

Order-41 Appeals from Original Decrees

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1. Form of appeal-What to accompany memorandum :-

(1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the ¹["judgment"]: ²[Provided that where two or more suits have been tried together and a common judgment has been delivered therefor and two or more appeals are filed against any decree covered by that judgment, whether by the same appellant or by different appellants, the Appellate Court may dispense with the filing of more than one copy of the judgment.]

High Court Amendment Bombay.-In its applicability to the State of Maharashtra the following rule shall be substituted as follows : "1. Form of appeal-What to accompany memorandum.-(1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded : Provided that where two or more suits have been tried together and a common judgment has been delivered therefor and two or more appeals are filed against any decree covered by that judgment, whether by the same appellant or by different appellants, the Appellate Court may dispense with the filing of more than one copy of the judgment. (2) Contents of memorandum.-The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and such

grounds shall be numbered consecutively. (3) Where the appeal is against a decree for payment of money, the appellant shall, within such time as the Appellate Court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may think fit: Provided that the Court may dispense with the deposit or security where it deems fit to do so for sufficient cause. (4) The appellant shall file along with the memorandum of appeal as many copies thereof on plain paper as there are respondents for being served on the respondents along with the notice of appeal: Provided that the Court in its discretion may permit the appellant to file the necessary number of copies of the memorandum of appeal after the appeal is admitted, within such time as the Court may grant in this behalf." ³

1. Substituted for "decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded", vide " Order-41 Appeals from Original Decrees" Dt.December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

2. Added by Act 104 of 1976, Sec.87 (w.e.f. 1st February,1977).

3. Vide Notifn. No. P. 0102/77 (w.e.f. 1st October,1983).

2. Grounds which may be taken in appeal :-

The appellant shall not except by leave of the Court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal; but the Appellate Court in deciding the appeal, shall not be confined to the grounds of objection set forth in the memorandum of appeal or taken by leave of the Court under this rule: Provided that the Court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground.

3. Rejection or amendment of memorandum :-

(1) Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there.

(2) Where the Court rejects any memorandum, it shall record the reasons for such rejection.

(3) Where a memorandum of appeal is amended, the Judge, or such officer as he appoints in this behalf, shall sign or initial the amendment.

3A. Application for condonation of delay :-

(1) When an appeal is presented after the expiry of the period of limitation specified therefor, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period.

(2) If the Court sees no reason to reject the application without the issue of a notice to the respondent, notice thereof shall be issued to the respondent and the matter shall be finally decided by the Court before it proceeds to deal with the appeal

(3) Where an application has been made under sub-rule (1), the Court shall not make an order for the stay of execution of the decree against which the appeal is proposed to be filed so long as the Court does not, after hearing under rule 11, decide to hear the appeal.]

4. One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all :-

Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceed on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the Appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be. Stay of Proceedings and of Execution

5. Stay by Appellate Court :-

(1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

1[Explanation.-An order by the Appellate Court for the stay of execution of the decree shall be effective from the date of the communication of such order to the Court of first instance, but an affidavit sworn by the appellant, based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the Appellate Court shall, pending the receipt from the Appellate Court of the order for the stay of execution or any order to the contrary, be acted upon by the Court of first instance.]

(2) Stay by Court which passed the decree.-Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied-

(a) that substantial loss may result to the party applying for stay or execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) ²[Subject to the provision of sub-rule (3)], the Court may make in ex parte order for stay of execution pending the hearing of the application.

3 [(5) Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in sub-rule (3) of rule 1, the Court shall not make an order staying the execution of the decree.]

1. Ins. by Act 104 of 1976, Sec. 87 (w.e.f. 1st February, 1977).

2. Subs. by Act 104 of 1976, for the words "notwithstanding anything contained in sub-rule (3)" (w.e.f. 1st February, 1977).

3. Ins. by C.P.C. (Amendment) Act 104 of 1976.

6. Security in case of order for execution of decree appealed from :-

(1) Where an order is made for the execution of a decree from which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be taken for the restitution of any property which may be or has been taken in execution of the decree or for the payment of the value of such property and for the due performance of the decree or order of the Appellate Court, or the Appellate Court may for like cause direct the Court which passed the decree to take such security.

