
A STUDY IN THE LIGHT OF DECIDED CASES IN INDIA: A STUDY ON THE DISPOSAL OF SUIT AT FIRST HEARING

Shourya Kackar & Aarushi Utpal Dey, Symbiosis Law School, Hyderabad

ABSTRACT

The fundamentals of the justice delivery system lie in the mode of its delivery. Dispensation of justice holds little to almost no significance if not served on time. “Justice Anand rightly said that “People want justice, pure, unpolluted, quick and inexpensive and they have every right to receive the same”.¹ The vicious cycle of practically pleading the court for decades in search of justice emphasises the need for speedy justice. Thus, in pursuit of escaping the claws of delayed justice, Order XV was introduced in the Code for Civil Procedure. While the issue of delayed justice still has not quite been resolved, the introduction of such order put an immediate end to the arduous journey endured by parties particularly in case of petty matters and those of questionable circumstance. While the order facilitated the dismissal of suits on their first hearing, it may even be considered as a remedy in disguise to both the Judiciary and the parties concerned for it combats the pendency of cases by dismissing them on the first instance. However, in lieu of the ambiguity surrounding the provision, this article aims to answer questions pertaining to the applicability and the different circumstances endured by the parties during the course of trial, which calls for setting motion such an order. Lastly, it also captures the essence of judicial review by clarifying the move of filing a revision petition before the court of appeal despite prior dismissal.

¹ Tanushree Sharma, *Right to Speedy Justice*, Indian Institute of Legal Studies (Aug. 26, 2021, 9:39 pm), <https://www.iilsindia.com/blogs/right-to-speedy-justice/>.

INTRODUCTION

A case that has been disposed of signifies that the matter has concluded in terms of legal proceedings. It is said that a civil or criminal case has been resolved when all the issues or modifications in it have been resolved. Usually, it's done on the day of dismissal itself.²

The fundamental need for justice is to be delivered as soon as possible. It is a well-known adage, “*justice delayed is justice denied*”, delaying the litigation process is equally proverbial, and while it may seem paradoxical³, it is still clear that the very provisions of the Codes, aimed at facilitating the proper and rapid examination of cases, are abused, causing delay. Ultimate success in disposing of cases on first hearing, always prove illusory.⁴

A dismissal, a guilty plea or ruling that a judge or jury was or was not guilty at trial are standard grounds for disposal.

Order XV (fifteen) of the civil procedure code allows the court to rule on a case in the first hearing. This can be done for a number of reasons, including:

- If neither party raises an essential issue at the first hearing, the court may dismiss the case.
- In the event that there is more than one respondent or defendant and none of them are issues that are meant to be if they are not related with the documented case, the court may decide in favour of or against the defendant in the lawsuit. Each defendant's case will continue in a different way.
- If one of the parties fails to produce evidence, the court may issue a judgement without proceeding any further.
- If the plaintiff is judged to be an irrelevant party, the court may either cancel the suit or dismiss it, depending on the circumstances of the suit.

Nevertheless, a case that has been adjudicated signifies that the case is complete, and a final decision has been made. However, this does not mean that the case has been thrown out of the courtroom. If the case is of a sensitive nature, people can request a copy of the final judgement

² K.N. Candrasekharan Pillai (rev.), R.V. Kelkar, Lectures on Criminal Procedure, 4th ed. 2006, Eastern Book Company, Lucknow.

³ Sarvaria S K, Mulla, Code of Civil Procedure, Lexis Nexis Butterworth, (2011).

⁴ Civil Procedure Code with Limitations act, 1963 by C.K. Takwani Pg. No:655.

or decree to learn more about it as soon as possible. Cases that have been dismissed can be reopened at the request of either party or if a mistake is identified in the Judgment.⁵ Because dismissing the claim as not maintainable would result in its final disposition, the Supreme Court determined that it was appropriate to conduct a review in those cases where it had determined that the suit could not be maintained.⁶

It appears that the parties are not involved in any question of law or fact, and that the court can pronounce the judgement on that matter in accordance with Order XV(1)⁷ CPC. This clause saves the time so the court will come to the party in quick relief. However, the “*Desi Kedari Vs. Huzurabad Co-Operative Marketing Society Ltd*”⁸ case found that “the question does not need to be framed because the complaint does not challenge content averments.” The decision should state adequately the facts on each subject to demonstrate its existence and its legitimacy. it proposes to construct. The judge should correctly frame the problems. Any error in framing the problems or the court's merit time will be lost, thus delaying the adjudication of such a lawsuit. There should not be framed the loaded problems. Clear and relevant issues must be addressed. Topics should be worded as early as possible in the hearings. In the “*Port of Mormugao's Board of Trustees vs. V.M. Salgaokar & Brothers*”⁹ it was decided that the Court could not follow draught issues forwarded by a group, as it is mainly the judge's responsibility to deal with the cases. Once the parties understand the important issues, the hearings may be shortened. It also serves to train the judge's minds on specific issues.

