Judgment,
Art of Judgment Writing
&
Nature of Judgment

By
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Judgement Writing in a Civil Proceedings.

Judgment writing is an essential feature of the judicial functioning performed individually by a Judge. Each individual developed its own style, acquire skills to marshal the facts and evidence, determine and apply the legal provisions to the facts and then arrive at his/her conclusion. The object is to have a lucid and reasoned judgment with clear cut findings.

- **Statutory Provisions.**

The statutory provisions with regard to the "judgement" and "order" in a civil proceeding are contained in Sections 2(9), 2(14), 33, 137 & Rules 1, 2, 3, 4 & 5 of Order XX of CPC and last but not the least Rule 6 of Order XXII.

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

Judgement is the declaration or final determination of rights of the parties in the matter before the Court. The important ingredient of a valid judgement is the reasons or grounds for decision because the validity of the judgment in the higher forum is to be seen from the reasoning and the same is to be challenged by the aggrieved party again with reference to the reasons. In other words the aggrieved party is to attack the reasoning

of the judgment in appeal and not the narration of the facts. The conclusions arrived at by the court will not be binding without reasoning, therefore, even in ex parte judgments reasons should be clearly given. A finding unaccompanied by reasons for it, is not a conclusive finding of fact. When the judgment of trial court contains no reasons, the appellate court would be deprived of the benefit of the view of lower court and would be unable to appreciate the process by which the decision has been reached.

- **Order.**

Whereas "order" means the formal expression of any decision of a Civil Court which is not a decree. 2 (14).

- **Distinction between judgement and order.**

Judgement stands on different footing than the order. Legislature in its wisdom has avoided the use of the word "formal expression" in the definition of the judgement as used in Section 2 (9), whereas the word formal expression has been used in the definition of the order as defined in Section 2 (14).

The judgement decides lis after the adjudication, i.e. trial, whereas, the order may or may not decide the case finally. An interlocutory order merged with final order/judgement.

- **Pronouncement of judgement**, Section 33 of the Code of Civil Procedure provides for the procedure after the case has been heard by the Court, it states;

The Court shall pronounce judgement and decree shall follow.

Section 33 prepares the way for Order XX, where the provisions governing judgments and decree are collected.

Rule 1 provides the procedure for pronouncing judgment in open court either at once or on some future day not exceeding 30 days from the date on which the hearing of the case was concluded for which due notice shall be given to the parties or their pleaders (Rule 1 Order 20).

Delay in announcement of judgment be avoided.

The Judgment writing is a divine duty to be performed without fear or favour. It should be discharged as early as possible, not exceeding thirty days. The Judge judges the cause and a Judge is judged by his judgment.

The judges who do not pronounced judgement in time commit turpitude, said Justice V.R. Krishna Ayer, C.J.I. He notes with a sense of sorrow ----

It has become these days for the highest to the lowest court's judges, after the arguments are closed, take months and years to pronounce judgements even in interlocutory matter -- a sin which can not be

forgiven a practice which must be forbidden, a wrong which calls for censure or worse.

A long delay in delivering the judgment give rise to unnecessary speculation in the mind of parties to case. (Bhugwan Das v HPA International & others, 2000 (2) SCC 13).

In Anil Rai v State of Bihar (AIR 2001 SC 3173). Similar observations were made "that dismay picture depicted before us on the basis of facts of this appeal is that a few Judges ---------- after conclusion of the argument keep the file withheld with them and do not announce the judgment for period spread over years".

Lord Denning puts its mildly by way of tendering good advice to new Judges. He says that when judgement was clear and obvious, it was for the benefit of the parties and the Judge himself that judgment should be delivered forthwith and without more ado. Though the art is difficult and requires great skills but practice can enable perfection.

However, there might be cases in which doubts are to be cleared, law has to be settled and conflicts are to be resolved, such judgement need calm and cool thinking and deep deliberations.

Such judgements must be reserved but not exceeding 30 days.

A judgment written by the predecessor judge not pronounced by him may be pronounced by the successor judge (Rule 2 Order 20).

