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PRACTICE NOTE — CIVIL PROCEDURE

The Code of Civil Procedure, 1908 — Key Points

Jurisdiction, pleadings, interim reliefs, special suits, execution and appeals — the procedural backbone of civil litigation

STRUCTURE	158 Sections + First Schedule of 51 Orders (with Rules) & 8 Appendices of Forms
NATURE	Sections = substantive procedural law (largely unamendable by rules); Orders/Rules = procedural detail (High Courts may amend under S.122)
APPLIES TO	All civil suits and proceedings in civil courts across India (subject to State amendments)
KEY 2015 CHANGE	Commercial Courts Act, 2015 — outer limit of 120 days for written statement in "commercial disputes" (Order 8 Rule 1 proviso, as applied to commercial suits)

JURISDICTION OF CIVIL COURTS

SECTION 9 — GENERAL JURISDICTION

- Civil Courts have jurisdiction to try **all suits of a civil nature** except suits of which cognizance is expressly or impliedly barred.
- A right to property or an office is a suit of civil nature even if it involves a question as to religious rites/ceremonies.

SECTION 15–20 — PLACE OF SUING

- Every suit to be instituted in the court of the lowest grade competent to try it (S.15); suits for immovable property filed where the property is situate (S.16); other suits filed where the cause of action arises or the defendant resides/carries on business (S.20).

BAR ON MULTIPLICITY — RES SUB JUDICE & RES JUDICATA

SECTION 10 — RES SUB JUDICE

- Bars trial of a suit where the matter in issue is **directly and substantially in issue in a previously instituted suit** between the same parties, pending in a competent court — the later suit is stayed, not dismissed.

SECTION 11 — RES JUDICATA

- Bars a court from trying any issue that has been **directly and substantially in issue** in a former suit between the same parties and has been **heard and finally decided** by a competent court — ensures finality and prevents re-litigation.

SECTION 80 — NOTICE BEFORE SUIT AGAINST GOVERNMENT

MANDATORY TWO-MONTH NOTICE

- No suit against the Government, or a public officer in respect of an act done in official capacity, can be instituted until the expiration of **two months** after a written notice has been delivered to/left at the office of the appropriate authority, stating the cause of action, relief claimed, and plaintiff's particulars.
- Court may grant leave to sue without such notice in cases requiring **urgent/immediate relief** (S.80(2)), but no relief can be granted unless the Court is satisfied the plaintiff had no earlier opportunity to serve the notice.

PLEADINGS — PLAINT & WRITTEN STATEMENT

ORDER 7 — PLAINT

- Particulars required: parties, facts constituting cause of action, jurisdictional facts, relief claimed, valuation, and verification.
- **Order 7 Rule 11** — plaintiff liable to be rejected where it discloses no cause of action, is undervalued, insufficiently stamped, or barred by law; decided purely on averments in the pleadings, not their truth.

ORDER 8 — WRITTEN STATEMENT

- Defendant must file written statement within **30 days** of service of summons, extendable up to **90 days** for reasons recorded in writing (directory, not mandatory — courts retain discretion beyond 90 days in appropriate cases).
- Facts not specifically denied are deemed admitted (O.8 R.5); set-off may be claimed (O.8 R.6).

AMENDMENT, SUMMONS & APPEARANCE

ORDER 6 RULE 17 — AMENDMENT OF PLEADINGS

- Court may allow amendment of pleadings at any stage, necessary for determining the real questions in controversy — but generally **not after trial has commenced**, unless due diligence is shown; no amendment permitted that substitutes an entirely new/inconsistent case.

ORDER 9 — APPEARANCE & CONSEQUENCE OF NON-APPEARANCE

- If plaintiff absent, defendant present: suit dismissed. If defendant absent, plaintiff present and summons duly served: court may proceed **ex-parte**. Ex-parte decree may be set aside on application (O.9 R.13) showing sufficient cause for non-appearance.

STAGES OF A CIVIL SUIT (TYPICAL SEQUENCE)

STAGE	GOVERNING PROVISION
Institution of suit (plaint)	Order 4, Order 7
Issue & service of summons	Order 5
Written statement, set-off, counter-claim	Order 8
Framing of issues	Order 14
Discovery, inspection, admissions	Order 11, Order 12
Recording of evidence & hearing	Order 18
Judgment & decree	Order 20

INTERIM & INTERLOCUTORY RELIEFS

ORDER 39 — TEMPORARY INJUNCTION

- Granted where suit property is in danger of waste/damage/alienation/wrongful sale, or defendant threatens to remove property to defraud creditors, or dispossess/injure the plaintiff, or is about to breach the contract/status quo.
- Plaintiff must show a **prima facie case, balance of convenience, and irreparable injury** — the settled three-fold test.

ORDER 38 & ORDER 40 — ATTACHMENT & RECEIVER

- **Order 38**: attachment before judgment where defendant is likely to obstruct/delay decree execution (e.g. dispose of property, abscond).
- **Order 40**: court may appoint a **Receiver** where it is just and convenient, to preserve/manage suit property pending the suit.

SPECIAL SUITS

ORDER 37 — SUMMARY SUIT

- For suits on bills of exchange, hundies, promissory notes, or recovery of a liquidated/ascertained sum on a written contract — defendant must obtain **leave to defend**, denied where no substantial defence is disclosed, to prevent frivolous delay in clear money claims.

ORDER 1 RULE 8 — REPRESENTATIVE SUIT

- Where numerous persons have the same interest in a suit, one or more may sue/be sued on behalf of all, with court permission and public notice — binds all represented persons; no compromise without leave of court.

ABATEMENT, WITHDRAWAL & COMPROMISE

ORDER 22 (ABATEMENT) & ORDER 23 (WITHDRAWAL/COMPROMISE)

- **Order 22:** on death, marriage or insolvency of a party where the right to sue survives, legal representatives must be brought on record within the prescribed time (generally 90 days) — failing which the suit **abates** as against the deceased, subject to an application to set aside abatement on sufficient cause.
- **Order 23:** plaintiff has an absolute right to withdraw the suit/abandon part of the claim; withdrawal with liberty to file afresh requires court's permission on the grounds specified (formal defect, or other sufficient grounds); lawful compromise/adjustment recorded and decree passed accordingly.

EXECUTION OF DECREES — ORDER 21

MODES & KEY FEATURES

- Decree may be executed by delivery of possession, attachment and sale of property, arrest and detention in civil prison (subject to safeguards), appointment of receiver, or by such other process as the nature of relief requires.
- Execution application filed before the court which passed the decree, or the court to which it is transferred; objections to executability may be raised under **Section 47** (questions between the parties relating to execution, discharge, or satisfaction of the decree) rather than by a fresh suit.

APPEAL, REFERENCE, REVIEW & REVISION

SECTION 96 — FIRST APPEAL & SECTION 100 — SECOND APPEAL

- First appeal (S.96) lies to the superior court from every decree, on facts and law, unless expressly barred; limitation generally 30 days (same place) / 90 days (District Court/High Court, elsewhere), per the Limitation Act.
- Second appeal (S.100) lies to the High Court only on a **substantial question of law** framed at admission.

SECTION 114/ORDER 47 — REVIEW & SECTION 115 — REVISION

- **Review:** by the same court, on discovery of new/important matter, mistake/error apparent on the face of the record, or other sufficient reason — generally within 30 days of the decree/order.
- **Revision:** High Court's supervisory power over subordinate courts' jurisdictional errors (not a re-hearing on merits) where no appeal lies.

PRACTICE NOTES

Order 7 Rule 11 — First Line of Defence

Before filing a written statement, always test the plaint for rejection under O.7 R.11 (limitation, no cause of action, undervaluation, deficient stamp) — this can dispose of a weak suit at the threshold.

Section 80 Notice — Do Not Skip

Suits against Government/public officers filed without the mandatory 2-month notice (and without leave under S.80(2)) are liable to be dismissed as premature — always verify notice compliance before institution.

Injunction Applications — Plead the Three-Fold Test Expressly

Draft Order 39 applications to specifically address prima facie case, balance of convenience, and irreparable injury — courts routinely reject applications that assert relief without addressing all three limbs.

For internal practice reference only — this note highlights select, frequently used provisions across 158 Sections and 51 Orders and does not cover the whole Code. Cross-check exact section/rule text, applicable High Court amendments (S.122), and the Limitation Act, 1963 before relying in advice or proceedings.

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Primary sources: The Code of Civil Procedure, 1908 (indiacode.nic.in / scpsc.gov.in); commentary and case-law summaries via iPleaders, LiveLaw, Vidhi Judicial Academy, and Lawbhoomi.