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AS No. 728 of 2



Order QR

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.09.2026

PRONOUNCED ON : 16.10.2026

CORAM

THE HON'BLE DR JUSTICE G. JAYACHANDRAN

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

THE HON'BLE MR.JUSTICE N.RAMESH

AS No. 728 of 2026
CNR: {HCMA011194062026}

1. Saroja
2. S. Jothi Lakshmi



..Appellant(s)

Vs

1. K. Ravivarma
 2. K. Parthiban
 3. K. Vinayagam
 4. R. Janani
- Rep.by her mother R.Rani
W/o.K.Ravivarma,
New No.19, Old No.9, Pillayar Koil 3rd Street,
Ekkaduthangal, Chennai – 600 032.

..Respondent(s)

PRAYER: This Appeal Suit is filed under Section 96 of CPC to set aside the judgment and decree of the Learned XVI Additional, City Civil Court, Chennai, made in O.S.No.916 of 2017 dated 31.10.2025 and allow the suit as prayed for and thus render justice.

For Appellant(s):

Mr.B.Dinesh Kumar
for P.Kavitha

For Respondent(s):

Mr.N.Santhanaraman
for Mr.J. Mano Balaji
for R4



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ORDER

(Judgment of the Court was delivered by N.Ramesh J.)

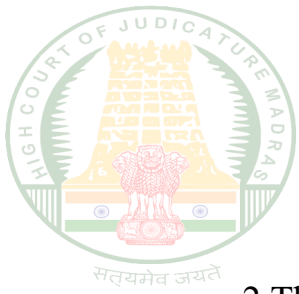
By order dated 05.08.2026 in A.S.No.728 of 2026, a Division Bench of this Court (N. Sathish Kumar and M. Jothiraman, JJ.) noticed that coordinate Benches of this Court had taken conflicting views on the procedure by which a first appeal under Section 96 of the Code of Civil Procedure, 1908 (“the Code”) is placed before the Court and notice ordered on the respondent. The Division Bench directed that the matter be placed before the Hon’ble the Chief Justice for constitution of a Full Bench to decide the following questions:

“i. Whether a first appeal under Section 96 of the Code of Civil Procedure, 1908 must be posted for admission or preliminary hearing before the concerned Bench under Order XLI Rule 11?

ii. Whether a first appeal can be dismissed in limine on merits under Order 41 Rule 11 of the Code without issuing notice to the respondent?

iii. Whether notice is to be issued by the Registrar automatically in every first appeal or whether such notice must be issued under Order XLI Rule 12 only if the appeal is not dismissed by the Court under Order XLI Rule 11?

iv. Whether there is any conflict between Order 41 Rule 11 CPC, as amended by the CPC (Amendment) Act, 1999 and the



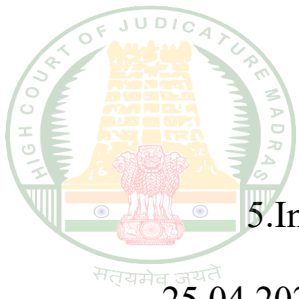
Appellate Side Rules and if so, which must prevail over the other? “

2.This Full Bench was constituted by the Hon’ble the Chief Justice on 11.08.2026. We have heard learned counsel on either side. Learned counsel for the respondents has also filed written notes of submissions dated 05.10.2026, together with a chart of the judgments and materials referred to in the order of reference.

The genesis of the reference

3.A.S.No.728 of 2026 is a first appeal under Section 96 of the Code against the judgment and decree dated 31.10.2025 of the learned XVI Additional District Judge, City Civil Court, Chennai, in O.S.No.916 of 2017. The merits of the appeal are not before us. Seven orders of this Court bear on the questions referred, and it is convenient to notice them in the order in which they were made.

4.In **Karupuchetty @ Vaiyapuri (Died) v. Papathi**, A.S.No.148 of 2025, N. Sathish Kumar, J., by order dated 18.02.2025, doubted the practice of the Deputy Registrar entertaining first appeals and issuing notice without the appeal being posted before the Court, and called for the views of the Registrar General. By the reasoned order dated 07.03.2025, reported in **[2025] 2 MLJ 719**, the learned Judge held that every first appeal must be posted before the Court under Order XLI Rule 11 for orders as to admission, and directed the issue of a circular to that effect.



