

THE CODE OF CIVIL PROCEDURE, 1908

(ACT NO. V OF 1908).

[21st March, 1908]

¹ An Act to consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature.

WHEREAS it is expedient to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature; It is hereby enacted as follows:-

PRELIMINARY

Short title, commencement and extent

- 1.(1) This Act may be cited as the [Code of Civil Procedure](#), 1908.
- (2) It shall come into force on the first day of January, 1909.
- (3) It extends to the whole of Bangladesh.

Definitions

2. In this Act, unless there is anything repugnant in the subject or context,-
 - (1) "Code" includes rules:
 - (2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within ²[* * *] section 144, but shall not include-
 - (a) any adjudication from which an appeal lies as an appeal from an order, or
 - (b) any order of dismissal for default.

Explanation.-A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final:

(3) "decree-holder" means any person in whose favour a decree has been passed or an order capable of execution has been made:

(4) "district" means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a "District Court"), and includes the local limits of the ordinary original civil jurisdiction of the High Court Division:

(5) "foreign Court" means a Court situate beyond the limits of Bangladesh which has no authority in Bangladesh and is not established or continued by the Government:

(6) "foreign judgment" means the judgment of a foreign Court:

(7) "Government Pleader" includes any officer appointed by the Government to perform all or any of the functions expressly imposed by this Code on the Government Pleader and also any pleader acting under the directions of the Government Pleader:

(8) "Judge" means the presiding officer of a Civil Court:

(9) "Judgment" means the statement given by the Judge of the grounds of a decree or order:

(10) "Judgment-debtor" means any person against whom a decree has been passed or an order capable of execution has been made:

(11) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued:

(12) "mesne profits" of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits but shall not include profits due to improvements made by the person in wrongful possession:

(13) "movable property" includes growing crops:

(14) "order" means the formal expression of any decision of a Civil Court which is not a decree:

(15) "pleader" means any person entitled to appear and plead for another in Court ³[* * *]:

(16) "prescribed" means prescribed by rules:

(17) "public officer" means a person falling under any of the following descriptions, namely: -

(a) every Judge;

(b) every member of the Civil Service of ⁴[The Republic];

(c) every commissioned or gazetted officer in the military, naval or air forces of Bangladesh while in the service of the ⁵[Republic];

(d) every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order, in the Court, and every person especially authorised by a Court of Justice to perform any of such duties;

(e) every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

(f) every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

(g) every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue-process, or to investigate, or to report on, any matter affecting the pecuniary interest of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government; and

(h) every officer in the service or pay of the ⁶[Republic], or remunerated by fees or commission for the performance of any public duty:

(18) "rules" means rules and forms contained in the First Schedule or made under section 122 or section 125:

(19) "share in a corporation" shall be deemed to include stock, debenture stock, debentures or bonds: and

(20) "signed", save in the case of a judgment or decree, includes stamped.

Subordination of Courts

3. For the purposes of this Code, the District Court is subordinate to the High Court Division, and every Civil Court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court Division and District Court.

Savings

4.(1) In the absence of any specific provision to the contrary,

nothing in this Code shall be deemed to limit or otherwise affect any special ⁷[* * *] law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.

(2) In particular and without prejudice to the generality of the proposition contained in sub-section (1), nothing in this Code shall be deemed to limit or otherwise affect any remedy which a landholder or landlord may have under any law for the time being in force for the recovery of rent of agricultural land from the produce of such land.

**Application of
the Code of
Revenue Courts**

5.(1) Where any Revenue Courts are governed by the provisions of this Code in those matters of procedure upon which any special enactment applicable to them is silent, the Government may, by notification in the official Gazette, declare that any portions of those provisions which are not expressly made applicable by this Code shall not apply to those Courts, or shall only apply to them with such notifications as the Government may prescribe.

