

# **INDORE INSTITUTE OF LAW**

## **LEX BONANZA-2015**

### **FORMAT**

#### **I. WHAT ARE THE ESSENTIAL ELEMENTS OF A JUDGEMENT:**

A judgement is the result of application of law to the facts of a given case. It is an expression of ultimate opinion of the Judge which he renders after due consideration of evidence and arguments advanced before him. It is intended to put a final end to the controversy involved in the matter so that the dispute brought before the Court by the parties is set at rest. While Section 2(9) of Civil Procedure Code defines the judgement to mean “a statement given by the Judge on the grounds of a decree or order”, but there is no such corresponding definition in Criminal Procedure Code. Question as to what are the essential requirements of an ideal judgement has been deliberated upon many times before, but since the enormity of litigation which the Courts throughout the country, from subordinate level to the Apex, are required to deal with, this is again engaging our attention in the present Conference held on the subject of “Techniques and Tools for Enhancing Timely Justice”.

Some of the essential requirements of a good judgement writing are as under:

#### **A. BEGINNING OF THE JUDGEMENT:**

A judgement, at the top of it, should always contain the name of the Court, title and number of the case which is being decided and also the name and designation of the Judge concerned. This is necessary so that it is known as to judgement pertains to which matter and has been decided by which Court and Judge. It should also contain the date of delivery of judgement.

#### **B. OPENING OF THE JUDGEMENT:**

A judgement should begin with brief introduction of the case history, such as what is its nature; whether Civil or Criminal etc. what is its stage, whether trial of a criminal case or an original suit, appeal or revision and if trial whether regular or summary or of a misc. nature. If it is not original jurisdiction, it should indicate as to how and when it reached the stage of appeal or revision. Case of the plaintiff / petitioner / appellant should be briefly noticed in the first instance with reference to his pleadings followed by such similar narrations of the case of the defendant / non-petitioner / respondent. In doing so, efforts of the Presiding Officer should be to notice every relevant fact, but at the same time, there should be no repetition and unnecessary facts should be omitted.

#### **C. ISSUES AND POINTS FOR DETERMINATION:**

The Presiding Officer should then proceed to frame issues and if it is a criminal trial, he may proceed to notice charges and in other matters, the points for determination within the periphery of which the evidence led by the parties can be marshalled and sifted and the arguments of their counsel examined. While Order 14 of the Code of Civil Procedure requires framing of issues on the basis of assertions and denials made by the parties in their pleadings on material proposition of fact or law, Section 354 of the Code of Criminal Procedure provides that the judgment should contain points for determination for decision and the reasons for such decision. Framing of issues in a civil suit and charges in criminal trial are the requirements of law, but formulating points for determination in other matters also helps the Court to remain focused on the questions of law and facts which it is called upon to decide.

**D. REFERENCE TO THE EVIDENCE; BOTH ORAL AND DOCUMENTARY:**

Evidence that is led in the matter may consist of both, oral as well as documentary. While oral evidence of the witnesses is noticed with reference to the number of the witnesses such as PW-1 or DW-1 etc., the documentary evidence likewise is mentioned with reference to the number of documents as they are exhibited such as Ex.P-1 or Ex.D-1 or in other misc. matters simply as Ex.1 or 2 or Annexure 1 or 2. Brief reference to the statement of number of witnesses recorded on either side and documents exhibited by both the parties may not be out of order.

**E. THE DECISION ON ISSUES FRAMED OR POINTS FORMULATED:**

The Presiding Officer may thereafter proceed to decide the issues or the points for determination, in the order they are framed. Likewise if it is a criminal trial, findings should be recorded charge wise. He should discuss the arguments of each party with reference to their evidence relevant to the issue / point in the question. Evidence of each of the issue / point should be sifted in the context of arguments raised. The Presiding Officer should record his finding on each of such issues by supplying his own reasons and giving logic for his doing so and not just by accepting the case of one party or rejecting that of the other. Findings on each of the points should be recorded in such a manner that they remain cohesive and linked to each other. The judgement should be reasoned and speaking one, but at the same time, it should not be unnecessarily longish.

