

## ART OF WRITING JUDGEMENTS

*B.G. Harindranath District Judge*

Good judgments enhance the image and perception associated with the justice delivery process and increases public confidence in the judiciary. Litigant public at all times look forward to just, fair and quality justice. A well written to the point judgment based on comprehensive analysis of facts and law is not only an indication of the intellectual strength of a judge but also is a sign of a worthy judicial system. It is therefore indispensable that judges acquire the skill to write good judgements.

In the midst of swelling litigation, backlog and insufficient research facilities' writing a good quality judgment is an ongoing challenge. Art of writing a judgment depends on the knowledge, proficiency, and aptitude of the judge. Judicial officers, seldom have the occasion to reflect on their approaches to writing judgments. Their experience prior to appointment often does not train them how to write judgements. As a rule, many blindly pursue the usual method followed by their forerunners, their assumptions about what must go in a judgment. Judges spend most of their time reading judgements written by others. Some of it good, some barely readable and a few to a certain extent of poor quality. We can list their merits and faults. What is the most important component of good judgment writing? To my mind, it is clarity. If your ideas are clear then you will be able to express them clearly. Unclear judgements are likely to be long-winded, indistinct, pretentious, and boring. Clear thinking is the key to clear writing.

**Purpose:** A judicial opinion is above all addressed to the parties in whose favour, or against whom, the judge is pronouncing judgment. The central purpose of a speaking judgement is to make clear the judges' own view. It explains the decision to the parties concerned. The next purpose, though not any less important than the first one, is to make available reasons for an appellate court to consider. A careful judge makes certain that the decision presents a sufficient description of the reasons for use by the appellate court.

**Structure:** Judgment should be a self-contained document from which it should appear as to what the facts of the case were and what was the controversy, which was tried to be settled by the Court and in what manner<sup>1</sup>. Basic structure of a judgment should be such that a reader while reading it without difficulty understands the facts delineated in the judgement. Further, a reader must be able to know effortlessly, the reasons given in it in reaching a just, and indeed one might say, often-inevitable conclusion. "Simple, brief and clear is best." Judgement must contain everything that needs to be said as to why a decision was reached and nothing more. The Practice of writing lengthy judgment is not appreciated<sup>2</sup>.

---

<sup>1</sup> Balraj Taneja and another vs. Sunil Madan and another, AIR 1999 SC 3381 : 2000(1) Land LR 116 : 1999 (4) Rec Civ R 438 : 1999(6) Andh LD 21 : 1999(8) SC 396 : 1999(8) DLT 779

<sup>2</sup> Amina Ahmed Dossa v. State of Maharashtra, AIR 2001 SC 656 : (2001) 2 SCC 675 : (2001) SCC (Cri) 382 : 2001 CrLJ 965 (SC)

**About style:** There is no approval in this system for divergence in approach according to the writer's taste or for embellishment. The style of judges in the common law systems is that of masterful advocates, who with the aid of their masterly reasoning reach those reasoned, often-inevitable conclusions. A plainly spoken judgment reveals the subject matter and the exposition of legal reasoning. For many readers you have only a few seconds to capture their attention, so it is best to put the most important message first. Be positive and avoid "pompous" language. Use the active voice rather than the passive. The active more often than not is direct and forceful than the passive. "I shall always remember my first day as a judicial officer". This is much better than "My first day, as a judicial officer will always be remembered by me". The latter sentence is less direct, less bold, and less concise. Write to "express, not to impress". Avoid complex sentences that may be grammatically correct but difficult to understand. Try to use legal expressions wherever possible. Do not use terminology, which may be unfamiliar--and irritating. Use simple verbs and keep them as close as possible to the subject to which they refer.

**Malapropism:** Unless one is sure about the meaning of a word, never use it. Use of an out of place word erroneously for one sounding similar may result in comic effect. It is called malapropism after Mrs. Malaprop, a character in Sheridan's *The Rivals* (1775), who had a habit of using polysyllabic words incorrectly. These are some characteristic examples in the following passage from the opening Act:

*"Then, sir, she should have a supercilious knowledge in accounts;- and as she grew up, I would have her instructed in geometry, that she might know something of the contagious countries...and like-wise that she might reprehend the true meaning of what she is saying. This, Sir Anthony, is what I would have a woman know; - and I don't think there is a superstitious article in it"*<sup>3</sup>.

