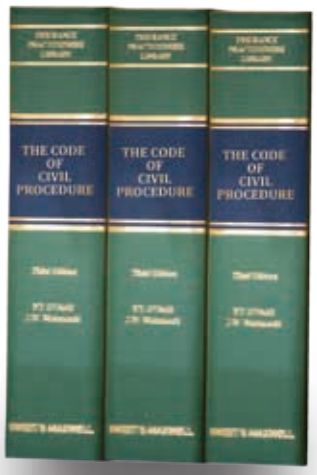
"Measure of Intelligence is the ability to Change"

Albert Einstein

STRATEGIC ACTION PLAN FOR REDUCTION OF CIVIL CASES



Judicial Academy Jharkhand

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FOR
REDUCTION OF CIVIL CASES

Judicial Academy Jharkhand

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Chapter 1

INTRODUCTION

The present work does not claim to be original in the sense to state anything new, rather it reiterates some of the fundamental proposition of Civil law and is largely inspired by the book "Justice, Courts and Delays" of Sri Arun Mohan which presents an in depth analysis of delays in civil adjudication. Some of the recommendation made in this book have been approved by Hon'ble The Apex Court in **Ramrameshwari Devi and ors Vs Nirmala Devi 2011(8) SCC 249** in which Dr. Arun Mohan assisted the court as an Amicus Curiae. In this case their lordships noted with pain as follows : *"This is a classic example which abundantly depicts the picture how the civil litigation moves in our courts and how unscrupulous litigants (appellants in this case) can till eternity harass the respondents and their children by abusing the judicial system ..... the crediblity of entire judiciary is at stake unless remedial steps are taken without"*

Magnitude of delays are frightening and anyone who has a first hand experience of civil litigation, can not remain untouched by its proportion. The main brunt is however faced by a party who moves the court for his just right and has to wait years together for the lis to be finally decided. It deters a bonafide litigants from approaching the court. Delays and piling up of civil cases at the subordinate court level has engaged the attention of the law makers, various reports of the Law Commission and in different observations made by the Hon'ble Apex Court. The anguish over the existing state of affair has been expressed by the Highest Court of the land in **L. Babu Ram Vs Raghunathji Maharaj AIR 1976 SC 1734** where the Hon'ble Court observed *"At long last, the unfortunate and heroic saga of this litigation is coming to an end. It has witnessed a silver jubilee, thanks to our system of administration of justice and our callousness and indifference to any drastic reforms in it. Cases like this, which are not infrequent should be sufficient to shock our social as well as judicial conscience and activise us to move swiftly in the direction of overhauling and restructuring the entire legal and judicial system. The Indian people are very patient, but despite their infinite patience, they cannot afford to wait for twenty five years to get justice. There is a limit of tolerance beyond which it would be disastrous to push our people. This case and many others like it strongly emphasize the urgency of the need for legal and judicial reforms. A little tinkering here and there in the procedural laws will not help. What is needed is a drastic change, a new outlook, a fresh approach which takes into account and socio-economic realities and seeks to provide a cheap, socio-economic expeditious and effective instrument for realization of justice by all sections of the people, irrespective of their social or economic position or their financial resources."*

If were refer to the pendency figures before the Subordinate Courts in the State of Jharkhand as on March 2015 more than **65,000 cases** were pending out of which **10480 cases** were 5 to 10 year old and **3856 cases** were more than 5 years. Thus, in total more than 20% cases were more than five years old as on March 2015. These are the pendency figures, inspite of the special drives launched from time to time by the Hon'ble Court. In most cases the pendencies are not on account of any apathy on the part of the officers, but it is sheer helplessness in the face of dilatory tactics on the part of parties. This action plan aims to focus on the powers of courts to bring speedy disposal of civil cases.

The statistics of pendency of civil cases does not capture in its entirety the pathos of parties who have to undergo the grind of protracted litigation. By an average estimate the life cycle of a civil suit can be put to be around 10 years and if the defendant is determined to deny plaintiff the fruit of decree, then it may take another 10 years at the appellate stage. Even after that the woes of the Plaintiff does not come to an end, as it is said that the trouble of the Decree holders begins only after the initiation of the execution proceeding. The question that every member of the legal fraternity, whether he is from the bar or the bench, should honestly and sincerely answer is whether we are able to deliver justice as envisioned in the Constitution of India? Do the people of India have a genuine faith in the Justice Delivery system at the Sub-ordinate Court level? Whether the Justice dispensation system is evolving itself to match the International standards of fast growing commercial world?

These are difficult, but very pertinent questions that everyone of us should answer to strengthen the Justice Delivery system which is the foundation of any democratic society. As a tree is Judged by the fruit it bears, so is any system adjudged not by the ideals it swears to stand by, but the actual and ultimate result it delivers. If the Justice delivery mechanism is tardy and inefficient its ideological foundations cannot lend creditability to its structure.

There cannot be any soft option to the problem of mounting arrears particularly on the civil side. Problem areas need to be clearly identified and firm corrective measures need to be taken to speed up the trial of civil cases. There are beneficiaries of delays who derive benefit from the delays and therefore have an interest to delay the conclusion of the litigation. The main thrust of the strategy to reduce such delays is to remove the benefits arising out of the delays to a party who is ultimately found to be on the wrong. Any false claim and defense needs to be adequately penalized as per the provisions of the Code. The provisions in this regard need to be strictly applied along with the time limits fixed by the Amendment Act. The sanctity of the process needs to be restored if we want quality product in fixed time frame.

Object of the judicial system is dispensation of justice, the task of the court is to arrive at the truth and not simply supervise a contest for success or superiority in a trial of chance, skill or endurance.

Chapter 2

EFFECT OF COURT DELAYS

1. Delayed justice is no justice. There is a relationship between justice and the time consumed in rendering justice. If we do not administer justice at the appropriate moment, what we administer then is no longer full justice, it might even be injustice. A victim of civil wrong (Tort) must have redress in time. Take a simple example. The breadwinner of a family may have died due to the negligence of the defendant, and if the family does not receive the support when it requires it most, is it not failure of justice?
2. In matrimonial and child custody disputes delays lead to situation where ultimately not one , but both parties suffer gross injustice.
3. Land acquisition is another subject where court delays cause injustice.
4. Statutory law ceases to be meaningful, and becomes empty promises and teasing illusions if judicial adjudication is delayed for too long. Because of the delays the value of claim may be consumed by the cost of asserting it in a litigation.
5. It also results in poor quality of justice. The civil or criminal trial which culminates in a few months carries a higher degree of accuracy compared to cases in protracted litigation. This is so because of combination of many factors, the main being that Evidence fades with time resultantly the accuracy in judicial decision is adversely affected.
6. The cost factor increases with time and in many cases the cost of the *lis* exceeds the claim for which the suit is brought.
7. Delay encourages falsehood and perjury. There is little fear which would dissuade a party from making a false averment in the pleading, or filing a forged document, or in denying a genuine document. Parties are seldom prosecuted for perjury and the provision of Section 35 B of the CPC for imposing costs for false claim or defence is seldom invoked. The result is that parties go even to ridiculous extent in making a false claim or defence. The parties at times can even deny their signatures. Process is no less important than the product. Mean decides the end. If the sanctity of the legal process is compromised the quality of the end product will naturally be affected.

