

BOOK REVIEWS

CODE OF CIVIL PROCEDURE, by Jatindra Kumar Das (PHI Learning Private Limited, Delhi, 2023), Pp. 935+Ixxxviii, Price Rs. 1795.00.

THE LAW of civil procedure is an adjective law to facilitate justice and further its ends. While substantive law determines the rights and liabilities of parties, adjective or procedural law prescribes the practice, procedure and machinery for enforcement of those rights and liabilities. In this sense, law can broadly be categorised into two groups, namely, substantive law, and adjective or procedural law. The Indian Contract Act, The Transfer of Property Act, The Negotiable Instruments Act are examples of substantive law, while The Code of Civil Procedure, The Indian Evidence Act, The Limitation Act are examples of procedural law applied in civil suits. Rights and obligations of the members of a civilised society would be rendered meaningless unless they are determined and enforced. This is made possible by two sets of laws—substantive law and procedural law. However, the substantive law and procedural law overlap each other more often. Since the function of procedural law or adjective law is to “facilitate justice and further its ends,” the rules of procedure must be construed liberally and in such a manner that renders the enforcement of substantive rights effective. Thus, law of civil procedure plays an important role of adjective law by forming an indispensable part of the machinery of justice and operates as an essential tool towards the enforcing legal rights and claims, redressing or preventing legal wrongs, asserting legal defences, and other ancillary purposes, notwithstanding its apparent complexity and its occasional technicality. The essential characters of the law of civil procedure can be categorised into three classes, namely: complementary, protective and remedial or practical. In its complementary character, law of civil procedure is ordinarily contrasted with substantive law. As the law of civil procedure neither creates nor takes away any right, but only regulates the procedure to be followed by civil courts, its provisions must be interpreted in a manner so as to serve and advance the cause of justice rather than defeat it. In its protective character, the law of civil procedure represents the public functioning of the legal machinery and the operation of the “due process of law”. In its remedial or practical character, the law of civil procedure deals with the actual litigation process itself, in accordance with the practice and procedure of the courts and enhances the importance and application of the rules, practical and procedural modes and methods for the conduction of the judicial process. The very basis upon which a judicial process can be resorted to is reasonableness and fairness in a trial. In light of this, the author of the book on “Code of Civil Procedure”¹ has critically analysed the development of law of civil procedure in India with special reference to role of the courts.

1 Jatindra Kumar Das, *Code of Civil Procedure*, (PHI Learning Private Limited, Delhi, 2023).

The book is composed of 35 Chapters separated into VI Parts. Part I is preliminary (Chapters one and two),² it discusses the theoretical foundations of law of civil procedure with origin, development, classification, importance, object, scope as well as few definitions. Particularly, Chapter one covers various theoretical issues which make the book an exception to other books on the subject. These issues are: whether civil procedure is an adjective law? How the Code of Civil Procedure, 1908 evolved and developed over time? What are the objects, scope and extent of applicability of the Code? How the Code is to be interpreted? Whether the Code should have retrospective operation? Whether the Code provides an adversary procedure or an inquisitorial procedure? To what extent has such adversary procedure been effective? The author rightly concludes in Chapter one that the Code of Civil Procedure provides an adversary procedure/ adversary process/ adversary system of trial for civil cases. In a suit under the Code, one of the parties, generally the aggrieved person(s) files a suit or petition before the court, claiming a right or property against the other party. There are four ingredients of a suit, namely, parties, cause of action, subject-matter, and relief claimed by the plaintiff. The person, who has filed the petition, is called the plaintiff. The person, against whom the petition is filed and claim is made, is called the defendant. Every suit must be instituted by the presentation of a plaint in duplicate or in such other manner as may be prescribed by the Code, by the plaintiff himself or by his advocate or by his recognised agent or by any person duly authorised by him. Unlike the adversary procedure, the inquisitorial procedure/ inquisitorial process/ inquisitorial system is based on investigation. Generally, the police are empowered to conduct inquisitorial process. It involves the searching for evidence. It is a fact finder. Generally, it entails undue vexation and torture. It is apt to ask questions of many persons connected or unconnected with the incident. In contrast, the adversary process directs the court to give an equal opportunity to both the parties while conducting the proceedings. However, the author equally argued that the judicial process has been abused by some of the parties and advocates. Sometimes the judicial process has been abused to harass opposite parties. Some advocates help such persons in filing unnecessary litigation. This causes much pain to the opposite parties, who may be innocent and are unnecessarily involved in the cases. Such an advocate may prolong the case for years by asking for adjournments under one pretext or another. This argument of the author is the beauty of the book.