The judgement shall be dated and signed by the judge in open court, judgement once signed can not be altered or added to, save as provided by Section 152 or on review (Rule 3 Order 20).

- **Form of judgements.** Judgements of a civil court shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision (Sub-Rule 2 of Rule 4 Order 20).

In suits in which issues have been framed, the court shall state its finding or decision, with the reasons thereof, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit (Rule 5 Order 20).

It is necessary that a judge should proceed to the consideration of the judgement while the demeanour of the witnesses (Rule 12 Order XVIII) and their individual characteristics are fresh in his memory. He should bear in mind that his first duty is to arrive at a conscientious conclusion as to the true state of those facts of the case about which the parties are not agreed. The oral and

documentary evidence adduced upon each issue should be carefully appreciated.

While writing the judgment after full trial Judge has to take notice of the demeanour of witness to appropriate and evaluate the evidence of particular witness.

- **Demeanour of witnesses.**

The demeanour of a witness plays very important role with regard to credibility of a witness, i.e. the observation of the judge about conduct and behaviour of the witness during his examination. The behaviour and appearance of a witness in the witness box has to be noted by the Judge on the issue of credibility (Rule 12 of Order XVIII). A Judge, who observes the demeanour of the witnesses, when they are being examined by counsel, has from his detached position, a much more favourable opportunity of forming a just appreciation than a judge who himself conduct the examination. If he takes the later course, so to speak descends into arena and is liable to have his vision clouded by the dust of conflict. Unconsciously he deprives himself of the advantage of calm and dispassionate observation. The demeanour of a witness is apt to be very different when he is being questioned by the judge to what it is being questioned by the counsel.

The observation with reference to the demeanour of witness by trial Judge that "I have watched him and his demeanour carefully in court and he does not appear to be an intelligent, resourceful or crafty type of person, on the other hand, he appeared to be an honest, straightforward and untroublesome individual."

Such observations regarding demeanour of witnesses are entitled to great weight. The look or manner of a witness while in the witness box, his hesitation and doubts or confidence and calmness and similar facts are facts which only the trial judge is in a position to and is expected to observe. When a Judge or Magistrate has recorded the evidence of witness, he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness while under examination. The language of the provision of Order XVIII Rule 12 of Code of Civil Procedure though does not make such recording mandatory as its language speaks "The court may record such remarks as it thinks material respecting the demeanour of any witness while under examination." Though pari-materia provision of Section 363 of Code of Criminal Procedure, makes it mandatory that "When a Sessions Judge or Magistrate has recorded the evidence of a witness, he shall also record such remarks (if any) as

he thinks material respecting the demeanour of such witness while under examination."

I will advise the Judges that while recording the evidence of witness, also to record the demeanour of such witness for two reasons:

(1) The appellate Court would be in a better position to evaluate the finding if such remarks about demeanour is on record.

(2) The omission may not be material when the judgment is written by the Judge just after the closure of the evidence and before his recollection of the witness's demeanour in the box has been dim. Now a days the judgments are being recorded after lapse of a considerable period of time and even by another Judge therefore it would be advisable to record the demeanour even in civil cases.

The observations by Lord Atkin in Seetha Lakshmi Ammal v Venkata Subramanian (AIR 1930 PC 170) is instructive. "The omission may be immaterial where a Judge writes his judgment a very few days after the close of the evidence and before the recollection of the witness's demeanour in the box has become dim."

- In preparation and delivery of judgment, attention of the Judges should be to the following points:

1. The judgment should be in the language of the court (S.137).
2. When a judgment is not written by the presiding officer with his hand, every page of such judgment shall be signed by him.
3. It should be pronounced in open court after it has been written and signed. It should be dated and signed in open court at the time of pronouncement and once signed, it shall not afterwards be altered or added to, save as provided by Section 152 or on review.
4. It should contain the direction of the court as to costs.
5. All the paragraphs of the judgment should be serially numbered to facilitate reference.
6. The memorandum of the substance of the evidence given by each witness examined is not required to be referred to in the judgement. All that is required is the concise statement of the case and not a reproduction of the evidence.
7. It may be necessary, in particular cases, to refer to , and give a summary that should be incorporated in the reasons given for the decision.