(2) Where an order has been made for the sale of immovable

property in execution of a decree, and an appeal is pending from such decree, the sale shall, on the application of the judgment-debtor to the Court which made the order, be stayed on such terms as to giving security or otherwise as the Court thinks fit until the appeal is disposed of.

7. No security to be required from the Government or a public officer in certain cases :-

Repeated by the A.O., 1937.]-

8. Exercise of powers in appeal from order made in execution of decree :-

The power conferred by rules 5 and 6 shall be exercisable where an appeal may be or has been preferred not from the decree but from an order made in execution of such decree.

9. Registry of memorandum of appeal :-

1 .-

(1) The Court from whose decree an appeal lies shall entertain the memorandum of appeal and shall endorse thereon the date of presentation and shall register the appeal in a book of appeal kept for that purpose.

(2) Such book shall be called the register of appeal.

1. Substituted for " 9 . [Rule-9]Registry of memorandum of appeal .- (1) Where a memorandum of appeal is admitted, the Appellate Court or the proper officer of that Court shall endorse thereon the date of presentation, and shall register the appeal in a book to be kept for the purpose. (2) Register of appeals.-Such books shall be called the Register of Appeals. ", vide " Order-41 Appeals from Original Decrees" Dt.December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

10. Appellate Court may require appellant to furnish security for costs :-

The Appellate Court may, in its discretion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security for the costs of the appeal or the original suit, or of both: Where appellant resides out of India.-Provided that the Court shall demand such security in all cases in which the appellant is residing out of ¹[India] and is not possessed of any sufficient immovable

property within ¹ [India] other than the property (if any) to which the appeal relates.

(2) Where such security is not furnished within such time as the Court orders, the Court shall reject the appeal.

1. Subs. by Act 2 of 1951, Sec. 3, for "the States"

11. Power to dismiss appeal without sending notice to Lower Court :-

¹(1) The Appellate Court after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day may dismiss the appeal.

(2) If on the day fixed or any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

(3) The dismissal of an appeal under this rule shall be notified to the Court from whose decree the appeal is preferred.

² [(4) Where an Appellate Court, not being the High Court, dismisses an appeal under sub-rule (1), it shall deliver a judgment recording in brief its grounds for doing so, and a decree shall be drawn up in accordance with the judgment.]

1. Substituted for " (1) The Appellate Court, after sending for the records if it thinks fit so to do, and after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day, may dismiss the appeal, without sending notice to the Court from whose decree the appeal is preferred and without serving notice on the respondent or his pleader. ", vide " Order-41 Appeals from Original Decrees" Dt. December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

2. Ins. by Act 104 of 1976, Sec. 87 (w.e.f. 1st February, 1977).

11A. Time within which hearing under rule 11 should be concluded :-

Every appeal shall be heard under rule 11 as expeditiously as possible and endeavour shall be made to conclude such hearing within sixty days from the date on which the memorandum of appeal is filed.] the disposal of appeals. The new rule 11-A in Order XLI fulfils this intention.

12. Day of hearing appeal :-

(1) Unless the Appellate Court dismisses the appeal under rule II, it shall fix a day for hearing the appeal.

1 (2) Such day shall be fixed with reference to the current business of the Court.

1. Substituted for " (2) Such day shall be fixed with reference to the current business of the Court, the place of residence of the respondent, and the time necessary for the service of the notice of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day. ", vide " Order-41 Appeals from Original Decrees" Dt.December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

13. Appellate Court to give notice to Court whose decree appealed from :-

****1 *]**

1. Omitted for "- (1) Where the appeal is not dismissed under rule 11, the Appellate Court shall send notice of the appeal to the Court from whose decree the appeal is preferred. (2) Transmission of papers to Appellate Court.-Where the appeal is from the decree of a court, the records of which are deposited in the Appellate Court, the Court receiving such notice shall send with all practicable despatch all material papers in the suit, or such papers as may be specially called for by the Appellate Court. (3) Copies of exhibits in Court whose decree appealed from.-Either party may apply in writing to the Court from whose, decree the appeal is preferred, specifying any of the papers in such Court of which he requires copies to be made, and copies of such papers shall be made at the expense of, and given to, the applicant. ", vide " Order-41 Appeals from Original Decrees" Dt.December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

14. Publication and service of notice of day for hearing appeal :-

(1) Notice of the day fixed under rule 12 shall be affixed in the Appellate Court house, and alike notice shall be sent by the Appellate Court to the Court from whose decree the appeal is preferred, and shall be served on the respondent or on his pleader in the Appellate Court in the manner provided for the service on a defendant of a summons to appear and answer; and all the

provisions applicable to such summons, and to proceedings with reference to the service thereof, shall apply to the service of such notice.