5. In **V.S. Chandrasekaran v. R. Uma**, A.S.(MD)No.5 of 2025, dated 25.04.2025, reported in [2025] 3 MLJ 411, a Division Bench (G.R. Swaminathan and M. Jothiraman, JJ.) held that

“there is an inconsistency between Order 41 Rules 9 and 11 of CPC as interpreted by the Hon’ble Supreme Court and Order II Rules 1 to 3 of the Appellate Side Rules of the Madras High Court”,

but that the Appellate Side Rules, framed under Section 122 of the Code, would prevail, and that the existing practice would continue until the Rules Committee amended the Rules.

6. In **Prema v. Nallasellam**, A.S.No.586 of 2025, dated 29.04.2025, reported in (2025) 3 MLJ 420, N. Sathish Kumar, J. held that the decision in **V.S. Chandrasekaran** (cited supra) had been rendered without noticing Section 32(1) of the Code of Civil Procedure (Amendment) Act, 1999 (Act 46 of 1999), and reiterated that every first appeal must be listed before the Court under Order XLI Rule 11.

7. In **P.R. Saravanan and others v. K. Dhanalakshmi (Died)**, A.S.Nos.617 of 2025 etc., dated 22.05.2025, reported in [2025] 4 MLJ 415, a Division Bench (G.R. Swaminathan and V. Lakshminarayanan, JJ.) took the opposite view. It held that

“Neither Section 96 nor does Order XLI Rule 11 contemplate an



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*admission procedure or motion procedure as is called”, that
“there is no conflict between the Appellate Side Rules and the
Code”,*

and that the Registry should continue to issue notice on the presentation and registration of the appeal, listing it under Order XLI Rule 11 only if the Court so directs. It overruled **Karupuchetty** (cited supra) and **Prema** (cited supra). As extracted in paragraph 9 of the order of reference, the Division Bench also held that

“At any stage of the proceedings after issuance of notice to the respondents, the appellate Court has the power to dismiss worthless or vexatious appeals.”

8.In **Chennai Port Authority and others v. J. Chandrasekaran and others**, reported in (2026) 2 LW 766, a Division Bench (C.V. Karthikeyan and K. Kumaresh Babu, JJ.), by judgment dated 30.04.2026, held that first appeals under Section 96 must be posted for admission before the concerned Bench. The Division Bench proceeded on the footing of an amendment to Order II Rule 3 of the Appellate Side Rules which had been approved by the Rules Committee but had not been notified.

9.In **D. Paramasivam v. P. Arunachalam**, A.S.No.535 of 2026, dated 15.07.2026, the Division Bench which decided **P.R. Saravanan** (cited supra) declined to follow **Chennai Port Authority** (cited supra). It held that the

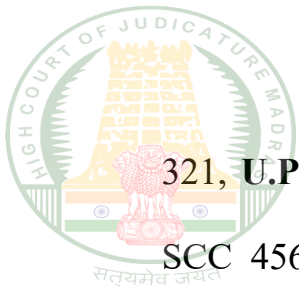


observations in that case on Section 96 and Order XLI were obiter, since that appeal arose under the Commercial Courts Act, 2015, and that a resolution of the Rules Committee has no force of law until it is sanctioned and published under Sections 126 and 127 of the Code. It directed the Registry to follow **P.R. Saravanan** (cited supra). The same Division Bench, however, invoked Order XLI Rule 11 and dismissed the appeal before it in limine without notice to the respondents, the appeal having been posted before it for admission. The referring Bench noticed, in paragraph 10 of the order of reference, that this course does not sit easily with the proposition that the power of dismissal is exercisable only after notice.

10.It is against this background that the four questions came to be referred.

The submissions

11.Learned counsel for the respondents submitted that, since the amendment of 1999, admission of a first appeal is not automatic. Every first appeal has to be listed before the concerned Bench for hearing under Order XLI Rule 11, and notice to the respondent follows only if the appeal is not disposed of at that stage. The Appellate Side Rules were framed before the 1999 amendment and have not been brought in line with it, and cannot be read to keep alive a practice of automatic admission. Learned counsel relied on paragraph 3.17 of the Report of the Malimath Committee, on the decisions of the Supreme Court in **Mahadev Govind Gharge v. Special Land Acquisition Officer**, (2011) 6 SCC



321, **U.P. Avas Evam Vikas Parishad v. Sheo Narain Kushwaha**, (2011) 6

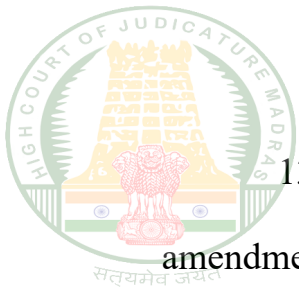
SCC 456, **Bolin Chetia v. Jogadish Bhuyan**, (2005) 6 SCC 81 and **Devi**

Theatre v. Vishwanath Raju, (2004) 7 SCC 337, and on the decision of the

three-Judge Bench in **Salem Advocate Bar Association, Tamil Nadu v. Union**

of India, (2005) 6 SCC 344.