EXTENT AND SCOPE

The following literature aims to highlight cases which have been disposed by the courts at first hearing as well as those which have been taken to the higher courts for the purpose of judicial review. Among the sea of cases to experience dismissal on the first hearing, the ones which shall be presently dealt with are: *Ashoka Marketing Ltd. vs Rothas Kumar & Ors*¹⁰, *Heeralal vs Kalyan Mal & Ors*¹¹, *Usha Balashaheb Swami & Others v. Kiran Appaso Swami & Others*¹²,

⁵ CBI vs Shrikant Jain & Ors, AIR 2018 Del 299.

⁶ Vidyodaya Trust V. R. Mohan Prasad, AIR 2006 7 SCC 452.

⁷ “(1) Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or of fact, the Court may at once pronounce judgment for or against such defendant and the suit shall proceed only against the other defendants.”

⁸ AIR 1994 AP 301.

⁹ AIR 2005 SC 4138.

¹⁰ AIR 1966 Cal 591.

¹¹ AIR 1998 SC 618.

¹² AIR 2007 5 SCC 602.

*Thokchom Lokeshwar Singh vs Thangjam Mohendro Singh, Kanwar Singh Saini vs High Court of Delhi*¹³.

This article would have a fundamental aim to understand what is disposal of suits at first hearing, To understand the application of this particular order XV of CPC, To study the case laws regarding Parties not in issue, To study the case laws regarding one of several defendants not at issue, To study the case laws regarding Parties at issue, To study the case laws regarding Failure to produce evidence, To understand how revision petition can be filed for disposal of suits at first hearing.

BACKGROUND OF ORDER XV

After a lawsuit is brought and the claimant gives a composed claim, the first hearing under the Code of Civil Procedure, 1908 is called. The first trial was arranged by Order 14 of the Code of Civil Procedure, 1908. This phrase "first hearing" as such is not clarified in the Code; the day on which the court takes the case of the parties to help in understanding their dispute is nevertheless the strict meaning of the expression.

In order to audit participants in a debate the Court ordered that Order 10 of the Code learn in a case. In "*Arjun Khaimal Makhijani v. Jamnadas C. Tuliani*"¹⁴ the Hon'ble Court held the first hearing that the Court applied its psyche to either outline or proves the argument.

Order 15 deals with different cases in which a suit is available at the first hearing itself. In the following scenario, the court can pass the judgment in the following case:

"WHEN ONE OF SEVERAL DEFENDANTS NOT AT ISSUE"¹⁵

If more accused than one is involved in the case, and anyone of the accused has no dispute of fact and law with the appellant, the Court can immediately pronounce a decision on or against the defendant (Order 15, Rule 2).

"PARTIES NOT AT ISSUE"¹⁶

¹³ AIR 2020 Mani 184.

¹⁴ (1989) 4 SCC 612.

¹⁵ Y.V.Chandrachud (rev.), Ratanlal and Dhirajlal, The Code of Criminal Procedure, 16th ed. 2002, rep. 2003, Wadhwa & Co. Nagpur, New Delhi.

¹⁶ Chaturvedi, Dr. R.G., "Justice: Natural, Social, and Political", (2013), The Law Book Company (P) Ltd., Allahabad.

Order 15 Rule 1 states that if the parties appear at the first hearing of a lawsuit to be out of dispute on some question of law or fact, the court can pass judgment at once.

In the case of “*Desi Kedari Vs. Huzurabad Co-Operative Marketing Society Ltd*”¹⁷, at the first hearing in the proceedings, it was held that, where there is no problem to be raised on any legal or factual matter, the Court is qualified to pronounce a judgment at once under Order 15 Rule 1. In such a case it is not necessary to obey the protocol laid down under Order 20. In this case, no legitimate question of application shall be posed under the Court's eye, where there is no point in the investigation of the statute, the Court shall be prepared to articulate judgment at once according to Order 15 Rule 1. In such a case, the technique provided for in Order 20 must not be continued.