**F. DECRETAL / OPERATIVE PART:**

Judgement should finally record the result of the determination either granting relief or refusing to grant such relief in civil cases and convicting or acquitting the accused in criminal case and in the case of conviction, clearly indicating the quantum of sentence both in terms of imprisonment and fine and consequences of failure to pay fine within the prescribed time. Even in civil cases, this part of the judgement should be stated in clearest terms, leaving no scope for

ambiguity. It should exactly indicate what the Court requires the parties to do and how the decision should be executed and which party has to carry it out, the deadline for execution thereof. If it is a money decree, the amount of money to be paid, by which party to whom and if interest is also to be paid, the rate and the period for which it has to be paid. In civil cases, Order 48 Rule 3 of CPC provides the forms given in the appendices, which may be used as a guideline with such variation as the circumstances of each case may require, for the purpose therein mentioned.

### **G. SIGNATURE:**

At the end of the judgement, the Presiding Officer should make his signature clearly indicating his typed written name in bracketed portion with designation and date of signing.

### **II. WHAT IS THE PURPOSE OF A JUDGMENT?**

Main purpose of a judgement is to let the party know about the reasons for which the matter has been decided in his favour or against him, granting or refusing to grant relief. Another significant and equally important purpose of writing judgement is to provide the reasons which have weighed with the Court in deciding the matter, one way or the other, for appreciation by the appellate / superior court.

### **III. HOW EFFECTIVENESS MEASURED:**

Effectiveness of a judgement can be measured by the manner how best the judgement conveys what the

Judge wants to communicate to its readers. The judgement should be self contained document from which it should appear what were the facts of the case and what was the controversy involved which has been decided by the Court and in what manner.

Structure of the judgement should be such that a reader while reading it without any difficulty understands the facts delineated and may be able to know every reason and the way, in which it has been decided. It should be simple, brief and clear.

### **IV. FEW OTHER SUGGESTIONS:**

Here are few other suggestions on how to write the judgment.

#### **A .AVOID QUOTING FROM PLEADINGS AND EVIDENCE:**

A Judge should avoid quoting extensively from the pleadings of the parties and their evidence. If he wants to discuss the evidence with reference to the pleadings, he should do so in his own

language rather than quoting and thereby leaving the parties to guess what for they have been quoted.

#### B. REFERENCE TO THE PRECEDENTS:

Reference to the precedents which may be relied on by either of the parties may be made, but caution should be taken to ensure that one which is nearest on the issues involved in the case and the facts should be relied. It should be ensured that the relied precedents are actually relevant to the controversy involved. Quoting from the precedents as far as possible should be kept bare minimum. The

Presiding Officer should generally refer to the ratio of the judgment with reference to the law point which he seeks to rely in his own language so as to omit unnecessary part. If at all he decides to quote, he should quote only that part of the precedent which is absolutely essential for deciding the controversy in question and it should be restricted to one or two of the latest case laws on the subject. Quoting extensively from number of precedents, one after the other, not only add on the pages of the judgment but in the process, may end up losing its focus on the central issues. Do not be just misled by head notes. Read the substantive part of the judgement and try to gather ratio *dicidendi* thereof. The Presiding Officer should always keep his knowledge updated on the subject in issue so as to ensure that his judgement is in conformity with latest approach of the law and is not in conflict with the binding decisions of the High Court concerned and the Supreme Court.

It may require some research back home, but that is worth of it.

#### C. LANGUAGE OF THE JUDGEMENT:

A judgement should be written in easy and simple language, which can communicate immediately and faster. Plainly spoken judgement quickly reveals the mind of the Judge and the exposition of the legal reasoning he propounds in a rather convincing manner. Do not use terminology which may be unfamiliar and irritating. Never use complicated language or phraseology just for the fun of it. Use simple verbs and keep them as close to the subject which they refer as possible. A judgement should not be prolix or verbose. Such judgement is a torture in the first place to its writer to write and then to its reader to read. Care should be taken to correctly spell proper nouns, names of the persons and places in the same manner throughout the judgement. The language should be sober and temperate and not satirical or factious. The Judge should refrain from cracking jokes in the judgement and should be dignified and restrained while expressing his opinion. Active voice is generally more direct and immediate in communication than the passive. Always therefore prefer to use active voice rather than using passive voice. Although good style is very much a matter of personal test, but the basic rules of grammar, structure and above all, common sense, should be applied.