   Sri Mohan illustrates this by comparing two environments. In environment A an original suit is decided well within one year and in the event of there being any incidence of falsehood

or perjury, the Judges order prosecution, which proceeding also culminates in another six months. Further, if the person is found guilty a one year prison sentence is normal.

In environment B, the original proceeding takes 10-20 years to decide and the Judges are loath to order prosecution for perjury. If there be a stray prosecution, proceeding thereof go for another 10 years. The result would be that although there may be a million instances of falsehood, perjury forgery etc there would hardly be a person who has actually gone through a prison sentence for having done so. This makes the situation ideal for all sorts of unscrupulous litigants who not only make a false claim or defence but also adopt all sort of unethical practices to overload the system. Resultantly, the courts delays first engender litigation and then allow falsehood, perjury to exacerbate it. The court gets loaded with all sorts of falsehood, forged documents etc which is to be adjudicated.

8. Delays coerce one of the two parties into an unjustified compromise. A person whose claim is for Rs100,settles for Rs 50 either before going to court for its recovery or even after spending a few years in court and realizing that ultimate decision and recovery may not come in his life. A settlement or compromise for that 50 may, for the statistics books of the Judicial system, be one matter disposed of , but is it justice dispensed?

   Then, if a person whose dues are being withheld agrees to accept less because he needs it, is it not a compromise out of coercion?

   Similarly, when a person does not owe anything to another but is made to pay something, say, Rs 30, to buy peace and extricate himself from a merit-less litigation and save the expense of defending it.

9. If adjudication takes a decade in the trial court, another decade for the first appeal and yet another in the High Court and Supreme court the parties who are all important in an adversarial system loose all interest in the *lis*.

10. The way the Contract Law developed in the 18th and 19th centuries assisted the industrial revolution-- as a kind of judicial legislation, evolving a principle of law tailored to every new development and requirement. In our present time the speed of business has increased, its fields getting wider and including more subtle areas like IPR, Corporate laws, International trade and so on. Contracts are entered by electronic devices and the stakes are high. The speed of adjudication should match the pace of trade and commerce, lest it will be a mill stone to a rising economy. Asian Countries like China, Singapore, Japan South Korea have put in a highly evolved and efficient Judicial system to match the pace of growth of their economy.

11. Some litigants misuse the freedom of access to the courts by launching an unmeritorious actions or numerous interlocutory applications causing anxiety and trouble to their victims who bear the same with little prospect of being compensated in terms of costs. How much load is on a person to defend such litigation, specially if it is at the instance of somebody who has either idle time or extra fund for the purpose, is not difficult to fathom.

12. Procrastination of civil trials generally results in injustice because of an unduly prolonged process. Much of the material evidence may perish. In criminal matters its results are devastating, with vanishing evidence and fading memories make the task of prosecution even more burdensome.

13. Profitability from delays slowly lead to social acceptance of such practices. Social acceptability ruptures the ethical fabric of the society, which is so much necessary for a democratic society.

14. Delays enable false complaints being lodged with police because the complainant feels that the Slow grind to acquittal will be anyway sufficient injury to the accused and he stands next to no chance for being prosecuted and punished for a wrongful act. Similarly, in civil cases delaying the trial is a sufficient reward to wrongdoer and breeds injustice to the rightful claimant. Example landlord and tenant where the tenant enjoys the fruits of delay & landlord is irreparably injured by it. Each and every case proceeds on the same principle.

15. If law is to serve the purpose of society, it is necessary to guard against the three enemies of efficient administration of justice: (1) delay, (2) unpredictability (3) Litigation Costs.

    Injustice or inability to receive justice is one major factor that drives people to commit crime. Once the incidence of Crime increases, the feeling of security and safety for the people who collectively form the state, disappears and as a consequence thereof, not only their lives becomes miserable but what can be output of one individual towards society diminishes greatly. With such fear in his mind and a sense of insecurity, he is unable to turnout his best.

Court Delays And Economic Growth

1. Delayed justice also slows down economic development and growth. A country's socio-economic development is dependent upon its law and justice system and efficient administration as per rule of law.

2. A democratic state is governed by rule of law. Different policies of the state are implemented through it instrumentalities. It is often felt that there exists a huge gap between the policies and its execution. There are numerous complains about the leakage at the implementation stage of beneficial schemes of the Govt. due to corruption. This can be fixed only if we have an efficient Judicial system to identify and punish the persons involved in it. Absence of any really deterrent punishment emboldens the elements who are the beneficiaries of the corruption. Rule of law shall be a distant goal if the laws are not efficiently and effectively enforced.

3. Globalization also requires a legal system that conforms to global norms. In the present context of globalization, economic development hinges on law and justice system in which not only contracts between private parties are efficiently enforced but property rights of foreign and domestic investors are respected, and it is ensured that executive and legislative branches of govt operate within a predictable framework of law. It is the law and justice system that lends creditability to business and political environment. Minimum of international standards do not comprise only of existence of standard legal norms, but also a system of adjudication which matches the international standards of certainty of results, and timeliness of its conclusion.

4. Law is not isolated / insulated from the rest of the society; rather, the law affects economic development. Evolution of the economy and market will not occur if law does not come to prevail.

5. Traditionally, a fair part of litigation pertained to disputes about money or property. Now there is a paradigm shift as to where the wealth lies. It is shifting to areas like Intellectual Property right and our system needs to cope with it.

Extra Legal Means Replaces Rule of Law

1. Court delays being what they are. The modus operandi adopted by some of the banks and finance companies for recovering of hypothecated vehicles runs against the basic tenet of rule of law. In **Gaya Prasad Vs. Pradeep Srivastava 2001 (2) SCC 604** it was observed :-

   The time is running out for doing something to solve the problem which has already grown into a monstrous form. If a citizen is told that once he resorts to bigger procedure for realization for your urgent need you have wait and wait for 20 to 23 years, what else is it if not to inevitably encourage and forcing to resort to extra legal measures for realizing the required relief. A republic, governed by rule of law, cannot afford to compel its citizens to resort to such extra legal means which are very often contra – legal means with counter productive results on the maintenance of law and order in the country.

2. Usually this is a side business for organized crime. Democracy has three pillars of which judiciary is one. If for any reason, in particular delays there is failure of judicial administration, it will mean collapse of society as a whole and goons will become a law unto themselves. If the legal system collapses the rule of gun will take over.

3. Criminal cases under Sections 420,406IPC,replaces money suit for monetary claims.

The Task Before Us

1. The object of Judiciary is that the Judicial administration is efficient and people are able to get fair, with confidence and trust in a reasonable time and at a reasonable cost.