If more than one defendant has been found and each of the defendant's is not involved, for example, with the case documented, then the court could justly reject the suit and continue in its normal course against separate defendants against or for that defendant. If each side fails to provide facts for no legal reasons, the court will at that time, without further consideration or if it feels it is appropriate, postpone the lawsuit to provide the evidence that is sufficient to decide those matters after framing and documentation problems. In the event that the complaint has been brought against any immaterial parties, the court can either cancel those names or completely deny the suit.¹⁸

“PARTIES AT ISSUE”¹⁹

In accordance with “Rule 3 of Order 15”, once a Court has framed the questions as provided herein and is satisfied that no further arguments or evidence may be sought by the parties and that the result of the proceedings²⁰ immediately is no injustice, the Court can decide those issues and, when the findings are sufficient for the purposes of Rules three of this Order, may decide the cases.

The apex court in the case of “*Usha Balashaheb Swami & Ors vs Kiran Appaso Swami & Ors*”²¹ stated that where at the first hearing of a suit it was observed by the court that the parties

¹⁷ AIR 1994 AP 301.

¹⁸ Qureshi, M. A., “Marriage and Matrimonial Remedies: Civil Code for India”, (1978), Concept Publishing Company, Delhi.

¹⁹ Majumdar, P.K. and Kataria, R.P., Commentary on the Code of Civil Procedure, 1908, Universal, Delhi, (1998).

²⁰ Civil Procedure Code with Limitations act, 1963 by C.K. Takwani Pg. No:758.

²¹ AIR 2007 5 SCC 602.

are not at the issues at the any question of law. In the current case defendant has accepted in the written statement that the seven properties out ten were joint family property where in the plaintiff had one-third share and two-third undivided share and he also accepted that.

There was no contest between the parties regarding Seven items of suit properties. According to the learned trial judge only issue two was at concern as it speaks about the dispute between the parties related to three items (Properties) which were not accepted/denied by the defendant in the written statement. In the above case the Order 15 (1) of CPC was in question as the court was agreeing to proceed without these seven properties.²²

As stated in the facts of the case hat before the complainer requested appointment of the receiver with respect to the admitted goods, it made no attempt by the defendant/respondents to pass an extension request to exclude such an appeal for removal from such admittance. The Court was persuaded by the conduct of the defendant, namely that only three properties are in doubt and that the property of the parties that the defendant accepts in his written declaration does not equally question the matter, the property that is not in question of law or fact is in dispute.

The effect of this Rule along with Rules 3 is that the “defendant is bound to deal specifically with each allegation of fact not admitted by him; he must either deny or state definitely that the substance of each allegation is not admitted.” It does not, of course, mean that every allegation in the plaint should be reproduced at length in the written statement for the purpose of denial. The main allegations which form the foundation of the suit should be dealt with in that way and expressly denied.²³

Such fact should be taken up separately as far as possible in the order stated in the plaint and the defendant should either admit them or deny or state that he does not admit. “Facts not specifically dealt with will be taken to be admitted.”

Duty of the Court in Framing of Issues

As stated in the case of “*Pandurang Laxman v. Kaluram Bahiru*”²⁴ the Hon’ble Court held That such a decision shall not be deemed fatal in the cases under which the court is not omitted

²² K.N. Candrasekharan Pillai (rev.), R.V. Kelkar, Lectures on Criminal Procedure, 4th ed. 2006, Eastern Book Company, Lucknow.

²³ Chaturvedi, Dr. R.G., “Justice: Natural, Social, Economical and Political”, (2013), The Law Book Company (P) Ltd., Allahabad.

²⁴ AIR 1956 Bom 254.

from framing matters. In the event, however, that such omissions influence the disposition of legal proceedings, the matter must then be referred for fresh trial to the trial judge. Although it was held on the other side that, if the parties understood that any point of proposal was a matter and yet the proceedings were not rendered fatal, such omission by the court in the question of framing would be appropriate if no pre-judiciary or substantive injustice were incurred.