(2) Appellate Court may itself cause notice to be served.-Instead of sending the notice to the Court from whose decree the appeal is preferred, the Appellate Court may itself cause the notice to be served on the respondent or his pleader under the provision above referred to.

1 [(3) The notice to be served on the respondent shall be accompanied by a copy of the memorandum of appeal.

(4) Notwithstanding anything to the contrary contained in sub-rule (1), it shall not be necessary to serve notice of any proceeding incidental to an appeal on any respondent other than a person impleaded (or the first time in the Appellate Court, unless he has appeared and filed an address for the service in the Court of first instance or has appeared in the appeal. ..

(5) Nothing in sub-rule (4) shall bar the respondent referred to in the appeal from defending it.]

1. Ins. by Act 104 of 1976, Sec. 87 (w.e.f. 1st February, 1977)

15. Contents of notice :-

****1 ***]

1. Omitted for "-The notice to the respondent shall declare that, if he does not appear in the Appellate Court on the day so fixed, the appeal will be heard ex parte.", vide " Order-41 Appeals from Original Decrees" Dt.December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

16. Right to begin :-

(1) On the day fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal.

(2) The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such cases the appellant shall be entitled to reply.

17. Dismissal of appeal for appellants default :-

(1) Where on the day fixed, or any other day to which the hearing

may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

1 [Explanation.-Nothing in this sub-rule shall be construed as empowering the Court to dismiss the appeal on the merits.]

(2) Hearing appeal ex parte.-Where the appellant appears and the respondent does not appear, the appeal shall be heard ex parte.

1. Ins. by Act, 104 of 1976, Sec. 87 (w.e.f. 1st February, 1977).

18. Dismissal of appeal where notice not served in consequence of appellants failure to deposit costs :-

****1 ***]

1. Omitted for "Where on the day fixed, or on any other day to which the hearing may be adjourned, it is found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit, within the period fixed, the sum required to defray the cost of serving the notice, 1 [or, if the notice is returned unserved, and it is found that the notice to the respondent has not been issued in consequence of the failure of the appellant to deposit, within any subsequent period fixed, the sum required to defray the cost of any further attempt to serve the notice,] the Court may make an order that the appeal be dismissed: Provided that no such order shall be made although the notice has not been served upon the respondent, if on any such day respondent appears when the appeal is called on for hearing. High Court Amendment Bombay.-The following new rule 18-A shall be inserted after the existing rule 18 of Order XLI as follows : ", vide " Order-41 Appeals from Original Decrees" Dt.December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

18A. Dismissal for want of prosecution :-

". .-Where after the admission of an appeal the rule or the special directions of the Court require the appellant to take any steps in the prosecution of the appeal before a fixed date, and where after due notice intimating the steps to be taken the appellant fails to take such steps within the time prescribed by the rules or allowed by the Court. The Court may direct the appeal to be dismissed for want of prosecution or may pass such other order as it thinks fit." **1**

1. Vide Notifn. No. P. 0102/77 (w.e.f. 1st October, 1983).

19. Re-admission of appeal dismissed for default :-

Where an appeal is dismissed under rule II, sub-rule (2), or rule 17

¹[***], the appellant may apply to the Appellate Court for the re-admission of the appeal; and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit. High Court Amendment Bombay.-Rule 19 of Order XLI shall be substituted as under : "19. Re-admission of appeal dismissed for default.-Where an appeal is dismissed under rule II, sub-rule (2) or rule 15-A or rule 17 or rule 18, the appellant may apply to the Appellate Court for the re-admission of the appeal and where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or taking the necessary steps in the prosecution of the appeal or from depositing the sum so required the Court shall re-admit the appeal on such terms as to costs or otherwise as it think fit." ²

1. Omitted for "or rule 18", vide " Order-41 Appeals from Original Decrees" Dt.December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59,dated December 30, 1999

2. Vide Notifn. No. p. 0102/'7 (w.e.f. 1st October, 1983).

20. Power to adjourn hearing and direct persons appearing interested to be made respondents :-

1

[(1)] Where it appears to the Court at the hearing that any person who was a party to the suit in the Court from whose decree that appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court and direct that such person be made a respondent.