Part II of the book includes 15 Chapters (Chapters 3 to 17) deals with suits in general. Chapter three³ discusses various facets of jurisdiction of civil courts. The expression “jurisdiction” has not been defined in the Code of Civil Procedure but it is used in a variety of senses in the Code. In the sense of inherent jurisdiction, it is a virtue of the court and in the sense of pecuniary jurisdiction or territorial jurisdiction

2 *Id.*, Ch 1 at 3-49; Ch 2, at 50-90.

3 *Id.*, Ch. 3 at 93- 130.

it sets the limits of exercising the powers of a court. At bottom the problem of defining the concept of jurisdiction for purpose of judicial review has been one of public policy rather than one of logic. Hence, the author examined various contemporary issues on jurisdiction in Chapter three. These issues are: What exactly is “jurisdiction of Civil Courts”? What is the meaning of the expression “jurisdiction”? Whether consent of the parties can confer jurisdiction of a court? Is there any distinction between absence of jurisdiction and erroneous exercise of jurisdiction? How jurisdiction of a court is to be determined? What are the classifications of jurisdiction of Civil Courts? What is the statutory framework of jurisdiction of Civil Courts in India? What is the meaning of suit of civil nature? When cognizance of Civil Courts can be barred? Whether ousting of jurisdiction of Civil Courts by legislation is permissible? If so, what is the scope and ambit? This chapter is a unique contribution by the author. The common law doctrine of *res sub judice* (stay of suit) is one of the key doctrines of the Code of Civil Procedure. The Section 10 of the Code relates to “stay of suit” that intends to prevent the courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of the same cause of action, the same subject-matter and the same relief. The obvious policy is to confine the litigation to one; obviating the possibility of two contradictory verdicts of two courts in respect of same relief. Now question arises: Can a person file fresh suit in respect of the same subject-matter again? The answer is clearly negative. Section 11 of the Code provides for the doctrine of *resjudicata*. It bars the trial of any suit or an issue in any suit in certain circumstances and if certain conditions are fulfilled. The doctrine of *res judicata* in substance means that an issue or a point decided and attained finality should not be allowed to be reopened and re-agitated twice. Chapter four⁴ discusses different facets of the doctrines of *res sub judice* and *resjudicata*. Likewise, private international law embodies the principle that any judgment of a foreign court of competent jurisdiction can be enforced through municipal law. The question is whether judgment of a foreign court is binding in India? In order to respond to this inquiry, Chapter five⁵ mainly focuses on a review of the scope and application of conclusiveness, presumption, and execution of foreign judgements in India. The Code of Civil Procedure regulates the forum for the institution of suits in India under the heading “place of suing.” Chapter six⁶ has demonstrated the various facets concerning the place of suing. The author in this chapter has clarified various issues on place of suing citing various case laws of the Supreme Court and high courts.

In Part II of the book the author rightly stated that the “parties to suit” and “framing of suit” are the two most important components of the institution of suits. These

4 *Id.*, Ch. 4, at 131- 173.

5 *Id.*, Ch. 5, at 174- 193.

6 *Id.*, Ch. 6, at 194- 238.

two components are directly relating to recognised agents and pleaders. In this context, Chapter seven⁷ is devoted to exploring the definition of the suit and its essentials, parties to suit, the framing of the suit, recognised agents, and pleaders, and institution of the suit. Every suit has to be presented through a pleading, that is, a plaint or a written statement. Chapter eight⁸ is devoted to demonstrating various facets of pleading, plaint, and written statements. Similarly, Chapter nine⁹ demonstrates various issues relating to issuing summons, appearances of parties, the consequence of non-appearance, and remedies against *ex parte* decrees. The first hearing is a stage of a civil suit. In Chapter 10¹⁰ the author discusses three important aspects of first hearing, namely, examination of parties, settlement of issues, and disposal of the suit at the first hearing. The purpose of the discovery, inspection, admissions, production of documents, and affidavits is to enable a party to a suit to obtain necessary information regarding the material facts constituting the case of the opposite party. Chapter 11¹¹ discusses various facets of the discovery, inspection, admissions, production of documents, and affidavits with case law. After the framing of issues by the court on the basis of the pleadings of the parties, the trial will begin. Chapter 12¹² discusses various stages of trial. In this chapter the author discusses the law relating to summoning and attendance of witness, summons to produce documents, adjournments, hearing of suit and examination of witness during the time of trial of civil suits. Is right to withdraw, adjust and compromise a suit an absolute right? This has been a debatable issue over time. In the light of this, in Chapter 13,¹³ the author discusses various issues relating to withdrawal, adjustment and compromise of suits with case law. Likewise, in Chapter 14,¹⁴ the author discusses the effect of death, marriage and insolvency during pendency of suits. Code of Civil Procedure provide for special procedures to be followed in suits and proceedings of a special nature. In Chapter 15,¹⁵ the author discusses in detail law of procedure relating to special suits and proceedings under the Code with leading case law. Code of Civil Procedure provides the law relating to judgment, decree, interest and costs which has been elaborated by the courts. In Chapter 16,¹⁶ the author has discussed various facets of judgment, decree, interest and costs with case law. Further, the Code provides the provision relating to interlocutory and interim orders. In Chapter 17,¹⁷ the author

7 *Id.*, Ch. 7 at 239-261.

