conditional like deposit of tax or its part in case of appeal against assessment/

imposition of tax.

Right of appeal under Section 96 C.P.C. is not conditional. Accordingly admission of such appeal cannot be conditional e.g. it cannot be ordered along with admission of appeal that in case certain amount is not deposited within certain time order of admission of appeal shall stand withdrawn or recalled vide Management of M/s *Devi Theatre v. Vishwanath Raju AIR 2004SC332* and *G.L. Vijain v. K. Shankar AIR 2007 SC 1103* (Such condition may be attached with stay order.)

4. Appeal against Preliminary and Final Decrees:

In certain suits, two decrees are passed, one is preliminary and the other is final, like partition suit, in which, in the preliminary decree shares of the parties are determined and in final decree actual partition is done by metes and bounds. Appeal is provided against both the decrees i.e. preliminary as well as final. However, if against the preliminary decree appeal is not filed then its correctness cannot be questioned in an appeal which is preferred against final decree as provided under Section 97 C.P.C.

5. Appeal not to be allowed on trivial defects in decree:

Section 99 CPC is quoted below-

"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

It has been held in *Kuldip Kumar Dubey v. Ramesh Chandra Goyal AIR 2015 SC 1135* that in appeal decree cannot be set aside on the ground of minor discrepancies in it, in view of section 99 CPC.

6. <u>Withdrawal of appeal and its effect on restoration application:</u>

Against ex-parte decree in a suit restoration application may be filed under Order 9 Rule 13 and appeal may also be preferred. Both the remedies may be pursued simultaneously. Even if restoration application is rejected, regular appeal will have to be decided or merit but the point that suit was wrongly decided ex parte as defendant had sufficient cause for non appearance would no more be open in appeal vide *Bhanu Kumar Jain v. Archana Kumar AIR 2005 SC 626 (3 judges)* However, if restoration is allowed then appeal becomes infructuous as the decree against which it was passed having been set aside does not remain in existence.

If appeal is disposed of first the restoration application becomes infructuous as the ex-parte decree sought to be set aside merges in the

decree of appeal. Explanation to Order 9 Rule 13 provides as under:

> *"Explanation.-Where there has been an appeal against a decree passed ex parte under this rule, and the appeal has been disposed of an any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting* aside *that ex parte decree."*

It has been held by the Supreme Court in *Shyam Sunder Sharma v. Pannalal Jaiswal AIR* 2005 SC 226 (3 judges) that even if the appeal is dismissed in default or as barred by time, restoration application in suit becomes infructuous and it is only and only withdrawal of appeal which keeps the restoration application alive and maintainable.

7. **Appeal against decree, challenge to other orders:**

> *"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 appeal lies*

does *not appeal there from, he shall thereafter be precluded from disputing* its *correctness."*

Accordingly any order passed in suit before final judgment and decree, if it affects ultimate judgment and decree, its correctness can be questioned in appeal against decree otherwise not. To illustrate orders passed on temporary injunction application do not affect the ultimate judgment and decree hence there is no question of challenging their correctness in the appeal against decree. However order passed on application seeking amendment in the pleading may affect the ultimate judgment and decree hence if it is not immediately challenged then its correctness can be questioned in appeal against the decree. Under Sections 12 and 16 of the U.P. Rent Control Act (U.P. Act No. 13 of 1972) first vacancy declaration order is passed and thereafter the building is either released in favour of the landlord or allotted to someone else. Against release or allotment order revision to the District Judge is provided under section 18 of the Act. The Supreme Court in *Ganpat Roy v. ADM, AIR* 1985 SC 1635 has held that vacancy declaration order can at once be challenged through writ petition in the High Court. However if vacancy declaration order is not immediately challenged through writ petition still its correctness can be questioned in revision which is filed against ultimate order of release or allotment on the principle of Section 105 C.P.C.

vide *Achal Misra v. Rama Shanker Singh* 2005 (5) *SCC* 531 (3 judges) (paras 11 to 13)

8. <u>Powers of First Appellate Court:</u>

First Appellate Court has got power to judge the correctness of findings of facts as well as of law recorded by the Trial Court. However, Second Appeal to the High Court under Section 100 C.P.C. lies only if the case involves substantial question of law.