#### D. CRITICISM OF PARTIES AND WITNESSES:

Judgment of a case should reflect the calm and cool deliberations made by the Judge based strictly on the pleadings and evidence of the parties and no extraneous material or personal

knowledge or surmises or conjectures should be allowed to creep in the judgment. While writing the judgment, criticism of the parties thereto or their witnesses or a person not a party to the litigation, should be avoided. If however doing so becomes necessary for any justifiable reason, the language should be of utmost restraint while always being reminded of the fact that even the person making the comment is not fallible. The language of the criticism therefore should be sober, dignified and restrained as the use of intemperate and satirical language is very antithesis to a judicial determination.

Disparagingly libelous remarks against a person who is not a party to the litigation and who has had no opportunity to defend himself should be always avoided. Care should be taken not to pass adverse or scathing remarks against Presiding Officer of a subordinate Court, more particularly when he has not been provided with the opportunity to present his view point.

#### E. USE HEADINGS AND SUB-HEADINGS:

Use of headings and then sub-headings in a judgement, which you consider might consume comparatively more pages, would always be helpful not only for the purpose of arranging the judgement in a cohesive manner, but also for the convenience of its readers. This would help break the monotonous reading of the continuous text and enable the readers to reach that part of the judgement which interests them most. It would help in avoiding repetition and keeping the discussion lively. By this method you can segregate one topic from another. A sub-heading given below the heading should broadly fall within the purview of the topic covered under that heading.

#### F. GIVING REASONS:

Findings recorded by the Presiding Officer on different issues, for or against any party should always be supported by clearly explained reasons.

Every party has the right to know how and in what manner the judgement has been decided in his favour or against him. Reasons are also necessary for being appreciated by the appellate court as to what weighed in the mind of the Judge in deciding the matter, the way he has done. In fact, right to know the reasons of a judgement is inherent in the right of appeal granted to a litigant by the Statute or otherwise. Giving reasons is thus considered integral part of the principles of natural justice. A Judge ought not to merely decide a case just by saying "dismissed" or "allowed" without giving the reasons how he came to that conclusion. In doing so, such Judge shifts the entire burden of giving the reasons to the appellate court. Increase in the quantity of the decided cases by such Judge can never be a substitute for the quality of judgements. An alert Judge therefore always ensures that his decision is framed in such a way that its contents have the persuasive value even for the appellate court to agree with his view point.

Requirement of giving reasons cannot be sacrificed merely for the sake of brevity, for brevity should not tend to obscurity. But at the same time, judgements should not be too prolix, verbose and lengthily. Judgement is the most important document which the Court hands out to the seeker of justice.

Therefore, the reasons that it contains assume significance.

### G. LINKAGE AND COHESION:

The judgement should be arranged in such a way that the reader is able to know effortlessly how and why the Judge has reached the given conclusion. While framing the judgement, discussion on the arguments advanced before the Court should as far as possible be made in the order in which the arguments have been noticed. There should be cohesion and linkage of the preceding part of the judgement with the succeeding one. Discussion on one topic should end in such a way as to connect it with the beginning of another. Each paragraph of judgement should follow naturally on from the one before and should lead on naturally to the one following. While all relevant arguments advanced by the learned counsel for the parties may be noticed and discussed but at the same time, the Judge should be judicious enough to eliminate the irrelevant arguments. This is necessary with a view to saving space in the judgement which in turn will save unnecessary burden to the readers of the judgement. The Judge may only briefly state the reasons for accepting or not agreeing with the arguments. Even when he is dealing with a number of different and complex issues, the judgement should be a strategic whole and it should look like an interwoven single document. Flow of a judgement should never be lost and it should make an interesting reading from beginning to end. Judgement writing, all said and done, is no more than an exercise in analysis and communication. Always therefore ensure that the result is as concise as is compatible with the findings on the issues and questions involved in the matter. Make sure that the judgement contains a proper balance between exposition, analysis and conclusion. Ensure that it is written in easy language and does not contain language which will require two dictionaries and a thesaurus to comprehend. Never use slang and loose language in order to appear streetwise.

### H. DELAY IN DELIVERY OF THE JUDGEMENT:

Judgement should be delivered at the earliest possible time. In fact, Order XX Rule 1 of CPC in its proviso requires that every endeavour should be made by the Court to pronounce the judgement within thirty days from the date on which the hearing of the case is concluded and if it is not practicable to do so on the ground of the exceptional and extraordinary circumstances of the case, the Court should fix a future date for pronouncement of the judgement which should ordinarily be not beyond sixty days from the date on which the hearing of the case was concluded. Early pronouncement of the judgement may save the Judge from unnecessary criticism.