8 *Id.*, Ch. 8 at 262-327.

9 *Id.*, Ch. 9 at 328-360.

10 *Id.*, Ch. 10 at 361-374.

11 *Id.*, Ch. 11 at 375-392.

12 *Id.*, Ch. 12 at 393-409.

13 *Id.*, Ch. 13 at 410-423.

14 *Id.*, Ch. 14 at 424-441.

15 *Id.*, Ch. 15 at 442-475.

16 *Id.*, Ch. 16 at 476-503.

17 *Id.*, Ch. 17 at 504-530.

discusses with leading case law relating to interlocutory or interim orders. Thus, the Part II of the book provides an accurate statement of law with latest high courts and Supreme Court decisions and amendments of the Code.

Part III of the book includes eight Chapters (Chapters 18 to 25) deals with appeals, reference, review and revision under the Code of Civil Procedure. A first appeal lies against a decree passed by a court exercising original jurisdiction. Such appeal may be filed on a question of fact or on a question of law or on a mixed question fact and law. The Code deals with appeals from original decrees which are known as first appeal. Chapter 18¹⁸ demonstrates various aspects of appeals from original decrees. Further, the law relating to appeals from appellate decrees are known as second appeals. Chapter 19¹⁹ elucidates the various facets of appeals from appellate decrees including second appeal. An appeal lies against an order only where such appeal is expressly provided by the Code or any other law for the time being in force. Chapter 20²⁰ demonstrates various issues with regard to appeals from orders. In India, indigent persons' right to appeal is a topic of substantive and procedural debate. Thus, in Chapter 21,²¹ the author systematically discusses the parties, payment of court fee, inquiry and period of limitation of appeals by indigent persons. Appeals to the Supreme Court are governed by the provisions of Articles 132, 133 and 134A of the Constitution of India with regard to civil matters. Sections 109 and 112 read with Order 45 of the Code of Civil Procedure deal with appeals to the Supreme Court subject to the provisions of the Constitution. Chapter 22²² demonstrates the scope of appellate jurisdiction to the Supreme Court and procedure thereof with case law. The power to seek reference is vested in the subordinate courts; and reference is always made to the high courts for their opinion. Such opinion may be sought while it tries a suit, an appeal or execution proceedings and feels reasonable doubt about a question of law. Chapter 23²³ discusses the scope and ambit of reference and the distinction between reference, appeal, review and revision. Similarly, Chapter 24²⁴ the author demonstrates the concept of review including its meaning, object and scope, circumstances and grounds, distinction between review and appeals, review and revision, and contemporary procedure and practice. The notion of revision, the distinction between error of law and error of jurisdiction, revision, writ and power of superintendence, and cotemporary method and practise of revision are all discussed in Chapter 25.²⁵ Part III of the book is well presented by the author with latest approach of law.

18 *Id.*, Ch. 18 at 533-559.

19 *Id.*, Ch. 19 at 560-590.

20 *Id.*, Ch. 20 at 591-610.

21 *Id.*, Ch. 21 at 611-617.

22 *Id.*, Ch. 22 at 618-628.

23 *Id.*, Ch. 23 at 629-639.

24 *Id.*, Ch. 24 at 640-661.

25 *Id.*, Ch. 25 at 662-683.

Part IV of the book includes 5 Chapters (Chapters 26 to 30) deals with law relating to execution. The author has discussed in Part IV five important aspects of execution in civil suits. They are general principles of execution, modes of execution, arrest and detention, attachment of property and distribution of assets as well as sale and delivery of property. In Chapter 26,²⁶ the author has demonstrated the general principles relating to execution of decrees and orders with special reference to courts which may execute decrees, questions to be determined by executing court, application for execution, stay of execution and adjudication of claims. Further, in Chapter 27,²⁷ the author demonstrates an overview on various modes of execution as well as specific modes for execution of different types of decrees. One of the modes of executing a decree is arrest and detention of the judgment-debtor in a civil prison. In Chapter 28,²⁸ the author has discussed the conditions for arrest and detention, classes of persons who cannot be arrested and the relevant procedure to be followed during time is of arrest and detention. Similarly, in Chapter 29,²⁹ the author discusses various facets of the law relating to attachment of property of judgment-debtor and distribution of assets in execution proceedings. Sale of property and delivery of property are two modes of execution of decrees are often in practice. Chapter 30³⁰ discusses the various issues relating to sale and delivery of property in execution of decrees. Thus, the author concludes in this chapter that a decree may be executed through sale of property. A duty is thus cast upon the court to sell such property or a portion thereof as necessary to satisfy the decree. Every sale in execution of a decree shall be conducted by an officer of the court through public auction. Any sale conducted without publication of proclamation is not merely an irregularity but a nullity. It is incumbent upon the court to be scrupulous to the extreme. No action of the court or its officer should be such as to give rise to the criticism that it was done in a casual manner.