Order 15 deals with different cases in which a suit should be disposed at the first hearing. Thus, disputes are of great importance for fair proceedings where a right decision should be taken, for legitimate grounds, and while all issues can usually be resolved at the same time, whereas if framed correctly, they can be caused. This constitutes all we need to know about first hearing.²⁵

“FAILURE TO PRODUCE EVIDENCE”²⁶

Should either defendant refuse to provide any facts without a proper basis on which he is relying, after the warrant has been given for final disposition of the suit, the Court can:

1. Pronounce the judgement at once, or;
2. When he deems appropriate, postpone proceedings to include the proof that is required for his or her determination in those matters after the framing and recording of the proceedings.

According to the Court, it must make an opinion for submission of evidence by the parties in that opinion the court can dispose of the case. The Court can go for adjournment so that the party can produce their evidence before a particular court by providing necessary explanation for the delay in producing the evidence. If there is no sufficient explanation or cause on the part of plaintiff/defendant, the court can directly dispose of the said case by issuing of summon.

The Documents/ evidence which are to the court by the party if they are necessary to come to a following conclusion the court has to go for an adjournment. Then the following evidence can be considered by court after commencement of the trial. According to the provision the date of first hearing is considered as the date on which the issues are framed, and the court can take various steps at different stages of proceedings through the provisions mentioned in the Civil procedure Code.

²⁵ Y.V.Chandrachud (rev.), Ratanlal and Dhirajlal, The Code of Criminal Procedure, 16th ed. 2002, rep. 2003, Wadhwa & Co. Nagpur, New Delhi.

²⁶ Majumdar, P.K. and Kataria, R.P., Commentary on the Code of Civil Procedure, 1908, Universal, Delhi, (1998).

As stated in the case of “*Vidyabai & Ors. Vs. Padmalatha & Anr*”²⁷ The Hon'ble Court replied to the issue whether or not the affidavit to the examiner is the beginning of the event. The Court held that the first hearing was the day on which the problems were discussed. Different measures at different phases of the proceedings are provided for in the Code of Civil Procedure. In the view of the tribunal, it will be “commencement of proceeding” to file an affidavit in place of an investigation by a witness's leader.

Leading judgement in “*State of Gujarat v. Jaipalsingh Jaswantsingh Engineers and Contractors*”²⁸ wherein it was stated that “such framing of issues in the first instance would facilitate the applicant to lead necessary evidence in support of the claim and the reliefs prayed pursuant thereto. In the second instance, it will avail the opponent an opportunity to confront and contradict the particular witness and thereafter to lead the evidence if he so desires to bring home the defence pleaded, and in the third instance, enlighten the trial court to test and appreciate the same in proper perspective to enable it to reach a just decision. It is hardly required to be told that issues are backbone of a suit.²⁹ They are also the lamp-post which enlightens the parties to the proceedings, the trial court and even the appellate court- as to what is the controversy, what is evidence and where the way to truth and justice lies.”

CONCLUSION

In my view, the aim of this article is to affirm the final decision the judge conscientiously arrives at by the most persistent explanations that indicate themselves.³⁰ The judge is opposed to this object in detail, and records day by day the variations in his thinking with respect to the witnesses, the proofs and the claims. A decision that it does not resolve the issue as raised by the parties, for example, considers a specific signature to be a forgery which both sides admit as genuine is significant objection.³¹ In appealable cases, all the questions arising in fact on matters to prevent remand must be decided by the Lower Court.

In one case, where the complaint was to be rejected when the complainant was unable to proceed, it would be a vague formality for all issues to be resolved.³² If the judge is satisfied at

²⁷ (2009) 2 SCC 409.

²⁸ 1994 GLH (2) 403.

²⁹ P. Sarkar and P.M. Bakshi (rev.), S.C. Sarkar, The Law of Criminal Procedure, 7th ed. 1996, rep. 2001, India Law House, New Delhi.

³⁰ Swaran Lata v. Harendra Kumar AIR1969 SC 1167.

³¹ Sri Raghunanda v. Sri Brozo Kishore 9187603 IA 154.

³² Pitamber Prasad v. Sohan Lal AIR 1957 All 107.

the first hearing and the parties do not have a matter of law or fact at hand, the court shall have the competence to pronounce the judgement at once in compliance with the proceedings set out in Order 20.³³ If an act is invalid or ultra-virus, the court will rule that it is so and it immediately collapses. It doesn't have to be left out.³⁴

It is my understanding that it is the order of Order 20, Rule 5, that, on some particular subject, the Court should provide its conclusions or ruling with good cause and that a reasoned conclusion should address all the distinct questions.³⁵ When the trial court has merely listed the proof of the parts and statute after all and then concluded that one party's argument has been admitted and the other is dismissed, no decision is in the eyes of the law.³⁶

When the Trial Court or the first appeals court gave no basis to justify its findings, the complaint was advised to hear it and record conclusions about each question separately.³⁷

³³ *Desi Kedari v. Huzurabad Co-operative Marketing Society Ltd.* AIR 1994 AP 301.

³⁴ *State of Punjab v. Gurdev Singh* (1991) 4 SCC 1.

³⁵ *Lakshman v. Kamalamma* AIR 2001 Kant. 120.

³⁶ *Omprakash v. State of HP* AIR 2001 HP 18(DB).

³⁷ *Sushil Kumar v. Jagdish Ram* AIR 2002 NOC 234 (HP).

BIBLIOGRAPHY*Books:*

- C.K. Takwani, Code of Civil Procedure and Limitation Act, 1963 (9th ed. 2021).
- Vol. 4, S.K. Mulla, Code of Civil Procedure, 1908 (19th ed. 2017).
- Majumdar, P.K. and Kataria, R.P., Commentary on the Code of Civil Procedure, 1908, Universal, Delhi, (1998).
- Saha, A.N., The Code of Civil Procedure, Eastern Law House, (1908).
- Vol. 2, Sarkar P C and Sarkar A. C., Sarkar's Law of Civil Procedure, Wadhwa and Co., (11th ed. 2006).
- Sarvaria S K, Mulla, Code of Civil Procedure, 1908, Lexis Nexis Butterworth, (2011).
- Thakker, C.K. and Thakker M. C., Code of Civil Procedure, 1908, Eastern Book Co., (2005).
- Sarkar's Law of Civil Procedure, Wadhwa and Company, (2006).

List of Cases:

- Sushil Kumar v. Jagdish Ram, AIR 2002 NOC 234 (HP).
- Omprakash v. State of HP., AIR 2001 Hp 18(DB).
- Lakshman v. Kamalamma, AIR 2001 Kant. 120.
- State of Punjab v. Gurdev Singh, (1991) 4SCC 1.
- Desi Kedari v. Huzurabad Co-operative Marketing Society Ltd., AIR 1994 Ap 301.
- Pitamber Prasad v. Sohan Lal, AIR 1957 All 107.
- Sri Raghunanda v. Sri Brozo Kishore 9187603 IA 154.
- Swaran Lata v. Harendra Kumar, AIR1969 SC 1167.
- State of Gujarat v. Jaipalsingh Jaswantsingh Engineers and Contractors 1994 GLH (2) 403.
- Vidyabai & Ors. Vs. Padmalatha & Anr. (2009) 2 SCC 409.
- Pandurang Laxman v. Kaluram Bahiru, AIR 1956 Bom 254.
- Usha Balashaheb Swami & Ors vs Kiran Appaso Swami & Ors., AIR 2007 5 SCC 602.
- Desi Kedari Vs. Huzurabad Co-Operative Marketing Society Ltd., AIR 1994 AP 301.
- Arjun Khaimal Makhijani v. Jamnadas C. Tuliani (1989) 4 SCC 612.

- Thokchom Lokeshwar Singh vs Thangjam Mohendro Singh, Kanwar Singh Saini vs High Court Of Delhi, AIR 2020 Mani 184.
- Usha Balashaheb Swami & Others v. Kiran Appaso Swami & Ors., AIR 2007 5 SCC 602.
- CBI vs Shrikant Jain & Ors, AIR 2018 Del 299.
- Vidyodaya Trust V. R. Mohan Prasad, AIR 2006 7 SCC 452.
- Desi Kedari Vs. Huzurabad Co-Operative Marketing Society Ltd, AIR 1994 AP 301.
- Port of Mormugao's Board of Trustees vs. V.M. Salgaokar & Brothers, AIR 2005 SC 4138.
- Ashoka Marketing Ltd. vs Rothas Kumar & Ors., AIR 1966 Cal 591.
- Heeralal vs Kalyan Mal & Ors., AIR 1998 SC 618.