

UNIT – 3

Trial Judgment and Execution

Appearance • Discovery • Issues • Judgment • Decree • Execution • Arrest • Attachment • Sale

Civil Procedure Code & Limitation Act – Expanded

Unit Overview

This expanded unit covers the entire trial process – appearance and consequences of non-appearance, discovery and inspection, framing of issues, admissions, affidavits, adjournments, abatement on death, withdrawal and compromise, judgment and decree, and the complete execution process including the three main modes: arrest & detention, attachment and sale. Practical points and key cases are included.

LEARNING OBJECTIVES

What You Will Learn

01 Appearance

Apply O.9 consequences of non-appearance

02 Discovery

Use discovery and inspection effectively

03 Issues

Frame and understand issues under O.14

04 Judgment Decree

Distinguish judgment, decree and order

05 Execution

Master s.47 and powers of executing court

06 Modes

Apply arrest, attachment and sale correctly

APPEARANCE

Appearance and Non-appearance – Order 9

Plaintiff Absent	Suit may be dismissed; fresh suit subject to limitation
Defendant Absent	Court may proceed ex-parte
Setting Aside Ex-parte Decree	On sufficient cause under O.9 R.13
Sufficient Cause	Must show that he was prevented from appearing by sufficient cause

DISCOVERY

Discovery and Inspection – Order 11

Interrogatories	Written questions to the opposite party to be answered on affidavit
Discovery of Documents	Party may be required to disclose documents relating to the matter
Inspection	Right to inspect documents disclosed
Object	Narrow the issues, avoid surprise, expedite trial

PRODUCTION

Production of Documents – Order 13

Stage	Documents to be produced at or before the settlement of issues
Impounding	Court may order any document to be impounded
Return	Documents may be returned after the suit is disposed of
Secondary Evidence	Rules of Evidence Act apply

FIRST HEARING

First Hearing and Examination – Order 10

Object	Court examines parties to ascertain the real points in controversy
Oral Examination	Court may examine parties orally
Admissions	Any admission is recorded and is binding
Consequence	Helps in framing correct issues

ISSUES

Framing of Issues – Order 14

Issues are the points of fact or law that are in dispute between the parties and that the court must decide.

Issues of Fact	Disputed questions of fact
Issues of Law	Disputed questions of law
Mixed Issues	Questions involving both fact and law
Importance	Evidence is led only on the issues framed

ADMISSION

Admissions – Order 12

Notice to Admit

Party may call upon the other to admit facts or documents

Judgment on Admissions

Court may pronounce judgment on admissions under O.12 R.6

Advantage

Saves time and cost of trial on admitted matters

AFFIDAVIT

Affidavits – Order 19

Use	Evidence may be given by affidavit in certain cases
Cross-examination	Court may order the deponent to appear for cross-examination
Contents	Affidavit should be confined to facts within the knowledge of the deponent

ADJOURNMENT

Adjournment – Order 17

Sufficient Cause	Adjournment only when sufficient cause is shown
Costs	Court may impose costs as condition for adjournment
Limit	Repeated adjournments are discouraged; 2002 amendment tightened the rules
Object	Prevent delay while ensuring fairness

ABATEMENT

Death, Marriage, Insolvency – Order 22

Death	Suit abates if right to sue does not survive; otherwise LR's can be brought on record
Time Limit	Application to bring LR's within 90 days (Limitation Act Art.120)
Marriage	Does not cause abatement
Insolvency	Official Assignee/Receiver may continue or defend the suit

WITHDRAWAL

Withdrawal and Compromise – Order 23

Withdrawal with Liberty	Court may permit withdrawal with liberty to file fresh suit
Withdrawal without Liberty	Bars a fresh suit on the same cause of action
Compromise	Agreement between parties; compromise decree is binding and executable
Recording	Compromise must be in writing and signed by parties

JUDGMENT

Judgment – Order 20

Meaning

Statement of the grounds of the decision

Contents

Must contain the points for determination, the decision thereon, and the reasons

Pronouncement

Judgment should be pronounced in open court

Time

Should be pronounced within a reasonable time after conclusion of hearing

DECREE

Decree – Meaning and Contents

Definition (s.2(2))	Formal expression of an adjudication which conclusively determines the rights of the parties
Essentials	Adjudication, conclusive determination, formal expression
Preliminary / Final	Preliminary decree decides rights; final decree completes the suit
Decree Holder / Judgment Debtor	Person in whose favour / against whom the decree is passed

EXECUTION 1

Execution – General Principles

Meaning

Process of enforcing the decree of the court

Section 47

All questions relating to execution, discharge or satisfaction of the decree shall be determined by the executing court

Executing Court

Court which passed the decree or the court to which it is transferred

Application

Decree holder files application for execution under O.21

EXECUTION 2

Modes of Execution – Overview

Arrest and Detention

Of the judgment-debtor in civil prison

Attachment

Of property of the judgment-debtor

Sale

Of the attached property

Other Modes

Delivery of property, partition, appointment of receiver, attachment of salary, etc.

ARREST

Arrest and Detention in Civil Prison

Conditions	Judgment-debtor must have means to pay and is refusing or neglecting to pay
Protection	Women, and certain other persons, enjoy protection from arrest
Subsistence Allowance	Decree holder must deposit subsistence allowance
Release	On payment of the decretal amount or on other grounds

ATTACHMENT SALE

Attachment and Sale of Property

Attachment

Court attaches the property so that it cannot be transferred

Exempt Property

Certain properties are exempt from attachment (tools of artisans, necessary clothing, etc.)

Sale

Attached property is sold by public auction

Setting Aside Sale

On grounds of material irregularity or fraud in publishing or conducting the sale

PRACTICAL

Practical Tips – Trial & Execution

Ex-parte	Always apply promptly under O.9 R.13 with sufficient cause
Issues	Ensure all material points are framed as issues
Execution	Use s.47 to raise all execution-related questions before the executing court
Attachment	Check exemption provisions before attaching property
Compromise	Record it carefully; it becomes executable as a decree

SUMMARY POINTS

Must-Remember Points

- Non-appearance can lead to dismissal or ex-parte decree; both can be set aside on sufficient cause.
- Discovery and framing of issues are crucial for a focused trial.
- Judgment contains reasons; decree is the formal operative part.
- Section 47 gives the executing court wide power to decide all execution questions.
- Main modes of execution are arrest & detention, attachment and sale.
- O.22 protects against abatement; O.23 regulates withdrawal and compromise.
- Prompt action and careful drafting are essential at every stage.