12. Learned counsel made three submissions which bear directly on the questions. First, if notice were to issue automatically on numbering, the power of summary dismissal before notice and before calling for the records, recognised in **Bolin Chetia** (cited supra) and **U.P. Avas Evam Vikas Parishad** (cited supra), would become a dead letter; the sixty-day limit in Rule 11-A would have no work to do; and notice would precede the Rule 11 hearing, contrary to paragraph 21 of **Mahadev Govind Gharge** (cited supra). A construction which empties a statutory provision of content should be avoided. Second, a rule made under Section 122 of the Code operates on the text of the First Schedule as it stood when the rule was made. No rule has been made after the 1999 amendment, and the Appellate Side Rules cannot be read as having altered a provision which, in its present form, the rule-making authority never had occasion to consider. Third, even on the reading adopted in **P.R. Saravanan** (cited supra), the Rules call upon the Registrar to take the instructions of the Judge to list the matter under Order XLI Rule 11, which itself points to listing before the Judge.



13. Learned counsel suggested that this Court may recommend an amendment of the Appellate Side Rules so as to provide for listing of a first appeal before the Bench under Order XLI Rule 11 within the time contemplated by Rule 11-A, for issue of notice only after that hearing, for hearing a caveator at that stage, for a brief reasoned order where the appeal is dismissed in limine, and for conforming the forms in the Appendices. Pending such amendment, learned counsel submitted that the Registry should continue to list first appeals before the Bench under Order XLI Rule 11.

The statutory provisions

14. Section 96(1) of the Code provides that, save where otherwise expressly provided,

“an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorised to hear appeals from the decisions of such Court.”

15. Order XLI Rules 11, 11-A and 12(1) of the Code read as follows:

“11. Power to dismiss appeal without sending notice to Lower Court.— (1) The Appellate Court after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day may dismiss the appeal.

11-A. Time within which hearing under rule 11 should be concluded.— Every appeal shall be heard under rule 11 as expeditiously as possible and endeavour shall be made to



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conclude such hearing within sixty days from the date on which the memorandum of appeal is filed.

12. Day for hearing appeal.— (1) Unless the Appellate Court dismisses the appeal under rule 11, it shall fix a day for hearing the appeal.”

16. Order XLI Rule 11(4) requires an Appellate Court, not being the High Court, which dismisses an appeal under sub-rule (1), to deliver a judgment recording in brief its grounds for doing so. Order XLI Rule 14(1) provides that

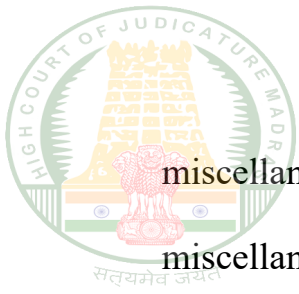
“Notice of the day fixed under rule 12 shall be affixed in the Appellate Court-house”,

and that a like notice shall be sent to the Court from whose decree the appeal is preferred and served on the respondent. Order XLII Rule 2 provides that, at the time of making an order under Rule 11 of Order XLI for the hearing of a second appeal, the Court shall formulate the substantial question of law.

17. Section 122 of the Code empowers a High Court, from time to time, by rules not inconsistent with the provisions in the body of the Code, to annul, alter or add to the rules in the First Schedule. The Rules of the High Court, Madras, Appellate Side, 1965 (“the Appellate Side Rules”) were framed under that power. Order II Rule 3(3)(i) of those Rules provides that in appeals against original decrees of subordinate Courts

“the Registrar shall issue notice forthwith”.

Order II Rule 3(3)(iv) provides that in appeals against appellate decrees,



miscellaneous appeals under Order XLIII Rule 1(u) of the Code and miscellaneous second appeals,

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“the Registrar shall take the orders of the Judge whether notice to the respondent shall issue. If the Judge directs that the appeal be posted for hearing under Order XLI Rule 11 of the Code, the Registrar shall post the appeal for hearing”.

Order II of the Rules has not been amended since 1999 in any respect material to this reference; the amendments notified in 2021 and 2025 relate to Orders I, IV, VIII and IX.