2 [(2) No respondent shall be added under this rule, after the expiry of the period of limitation for appeal, unless the Court, for reasons to be recorded, allows that to be done, on such terms as to costs as it thinks fit.]

1. Renumbered by Act 104 of 1976, Sec. 87 (w.e.f. 1st February, 1977).

2. Ins. by C.P.C. (Amendment) Act 104 of 1976. (w.e.f. 1st February, 1977).

21. Re-hearing on application of respondent against whom ex parte decree made :-

Where an appeal is heard ex parte and judgment is pronounced against the respondent, they may apply to the Appellate Court to re-hear the appeal; and if he satisfies the Court that the notice was not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.

22. Upon hearing, respondent may object to decree as if he has preferred separate appeal :-

(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree ¹[but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross-objection] to the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

²[Explanation.-A respondent aggrieved by a finding of the Court in the judgment on which the decree appealed against is based may, under this rule file cross-objection in respect of the decree in so far as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the decree is, wholly or in part, in favour of that respondent.]

(2) Form of objection and provisions applicable thereto.-Such cross-objection shall be in the form of a memorandum, and the provisions of rule I, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

(3) [****3 ***]

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

(5) The provisions relating to the appeal by indigent persons shall, so far as they can be made applicable, apply to an objection under this rule.

1. Subs. by by C.P.C. (Amendment) Act 104 of 1976., for the words "on any of the grounds decided against him In the Court below, but take any cross-objection" (w.e.f. 1st February, 1977).
2. Ins. by by C.P.C. (Amendment) Act 104 of 1976. (w.e.f. 1st February, 1977).
3. Omitted for "Unless the respondent files with the objection a written acknowledgment from the party who may be affected by such objection or his pleader of having received a copy thereof, the Appellate Court shall issue a copy to be served, as soon as may be after the filing of the objection, on such party or his pleader at the expense of the respondent.", vide " Order-41 Appeals from Original Decrees" Dt.December 30, 1999 Published in Received the assent of the President on the 30th December, 1999 and was published in the Gazette of India, (Extra.), Part II sec.1, No. 59, dated December 30, 1999

23. Remand of case by Appellate Court :-

Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

23A. Remand in other cases :-

Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a re-trial is considered necessary, the Appellate Court shall have the same powers as it has under rule 23.]

24. Where evidence on record sufficient Appellate Court may determine case finally :-

Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after re-settling the issue, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

25. Where Appellate Court may frame issues and after them

for trial to Court whose decree appealed from :-

Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issue, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required; and such Court shall proceed to try such issue, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor ¹ [within such time as may be fixed by the Appellate Court or extended by it from time to time.]

1. Ins. by Act 104 of 1976, Sec. 87 (w.e.f. 1st February. 1977).

26. Findings and evidence to be put on record-Objections to finding :-

(1) Such evidence and findings shall form part of the record in the suit; and either party may within a time to be fixed by the Appellate Court present a memorandum of objections of any finding.

(2) Determination of appeal.-After the expiration of the period so fixed for presenting such memorandum the Appellate Court shall proceed to determine the appeal.

26A. Order of remand to mention date of next hearing :-

Where the Appellate Court remands case under rule 23 or rule 23-A, or frames issues and refers them for trial under rule 25, it shall fix a date for the appearance of the parties before the Court from whose decree the appeal was preferred for the purpose of 'receiving the directions of the Court as to further proceedings in the suit.]

27. Production of additional evidence in Appellate Court :-

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

¹ [(aa). the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within, his knowledge or could not, after the

exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

1. Ins. by Act 104 of 1976, Sec. 87 (w.e.f. 1st February, 1977).

28. Mode of taking additional evidence :-

Wherever additional evidence is allowed to be produced, the Appellate Court may either take such evidence to direct the Court from whose decree the appeal is preferred, or any other subordinate court, to take such evidence and to send it when taken to the Appellate Court.

29. Points to be defined and recorded :-

Where additional evidence is directed or allowed to be taken, the Appellate Court shall specify the points to which the evidence is to be confined, and record on its proceedings the points so specified.

30. Judgment when and where pronounced :-

1 [(1)] The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the Court from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment in open Court either at once or on some future day of which notice shall be given to the parties or their pleaders.