2. Admittedly, there are factors beyond the control of the courts like procedural loopholes which are exploited by the parties who are at wrong and who profit on account of delays. There are however provisions in the Procedure Code which are aimed and intended to reduce delays but which are not fully used in the court proceedings, either due to indifference or to avoid any confrontation with bar.

3. There are unscrupulous litigants who profit from delays and therefore, all profitability from delay must be removed.

4. Abuse of process, which is rampant has to be removed. Procedures is necessary, but it has also come to serve as an object of misuse by creating obstacles. Misuse of procedure takes many a form with a two fold objective:(1) delays; and(2) distortion of end result. If the delays do not invite penalties to the party concerned, causing delay may be a profitable proposition and indeed an incentive for the party who is on the wrong and does not stand to win at the conclusion of the trial.

   The state of affair of civil litigation is alarming and the result as discussed above is fast erosion of popular faith in the system to deliver Justice particularly on the civil side. Instead of caviling over the shortcomings the need of Hour is to identify the areas where within the four corners of the existing laws, Courts can improve efficiency by fully utilizing the existing provisions. There are provisions in the Code of Civil Procedure which can be utilized to increase the pace of trial, hereunder some of them have been given below.

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Chapter 3

PROFITABILITY OUT OF LITIGATION

One of the reason delays in civil litigation is that the party on the wrong procrastinate the trial to derive undue profit from delay in litigation.

Say for instance in a Money suit the Defendant who is evading repayment gains by delaying the litigation as he has opportunity to use the money of the plaintiff which finally he would be required to repay at a rate of interest much below the commercial rate of interest. Further during prolonged trial there is also a devaluation of money, that adversely affects the plaintiff and is a gain to the defendant. Further the Courts generally never considers ante-lis interest.

Removing The Latent Incentive For Litgation

1. In 90% of the matters before the court , one party knows he is in the wrong, yet there is litigation. Strictly speaking, any wrong claim/defence before a court of law is an abuse of the process. Ignoring such abuses even in some glaring cases is an incentive to false litigants. Once such falsehood, perjury and fraud is clearly proved in a court, should the Judicial system not take cognizance of it and then adequately punish the party which is found to have been in the wrong? Has it not resulted in our collective conscience being blunted, where such falsehood and forgeries are allowed to pass as minor aberrations in the court process and thereby compromising the sanctity of court proceedings?
2. Admittedly every party is entitled to raise his own plea and buttress it with sound evidence. But, this does not give permit any party to raise one's case on falsehood.
3. It is not as if the process of litigation can be, or will ever be, instantaneous. It will always take time—reasonable or more, is another question. For the duration of the litigation, all benefits that arise out of its existence and pendency must be identified and then restored to the persons rightly entitled them. Anything belonging to a person has a usufruct value for him. If he is deprived of that thing , and if at the culmination of legal proceedings, the whole of it is not restored to him, then the extent of shortfall in restoration is failure of Justice. If the whole of it is restored, but restored only after a long time, it is also injustice. It also serves as an incentive to the wrongdoer to retain such part of the usufruct.

4. This can be illustrated by one case: If A has a genuine claim for Rs 100 against B, and B is asked to pay up, the typical answer is—Go to court. It will take you many, many years, plus there is the chance factor and in the meantime, I shall avail all the benefits, and then at the end of the day, what will the court give you?

5. The strategy that can be adopted towards a speedy, effective and efficient Justice delivery mechanism, is to restore the sanctity of the court proceedings by heavily penalizing, false claim and defense, criminal proceedings against parties filing forged documents. There may be apprehension that a section of Bar may offended in the face of such an approach. The fear is however not much without any real basis for two reasons. Firstly, it is the members of bar who also suffer on account of such unscrupulous means adopted by some litigants. Secondly, if the popular faith is not restored in the judicial process, the result will be docket exclusion with less and less people having recourse to legal remedies for redress of their grievances. In any case the interest of any stake holder to the Justice delivery system can not be higher than the interest of Justice.

   Hon'ble the Apex Court in **N.G Dastane Vs srikant s Shivde AIR 2001 SC 2028** observed as hereunder,

   "We are much grieved if not peeved in noticing how two advocates succeeded in tormenting a witness by seeking numerous adjournments for cross-examining him in the court of a Judicial Magistrate. In all those days the witness had to be present perforce and at considerable cost to him ……. An advocate abusing the process of court is guilty of misconduct. When witnesses are present in the court for examination, the advocate concerned has a duty to see that their examination is conducted. We remind that the witness who come to the court on being catted by the court, to do so as they have no other option and such witnesses are also responsible citizens who have other work to attend to for eking out a livelihood. They can not be treated as less respectable to be told to come again and again just to suit the convenience of the advocate concerned……..Seeking adjournment for postponing the examination who are present in court is a dereliction of an advocates duty to the court. Such dereliction if repeated would amount to misconduct. Legal profession must be purified from such abuses of court procedures; tactics of filibuster if adopted by an advocate is also a professional misconduct".

6. All orders regarding compensation and penalties be issued at the time of the final Judgment itself. No party who has endured a long and protracted litigation can afford a second bout by filing a case for compensation on account of malicious prosecution. Restoration of all benefits to the party held to be on the right, together with costs incurred and reasonable compensation for any damage caused by the litigation, should remove a fair amount of what is today an incentive for wrong litigation. The concept of civil penalty and fine is the only way to reduce the incidence of wrongs before the Judiciary and to ensure discipline.

   Resort to order 7 rule 7 could be had in appropriate cases. It would not be out of place to discuss the ambit and scope of O7 R7 which provides for grant for just and equitable reliefs. Order 7 R 7 stipulates that the plaintiff need not make prayer for **general or other relief**. Such reliefs can be granted by the court to the same extent as if it had been asked for. What is other relief as provided under O7 R 7? It is settled that the court can grant every such relief which is within the nature and scope of the said suit, the only limitation is that such relief

should not be a larger relief than the relief actually prayed for. Grant of future mesne profit in a suit for possession can be granted. Similarly pendente lite interest can also be granted. In a suit for declaration of title and for injunction relief for recovery of possession under O7 R7 can be granted if it is not inconsistent with the plaintiff's case.--- **AIR 1950 Patna 89**. Similarly in a suit based on contract for reimbursement when the same was not established relief was given under Section 70 of the Contract Act though it was not pleaded.----**AIR 1962 Madras 345**

To the contrary in a suit for eviction under the provisions of the Building Act no decree for recovery of possession on the basis of title can be granted under Order 7 R7. Similarly in a suit brought by a reversioner, for injunction appointment of receiver etc and if the plaintiff fails in the substantial heads of his claim no decree of declaration that he is the next reversioner can be granted.

7. The civil liability should be determined by the conduct and not the mental state of the wrong doer, and his motive may be regarded as immaterial on the question of his liability exdelicto.

