

Precedents on the Code of Civil Procedure

- ❖ S 9-. Jurisdiction-determination of – it is value of claim and not value of ultimate decree, which determines pecuniary jurisdiction of court.1978 MHLJ 561.
- ❖ S.9-Exclusion of jurisdiction of court is not to be readily inferred-exclusion must either be explicitly expressed or clearly implied. AIR 1966 SC 249. AIR 1969 SC 78.
- ❖ Nature of jurisdiction-It is universal in the sense, but for express or implied bar, civil court has power of cognizance upon all civil causes and disputes.1977 MhLJ 269.
- ❖ Special tribunal created by special Act-dispute must go before special tribunal.1971 MhLJ Note 69.
- ❖ If such tribunal is not created though Act came in force –Aggrieved person will have right to proceed to ordinary civil court1965 MhLJ 913 FB.
- ❖ Where plaintiff seeks to enforce special rights alleged to have been conferred on him by a statute which also create special forum for granting such relief, the jurisdiction of the civil court must be deemed to have been barred to that extent by necessary implication .1969 MhLJ 710.
- ❖ Suit for mandatory injunction seeking directions against State Government and collector to take action against Municipal Council and its officers who were guilty of misappropriating the property of the council and responsible for its mismanagement. Municipal act providing for machinery for redressing grievance as made. There being equally efficacious remedy, jurisdiction of Civil Court to try such suit impliedly barred under section 9 the Code of Civil Procedure 2000(1) MhLJ. 201
- ❖ Tenability of suit where the construction contrary to by-laws-The construction contrary to the building by-laws affecting easementary right of a neighbour could be in violation of his right to life – such person has the local standing to file suit for injunction; complaining infraction of municipal by-laws invading his right-The jurisdiction of the civil court to maintain such suit has neither been expressly or impliedly excluded. Fatima v. V.P.Merces2000 (1) MhLJ. 836
- ❖ S.9: Suit by the Hindu wife for perpetual injunction restraining her Hindu Husband from contracting second marriage – jurisdiction of civil court to entertain the suit not barred by Hindu Marriage Act. Section 34 of the Specific Relief Act permits suit. (Shankarappa Vs. Basamma, AIR 1984, Mysore, 247).
- ❖ CPC s.9- Suit filed by plaintiff, Jains by faith who where also members of a public trust complaining of violation of there civil rights qua the trusts within the frame works of its governing schemes is maintainable. Merely because the trust is a religious denomination, its members cannot be said to have ceased their civil rights. Naresh v. Kantilal 2001(1) MhLJ 972
- ❖ S.9-Suit by Hindu wife for perpetual injunction restraining her Hindu husband from contracting second marriage is a suit permitted by s.34 of Specific Relief Act, hence Civil Court has jurisdiction to try the suit. AIR 1984 Mys.247.
- ❖ S.9-Civil Court's jurisdiction is impliedly barred in view of S.155 of Companies Act. AIR 1998 SC 3153.
- ❖ S.9-Plaintiff permitting defendant to use premises on license without payment of any consideration. Plaintiff revoking permission latter on .As defendant refused to restore possession plaintiff filed suit for recovery of possession. Defendant though styled as trespasser is ex-licensee Presidency Small Cause Court has jurisdiction. AIR 1998 Bom.337.
- ❖ S.9 Jurisdiction off Court is to be decided on the basis of averment in the plaint.1998 (2) MHLJ 597.
- ❖ S.9-Presumption is always in favour of jurisdiction of Civil Court exclusion of jurisdiction should not be readily infered.1996 (1) MHLJ 673.
- ❖ Damages- Claim for compensation for accident on unmanned railway crossing. Negligence by railway proved. In view of S.110 of the MV Act Tribunal can grant compensation against railway. AIR 1998 SC640

- ❖ S.9-A-Power and duties of court –plaintiff taking out notice for interim injunction defendant raising issue of jurisdiction –court must determine issue of jurisdiction as preliminary issue before disposing of application –ad interim relief in such cases can be granted .1976 MhLJ 456,
- ❖ Parties are required to be given full opportunity to lead necessary evidence as would have been done if the issue were framed at the trial –Determination of such issue has to be on consideration of all aspect .AIR 1982 Bom. 263.
- ❖ If the matter does not come under section 9A of the Code of Civil Procedure, the only option available to the defendant is to file written statement and raise objection regarding jurisdiction therein. Once the stage of filing the written statement is reached, only option available to the defendant is to file written statement raising therein objection regarding jurisdiction. The stage of first hearing of suit is after filing of the written statement and before framing of issues 1999(2) MhLJ 783.
- ❖ The language of Section makes it amply clear that objection regarding jurisdiction of court can be raised at the interlocutory stage. Court can even suo-motu examines jurisdictional aspect of the case. Legislative policy is clear and unambiguous that a court, which lacks jurisdiction, need not necessarily go into the legal entanglement between the parties and waste time on it.1999 (2) MhLJ 473.
- ❖ While deciding the objections under s.9-A the court has to make difference between the situation, which disclose ouster of jurisdiction at the outset and the situations which require evidence to come to this conclusion. The plea of non-issue of notice by defendant municipal council rose after three years. Question whether under these facts notice under S.527 was waived or not can only be decided only after recording evidence. Dismissal of suit under S.9-A is erroneous.1999 (3) MhLJ 183.
- ❖ S.9-A- Issue whether suit is barred by limitation is a question which would expressly touch upon the issue of jurisdiction of the Court, for, if the suit is barred by limitation, the court trying such a suit is precluded to pronounce upon the merits of the contentions – With a view to avoid multiplicity of proceedings, it will therefore be essential that the issue of jurisdiction in context of suit being barred by limitation, is framed as a preliminary issue and decided in the first instance before proceeding to decide the suit on any other issue. Sudesh v. Abdul Aziz. 2001(1) MhLJ 324
- ❖ S.9A-Opportunity should be given to the parties to lead evidence before adjudicating issue under this order.1998 (3) MHLJ 940.
- ❖ O.9R.13- Application under this provision is not tenable to set-aside decree passed u/o8r.5.Remedy is by way of appeal .1998 (3) MHLJ 924.
- ❖ S.9A-Opportunity should be given to the parties to lead evidence before adjudicating issue under this order.1998 (3) MHLJ 940.
- ❖ S.10_-Stay of suit –for applicability of s.10 previously instituted suit must be in the court having jurisdiction to grant relief in subsequent suit.1981 MhLJ 783.
- ❖ Provisions of S.10 are mandatory 1980 MhLJ 578.
- ❖ Application for staying subsequent suit cannot be rejected merely on ground of delay.1972 MhLJ Note 67.
- ❖ Prior suit vexatious and false, filed with object of arresting progress of likely subsequent suit –court has power to refuse stay of subsequent suit 1960 NLJ Note 94.
- ❖ Court staying suit can entertain application for temporary injunction. AIR 1980 Bom.188.
- ❖ For applicability of s. 10, the court where previous suit is pending must have concurrent jurisdiction as that of the court where the subsequent suit is pending.1999 (2) MhLJ 389.
- ❖ S.10-Word trial in s.10 is not used in its widest sense. Concept is not applicable to subsequently instituted summary suit. AIR 1998 SC 1952.
- ❖ S.10-What S. 10 require that issues in two suits should directly and substantially be same. In other words, it is not identity off subject matter but it is identity between the fields of controversy in two suits that should be substantially same.1998 (1) MHLJ 504.

- ❖ S.11-Finding as to arrears of rent –tenant pleading loan given to landlord and agreement not to pay rent till discharge of loan –Rent controller upholding agreement-Appeal dismissed –finding is *res judicata* in suit for rent by land lord. 1980 MHLJ 62.
- ❖ Finding as to title by small cause Court is not *res-judicata* in subsequent suit for determination of any right or interest in immovable property –finding in suit for rent that the document was sale deed cannot operate as *res judicata* in suit for declaration that executant continued to be the owner. 1982 MHLJ 1.SC.
- ❖ Fresh suit without pleading of changed circumstance u/s.13 (1)(I) of Bombay Rents Act is barred by *res judicata*. AIR 1972 Bom.46.
- ❖ Plaintiff landlord filing suit for partition making petitioner tenant in possession party court decreeing suit in 1957 –collector putting plaintiff in symbolic possession tenanted-plaintiff obtaining actual possession through civil court application –petitioner applying u/s.36 (1) for possession Question of tenancy not being in issue in partition suit s.11 did not apply –petitioner tenant could not have in 1957 when tenancy Act had not come in force –it is open for petitioner to raise question u/s,36. AIR 1975 Bom.160.
- ❖ G suing for redemption as heir of mortgagor but failing -successor in interest of G subsequently suing as co-owners-suit is barred u/s.11 expl. IV. 1979 MhLJ 682.
- ❖ Suit to challenge finding of registrar that property was public trust –previous suit by plaintiff claiming damages and injunction –Question whether trust public or private only incidentally in issue in previous suit –Decision is not *res judicata*. 1971 MhLJ 215.
- ❖ Pleading, issue and judgment in previous suit necessary for deciding question of *res judicata*-Adverse finding against party succeeding in suit or appeal-Finding not *res judicata* .AIR 1961Bom. 97.
- ❖ *Res-judicata* between co-plaintiffs-conflict of interest between co-plaintiffs in earlier suit and necessity of decision on the conflict are necessary.1975 MhLJ345.
- ❖ Plea of *res-judicata* should not ordinarily be disposed of, as a preliminary issue-it should normally be tried along with other issues. AIR 1972 Bom.228.
- ❖ Plea of *res-judicata* can be waived by a party-plea has to be specifically raised and if not so raised will be deemed to have been waived .1988 MhLJ 299.
- ❖ Appeal against decree passed by one court –appellate court remanding the suit to trial court for recording findings –District Judge transferring the case to other court –other court recorded findings-appellate court passed the decree –execution started in the court of other judge –part payment made –execution disposed of as partly satisfied –2nd application for execution in the same court –the J.D. is estopped from contending that other court, which decided previous execution application, is not proper court to entertain execution application. 1961 NLJ Note 84. 1991 MhLJ 104.
- ❖ Tribunal exercising judicial function giving finding on controversy between parties after full contest – finding is binding in subsequent suit between same parties on general principle of *res judicata* 1980 MhLJ 627.
- ❖ Discretionary relief claimed in previous suit –claim negated –decision operates as *res judicata* AIR 1961Bom. 97.
- ❖ Judgment challenged in appeal –finality of decree stands qualified by the appeal and in such a case, the decree was not final in the sense that it formed *res judicata* between the parties AIR 1982 Bom. 437.
- ❖ Parties going to trial on issue even where the suit would be decided properly without it –decision *res judicata*. AIR1961 Bom. 97.
- ❖ It is impermissible to permit any party to raise an issue inter-se where such issue has already been decided earlier. 1999(1) MhLJ 1 (SC).
- ❖ Provisions of section 11 of Civil Procedure Code apply to the proceedings for execution of decree. 1999(1) MhLJ 187.