Section 107 C.P.C. provides as under:-

> "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."*

Accordingly most of the things which may be done by the Trial Court can also be done by the Appellate Court.

Under **Order 6 Rule 17 C.P.C.** plaint or written statement may be amended. The rule itself provides that the Court may, at any stage of the proceedings, allow either party to alter or amend his pleading. Accordingly, amendment in plaint or

written statement may be sought even during pendency of appeal. However, in this regard great caution must be taken and the first thing which is to be seen is as to why amendment application was not filed before the trial court during continuance of the suit. Further, by virtue of the Amendment in C.P.C. w.e.f. 1.7.2002 a proviso has been added to Order 6 Rule 17 to the following effect:

> *"Provided that no application for amendment shall be allowed after the trial has commenced unless the court comes* to *the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial."*

After decision of the suit trial not only commences but stands concluded.

9. **Subsequent events of facts & law:**

Under Order 7 Rule 7 C.P.C., in a suit, the Trial Court is required to take into consideration events coming into existence after institution of the suit and court may also grant general or other reliefs which may not even have been asked for. Similarly, subsequent event coming into existence during pendency of appeal shall be taken into consideration. Vide *Gaivdinshaw Irani v. Tehmtan Irani, AIR 2014* SC 2326 and the authorities relied upon therein. The leading authority on this point is reported in *L. Prasad Shukla v. K.L. Chaudhary AIR* 1941 *FC 5.*

10. **Appeal by Some of the Parties:-**

Order 41 Rule 4 provides *as* under:-

"One of several plaintiff or *defendants may obtain reversal of whole decree where it proceeds on ground common to all. - Where there are more plaintiffs* or *more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs* or *to all the defendants, anyone of the plaintiffs* or *of the defendants may appeal from the whole decree, and thereupon the Appellate Court may reverse* or *vary the decree in favour of all the plaintiffs* or *defendants,* as *the* case *may be."*

Even if other plaintiffs or defendants as the case may be, are not made proforma respondents it will not make any difference. Similarly even if other plaintiffs or respondents as the case may be are made proforma respondents and some of them die and substitution application is not filed, appeal will not abate vide *B.* S. *Ruia v.* S. *N. Ruia AIR 2004* SC 2546.

11. <u>Conditional Stay order:</u>

Stay order in appeal can be made conditional and if condition is not complied with stay order will stand revoked/ discharged but appeal will remain intact and will have to be heard on merits vide *Devi Theatre* supra under synopsis 3.

In *Atma Ram Properties (P) Ltd. v. M/* s. *Federal Motors Pvt. Ltd., 2005* (1) *SCC 705* it has been held that in Rent Control matters in appeal and revision against order of eviction conditional stay order may be granted and condition for payment of more

amount than the rent may be attached with stay order. Reason is that after order of eviction tenant remains in possession not by virtue of any right under Rent Control Act but by virtue of stay order and along with the stay order reasonable condition can always be attached. Following the said authority Allahabad High Court in *Ganga Prasad v. Hanif Opticians 2005(2) ARC* 723 has issued general directions to the effect that in revision or appeal against order of eviction passed under U.P. Rent Control Act stay order must always be made conditional and the reasonable condition may be of payment / deposit of roughly 50% of the current market rent.