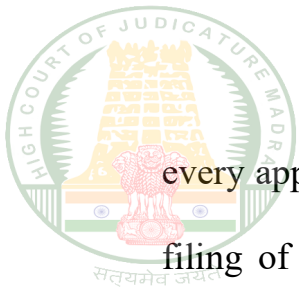
18. Section 32(1) of Act 46 of 1999, which is in the same terms as Section 16(1) of Act 22 of 2002, provides:

“Any amendment made, or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of this Act shall, except in so far as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed.”

Both Acts were brought into force on 01.07.2002.

Question No.1

19. The text of Order XLI Rule 11-A answers the first question. It provides that *“Every appeal shall be heard under rule 11 as expeditiously as possible”*. The words are “every appeal”, and the verb is “shall”. The Rule does not say that an appeal may be heard under Rule 11 if the Court so directs; it says that



every appeal shall be so heard, and it fixes an outer limit of sixty days from the filing of the memorandum of appeal for concluding that hearing. Rule 12(1) then provides that it is only “*Unless the Appellate Court dismisses the appeal under rule 11*” that a day is fixed for hearing the appeal, and Rule 14(1) provides for notice of the day so fixed under Rule 12. Read together, these Rules lay down one sequence for every appeal governed by Order XLI: a hearing of the appellant under Rule 11; dismissal at that stage, or, if the appeal is not dismissed, the fixing of a day under Rule 12; and notice of that day to the respondent under Rule 14.

20. This is how the Supreme Court has read these Rules. As held in **Mahadev Govind Gharge** (cited supra), at paragraph 20,

“Rule 11 is an important provision which requires the appellate court to fix a day for hearing the appellant or his pleader and, on hearing, it may even dismiss the appeal at that very stage”, and “The hearing contemplated under Rule 11 is not an empty formality but denotes the substantive right of being heard, available to the appellant(s). The court has to apply its mind to the merits of the appeal and then alone the court can pass an order of dismissal.”

At paragraph 21, the Supreme Court held that

“Between the day of hearing fixed under Rule 11 and that fixed under Rule 12 there is a requirement to issue notice to the respondent(s)”,



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and at paragraph 39 that hearing of the appeal

“can be classified in two different stages; one at the admission stage and the other at the final stage”.

As held in **Bolin Chetia** (cited supra), at paragraph 9, the stage under Rule 11 is, *“in judicial circles, ... generally called a ‘motion hearing’ or ‘hearing on admission’ or ‘preliminary hearing’.”* As held in **Devi Theatre** (cited supra), the Court, while considering the question of admission of an appeal under Section 96, may admit the appeal if it is found fit for full hearing, and *“Otherwise, if it finds that the appeal lacks merits, it may be dismissed at the initial stage itself.”* The three-Judge Bench in **Salem Advocate Bar Association** (cited supra), as noticed in paragraph 17 of the order of reference, examined the amendments of 1999 and 2002 and upheld them, including the amendment to Order XLI Rule 11.

21. The purpose of the amendment confirms this reading. Paragraph 3.17 of the Report of the Malimath Committee, extracted in paragraph 5 of the order of reference, states:

“In our view, there is no justification for not listing Regular First Appeals for preliminary hearing or admitting them as of course. Admitting appeals for final hearing regardless of merit not only encourages frivolous litigation and adds to the cost thereof but also leads to avoidable accumulation of cases in the High Courts.”

The Committee went on to say that Order XLI Rules 11, 11-A and 12 read together



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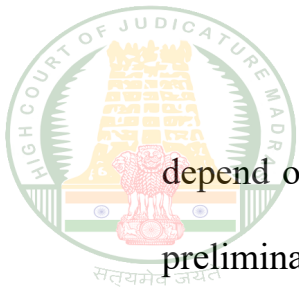
“make it obligatory for the appellate court to fix a day for the preliminary hearing of appeal as expeditiously as possible”, and that

“the question of fixing a day for the final hearing of appeal arises only if the appeal is not summarily dismissed at the preliminary hearing.”

A practice by which every first appeal is noticed on numbering, and reaches the Court for the first time at its final hearing, restores the very position which the Committee found to be a cause of arrears.

22.The right of appeal under Section 96 is a substantive and valuable right. It is a right to be heard by the Court. It is not satisfied by the registration of the memorandum and the issue of notice by an officer of the Registry. Paragraph 20 of **Mahadev Govind Gharge** (cited supra) describes the Rule 11 hearing as a *“substantive right of being heard”*. That right is given effect only when the appeal is placed before the Bench and the Bench applies its mind to it at the threshold.