- ❖ Finding as to title by small cause court is not res-judicata in subsequent regular suit for determination or enforcement of any right or interest in immovable property. Finding in suit for rent that a document was a sale deed cannot operate as res-judicata in suit for declaration that executant continued to be the owner. Gangabai Vs. Chhabubai 1982 Mh.L.J. 1
- ❖ Res-Judicata -Finding under order 22 rule 5 while considering entitlement as legal representative not res judicata in subsequent proceedings in relation to rights or parties to property. Bhaskar v. Gangaram 2001(2) MhLJ 263
- ❖ S.11-It is impermissible to permit any party to raise an issue inter se when such issue has already been decided earlier.1999 (1) MhLJ 1 SC.
- ❖ S.11-Provisions of section 11 can apply to the proceeding for execution of decree. Order passed in one darkhast between the same parties operates as res judicata in subsequent darkhast between said parties.1999 (1) MhLJ 187.
- ❖ S.11-Decision in writ petition operates as res judicata in subsequent proceeding. AIR 1998 SC2046.
- ❖ S.11-Rejection of plaint does not amount to dismissal of suit. Principle of res judicata not applicable. 1994 MHLJ 427.
- ❖ S.11-Jurisdiction cannot be conferred on civil Court by raising plea of res judicata. AIR 1991 SC 993.
- ❖ S.11-Matter must be alleged by one and denied by other. Alleged by one is not sufficient. 1996(2) MHLJ 505.
- ❖ S.11, 13-In a proceeding for permission if a rent controller has recorded a finding that relationship of landlord and tenant exist. Such finding will be res judicata in subsequent suits, notwithstanding the fact that rent controller could not try the subsequent suit 1996 (1) MHLJ 253.
- ❖ S.11-Even erroneous decision operates as res judicata. AIR 1998 All. 62.
- ❖ S. 15-suit not capable of valuation –plaintiff cannot put any arbitrary valuation for jurisdiction though his valuation would determine jurisdiction –s.15 is a rule of procedure and not of jurisdiction –though jurisdiction of higher court is not ousted, court return plaint where valuation is patently arbitrary –s15 enacted not merely to prevent overcrowding but also for convenience of parties and witnesses.1970 MhLJ 641.
- ❖ S.19-suit for damages for malicious prosecution –court in whose jurisdiction summons was served on plaintiff maliciously prosecuted has jurisdiction to entertain suit .AIR 1965 Bom. 109.
- ❖ S20. -Agreement that dispute would be tried by one of the two competent courts is valid.1965 MhLJ note 84.1960 NLJ Note 88.
- ❖ Plaintiff purchaser doing business at Nagpur taking delivery of goods at Nagpur and making payment by cheque issued at Nagpur-plaintiff suing for overpayment at Nagpur –Defendant seller doing business at Amravati sending printed bills with endorsement at top “subject to jurisdiction at Amravati court “-in absence of evidence regarding any specific agreement on the point of jurisdiction –jurisdiction of Nagpur court is not ousted.1975 MhLJ Note 62.
- ❖ Suit brought in court where cause of action arose but defendant did not reside –suit filed in proper court 1962 NLJ Note 33.
- ❖ Corporation u/s20 expl. II includes company. AIR 1977 Bom.299.
- ❖ S.20 (a)-Transport company having registered office at K accepting goods for carriage at B to be delivered at P-court at K has jurisdiction to try suit for damages for non-delivery. AIR 1977 Bom.299.
- ❖ S20 (b)_ Leave has to be specifically sought –where no leave has been sought, order of the civil court holding that defendants had acquiesced in the jurisdiction of court cannot be construed as an order granting leave to the plaintiff –application for leave can be granted by appellate court in appropriate cases .1969 MhLJ .219.
- ❖ Contract on telephone-plaintiff booking telephone call from Akola to deft. 2 at Ujjain making certain enquiry and deft. Offering to sell cottonseed oil atRs.470 p/l. –plaintiff-accepting offer –deft. Sending letter containing terms of contract and asking confirmation –plaintiff confirming –plaintiff latter suing

- for damages at Akola for breach of contract alleging agreement to make payment was at Akola – Akola Court has jurisdiction 1975 MhLJ Note 78.
- ❖ 20(C)-Suit for maintenance by wife at the place of marriage –marriage part of cause of action – suit maintainable .1962 NLJ Note 68.
 - ❖ Acceptance of tender communicated at Pune-contract not providing any particular place having jurisdiction –because of acceptance part of cause of action arose at Pune- court at Pune has jurisdiction.1986 MhLJ 401.
 - ❖ Consignor while delivering goods to carrier to be delivered to plaintiff signing printed forwarding note containing at the top words subjecting parties to the jurisdiction of particular court in case of dispute –plaintiff's suit for non-delivery can be filed only in court specified in the forwarding note. AIR 1977 Bom.299.
 - ❖ S.20-Parties cannot confer by an agreement jurisdiction on a Court, which it does not possess under CPC-Clause in the agreement provided that in respect of all the disputes between parties Court at Bombay will only have jurisdiction. Where no part of cause of action had arisen within the territorial jurisdiction of Bombay Courts, parties cannot derive any benefit from the said clause in agreement 1998 (2) MHLJ 223.
 - ❖ S.21-During pendency of suit plaintiff getting information about death of one of defendants prior to the filling of suit. Plaintiff taking immediate steps to take LR's on record. Application liable to be allowed. 1998 (1) MhLJ 912.AIR 1993 SC 2324 relied on.
 - ❖ S.24-Jurisdiction should be exercised with caution –court must be satisfied that refusing plaintiff to continue suit in forum of his choice could more likely do justice. 1971 MhLJ 251.
 - ❖ S.34-Interest-court has discretion to grant interest higher than 6p.c. from date of suit to date of decree.1990 MhLJ 327.
 - ❖ Pendente lite interest should not be disallowed unless plaintiff by his conduct renders himself disentitled to grant of such relief .1967 MhLJ Note 15.
 - ❖ Interest awarded under section 34 of the Code of Civil Procedure on the principle sum adjudged can be inclusive of the principal sum advanced and interest as well depending upon the contract between the parties .2000(1) MhLJ 801
 - ❖ Provision relates to payment of interest in money suits during pendency and after disposal till payment is made. Not applicable with respect to interest prior to filing of the suit. Interest is to be calculated on the principal sum on the and not the principal sum plus the interest accrued till the filing of the suit. (2000(1) MhLJ 567
 - ❖ Civil Procedure Code-section 34-Interest-loan taken by agriculturist for agricultural pursuit-It is commercial transaction-proviso applies. AIR 1990 Karnataka 145, held not good law in view of AIR 1981 SC 10 47-Canara bank v. Mahadeo AIR 1994 Bombay 291
 - ❖ Trial court not giving reasons for rejecting plaintiff's claim for interest pendente lite High Court failing to take notice plaintiff's claim for interest in cross objection-supreme court allowed interest at 4.5 p.c. AIR 1970 SC 1818.
 - ❖ S 34 O.7 R.1&7- Suit for damages –no specific averment in plaint regarding interest –interest cannot be allowed though decree for interest claimed in prayer clause.1960 NLJ 479.
 - ❖ S.34 O.34R.11-Damduppat court has to allow interest at contractual rate till date of redemption .1969. MHLJ 549.
 - ❖ S.34 O.47 R.1-Grant of interest discretionary –discretion exercised in particular way-decision should not be reviewed. 1960 NLJ 479.
 - ❖ S.34-Bank cannot charge compound interest on agricultural loan in contravention of reserve bank circulars. Bank cannot charge interest on incidental charges. AIR 1998 AP 2,rellyed on 1994 (1) SCC 217.

- ❖ S.35-Defendant appealing against decree and court ordering remand in the interest of justice – appellate court however saddling cost on appellant –there is no proper exercise of jurisdiction 1979 MHLJ Note 7.
- ❖ Order made subject to costs- cost paid- accepted by opposite party – order can be challenged only if right to challenge it is reserved at the time of acceptance of costs. AIR 1960 Bom. 136.
- ❖ Cost accepted under protest –word “under protest” has no significance unless right to challenge order in appeal is also reserved .AIR 1960 Bom.136.
- ❖ Loan for poultry business granted under the scheme of agricultural term loan-not sufficient to hold that it was for agricultural purpose.2000(1) MhLJ 567.
- ❖ S.38 & O.21 R.52-court passing decree has no jurisdiction to attach properties lying outside its territorial jurisdiction .AIR 1985 Bom. 79.
- ❖ Section 35 A-the court has to remind itself of section 35 A civil procedure code. The court should take deterrent action if it is satisfied that the litigation was inspired by vexatious motives. SNP Shipping Services v. world tanker 2000(2) MhLJ 570.
- ❖ S.35-Suit for compensation filed by patient against doctor for treatment, which the plaintiff believed to be negligent. Plaintiff's belief found scientifically wrong and suit was dismissed. Plaintiff not liable to pay costs of litigation. AIR1998 Bom. 373.
- ❖ S.47-Application by auction purchaser for setting aside sale is not covered by S.47. AIR 1965 Bom.139. AIR 1968 Bom. 98.
- ❖ Auction –purchaser is not the representative of J.D. or D.H. AIR 1967 Bom. 34.
- ❖ Consent decree –court can refuse execution on change of law.1962 NLJ Note 44.
- ❖ Dispute between a party and his representative is not covered by s.47.1987 MHLJ 30.
- ❖ Jurisdiction –objection as to jurisdiction of court passing decree not appearing on face of record – Executing court cannot go behind the decree.1978 MHLJ 804.
- ❖ Section 47 doesn't apply to application filed by one judgment –debtor against another the subject matter of which does not adversely affect D.H.1965 MHLJ Note 72.
- ❖ Right of parties –Decree not showing on face of it the ground on which it was passed-it is open for party to show from other material on record under what provision the decree was passed AIR 1978 Bom .14.
- ❖ Executability –Landlord obtaining decree under s.13 (1) (g) and transferring it –it cannot be contended that change in circumstances changed complexion of decree making it unexecutable. AIR 1978 Bom. 14.
- ❖ Final decree proceedings are mere continuation of preliminary decree proceedings –unless final decree proceedings are finally disposed off there is no executable decree-S. 47 have no applicability to a stage between passing of preliminary decree and proceedings in the matter of making final decree.1987 MHLJ 30.
- ❖ Small Cause Court passing decree for ejectment –J. D in execution cannot raise question of jurisdiction depending on the investigation of facts-Small Causes Court is having jurisdiction to execute the decree.1975 MHLJ 97.
- ❖ Distinction between the plea that the decree is nullity and the decree was passed overlooking certain provisions of law AIR 1971Bom. 91.
- ❖ DH by decree entitled only to underlined portion of survey number –warrant for possession u/O.21 R.35 (2)- D.H.given joint possession of whole survey number instead of symbolic possession for the portion he is entitled to –it is a case of excessive execution and objection to it falls u/s 47.1971 MHLJ Note 65.
- ❖ S.47 –Executing Court bound by terms of decree .It could not add or delete anything from decree. AIR 1998 SC 743.
- ❖ It is well settled that the executing court cannot go behind the decree unless it is shown that it is passed by a court having inherent lack of jurisdiction which would make it a nullity (Bhavarlal Vs. Universal Heavy Mechanical Lifting Enterprises AIR 1999 Supreme Court, 246).

- ❖ S.48 & 68-Collector returning execution papers to executing court-D.H. not entitled to seek attachment of fresh property or imprisonment of J.D. after the lapse of twelve years from the date of decree where collector has not exercised powers under para .7Sc. III .AIR 1964Bom. 157.
- ❖ S51 & 60-Decree for maintenance –means to pay decreetal amount –amount of salary paid to J.D. can be taken into consideration –it ceases to be salary after payment AIR 1961Bom 142.
- ❖ S.52- Suit against L.R.S of deceased person –decree can provide that money should be paid out of the property of the deceased in the hands of LR's.AIR 1961 Bom.97.
- ❖ S.54 &O.20 R.18-Jurisdiction –court passing preliminary decree for partition of revenue paying lands and sending precepts to collector - Collector partitioning property and placing party in symbolic possession as land tenanted –civil court has no jurisdiction to put party in actual possession on application –delivery of such possession is *ultra vires* .AIR 1975 Bom. 160.
- ❖ S.54 O.20 R.18, O.26 R.13. -In case of revenue paying estate the decree in partition suit is required to be sent to the Collector–order directing partition by Collector is final decree –its execution is in the hands of Collector Collectors action is subject to control only when he transgresses decreetal command of law relating to partition –commissioner cannot be appointed for partitioning such lands. AIR 1971 Bom. 26.
- ❖ Civil Procedure Code, S.54 and Limitation Act (36 of 1963), Art.136 – Application praying for sending preliminary decree and necessary papers to the Collector under section 54, Civil Procedure Code is not an application execution – Provisions of Limitation Act, 1963 not attracted in such case. {Annasaheb Rajaram Nagane vs. Rajaram Maruti Nagane} 2001(3) Mh.L.J 53
- ❖ Civil Procedure Code, SS. 54, 11 and O. 20, R.18 – The step taken by the decree holder just to remind the Court of its duty can hardly be said to be any proceeding attracting provisions of section 11 of Civil Procedure Code {Annasaheb Rajaram Nagane vs. Rajaram Maruti Nagane} 2001(3) Mh.L.J 53
- ❖ S58-“total amount of the decree “will include such amount of future interest as accrued due on date of filing execution application where decree awards future interest –Expenses for police aid and costs of previous execution cannot be taken in account 1980 MHLJ 98.
- ❖ S.58 (2)-Person once detained in civil prison in execution of a decree cannot be reasserted in view of this section1982 MHLJ775.
- ❖ S.60-Property includes every possible interest possessed by J.D.1964 MHLJ Note 13.
- ❖ S.60, 64 & 65-J.D.'s benamidar transferring property between sale and confirmation –transfer is void as against auction-purchaser even if transferee is bonafide purchaser for value and without notice of attachment –S.60 reaches benami holdings –transferee's remedy is against the JD or benamidar-Title of A.P. relate back to the date of sale. AIR 1979 Bom. 29.
- ❖ Tractor not exempted under s.60from attachment 1988MHLJ 235.
- ❖ Money payable under insurance policy on the life of JD totally exempted from attachment whether policy matures during his lifetime or money becomes payable after his death .1984 MHLJ 942.
- ❖ S.73 O.21R.55(a)-Ratable distribution –mode of acquisition of assets is immaterial –JD making payment for specific purpose –payment is still available for ratable distribution .1976 MHLJ 872.
- ❖ S,91-Suit required to be instituted by obtaining leave of Court. Law enjoins a duty on the Court that such power should be exercise judiciously and not in arbitrary manner .Court is required to pass reasoned order so as to disclose why permission has been granted to institute such suit. 2000(1Mh.L..J.2o1
- ❖ S .94 &151-Inherent powers of the court –court cannot under inherent powers order sale of property and partial distribution by interlocutory order.77 BLR 156.
- ❖ S.96.-Appeal lies against decree passed without jurisdiction1961 NLJ Note 25.
- ❖ Appellate court should not disturb findings of fact unless evidence accepted is contradictory or so improbable as to be unbelievable or otherwise unworthy of acceptance.1977 MHLJ 402.Trial court refuses to exercise jurisdiction under s.90 Evidence Act –appellate court not justified in interfering with