Dogberry, the Watch in Shakespeare's *Much Ado about Nothing* was addicted to malapropism. Malapropisms are a feature of everyday life as this illustration shows: "He rides the motor bike and she sits on the pavilion". Judgments are no exception to this habit.

**Facts:** A judgement is the result of an application of the law to the facts. The judge collects the facts from both sides in a fair trial. At the beginning of the judgement, there must be a summary of the case as presented by the parties. In a civil case, parties describe the facts in their pleadings and in criminal cases; it is narrated in the final report of the police or the complaint filed by the complainant. The narration of the facts in the judgement need not be boring. What makes a judgement absorbing is the wide range of facts that are brought before the court to resolve. There is no reason why we cannot narrate facts in a simple but interesting way. See the lucid manner in which **Justice Chandrachud** (as his lordship then was) described the otherwise dull facts relating to fishing operations common in Cochin back waters in **LonanKutty Vs Thommen and others**<sup>4</sup>

<sup>3</sup> Sheridan's *The Rivals* (1775)

<sup>4</sup> 1976 AIR 1645/1976 SCR 74/1976 SCC (3) 528

*“This 22-year old litigation concerns the right of two adjacent owners to catch prawns on their respective lands. Survey No. 673 of Kadamkudi, District Ernakulam, measuring about 11 acres originally belonged to the Cochin Government but by diverse transfers the title thereto is now vested in the appellant, Lonankutty. The land is bounded on the West and South by a river. A portion of the land on the North-East can be put to agricultural use for a part of the year but the land, by and large, is water-logged and can profitably be used for prawn-fishing. In order to make fishing feasible, the appellant has constructed a bund on the western side of the land for arresting the flow of the river water. The contrivance is calculated to permit collection of water on the land, almost to the point of submerging it. The prawns enter the land with the high tide, they breed and multiply on the land, and the water while receding leaves the prawns behind. The appellant then catches them, presumably under a licence from the Government of Kerala.*

*Survey Nos. 672, 677, 655/4, and 670, which sprawl on all sides of survey No. 673 belong to the respondents: Thomman and his mother Annam. We are concerned with the prescriptive rights claimed by them in respect of survey No. 672, which is situated towards the northeast of survey No. 673. Survey No. 672 is almost landlocked and between it and the river on the south stands the vast expanse of survey No. 673 belonging to the appellant. Prawns have an export value and catching them is so much more profitable than growing food-crops. But the respondent’s land being land-locked, they have no direct access to the river on the west or the south. They cannot therefore do any fishing operations because, for prawn-fishing it is necessary that the river-water must enter their land, and collect on it so that after the prawns have bred, the water can be released back to the river. For achieving this result, respondents constructed a bund with sluice-gates on the border between their land and survey No.673. Their case is that they have a prescriptive easement to take water from the appellant’s land and to divert it back through the same land, both for fishing and agriculture. The appellant has grave objection to permitting the respondents to engage thus in prawn fishing because along with the water which would pass from his land (survey No. 673) to the respondents’ land (survey No. 672), prawns also would pass. And when the water would be released back from survey No.672 through the sluice gates, survey no. 673 would get flooded, carrying back the prawns left on his land, to the river on the south. This is the genesis of the dispute between the parties.”*

The facts recounted in the pleadings must be briefly narrated in the judgement. Judgement need not spell out all the facts contained in the pleading: material facts alone need be stated. Facts must be narrated in a chronological order. A careful analysis of the pleadings will reveal what facts are not in dispute and what facts have to be determined.

**Framing issues in civil cases:** Under Order 14 of the Code of Civil Procedure, issues arise when the other party denies material propositions of fact and law averred by one party. “Issue” means a point in question at the conclusion of the pleadings between the parties in an action<sup>5</sup>. It is important for the decision maker to resolve each of the facts in issue. Order 14 rule (3) of the Code of Civil Procedure enables the court to take into account replies to the interrogatories, the documents produced by the parties besides

---

<sup>5</sup> New Shorter Oxford English dictionary

pleadings<sup>6</sup>. Under Order 14, rule (2) court is, subject to the provisions of sub rule (2) bound to answer all issues, which is intended to avoid piecemeal trial and protracted litigation<sup>7</sup>. Issues must find a place in the judgement after the narration of facts.

**Special Features of Judgements in criminal cases:** A judgment under section 354 of the Criminal Procedure Code should contain the points for determination, the decision, and the reasons for the decision. The particular offence, the relevant section of the Indian Penal Code or other law under which an accused is punished and the quantum of punishment should be mentioned. Separate sentence must be passed by the court for each proved offence<sup>8</sup>. In case of acquittal, the judgment must mention the offence of which the accused is acquitted. Under no circumstances, would a Court be justified in recording a finding against an accused person in respect of facts that do not form the subject matter of the charge<sup>9</sup>. Keeping in view the social object of preventing social victimization or ostracisms of the victim of a sexual offence for which S. 228-A has been enacted, it would be appropriate that in the judgments, be it of High Court or lower Court, the name of the victim should not be indicated<sup>10</sup>. The Judge should refrain from complementing the investigating officers in every case merely because there has been a conviction. If the officers have done their duty, there is no reason why such complement should be repeated<sup>11</sup>. A judgment, which is not in accordance with the mandatory requirements as laid down in, S.354 has to be set aside<sup>12</sup>.

**Preparation:** It is helpful, before you deliver the judgment to write down each of the points in the judgment in summary form so that you can arrange the judgment in a lucid and coherent way.

**Reasons for the Decision:** Judgment as per section 2(9) of the Code of Civil procedure means the statement given by the judge on the grounds of decree or order. What is required is a reasoned judgement and not reasons for the judgement. Every party has a right to receive a judgement, which shows the reasons. A judgement without a reason would make it impossible to file a well-founded appeal against the judgement. Therefore, the right to appeal includes the right to know the reasons of a judgement. It is not a sufficient reasoning just to use the phrase: "having seen all facts and the law the court decides..." In judicial proceedings, there cannot be arbitrary orders. A Judge cannot merely say "suit dismissed" or "suit decreed". The whole process of reasoning has to be set out for deciding the case one way or the other. Reasons must be given in a coherent sequence. Even in uncontested cases, court has to write reasoned judgements. Whether it is a case which is contested by the defendants by filing a written statement or a case which proceeds

<sup>6</sup> Azam khan V Sattar AIR 1978 Allahabad

<sup>7</sup> Manager Betich Estate V Bhaghavati Saran Sukla AIR 1993 Allahabad 2

<sup>8</sup> Naresh Janimal Lohana v. State of Gujarat, 1998 CrLJ 3574 (Guj-DB); Rajinder Singh v. State of West Bengal, 2004 CrLJ 4023 (4029) (Cal-DB).

<sup>9</sup> Asaram Bhavandin Yadav v. State of Maharashtra, 1991 CrLJ 1252, 1254 (Bom).

<sup>10</sup> Bhupinder Sharma V. State of Himachal Pradesh, (2003) 8 SCC 551 : 2004 CrLJ 1(2) (SC).

<sup>11</sup> Ismail Amir Shaikh v. State of Maharashtra, 1985 CrLJ 273 (Bom-DB).

<sup>12</sup> State of A.P. v. Gowthu Rangunayakalu, AIR 1987 SC 40 : (1986) 4 SCC 764 : 1987 CrLJ 316.

ex-parte and is ultimately decided as an ex-parte case, or is a case in which the written statement is not filed and the case is decided under Order 8 Rule 10 C.P.C., the Court has to write judgment which must be in conformity with the provisions of the Code or at least set out the reasoning by which the controversy is resolved. Even if the definition were not indicated in Order 20, Rule 1(2) C.P.C., the judgment would still mean the process of reasoning by which a Judge decides a case in favour of one party and against the other<sup>13</sup>. The function of a judicial trial is to hear and decide a matter in contest between the parties in open Court in the presence of parties according to the rules of evidence and the procedure prescribed for the investigation of the dispute. The conclusion of the Court ought to be supported by reasons duly recorded. This requirement transcends all technical rules of procedure<sup>14</sup>.

**Decretal Part:** This part of the judgement formulates the decision the judge has made. It informs the parties exactly about what the court orders them to do and how the decision shall be executed. The given order must be enforceable; this means it has to be very precise, naming exactly the parties, their duties, the deadlines, the amounts of money, the interest rates to be paid, etc. It must be clear for the executing court or the enforcement agents without any further discussion what obligations the parties have to fulfil according to the decision. Any vague formulation of an execution order could cause the parties to start a new dispute about the execution and the contents of the decision. Under Order 48 Rule 3 of the C.P.C, forms given in the appendices shall be used for the purposes mentioned therein. Under order 48 R3 of the CPC forms given in the appendices, with such variation as the circumstances of each may require, shall be used for the purposes mentioned. Remember that an appeal can be filed with the last portion of the judgement, when decree copy is not ready. For instance in the case of a simple money decree the last portion of the judgment should be as follows:

*“It is ordered and decreed that the defendant do pay the plaintiff the sum of Rs... with interest thereon @ ... per annum from ... to the realisation of the said sum and do also pay costs of the suit” (See Appendix-D Form No.2).*

It should not be as follows, as it would contravene the provisions contained in order 48 R3 of the CPC:

*“the plaintiff is allowed to recover an amount of ... with interest @ ... from...day to the date of realisation with costs”.*

---

<sup>13</sup> *Balraj Taneja and another vs. Sunil Madan and another*, AIR 1999 SC 3381 : 2000(1) Land LR 116 : 1999(4) Rec Civ R 438 : 1999(6) Andh LD 21 : 1999(8) SC 396 : 1999(8) DLT 779

<sup>14</sup> *Smt. Swaran Lata Ghosh v. Harendra Kumar Banerjee and another*, AIR 1969 SC 1167: 1969 (1) SCWR 768: 1969(3) SCR 976: 1969(1) SCC 709

Likewise, there are forms in the matter of mortgage decrees and other type of decrees in appendix-D. As far as possible the decretal portion of the judgment, should be in consonance with the forms mentioned in appendix-D.

**Criticism, necessity to exercise restraint:** Judgement is the outcome of cool deliberations and the screening of the material by the informed mind of the Judge that leads to determination of the lis. Bear in mind that tone and attitude are contagious. If the cushion is lost and the Courtroom is allowed to vibrate with the heat generated outside it, the adjudicatory process suffers and the search for truth is stifled<sup>15</sup>. Maintain judicial decorum at all times .Even where criticism is justified; it must be in language of utmost restraint, keeping in view at all times that the person making the comment is also fallible. Even when there is justification for criticism, the words should be dignified and restrained<sup>16</sup>. Unbalanced language is out of place in a judicial adjudication<sup>17</sup>. The Supreme Court disapproved the practice of passing adverse remarks against the presiding Judge of the lower Court as it damages the judicial system as a whole<sup>18</sup>.

---

<sup>15</sup> *State (Delhi Administration) v. Laxman Kumar and others*, 1986 CrLJ 155 : 1986 AIR (SC) 250 : 1986 SCC (Cr) 2 : 1985 CrLR (SC) 501 : 1985 CAR 304 : 1986 (1) Rec CrR 184 : 1986 Mad LJ (Cr) 86

<sup>16</sup> *Alok Kumar Roy v. Dr. S.N. Sarma and another*, AIR 1968 SC 453: 70 Bom LR 198: 1968 Cant LJ 292: 1968 Mah LJ 500: 1968(1) SCR 813.

<sup>17</sup> *D. Macropollo and Co. (Private) Ltd. v. D. Macropollo and Co. (Private) Ltd., Employees' Union and others*, AIR 1958 SC 1012: 1958(2) Lab LJ 492

<sup>18</sup> *K.P.Tiwari v.State of M.P.*,1994 CrLJ 1377: AIR 1994 SC 1031: 1994 Supp (1) SCC 540; *V.Sujatha v. State of Kerala*, 1994 (Supp) 3 SCC 436.