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ORDER XIV RULE 5 OF CPC, 1908 - POWER TO AMEND/STRIKE OUT - ISSUES FRAMED: A JUDICIAL ANALYSIS

Introduction

- 1 Issues are framed by Courts to determine the material propositions to be adjudicated in relation to the particular dispute between the parties. It covers the questions to be answered by the Courts in the process of determining the rights of the parties.
- 2 Substantial questions of law or of fact are addressed by the courts in framing the issues.
- 3 Order XIV of the Code of Civil procedure, 1908 (“CPC”) deals with settlement of issues and determination of suit on issues of law or on issues agreed upon.

Order XIV Rule 5

- 1 The Court has the power to amend the issues or frame additional issues on such terms as it thinks fit to be necessary for determining the matters in controversy between the parties. Such right also includes the right to strike out issues that appear to be wrongly framed.
- 2 In *Tajuddin Rajaballi Panjwani vs. Shakuntali Rajaballi Panjwani (R/Special Civil Application No. 2144 of 2019)*, the Court held that recasting of issues depends upon the satisfaction of the Court. If the Court comes to the conclusion that any issue is required to be re-casted, amended, deleted or any new issue is required to be framed then Court has inherent power for it.
- 3 The Madhya Pradesh High Court in *Bhagwan vs. Sachi Chandra Jain [AIR 1992 MP 258]* held that issues can be framed at any stage if it is concluded that the issues were not framed correctly. Framing of issues is the primary duty of the Judge hence suo motu additions may be made.
- 4 Thus, the Court may recast issues suo motu or on an application for re-casting of issue brought by any of the parties.

Suo Moto re-casting of issues after matter has been reserved for judgment

- 1 In *Abdul Karim vs. Ashok Das (2004 SCC OnLine Gau 381)*, the issues were recasted by the trial Court while writing the judgment. The parties were not given an

opportunity to adduce evidence or advance arguments on the recasted issues. The Court held that Court has wide powers to amend or frame issues but this power cannot be exercised without giving an opportunity of hearing to the parties. Decision on such issues cannot be made on the basis of the evidence already produced.

2. In *S. Gause Mohideen vs. M. Sivalingam (2010 SCC OnLine Mad 3380)*, the Trial Judge, suo motu recasted the issues in the judgment without informing parties and judgment was pronounced on the basis of evidences already available. It was held that it was not open for the Trial Court to recast issues after posting the matter for judgment and that too without giving an opportunity of hearing to the parties.
3. In *Md. Abdul Majeed Khan vs. Mohd. Abdul Jaleel Khan; MSA No. 561 of 2010*, the Trial Court recasted the issues in the judgment without notice to the parties and dismissed the suit on consideration of the issues. Appeal was filed before District Court which set aside the judgment on the ground that after recasting of issues parties were not given an opportunity of hearing. The appellant filed an appeal against order of the District Court contending that although the issues were recasted, the issues were substantially similar to the issues framed earlier. The High Court held that there are no reasons in the judgment of the trial Court as to why the issues were recasted. The Court owes a duty to bring to the notice of the parties the issues which are recasted and give them an opportunity to adduce evidence if they choose to do so and then pronounce the judgment on merits.
4. Again, in *Santhi vs. Sigaman (CMP No. 4145 of 2017)*, the trial Court had recast the issues after the matter was posted for judgment without putting the parties on notice. The High Court observed that once the issues were recast, the proper course was to reopen the case and pronounce verdict after eliciting the responses of the parties.



Amit Meharia

Managing Partner, MCO Legals
Solicitor

(Supreme Court of England & Wales)

Expertise:

Corporate Due Diligence &
Corporate/Commercial Arbitration

✉ amit.m@mcolegals.co.in



Paramita Banerjee

Associate, MCO Legals
B.A., LLB (Hons.)
School of Law, Christ University
Bangalore

Expertise:

Litigation and Arbitration

✉ paramita.b@mcolegals.co.in

5. The Supreme Court in *Mahadeva vs. Tanabai* [(2004) 5 SCC 88], set aside the judgment of the High Court on the ground that HC had framed questions during the course of writing the judgment in departing from the issues originally framed.
6. In *M/s. Soni Hospital vs. Arun Balakrishnan Iyer* (OSA No. 391 of 2003) by reason of the recasted issues in the judgment, the burden of proof that was originally on the plaintiff shifted upon the defendants. The Madras High Court observed that when the issues originally framed, are recast or issues are added, the parties should not only be put on notice, but also be given an opportunity to forthwith evidence.

Conclusion

1. Courts have continuously recognized the discretionary powers granted under Order XIV Rule 5 thus holding that suo motu recasting of issues may be adopted by the Courts at any time before passing of a decree including when the arguments have concluded.
2. Due care and caution must be applied by Courts in cases where issues are to be recasted with special emphasis on the scope of pleadings between the parties and the necessity of such modification or cancellation of issues.
3. However, the courts have also warned that issues must not be recasted directly in the judgment. Even when the same is done, the parties must be given a reasonable opportunity of being heard and of adducing evidence.