
**PROVISIONS OF APPEAL AS APPEAL IS A CREATURE OF STATUTE AND RIGHT
TO APPEAL IS NEITHER AN INHERENT NOR NATURAL RIGHT**

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An appeal is a process through cases are reviewed and also performs two basic function like it ensure justice under the law as a process of error correction and other is that it also interpret and clarify law as it is necessary to do so. Right to appeal is a Statutory¹, Substantive right² and vested in party to suit. In *Veeraya v. Subbia Choudhry* AIR 1957 SC 540 it has been held that Right to appeal get vested on the date suit is instituted. A new right to appeal gets created can't be availed by the parties to a proceeding which commenced earlier during the creation of new rights. Appeal is provided under section 96 of the CPC, also if we combine section 96 with section 2(2)³, 2(9)⁴, we observe that First Appeal is maintainable in certain adjudications which are when an original decree is passed ex-parte, it is against a decree, when there any question which has to be determine within Section 144, when a plaint is rejected under Order 7 Rule 11 C.P.C, against final decree and against preliminary decree also it can't be maintainable in certain adjudication such as when we have to determine any question within Section 47⁵, when any suit is dismissed in default and also no appeal is allowed except on a question of law, when a decree passed by Court of Small Causes, if the amount of the subject-matter does not exceed Rs. 10000. In *Ganga Bai v. Vijay Kumar*, AIR 1974 SC 1126 it has been held that it is not necessary for suit to be provided by any statute as because it is inherent and common law right. Right to appeal comes into effect just after judgement is pronounced against party and also it can be relinquished by party through a valid agreement within the scope of law. The court where appeal is filed, can

¹ Statutory right means must be conferred by statute unless it provides there won't be any right to appeal. While right to institute a suit is not conferred by law. The right is inherent. But right to appeal has to be conferred by appeal statute.

² An appeal is appeal substantive right. Right to appeal can't be taken retrospectively because general rule of specific interpretation. Substantive law operates prospectively unless an express statute provides so.

³ **2 (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 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.

⁴ **2 (9)** "Judgment" means the statement given by the Judge on the grounds of a decree or order."

⁵ prior to the amendment of 1976-77 against such determination regular first appeal was maintainable as it was included in the definition of decree under Section 2(2)

prosecute any person having relation with that subject matter who has not been prosecuted earlier and can be taken as respondent.

For the purpose of appeal, final judgement and interlocutory decree are the two categories which can be created from orders and judgement of trial court. In final judgement, litigation comes to an end and judgement is pronounced. In course trial, all the subsidiary questions are taken into account and settle the same but it not covers the important issues and these can be termed as interlocutory decrees.

Appeal lies to superior court which may not be high court from decree and appealable orders and also heard by different judge. It abates if LRs of the deceased party not bought on record. It lies on question of fact, law or both. If we compare from reference then ground of appeals are wider than grounds of reference. Provisions related to appeals can be divided into general provisions (section 107,108) and specific provisions (section 96-112 except 107 and 108). If any contradiction arises between general and specific conditions then specific condition overrides over general conditions. General provisions related to appeal means these provisions shall applicable in each and every case of appeal. Section 107 states, subject to such conditions and limitations as may be prescribed, an appellate court has the power:

- a) To determine a case finally;
- b) To remand a case (higher court may remand a case to lower court so that lower court will take a certain action);
- c) To frame issues and refer them for trial.
- d) To take additional evidence or to require such evidence to be taken.

The appellate court also has the same power and duties as civil procedure code has conferred and imposed on courts of original jurisdiction. Thus, an appellate court has the same power to add, transpose and substitute parties as a court of original jurisdiction. It also has the power to pass all such interlocutory orders as are necessary in interest of the justice. Such an order grants an interim injunction. For example, other party is using the property which has been claimed and court may grant interim or stay order for using that property.

Section 108 provides that the sections of the code relating to appeals from original decree also apply, so far as may, be to appeals-

- a) Appeals from appellate decree.
- b) From orders made under the code or any special or local law in which a different procedure is not provided.

An appeal, according to Black's Law Dictionary is "*The complaint to a superior court of an injustice done or error committed by an inferior one, whose judgment or decision the court above is called upon to correct or reverse.*" In the same way second appeal is also provided under section 100 of CPC. Right to second appeal is created by statute and not inherited and it cannot be declared void until and declared by statute.

Second appeal can be filed where there is substantial question of law is involved. In ***Mahindra & Mahindra Ltd. v. Union of India & Anr***⁶, the court observed that "*Under the proviso, the Court should be 'satisfied' that the case involves a substantial question of law and not a mere question of law. The reason for permitting the substantial question of law to be raised should be recorded by the Court.*"

Second appeal can also be filed, when question of fact is involved. In the case of [*Dudh Nath Pandey vs Suresh Chandra Bhattasaali*](#), it was held that those facts which were collected by the First Appellate Court can't be set aside by the High Court. In ***Jadu Gopal Chakravarty v. Pannalal Bhowmick & Ors***⁷ the question arises, if any of the decree given by the lower court was a result of fraud then court held that it came under the question of fact which any of the lower court has not dealt. Hence, this court can look into the question of fact by exercising its power under Section 103. Further, the court clarified in ***Ramji Bhagala v. Krishnarao Kirirao Bagra*** that second appeal cannot be accepted or rejected partly under Section 100 and Section 101. It should be as a whole either admit or completely reject.

Second appeal can also be filed, where there is mixed question of fact and law are involved. It can also be filed where the decree was ex parte. Second appeal is not maintainable except within section 100. When amount in the subject matter does not exceed 25000 then also second appeal is not maintainable. An appeal lies to Supreme Court if high court certifies that a case involves a substantial question of law of general importance. Supreme Court observed in *chunnilal Mehta*

⁶ Refer <https://blog.ipleaders.in/second-appeal/> accessed on- 30.03.2020

⁷ Refer <https://blog.ipleaders.in/second-appeal-under-cpc/> accessed on- 30.03.2020

vs century spinning a substantial question of law includes question of general public importance, a question which directly and substantially affects the rights of parties, a question which calls for discussion of alternative views, but does not includes misapplication of principal of law.

Some differences between first appeal and second appeal are:

- First appeal lies from decree passed by court exercising original jurisdiction whereas second appeal from decree passes by court exercising appellate jurisdiction.
- A first appeal lies to superior court which may or may not be high court whereas Second appeal lies only in high court.
- In case of first appeal Ground are different, it can be filed on question of fact, of law of law and fact whereas Second appeal lies on substantial question of law.
- Where amount of decree does not exceed 10000, first appeal is maintainable, second appeal does not lies in such cases.
- First appeal can be filed in 90 days (high court), 30 days (other court) whereas Second appeal in high court can be filed in 90 days.

Subject to the provisions in Chapter IV of Part V of the Constitution, an appeal shall lie to the Supreme Court from a High Court, if the High Court certifies⁸: (i) that the case involves a substantial question of law of general importance; and (ii) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.

⁸ K. Agrawal, Civil Justice in India, January 2016, BRICS Law Journal, accessed on 04.04.2020