2 [(2) Where a written judgment is to be pronounced, it shall be sufficient if the points for determination, the decision thereon and the final order passed in the appeal are read out and it shall not be necessary for the Court to read out the whole judgment, but a copy of the whole judgment shall be made available for the perusal of the parties, or their pleaders immediately after the judgment is pronounced.]

1. Re-numbered by Act 104 of 1976, Sec. 87 (w.e.f. 1st February 1977)

2. Ins. by Act 104 of 1976, Sec. 87. (w.e.f. 1st February, 1977)

31. Contents, date and signature of judgment :-

The judgment of the Appellate Court shall be in writing and shall state-

(a) the points for determination;

(b) the decision thereon;

(c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled ;

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein. High Court Amendment Bombay.-Add a colon for full stop at the end of rule 31 of Order XLI and the following proviso shall be added as follows : "Provided that where the judgment is pronounced by dictation to shorthand writer in open Court the transcript of the judgment so pronounced shall, after making such corrections therein as may be necessary, be signed by the Judge or the Judges concerned and shall bear the date of its pronouncement." ¹

1. Vide Notifn. P. 0102/77 (w.e.f. 1st October, 1983).

32. What judgment may direct :-

The judgment may be for confirming, varying, reversing the decree from which the appeal is preferred, or, if the parties to the appeal agree, as to the form which the decree in appeal shall take, or as to the order to be made in appeal, the Appellate Court may pass a decree or make an order accordingly.

33. Power of Court of Appeal :-

The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or-make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties, may not have filed any appeal or objection ¹[and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees] : ² [Provided that the Appellate Court shall not make any order under Section 35A , in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.]

1. Ins. by Act 104 of 1976, Sec. 87 (w.e.f. 1st February, 1977).
2. Ins. by Act 9 of 1922, Sec. 4, which under Sec. 1 (2) thereof, may be brought into force in any State by the State Government on any specified date. The Act has been brought into force in Bombay, Bengal, U. P., Punjab, Bihar, Madhya Pradesh, Assam, Orissa and Madras.

34. Dissent to be recorded :-

Where the appeal is heard by more Judges than one any Judge dissenting from the judgment of the Court shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reasons for the same.

35. Date and contents of decree :-

(1) The decree of the Appellate Court shall bear date the day on which the judgment was pronounced.

(2) The decree shall contain the number of the appeal, the names and descriptions of the appellant and respondent, a clear specification of the relief granted or other adjudication made.

High Court Amendment Bombay.-The following sub-rule (2) of rule 35 of Order XLI shall be substituted as follows : "(2) The decree shall contain the number of the appeal, the names and descriptions of the appellant and the respondent, their registered addresses, and a clear specification of the relief granted or the adjudication made." ¹ (3) The decree shall also state the amount of costs incurred in the appeal, and by whom, or out of what property, and in what proportions such costs and costs in the suit are to be paid. (4) The decree shall be signed and dated by the Judge or Judges who passed it. Judge dissenting from judgment need not sign decree.-Provided that where there are more Judges than one and there is a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree.

1. Vide Notifn. No. P. 0102/77 (w.e.f. 1st October 1983)

36. Copies of judgment and decree to be furnished to parties :-

Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the Appellate Court and at their expense.

37. Certified copy of decree to be sent to Court whose decree appealed from :-

A copy of the judgment and of the decree, certified by the Appellate Court or such officer as it appoints in this behalf, shall be

sent to the Court which passed the decree appealed from and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the register of civil suits. High Court Amendment Bombay.-The following new rule 38 after rule 37 of Order XLI shall be added as under:

38. Registered address to hold good during appellate proceedings :-

". .-

(1) The registered address filed under Order VI, rule 14-A shall hold good during all appellate proceedings arising out of the original suit or petition, subject to any alteration under sub-rule (3) hereof.

(2) Every memorandum of appeal shall state the registered address given by the opposite parties in the Court below, and notices and processes shall issue from the Appellate Court to such addresses.

(3) Sub-rule, (2) and (4) (i) and (ii) of rule 14-A of Order VI shall apply so far as may be, to appellate proceedings." ¹

1. Ins. by Act 104 of 1976, Sec. 87 (w.e.f. 1st February, 1977).