

Chapter 1
PART L.—INCIDENTAL PROCEEDINGS

{ (a) Attachment before Judgment, temporary injunctions and appointment of receiver etc." }

{The heading is amended vide C.S. No. 84 Rules/II.D4 dated 21.11.2022}

1. **Attachments or arrest before judgment:-** If at the time of filing the plaint, or at any other stage of the suit, an application is made by the plaintiff, under Order XXXVIII of the Code, for the arrest of the defendant or for the attachment of his property before judgment, the Court should proceed to consider the application with reference to the provisions of the Code and the following instructions.
2. **Attachment or arrest before judgment:-** Orders for arrest or attachment before judgment ought not to be made on insufficient grounds. The circumstances which justify a Court in passing an order of this nature are distinctly stated in Order XXXVIII of the Code of Civil Procedure. The Court should, in every such case, be satisfied (Order XXXVIII, Rules 1 and 5) that the defendant has or is about to dispose of or remove the property from its jurisdiction or that he has or is about to leave its jurisdiction,
3. **Temporary injunction:-** It has been noticed that temporary injunctions are frequently issued *ex-parte* by subordinate Courts, without realising fully their consequences. The following instructions in respect of such orders should therefore be ordinarily followed :—
 - (i) The Court should scrutinise carefully the plaint, the application and the affidavit before interfering with the defendants' rights and should satisfy itself that some recent happenings have justified the interference without notice to the defendant.
 - (ii) Court should use the rules in Order XXXIX, Civil Procedure Code, with great discrimination, and should not overlook the significance of the word "may" wherever it occurs. It should not treat the exception in Rule 3 as the normal procedure. Interlocutory injunctions should be granted *ex- parte* only in very exceptional circumstances, and only when the plaintiff can convince the Court that by no reasonable diligence could he have avoided the necessity of applying behind the defendants' back.
 - (iii) Such injunctions, when granted, should be limited to a week or less, i.e., the minimum time within which a defendant can come before the Court, assuming that to get rid of the injunctions, he will be prepared to use the greatest expedition possible.
 - (iv) The Court should state clearly what acts it has restrained. Vague orders such as 'Issue of temporary injunctions as prayed' should be avoided. Where only some of the acts mentioned in the petition need to be urgently restrained the *ex-parte* order should be confined to these only. The plaint or petition should not merely be copied out.
 - (v) When the defendant appears and files his affidavit, the plaintiff should be given only a few days to answer it. The contested application should then be heard, as soon as possible, and if the Judge cannot dispose of it at once, should, for the term of the adjournment, which should be as short as possible, either grant an ad interim injunction, or obtain an undertaking from the defendant not to do any acts complained against.
 - (vi) After the plaintiff has obtained an interim or *ex parte* order, the court should take care to see that he does not abuse the advantage by resorting to the usual dilatory tactics; such as delay in deposit of process fees, evasion of service of summons on a pro-forma defendant interested with the plaintiff in delaying the suit or in other manners.
4. **Exparte injunctions:-** The above instructions are not intended to restrict the

discretion of Courts, but every application for an *ex parte* injunction should be very carefully considered in the light of these instructions and should not be granted unless sufficiently good grounds are made out.

5. **{Appointment of Receiver:-** Under Order XL Rule 1 of CPC the Court may appoint receiver to monitor the status of the property in question as *custodial legis* (in custody of law) for proper adjudication of the matter specifying as to whether receiver shall take actual physical or symbolic possession thereof.} **{Rule 5 inserted vide C.S. No. 84 Rules/II.D4 dated 21.11.2022}**
6. **{Ensuring satisfaction of decree:-** In suit for payment of money, the Court may in appropriate cases at any stage of the suit demand security from the defendant to ensure satisfaction of decree exercising the powers under Section 151 CPC} **{Rule 6 inserted vide C.S. No. 84 Rules/II.D4 dated 21.11.2022}**

(b) Death, Marriage or Insolvency of Parties.—

Death, Marriage or Insolvency of parties - Abatement. - *The procedure to be followed in the event of death, marriage, or insolvency of parties is laid down in Order XXII, Civil Procedure Code. Proper steps must be taken to bring the legal representatives of the person concerned (the Receiver in the case of a person who is declared an insolvent) on the record within the period of limitation. Otherwise the suit is liable to abate wholly or partly in certain cases. The abatement takes place automatically and a formal order of abatement, though not essential, should be usually recorded. The abatement can be set aside on an application by the 'aggrieved party, if sufficient cause is shown (Order XXII, Rule 9).*

There is no abatement if a party dies after the conclusion of the case but before judgment. In such cases judgment may be pronounced and will take effect as though it had been pronounced while the party was alive.

In certain cases, the abatement of a suit as against one defendant results in the dismissal of the whole suit. Reference may be made in this connection to I.L.R. X, Lah. 7F.B.

(c) Compromise or Adjustment Of Suits.

Compromise:- Where a Court is satisfied that a claim has been adjusted by any lawful agreement or compromise or the claim has been satisfied wholly or in part, the Court shall order such agreement, compromise or satisfaction to be recorded and shall pass a decree accordingly so far as it relates to the suit, in cases where the compromise goes beyond the subject matter of the suit, the directions given in 46- 1-A 240, 244 and I. L. R. 1\$ Cal, 485 should be followed in preparation of decrees.

When a minor is concerned, the Court should consider and record a finding as to whether the compromise or adjustment is for the benefit of the minor, and pass an express order granting or refusing leave, for the purpose as it may think fit.

As to compromises in cases of minors see Chapter 1-M. (d).

As to forms of decrees based on compromises see Chapter 11-B, paragraph 5.

As to stay of hearing on the ground of compromise see Chapter 1-K, paragraph 11.

(d) Amendment and Review

Amendment and Review.—When a case is decided on the merits, the Court has no power to vary the judgment or decree, except by way of amendment under Sections 151 and 152 or by review under Order XLVII, Civil Procedure Code. The scope of amendment is very limited, being confined to clerical or arithmetical errors, accidental slips, etc. Review can be granted only on the grounds specified in Order XLVII. The words "any other sufficient cause" occurring in Rule 1 of Order XLVII have been held by their Lordships of the Privy Council to mean "a reason sufficient on grounds at least analogous to those specified immediately previously." (*See I. L. R. III, Lahore 127-P C.*)

(e) Inherent Powers under Section 151, Civil Procedure Code

Section 151, Civil Procedure Code.—The scope of Section 151, Civil Procedure Code, is frequently misunderstood and applications are made under that section, which do not properly fall within its purview. The section is widely worded to enable Courts to do justice in proper cases, but it cannot be used so as to over ride the express provisions of Statute. For instance, a suit which is barred by limitation, cannot be heard in the exercise of inherent powers under Section 151. But where there is no express provision of law on a particular point inherent powers may be used in proper cases in the interests of justice. For instance, it has been held that when an application for execution is dismissed in default, it may be restored in the interests of justice on sufficient cause being shown, although there is no express provision of law for restoration of such an application dismissed in default (I.L.R. II Lahore 66).