8. When it is necessary to refer to the evidence, the reference should be by name as well as the number of the witnesses.
9. Do not import your own private knowledge or opinion into the judgment/order.

If any party to a suit dies between the conclusion of the hearing and the date of pronouncing the judgment, such judgment may be pronounced notwithstanding the death, and shall have the same force and effect as if it had been pronounced before the death took place. (Rule 6 of Order XXII)

- **Speaking Orders or Reasoned Decisions**

There are a number of good reasons for giving a reasoned judgment. These can be seen from different perspectives i.e. for the litigant, legal profession, appellate courts and Judges own conscience. From the perspective of a litigant, a losing party is entitled to know why it lost a case. From the perspective of legal profession, a reasoned judgment discloses the professionalism, it contribute to development of law. From the point of view of Appellate Court, it enables it to judge and test the judgment in appeal. It also enables the Judge to satisfy his own conscience and uphold its integrity. Besides in the absence of reasons, the judgment

is not transparent and parties can not know what were the reasons for the Judge to reach the conclusion?

A speaking order is an order which is written after applying one's mind to the issues involved and setting out the reasons for arriving at the decision/order based on the principles of law. Justice not only should be done, it should appear to have been done is an old adage. The concept of natural justice that one must be heard before he is condemned has its root in ancient law. Though it is difficult to precisely define what is meant by natural justice, the contents of principles of natural justice are quite easy to enumerate. As it stands today, the basic principles of natural justice are:

1) that the parties should be heard before deciding an issue;
2) the hearing must be before an impartial Judge, as no man can be judge of his own cause. Therefore, the hearing must be before an unbiased Judge;
3) the Judge should decide in good faith. He should have no bias, personal or pecuniary; and
4) the decision given must be reasoned one and therefore, the decision must be evidenced by a speaking order which enumerates the reasons for coming to a particular conclusion.

The American Due Process of Law postulates: (a) notice (b) opportunity to be heard (c) an impartial tribunal and (d) an orderly course of procedure. The concept of speaking order is a part of principles of natural justice. Three basic accepted principles of natural justice are :

1) that the dispute should be decided by an impartial judge without any bias or interest against the parties and in the subject-matter of dispute;
2) 'Audi alteram partem' which means, no man should be condemned unheard. Both parties must be heard before passing any order;
3) that the decisions must be reasoned one and the orders containing the decision must be speaking orders.

Therefore, the third principle of natural justice is that a party ought to know the result of the inquiry and the reasons for the decision.

A 'speaking order' means an order speaking for itself by giving reasons. Speaking orders are necessary if the judicial review is to be effective. The party affected must know why and on what grounds an order has been passed against him. The Courts have specifically held that passing of a speaking order is a part and parcel of natural justice.

The courts have justified the requirement for a speaking order on three grounds:

1) the party aggrieved has the opportunity to demonstrate before the appellate or revisional court that the reasons which persuaded the authority to reject his case were erroneous;
2) the obligation to record reasons operates as a deterrent against possible arbitrary action by executive authority invested with judicial power; and
3) it gives satisfaction to the party against whom the order is made. The power to refuse to disclose reasons in support of the order is of an exceptional nature and it ought to be exercised fairly, sparingly and only when fully justified by the exigencies of an uncommon situation.

In respect of the speaking order, the law may be summarised as under:

1) Where a statute requires recording of reasons in support of the order, it imposes an obligation on the adjudicating authority and the reasons must be recorded by the authority.
2) Even when the statute does not lay down expressly the requirement of recording reasons, the same can

be inferred from the facts and circumstances of the case.

3) Mere fact that the proceedings were treated as confidential, does not dispense with the requirement of recording reasons.

4) If the order is subject to appeal or revision, the necessity of recording reasons is greater as without reasons the appellate or revisional authority cannot exercise its power effectively inasmuch as it has no material on which it may determine whether the facts were correctly ascertained, law was properly applied and the decision was just and based on legal, relevant and existent grounds. Failure to disclose reason amounts to depriving the party of the right of appeal or revision.