Chapter 4

MEASURES TO CURB INCENTIVES OF LITIGATION BY FALSE CLAIM AND DEFENCE

As discussed above false claim and defenses are put forward in a civil suit by the parties, as the same is not visited with any adverse consequences which can have a deterrent effect on such litigants. Despite the abuse of process the concerned parties get away without being saddled with penal costs. It is not that the CPC is completely devoid of such provisions, the problem lies in their non-application. Hon'ble Apex Court in **Ramameshwari Devi** case outlined the following steps to be taken by the trial courts while dealing with civil trials:

A) Pleadings are foundation of the claims of parties. Civil litigation is largely based on documents. It is the bounden duty and obligation of the trial judge to carefully scrutinize, check and verify the pleadings and documents filed by the parties. This must be done immediately after the suits are instituted.

B) The court should resort to discovery and production of documents and interrogatories at the earliest according to the object of the court. If this exercise is carefully carried out, it would focus the controversies involved in the case and help the court in arriving at the truth of the matter and doing substantial justice.

C) Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournment by the parties. In appropriate cases the courts may consider prosecution, otherwise it may not be possible to maintain purity and sanctity of judicial proceeding.

D) The courts must adopt realistic and pragmatic approach in granting mesne profits. The courts must carefully keep in view the ground realities while granting mesne profits.

E) The principle of restitution be fully applied in a pragmatic manner in order to do real and substantial justice.

F) Every case emanates from a human or a commercial problem and the court must take serious endeavor to resolve the problem within the framework of law and in accordance with the well settled principles of law and justice.

G) At the time of filing of the plaint, the trial court should prepare complete schedule and fix dates for all the stages of the suit, right from the filing of the written statement till pronouncement of judgment and the court should strictly adhere to the said dates and the said time table as far as possible.

Chapter 5

MANNERS IN WHICH DELAYS ARE DELIBERATELY CAUSED

Before a proper strategy to curb delays is devised, it is necessary to understand the manner means and methods by which delays are caused. In 90% cases, of the two, one of the party knows he is in wrong and given an expeditious and accurate decision, he is bound to lose. He therefore may adopt the following dilatory tactics to delay the early disposal of the case :

1. Raise a dispute over one and every fact so that voluminous evidence becomes necessary;
2. Obstruct the other in being able to adduce evidence in support of his case including a challenge at every step to the admissibility and sufficiency;
3. Adduce all sort of irrelevant or minimally relevant evidence with the sole object of creating confusion
4. keep on seeking adjournments/opportunity for adducing his own evidence-- adopt a go slow for his own evidence;
5. Move an application for injunction having no merit, get it rejected. File a miscellaneous appeal and get the LCR called for and get the suit delayed;
6. File a meritless application under O1 R10 for addition or deletion of parties, get an adverse order challenge it before superior forum.
7. File an application under O26 R 9 for scientific investigation of the subject matter of dispute. For instance where there is a case of damage having been caused to the subject matter of the suit, petitions are filed for appointment of Engineer to assess the damage to the property.
8. File an application in a partition suit for including the personal property in the Joint property.
9. Select deliberately a wrong forum for appeal or revision and at the stage of hearing which normally comes after some years, move an application for withdrawal with leave to file it before proper forum.
10. File an application for additional evidence
11. At the execution stage abuse of s/47 O21 R97 & 99

Court Measures To Counter Dilatory Tactics Of Either Party

1. To ensure presence of the necessary documents on record O7R14 O8 R1 A;
2. summon documents from official records, and other witnesses together with supporting certificates
3. A comprehensive admission/ denial of documents;O12 R2 to 4
4. Discovery by interrogatories and of documents;
5. Receive affidavits of the parties by way of evidence together with lists of facts to be judicially noticed.
6. Oral examination of party, or companion of party to determine the matter in dispute between the parties under O10 R2.
7. Decide objections as to admissibility and proof and other objections with regard to items of evidence particularly documents.
8. Prevent adducing unnecessary evidence including that in cross-examination;
9. In case of appeals against interlocutory order or in case of filing of revisions what part of record is to be sent by the lower court to the appellate court is clearly laid down in **General Letter No. 9/1923 of the Patna High Court**, wherein it has been provided that the entire record, unless specially called for, should not be forwarded to this court in connection with miscellaneous appeal or an application for revision….. The material papers connected with the order appealed against or sought to be revised should only be sent and when it is not practicable to send the relevant portion of the order sheet, an attested copy thereof should be submitted.

   The appellate court in miscellaneous appeals can instead of calling for the entire LCR for hearing a particular appeal may ask the petitioner to submit the certified copies of the relevant ordersheets. So far documents and pleadings is concerned the party can be required to file the photo copy of the same supported by affidavit with regard to its genuineness. This will ensure that the trial is not affected on account of filing of the Miscellaneous Appeal.

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Chapter 6

ROLE OF PROCEDURE

"Substantive law is canonized procedure and Procedure is unfrocked substantive law"- Therman Arnold

"Substantive law is that which we enforce while procedure deals with the rules by which we enforce".-Salmond

Hon'ble the Apex Court in **Sushil Kumar Singh Vs. State of Bihar, 1975 (1) SCC 774** *The mortality of justice at hands of law troubles a Judges consigns and point an angry interrogation at the law reformer. The processual law so dominates in certain system as to over power substantive rights and substantial justice. The humanist rule that procedure should be handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable….. Justice is the goal of jurisprudence – processual, as much as substantive.*

In **State of Punjab Vs. Shamlal Murari, 1976 (1) SCC 719**, Hon'ble the Apex Court stated – *Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a restraint in the administration of justice.*

There have been incentives for wrongful litigation but if the court and the judges actually venture to strictly apply some of the provisions of the CPC intended to curb the misuse of the process of the court , the result would be entirely different. For example the provisions regarding first hearing is not applied in actual practice. If the Court direct each party to give full details of his claim to title and possession as required under O10 CPC together with discovery, production and admission/denial of all document (Order 11 and 12) and then pending trial, call for security for costs and ultimately while deciding the matter not miss out on the mesne profits, costs and penalties (Sections 34,35 CPC), including a prison term to one who resorted to a false suit on the basis of a false affidavit or forged document (s/340Cr.P.C) the unscrupulous litigation to a large extent will be Checked.

The common illustration is where A has taken money and approaches the lawyer saying that yes I have taken money and I want to pay him back but not now. He may be advised by some of the lawyers to go for litigation in order to avoid payment.

Similarly, where Tenant approaches his advocate and says that it is true that the lease has expired and the landlord has necessity of the premises but still he wants to continue in the premises for indefinite period. The obvious advise is let us litigate and prolong the litigation.

The incentive in the former case is that he Keeps the money unscrupulously, derives profit out of it and then after a prolonged delay gets away by paying the principal adjudged amount with nominal simple interest.

In the later case he continues to possess the premises at a lower rent and even finally ends up bargaining with the landlord.

Two things stand out . Firstly the one who requires the premises bonafide is unable to get it when he requires it. Very often the petitioner does not survive the ordeal because of the procedural delays. Secondly there are tenants who have actually sub-let and are recovering huge amount of money from the person actually utilizing.

