

## **Order-43 Appeals from Orders**

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## **Order-43 Appeals from Orders**

### Order-43 Appeals from Orders

#### **1. Appeals from Orders :-**

An appeal shall lie from the following orders under the provisions of Section 104 , namely :

(a) An order under rule 10 of Order VII returning a plaint to be presented to the proper Court <sup>1</sup>[except where the procedure specified in rule 10-A of Order VII has been followed] ;

(b) <sup>2</sup>[ \* \* \* ]

(c) an order under rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;

(d) an order under rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed ex parte,

(e) <sup>3</sup>[\* \* \* ]

(f) an order under rule 21 of Order XI;

(g) <sup>4</sup>[\* \* \* ]

(h) <sup>5</sup>[\* \* \* ]

(i) an order under rule 34 of Order XXI on an objection to the draft of a document or of endorsement;

(j) an order under rule 72 of rule 92 of Order XXI setting aside or refusing to set aside a sale;

**6**[(ja) an order rejecting an application made under sub-rule (1) of rule 106 of Order XXI, provided that an order on the original application, that is to say, the application referred to in sub-rule (1) of rule 105 of that Order is appealable.

(k) an order under rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit

;

(l) an order under rule 10 of Order XXII giving or refusing to give leave;

(m) **7**[\* \* \*]

(n) an order under rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;

**8**[(na) an order under rule 5 or rule 7 of Order XXXIII rejecting an application for permission to sue as an indigent person ;]

(o) **9**[\* \* \*]

(p) order in interpleader suits under rule 3, rule 4 or rule 6 of Order XXXV;

(q) an order under rule 2, rule 3 or rule 6 of Order XXXVIII;

(r) an order under rule 1, rule 2, **10**[rule 2-A], rule 4 or rule 10 of Order XXXIX;

High Court Amendment Bombay.-The existing Cl. (r) to rule 1 of Order XLIII shall be substituted as under;

"(r) an order under rule 1, rule 2, rule 4, rule 10 or rule 11 of Order XXXIX." **11**

(s) an order under rule 1 or rule 4 of Order XL;

(t) an order of refusal under rule 19 of Order XLI to re-admit, or under rule 21 of Order XU to re-hear, an appeal;

(u) an order under rule 23 **3**[or rule 23-A] of Order XLI remanding a case, where an appeal would lie from the decree of the Appellate Court;

(v) **13** [\* \* \*]

(w) an order under rule 4 of Order XLVII granting an application for review.

1. Ins. by by C.P.C. (Amendment) Act 104 of 1976.. Sec. 89 (w.e.f. 1st February, 1977).
2. Clause (b) omitted by by C.P.C. (Amendment) Act 104 of 1976.
3. Clause (e) omitted by Sec. 89 (w.e.f. 1st February, 1977).
4. Clause (g) omitted by Sec. 89 (w.e.f. 1st February, 1977).
5. Clause (h) omitted by Sec. 89 (w.e.f. 1st February, 1977).
6. Ins by Act 104 of 1976, Sec. 89 (w.e.f. 1st February, 1977).
7. Clause (m) omitted by Sec. 89 (w.e.f. 1st February, 1977).
8. Ins. by Sec. 89 (w.e.f. 1st February, 1977).
9. Clause (o) omitted by Sec. 89 (w.e.f. 1st February, 1977).
10. Ins. by Sec. 89 (w.e.f. 1st February, 1977).
11. Vide Notifn. No. P. 0102/77 (w.e.f. 1st October, 1983).
13. Clause (u) omitted by Act 104 of 1976, Sec. 89 (w.e.f. 1st February, 1977).

**1A. Right to challenge non-appealable orders in appeals against decrees :-**

**1**

(1) Where any order is made under this Code against a party and thereupon any judgment is pronounced against such party and a decree is drawn up, such party may, in an appeal against the decree, contend that such order should not have been made and the judgment should not have been pronounced.

(2) In an appeal against a decree passed in a suit after recording a compromise or refusing to record a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise should, or should not have been recorded.]

1. Ins. by Act 104 of 1976, Sec. 89 (w.e.f. 1st February. 1977)

**2. Procedur :-**

e.-The rules of .Order XLI shall apply, so far as may be, to appeals from orders.