

BOOK REVIEWS

CIVIL PROCEDURE (1983). By C.K. Takwani. Eastern Book Company, 34 Lalbagh Lucknow-226 001. Pages lix+512. Price Rs. 40.

THE BOOK under review reminds one of the dictum of George Bernard Shaw. While writing a long letter to a friend he said that he was writing a long letter because he had no time to write a short one. The lesson driven home by this pithy saying is this—to express oneself fully but succinctly is more difficult than to express oneself fully but at length. The reason is that one has to digest all the thinking oneself first before one can write it out with economy of words. What is the nature of the Code of Civil Procedure? Apparently it appears to be a longish enactment but mature consideration shows that the numerous steps of long procedure have been summarised with remarkable brevity in that enactment. The learned author has quoted the late Chief Justice M.C. Chagla who said “the more you study the Civil Procedure Code, the more you realise what an admirable piece of legislation it is.” I am sure the admiration is due not only to the thoroughness of the code but also due to its systematic arrangement and brevity.

The run-of-the-mill commentaries of Civil Procedure Code have often eclipsed the force of the text of the code by prolix and banal citation of case law un-critically. An ideal commentary on the code must be in tune with the nature of the text of the code. A commentary on the code can usually be in the form of an annotation of the statutory provisions with the help of the case law. While this facilitates the location of relevant decisions under a particular section or the rule, it does prevent one from grasping the scheme and the main objective of the code. The learned author has in his preface rightly referred to the proverb that “one should not miss the wood for the trees”. In trying to understand the details one often fails to grasp the entirety and the substance. The author has successfully avoided this danger. He has deftly combined the reference to the provisions of the text with the exposition of these provisions topically rather than in the form of piecemeal commentary coming under each section or rule. The scheme of the book is mainly according to the scheme of the code itself. But the code could not give selective importance to the main topics because all the provisions thereunder have the same statutory force. But the importance differs. The author has selected the main topics according to their importance. At the same time he has taken care to incorporate all details under the main topics and thus make the analytical exposition of the code complete.

The chief merit of the book, however, lies in the skill employed in

describing the provisions of the code fully, so as to create interest in the reader and provoke thinking on his part. The learned author has himself so much absorbed the essential meanings of the code that he has been able to express it with remarkable clarity and completeness.

The author says that the book is meant mainly for the students and the junior advocates. He is being modest. It may be that full citation of numerous case law could not be comprised within the size of the book. It is only for that reason that it may be said that it is for the students and junior advocates. But a book cannot be said to be not for the senior advocates if the discussion of topics is so suggestive and thought-provoking as to beat a longer book on the subject. In its exquisite analysis and complete discussion of all questions including the controversial ones, it is a work which is for everyone who wants to understand and use the Code of Civil Procedure whether he is a novice or an erudite lawyer. Two examples of the method of the author in dealing with the topics will make the nature of the exposition in the book clearer.

1. The chapter on the institution of a suit includes institution of a suit, parties to a suit and the frame of a suit. The chapter opens with an analytical table of contents in which every topic can be located easily. All these analytical contents of all the chapters are grouped together at the beginning of the book to facilitate reference to any topic in accordance with the arrangement of the topic in the code itself. It is a pleasant surprise that in such a short book¹ the leading decision of the Supreme Court in *Razia Begum v. Anwar Begum*² has been given a full page³ by reproducing the principles laid down by the Supreme Court as to the power of the court to add parties under rule 10(2) of order I of the code. Since the Supreme Court decisions are almost as important as the statute, the principles laid down by the court must be known to everyone. Even bigger works on the subject have not reproduced the principles⁴ which the author has taken care to do. At another place, the author states the test regarding the joinder of parties in the following words :

The test is not whether the plaintiff agrees to adding a party as a defendant or not, but whether the relief claimed by the plaintiff will directly affect the intervener in the enjoyment of his right.

This is stated as a modification of the rule that the plaintiff is ordinarily the *dominus litis* and has the right to choose what parties should be joined in a suit. The fundamentals of civil procedure are, therefore, stated with authority and completeness even in the brief space available.

2. In chapter XVI suits in particular cases are grouped together one by one. In section 14 summary procedure in order 37 is explained.

1. C.K. Takwani, *Civil Procedure* (1983).

2. A.I.R. 1958 S.C. 885.

3. *Supra* note 1 at 88.

4. *Id.* at 89.

The law regarding the granting of leave to defend has been stated⁵ with the help of the latest decisions.⁶

It is because the book is fully a creation out of the mind of the author that prominence is given to the decisions of the Supreme Court and to the recent case law. By contrast one finds that some of the older commentaries on the Code of Civil Procedure retain the old case law because it was there when the book was originally written without updating the case law. The reason is that the amount of labour required to study the cases in original is not put in at the time of revision. The present book is original and up to date and is thus superior in these respects to the larger books.

It must be said to the credit of the author and the publisher that the citation of the Supreme Court decisions include not only the *Supreme Court Cases* but also the *All India Reporter* and sometimes even the *Supreme Court Reports* for the convenience of the reader. The publishers have not been parochial in preferring the citations to the Supreme Court cases alone. The get-up and the printing is excellent and the moderate price makes the purchase of the book a real joy of buying a treasure of knowledge on the Code of Civil Procedure almost for a song.

V.S. Deshpande*

5. *Id.* at 272.

6. *Mechalec Engineers v. Basic Equipment Corpn.*, A.I.R. 1977 S.C. 577; *Prayag Debb v. Rama Roy*, A.I.R. 1977 Cal. 1 (F.B.).

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