Sri Mohan has sited another illustration of a prime property in a Metropolitan City. There was an old tenancy in early 1960's an eviction petition was filed. Eviction was ordered, first appeal was dismissed. Thereafter the 2nd appeal was filed admitted and dismissed SLP was also dismissed. The process took about 15 to 20 years thereafter objections were filed in the executing court by the tenant. This also consumed another four years. The tenant then filed civil suit for declaration that eviction order was without jurisdiction and hence not binding. The suit was also dismissed, the 1st appeal and 2nd appeal was also dismissed but this also consumed another two years. The tenant did not relent, he got another person to file another suit for specific performance of contract against the landlord setting up the ground that the landlord had agreed to sell him the house received consideration in cash, executed an agreement, delivered possession and had asked the tenant to atorn to him, whereupon the tenant did atorn, and so there was no question of execution. The litigation has already been on for 30 years plus and there is no relief in sight.

These are only a few of the illustrations afflicting the civil adjudication but any one dealing with these matters knows that it is only the tip of the iceberg.

We should endeavor and the law should enforce that the claim or defence must be preceded by proper investigations and allowed to be put forward not, repeat not, as a "no risk, no cost, speculative move", but only as a solemn representation coupled with every responsibility in every sense. Procedural law must ensure that only a person who is reasonably confident that he is in the right and is most likely to succeed will come forward with a claim/defence/objection, and not otherwise.

As a matter of fact if the court endeavors to enter into the extent of controversy then in the majority of the case the actual area of dispute will not be found of the dimension as it appears. The civil litigation unfortunately has been reduced to an exercise where the party on the wrong attempts to delay the final outcome by resorting to various means and contrivance in which some of the well intentioned procedures are also invoked and misused. The duty of the court is to see to it that the procedural laws are not misused to defeat the ends of Justice.

Gandhi jee said mean decides the end and that mean should also be pure as the end. This is axiomatic and can be applied in civil suits. So, where the means are not fair the end is bound to be

adulterated. If the litigant is allowed unhindered to make false claims and defence then the final outcome in the form of the decision of the court can not, but be affected.

There is a necessity of doing preparatory proceedings before the commencement of trial, in order to pin point the controversy therein. This can be done by ensuring that all documents are brought on record followed by a comprehensive admission/denial and inviting interrogatories and replies thereto all supported by affidavit.

This is to be followed by the first hearing at which the statement of the parties are recorded.

This preparatory proceeding will actually narrow down the compass of controversy and some matters may even get disposed of at this stage.

Hon'ble The Apex Court in **1994 (4)SCC225 Morgan stanley Mututal fund Vs Kartik** Das held that *there is an increasing tendency on the part of the litigants to indulge in speculative and vexatious litigation and adventurism which the court seems readily to oblige. We think such a tendency should be curbed.*

Show Cause Notice

In a number of suits/writs, a plea is raised about the service and validity of show cause notice and the litigation takes years to decide that. In such case the service part should be tackled first,if need by handing a copy in the court and deeming the proceeding of that day to be service.

Notice by Municipality:

In case of plea of non-service of notice for the intended demolition by the municipality of the unauthorised construction, instead of taking five years to decide whether notice was served or not the court can deem the notice having been served as on date of hearing and finally dispose of the whole suit while continuing with the injunction against demolition for 30 or more days ie the statutory period of the notice or modify the relief according to the law or requirement.

Ejectment Suit

Similarly, in a suit for ejectment where service of notice to quit is being disputed, the court ought to first direct the defendant to make a statement as to when , according to him the tenancy month is to expire. Thereafter the court can pass an order deeming the proceedings of the day to be a quit notice expiring with the period/date as stated by the defendant and pass a decree for ejectment, which be made not executable till 30 days after the next tenancy month. A ten years litigation is thus avoided.

There need to be some prima facie proof of an earlier notice/show cause or at least its despatch before the days proceeding be deemed to be passed.

If the suit is barred by limitation there is little that can be done at this stage to remedy the situation. If there is exfacie a question of limitation than it needs to be decided at the first hearing stage itself. Opportunities may be given to the plaintiff to explain the delay. Limitation can not be condoned u/s 5 of the limitation Act in institution of suits.

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Chapter 7

SCHEME OF ADJOURNMENTS UNDER CPC

Order 17 of CPC deals with adjournments.

Rule 1(1) mandates that there shall be a maximum of three adjournments only on sufficient cause to be shown by the party for reasons **to be recorded in writing.**

Rule 1(2) Provides for costs and higher costs to be imposed while adjourning a matter for hearing. This has been introduced by amendment of Order 17 vide amending Act of 2002. The legislature has sought to restrict the right of adjournment available to any party in a case.

Under this rule no adjournment can be granted at the request of the party, except where the circumstances are beyond the control of the party. The ground of pleaders illness or being engaged in another court can not be a ground for granting adjournment. Where a witness is present but the party or his pleader is not present, the witness may be discharged after cross-examination.

What was the import of this amendment came up for determination in **Salem Advocate Association Bar Association Case** 2005 (6) SCC 344. It was held that more than three adjournments may be granted in case it can be shown that circumstances are beyond the control of a party. Ultimately it would depend upon the facts and circumstances of each case. It was further held, even in cases which may not strictly come within the category of "circumstances beyond control of a party," court by resorting to **provision of higher costs, including punitive costs in the discretion of the court,** may grant adjournments beyond three having regard to the injustice that may result on refusal thereof, with reference to peculiar facts of a case---- However it cautioned that adjournment is not a right of a party-- Grant of adjournment has to be on showing special and extraordinary circumstances and can not be routine, and legislative intent to restrict thereof is to be kept in mind. **It has been further held that awarding costs has been made mandatory**—ordinarily where costs or higher costs for adjournments are awarded, the same should be realistic, and as far as possible actual that had to be incurred by the other party, to be awarded where the adjournment being sought is found to be avoidable.

If the cost is not paid how should the court proceed ?

Recourse in such cases is provided under Section 35 B which has been inserted in the code vide amendment of 1976. Under this provision where the payment of cost is a condition precedent, then non-payment will result in stopping the plaintiff in prosecution of the suit and where it is for the defendant then stopping the defendant from defending the suit.

This principle of imposition of costs and avoidance of frequent adjournments was approved in Hon'ble The Chief Justices Conference of April 2007 and it was circulated for its implementation to all the Judgeships vide letter no.539/60/ R&S dated 2.7.2007 of the Jharkhand High Court as hereunder:

- Frequent adjournments to be avoided.
- Actual reasonable cost should be imposed including **cost of time** spent by a successful party, cost of transportation and lodging, court fees lawyers fee etc.

Under Order 17 R 2 there is a provision requiring the court to proceed under the provisions of O 9 in circumstances where either party fails to appear on the date fixed. The explanation clarifies the position that where evidence or substantial portion of the evidence of the absenting party is on record, then the court shall proceed assuming that such party is present in the court.

Under Order 17 R3 there is a provision to deal with circumstances where the party is not taking steps as required by the court. Herein if the party is present, the court shall proceed to decide the suit forthwith, and if the party is absent the court shall proceed under R 2.