(2) "Revenue Court" in sub-section (1) means a Court having jurisdiction under any ⁸[* * *] law to entertain suits or other proceedings relating to the rent, revenue or profits of land used for agricultural purposes, but does not include a Civil Court having original jurisdiction under this Code to try such suits or proceedings as being suits or proceedings of a civil nature.

**Pecuniary
Jurisdiction**

6. Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any Court jurisdiction over suits the amount or value of the subject-matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction.

**Small Cause
Courts**

7. The following provisions shall not extend to Courts constituted under the ⁹[* * *] [Small Cause Courts Act](#), 1887, or to Courts exercising the jurisdiction of a Court of Small Causes under the said Act, that is to say,-

(a) so much of the body of the Code as relates to-

(i) suits excepted from the cognizance of a Court of Small Causes;

(ii) the execution of decrees in such suits;

(iii) the execution of decrees against immovable property; and

(b) the following sections, that is to say,-
section 9,
sections 91 and 92,
sections 94 and 95 so far as they authorise or relate to-
(i) orders for the attachment of immovable
property,
(ii) injunctions,
(iii) the appointment of a receiver of immovable property, or
(iv) the interlocutory orders referred to in clause (e) of section
94; and
sections 96 to 112 and 115.

[Omitted]

8. [Omitted by the Adaptation of Central Acts and Ordinance
Order, 1949].

PART I

SUITS IN GENERAL

Jurisdiction of the Courts and Res Judicata

**Courts to try all
civil suits
unless barred**

9. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation.-A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Stay of suit

10. No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other

Court in Bangladesh having jurisdiction to grant the relief claimed, or in any Court beyond the limits of Bangladesh established or continued by the Government and having like jurisdiction, or before the Supreme Court.

Explanation.-The pendency of a suit in a foreign Court does not preclude the Court in Bangladesh from trying a suit founded on the same cause of action.

Res Judicata

11. No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.-The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II.-For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.-The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.-Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.-Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI.-Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Bar to further suit

12. Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action

in any Court to which this Code applies.

When foreign judgment not conclusive

13. A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except-

(a) where it has not been pronounced by a Court of competent jurisdiction;

(b) where it has not been given on the merits of the case;

(c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of Bangladesh in cases in which such law is applicable;

(d) where the proceedings in which the judgment was obtained are opposed to natural justice;

(e) where it has been obtained by fraud;

(f) where it sustains a claim founded on a breach of any law in force in Bangladesh.

Presumption as to foreign judgments

14. The Court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction.

Place of Suing

Court in which suits to be instituted

15. Every suit shall be instituted in the Court of the lowest grade competent to try it.

Suits to be instituted where subject-matter situate

16. Subject to the pecuniary or other limitations prescribed by any law, suits-

(a) for the recovery of immovable property with or without rent or

profits,

(b) for the partition of immovable property,

(c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,

(d) for the determination of any other right to or interest in immovable property,

(e) for compensation for wrong to immovable property,

(f) for the recovery of movable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate, or, in the case of suits referred to in clause (c), at the place where the cause of action has wholly or partly arisen:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or, in the case of suits referred to in clause (c), at the place where the cause of action has wholly or partly arisen, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation.-In this section "property" means property situate in Bangladesh.

Suits for immovable property situate within jurisdiction of different Courts

17. Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate:

Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court

Place of institution of suit where local limits of jurisdiction of Courts are

18.(1) Where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts any immovable property is situate, any one of those Courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon proceed to entertain and dispose of any

uncertain

suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the local limits of its jurisdiction:

Provided that the suit is one with respect to which the Court is competent as regards the nature and value of the suit to exercise jurisdiction.

(2) Where a statement has not been recorded under sub-section (1), and an objection is taken before an appellate or revisional Court that a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the appellate or revisional Court shall not allow the objection unless in its opinion there was, at the time of the institution of the suit, no reasonable ground for uncertainty as to the Court having jurisdiction with respect thereto and there has been a consequent failure of justice.