5) There is no prescribed form and the reasons recorded by the adjudicating authority need not be detailed or elaborate and the requirements of recording reasons will be satisfied if only relevant reasons are recorded.

6) If the reasons recorded are totally irrelevant, the exercise of power would be bad and the order is liable to be set aside.

7) Where the lower authority does not record reasons for making an order and the appellate authority

merely affirms the order without recording reasons, the order passed by the appellate authority is bad.

Ref. [Swaran Lata Ghosh v Harendra Kumar Banerjee (AIR 1969 SC 1167)]

8) Where the appellate authority reverses the order passed by the lower authority reasons must be recorded, as there is a vital difference between an order of reversal and an order of affirmation.

9) The validity of the order passed by the statutory authority must be judged by the reasons recorded therein and cannot be construed in the light of subsequent explanation given by the authority concerned or filing affidavit. Orders are not like old wine becoming better as they grow older.

10) The duty to record reasons is a responsibility and cannot be discharged by the use of vague general words.

11) The reasons recorded by the statutory authority are always subject to judicial scrutiny.

- **Start Before the Beginning.**

The process of judgment writing begins in practical terms before the end of the case. It entails reading and study of all documents/pleading, the statement of issues by the counsel and notes taken by the Judge. Judges, who during the course of hearing start dictating their notes,

either summarise their arguments or present their own understanding of the case.

- **Choose an Appropriate Style.**

Use Plain Language: Every judge must develop his or her own style of expression.

Original: The argument as applied in an instant case is, in essence, that prior to and at the time of the rezoning application the nature of the project was clearly understood to be a condominium development.

Plain language rewrite: Counsel argues in this case that both before and at the time of the rezoning application, the project was clearly understood to be a condominium development.

Original: In this context I am of the opinion that the evidence that Mr. Hamid has given is somewhat conclusive.

Plain language rewrite: Mr. Hamid's evidence is inconclusive.

Use paragraph numbers, heading and sub-headings.

Use active rather than passive voice:

Passive Voice: "It was reported by the engineer that the bridge was structurally sound and safe."

Active Voice: "The engineer said that the bridge was structurally sound and safe."

Avoid Latin expressions and legalese.

Avoid expressions, such as, “the said”, “hereinabove mentioned”, “it is therefore ordered”, “adjudged and decreed”.

Avoid redundancy

After reviewing all of the evidence and weighing carefully the competing arguments advanced by the parties, I have decided that…

- **Language.**

A Judgment should be written in a simple language and the use of “expressions”, “words and phrases” that are not understood by an educated layman unless the context so specifically requires, should be avoided. The judgment is for the litigants, lawyers, the appellate court and the general public. It should, therefore, be in simple and clear language that is understood by them. Barring exceptional cases, if a judgment requires a person with reasonable knowledge of English language to look up the dictionary once for every page, the judgment does not serve its purpose. Simple short sentences easy to read avoiding surplus-ages are what is required. The challenge in writing a good judgment is to present complicated questions in a simple manner which can be understood by a layman too.

The Judges often suffer from the malady of prolixity. Hyperbole, the extravagant use of adjectives and adverbs is to be avoided. Very often the phrases *evidence reveals. "I have given my thoughtful considerations*". It goes without saying that judgments have to be product of careful consideration and therefore words such as "*careful or thoughtful consideration*" are to be avoided. The *American State* "*Trial Judges Book*" also discourages and advises against the use of Latin phrases. Even in England, the thinking is that by use of liberal Latin phrases not much light is obtained e.g. *"novus actus interveniens*." which means *a new intervening act (Ingram v United Automobiles Services Ltd* (1943) 2 All E.R. 71). The language should be temperate. Strong and disparaging remarks must be avoided lest it may even give an impression of bias.

- **Structure of the judgment.**

No two judgments are alike but it is helpful if you can adopt a general structure which will help you marshal your thoughts and make what you say easier to assimilate.

1. Summarise the relevant facts in chronological order make sure that you clearly identify which facts are agreed and which facts are significantly in contention. Try to deal with the agreed facts as

early as possible in your narrative as this will clarify matters later on.