The distinction between R 2 and 3 has been explained in **Gurusanthaya Vs Veerayya AIR 1952 Mad 825** that R 2 should apply if a party or pleader is not present in the Court, whereas in R3 even if party or his pleader is present in court, if there is failure to produce evidence or to cause appearance of witness or to perform any other act necessary to further progress of the suit under O17.

The Hon'ble High Court from time to time has expressed its concern on unwanted adjournments granted by the trial courts. The **General Letter No. 14 of 1919** along with along with **General Letter No. 3 of 1922 and General Letter No. 1 of 1954** expresses the concern of the Hon'ble Court on frequent and frivolous adjournments granted by the trial court. Directions were given that while adjourning the cases for hearing the court should manage the docket in such a manner that on the adjourned date there is no further adjournment to avoid harassment to litigants and witnesses.

A practical approach with respect to old cases would be to notify such mature, old and priority based cases for hearing **on a monthly basis**. This will ensure that the parties as well as the litigants come fully prepared in such cases. This will prevent dilatory and lingering tactics adopted by some parties.

With regard to old cases in **General Letter No. 7 of 1961** there is a direction to adopt a method of giving advance notices of hearing of old cases. This would avoid uncalled for adjournment and would ensure timely disposal of such cases.

Grant of easy adjournments again came up for discussion in Hon'ble The Chief Justices Conference and suggestions made by the Hon'ble Chief Justice of India in this conference was circulated through **General Letter No. 1 of 1977** with the following directions :

1. The cause list of court should be prepared with a practical view i.e. in such a manner that the parties may not have to go back on the dates fixed, without their cases being heard and witnesses being examined on the dates they are summoned.

2. Court should avoid granting easy adjournments.
3. Special attention should be paid for prompt service of notices and delinquent process servers should be properly dealt with.

These concerns

Vide **General Letter No. 11 of 1962** the Hon'ble Court has been pleased to direct that the cases which are ready for hearing even for important interlocutory matters, the Presiding Officer should himself fixed the date and announce it in open court.

Adjournment On The Plea Of Moving Superior Courts

There is a general tendency by the litigants to pray for adjournments in order to bring stay orders from superior courts particularly from the High Court. At the outset it may be pointed out that the principle of law has been emphatically laid down in O41 R 5(1) which states that an appeal shall not operate as a stay of proceedings under a decree or order appealed from. Despite this the general practice shows that records are delayed for months together on the pretext of obtaining orders of stay from superior courts. In this regard vide **General Letter No. 3 of 1963, Letter No. 12836 – 52, dated 14th September, 1971 and General Letter No. 7 of 1981**, there is a clear guideline of granting adjournment of 15 days excluding holidays. In exceptional cases and on filing affidavit the period of adjournment may be extended and if no stay is obtained by this period the case should proceed on. Further, if it is found that the party has sought for frivolous adjournment not intending to move in revision or appeal then such party should be saddled with reasonable cost. It is also mentioned in the said letter that these instructions should be strictly followed for granting adjournment.

Where a stay has been granted by the Hon'ble Court specific directions have been issued to the court below vide **order dated 20th September, 2011** of Hon'ble the Chief Justice of High Court of Jharkhand to make queries and enquire in this regard through email addressed to the Assistant Registrar (Judicial) and in the event of failure to get response within fifteen days, then the enquiry should be addressed to the Registrar General of the High Court. The concerned Assistant Registrar (Judicial) shall respond to such queries within fifteen days and the Registrar General shall respond within seven days.

Replication

A written statement often require a further answer in the form of pleading by the plaintiff. Once a defence has been raised an opportunity to the plaintiff to meet all those pleas and also give his version in face thereof is desirable. Such a pleading is called replication. The code as its stand does not provide for replication because Rule 1 of Order 6 states a pleading to mean a plaint or written statement.

The Hon'ble Delhi Court in **Anant Construction Vs. Ram Niwas 1995 Rajdhani Law Reporter 20** held that a replication is not to be filed nor permitted ordinarily save and except in three situations:

1. When required by law;
2. When a counter claim is raised or a set off is pleaded by defendant ;

3. When the court directs or permits a replication being filed;
4. A plea inconsistent with the pleas taken in original pleadings cannot be permitted to be taken in subsequent pleadings;
5. A plea which is foundation of plaintiff's case or essentially a part of cause of action of plaintiff, in absence whereof the suit will be liable to be dismissed or the plaint liable to be rejected cannot be introduced for the first time by way of replication. Thus the plaintiff is not fettered from leading rebuttal evidence on any new fact/plea that has come in WS.

The law is settled that the plaintiff can traverse through the pleading of the defendant and need not apply for ammending the plaint or for replication.

Chapter 8

ADMISSION OF SUIT

Is there any specific provision for admission of suit? If not, then why adjournments after adjournments are granted for hearing on the Point of Admission?

Section 26 and O4 R 1 of CPC are relevant provisions regarding institution of suits on presentation of plaint. The stage of issuing of summons to the defendants does not use the term admission. It merely says that when a suit has been duly instituted, a summon may be issued to the Defendant to appear and answer the claim and to file written statement of his defence within 30 days. What is institution is given in O4 R1 according to which a plaint is instituted on presentation with duplicate copy and the plaint should comply with the rules contained in order 6 and 7. It has been held in **AIR 1989 SC 2259** that t*he date of institution of the proceeding is the day on which an action in the court commences, on the filing of a claim in accordance with the prescribed procedure before the authorities empowered to receive it and not on the day when the court takes up the plaint for consideration and applies its mind to the merits of the matter.*

The provision simply mandates that when a plaint is presented complying with the provision of O6 and O7 the suit shall be deemed to be instituted. What are the things that needs to be checked by the court concerned at this stage has been laid down in O6 and 7 which are as under -

1. Pleading should be signed and verified by the parties O6 R14, 14A &15
2. Facts alleged in the plaint is supported by affidavit sworn by the parties or recognized agent.
3. Documents referred to in the plaint are filed along with the pleadings in original O7 R14. If it is not filed at this stage it can not be admitted in evidence without the leave of court .
4. The pleading discloses a cause of action which is not barred by any law. If the suit is barred by limitation or it does not disclose any cause of action the plaint can be rejected. Where the suit is barred by limitation it is not curable by application of Section 5 of the Limitation Act. There is a legal duty under Section 3 of the Limitation Act to see whether the plaint has been presented in time or not.
5. The court shall satisfy itself on the question of Jurisdiction.---If the plaintiff relies on the defendant's residence or place of business as giving jurisdiction, the facts showing this must be stated in the body of the plaint. The plaint must aver all facts showing how the court has jurisdiction. As per O7 R2 in money suit the plaint shall state precisely the amount claimed.

Rule 3 provides that where the subject-matter of the suit is immovable property, the plaint shall contain the description of property sufficient to identify it.

Court Fees

If the court fees is not paid can the suit be instituted?

Even when the court fees is not paid the institution can not be deferred. The court can only pass order for payment of court fees. Non-compliance of this order will invite consequence of rejection of plaint as laid down in O7 R11.

It is often seen that the suit remains pending for admission awaiting stamp reporting or for other reasons. This practice is not in consonance with settled provisions of the CPC. It is the duty of the court to see that there is no delay by the office in making the stamp reporting and subsequently the court should ensure immediate issuance of summons. (O7 R9& O 5 R1)

In order to obviate the delay in stamp reporting in the subordinate courts a Letter/circular of the Hon'ble Court may perhaps be needed to fix time limit in giving such report by the office. Before the Court takes up the plaint and applies its mind, the stamp reporting should be made so that further adjournments for stamp reporting is not required.

In proper MACT cases where there is delay in payment of court fees the Court concerned can adopt a practical approach by proceeding with the claim case by giving time to the party for making payment of the court fees at a later stage like after passing of order under Section 140 of the MV Act. This is for the reason that MV Act is a beneficial piece of legislation and the object of the Act is to provide speedy relief to victims. Furthermore, even in cases instituted on the basis of Accident Information Report forwarded by the concerned Police Station under Section 158(6) of the MV Act there is no provision for payment of Court Fees at the initial stage.

Rejection Of Plaint

The court must give a meaningful reading to the plaint and if it is manifestly vexatious or merit less in the sense of not disclosing a clear right to sue, the court may exercise its power under O7 R11 to reject the plaint. It is the duty of the court to examine a plaint before issuing summonses and to ascertain whether any relief has been claimed against the defendants and to ascertain as to whether the plaint should be rejected or returned . Where the plaint was admitted as duly stamped , the suit can not be dismissed under this rule at the stage of arguments on the ground that the court fees paid was insufficient.

Signing and verifying the suit:

If the authority of the party signing and verifying the plaint is challenged on the ground that he is not properly authorized to sign and verify the same , he may be asked simply to swear an affidavit.

Chapter 9

SERVICE OF SUMMONS ON THE PARTIES OV R9

Under the C.P.C. there is a complete code prescribing the form and manner of service of summons.

Under the amended rule when the summon is served by a registered or speed post and the acknowledgement has not returned still service of summons can be declared to be valid after expiry of thirty days from the date of issuance of summons. Here the concerned party may be asked to file the delivery report of such speed post/registered which can be tracked on INTERNET and its delivery can be reported within a week, whereupon service can be declared to be valid if there is a service report showing delivery. Rule 1 of Order 5 speaks about the summons containing the command of the court calling upon the defendant to file written statement within 30 days from the date of receipt of the summons. Rule 9 and 9A speaks about the mode of service of summons.

What the court has to ensure is that the summon contains a neatly typed copy of the plaint along with the documents filed under Order 7 Rule 14.This will preclude the defendant from alleging that it has not received a proper copy of the plaint or the documents referred to therein. Secondly, service could be made through registered (speed) post the service of which can be tracked and this avoid waiting for a period of 30 days to presume due service. Other electronic mode of service can also be taken recourse of if such address is available.

The statutory period of filing the requisites is within seven days as contemplated under Order 7 Rule 9 should also strictly be complied with.

Notice To Persons In Foreign States

In some cases where the notice/summons is to be issued against a person residing In a foreign state there is some confusion on the mode of its service. **Vide Letter No. 382 -403/Apptt.** the Hon'ble Court has been pleased to circulate that for seeking assistance from a foreign country including service of all kinds of judicial process communication should be made to the Ministry of Home Affairs, Government of India, New Delhi in Criminal Law matters and to the Ministry of Law & Justice, Government of India, New Delhi in Civil and Commercial matters.

It is to be noted that Order 5 Rule 1 clearly specifies that the summon itself should direct the defendant to appear within 30 days and as per the proviso to file the written statement within 30 days from the date of receipt of the summon as required under Order 8 Rule 1. The court

should ensure that the next date fixed for appearance of the defendant should not be more than 30 days, otherwise the very object of Order 8 Rule 1 will be frustrated. Secondly the summons should specifically mention that defendant shall within 30 days form the service of summon present a written statement of his defence.

Chapter 10

FIRST HEARING

First Hearing means a hearing at which the court goes into the pleadings in order to understand the contention of the parties and then frame issues.

In **Ved Prakash Wadhwa Vs Vishwa Mohan 1981 – 3 SCC 667** the Supreme Court said: the first hearing of the suit can never be earlier than the date fixed for the preliminary examination of the parties.

In **Siraj Ahmad Siddiqu Vs Prem Nath Kapoor 1993** it was held that the date of first hearing of the suit is ordinarily the date on which the court applies its mind to the contention in the pleadings of the parties to the suit and in the documents filed by them for the purpose of framing the issues to be decided in the suitable

The first hearing is not given the type of attention it deserves. The current practice with regard to it is anything but dismal . All that is done is that on the suggestions of the lawyers of the respective parties the issues are framed.

To begin, at the first hearing , it must be re-verified that those defendants who are not appearing have been properly served and orders proceeding exparte have been correctly passed. For the appearing parties the vakalatnama is to be rechecked followed by a general review of proceeding till then.

While issuing summon to the Defendant it is a clear mandate of O5Rule7 to produce all documents or copies in his possession as specified in rule 1 A of O8.

If the documents are not so filed with the plaint or the WS, the same can not be adduced into evidence save with the leave of the court.

The pleadings, principal documents need to be re-examined and if need be parties may be asked to make necessary amendment in the pleadings or joining of parties. Those documents which are admitted and in which formal proof can be dispensed with can be ordered to at the stage of examination of the parties. Examining of the parties can help in reducing the area of disputes by getting admission/stipulation to that effect.

The court need to verify whether it has Jurisdiction to hear the lis and if so can the matter be resolved by some practical method. It is often seen that even where the court concerned has no

valid jurisdiction , the case is admitted and notice is issued thereby consuming valuable court hours only to be found much later that it had no valid jurisdiction to hear the matter.

At the first hearing after the court is fully apprised about the case, the pending interlocutory applications like that of injunctions should be heard and disposed of.

Orders regarding interim maintenance, mesne profit, deposit of recurring amount to the court or to the other party etc should be passed at this stage.

At the first hearing the court should assume the full control over the management of the case. For expediting the disposal of the suit , establishing early and continuous control is essential. This will also improve the quality of trial with a thorough preparation.

Title of A Previous Owner:

In a suit for possession against trespasser the plea is taken by the defendant that the plaintiff has not acquired title from the vendor. In that case the vendor can be summoned at this stage itself to decide the suit.

In a suit for injunction against forceful dispossession at the first hearing the plaintiff may be directed to identify the suit property, state the basis of his claim, supported by document, precise basis on which he disputes the claim for the property and an undertaking that if the plaintiff is found to be in unauthorized occupation, he undertakes to hand over possession and shall be liable for mesne profit.