23.We are conscious that **P.R. Saravanan** (cited supra) held that the word “admission” does not appear in Order XLI Rule 11, and that Rule 11 is a power of dismissal and not a gate through which every appeal must pass. We have given that reasoning our respectful consideration. Nothing turns on the absence of the word “admission”. Rule 11-A requires every appeal to be heard under Rule 11, and Rule 12 makes the fixing of a day for hearing the appeal

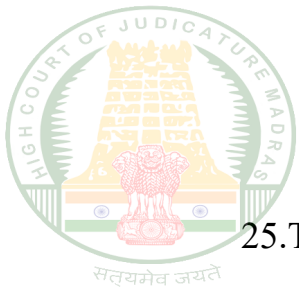


depend on the outcome of that hearing. Whether the stage is called admission, preliminary hearing or motion hearing, the Supreme Court has used all three expressions for it. The decision in **P.R. Saravanan** (cited supra), at paragraph 120, treated **Mahadev Govind Gharge** (cited supra) as having decided only that an appellate Court has the power to dismiss an appeal ex parte. As the referring Bench has pointed out, that reading proceeds from paragraph 39 without noticing paragraph 20 of the same judgment, which deals directly with Rule 11. With respect, the reading in **P.R. Saravanan** (cited supra) also does not account for Rule 11-A, which leaves no discretion as to whether the Rule 11 hearing is to be held.

24. We are fortified in this view by the submission of learned counsel for the respondents, which we accept, that the contrary construction would leave three provisions without content. If notice were to issue automatically on numbering, the power recognised in **Bolin Chetia** (cited supra) to dismiss an appeal

“before issuing notice to the respondent and even before sending for the record of the inferior forum”

could never be exercised; the sixty-day limit in Rule 11-A would have nothing to operate on; and notice would precede the Rule 11 hearing, contrary to paragraph 21 of **Mahadev Govind Gharge** (cited supra). A construction which renders a statutory provision otiose is to be avoided.



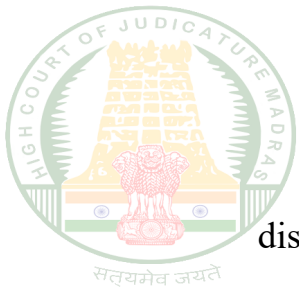
25. The variety of appeals which now reach this Court under Section 96 is also far wider than in 1965, when the Appellate Side Rules were framed. Appeals arising under special enactments, such as the Commercial Courts Act, 2015, carry their own periods of limitation and raise threshold questions as to the forum and the applicable procedure, as the facts of **Chennai Port Authority** (cited supra) illustrate. These are questions for the Court and not for the Registry, and they are best answered at the threshold.

26. We therefore answer Question No.1 in the affirmative. Every first appeal under Section 96 of the Code shall be posted before the concerned Bench for hearing under Order XLI Rule 11, read with Rule 11-A, before notice is issued to the respondent.

Question No.2

27. Order XLI Rule 11(1) contemplates a hearing of the appellant or his pleader. It does not require the respondent to be served or heard before the appeal is dismissed at that stage. As held in **U.P. Avas Evam Vikas Parishad** (cited supra), at paragraph 7,

“an appellate court can dismiss an appeal after a preliminary hearing without calling for the records of the trial court and without issuing notice to the respondent, if it is satisfied that the appeal has no merit.”



As held in **Bolin Chetia** (cited supra), at paragraph 9, the power to dismiss summarily

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“can be exercised, depending on the facts and circumstances of a given case, before issuing notice to the respondent and even before sending for the record of the inferior forum.”

As we have noticed, the Division Bench in **D. Paramasivam** (cited supra) itself exercised this power and dismissed the appeal before it without notice to the respondents.

28. The power is a judicial discretion, and it is attended by two safeguards.

First, it is to be exercised sparingly. As held in **Bolin Chetia** (cited supra),

“The appellate courts exercise the discretion in favour of summary dismissal sparingly and only by way of exception.”

An appeal which raises a triable issue, or which discloses a prima facie case, is not to be dismissed in limine. Second, the order must be reasoned. As held in **U.P. Avas Evam Vikas Parishad** (cited supra), at paragraph 9,

“The order of the High Court dismissing the first appeal should be sufficiently reasoned to disclose the application of mind to the grounds of appeal and make out that the High Court was resorting to dismissal in limine as it found the appeal either to be vexatious or wholly without merit”,

and at paragraph 10,

“Unless the order is reasoned, there will be no way of knowing whether the appellate court has examined the appeal before deciding that it did not deserve admission.”