- the exercise of discretion unless it is arbitrary, injudicious or capricious-interference in absence of such circumstances amounts to an error of law. AIR 1967 Bom.382.
- ❖ Appeal disputing the very fact of the decree being S.96(3) and does not hit a consent decree is tenable u/s.96(1). AIR 1984 Bom.475.
 - ❖ Right to appeal is a statutory right and not fundamental right (2000(1) MhLJ 605)
 - ❖ S107 & O.22 R.3,4 & 11.-legal representative substituted in appeal –Appeal succeeds –it is not necessary to bring lrs. on record in suit.1960 NLJ Note 26.
 - ❖ Court dealing with matters under Indian Succession Act is a Court of civil jurisdiction. Provisions under section 141CPC apply to the proceeding under the Act. Application for amendment is tenable 2000(1)Mh.L.J511.
 - ❖ S.96-Delay condoned without recording satisfaction for inordinate delay. No explanation in fact offered by state. Condonation of delay not proper and judicious. AIR 1998 SC 2276.
 - ❖ Civil Procedure Code, S.96 – First appeal – Judgment of Appellate Court must reflect its conscious application of mind and record findings supported by reasons on all issues arising in appeal. {Santosh Hazari vs. Purushottam Tiwari deceased by L.Rs.} {2001 (2) Mh.L.J.(S.C.)786}
 - ❖ Civil Procedure Code (5 of 1908), S.96 – First appeal – Writing a judgment of reversal by Appellate Court – Principles. {Santosh Hazari vs. Purushottam Tiwari deceased by L.Rs.} 2001(2) Mh.L.J.(S.C.)786
 - ❖ S100-1st appellate court deciding question beyond jurisdiction .2nd appeal can be entertained. AIR 1998 SC 179.
 - ❖ Civil Procedure Code, S. 115 – Court means only Civil Court Tribunals not included. {Gangwani and Co., Nagpur vs. Mrs. Saraswati wd/o Maniram Banewar} 2001(3) Mh.L.J (F.B.) 6
 - ❖ S.144-It is an obligation on the court to restore the party to its old position from which it was deprived on account of the order of the court which was subsequently varied 1991 MHLJ 136.
 - ❖ The order of restitution is obligatory on court and not discretionary. AIR 1968 Bom. 57.
 - ❖ Principal of unjust encroachment. Decree for ejectment executed not on account of fraud, misrepresentation nor was executed behind the back of petitioner tenants or without any knowledge to them. Not a case of encroachment by respondent. 2000(1)Mh.L.J.605
 - ❖ S.148.-Notice of motion to set-aside ex-parte decree-defendant ordered to deposit decretal amount and costs before certain date –on failure “the notice of motion to be dismissed with costs”-order is not final –court retains jurisdiction to enlarge time upon failure to deposit costs within the date .1971 MHLJ 717. +1976 MHLJ 40.
 - ❖ S.149.Court has power to allow payment of court fees at any stage of the proceeding .1981 MHLJ 573.
 - ❖ Court fees on counter –claim –defendant applying for payment of court-fee on ground that it was not paid through inadvertence- material to doubt statement not existing on record –payment of court-fee should be allowed.1977 MHLJ Note 23.
 - ❖ S.151-Power of court to grant interim maintenance in a suit for partition –court has power to grant interim maintenance in appropriate cases.1976 MHLJ 82.
 - ❖ Amendment of decree or order –Court has inherent power to correct decree or order unless prohibited or excluded by Code or other statute. AIR 1971 Bom.121.
 - ❖ Consolidation of suits- plaintiff suing for possession on the basis of title by virtue of sale-deed in favour of predecessor-in-title-defendant suing plaintiff and one S for specific performance of contract to sell by father of S-order rejecting consolidation is not proper1975 MHLJ Note 52.Same ratio 1974 MHLJ 334.
 - ❖ Sale held in disregard of previous decision of court and confirmed –no application made u/o 21 r.89,90 & 91for setting aside sale –court has inherent Jurisdiction to set it aside.1962 NLJ note 70.
 - ❖ Interlocutory order passed ex-parte through mistake –court has inherent jurisdiction to set aside such order.1973 MHLJ 588.
 - ❖ Suit dismissed u/s.151 can be restored u/s.151in the interest of justice.1970 MHLJ 503.

- ❖ Abuse of the process of court –court cannot compel the parties to submit to blood test.1968 MHLJ 492.
- ❖ Inherent powers not intended to enable the court to confer right upon a party. 1987 MHLJ 179.
- ❖ It does not confer substantive jurisdiction on court .1986 MHLJ 759.
- ❖ Provisions cannot be invoked to enlarge jurisdiction of court .AIR 1963 Bom. 85.
- ❖ S.151 is declaratory in nature – the section assumes that the power is inherent in the court and section is mere declaration of it –section cannot be invoked when there is specific provision in the Code AIR 1968 Bom. 250.
- ❖ S.151, 152-Decree omitting important relief mentioned in Judgment –amendment of decree could be allowed AIR1971 Bom.121.
- ❖ Party omitting to avail of the remedy provided in the code court cannot make use of S. 151 in favour of such party .AIR 1970 SC 997.
- ❖ Recourse cannot be had to S.151 for staying suit when facts don't justify stay u/s.10.1981MHLJ 783.
- ❖ Correction of defendant's name –Name found to be incorrectly stated in plaint, Judgment, and decree – plaintiff applying for amendment on knowing of inaccuracy at the time of execution –defendant appearing and raising no objection at trial –Amendment can be allowed .1973 MHLJ Note 41.
- ❖ Land added by mistake in partition decree –Amendment excluding it can be allowed .1973 MHLJ Note 41.
- ❖ Abuse of the process of the court. Relitigation of a matter on self same facts by filing vexatious and frivolous suit is abuse of the process of court. Court can strikeout such suit from its record and in exercise of inherent jurisdiction. 2000(1)Mh.L.J.699.
- ❖ S.151 can be invoked in a case as the instant one. It is open to the court to consider the application on merits.1980 BLR 605.
- ❖ S.151-Inherent powers do not give the Court jurisdiction to do what it otherwise cannot do. Order of the Court to stay election of surpanch is without jurisdiction.S.151-Simultaneous prosecution of civil suit and criminal prosecution would embarrass the defendant. Civil suit has to be stayed till disposal of criminal proceeding1996 (2) MHLJ 907.
- ❖ section 151, O . 39 R 1-10 status quo ordered in respect of property-Creation of sublease in such property is illegal, even if it be by tenant who was not party to interlocutory application for status quo. Satyabrata v. Kalyan kumar AIR 1994 SC 1837
- ❖ O.11R.1-Plaintiff's tenants of different rooms in same premises –building damaged –tenants started re-construction- defendant can add them all in a suit for injunction or possession AAIR 1973 Boom. 358.
- ❖ Revenue authorities selling plaintiff's land for recovery of tagai loans taken by plaintiff's father before partition –defendant purchasing same and put in possession –plaintiff suing for possession on the ground that auction was ultra-vires-govt. is not necessary party –Auction being ultravires it is not necessary to set it aside.1976 MHLJ 373.
- ❖ Right to relief and person against whom right to relief is claimed must arise out of same acts and adjudication must involve a common question of law or fact.1983 MHLJ 221.
- ❖ O.11R.1-Plaintiff can deliver interrogatories even before the filing of WS by the defendant.1998 (3) MHLJ 626.
- ❖ Civil Procedure Code, O. 1, R. 10(2) – Suit summons served by bailiff not accompanied by copy of plaint and annexure – Non-furnishing of copy of plaint and annexure along with summons by itself cannot result in dismissal of the suit. {Hanumandas s/o Bajrangdas Gupta vs. Bardha d/o Yashwant Sangla} 2001(3) Mh.L.J 28
- ❖ O.11R.1,12,13,-Plaintiff's application in a suit for maintenance by wife for discovery and inspection of documents. Document and interrogatories in respect of financial status of defendant. Such inspection was extremely relevant to decide quantum of maintenance. Non filing of WS by the defendant is not a ground to deny application. AIR 1998 Bom.302.

- ❖ S. 152-Amendment of decree-Power cannot be exercised to add or subtract from any relief granted earlier. *Plasto Pack v. Ratankar bank limited* 2002 (1) MhLJ 246
- ❖ O.1R.2-Court must be satisfied that joinder would embarrass or delay the trial. 1978 MHLJ 345.
- ❖ O.1R.8-Notice of institution of suit must be given before according permission and not after granting it .1976 MHLJ 470=AIR 1976 Bom.401.
- ❖ Person ascertainable are numerically small-Personal service is necessary –where personal service is not possible notice by public advertisement should be directed. AIR 1976 Bom. 401.
- ❖ There need not be a formal order on the record for permission to sue in a representative capacity under O.1 R.8. The permission can be inferred where the Court grants plaintiffs' prayer that they should be allowed to sue in a representative capacity u/o1 r 8. *Mukeram das v/s Chhagan* AIR 1949 Bom.491.
- ❖ O.1, R.8, - Suit by members of public trust challenging the resolution passed by the trust – Such suit in individual capacity maintainable suit therefore not liable to be dismissed as not maintainable at a threshold only on the ground that O.1, R.8 has not been followed. *Naresh v. Kantilal* 2001(1) MhLJ 972
- ❖ O.1R.8-It is only enabling provision. One person may sue or defend on behalf of all in same interest. Filing representative suit not compulsory .Any person can file suit individually.1998 (1) MHLJ 134?.
- ❖ Where the plaintiffs are putting forward the right of communities as such and claiming themselves to be chosen representatives of the community the suit would not be maintainable in absence of compliance with Order 1 rule 8. (*The Asstt.Commissioner Vs. Nattamai & Otrs* AIR 1987, Madras 187).
- ❖ O.1 R.10.-Party to be joined should have direct interest –AIR 1972 Bom.148.
- ❖ Party cannot be forced to be to be joined –plaintiff suing for refund of earnest money on breach of contract –opponent no.2 & 4 donees from opponent no.1 applying to be joined as defts. –Plaintiff opposing- he cannot be forced to join opponent no.2 to 4. 1973 MhLJ Note 19.
- ❖ Benamidar sues for return of deposits –defendant-pleading payment to real owner and applying to add him –real owner is not necessary party and need not be added though he could be added on his application.1970 MHLJ 260.
- ❖ Person claiming interest-suit for specific performance of agreement of sale –stranger claiming that he had an interest in property and should, therefore, be joined as party to suit –he is not entitled to be joined u/O.1R.10 (2). AIR 1973 Bom.330.
- ❖ Addition necessary for complete and effective adjudication –decree not possible without affecting right of party –he is necessary party –it is immaterial who applies –Court would not add party without plaintiff's concurrence unless he is necessary party as distinguished from proper party - AIR 1972 Bom.148.
- ❖ Plaintiff suing on hundi-defendant contending signing blank hundi after receiving money from hundi broker and claiming payment to him under implied authority –plaintiff not claiming any relief against broker –plaintiff cannot be forced to join broker 1971 MHLJ Note52.
- ❖ Addition as co-plaintiff –no person can be added as co-plaintiff without plaintiff's consent –if necessary party he may be added as defendant .1977 MhLJ Note 11.
- ❖ Right of newly added party-party added after passing of preliminary decree in partition suit cannot be allowed to reopen the same .1979 MHLJ 252.
- ❖ Terms of R.10 (2) are wide Court empowered to add party either on application by party or even *suo motu*. AIR 1972 Bom.148.
- ❖ Transposition of parties –suit for rendition of accounts of dissolved partnership –plaintiff-withdrawing suit –before order of court. Defendant applying for transposition as plaintiff and of plaintiff as defendant -Court has jurisdiction to allow transposition .1975 MHLJ 337.
- ❖ Agreement for sale of housing society flat-Suit for specific performance-Defendant/vendor was the member of the society-The society had specifically agreed to make plenty its member-No relief claimed against the society in suit-Society in the circumstances not necessary party to suit. *Haren v. Kamla* 2001(2) MhLJ 45

- ❖ O.1R.10-It is plaintiff to pray relief against opposite party .Stranger can't be impleaded at instance of defendant.1995(2) MHLJ 816.
- ❖ O.1R.10-Suit for specific performance. Such suit being limited to the agreement of which specific performance is sought, stranger to the contract can't be impleaded as party to the suit.1995 (1) MHLJ 893.
- ❖ A person may not be added merely because he would be incidently affected by the Judgment. (Banarasidas Vs. Pannalal & Othrs. AIR 1969, Punjab & H.57)
- ❖ The principles governing the power of the court under order 1 rule 10 C.P.C. are that, as a rule of the court should not add a person as a defendant in a suit when the plaintiff is opposed to such addition. The reason is that the plaintiff is "dominus litis". He cannot be compelled to fight against the person against whom he does not wish to fight and against whom he does not claim any relief (Gonsola & Othrs Vs. Inacio & Othrs AIR 1977 GOA-4).
- ❖ O.1 R.10-Suit for declaration by a party that his construction authorized .3rd party wants to join on the count that his right of way affected by construction .He is not necessary party as nature of right different 1998(1) MHLJ 410.
- ❖ Without giving a prior notice so as to call objections, court will not in a position even to make appropriate order with regard persons who may be permitted to sue or be sued in a suit as representatives of the others. The notice is required to be issued before institution of the suit is allowed as representative suit (The Municipal Council Amrawati Vs. Govind & Othrs AIR 1976 Bombay 401).
- ❖ O.1R.11,12-More than one plaintiff –counsel appearing for them must appear jointly for all of them and not separately for one or more of them –examination or cross-examination of witnesses should be by one of the counsel AIR 1961 Bom.94.
- ❖ When the declaration sought for in the suit would affect interest of the party and to effectually and completely adjudicate the points at issue it was necessary to implead said party as defendant to the suit, said party may be joined under order I rule 10 (2).Kshitish v. Dewan AIR 1976 Gauhati 41.
- ❖ As a rule, the Code should not add a person as a defendant in a suit against the wishes of the plaintiff but the word "may "in sub rule 2 of rule 10 of order I of the Code gives a discretion to the Code and where it finds that the addition of a new defendant is absolutely necessary to adjudicated effectively and completely the matter in controversy between the parties it will add party as defendant even without the consent of the plaintiff. The power given to the court under order I rule 10 is complete in all respects and it can join any person as plaintiff or defendant, who ought to have been joined or whose presence before the Court is necessary in order to enable it effectively and completely adjudicate upon and settle all questions involved in the suit.Bara Hanuman Temple v. Gurubux AIR 1978 Punjab and Haryana 192.
- ❖ Power of court to add a party as defendant-Wishes of plaintiff remedial if Code considers presence of the party necessary for adjudicating all issues involved in the suit without changing its nature-Expression 'issues involved in the suit' cannot be read as issues involved between the parties to the suit.Singheswar v. Babulal AIR 1980 Patna 187.
- ❖ In a suit relating to property, the person to be added as a party should have a direct interest as distinct from a commercial interest in the subject matter of the litigation. Where the subject matter of the litigation is the declaration as regards status or a legal character, the rule of present or direct interest may relaxed in a suitable case where the court is of opinion that by adding the party, it would be in a better position to effectually and completely adjudicate upon the controversy.A. Gyaneswar v. Mohamad Sharif AIR 1982 Andhra Pradesh 155.
- ❖ The theory of dominus litis should not be overstretched in the manner of impleading of parties, because it is a duty of the court to ensure that if for deciding the real matter in dispute, a person is necessary party, the court can order such person to be impleaded. Merely because the plaintiff does not choose to implead person is not sufficient for rejection of the application for being impleaded. The provisions of order, 1 rule 10 are very wide and the powers of the court are equally extensive. Even

without an application to implead as a party, the court may, at any stage of the proceedings order that the name of any party, who ought to have joined whether as plaintiff or defendant or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added. Committee of management v. III Addl. Civil Judge AIR 1995 Allahabad 7.

- ❖ Suit for injunction filed by a tenant against Municipal Corporation-Relief claimed is for perpetual injunction against municipal Corporation, that the municipal Corporation be prevented from pulling down the portion of the building as mentioned in the notice issued by the Corporation-Landlord is proper party to such suit. Madanlal v. Jugalkishore 1997 BLR 748.
- ❖ Plaintiff is a Dominus litis as far as litigation in question is concerned and the court would not add a person as a party without the concurrence of the plaintiff. The court would add a person as a party defendant, without concurrence of plaintiff only in exceptional circumstances, where the person sought to be added is a necessary party as distinguished from the mere proper party. Necessary party is the party without joining whom an effective decree in the suit can not be passed. Jivanlal v. Narayan 1972, and were whom MhLJ 64.
- ❖ It is for plaintiff to decide whom to join as a defendant-Where party is absolutely necessary such person act n can be joined even where the plaintiff opposes such joinder. Herbertsons ltd. V. Kishore 2000 (3) MhLJ 550
- ❖ Suit by Trustees of endowed property of family deity for possession of certain rules against one of the shebaitis-All the shebaitis , do necessary parties, not intended as parties-held, suit by trustees was not probably constituted and must be dismissed.Prafulla v. Satya Choran AIR 1979 SC 1682
- ❖ In order that a party may be added as a defendant in the suit a should have a legal interest in the subject matter of litigation. Legal interest not as distinguished from an equitable interest, but interest which the law recognizes. A person who owed the only indirectly or commercially affected by the result of the litigation to be impleaded as a party. The expression 'all questions involved in the suit' to be read as questions involved between the parties to the suit.Bindeshwari v. Dr. Sheo nandan AIR 1973 Patna 115.
- ❖ O1R.13-Objection regarding non-joinder of necessary parties cannot be
- ❖ O.3.R.1 . Direction by trial court to the plaintiff to step iup in the witness bolx to discharge the burden of the issues upon him can be given only in justifiable casesbu speaking order and not as a matte5 of course.There ias no rewstriction imposed upon the holder of power of attorney holder of a party to the suit to dwepose for and on behalf of the principal giving suich power.His cope ndency to depose has not be curtailed by the provksions of order 3 rule 1 ,2 and order 18 rule 3A. 2000(1)Mh.L.J.690.
- ❖ O.3 R.1-Suit fixed for recording plaintiff's evidence .Plaintiff and his advocate absent but defendant's advocate present .Dismissal of suit by trial court was u/O.9 R.8.. fresh suit based on same cause of action seeking same relief not tenable in view of provision u/o9r9. Court recording finding that though defendant's advocate was present his presence could not be considered as the presence of defendant. Said observation of the Court contrary to provisions of O.3 r.1.1998 (3) MHLJ 252.
- ❖ O.3-Where duly appointed pleader engages another pleader to plead. Such other pleader is not required to file memo of appearance.1997 (1) MHLJ 261.
- ❖ O.2R.1,2,3,4- raised after issues are settled .1973 MHLJ 845.
- ❖ Bar of subsequent suit –cause of action for suit for possession is different from that for the suit for damages or mesne profits –first suit for damages found on contract- subsequent suit for possession founded on title is not barred. AIR 1972 Bom.326.
- ❖ Nature of cause of action may be indicated by the nature of evidence by which it is supported .AIR 1972 Bom.326.
- ❖ Defendant in wrongful possession –separate suit for each year's mesne profits is not bared1960 NLJ 765.

- ❖ Earlier suit for injunction when plaintiff was out of possession –cause of action alleged to be breaking open of lock by the defendant –said suit withdrawn –subsequently suit filed for possession and damages on the same cause of action barred.1990 MHLJ 227.
- ❖ O.3 R.1-A counsel whether Advocate or pleader has actual though implied authority to act by way of compromising a case without specific consent of a client unless otherwise so instructed .AIR 1975 SC 2202.
- ❖ Party appearing through pleader –mere presence is not enough –he must be duly instructed and able to answer questions pleader engaged only for seeking adjournment and not able to answer questions- he cannot be said to have appeared though he doesn't withdraw on refusal of adjournment-order dismissing suit is one under O.9-1970 MHLJ 503.
- ❖ O.3R.4(2)Suit dismissed in default –authority of counsel not terminated –counsel can file application for restoration of suit.1964 MHLJ Note 38.
- ❖ O.5 R.19-Declaration by court that the summons has been duly served is mandatory, though form of declaration is not mandatory –unless this is done court will not be justified in proceeding with the suit *ex-parte*. 1984 MHLJ 247.
- ❖ O.5R.21-AO.30R.3&5-Acknowledgement is only prima-facie proof of service –court must decide on inquiry whether service was good –1968 MHLJ 510.
- ❖ O.6 R.1-plaintiffs bound by his own pleadings-must fail or succeed on its own pleadings. Niwas Builders V. Chanchalben 2003(3) MhLJ 312
- ❖ O.6 R.2-Suit for damages for slander –plaintiff must give in the plaint names of person to whom slander was uttered –plaintiff not giving names in the plaint-plaint is liable to be rejected-defendant not applying for rejecting plaint but objecting to examination of witnesses-procedure is not proper.1971 MHLJ Note 31.
O.6 R.1- Order 6 rule 1-plaint presented by brother of plaintiff-Plaintiff by subsequent amendment was permitted by trial court to sign plaint and verification-Suit of 24 did not suffer from any integrity for want of verification by plaintiff. Abdul Awal v. Syed 2001(2) MhLJ 625
- ❖ O.6R.2-Rules relates to matter of procedure only –plaint not properly signed and verified –institution of suit is not thereby rendered ineffective .AIR 1961 Bom. 292.
- ❖ O.6R.4-Pleading as to negligence –all particulars must be given. AIR 1971 Bom.348.
- ❖ Party pleading misrepresentation –particulars necessary.1991MHLJ 1004.
- ❖ O.6R.5 - application for better particulars filed before Amendment of CPC in 2002 -in view of the Saving Clause in the Amendment Act pleadings filed in the court before the Amendment Act are required to be deed with as for the provisions of CPC existing on the date of filing pleadings-code to decide application on merits-Prabhakar V. Ramrao 2003(3) MhLJ 213
Order 6 rule 16-candidate in verification of election petition-Irritability is curable -permission to carry out the amendment in so required could be granted. Bharamu v. Narsingrao 2001(2) MhLJ 348
- ❖ O.6R.17-Adding new ground of relief –plaintiff suing for possession after terminating tenancy – defendant claiming ownership-plaintiff seeking amendment to base suit on title in alternative – amendment allowed restricting claim on title .1973 MHLJ Note 45.
- ❖ Amendment taking out of jurisdiction –can be allowed. AIR 1971 Bom.382.+1985 MHLJ 616.Contrary view 1973 MHLJ Note 54.
- ❖ Withdrawal of admission seeking to deprive plaintiff of right accruing from admission made in the written statement earlier-permissibility and scope.1991 MHLJ 50.
- ❖ Order allowing amendment subject to cost-opposite party accepting cost under protest but not reserving right to challenge the order he cannot challenge order of amendment. AIR 1961 Bom. 136.
- ❖ Amendment sought as a result of subsequent event which occurred during the pendency of suit is required to be allowed.1999(1) MhLJ 17.
- ❖ Suit for recovery of amount by bank relying on the letter by defendant dated 14-3-88.Suit filed on 11-3-91.Plaintiff bank on 7-1-97 seeking to amend the plaint by making the averment that the

defendant wrote a letter dated 12-7-88 to the plaintiff. Bank under his signature and in the said letter defendant had in most clear terms admitted fact of the plaintiff bank having given the loan as mentioned in the plaint to the defendant and defendant having availed it. Said letter was also sought to be filed in the suit. Amendment did not in any way change the nature of the suit or was not seeking to add any allegation nor was it claiming any fresh relief which it had prayed for in the plaint. There is no question of extending the limitation period, by the aforesaid amendment and by the production of the said letter, there was absolutely no prejudice that would be caused to the petitioner. It did not in any way, add to or alter the cause of action. Amendment should be allowed. 1999(2) MhLJ 393.

- ❖ Time Barred Amendment affecting right of parties' contrary to original pleading cannot be allowed. (Prabhulal & Otrs. Vs. Chandrakant AIR, 1983, NOC-85 Gujrat).
- ❖ Court dealing with matters under Succession Act its court of civil jurisdiction. Provisions of section 141 Code of Civil Procedure apply to proceedings under the Act. Amendment which takes away admission in favour of adverse party not permissible. Deubai v. Muktabai 2000(1) MhLJ 511.
- ❖ O.6R.17-Amendment sought as a result of subsequent events, which occurred during pendency of suit, can be allowed. 1999(1) MhLJ 17.
- ❖ O.6 R.17-Court can order amendment ousting jurisdiction. After amendment plaint be returned for presentation to proper court. 1994 MHLJ 1001, 1286, 1345.
- ❖ O.6R.17-Court has right to grant time barred amendments. 1995 (2) MHLJ 506.
- ❖ O.6 R.17-Withdrawal of admission by amendment off WS cannot be allowed which will displace the plaintiff's case and cause him irretrievable prejudice. AIR 1998 SC 618.
- ❖ Order 6 Rule 17-Prayer for permission to amend written statement-Stand taken in original written statement and proposed amendment was dramatically opposite in the context of the claim for assertion title with regard to suit property -Rejection of prayer by trial Court mainly on ground that amendment would result in permitting defendant to withdraw admission is given by him in written statement thereby causing prejudice to the plaintiff-no reason to interfere with the decision of the trial Court in the circumstances. Janu Laxman vs. Pandurang 2000 (4) MhLJ 159.
- ❖ Civil Procedure Code, O.6, R.17 –Suit for declaration based on title - By amendment alternate plea based on adverse possession sought to be incorporated in the plaint – Amendment allowed. {Mudra Salt and Chemical Industries vs. Collector, Thane} 2001(3) Mh.L.J 151
- ❖ O.6R18-Said provision has no applicability for incorporating names of the legal representatives pursuant to an order allowing substitution – Cause title may be corrected by the concerned party or establishment of the court. Rukmini v. Paramanand . 2001(1) MhLJ 290
- ❖ O.6 R.18-Carrying out of amendment after 4 month of limitation –May be allowed on costs. 1997 (1) MHLJ 6.
- ❖ O.7 R.6-It is sufficient if facts on which exemption is claimed are set out in plaint plaintiff referring in plaint reply to the notice as containing acknowledgement of debt –that is sufficient to found plea u/s .18. AIR 1973 Bom.84.
- ❖ Alternative relief-court can grant relief to the plaintiff on the basis of defendant's admission though alternative plea to that effect is not taken by the plaintiff. 1974 MHLJ Note 30.+1976 MHLJ Note 66.
- ❖ O.7 R.7-Principles of law applicable to suit for specific performance with regard to discretion to be exercised u/s 20-Such relief can't be granted unless evidence and proof of agreement is absolutely clear and certain. Relief consistent with pleading and proof can be granted. 1998 (3) MHLJ 412. SC.
- ❖ O.7 R.11-Provisions comes into play at any stage of suit, even after filing of the WS. 1995 (1) MHLJ 179.
- ❖ O.8 R.3,4,5.-When denial in WS is not specific but evasive said fact may be taken as an admission .admission itself being proof, no other proof is necessary. 1995 (1)MHLJ 22.
- ❖ O.8 R.6-Legal or equitable set off –plaintiff ,building contractor suing to recover over a lakh of Rupees –defendant contending work not done according to contract alleging work to be incomplete causing

considerable loss limiting claim to loss of Rs.50,000-claim amount to equitable set-off.AIR 1972 Bom.150.

- ❖ O.8 R.6A- Amendment of counter claim cannot be permitted when cause of section for amended counter claim arose after date of filing written statement or after date of raising of first counter claim. Ganu V. Manik 203(3) MhLJ 218.
- ❖ O.8 R.10-Once the case is adjourned to a future date,it is empliedly clear that the trial court exercised discretion contemplated in the latter part of Rule 10 of order 8 of CPC .It can't therefore be construed that trial court was not competent to accept the written statement1999(1) MhLJ 180.
- ❖ Order 9 rule 4-Restoration of suit under or 9 rule 4-Notice must be given to the defendant. Steamship v. Thakur shipping 2001(2) MhLJ 392
- ❖ O.8 R.5 –Order under this provision can't be equated with exparte decree, hence application for setting aside decree can't be intertained1994 MHLJ 31.
- ❖ O.8 R.6A-Counter claim can be for relief of possession.1994 MhLJ 732.
- ❖ O.9.R.13-In a suit by a petitioner landlord a compromise decree came to be passed according to which a period of 5 years was given to respondent tenant to vacate the suit hotel.Tenant after 5 years did inot vacate the suit hote,but filed a notice iof motion to set aside the compromise decree on the ground that he neither received any suit summons or engaged any lawyer to defend him .Record show presence of defendant and h is lawyer when decree was passed. Trial court set aside the compromise decree. The Trial court set aside decree .The fact show that some fraud has been played in the case. Trial courts oprder set aside with a directions to principal judge, city civil court to complete the enquiry in the matter.2000 (1). Mh.L.J.230.
- ❖ Where an appeal preferred against an ex-parte decree is dismissed as being barred by limitation application for setting aside ex-parte decree under order 9 R,13 is not maintainable. Vasant dada v. B.B. Consulting 2001(1). Mh.L.J.871.
Order 9 rule 13-Code can proceed to past degree under or a whole 5 se than on basis of facts as pleaded in plaint -Suit can be decreed ex parte only on according evidence. Steamship v. Thakur shipping 2001(2) MhLJ 392
- ❖ O.9R.13-Application and appeal for setting aside exparte decree can be simultaneously filed. Appeal should be on merits, however if either of them is disposed other can't proceed.1995 (2)MHLJ 951.
- ❖ O.9R.13- Application under this provision is not tenable to set-aside decree passed u/o8r.5.Remedy is by way of appeal .1998 (3) MHLJ 924.
- ❖ O.9r.13- When defendant neither negligent nor careless while defending. Decree passed through negligence of counsel .Exparte decree liable to be set aside. AIR 1998 SCC 258.
- ❖ O.10 R.1-the provisions of orders 10 rule 1 and 2, if freely and generally pressed into service by the courts for imparting speedy justice, the provisions certainty has a role to play. By resorting for examination under rule one and two of order 10, the court can clarify pleadings by putting material questions relating to the suit to the parties. Bhawarlal v. Shamsundar. AIR 1984 Raj. 113.
- ❖ Were the plaintiff applied under order 10 rules 1and 2 for examination of the defendant, and the defendant has duly authorized and instructed Counsel appearing on their behalf, then the counsel should be initially examined under the provisions of order 10 rule 1 and 2. Vishnu v. State Bank of Bikaner AIR1970 Raj.195 .: a fifth in a
- ❖ O.13 R.2-Documents which can be introduced in evidence by way of cross-examination are those which are not meant to prove original case as setout in plaint or written statement.1984 MhLJ 938.
- ❖ O.13 R.2-Documents not included in list may be allowed to be filed if no prejudice caused to other side .it is for the other side to explain what prejudice will be caused to him.1995 (2) MHLJ 895.
- ❖ O.14 R.1 -framing of issues-Code cannot frame issue for first-time and travel in territory unknown to parties during course of trial. NiwasBuilders V. Chanchalben 2003(3) MhLJ 312.
- ❖ O.14 R.2-Suit for declaration of will as null and void-Will executed on 15-6-1964-testator died on 15-11--1964-Suit filed on 1970 1970s the allele that all affection for filing suit had arisen on 15-8-1972

from date of knowledge about circumstances under which will have got executed-Allegation of deceit by defendant as well as acquisition of knowledge thereof on 15-8-1972 by plaintiff required to be established by adducting evidence of-Point of limitation in the case could not be decided as preliminary issue-Suit rightly remanded appellate Court to enable parties to lead evidence on issue of limitation. Bhaskar v. Gangaram 2001 (2) of MhLJ 263.

- ❖ O.14 R.2-executing court is not under obligation to frame issue regarding the question raised before it-Framing of issue by the executing Court would at the best be matter of prudence but not a rule.C.V.Joshi v. advance in theSliphinstone mill2001 (2) of MhLJ 195
- ❖ order 18 rule 1-It is only an enabling provision entitling defendant of right to begin-Court not competent to direct defendant to enter witness box before plaintiff and lead evidence in support of the case.Haran bidi Supplier v. Messrs V M. and company 2000 (4) MhLJ 112.
- ❖ O.18R.2,O.20R.1-On date fixed for evidence while plaintiff's evidence was recorded defendant present but plaintiff not cross –examined as counsel was not present –case there after closed for Judgment –application made for permission to cross examine plaintiff not maintainable under O.18R.2as stage of hearing contemplated therein had already been over –subsequent stage being covered by O,20 R.1application for cross examination not tenable.1985 MhLJ 565.
- ❖ Order 18 Rule 4- evidence of witnesses of his examination in chief on affidavit-rule does not differentiate between appealable and non appealable cases. Copies of affidavit of examination in chief to be furnished to the opposite party well in advance. FDC ltd. V. Federation of medical representatives Association India. 2003(3) MhLJ 327
- ❖ Order 18 Rule 17- Recall of witnesses-power cannot be exercised for cross-examination of witnesses by either of parties but for purpose of examination by Court itself. Inherent powers of the court cannot be invoked to enable party to fill lacuna in evidence. Balkrishna V. Mahesh 2003(3) MhLJ 47
Order 18 Rule 17 A-After conclusion of the deposition of plaintiff in suit the document in question signed by plaintiff were produced by plaintiff's witness-Trial Court was justified in meeting plaintiff to examine himself to identify document is in exercise a power is under O. 18 rules 17 A. Bhupatrai v., Chain Thakurdas 2001(2) MhLJ 461
- ❖ O.18 R.18-Spot inspection, Observation of a Judge at the time of the inspection can be used only for the purpose of better following and understanding evidence adduced in the case as to test its accuracy. Such inspection can't be substituted as evidence in case nor Judge can make it foundation for judgment. 1999(2) MhLJ 569.
- ❖ O.18 R.20.18 R.2 –Right to argue finally –Party that led evidence first has right to address the court last.1995 (1) MHLJ 695.
- ❖ O.20R.12-After termination of tenancy tenants possession is that of trespasser and therefore he is liable to pay compensation1991MhLJ 183.
- ❖ Effect of stay –appellate court granting stay to possession –D.H. is not precluded from applying for mesne profits. AIR 1979 Bom. 60.
- ❖ Mesne profits –after termination of tenancy tenant becomes trespasser –he is not entitled to privileges under rent control legislation –mesne profits payable to landlord should be calculated at the value of user of premises to him. AIR 1966 MhLJ 688. 1974 MhLJ 129 SC.
- ❖ Civil Procedure Code, O.20, R.12 (1)(i) –Once the Court having come to the finding that the plaintiff landlord is entitled to possession by executing the decree of eviction, the Court has discretionary power to pass the decree directing the enquiry into future mesne profits also. {Narayan Ganpat Bhoite vs. Smt.Rampyari Suchitram Gupta since deceased through heirs Hariprasad Gupta} 2001(3) Mh.L.J.234
- ❖ Civil Procedure Code, O.20, R.18 – After passing of preliminary decree for partition the decree cannot be made effective without there being final decree – Final decree has to specify the division by metes and bounds and has to be engrossed on requisite stamp paper after which it becomes executable. {Annasaheb Rajaram Hagane vs. Rajaram Maruti Nagane} 2001(3) Mh.L.J. 53

- ❖ O.21R.1-Decreetal amount payable in installments with default clause-installment due on date on which court was closed for Christmas –amount deposited on reopening day-debtor is in default – default clause operates. AIR 1972 Bom.299.O.21R.11Any person acquainted with the fact of the case may sign execution on behalf of D.H.1967 MhLJ 112.
- ❖ O. 21-It is the duty of executing court to x-ray the award and to lift the veil to find out what material was available before the arbitrator to have come to his conclusions-It is not the duty of executing court to decide whether the award was right or wrong but it can certainly decide whether it was business and/or perverse and based on any evidence or material at all. Jaimal v. Ila Pandya 2001(2) MhLJ 297
- ❖ Drawing up of decree not condition precedent to initiation of execution proceeding.1978 MhLJ 425.
- ❖ Eviction decree-Execution filed by widow of decree-holder/landlord –Plea that she is not competent to file application as she was only appointed as a receiver. -Widow had deposed on behalf of landlord and it was her evidence that suit had been decreed.-She is competent to file execution.1999(1) MhLJ 37.
- ❖ Satisfaction of decreetal liability-Part payment made by judgment debtor from time to time should be applied first to us decreetal amount carrying interest-It is not open for the decree holder appropriate payment received by him to that part of decreetal liability which did not bear any interest. Bhikalal v. Preeti 2001 (1) MhLJ 665
- ❖ order 21 rule 11-Ejectment decree in favour of trust-Execution petition presented by secretary of trust-execution petition is maintainable-It is not necessary that all the trust is and decree holder's should execution petition. Monalisa v. Naval 2000 (4) MhLJ 73
- ❖ O.21R.32.-Decree for specific performance is a decree in favour of DH &J.D.-it is capable of Executed by either of them R.30 would not apply to decree for specific performance. AIR 1972 SC 1826.
- ❖ O.21.R.34-The executing court is empowered in terms of the provisions U/o 21 R.34 to direct execution of the sale deed in accordance with a draft submitted by the decree holder. Where the draft was in accordance with the decree, the clause of the agreement cannot substitute a provision contained in rule 34.2000(1)Mh.L.J.447.
- ❖ O.21 R.37-J.D.must appear in person in answer to notice u/o21r.37-on failure off JD to appear issue of warrant of arrest not without. Jurisdiction. AIR 1961 Bom.23.
- ❖ 21R.54-Formalities not observed-effect-there is any attachment .1976 MHLJ Note 52.
- ❖ O.21R.58 & S.47.- Distinction –u/o21 r.58 inquiry is restricted to the question of possession only under s.47 the scope is not restricted and question including that of title have to be gone into-Inquiry is summary –if complicated question of title or facts involved ,party has to establish rights by filing suit. AIR1971 Bom.94.
- ❖ Self acquired land of the JD attached –Said land is shown to be transferred to the minor son of the JD under mutation entry without executing any conveyance.-Application of raising attachment filed by minor son under O 21 R.58 allowed by the claim tribunal without there being any evidence of title of transferee son.-Respondent played fraud I procuring mutation entry in the name of his son without any document of title. –Order set-aside being perverse in law. 1999(1) MhLJ 381.
- ❖ O.21R.58-J.D. owner of self acquired property .Said property attached ,however said land shown to have been transferred to minor son of J.D. under mutation entry without executing any conveyance .order of raising attachment on the application of minor son perverse in law.1999(1) MhLJ 381.
- ❖ O.21R.63-Objection to attachment allowed –suit by aggrieved DH will be governed by s.16 (d) and is triable by court within whose jurisdiction property lies –Court which passed attachment order but has no territorial jurisdiction over immovable property cannot entertain such suit .1967 MHLJ 98.
- ❖ O.21R.66-Requirements-sale after notice is contemplated –service of notice effected –recording of fact by court is not necessary- sale valid.11960 NLJ Note101.
- ❖ Adjournment of sale –fresh notice is not necessary .1961 NLJ 49.

- ❖ Non service of notice does not render a sale nullity –sale is only voidable at the instance of JD, who has to apply for setting it aside AIR 1973 Bom.301.
Omission to properly describe property ,or to disclose encumbrance is material irregularity .1970 MHLJ 273.
Order 21 rule 84-It is obligatory on the part of person declared the purchaser to deposit immediately after such declaration 25% of the amount of purchase money. In default of such deposit the properties are required to be sold forthwith-Failure to deposit 25% of the purchase money renders the sale a complete nullity and confirmation there of and issuance of sale certificate have no effect-The officer conducting sale has no authority extent time of such deposit-Executing court directed to hold fresh auction in accordance with law. ItJagdish v. Ramesh 2001(2) MhLJ 417
- ❖ O.21R.85- Balance of purchase price must be paid within 15 days of auction sale court cannot extend time – balance not paid court shall order re-sale. AIR 1961 Bom.224.
- ❖ O.21 R.85-Auction –DH was highest bidder. Even after set-off of decretal amount there was short fall in sale price. Failure of DH to provide sale price within time. Rule 85 being mandatory its non-compliance will render the sale nullity 1997 MHLJ 687 SC
- ❖ O.21R.89 –No particular form of application required –deposit of amount with pursis implying prayer that sale should be set-aside is sufficient compliance. AIR 1967 Bom.39.
- ❖ O.21R.92-Sale held in execution of money decree-auction purchaser aware of challenge to the decree –on decree being set-aside in appeal auction sale liable to be set aside and judgment debtor entitled to be restituted by allowing possession to be made over by auction-purchaser to the judgment-debtor.1990 MHLJ(SC) 285.
- ❖ O.21R.97-Holder of decree contemplates valid decree –where decree is nullity DH cannot maintain complaint in regard to obstruction to execution-obstructionist in such proceeding can always contend that decree is nullity and therefore application is not maintainable.1991 MHLJ 376.
- ❖ Eviction suit against tenant. –Decree-landlord secured sale-deed in respect of land. –Execution of decree obstructed by sub-tenants. -Vendee claiming under sale-deed took out obstructionist proceeding –there was specific reference to the eviction decree obtained by vendors/landlords, in the agreement of sale as well as the sale-deed –Plea that the vendee was not competent to take out obstructionist proceeding negated.1999 (1) MhLJ 37.
- ❖ O.21R.97-Decree passed in 1980 on contest for eviction from open plot . Obstructionist inducted by J.D. on structure put up by them and in possession. Such obstructionist not justified in resisting the decree.1999 MhLJ 860.
- ❖ Executing court recalling issue already framed-No error in recalling the order for framing particular issue on the view that the proceedings could be decided finally without any issue. C.V.Joshi v.Elphinstine mill 2001(2) MhLJ 195.
- ❖ O.21 R.97-Execution of decree obstructed by sub-tenants on ground that there was attornment of tenancy of obstructionist by landlord. Letters allegedly issued by landlord are not proved, moreover landlord was not in possession of land despite decree, thus there was no question of attornment.1999(1)MhLJ 37.
- ❖ O.21 R.97-Stranger to a decree who claims independent right, title or interest in the decreetal property is entitled for settlement of his grievance before delivery of possession to DH.1997 (1) MHLJ (SC)817.
- ❖ O.21 R.97Grant of police aid for execution without inquiry u/o21 r.35 and 97 improper AIR 1998 DELHI 2 ,Relied on AIR 1995 SC 358.
- ❖ O.21R.97-Tenant in possession not a party to the decree can resist delivery of possession to the decree holder by seeking adjudication of his objection by executing Court. One has not to wait for loss of his possession to enable him to participate in proceeding. Procedural law –Where it is open for more than one interpretation, one, which curtails procedure without eluding justice, is to be adopted. 1998(3) SC MhLJ 1.

- ❖ O.21R.103-Suit for possession on objection to delivery of possession upheld in execution proceeding -test regarding maintainability of suit –subsequent suit brought on a different right not hit by O.21 R.103.AIR 1971Bom.16.
- ❖ O.21R.103 –Order rejecting objection filed by stranger to execution of possessory decree. Only remedy available to him is to file a suit u/s 103.Such order is not revisable. AIR 1998 SC 2476.
- ❖ O.21R.101 to 105-Proceeding in nature of suit –executing court should frame issues and allow parties to lead such evidence as desired. AIR 1984 Bom. 357.
- ❖ Suit is not continuation of summary proceeding –market value of subject mater would govern question of jurisdiction AIR 1967 Bom.389.
- ❖ Suit for declaration in respect of obstruction to possession is defensive in character and advantage of section 53-A is available to person in possession under agreement of sale .AIR1967 Bom.34.
- ❖ O.22 R.3-Partitin suit dismissed-plaintiff appealing –one of the respondents representing his branch dying and appellant not bringing LRS. on record in time –respondent’s Lrs applying for being brought on record –court has no power after abatement of appeal to allow LRS.to be brought on record-application cannot be allowed.1976 MHLJ Note 68.
- ❖ O.22-Provisions of O.22 not applicable to revision .LRs can be brought on record by invoking the provisions under S.151.1995 (2) MHLJ 608.
- ❖ Pecuniary jurisdiction –original plaintiff not raising objection regarding pecuniary jurisdiction before court-death of original plaintiff –his LR’s.cannot be allowed to raise objection regarding jurisdiction before appellate court .1989 MHLJ 360.
- ❖ O.22 R.4- Agreement to sell premises. Death of vendee before filing of the suit for specific performance. Suit for specific performance and for damages filed against vendees LR’s .Death of one of the LR will not abate the suit in entirety consequence of not bringing his LR’s on record as claim made was also for damages.1999(2) MhLJ 489.
- ❖ O.22R.4-When defendant is dead and LR’s on record only transposition of LR’s in place of deceased def’t. to be done.
AIR 1998 SC 277
- ❖ O.22 R.5 –Rival claims as LR’s-Summary inquiry –The claimant having better title is substituted as plaintiffs and others as defendants. Finding will not operate as res judicata.1994 MHLJ 295.
- ❖ O.22R.9-Procedure –court cannot set aside abatement and order legal representatives to be brought on record without notice to the proposed LR’s.1976 MHLJ Note 63.
- ❖ O.23 R.1-Power of court –plaintiff applying for withdrawal with liberty to file fresh suit –court may reject application but cannot order that suit stands withdrawn without liberty to bring fresh suit.1973 MHLJ 889.
- ❖ Suit allowed to be withdrawn with permission to file fresh suit on same cause of action on payment of ¼ th costs of defendants –fresh suit filed but costs not paid –however costs paid during pendency of the suit –continuance of suit not in any way affected 1990 MHLJ 572.
- ❖ Expression “formal defect “as appearing in rule 1 (3) means a defect which does not affect the merit of the case. Whether such defect is fatal to the suit or not. Appellate court has power in appropriate cases to grant permission to withdraw the suit with liberty to file fresh suit.2000(1)Mh.L.J.310
- ❖ O.23 R.1-If application is made for withdrawal of suit with permission to file fresh suit, it is not open for Court to grant permission only for withdrawal without liberty to file fresh suit ,though it is open to the court to reject the application .1996 (1)MHLJ564.
- ❖ O.23R3-Expration “in writing and signed by parties “does not obligate signing of consent terms by parties in person –consent term signed by the advocate or counsel will have to be treated as if signed by parties .1991 MHLJ 104.
- ❖ O.32R.15-Next friend suing on behalf of person alleging to be of unsound mind-court must at once enquire and record finding if plaintiff was of unsound mind –separate application not necessary – defendant entitled to challenge after entering appearance that the plaintiff was not of unsound mind –

- defendant proving that the plaintiff was capable of defending interest-plaint liable to be rejected. AIR 1973 Bom.276.
- ❖ O.34 R.11 –While s.34 of CPC applies to simple money decree O.34 deals with mortgage suits. So far as mortgage suit is concerned ,the special provisions in O.34 R.11 alone are applicable 1998 (2) MHLJ SC 580.
 - ❖ O.35.R.5-Allegations made showing suit to be barred by limitation court bound to reject application to sue as indigent person .1990 MHLJ 327.
 - ❖ O.37r.3- defendant admitting receipt of amount claimed but claims for interest denied. Decree for lesser amount than claimed can be passed under o.37 r.3 1999(2) MhLJ 489.
 - ❖ O.37R.4- Although the defendants could show that they were prevented for the good and sufficient reasons for not entering their defence within 10 days from date of receipt of summons, they failed to satisfy the court that they had good and meritorious defence. In absence of any special for setting aside ex parte decree, application dismissed. 1999(2) MhLJ 289.
 - ❖ O.37.,R.2-“Service charge “ for use of credit card is not a penalty Suit filed by the bank based on the use of credit card is, therefore, maintainable as a summary suit 2000(1) MhLJ 744.
 - ❖ O.37.R.3 – Defendant seeking unconditional leave to defend summary suit on ground that the plaintiff had made excessive claim of interest in the suit. Claim to interest is in the discretion of the court. Conditional leave granted. 2000(1) Mh.L.J.431.
 - ❖ Summary suit for recovery of amount due for supply of goods-Suit based on the entries reflected in the books of defendants - The defendants themselves had addressed three letters to the plaintiffs voluntarily pointing out the amount stated in the books of account to be the liability towards defendants-Plea taken by defendants that summary suit would not lie could not be sustained- Implied obligations if they create a liability to pay debt or liquidated demand in money can be enforced by instituting summary suit. R.Kumar v. Chemicals Unlimited 2001 (1) MhLJ 687.
 - ❖ O.37, R.3 – Claim for rupees 5,67,68,433.23 – leave to defend – unequivocal and clear-cut admission on the part of defendant that an amount of rupees 5 crores was payable to the plaintiff – Conditional leave to defend granted on deposit of rupees 5 crores within 1 year in four equal installments. Leela capital v. Modilutf 2001(1) MhLJ 534 Civil Procedure Code,
 - ❖ O. 37, R. 4 and O.9, R.13 – Ex parte decree in summary suit – In the matter of application to set aside ex parte decree defendant must show that special circumstances exist to set aside the decree. {Dwarka Cement Works Ltd. Vs. Rajnesh Jain} 2001(3) Mh.L.J. 125
 - ❖ Civil Procedure Code, O.37,R.4 and O.9,R.13 – Setting aside ex parte decree – Discretion of court can be available only in favour of person showing that he was prevented from prosecuting case for reasons beyond his control. {Dwarka Cement Works Ltd. Vs. Rajnesh Jain } 2001(3) Mh.L.J. 125
 - ❖ O.39 R.1-Defendant not entitled to injunction against plaintiff in case covered by order 39 R1(b) & (c)- where case is covered u/o 39r.1(a) court has jurisdiction to grant injunction in favour of defendant. 1991 MHLJ 685.
 - ❖ Application by person for T.I. claiming to be in possession as tenant-finding by tenancy authority on reference under s.85-A of BTAL Act is not precondition for grant of temporary injunction. 1985 MHLJ 314.+1987 MHLJ 628.
 - ❖ Jurisdiction to grant temporary mandatory as to restore status quo anterior to the institution of suit – in special circumstance court can grant such relief .1989 MHLJ 146.
 - ❖ Absence of dispute about facts –matter purely resting on interpretation of a particular provision –in deciding application for temporary injunction it is neither necessary nor proper to defer consideration of such question on ground that such decision would amount to pre-judge the case on merits .1985 MHLJ 527.
 - ❖ Court must be careful while granting interim reliefs-No cock and bull story entitles the author of the story to interim relief.1991 MHLJ 181.

- ❖ Alienation of joint family property by Karta. The requirement of law is that the if alienation of joint family property is made by Karta, it should be for legal necessity or for benefit of the estate or for the payment of antecedent debt. If so made, no coparcener can move the court for injunction restraining the karta from alienating the coparcenary property especially when the alienation is at the stage of agreement to sale only. 1999(1) MhLJ 153.
- ❖ Transfer by a member of an undivided family of his share in dwelling house. Suit for injunction against transferee. No partition by metes and bonds had taken place. Injunction is required to be granted against defendant transferee. 1999(2) MhLJ 307.
- ❖ Interim mandatory injunction-In a case e justifies mandatory injunction courts should not hesitate to grant it and substitute the relief of monetary compensation in lieu of it. As the right of the plaintiff was infringed with impunity, pecuniary compensation is hardly the answer. Commission was taken on the dater of suit and even on knowing about the institution of suit defendants continued with their wanton act of destruction of boundary wall. In the circumstances of the case, pecuniary compensation would hardly be sufficient to meet the ends of justice. T. Prasads v/s P.D. Punnoose AIR 1995 Ker. 157.
- ❖ Test for granting mandatory injunction-
 1. The plaintiff has a strong prima-facie case for trial i.e. it shall be of higher standard than a prima-facie case that is normally required for a prohibitory injunction.
 2. It is unnecessary to prevent irreparable or serious injury, which normally can't be compensated in terms of money.
 3. Balance of convenience is in favour of the one seeking such relief. (Dorab wardon v/s coomi sorab 1990(1) CCC 611.
- ❖ The language employed in O 39 R 1 & 2 is clearly wide enough to include an order in the form of mandatory injunction and admits of no exception with inference to a point of time to which it can be made. Injunction is a form of equitable relief and they have to be adjusted or moulded in the aid of equity and justice to the facts and circumstances of each particular case. Even if injunction can't be granted under o.39, section 151 is the source of such jurisdiction. It is not necessary to lay down an absolute proposition and form unjustified and unnecessary fetter on the powers of equity courts to grant appropriate relief even in a well deserving case and reduce its position to a willing but helpless spectator, a situation not warranted by our equity jurisprudence. Baban v/s Mahadu 1989 MhLR 774. AIR 1989 Bom. 247
- ❖ It can't be said that the court on an interlocutory application in any circumstances can grant no mandatory injunction. There is no bar to the court's granting interlocutory relief in the mandatory form, though in doing so, the court should act with greatest circumspection and such powers can be exercised only in rare and exceptional cases. Mrs. Vijaya v/s M/s Mirahal AIR 1988 Del. 140.
- ❖ Court can pass order of mandatory temporary injunction if it is necessary to preserve the suit property from being destroyed or if such order is required to maintain status quo between the parties. Gowardhan singh v/s Mulkh Rai AIR 1973 J&K 63.
- ❖ If the plaintiff is alleging that he is in possession and therefore he wants his possession to be protected by an appropriate order under order 39 then the Court, considering whether he is prima-facie in possession and other such factors can give interim relief by way of injunction restraining the defendant from disturbing the plaintiff possession. If other issues, which can be decided only by the authorities under the tenancy act, arise, then those issue may be referred to authorities, it cannot be said that unless those issue are insert by the proper tenancy authorities no interim relief can be granted. (Mh.L.J. 1982, 777 Laxmi & Otrs Vs. Sawant AIR 1986, Bombay 169).
- ❖ Relief of temporary injunction sought pertaining to performance of negative covenant in the agreement arrived at between plaintiff and defendant No.1. Order of rejection of application maintained on the ground that there was no balance of convenience in favour of plaintiff. 2000 (1) Mh.L.J. 148.
- ❖ O39 R1-The requirement of law is that if alienation of joint property is made by the karta, it should be for the legal necessity or benefit of the estate or for meeting the antecedent debts. if it is so made, coparcener can't move the court for grant of injunction restraining the karta from alienating the

- coparcenary property especially when the alienation is at the stage of agreement to sale only and injunction will cause irreparable loss to the karta. 1999(1) MhLJ 153.
- ❖ O.39 R.1-Plaintiff has trademark on the paunches in which he uses to sale the milk. Defendant deceptively copied the said mark on the milk bags sold by him. Use of similar design and logo may lead the people to believe that product of defendant was infect product off plaintiff. In such circumstances all prerequisites for grant of injunction in favour of plaintiff. 1998 (3) MHLJ 531.
 - ❖ O.39 R.1-Suit filed by owner of properties to restrain third party from carrying out construction activities therein. Developer who agreed to negotiate between parties in the said suit ,seeking temporary injunction to restrain owner from committing breach of agreement styled as Memorandum of understanding whereby owner agreed to the developer not to settle said suits without his consent and to his detriment .Perusal of terms of MOV disclose that there was no restriction imposed on owner in the matter of settlement of said suit .No prima-facie case made out for grant of injunction in favour of developer. in fact putting such embargo on the ownership right of was bound to result in irreparable loss to owner .Order of trial Court granting injunction to developer set aside .1998 (3) MHLJ 426.
 - ❖ O.39.R.2A-Proceeding for breach of order initiated against defendant for alleged disobedience of order of injunction stated to have been passed on the basis of under taking. In the order sheet reference was made to “no objection in granting injunction” by the advocate of the defendant which by no stretch of imagination would tantamount to giving an undertaking. Proceedings being ab-initio void were not maintainable. 2000(1) .Mh.L.J.767.
 - ❖ O.39R.2A-Power of the court in case of breach of injunction. Court may either order detention of disobeying party or attach his property. Both the steps can be resorted to and one of them alone need be chosen depending on the facts of each case. AIR 1998 SC 2765.
 - ❖ O.39 R.1 & 4 and S.151 –Stranger not party if entitled to seek dissolution of injection order – plaintiff as the owners of shares of defendant No.1 Company were granted injunction against defendants. Defendant no.2, of which defended no.3 to 5 where partners had, without authority and consent, sold shares pledged in their favor by plaintiff – Applicant who had no titled in the suit shared and who was merely a broker prayed for vacating the injunction on ground of bad deliveries – The applicant was neither necessary nor proper party to the suit. He has no locus to ask for the vacation of injunction. Felix Pintoo v. Satyam Computers. 2001(1) MhLJ 512.
 - ❖ Civil Procedure Code, O.39,R.11 and O.5,R.2 – Defendant served with suit summons which was not accompanied by copy of plaint and annexure – No ex parte order passed in favour of the plaintiff nor any directions issued by the trial Court – Provisions of Order 39 Rule 11 not attracted in such case and suit cannot be dismissed on said count. {Hanumandas s/o Bajrangdas Gupta vs. Bardha d/o Yashwant Sangla} 2001(3)Mh.L.J 28
 - ❖ O.40 R.1-Just and convenient –plaintiff earning bread by running truck, purchasing from the defendant on hire-purchase and suing defendant for possession on ground of forcible dispossession – court appointing plaintiff himself a receiver of the truck and directing him to furnish accounts of income from plying the same –appointment is proper –truck lying idle with defendant was bound to dissipate. 1970 NLJ Note 50.
 - ❖ O40 R.1-Requirement of leave of court before filling of the suit by receiver is curable irregularity. Suit for eviction by court receiver without leave of the court. On discharge off receiver landlord substituted in place of receiver. Irregularity of leave of the court cured. 1998 (3) MHLJ739.
 - ❖ O.40 R.1-Powers for fixation of royalty. Party in possession appointed as receiver. Absence of any guidelines for fixing royalty. Royalty can’t exceed actual rent payable to landlord. Receiver can’t seek to make profits as court’s agent. AIR 1998 Bom. 352.
 - ❖ O40R.1-Order of discharge does not automatically bring to an end office of court receiver. 1998 (3) MHLJ 258.
 - ❖ O.47.R.1.-Jurisdiction in the matter of review .It cannot be exercised to repair verdict once given. Where there was neither misconception of fact or law nor there was any omission to consider any

material on record there was no error of what soever nature in the order as sought to be reviewed. The order allowing review set aside 2000(1), Mh.L.J.447.

- ❖ O.47 R.1-Person aggrieved by judgment of Tribunal and who is not party to the main petition and special leave petition can't challenge Judgement of tribunal by filing a review petition. AIR 1998 SC 1872.
- ❖ Lawyer has implied authority to compromise 1998 (2) MhLJ 91. Civil Procedure Code,
- ❖ S. 100 – Second Appeal – Lower Courts failed to consider material and relevant evidence which if considered would have led to apposite conclusion – High Court in exercise of jurisdiction under section 100 set aside erroneous reasoning and conclusion of lower courts – Suit decreed. {Gulabrao Maruti Bhagat vs. Bhagwan Nana Bhagat} 2001(2)Mh.L.J.665
- ❖ Civil Procedure Code (5 of 1908 as amended by Act 104 of 1976), S.100 – Substantial question of law – It depends on facts and circumstances of each case whether a question of law is substantial one and involved in the case or not. { Santosh Hazari vs. Purushottam Tiwari deceased by L.Rs} 2001(2) Mh.L.J. (S.C.) 786
- ❖ Civil Procedure Code (5 of 1908 as amended by Act 104 of 1976), S. 100{ Santosh Hazari vs. Purushottam Tiwari deceased by L.Rs} 2001(2) Mh.L.J. (S.C.) 786 – Substantial question of law – Meaning – Substantial question of law need not necessarily be a substantial question of law of general importance . {Santosh Hazari vs. Purushottam Tiwari deceased by L.Rs.} 2001(2) Mh.L.J.(S.C.) 786
- ❖ Civil Procedure Code (5 of 1908 as amended by Act 104 of 1976), S.100 – Second Appeal – Existence of substantial question of law is the sine qua non for exercise of jurisdiction under amended section 100 of Civil Procedure Code. {Santosh Hazari vs. Purushottam Tiwari deceased by 2001(2)Mh.L.J.(S.C.)786
- ❖ Civil Procedure Code (5 of 1908 as amended by Act 104 of 1976),S.100- Second Appeal – High Court must be satisfied that a substantial question of law is involved in the case.{Santosh Hazari vs.Purushottam Tiwari deceased by L.Rs.}2001(2)Mh.L.J.(S.C.)786
- ❖ Civil Procedure Code. S. 100 – Whether on the pleadings and the material brought on record by the defendant, the first Appellate Court was right in holding that the case of adverse possession was made out by the defendant and the suit filed by the plaintiff was liable to be dismissed as barred by time under Article 65 of the Limitation Act,1983, more so when such finding was arrived at in reversal of the findings of the trial Court? is a substantial question of law arising in second appeal. {Santosh Hazari vs. Purushottam Tiwari deceased by L.Rs.} 2001(2)Mh.L.J.(S.C.) 786
- ❖ Civil Procedure Code,O.6,R.17 and O.8,R.1 – Amendment of written statement – Plea raised by respondent No. 2 that he was sub-tenant prior to 1-2-1973 and was protected under section 15A of the Bombay Rent Act when in the original written statement he had claimed to be direct tenant at appeal stage destructive of original stand take petitioner by surprise on the stand on which no evidence has been adduced by either party before trial court – Amendment of written statement allowed by Lower Appellate Court rejected by order passed in petition under Article 227 challenging the order allowing amendment. {Balu Appaji Sangonkar vs. Rangrao Dattoba Palkar } 2001(2)Mh.L.J.709
- ❖ Civil Procedure Code, O.6,R.17 and O.8,R.1 – Merely because amendment has been carried out in record that would not preclude challenge to the order allowing amendment in petition under Article 227 of the Constitution. {Balu Appaji Sangonkar vs. Rangrao Dattoba Palkar}
- ❖ Civil Procedure Code,O.8,R.10 – The judgment to be pronounced under Order VIII, Rule 10 of the Civil Procedure Code must satisfy the requirement of the provisions of law contained in section 2(g) and therefore, the Court has to apply its mind to the facts pleaded and material in support therefore placed on record- The judgment is not mere counter singing of the pleading of the plaintiff by the Court. (Namdeo Laxman Nawale vs. Chandrasen Khasiram Rajeshirke}2001 (2) Mh.,L.J.709
- ❖ Civil Procedure Code,O.9,R.13 Explanation – Application to set aside exparte decree – Applicant also invoked appellate jurisdiction during pendency of application under Order 9, Rule 13 and challenged exparte decree – Application under order 9, Rule 13 was rendered untenable no sooner jurisdiction of

appellate forum was invoked by applicant/respondent {Vijay Prabhakar Salunke vs. Kamini S. Dadarkar} 2001(2)Mh.L.J. 94

- ❖ Civil Procedure Code, O.14, RR.1 and 5 – Framing of issues – Object – Courts not to determine an issue which does not arise from pleadings. {Manoj A.S.Dhargalkar @ Kulkarni vs. Taramati Harichandra Salgaonkar since deceased by his L.Rs.} 2001 (2)Mh.L.J.758
- ❖ Civil Procedure Code, O.19 And R.1 – A party cannot be permitted to lead evidence in the form of affidavit as a matter of course – It is necessary for the court while granting leave to ascertain whether there are sufficient reasons to grant such leave – Permission to lead evidence in the form of affidavit cannot be granted mechanically. {Namdeo Khandre vs. Sahebrao Kachru Khandare }2001(2)Mh.L.J.941
- ❖ Civil Procedure Code, O.26,R.9 – Court Commissioner cannot be appointed for collecting evidence. {Sanjay Namdeo Khandare vs. Sahebrao Kachru Khandare } 2001(2) Mh.L.J 959
- ❖ Civil Procedure Code {5 of 1908 as amended by Bombay High Court Notification dated 5th September, 1983}O.39,R.11(1) – Defence defendant struck out under Order 39, Rule 11(1) as provided in Order 39 Rule 11(!) as per amendment by the Bombay High Court – Defendant in consequences loses right to cross-examine plaintiff and his witnesses. {Ganpatrao Shankar Waghmare vs. Smt.Anjalibai Rao Waghmare} 2001(2)Mh.,L.J.756
- ❖ Civil Procedure Code, S.54 and Limitation Act (36 of 1963), Art.136 – Application praying for sending preliminary decree and necessary papers to the Collector under section 54, Civil Procedure Code is not an application execution – Provisions of Limitation Act, 1963 not attracted in such case. {Annasaheb Rajaram Nagane vs. Rajaram Maruti Nagane}2001(3)Mh.L.J 53
- ❖ Civil Procedure Code, SS. 54 11 and O. 20, R.18 – The step taken by the decree holder just to remind the Court of its duty can hardly be said to be any proceeding attracting provisions of section 11 of Civil Procedure Code {Annasaheb Rajaram Nagane vs. Rajaram Maruti Nagane}2001(3)Mh.L.J 53
- ❖ Civil Procedure Code., O. 1, R. 10(2) – Suit summons served by bailiff not accompanied by copy of plaint and annexure – Non furnishing of copy of plaint and annexure along with summons by itself cannot result in dismissal of the suit. {Hanumandas s/o Bajrangdas Gupta vs. Bardha d/o Yashwant Sangla} 2001(3)Mh.L.J 28
- ❖ Civil Procedure Code, O.6, R.17 –Suit for declaration based on title - By amendment alternate plea based on adverse possession sought to be incorporated in the plaint – Amendment allowed.{Mudra Salt and Chemical Industries vs. Collector, Thane} 2001(3)Mh.L.J 151
- ❖ Civil Procedure Code, S. 115 – Court means only Civil Court Tribunals not included. {Gangwani and Co., Nagpur vs. Mrs. Saraswati wd/o Maniram Banewar} 2001(3)Mh.L.J (F.B.)6
- ❖ Civil Procedure Code, O.20,R.12(1)©(I) –Once the Court having come to the finding that the plaintiff landlord is entitled to possession by executing the decree of eviction, the Court has discretionary power to pass the decree directing the enquiry into future mesne profits also. {Narayan Ganpat Bhoite vs. Smt.Rampyari Suchitram Gupta since deceased through heirs Hariprasad Surajbally Gupta}2001(3)Mh.L.J.234
- ❖ Civil Procedure Code, O.20, R.18 – After passing of preliminary decree for partition the decree cannot be made effective without there being final decree – Final decree has to specify the division by metes and boundds and has to be engrossed on requisite stamp paper after which is becomes executable. {Annasaheb Rajaram Hagane vs. Rajaram Maruti Nagane}2001(3)Mh.L.J. 53
- ❖ Civil Procedure Code, O. 37, R. 4 and O.9,R.13 – Ex parte decree in summary suit – In the matter of application to set aside ex parte decree defendcant must show that special circumstances exist to set aside the decree. {Dwarka Cement Works Ltd. Vs. Rajnesh Jain}2001(3)Mh.L.J. 125
- ❖ Civil Procedure Code, O.37,R.4 and O.9,R.13 – Setting aside ex parte decree – Discretion of court can be available only in favour of person showing that he was prevented from prosecuting case for reasons beyond his control. {Dwarka Cement Works Ltd. Vs. Rajnesh Jain }2001(3)Mh.L.J. 125
- ❖ Civil Procedure Code, O.39,R.11 and O.5,R.2 – Defendant served with suit summons which was not accompanied by copy of plaint and annexure – No ex parte order passed in favour of the plaintiff nor

any directions issued by the trial Court – Provisions of Order 39 Rule 11 not attracted in such case and suit cannot be dismissed on said count. {Hanumandas s/o Bajrangdas Gupta vs. Bardha d/o Yashwant Sangla} 2001(3)Mh.L.J 28

- ❖ Civil Procedure Code, O.8, R.5 and O.9, R.13: Judgment pronounced under Order 8, Rule 5 of the Civil Procedure Code for want of pleadings of the defendant is a judgment as described in section 2(9) of the Code – such judgment cannot be equated with an ex parte decree and application under Order 9 Rule 13, for setting aside the same, is not maintainable. (1994 Mh.L.J.-31)
- ❖ Civil Procedure Code 1908 – Order 8, Rule 5(2) and Section 151 – Held, since Order 8, Rule 5(2) contains no specific and positive mandate not to accept written statement under any circumstances, an application u/s Section 151 would always be entertainable. (1985 Mh.L.R.-39)
- ❖ Rule 3, 4 & 5 of Order 8 of CPC form an integrated code dealing with the manner in which allegations of facts in the plaint should be traversed. And the legal consequences flowing from its non-compliance.
- ❖ The written statements must deal specifically with each allegation of the facts in plaint. If denial of the fact is not specific but evasive, said fact should be taken to be admitted. In such an event, the admission itself be a proof no other proof is being necessary. (1995 (I) Mh.L.J.-22).
- ❖ Application under Order IX Rule 13 not tenable when the court has passed the decree under order VIII rule 5 or 10. Remedy is by way of appeal against the decree. (1998 (iii) Mh.L.J.-924) (1996 (I) Mh.L.J.-67). (1992 Mh.L.J. -1266)
- ❖ Written Statement can be accepted after the order of filing affidavit in support of suit claim is passed in consequence of failure of the defendant to file written statement. (1996 (ii) Mh.L.J.-1064).
- ❖ Application for taking written statement on record made after passing order of the no w.s., can be entertained under O-VIII, rule 5(2) and Section 151, 148. (1986 Mh.L.J.-525).
- ❖ Order VIII Rule 10 is divided in to two parts. First part speaks for pronouncing the judgment of non-filing of the w.s. Later part of the rule 10 provides the court discretion to make such order in relation to suit, as it thinks fit. The court holds the exercise to accept the evidence of the plaintiff fall under later part of rule 10. During this proceeding if application for filing written statement is filed by the defendant, the court can accept it by invoking provisions under later part of rule 10. (1999 (I) Mh.L.J.-180)..2.
- ❖ Order under Rule 10 can only be passed when the defendant is under obligation to file the written statement under order 8 rule 1 or 9. (1997 (ii) Mh.L.J.-128).
- ❖ Order IX Rule 13, application for Restoration of number of suits not maintainable. (1974 Mh.L.J.-NOC-80).
- ❖ Proofs of sufficient cause – in absence of Doctor's Certificate statement of the applicant on oath regarding is ill health may also be sufficient, if the statement remains unchallenged. (1974 Mh.L.J.-NOC-82).
- ❖ Wrong noting of the date in the advocate's diary is also a sufficient cause if proved by convincing evidence. (1974 Mh.L.J.-NOC-67).
- ❖ Fresh suit by plaintiff is not barred against some of the defendant against whom order of dismissed is passed under rule 3 order IX (1974 Mh.L.J.-951).
- ❖ Application for setting aside ex parte decree and an appeal to set aside ex parte decree filed. Appeal barred by limitations, hence application of delay condonation also filed. Application for condonation for delay dismissed for want of prosecution, tenability of application to set aside ex parte decree not affected on above circumstances. (1989 Mh.L.J.-1074).
- ❖ An ex parte decree may be set aside by an application under order 9 Rule 13 of CPC Here the applicant will have to show sufficient cause for his failure to appear when the suit was called for the hearing in the Court and in appeal u/s 96, he would be able to challenge the decree on merits. There is nothing in CPC to bar simultaneous resort to both of them. Both the remedies can be resorted to

and if either of them is disposed of or is decided, then it would affect continuance of the other remedy. (1995 (ii) Mh.L.J. 951).

- ❖ Where an application under order 9 rule 13 of CPC was passed refusing to set aside the ex parte decree and an appeal against the decree passed ex parte was filed u/s 96 of CPC, it is not open to the defendant to make the grievance of the proceeding having been ex parte. The order refusing to set aside ex parte decree is made appellable under order 43 (d) in which appeal challenging the correctness of the order passing ex parte decree could properly be canvassed. If the decision refusing to set aside ex parte decree has become final, it is not open to the defendant in an appeal filed by him from the ex parte decree to make grievance as regard ex parte decree. (1987 Mh.L.J.-383).
- ❖ Even in absence of the written statement, if defendant happens to be present in the court then he should be given right of audience. He can address the court and can also cross-examine the plaintiff. 1994 Mh.LJ31.
- ❖ Where the defendant is served and represented by his counsel but fails to file his WS despite opportunity given to him, the decree passed against him would be one under the provisions of order VIII R10 of CPC. Application in this case u/o IX R 13 for setting aside such a decree is not maintainable. 1992 MhLJ 1266.
- ❖ “Ex-parte” as mentioned in O.9 R. 13 of CPC has a definite connotation to mean a decree, that has been passed after following O IX R.6. 1998 (3) MhLJ 924.