### I. AVOID MEDIA ORIENTATION:

Media orientation of the judgements has today become a very disturbing trend which should be avoided at all costs. Though judgements which are delivered by the courts are not only meant to convey to the litigants, but to the whole lot of outside world and thus the media persons can also have access to them and subject them to fair criticism. But at the same time, a Judge should never frame a judgement keeping in view the fame and highlights he will gain there from, though it may be incidental in some of the cases. Avoiding such approach is very

necessary, otherwise the objectivity of the Judge writing the judgement is likely to get blurred which may eventually obstruct the reach of justice and may unwittingly, prejudice cause of one or the other litigating parties.

J. TAKING NOTES-MAKING NOTES:

A Presiding Officer should cultivate the habit of taking notes while hearing the arguments, especially in cases which involve complex issues and may require longer judgements. By this method, he will not miss important arguments and it would immensely help him in improving quality of the judgement. Likewise, he may prepare a handwritten draft of the judgement before dictating the final judgement. This would, on its own, ensure conciseness and brevity of the judgement and would also, with the proximity of time that his thought process would have while translating the ideas on to the paper, tremendously improve quality of the judgement. This would also enable the Presiding Officer to make corrections, modifications or additions in the last draft before he finally sits back to dictate the judgement.

K. GIVE A SECOND LOOK:

Barring the short orders on matters of the movement, when the Presiding Officer is deciding a judgement having some stakes or important points of law, he should invariably give a second look to the final draft of the judgement because there is always a room for improvement. Giving final glance, he would always feel tempted to rewrite some of the portions of the final text of the judgement, which would definitely improve it.

L. CORRECTIONS:

Normally a judgement when pronounced in the Court or dictated in the open court should be allowed to go in the shape it was made known to the parties but at the same time, a Judge should always have the liberty to make corrections of facts and figures or grammatical errors when he is making proof reading even of such judgement. It is in the interest of both the parties that the judgement does not go with such mistakes and ambiguities necessitating them to come back to the Court for their correction. Care however should be taken to ensure that there is no major or substantial change and final result of the case should always remain the same. Though comprehensive they may be, there cannot be exhaustive guidelines for writing of a judgment But it is my earnest hope, these suggestions might prove useful to you all in due discharge of your judicial obligations.

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### **LEX BONANZA-2015**

- 1. Title:** The competition will be called “Judgement Writing Competition, Lex Bonanza-2015”.
- 2. Rules:** Besides the rules given at below all relevant rules of the Madhya Pradesh High Court for judgement writing are applicable.
- 3. Eligibility:** The participants must be a 3 years LL.B. or 5 years B.A.LL.B/B.B.A.LL.B. pursuing student.
- 4. Structure:** The structure of the judgment will reflect the forum / court in which the provided case is set and argued. The structure also follows the Criminal/ Civil Laws as the competition is based upon the judgement writing.
- 5. Submission:**
  - a. There shall be an *on spot* judgement writing competition.
  - b. The related Problem shall be provided 90 minutes before the competition to the participants.
  - c. The participants shall compile their judgement within the word limit of *2500 words*.
- 6. Evaluation criteria (based on principle & objective):**
  - (i) In Criminal matter**
    - (a) Charge - 20 marks
    - (b) Format - 20 marks
    - (c) Points of determination – 20 marks
    - (d) Marshalling – 10 marks
    - (e) Appreciation – 10 marks
    - (f) Findings – 20 marks
  - (ii) In Civil matters**
    - (a) Format - 20 marks
    - (b) Issues – 20 marks
    - (d) Marshalling – 10 marks
    - (e) Appreciation – 10 marks
    - (f) Judicial Principles – 20 marks
    - (f) Findings – 20 marks
- 8. Jury:**
  - a. Will consist of Retired / sitting Supreme Court / High Court judges / District & Sessions judges / Magistrates / Senior Advocates / eminent scholars for evaluating the judgments

b. The results announced by the juries will be final and no further representation will be entertained in this regard

**9. Results:**

Results, all Certificate, Trophy and Gift Hamper will be announce on the same day.

**10. Prize and Certificates:**

**Winner:** Winning Trophy, Certificate and Gift Hamper

**Runner up:** Winning Trophy, Certificate and Gift Hamper

All the participants who have submitted the Judgments would get Participation Certificates.

**Student Coordinators**

**Shikha Thakkar- 98279-04185**

**Osama Ahmad- 86024-35345**