Part V of the book includes five Chapters (Chapters 31 to 33) deals with law relating to restitution, caveat, and inherent powers of court. Restitution is an equitable principle which provides that on the reversal of a decree in an appeal, the law imposes an obligation on the party to the suit who received the benefit of the erroneous decree to make restitution to the other party for what he has lost. Chapter 31³¹ explores various aspects of law relating to restitution. Any person claiming a right to appear before a court on the hearing of an application by the petitioner may lodge a caveat. Therefore, a number of questions arise: What is the meaning of caveat and its

26 *Id.*, Ch. 26 at 687-704.

27 *Id.*, Ch. 27 at 705-721.

28 *Id.*, Ch. 28 at 722-730.

29 *Id.*, Ch. 29 at 731-741.

30 *Id.*, Ch. 30 at 742-755.

31 *Id.*, Ch. 31 at 759-767.

statutory framework? What is the object and scope of the law of caveat? Who can file caveat? What are the rights and duties recognised under the law of caveat? What procedure is to be followed to lodge a caveat? Chapter 32³² discusses various aspect of caveat. Inherent powers of the court are in addition to and complimentary to the powers expressly conferred under the Code of Civil Procedure. Thus, enlargement of time, deficiency of court fee, transfer of business, ends of justice, abuse of process of court as well as correctional powers of the court are different facets of inherent powers of court. These aspects of the inherent powers of court are covered in Chapter 33.³³

Part VI of the book includes two Chapters (Chapters 34 and 35) deals with law relating to commercial courts and law of limitation. Commercial disputes are of special nature therefore Commercial Courts Act, 2015 has been enacted by the Parliament to provide for the constitution of commercial courts, commercial appellate courts, commercial division and commercial appellate division in the high courts for adjudicating commercial disputes of specified value (rupees three lakhs or more) and matters connected therewith or incidental thereto. Section 16 of the Act declares that the provisions of the Code of Civil Procedure 1908 stand amended in the manner as specified in the Schedule of the Act. The Schedule, *inter-alia*, refers to amend the following matters: (i) institution of suits, (ii) costs, (iii) compensatory costs, (iv) issue and service of summons, (v) pleadings, (vi) discovery and inspection of documents, (vii) examination of witness, (viii) judgment and decree, (ix) summary judgments, (x) case management hearing. Chapter 34³⁴ discusses various facets of commercial courts and their working under the Code of Civil Procedure. The law of limitation sets the time after which a suit or any proceeding cannot be entertained in a court of justice or before an appropriate authority. The Limitation Act 1963 was enacted with the object to consolidate and amend the law for the limitation of suits and other proceedings. Chapter 35³⁵ discusses certain fundamental issues in relation to the law of limitation: When the law of limitation has been originated and how the Limitation Act, 1963 has been developed in India? What are the objects and reasons underlying the existence of the law of limitation? What is the scope for application of the Limitation Act? Does the law of limitation bar remedy or extinguish rights? What is the distinction between limitation and prescription? Is the law of limitation substantive law or procedural law? Does a statute of limitation have retrospective operation? How can the Limitation Act be interpreted? How the terms applicant and application, bill of exchange, bond, plaintiff and defendant, easement, period of limitation and prescribed period are to be defined? How the limitation period of suits, appeals and

32 *Id.*, Ch. 32 at 768-775.

33 *Id.*, Ch. 33 at 776-801.

34 *Id.*, Ch. 34 at 805-821.

35 *Id.*, Ch. 35 at 822-925.

applications are to be determined? What will happen in case of expiry of prescribed period took place when court is closed? Is there any rule for extension of time or prescribed period? What is the meaning of sufficient cause? Is there any law of limitation relating to legal disability? Is there any provision in limitation Act for suits against trustees and their representatives? Whether the rule of *lex fori* is applied in law of limitation? What is the method of computation of the period of limitation? What is the effect of death, fraud, mistake *etc.* in computation of the period of limitation? Is the law of limitation applied in case of acquisition of ownership by possession? Whether the Schedule of the Limitation Act is applied to civil matter or criminal matter or both? As a result, this book is a pioneering work on the Code of Civil Procedure in contemporary India. It offers an in-depth understanding of the law of civil procedure from all minutes conceptual and legal details concerning the historical origin, growth and development of law of civil procedure in its theoretical mapping, statutory analysis and judicial interpretation. Further, the author has meticulously presented a large number of land mark case laws. In this way, the book is useful to LLB and LLM students, researchers, academicians, jurists, attorneys, judges, and members of civil society.

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