11A. <u>Admission of appeal:</u>

Under Order 41 R. 11 C.P.C. appeal is heard in admission. Prior to 2002 Amendment of C.P.C. records of the Court below could be called for before such hearing. However after 1.7.2002 when relevant Amendment of 1999 was enforced such power is not there. First Appeal under Section 96 C.P.C. shall normally be admitted and not dismissed in limine vide *Union of India v. K. V. Lakshman AIR 2016 SC 3139.*

12. <u>Dismissal in default of appeal Ex-parte hearing and restoration:-</u>

Before 1976-77 Amendment of Order 41 Rule 17 C.P.C. there was conflict of opinion among different High Courts regarding power of the court in case the appellant does not appear and only

respondent appears, There has never been any doubt that in such situation appeal may be dismissed in default, however, the difference of opinion was as to whether in such situation appeal could be dismissed on merit or not. Allahabad High Court was of the opinion that appeal could not be dismissed on merit in such situation. In 1976-77 approving the view of Allahabad High Court and of some other High Courts the following explanation has been added to Order 41 Rule 17:

> *"Explanation.-Nothing in this sub-rule shall be construed as empowering the Court* to *dismiss the appeal on the merits."*

Accordingly in the absence of appellant either appeal may be adjourned or it may be dismissed in default, however it cannot be dismissed on merit. If it is dismissed on merit in the absence of appellant still order will be treated to be dismissal in default and if the appellant shows good cause for his absence, order will have to be set aside vide Harbans Prasad Jaiswal, infra.

Under the same rule it is provided under Sub Rule 2 as follows:-

> *"(2) Hearing appeal* ex *parte-Where the appellant appears and the respondent does not appear the appeal shall be heard* ex *parte,"*

If appeal is allowed after hearing the appellant ex-parte in absence of respondent then the respondent under order 41 Rule 21 may apply for

rehearing of appeal after setting aside of ex-parte decree of appeal. If respondent shows good ground for his absence then the judgment even though on merit has to be set aside and appeal has to be readmitted and heard afresh. However, in such rehearing application merit of the ex-parte judgment cannot be seen. If respondent wants to challenge ex parte judgment, allowing the appeal, he can only apply for review vide *Harbans Pershad Jaiswal v. Urmila Devi Jaiswal AIR* 2014 SC 3032.

13. **Remand to be avoided:**

Under Order 41 Rule 23 and 23A matter may be remanded by the appellate court (under Rule 25 also remand is made). However, under Rule 24 it is provided as under:

> *24. Where evidence on record sufficient, Appellate Court may determine case finally. - Where the evidence upon the record* is *sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal* is *preferred has proceeded wholly upon some ground other than that on which Appellate Court proceeds."*

Similarly under Section 107 Appellate Court has got same powers as of the trial Court.

In the following authorities it has been provided that as far as possible remand must be avoided:

1. *Zarif Ahmad (D) v. Mohd. Farooq AIR 2015* SC 1236
2. G.C. *Kapoor v. Nand Kumar Bhasin AIR 2002* SC *200* (In this case release application of the landlord under Section 21 of U.P. Rent Control Act was dismissed by prescribed authority, appeal was dismissed by the District Judge and writ petition was also dismissed by the High Court. The Supreme Court set aside all the three judgments and instead of remanding the matter allowed the release application by itself.)
3. *R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami* & *V.P. Temple, AIR 2003* SC 4548 (towards the end of para 10 it was held that even though remand was desirable but as the suit had been instituted 25 years before (in 1978) hence it was avoided)

14. <u>Cross objection, whether necessary</u>:

Order 41 Rule 22 (1) and 33 are quoted below-

> *"22. Upon hearing respondent may object* to *decree as if he had preferred separate appeal.-* (1) *Any respondent, though he may not have appealed from any part of the decree, may not only support the decree but may also state that the finding against him in the Court below in respect of any issue ought* to *have been in his favour; and may also take any cross-objection* to *the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within*

such further time as the Appellate Court may see fit to allow.

Explanation.- A respondent aggrieved by a finding of the Court in the judgment on which the decree appealed against is based may, under this rule, file cross-objection in respect of the decree in so far as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the decree, is, wholly or in part, in favour of that respondent.

33. Power of Court of appeal.- The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding 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 such respondents or parties may not have filed any appeal or objection and may where 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 the appeal is preferred has omitted or refused to make such order."

