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Subject : Civil Procedure Code

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Semester 7 - Final Exam

Q.1 - How Suit dismissed in default can be restored?

Order 9 Rule 4 of CPC deals with the restoration if the case is dismissed under rules 2 and 3 which is non-appearance, non-payment of postal charges.

“4. Plaintiff may bring a fresh suit or Court may restore suit to file: Where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit, or he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his not paying the court fee and postal charges (if any) required within the time fixed before the issue of the summons, or for his non-appearance, as the case may be, The court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.

Some judgments :

Revision application dismissed in default can be restored sufficient cause shown in exercise of inherent powers of court PLD 1992 Lahore. 250

Order 9, Rule 8 C.P.C postulates that where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the court shall make another that the suit is dismissed.

And for the restoration for such suit order 9, Rule 9 contains the remedy.

Decree against plaintiff by default bars fresh suit: (1) Where a suit is wholly or partly dismissed under rule 8. the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with the suit.

Restoration of suit dismissed in default be can be remedied by the rule provided above, Satisfaction of the court is necessary by affidavit or with other material making on evidence and the party is entitled under the law to substantiate by evidence the grounds taken in support of restoration of the petition PLD lahore 619

Q.2 How documents to another party can be called upon in a civil suit.

The documents in civil suits can be called with aid of Order 11, Rule 12 and subsequent rules.

12. Application for the discovery of documents: Any party may, without filing any affidavit apply to the Court for an order directing any other party to any suit to make a discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application, the Court may either refuse or adjourn the same, if satisfied that such discovery is

not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion, be brought fit: Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

The party may apply to the court asking another party to produce documents in their possession or power related to the matter in suit,

The applications need to satisfy the court that the documents are essential or deliver justice wind up proceedings in quick manner by bringing light to important documents under controversy

More importantly, Appendix C is used as a notice to other parties to produce documents

“ Notice to produce: Notice to any party to produce any documents referred to in his pleading or affidavits shall be in Form No.7 in Appendix C, with such variations as circumstances may require.”

Q.3 How Ex-parte judgment can be set aside, Please elaborate grounds and law applicable to

rule 7,

Rule 13 An appeal under S.96(2)

An application under S. 12(2)

OrRule 7 -

Procedure where the defendant appears on the day of the adjourned hearing and assigns good cause for the previous non-appearance.

Where the Court has adjourned the hearing of the suit ex parte and the defendant at or before such hearing appears and assigns good cause for his previous non-appearance, he may upon such terms as the Court directs as to costs or otherwise be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

Under Rule 7 ex-parte decree can be set aside if the litigant can show good cause for not being able to appear in court

13. Setting aside decree ex-parte against the defendant: 1 - In any case in which a decree is passed ex parte against a defendant he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit

Rule 13 is also relevant in setting aside ex- parte decree along with keeping in mind article 164 of limitation act that application to be filed within 30 days and with sufficient grounds of absence.

Civil procedure code

Section 12(2) Where a person challenges the validity of a judgment, decree or order on the pica of fraud, misrepresentation or want of jurisdiction, he shall seek his remedy by making an application to the Court which passed the final judgment, decree or order and not by a separate suit

Where an ex-parte judgment has been passed the remedies available in section 12.2 can be instituted to claim fraud or misrepresentation Where the other party was not duly aware of the ongoing case

Person proceeded ex-parte can join the proceedings at any stage of the case (2002 CLC 1907; PLD 1975 Lah. 879).

Q.4 How suits pending before district judge can be transferred out of province Please refer to relevant provisions.

Section 24 of CPC deals with a question posed

24. General power of transfer and with drawl:- (I) On the application of any of the parties and after notice to the parties and after hearing such of be heard, or of its own motion without such notice, the High Court 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

The section 24 gives the high court and district court the power to transfers cases at any stage or a pending suit.

The law states no ground for transfer but the sec.24 principles can be exercised with the goal of administration of justice.

Power of High court U/S 24 is equivalent to power under article 203 of the constitution. 2001 CLC 1319

For administrative reason and interest of justice. The court has the power to transfer the cases outside its territorial limits.