2. Summarised the question (issues) you have to decide. This is frequently done in a fairly conventional and obvious format.
3. Summarise the relevant law, where there is no issue as to the law and the matter turns on disputed fact it may not be necessary to do this, although occasionally it will be helpful to do so. If there has been a dispute as to the law refer to the main authorities relied on by the parties together with the references. Wherever possible avoid having to quote from judgment and getting too academic. Usually the case name, reference and proposition it supports should be sufficient. If you do feel compelled to quote from the case keep it short and identify the relevant passage by page and paragraph number wherever possible.
4. Briefly set out the material issues and main arguments on each side. Take care to ensure that you have summarized the principal submissions of the unsuccessful party, in order to demonstrate that you have understood them and taken them into account.

5. This will also be helpful in the event that the court of appeal has ultimately to consider the matter.
6. Ensure that when you do make findings of fact, you do so clearly. Provided you formulate your findings with care and there is credible evidence to support them.
7. Avoid having to make remarks which express moral, censure, excessive criticism or emotion, also avoid appearing pompous and patronising.
8. Make sure that you decide all necessary matters. If you have to exercise a discretion make sure that you say so, do so and identify all the factors for and against which you have taken into account in carrying out the balancing exercise.

- **Part of Judgments**

1. The title which shall contain:
   i) Case number and the year
   ii) Parties name i.e.

   Mr. ABC----------Plaintiff.

   Versus.

   Mr. DEF----------Defendant.

   iii) Name of the counsel appearing for the parties:

   Mr. _____ Advocate appearing for the plaintiff.

Mr. _____ Advocate appearing for the defendant.

2. Judgment/Order
3. Facts of the plaintiff's case and the defence raised by the defendant, in concise way
4. Issues, that may be of fact and law or both
5. Finding issue wise in affirmative or negative
6. Reasons on each issues in support of the findings and
7. Result i.e. the suit decreed or dismissed or partly decreed or partly dismissed with cost, without cost, parties to bear their own cost.
8. Date of announcement of judgement.
9. Signature of the Judge.

- **The Judgment should not be long.**

The judgment should be précise, in simple language, lengthy judgment should be avoided. Final judgments have recently become invariably long. Average judgment reported in Common Wealth Law Reports in the year 1935 was of 18 pages. The Privy Council Judgments were generally 1 to 5 pages long. In a few exceptional cases, it was 5 to 15 pages long and very rarely more than that. It was not as if complicated issues were not being decided or evidence were not

being appreciated or analysed. Despite the virtues of concise writing, the judgments have become long. Critics reason, *"Generally the Judges do not have to worry about sustaining the interest of readership"*. They have a captive readership amongst litigants, professionals and lawyers. On the other hand, if the Judge has properly marshalled the facts, appreciated the evidence then it would pick up only the material part of evidence of relevant witnesses and comment upon its credibility and veracity with reasons. Similar would be its position on the issues of law.

- **Attitude/Approach.**

At times, some Judges are branded as being hyper technical, having no mind for justice, while there are others, who are credited with a complete flair for justice over-riding the bounds of law. Again, Judges are at times branded as *pro-tenant, pro-labour, pro-management, pro-individual and others having community interest.* The list is endless. A Judge need not imbibe any of these predilections. He should have a single minded devotion to render justice without transgressing limits of law.

- **Edit the Judgment**

Using a checklist of topics or issues, checking the names, dates, figures and other data for accuracy, eliminating repetition, excluding irrelevant findings

of fact, pruning lengthy quotations, removing and replacing Latin expressions, jargon or outmoded expressions, eliminating explanations of the obvious, using the active voice rather the passive voice, simplifying lengthy complex sentences and adopting short sentences, where appropriate, checking punctuation and scrutinizing the length and content helps in preparing a good judgment.

- **Nature of Judgment**

Broadly there are two types of judgment “judgment in rem” and “judgment in personam”.