Cross objection is necessary only if some direction has been issued against the respondent or respondent wants to challenge the finding on the basis

of which part relief has been granted to the plaintiff otherwise even without cross objection, finding against him may be challenged in appeal by the respondent.

In S. Nazeer Ahmad v. State Bank of Mysore AIR, 2007 SC 989 (para 7) suit was dismissed as barred by time but the issue of bar of O. 2 Rule 2 C.P.C. was decided in favour of plaintiff. Plaintiff filed appeal. It was held that the defendant respondent in the appeal could argue that the issue of bar of Order 2, Rule 2 was wrongly decided in favour of plaintiff appellant by the trial Court, without filing any cross objection.

However in *Laxman T. Kankate v. T.* H. *Dhatrak AIR* 2010 SC 3025 in a suit for specific performance of agreement for sale, relief of specific performance was disallowed and suit was decreed for return of earnest money. In appeal by plaintiff, respondent defendant sought to argue that the finding of the trial court that the agreement was genuine was erroneous and must be set aside. It was held that it could not be done in the absence of cross objection.

In M/s *S.K.L. Co. v. Chief Commercial Officer, AIR* 2016 SC 193 (para 2) it has been held that respondent cannot question in appeal a direction issued against him by the Court below without cross objection.

Same principle applies to revision vide *Nalakath. Sainuddin v. Koorikadan Sulaiman, AIR*

*2*002 SC 2562.

15. <u>Additional Evidence:</u>

Order 41 Rule 27 is quoted below:

> *"27. Production of additional evidence in Appellate Court.* - (1) *The parties* to *an appeal shall not be entitled* to *produce additional evidence, whether oral or documentary, in the Appellate Court. But if—*
>
> *(a) the Court from whose decree the appeal* is *preferred has refused* to *admit evidence which ought* to *have been admitted, or*
>
> *(aa) the party seeking* to *produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or*
>
> *(b) the Appellate Court requires any document* to *be produced or any witness* to *be examined* to *enable* it to *pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document* to *be produced, or witness* to *be examined.*
>
> *(2) Wherever additional evidence* is *allowed* to *be produced by an Appellate Court, the Court shall record the reason for its admission.*

In *Union of India v. Ibrahimuddin 2012 (8) SCC 148,* scope of order 41 Rule 27 has been discussed in detail and it has also been held that application for additional evidence shall be considered along with hearing of appeal.

In *Union of India v. K.V. Lakshman AIR 2016 SC 3139* it has been held that the High Court in

First Appeal wrongly rejected the application and it ought to have taken on record additional evidence sought to be adduced by appellant as inter alia it was Union of India deserving more indulgence in such procedural matter and documents sought to be adduced were public documents.

16. How to Write judgment and discuss Evidence:

Order 41 Rule 31 is quoted below:

> ***"31. Contents, date and signature of judgment.*** *- The judgment of the Appellate Court shall be in writing and shall state-*
>
> *(a) the points for determination;*
>
> *(b) the decision thereon;*
>
> *(c) the reasons for the decision; and*
>
> *(d)where the decree appealed from is reversed or varied, the relief to which the appellant is entitled,*
>
> *(e)and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein."*

This is an area which requires special care and attention. Sometimes judges, even High Court judges, ignore the requisite requirements. In the following cases Supreme Court set aside the judgments of different High Courts passed in appeals U/s 96 CPC on the grounds that evidence had not been reassessed and points for determination were not framed. The matters were

remanded to do the needful.

In *M/s United Engineers & Contractors v. Secretary* to *Govt. of A.P. AIR 2013 SC 2239,* High Court while deciding First Appeal u/s 96 CPC only mentioned facts and issues and came rather abruptly to the ultimate conclusion. The Supreme Court set aside the judgment and remanded the matter. It was observed in para 9 as follows:

> "9. *This Court has considered the scope of Order* 41 *Rule* 31 *Code of Civil Procedure in H. Siddiqui (dead) by L.Rs. v. A. Ramalingam, AIR* 2011 SC 1492 and *held as under:*
>
> *"18. The said provisions provide guidelines for the Appellate court as* to *how the court has* to *proceed and decide the case. The provisions should be read in such a way as* to *require that the various particulars mentioned therein should be taken into consideration. Thus,* it *must be evident from the judgment of the Appellate court that the court has properly appreciated the facts/ evidence, applied its mind and decided the case considering the material on record. It would amount to substantial compliance of the said provisions if the Appellate court's judgment is based on the independent assessment of the relevant evidence on all important aspect of the matter and the findings of the Appellate court are well founded and quite convincing. It* is *mandatory for the Appellate court* to *independently assess the evidence of the parties and consider the relevant points which arise for adjudication and the bearing of the evidence on those points. Being the final court of fact, the first Appellate court must not record mere general*

expression of concurrence with the trial court judgment rather it *must give reasons for its decision on each point independently* to *that of the trial court. Thus, the entire evidence must be considered and discussed in detail. Such exercise should be done after formulating the points for consideration in terms of the said provisions and the court must proceed in adherence* to *the requirements of the said statutory provisions. (Vide: Thakur ukhpal Singh v. Thakur Kalyan Singh and Anr., AIR* 1963 SC 146; G*irijanandini Devi and Ors. v. Bijendra Narain Choudhary, AIR* 1967 SC 1124; G. *Amalorpavam and Ors. v. R.C. Diocese of Madurai and Ors.,* (2006) 3 *SCC* 224; *Shiv Kumar Sharma v. Santosh Kumari,* 2008 SC 171: (2007 *AIR SCW 6384); and Gannmani Anasuya and Ors. v. Parvatini Amarendra Chowdhary and Ors., AIR* 2007 SC 2380.

19. in B. V. Nagesh and Anr. v. H. V. Sreenivasa Murthy, (2010) 113 SCC 530 : AIR 2010 SCW 6184 , while dealing with the issue, this Court held as under (Para 4 of AIR SCW):

"The Appellate Court has jurisdiction to *reverse or affirm the findings of the trial Court. The first appeal* is *a valuable right of the parties and unless restricted by taw, the whole case therein* is *open for re-hearing both on questions of fact and law. The judgment of the Appellate Court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth and pressed by the parties for decision of the Appellate Court. Sitting as a court of appeal,* it *was*

the duty of the High Court to *deal with all the issues and the evidence led by the parties before recording its findings. The first appeal* is *a valuable right and the parties have a right* to *be heard both on questions of law and on facts and the judgment in the first appeal must address itself* to *all the issues of law and fact and decide* it *by giving reasons in support of the findings. [Vide: Santosh Hazari v. Purushottam Tiwari, AIR* 2001 SC 965 *and Madhukar and Ors. v. Sangram and Ors., AIR 2001 SC 2171].*

Thus, it is evident that the First Appellate Court must decide the appeal giving adherence to the statutory provisions of Order 41 Rule 31 Code of Civil Procedure."

Same thing has been emphasized in *Vinod Kumar v. Gangadhar 2015(1) SCC 391.*

In *Leela K. Pansare v. B.B. Ithape AIR* 2014 SC 2867 (paras 5 and 6) it has been held that High Court in First Appeal should discuss evidence in detail.

In *Shasidrar v. A.U. Mathad AIR 2015 SC 1139* also same thing was said after referring to seven earlier judgments of Supreme Court. Paras 24 and 25 are quoted below:

"24. We may consider it *apposite* to *state being a well settled principle of law that in a suit filed by a' co-sharerer, coparcener, co- owner or joint owner, as the case may be, for partition and separate possession of his/ her share qua*