Suits for compensation for wrongs to person or movables

19. Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.

Illustrations

(a) A, residing in ¹⁰[Chittagong] beats B in Dhaka.

B may sue A either in Dhaka or in ¹¹[Chittagong].

(b) A, residing in ¹²[Chittagong] publishes in Dhaka statements defamatory of B. B may sue A either in Dhaka, or in ¹³[Chittagong].

Others suits to be instituted where defendants reside or cause of action arises

20. Subject to the limitations aforesaid, every suit shall be instituted in –a Court within the local limits of whose jurisdiction.

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually or voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually or voluntarily resides, or carries on business, or personally works for gain,

provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

Explanation I.-Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.

Explanation II.-A Corporation shall be deemed to carry on business at its sole or principal office in Bangladesh or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Illustrations

(a) A is a tradesman in Dhaka. B carries on business in ¹⁴[Chittagong]. B, by his agent in Dhaka, buys goods of A and requests A to deliver them to the ¹⁵[Bangladesh Biman]. A delivers the goods accordingly in Dhaka. A may sue B for the price of the goods either in Dhaka, where the cause of action has arisen, or in ¹⁶[Chittagong], where B carries on business.

(b) A resides at ¹⁷[Cox's Bazar], B at Dhaka and C at ¹⁸[Chittagong]. A, B and C being together at ¹⁹[Khulna], B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C ²⁰[at Khulna], where the cause of action arose. He may also sue them at Dhaka, where B resides, or at ²¹[Chittagong], where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the Court.

Objections to jurisdiction

21. No objection as to the place of suing shall be allowed by any appellate or revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

Power to transfer suits which may be instituted in more than one Court

22. Where a suit may be instituted in any one of two or more Courts and is instituted in one of such Courts, any defendant, after notice to the other parties, may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to have the suit transferred to another Court, and the Court to

which such application is made, after considering the objections of the other parties (if any), shall determine in which of the several Courts having jurisdiction the suit shall proceed.

To what Court application lies

23.(1) Where the several Courts having jurisdiction are subordinate to the same Appellate Court, an application under section 22 shall be made to the Appellate Court.

(2) Where such Courts are subordinate to different Appellate Courts ²²[* * *], the application shall be made to the ²³[* * *] High Court Division.

(3) [Omitted by section 3 and 2nd Schedule of the [Bangladesh Laws \(Revision And Declaration\) Act, 1973](#) (Act No. VIII of 1973).]

General power of transfer and withdrawal

24.(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court Division or the District Court may at any stage-

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which thereafter tries such suit may, subject to any special directions in the case of any order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section, Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court.

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of

such suit, be deemed to be a Court of Small Causes.

Appearance of parties on transfer of suit, etc

²⁴[24A.(1) Where any suit is transferred under section 22, or any suit, appeal or other proceeding is transferred or withdrawn under sub-section (1) of section 24 on the application of a party, the Court ordering the transfer or withdrawal shall fix a date for the appearance of the parties before itself, if the suit, appeal or other proceeding is to be tried or disposed of by itself, or before the Court to which the case is so transferred.

(2) Where any suit, appeal or other proceeding is transferred from one Court to another, otherwise than on the application of a party, the parties thereto shall appear before the Court from which the suit, appeal or other proceedings is to be transferred, on the day already fixed for their appearance before that Court, and such Court shall then communicate the order of transfer to such parties and direct them to appear before the Court to which the suit, appeal or other proceeding is to be transferred, either on the same day, or on such earliest day as may be reasonable having regard to the distance at which the other Court is located.]

[Omitted]

25. [Omitted by the Schedule of the Central Laws (Statute Reform) Ordinance, 1960 (Ordinance No. XXI of 1960).]

Institution of Suits

Institution of suits

26. Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed

Summons and Discovery

Summons to defendants

27. Where a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and may be served in manner prescribed.

[Omitted]

28. [Omitted by the [Bangladesh Laws \(Revision And Declaration\)](#)]

[Act](#), 1973 (Act No. VIII of 1973), section 3 and 2nd Schedule.]

**Service of
foreign
summonses**

29. Summonses and other processes issued by any Civil or Revenue Court situate outside Bangladesh may be sent to the Courts in Bangladesh and served as if they were summonses issued by such Courts:

Provided that the ²⁵[Government] has by notification in the official Gazette declared the provisions of this section to apply to such Courts.

**Power to order
discovery and
the like**

30. Subject to such conditions and limitations as may be prescribed, the Court may, at any time, either of its own motion or on the application of any party,-

(a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;

(b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;

(c) order any fact to be proved by affidavit.

**Summons to
witness**

31. The provisions in sections 27, 28 and 29 shall apply to summonses to give evidence or to produce documents or other material objects.

**Penalty for
default**

32. The Court may compel the attendance of any person to whom a summons has been issued under section 30 and for that purpose may-

(a) issue a warrant for his arrest;

(b) attach and sell his property;

(c) impose a fine upon him not exceeding five hundred Taka;

(d) order him to furnish security for his appearance and in default commit him to the civil prison.

Judgment and Decree.

**Judgment and
decree**

33. The Court, after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow.

Interest

Interest

34.(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie.

Costs

Costs

35.(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the Court has no jurisdiction to try the suit shall be no bar to the exercise of such powers.

(2) Where the Court directs that any costs shall not follow the event, the Court shall state its reasons in writing.

(3) The Court may give interest on costs at any rate not exceeding six per cent. per annum, and such interest shall be added to the costs and shall be recoverable as such.

Compensatory costs in respect of false or vexatious claims or defences

²⁶[35A.(1) If in any suit or other proceeding, including an execution proceeding, not being an appeal, any party objects to the claim or defence on the ground that the claim or defence, or any part of it, is false or vexatious, and if, thereafter, such claim or defence is disallowed, in whole or in part, the Court shall, after recording its reasons for holding such claim or defence to be false or vexatious, make an order for the payment to the objector, such cost by way of compensation which may, without exceeding the limit of the Court's pecuniary jurisdiction, extend upto twenty thousand taka.

(2) No person against whom an order has been made under this section shall, by reason thereof, be exempted from any criminal liability in respect of any claim or defence made by him.

(3) The amount of any cost awarded under this section in respect of a false or vexatious claim or defence shall be taken into account in any subsequent suit for damages or compensation in respect of such claim or defence.]

Cost for delay in making applications, etc, in respect of interlocutory matters

²⁷[35B.(1) If at any stage of a suit or proceeding, an application or written objection is not filed within the time fixed by the Court, such application or written objection, as the case may be, shall not be admitted for hearing without payment by that party of such cost to the other party not exceeding two thousand taka.

(2) If after filing of written statement, any party to the suit makes an application in respect of any matter which, in the opinion of the Court, could and ought to have been made earlier, and is likely to delay the main proceeding of the suit, the Court may admit, but shall not hear and dispose of the application, without payment by that party of such cost to the other party not exceeding three thousand taka, as it shall determine and direct, and upon failure to pay the cost, the application shall stand rejected.]

PART II

EXECUTION

General

Application to orders

36. The provisions of this Code relating to the execution of decrees shall, so far as they are applicable, be deemed to apply to the execution of orders.

Definition of Court which passed a decree

37. The expression "Court which passed a decree," or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include,-

(a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and

(b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

Courts by which decrees may be executed

Court by which decree may be executed

38. A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.

Transfer of decree

39.(1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court,-

(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or

(b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or

(c) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it, or

(d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

(2) The Court which passed a decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.

[Omitted]

40. [Omitted by section 3 and 2nd Schedule of the [Bangladesh Laws \(Revision And Declaration\) Act, 1973](#) (Act No. VIII of 1973).]