The terms *"in rem*" and *"in personam" are* of Roman Law used in connection with actio, that is, actio *in rem* and actio in *personam to* denote the nature of actions, and with the disappearance of the Roman forms of procedure, each of the two terms *"in* rem" and *"in personam"* got tagged with the word judgments to denote the end-products of actions *in rem* and actions *in personam. Thus,* according to the civil law an actio in which a claim of ownership was made against all other persons was an action *in rem* and the judgment pronounced in such action was a judgment *in rem* and binding upon all persons whom the Court was competent to bind, but if the claim was made against a particular person or persons, it was an action *in personam and* the

decree was a decree *in personam* and binding only upon the particular person or persons against whom the claim was preferred or persons who were privies to them. A judgment *in rem* is always as to the status of the *res* and is conclusive against the world as to that status, whereas in a judgment *in personam the* point, whatever it may be, which is adjudicated upon, it not being as to the status of the *res*, is conclusive only between parties or privies. A decision *in rem* not merely declares the status of the person or thing, but *ipso facto* renders it such as it is declared: Thus a decree of divorce not only annul the marriage, but renders the *wife feme sole*: adjudication in bankruptcy not only declares but constitute the debtor a bankrupt.

Judgments *in rem* are an exception to the rule of law that no man should be bound by the decision of a Court of justice unless he or those under whom he claims were parties to the proceeding in which it was given.

A "judgment in rem" amounts to a determination of the status of a particular matter or an individuals rights in respect of a certain matter, but is conclusive not only between the competing parties but also as against the world. Put another way both in rem and in personam judgments are: judicial determinations of the existence of

rights: in one case rights over property and in the other rights against a person.

A "judgment in rem" is an adjudication, pronounced upon the status of some particular subject matter by a court having jurisdiction for that purpose. It differs from a "judgment in personam", in this: that the later judgment is in form, as well as substance, between the parties claiming the right; and that it is so inter parties appears by the record itself. It is binding only upon the parties appearing to be such by the record, and those claiming by them. A "judgment in rem" is founded on a proceeding instituted, not against the person, as such, but against or upon the thing or subject matter itself, whose state or condition is to be determined. It is a proceeding to determine the state or condition of the thing itself, and the judgment is a solemn declaration upon the status of the thing, and it ipso facto renders it what it declares it to be. It is generally said to be a judgment declaratory of the status of some subject matter, whether this be a person or a thing. Thus the probate of a will fixes the status of the document as a will. The personal rights and interests which follow are mere incidental results of the status or character of the of the paper, and do not appear on the face of the judgment. So a decree establishing or dissolving a marriage is a "judgment in rem", because it

fixes the status of the person. A judgment against specific articles or goods, for a revenue laws is a "judgment in rem".

According to Black’s Law Dictionary a "judgment in personam" that is also called personal judgment. A judgment that imposes personal liability on a defendant and that may therefore be satisfied out of any of the defendant’s property within judicial reach. A judgment resulting from an action in which a court has personal jurisdiction over the parties. A judgment against a person as distinguished from a judgment against a thing, right or status.

"judgment in rem" a judgment that determines the status or condition of property and that operates directly on the property itself. The phrase denotes judgment that affects not only interests in a thing but also the person’s interest in the thing.

In Halsbury’s Law of England "judgment in rem" and "judgment in personam" has been explained as follows:

“503. "judgment in rem" and "judgment in personam". -- A "judgment in rem" may be defined as the judgment of a Court of competent jurisdiction determining the status or the disposition of a thing, as distinct from the particular interest in it of a party to the litigation. A "judgment in personam" determines the rights of the

parties themselves to or in the subject matter in dispute, whether it be corporeal property of any kind whatever, or a liquidated or unliquidated demand, but does not affect the status of either persons or things, or make any disposition of property, or declare or determine any interest in it except as between the parties litigant. "judgment in personam" include all judgments which are not "judgment in rem", but, as many "judgment in rem" deal with the status of persons and not of things, the description “judgments inter partes” is preferable to "judgment in personam".”

The judgments, emanating from probate, matrimonial, admiralty, insolvency jurisdiction are “judgment-in-rem” so as to the judgments relating to matter of public nature. Such judgments are relevant in terms of Articles 55 & 56 of Qanun-e-Shahadat Order.

Justice (R) Shabbir Ahmed.