BY

Dr. Amit Gopinathan

Institute of Law

Jiwaji university

Gwalior (M.P.)

B.A. LL.B VI SEM

Unit –I Concepts

Topic-Affidavit-

Subject : The Code of Civil Procedure

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Affidavit under Section 139 of the CPC is a statement in writing, made before an officer of the court authorized to administer oaths. The person making the affidavits known as the deponent for he 'deposes' to the facts contained therein. For instance interrogatories are answered by way of affidavit.

Section 139 Oath on affidavit by whom to be administered-

In the case of any affidavit under this Code-

   (a) Any Court or Magistrate, or

   (aa) any notary appointed under the Notaries Act, 1952

   (b) Any officer or other person whom a High Court may appoint in this behalf or
   (c) Any officer appointed by any other Court which the State Government has generally or specially empowered in this behalf,
   May administer the oath to the deponent
   The words 'or other person' as used clause(b) of this section means a person other than the officer of that court and a deputy registrar of the

High Court has been held to be not included within the meaning of "Oath Commissioner". The High Court of Madhya Pradesh said that Deputy Registrar inspite of the fact that he has an authority to administer oath or receive solemn affirmation in the case of affidavits" is a different authority and it cannot be said to be included in the definition of Oath Commissioner

It has been held by Calcutta High Court that in writ proceedings, an affidavit affirmed before a notary public is not admissible.

Order – Section 2(14) "order" means the formal expression of any decision of a Civil Court which is not a decree;

'Order' means the formal expression of any decision of a Civil Court which is not a decree. Order as used under section2(14) means what is popularly known to legal public as a formal order in contradiction to decree and judgment. Thus, an adjudication of a Court which is not a decree is an order. Order written by a clerk and signed by the Court is a proper order. Order must be logical, clear and without creating confusion in the mind of the parties. A judicial order must contain discussion of the question at issue and the reasons which prevailed with the Court to pass the order. Order is analogous to decree. Order which operates is one which Court decides to pass and not one clearly proved to have been dictated as a result of some mistake. Order usually passed in contempt proceedings are judgments and not an order.

Similarly order passed in writ petitions are not orders within the purview of Section 2(14).

The following have been held to be an order

(a) Order under Section 98 of the Representation of People Act 1951 containing reasons.

(b) Award under Section 26 of the Land Acquisition Act.

Judgment – Section 2(9) judgment means the statement given by the judge of the grounds of a decree or order

Judgment means according to Section 2(9) of the Code, "the statement given by the judge of the grounds of a decree or order." The essential element of a judgment is that there should be a statement of the grounds

of the decisions. An order of Election Tribunal under Section 98 of the Representation of Peoples Act, 1952 containing reasons for the decisions is a judgment.

The term judgment as defined under Section 2(9) of the Code is not the same as else where. In England the word judgment is generally used in the same sense as decree in this code. The meaning of the word judgment in Civil Procedure Code is not helpful in ascertaining meaning of the word under Section 10 of Delhi High Court Act. Similarly this definition does not apply to the word as occurring in the Letter Patent.

The term judgment as occurring under Article 133 of the Constitution of India also has a different sense than used under present Section.

An order under Order 1, Rule 10 of the Code by single judge directing plaintiff to implied a person as defendant affects vital and valuable right of plaintiff. Hence it amounts to a judgment and appeal is permissible against such order.