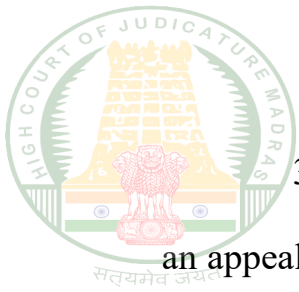
29. Where a respondent has lodged a caveat, the respondent is entitled to be heard at the Rule 11 stage. As held in **Mahadev Govind Gcharge** (cited supra), at paragraph 39, such an appeal

“could be heard in the presence of the other party at the admission stage itself, particularly, in cases where a caveat is lodged by the respondent to the appeal.”

30. We therefore answer Question No.2 in the affirmative. A first appeal may be dismissed in limine on merits under Order XLI Rule 11 without issuing notice to the respondent, after hearing the appellant or his counsel. The power shall be exercised sparingly, only where the appeal is found to be vexatious or wholly without merit, and by a reasoned order disclosing the application of mind to the grounds of appeal. Where a caveat has been lodged, the caveator shall be heard at that stage.

Question No.3

31. The third question follows from the first. Order XLI Rule 14(1) provides for notice *“of the day fixed under rule 12”*. A day is fixed under Rule 12 only if the appeal is not dismissed under Rule 11. As held in **Mahadev Govind Gcharge** (cited supra), at paragraph 21, the requirement to issue notice to the respondent arises between the day of hearing fixed under Rule 11 and the day fixed under Rule 12. Notice to the respondent is therefore the consequence of the appeal surviving the Rule 11 hearing. It is not an event which precedes that hearing.



32. The decision whether a respondent should be called upon to answer an appeal is a decision on whether the appeal deserves to proceed to a contested hearing. That is a judicial decision. As held in **Prema** (cited supra), the power to hold a hearing under Order XLI Rule 11

“requires the first appellate Court to apply its mind to the merits of the case. It is unquestionably a judicial function and is inalienable and cannot be delegated to a Deputy Registrar.”

The Registry may receive, scrutinise and number the appeal; it cannot decide that the appeal is to be answered by the respondent before the Court has heard the appellant.

33. We therefore answer Question No.3 as follows. Notice to the respondent shall not be issued by the Registrar automatically in a first appeal. Notice shall issue under Order XLI Rule 12 read with Rule 14, and only if the appeal is not dismissed by the Court under Order XLI Rule 11.

Question No.4

34. The Appellate Side Rules and the Code are to be read together and harmonised wherever possible. The difficulty arises only from Order II Rule 3(3)(i) of the Rules, which directs the Registrar, in appeals against original decrees of subordinate Courts, to “*issue notice forthwith*”. Read as a direction to issue notice to the respondent on numbering, without any hearing under Order XLI Rule 11, that clause cannot stand with Rules 11, 11-A, 12 and 14 of Order XLI. The Code requires every appeal to be heard under Rule 11 before a



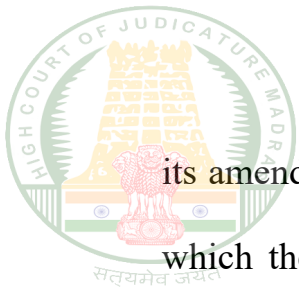
day is fixed under Rule 12 and notice of that day issues under Rule 14. The clause directs notice before any such hearing. Both cannot be given effect in the same appeal. To that extent, there is a conflict.

35.It is significant that the clause which **P.R. Saravanan** (cited supra) described, at paragraph 104, as one which

“only call[s] upon the Registrar to receive instructions from the Judge to list the matter for hearing under Order XLI Rule 11”

is, in its terms, Order II Rule 3(3)(iv), which governs appeals against appellate decrees and miscellaneous second appeals. Clause (iv) is in harmony with the Code. It is clause (i), which governs first appeals and directs notice forthwith, that is not. As learned counsel for the respondents rightly submitted, the description of the Rules in **P.R. Saravanan** (cited supra) itself points to listing before the Judge.

36.The next question is which of the two prevails. Section 122 of the Code permits a High Court to annul, alter or add to the rules in the First Schedule by rules *“not inconsistent with the provisions in the body of this Code”*. The power is conferred by Parliament, and a rule made under it operates on the First Schedule as it stood when the rule was made. Order II Rule 3(3)(i) of the Appellate Side Rules was framed in 1965, when Order XLI stood in a different form. Parliament thereafter amended Order XLI by Act 46 of 1999 and Act 22 of 2002, with effect from 01.07.2002. The High Court has not, since then, made any rule under Section 122 which alters or departs from Order XLI Rule 11 in



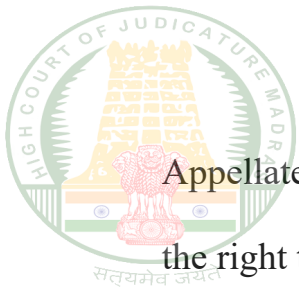
its amended form. There is, therefore, no exercise of the rule-making power by which the High Court can be said to have considered amended Rule 11 and chosen to vary it. A rule framed in 1965 cannot be read as having altered a provision which did not then exist in its present form.

37. More specifically, preamble of the Appellate Side Rules specifically read that:

"Under the provisions of section 122 of the Code of Civil Procedure, 1908, and all other powers hereunto enabling and with previous approval of the Government of Madras, the High Court hereby issues the following rules to apply, so far as may be practicable, to all proceedings taken on the Appellate Side of the High Court, Madras.."

(emphasis supplied)

Thus, when the High Court considered this power under Section 122 and taking into account the then prevailing Order XLI, had framed the Appellate Side Rules, 1965, thereby, in tune with the provisions to the Code of Civil Procedure, had assigned the powers and duties of the officers of this Court under Order II, and by Rule 3(3)(i) notice forthwith was to be issued. (The numbering sequence of which, is also erroneous and ideally, it should be Order II R 4(1)). Once the Code of Civil Procedure is amended, which had changed the very procedure by which, the appeals are to be heard, as the Appellate Court had to apply its mind and has to reject if the appeal has no merit at all, then, it became impracticable to continue to apply the Order II R 3(3)(i) of the



Appellate Side Rules, 1965. Now, the very right of appeal of a litigant includes the right to consider the appeal at the very inception.

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38. Parliament also provided expressly for this situation. Section 32(1) of Act 46 of 1999, and Section 16(1) of Act 22 of 2002, provide that any provision inserted in the principal Act by a High Court before the commencement of the amending Act shall, except in so far as it is consistent with the principal Act as amended, stand repealed. A rule made under Section 122 altering the First Schedule is such a provision. To the extent Order II Rule 3(3)(i) is inconsistent with amended Order XLI, it stands repealed by the express words of Parliament. The inconsistent part of the Rule is thus overtaken by the amendment and remains inoperative unless and until the High Court, in exercise of the power under Section 122, makes a fresh rule consistent with the Code as it now stands.

39. In **V.S. Chandrasekaran** (cited supra), the Division Bench held that rules framed under Section 122 rank higher than the rules in the First Schedule and therefore prevail. With respect, we are unable to agree. The power under Section 122 is a power to vary the First Schedule as it stands when the rule is made. It does not authorise a rule framed in 1965 to override an amendment which Parliament itself made to the First Schedule thirty-four years later, and it cannot be read so as to defeat Section 32(1) of Act 46 of 1999, by which Parliament repealed every earlier High Court provision inconsistent with the amended Code. The view taken in **V.S. Chandrasekaran** (cited supra) does not



take into account Section 32(1). For the same reasons, the view in **P.R. Saravanan** (cited supra) that there is no conflict between the Rules and the Code cannot be accepted in so far as first appeals governed by Order II Rule 3(3)(i) are concerned.

40. After all, procedure is the hand-made of justice and we have to take stock of the long period of time we have travelled, prior and after the amendment of the Code and with the existing system, one can safely conclude that hearing and disposal of First Appeals by the High Court was not exemplary and could have been better. Still clinging on to the out-dated procedure would not be in the best interest of the litigant, for whose benefit alone the system exists.

41. We therefore answer Question No.4 as follows. There is a conflict between Order XLI Rule 11 of the Code, as amended by the Code of Civil Procedure (Amendment) Act, 1999, and Order II Rule 3(3)(i) of the Appellate Side Rules, in so far as the latter directs the Registrar to issue notice in a first appeal without a hearing under Order XLI Rule 11. Order XLI Rule 11 of the Code, as amended, prevails. To the extent of the inconsistency, Order II Rule 3(3)(i) stands repealed under Section 32(1) of Act 46 of 1999 and Section 16(1) of Act 22 of 2002. In all other respects, Order II Rules 1 to 3 of the Appellate Side Rules shall be read in harmony with Order XLI of the Code as amended.



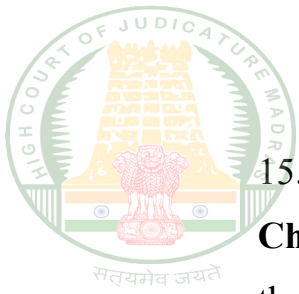
Conclusion

42. The reference is answered as follows:

- (i) Every first appeal under Section 96 of the Code shall be posted before the concerned Bench for hearing under Order XLI Rule 11, read with Rule 11-A, before notice is issued to the respondent.
- (ii) A first appeal may be dismissed in limine on merits under Order XLI Rule 11 without issuing notice to the respondent, after hearing the appellant or his counsel. The power shall be exercised sparingly, only where the appeal is vexatious or wholly without merit, and by a reasoned order. Where a caveat has been lodged, the caveator shall be heard at that stage.
- (iii) Notice to the respondent shall not be issued by the Registrar automatically. Only the Court can issue notice under Order XLI Rule 12 read with Rule 14, if the appeal is not dismissed under Order XLI Rule 11.
- (iv) Order XLI Rule 11 of the Code, as amended, prevails over Order II Rule 3(3)(i) of the Appellate Side Rules, which stands repealed to the extent of the inconsistency under Section 32(1) of Act 46 of 1999 and Section 16(1) of Act 22 of 2002.

43. **Karupuchetty @ Vaiyapuri (Died) v. Papathi**, [2025] 2 MLJ 719, **Prema v. Nallasellam**, (2025) 3 MLJ 420, and **Chennai Port Authority v. J. Chandrasekaran**, (2026) 2 LW 766, in so far as they hold that a first appeal must be posted before the Bench under Order XLI Rule 11, are approved.

P.R. Saravanan v. K. Dhanalakshmi (Died), [2025] 4 MLJ 415, and **D. Paramasivam v. P. Arunachalam**, A.S.No.535 of 2026, dated

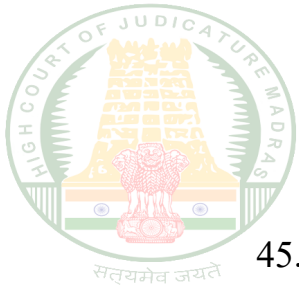


15.07.2026, in so far as they hold to the contrary, are overruled. **V.S. Chandrasekaran v. R. Uma**, [2025] 3 MLJ 411, in so far as it holds that the Appellate Side Rules prevail over Order XLI Rule 11 as amended, is overruled.

44.The Registrar General shall place a copy of this judgment before the Hon'ble the Chief Justice and the Rules Committee for an amendment of Order II Rule 3 of the Appellate Side Rules, in exercise of the power under Section 122 of the Code, so as to bring it in conformity with Order XLI of the Code as amended. The amendment may provide that

- (a) a first appeal, on presentation and numbering, shall be listed before the concerned Bench for hearing under Order XLI Rule 11 within the time contemplated by Rule 11-A;
- (b) where a caveat has been lodged, the caveator may be heard at the Rule 11 stage;
- (c) where an appeal is dismissed in limine, a reasoned order shall be recorded; and
- (d) the forms and notices in the Appendices to the Rules shall be conformed accordingly.

Pending such amendment, the Registry shall list first appeals in accordance with the answers given above.



45.The Registry shall place A.S.No.728 of 2026 before the appropriate Bench, as per the roster, for disposal in the light of the answers given above.

(G.J.,J.)

(D.B.C.,J.)

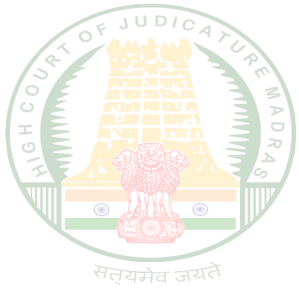
(N.R.,J.)

16-10-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
sms

To

- 1.The Learned XVI Additional, City Civil Court, Chennai.
- 2.The Registrar General,
High Court, Madras.
- 3.The Registrar (Judicial)
High Court, Madras.



WEB COPY

AS No. 728 of 2



Order QR

DR.G.JAYACHANDRAN, J.
AND
D.BHARATHA CHAKRAVARTHY, J.

N.RAMESH, J.

sms

PRE-DELIVERY ORDER MADE
IN AS No. 728 of 2026

16-10-2026