others, it is *necessary for the Court* to *examine, in the first instance, the nature and character of the properties in suit such as who was the original owner of the suit properties, how and by which source he/ she acquired such properties, whether* it *was his/ her self-acquired property or ancestral property, or joint property or coparcenery property in his/ her hand and, if so, who are/ were the coparceners or joint owners with him/her* as *the case may be. Secondly, how the devolution of his/her interest in the property took place consequent upon his/ her death on surviving members of the family and in what proportion, whether he/she died intestate or left behind any testamentary succession in favour of any family member or outsider to inherit his/ her share in properties and if so, its effect. Thirdly whether the properties in suit are capable of being partitioned effectively and if so, in what manner? Lastly, whether all properties are included in the suit and all co-sharerers, coparceners, co- owners or joint-owners,* as *the case may be, are made parties to the suit? These issues, being material for proper disposal of the partition suit, have to be answered by the Court on the basis of family tree, inter* se *relations of family members, evidence adduced and the principles of law applicable to the case. (see "Hindu Law" by Mulla 17th Edition, Chapter XVI Partition and Reunion - Mitakshara Law pages* 493-547).

25. Being the first appellate Court, it was, therefore, the duty of the High Court to decide the first appeal keeping in view the scope and powers conferred on it under Section 96 *read with Order* 41, *Rule 31 of the Code mentioned above. It was unfortunately not done, thereby,*

accordance with law. "

Same thing has been emphasized in *Vinod Kumar v. Gangadhar 2015 (1) SCC 391.*

In *U.P. S.R. T.C. v. Mamta AIR 2016 SC 948* High Court had decided appeal U/s 173 of Motor Vehicles Act in a cryptic manner. It neither set out the facts, nor took note of grounds of appeal nor appreciated evidence. The judgment of the High Court did not contain concise statement of points for determination, decision thereupon and reasons therefor. The Supreme Court set aside the judgment and remanded the matter for decision of appeal in accordance with order 41 Rule 31 CPC. Para 24 is quoted below-

> *"24. An appeal under Section* 173 *of M. V. Act* is *essentially in the nature of first appeal alike section* 96 *of the Code and, therefore, the High Court* is *equally under legal obligation to decide all issues arising in the case both on facts and law after appreciating the entire evidence. [See National Insurance Company Ltd. v. Naresh Kumar & Ors.* (2000) 10 *SCC* 198 *and State of Punjab & Anr. V. Navdeep Kuur & Ors.* (2004) 13 *SCC 680]"*

<u>All the points/ issues must be decided:</u>

In a First Appeal under Section 96 C.P.C. High Court decided only the issue of limitation and after holding the suit to be barred by limitation, dismissed the appeal without deciding merit of the

case. Supreme Court in *Madina Begam v. Shiv Murti Prasad Pandey AIR 2016 SC 3554 (paras 24 to 26)* after placing reliance upon *Vinod Kumar v. Gangadhar 2015 (1) SCC 391* wherein reference had been made to large number of decisions, held that what the High Court had done was impermissible and it ought to have decided all the issues/ points involved. The Supreme Court after reversing the judgment of the High Court on question of limitation had to remand the matter to the High Court for decision of appeal on other points, which would not have been required if High Court had decided all the points.

Order 20 Rules 6, 6A and 7:

> *"6. Contents of decree.-(1) The decree shall agree with the judgment; it shall contain the number of the suit, the [names and descriptions of the parties, their registered addresses,] and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit.*
>
> *(2) The decree shall also state the amount of costs incurred in the suit, and by whom or out of what property and in what proportions such costs are to be paid At that the costs payable to one party by the other*
>
> *(3) The Court may direct that the costs payable to one party by the other, shall be set off against any sum which* is *admitted or found to be due from the former to the latter.*
>
> *[6-A. Preparation of decree.-(1) Every*

endeavour shall be made to *ensure that the decree* is *drawn up* as *expeditiously* as *possible and, in any* case, *within fifteen days from the date on which the judgment* is *pronounced.*

(2) An appeal may be preferred against the decree without filing a copy of the decree and in such a case *the copy made available* to *the party by the Court shall for the purposes of rule 1 of Order XLI be treated* as *the decree. But* as *soon* as *the decree* is *drawn, the judgment shall* cease *to have the effect of a decree for the purposes of execution or for any other purpose.*

7. Date of decree. - The decree shall bear the day on which the judgment was pronounced, and when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree."