

Judiciary Digest

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Rights of Indigent Persons.....	1
Landlord's Right to Mesne Profit from Tenant at Sufferance.....	2
Magistrate's Authority Under Section 156(3) Cr.P.C.....	3
Then and Now: Default of Payment of Fine.....	4
Past Exam Highlights.....	5
Clear Concept: Contributory Negligence.....	8

Rights of Indigent Persons

On May 27, 2024, the Supreme Court of India delivered a significant judgement addressing the rights of indigent persons seeking enhanced compensation. The question at hand was whether a person who has been awarded monetary compensation but has not received it can file an appeal seeking enhanced compensation as an indigent. The case, **ALIFIYA HUSENBHAI KESHARIYA v. SIDDIQ ISMAIL SINDHI & ORS.**, highlights the intersection of financial incapacity and access to justice.

Order XXXIII and Order XLIV of CPC

The Bench of Justices J.K. Maheshwari and Sanjay Karol referred to the provisions of Order XXXIII (Suits by indigent persons) and Order XLIV (appeals by indigent persons) of the Code of Civil Procedure (CPC), 1908. These provisions are designed to ensure that lack of monetary capability does not preclude a person from seeking legal recourse. The Court emphasised that these rules exemplify the principle that financial incapacity should not bar access to justice.

Case Background

The appellant in this case suffered injuries in an accident and approached the Motor Accident Claims Tribunal for compensation, claiming Rs. 10 Lakhs due to permanent disablement. However, the Tribunal awarded her only around Rs. 2 Lakhs. Dissatisfied with this amount, she filed an appeal in the High Court, accompanied by an application to file the appeal as an indigent person. The High Court, despite acknowledging that she had not received the compensation, refused to entertain her application, leading to the matter being escalated to the Supreme Court.

Supreme Court's Observations

The Supreme Court referred to precedents, including **Union Bank of India v. Khader International Construction & Ors., (2001) 5 SCC 22**. In this precedent, it was established that court fees for indigent persons are deferred until the suit is decreed in their favour, thus aiding poor litigants who cannot afford the requisite fees due to poverty.

The Bench noted that even though the appellant had been awarded compensation, she had not received any payment. Therefore, her status as an indigent person remained unchanged. The

Court criticised the High Court for dismissing her application on the grounds that she had been awarded compensation without receiving any payment.

Importance of Conducting Inquiries

The Supreme Court also highlighted the necessity of conducting inquiries under Order XLIV Rule 3(2) of the CPC to determine whether the applicant is an indigent person. The Court observed that no such inquiry was conducted in this case, which was required given that the claimant had initially approached the Tribunal without claiming indigency.

Conclusion and Directions

The Supreme Court concluded that the High Court erred in rejecting the appellant's application to file an appeal as an indigent person. It was evident that her financial situation had not improved since she had not received the awarded compensation. The Court set aside the order of the learned Single Judge and allowed the appellant to file the appeal as an indigent person, considering the significant lapse of time. Furthermore, the Supreme Court requested the High Court to decide the appeal within six months, ensuring expedited justice for the appellant.

Landlord's Right to Mesne Profit from Tenant at Sufferance

The Supreme Court recently ruled on an important issue concerning tenancy rights and landlord compensation. The case, **BIJAY KUMAR MANISH KUMAR HUF V. ASHWIN BHANULAL DESAI**, involved the question of whether a tenant who continues to occupy rented premises after the expiration of tenancy rights without an eviction order is liable to pay compensation in the form of 'mesne profit' to the landlord.

Definition of Mesne Profit and Tenant at Sufferance

Mesne profit refers to the compensation awarded to a landlord for the unauthorised occupation of property by a tenant after the expiration or termination of tenancy rights. A 'tenant at sufferance' is a tenant who lawfully enters a property but continues to occupy it after their legal right to do so has expired. This legal concept ensures that landlords are compensated for the continued use of their property beyond the agreed-upon term.

Court's Observation

In its ruling, the Bench of Justices J.K. Maheshwari and Sanjay Karol affirmed that tenants who remain in possession of rented premises after their tenancy rights are extinguished are liable to pay mesne profit to the landlord. The Court emphasised that this principle is well-established in law and is intended to ensure fairness and justice for landlords deprived of their rightful property use.

The judgement, authored by Justice Sanjay Karol, drew support from the precedent set in **Indian Oil Corporation Ltd. v. Sudera Realty Private Limited, 2022**. In this earlier case, the Court held that tenants who continue to occupy premises after the lease's expiration must pay mesne profits to the landlord. The ruling in the present case aligns with this precedent, reinforcing the principle that tenants at sufferance are liable for compensation.

Interpretation of Lease Terms

The Court also clarified the legal implications of terms such as 'determination', 'expiry', 'forfeiture', and 'termination' of leases. These terms, when applied to a lease, signify that the tenant's rights have either ended or been significantly weakened. In any such situation, the tenant is obligated to compensate the landlord through mesne profit. This interpretation ensures that landlords are protected from prolonged unauthorised occupation of their property, which can result in financial losses.

Directives

The Supreme Court concluded that the tenant in this case was liable to pay mesne profit for the period during which they were a tenant at sufferance. The Court noted that the respondent-tenant had been delaying the payment of rent and other dues without justification, causing significant financial harm to the landlord. As a result, the Court ordered the tenant to deposit the claimed amount to ensure complete justice between the parties.

Magistrate's Authority Under Section 156(3) Cr.P.C.

The Supreme Court of India reiterated the boundaries of a Judicial Magistrate's authority under Section 156(3) of the Code of Criminal Procedure (Cr.P.C.). The judgement, delivered by Justices Bela M. Trivedi and Pankaj Mithal, emphasised that directing a police investigation does not equate to taking cognizance of an offence. This decision reverses a previous High Court ruling and reinforces the procedural distinction between initiating an investigation and taking cognizance of a crime.

Background

The Supreme Court's decision draws from the precedent set in **Devarapalli Lakshminarayana Reddy And Others Versus V. Narayana Reddy And Others (1976) 3 SCC 252**. According to this landmark case, a Magistrate directing an investigation under Section 156(3) of the Cr.P.C. does not signify taking cognizance of an offence. Cognizance, in the context of criminal procedure, refers to the Magistrate applying their mind to the case with the intention of proceeding under Chapter XV, which includes Sections 200 onwards.

Important Observations

The bench clarified that when a Magistrate receives a complaint and opts to proceed under Section 200 and subsequent sections of Chapter XV of the Cr.P.C., they are considered to have taken cognizance of the offence. However, if the Magistrate exercises judicial discretion to order a police investigation under Section 156(3), it merely initiates an investigative process without cognizance of the offence.

This distinction was crucial in the case of **M/S SAS INFRATECH PVT. LTD. V. THE STATE OF TELANGANA & ANR**. Here, the Magistrate, after reviewing the complaint and accompanying documents, and hearing the complainant, directed a police investigation under Section 156(3) Cr.P.C. The accused challenged this order under Section 482 Cr.P.C. before the High Court, which set aside the Magistrate's order.

Supreme Court's Ruling

The Supreme Court ruled that the High Court overstepped its discretionary powers under Section 482 Cr.P.C. by interfering with the Magistrate's order. The judgement emphasised that the Magistrate's decision to direct a police investigation was a just, legal, and proper exercise of judicial discretion. The High Court's intervention was deemed inappropriate given the limited scope of Section 482, which is meant for preventing abuse of the process of the court and securing the ends of justice.

Then and Now: Default of Payment of Fine

Indian Penal Code (IPC) has historically provided for imprisonment in cases where individuals default on the payment of fines. However, it did not account for community service as a form of punishment, nor did it specify any imprisonment for defaulting on community service. With the introduction of the Bharat Niti Samhita (BNS), a new dimension has been added to the penal system, including community service and corresponding penalties for non-compliance.

Old Law: Imprisonment in Default of Fine

Under the IPC, defaulting on the payment of fines resulted in imprisonment, with the duration determined by the amount of the fine:

- For fines not exceeding ₹50, the imprisonment could not exceed two months.
- For fines not exceeding ₹100, the imprisonment could not exceed four months.
- For any other case, the imprisonment could not exceed six months.

These provisions ensured that offenders who could not or would not pay fines were subject to a proportionate period of imprisonment, maintaining a deterrent effect and ensuring compliance with court orders.

Introduction of Community Service Under BNS

The Bharat Niti Samhita (BNS) introduced a significant shift by incorporating community service as a form of punishment. This new form of penalty reflects a modern approach to criminal justice, emphasising rehabilitation and community engagement over purely punitive measures. Section 4 of the BNS specifically addresses this new form of punishment.

Imprisonment in Default of Community Service

Given the introduction of community service, the BNS also includes provisions for handling defaults in completing such service. Sub-sections (4) and (5) of Section 8 of the BNS provide for imprisonment in cases where an individual fails to complete their community service. This ensures that community service is taken seriously and that there are consequences for non-compliance.

Revised Penalties Under BNS

The BNS also revises the penalties for defaults in the payment of fines and the completion of community service. The new provisions are as follows:

- For fines not exceeding ₹5000 or default of community service, the imprisonment shall not exceed two months.

- For fines not exceeding ₹10,000 or default of community service, the imprisonment shall not exceed four months.
- In any other case, the imprisonment shall not exceed one year.

These revisions significantly increase the potential duration of imprisonment for defaults, reflecting a more stringent approach to enforcement.

Past Exam Highlights

Prelims

1. The court cannot order execution of a decree as per Section 51 of CPC, in which of the following ways?

- (A) By delivery of any property specifically decreed
- (B) By attachment and sale of property
- (C) By serving summons on the party
- (D) By appointing a receiver

Ans: C

Explanation: As per Section 51 of the Code of Civil Procedure (CPC), the court can order the execution of a decree in various ways, including by delivery of any property specifically decreed, by attachment and sale of property, and by appointing a receiver. However, serving a summons on the party is not a recognized method for executing a decree. Serving summons is typically a step in initiating legal proceedings, not in executing a decree.

2. If the appellant withdraws the appeal preferred against a decree passed ex parte, the application under Order 9, Rule 13 of CPC shall be

- (A) rejected
- (B) returned
- (C) maintainable
- (D) referred for opinion of the Appellate Court

Ans: C

Explanation: If the appellant withdraws the appeal preferred against a decree passed ex parte, the application under Order 9, Rule 13

of the Code of Civil Procedure (CPC) shall be maintainable. Order 9, Rule 13 allows a party to apply for setting aside an ex parte decree, and withdrawing an appeal does not bar this right.

3. Where a suit is abated or dismissed under Order 22 of CPC on the same cause of action

- (A) new suit may be instituted with the consent of parties
- (B) fresh suit may be filed with prior permission of the court
- (C) no fresh suit shall be brought
- (D) new suit may be filed if sufficient cause is shown

Ans: C

Explanation: Under Order 22 of the Code of Civil Procedure (CPC), if a suit is abated or dismissed, no fresh suit shall be brought on the same cause of action. This provision ensures that once a suit is abated or dismissed, the matter cannot be re-litigated, thereby upholding the principle of finality in judicial proceedings and preventing multiple suits on the same issue.

4. Which of the following is not correct regarding the powers of the Appellate Court?

- (A) Appellate Court has power to determine a case finally
- (B) Appellate Court has power to remand the case
- (C) Appellate Court has no power to take additional evidence

De Facto IAS
Judiciary Exam: Current Affair

(D) Appellate Court has power to frame issue and refer them for trial

Ans: C

Explanation: The statement that the Appellate Court has no power to take additional evidence is incorrect. Under Order 41, Rule 27 of the Code of Civil Procedure (CPC), the Appellate Court has the power to take additional evidence or require such evidence to be taken. This power is exercised under specific circumstances, such as when the lower court has refused to admit evidence that ought to have been admitted or when the appellate court requires additional evidence to pronounce judgement.

5. Period of detention in civil imprisonment, as a consequence of disobedience or breach of any injunction, shall not exceed

- (A) one month
- (B) three months
- (C) six months
- (D) one year

Ans: B

Explanation: The period of detention in civil imprisonment as a consequence of disobedience or breach of any injunction shall not exceed three months. This is provided under Order 39, Rule 2A of the Code of Civil Procedure (CPC).

6. If a party who has obtained an order to amend the pleadings under CPC, if not amended, after expiration of how many days shall not be permitted to amend the same without the leave of the court?

- (A) 15 days
- (B) 90 days
- (C) 14 days
- (D) 30 days

Answer: C

Explanation: If a party who has obtained an order to amend the pleadings under the Code of Civil Procedure (CPC) does not amend

within 14 days, they shall not be permitted to amend the same without the leave of the court. This provision, found under Order 6, Rule 18, ensures timely amendments to pleadings, preventing unnecessary delays in the proceedings.

7. An application for revision under CPC is filed under

- (A) Section 114
- (B) Section 115
- (C) Section 116
- (D) Section 113

Answer: B

Explanation: An application for revision under the Code of Civil Procedure (CPC) is filed under Section 115. This section grants the High Court the power to revise any order of a subordinate court if it appears that the subordinate court has exercised a jurisdiction not vested in it, failed to exercise a jurisdiction so vested, or acted in the exercise of its jurisdiction illegally or with material irregularity.

8. Suit of indigent persons has been provided under

- (A) Order 32 of CPC
- (B) Order 33 of CPC
- (C) Order 29 of CPC
- (D) Order 34 of CPC

Answer: B

Explanation: The provision for suits by indigent persons is provided under Order 33 of the Code of Civil Procedure (CPC). Order 33 lays down the procedure for filing suits by individuals who are unable to pay the court fees due to poverty. It allows such persons to seek permission from the court to file a suit as an indigent person, thereby facilitating access to justice for those with limited financial means.

9. The provision in respect of summary procedure has been laid down under

- (A) Order 37 of CPC
- (B) Order 36 of CPC
- (C) Order 38 of CPC
- (D) Order 40 of CPC

Answer: A

Explanation: The provision in respect of summary procedure has been laid down under Order 37 of the Code of Civil Procedure (CPC). Order 37 provides a streamlined procedure for the swift disposal of suits in certain specified categories, primarily involving suits based on bills of exchange, promissory notes, or other written contracts.

10. Exemption from personal appearance in the court is provided under

- (A) Section 133 of CPC
- (B) Section 132 of CPC
- (C) Section 143 of CPC
- (D) Section 142 of CPC

Answer: A

Explanation: Exemption from personal appearance in court is provided under Section 132 of the Code of Civil Procedure (CPC). This section grants certain individuals, such as women who according to the customs and manners of the country ought not to be compelled to appear in public, and other persons as the court may deem appropriate, exemption from appearing in court.

Mains

Q. State grounds on which a surety is discharged from his liability under a contract of guarantee.

Ans: A contract of guarantee is a tripartite agreement involving the Principal Debtor, the Creditor, and the Surety (or Guarantor). The surety assures the creditor that in the event of the principal debtor's default, the surety will make good on the obligation. However, there are circumstances under which a surety is discharged from his liability. These grounds are stipulated under the Indian Contract Act, 1872.

The Indian Contract Act, 1872, particularly Sections 130 to 133 and Section 139, outlines the conditions under which a surety can be discharged.

Grounds for Discharge of Surety:

Revocation by the Surety: A continuing guarantee can be revoked by the surety as to future transactions by giving notice to the creditor.

Death of Surety: In a continuing guarantee, unless there is a contract to the contrary, the surety is discharged on his death as far as future transactions are concerned.

Variation in Terms of Contract: If the terms of the contract between the principal debtor and the creditor are altered without the surety's consent, the surety is discharged from his future liability unless the alteration is beneficial to the surety.

Discharge of Principal Debtor: The surety is discharged if the creditor does any act which is inconsistent with the rights of the surety or discharges the principal debtor.

Arrangement with Principal Debtor: If the creditor makes an arrangement with the principal debtor that gives the latter more time or varies the terms of the agreement, the surety is discharged unless he gives his consent to such an arrangement.

Impairment of Surety's Remedy: If any act or omission of the creditor impairs the surety's eventual remedy against the principal debtor, the surety is discharged to the extent of the impairment.

Release or Condonation: If the creditor voluntarily releases or condones the principal debtor from his liability, the surety is also discharged.

Loss of Security: If the creditor loses or parts with security given by the principal debtor, without consulting the surety, the surety is discharged to the extent of the value of the security.

Clear Concept: Contributory Negligence

Contributory negligence is a crucial concept in tort law that pertains to the situation where the plaintiff's own negligence contributes to the harm they suffer due to the defendant's negligence. This principle plays a significant role in determining liability and the amount of damages awarded in personal injury cases.

Basic Principles

Contributory negligence occurs when the plaintiff fails to exercise reasonable care for their own safety and this failure contributes to the harm they ultimately suffer. In such cases, even if the defendant is found to be negligent, the plaintiff's compensation may be reduced proportionally to their degree of fault. This concept is covered in the maxim that one must take care of oneself to some extent to claim damages for the negligence of others.

For instance, if a pedestrian suddenly crosses a road without checking for oncoming traffic and gets hit by a car, the pedestrian may be found guilty of contributory negligence. This was exemplified in the case of **Yoginder Paul Chowdhury v. Durgadas**, where the Delhi High Court held that a pedestrian who tries to cross a road abruptly and is hit by a moving vehicle is guilty of contributory negligence

Evolution

Under common law, contributory negligence was a complete defence. If the plaintiff was found to be even slightly negligent, they could not recover any damages from the defendant. This rule was applied stringently, often resulting in harsh outcomes for plaintiffs who were minimally negligent. This was illustrated in the case of **Butterfield v. Forrester**, where the plaintiff could not recover damages because he rode violently into an obstruction that he could have avoided with ordinary care.

However, recognizing the potential unfairness of this rule, courts developed the "**last opportunity**" rule. This rule held that the party who had the last clear chance to avoid the accident should be liable. In **Davies v. Mann**, the plaintiff's donkey was left fettered on a road and was run over by the defendant's wagon. The court held that the defendant had the last opportunity to avoid the accident and was therefore liable, despite the plaintiff's contributory negligence

Modern Approach

The rigid rule of contributory negligence was later reformed. Modern legal systems, including those in India, have moved towards a comparative negligence approach, where the court apportions

damages based on the degree of fault of each party. The **Law Reform (Contributory Negligence) Act of 1945** in England and subsequent similar laws in other jurisdictions allow courts to reduce the plaintiff's damages in proportion to their contributory negligence rather than barring recovery altogether.

Judicial Application

The principle of contributory negligence has been applied in numerous cases. In ***Rural Transport Service v. Bezlum Bibi***, passengers were invited to travel on the roof of a bus. When the bus swerved and a passenger was injured by a tree branch, the court held both the driver and conductor liable, but also found contributory negligence on the part of the passenger for accepting the risk of travelling on the roof.

In ***Sushma Mitra v. Madhya Pradesh State Road Transport Corporation***, a plaintiff resting her elbow on the window sill of a moving bus was injured when a truck grazed the bus. The court held that the plaintiff acted as a reasonable passenger and was not guilty of contributory negligence.