How a proper scrutiny at the first hearing can shorten the life of litigation can be illustrated by one example. 'A' who was an executive officer and a partner on the relevant day of dispute, because of a reshuffling he ceased to be a partner. Reference was made by the Govt undertaking and in the arbitration proceeding after consuming some time an award was passed. Objection was made by the Govt undertaking that A not being a partner could not have sought reference and that since the reference was by A, who was unauthorized person hence the entire proceeding was bad. The court did not record the statement of all the other partners and the matter prolonged for 20 years despite the fact that the Act of 'A' was ratified by the other partners. A practical approach on the first hearing of recording of statement of all the partners who had in fact ratified his action would have prevented delays and injustice.

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Chapter 11

EXAMINATION OF PARTIES BEFORE THE FRAMING OF ISSUES:

There is specific provision in the CPC for Examination of parties under O10 R1-2 which is not being actually used in practice. If during the first hearing this provision is put to proper use the court concerned will not only have a better grip over the case but it will help to weed out frivolous litigation at the inception.

O 10 R 1 contemplates a first hearing by the court to ascertain as to whether either party admits or denies the allegations of facts made in the plaint or in the written statement and the court shall record such admission or denial.

However, in view of Rule 1Ato 1C read with section 89 CPC the matter has to be referred at the first hearing to one of the modes of ADR.

O 10 R 2 mandates that in order to elucidate matter in controversy in the suit, the court **shall examine orally such of the parties as are present in the court appearing in person as it deems fit and may examine any other person able to answer such questions relating to the suit by whom any party appearing in person or present in the court or his pleader is accompanied.**

This examination can be done even in the second hearing.

O10 Rule 2(3) further provides that the court may put such questions to the person in terms of the suggested questions by either party. This has a reference to O11 R 1 which provides for discoveries by interrogatories. So where the interrogatories have already been filed by either of the side at this stage, the court can put question to the parties in this regard.

The process of first hearing ends up into multifold result. Under Rule 1 there is admission or denial of pleading, under Rule 2 first hearing is for the purpose of elucidating the matter in controversy. If there are clear cut admission under rule 1 resort to order 12 R6 can be taken and Judgment on admission can pronounced. If the admission comes under Order 10 R2 recourse to O15 R1 can be had and Judgment be pronounced. If the parties are at issue then recourse to O14 can be taken.

The object of examination under this rule is not to ascertain what is to be the evidence in the case but to determine the matters in dispute between the parties. It has been held **in 2012 (6) SCC 430 A. Shanmugam Vs AKRVMNP Sangam that O10 R2** *enables the court in its search for the truth to go to the core of the matter and narrow down or even eliminate the controversy*. It has been held in AIR 1997 All 122 that *the statement of a party, its counsel or agent under this rule, is for all practical purposes a part of the pleading and is binding on the party who makes it or on whose behalf it is made.*

It may be pointed in this context that the parties are not to be examined on oath and only the substance of their examination is to be reduced to writing by the Judge and form part of the record as laid down in O 10 R3. This first hearing enables the court in its search for the truth to go into the matter and narrow down or even eliminate the controversy. It is not contemplated that the parties be put into the witness box and examined and cross examined at this stage. Statements made under this rule are not intended to supersede evidence but they are of great value as admissions conclusive against the party making them. Such statements are not admissible against other parties unless opportunity to cross examine the party is provided. Substance of examination to be recorded in terms of Rule 3 can be incorporated in the ordersheet and signature of the concerned party/ pleader be taken in the margin of the ordersheet. Further, it can also be recorded in a separate sheet and signature of the party/ pleader obtained thereon.

Consequence of refusal or inability of pleader to answer:

O10 R4 further provides that in case the parties are not appearing in person and the pleader or the person accompanying the pleader is unable to answer the question put under R 2 the court may compel the part to appear on the next date which shall **not be later than seven days** from the date of first hearing. Failure of the party to appear in person as a consequence of the above order enables the court to pronounce judgment against him or pass such order in relation to the suit as it thinks fit.

The amendment of 1999 which came into effect on 1st July 2002 enables the court to cap the time which may be given to the pleader to answer any material question relating to the suit and further limits the postponement of the suit to not later than seven days from the date of first hearing.

Where the party in spite of the direction of the court to appear in person does not appear, the court is empowered to proceed in terms of O9 R12 . The consequence of non appearance may be as laid down under O9 which includes dismissal of suit for default and exparte Judgment.

Under R 4 an order directing a party to appear in person can be made only if the pleader or agent who represents him has refused or is unable to answer any material question.

Chapter 12

ADMISSION AND DENIAL

Aver means to state or assert or something or a particular fact to be the case. To assert means to state or assert something or a particular fact to be the case. The word response means an answer or a reaction to something that is averred. At times law places a duty to give appropriate response failing which law is free to infer or deem the truth of that to which a response was expected. Order VIII Rules 3,4, & 5 of CPC codifies the same. The principle laid down is as hereunder;

- Denial should be specific
- Vague denial is no denial
- Facts not denied should be deemed to be admitted

Once an assertion is made, or information fairly sought law raises a liability of response. This liability has been codified in the CPC in the provisions for written statement, set-off and counter claim in OVIII. This is with respect to the pleading of facts but is not limited to it. The concept of assertion and response is laid down in in the chapter of Burden of Proof in Chapter VII of the Evidence Act. Thus once an assertion is made by a party onus is on him to lead evidence to discharge the onus. Once that onus is discharged, onus shifts on the other side to give response to it by bringing proper evidence.

The response to an assertion can take the following forms:

1. admission
2. denial and
3. Ignorance.

The court can take note of the admissions if any. In case of denial if proved wrong, court can impose cost and penalties as provided under Section 35 A&B of the CPC. In case where the party pleads ignorance, it can be considered while appreciating the evidence on record. For instance, the party which leads positive evidence on a particular fact, his case will deserve to be taken with a greater degree of credence than of a party which only takes an ambivalent stand on a particular fact-in-issue.

Discovery by Interrogatories O11 R1

In any suit the plaintiff or defendant by leave of the Court may deliver interrogatories in writing for the examination of the opposite parties. The object and purpose of serving interrogatories is to enable a party to require information from his opponent for the purposes of maintaining his own case and destroying the case of the opponent. If the provisions of interrogatories, inspection and production is properly applied it will help to zero down on the main dispute between the parties. The court is under a mandate to decide over the application for interrogatories within seven days of the application. The answer to such interrogatories is to filed within ten days supported by affidavit (R8).

R 14 The court has also power to at any time during the pendency of the suit, to order the production by any party thereto, upon oath, of such document in his possession or power.

R 21 lays down the **consequences of non-compliance** with the order for discovery and he shall, if a plaintiff, be liable to his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any struck out, and the party seeking discovery and inspection may apply to the court for an order to that effect.

R 22 provides that any party may, at the trial of a suit , use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or whole of such an answer.

Admission/Denial Of Documents Order XII

The term admission/denial of documents has not been defined by the code. In procedural parlance it means that once the party is called upon to admit or deny a document produced by the adversary by an endorsement, further proof in relation to that document can either be dispensed with or insisted upon before the document is admitted into evidence. In actual practice the party is required to mark as admit or denied on the document, and to that endorsement, the signature and date are appended. If the document is admitted, it is given an exhibit mark under rule 4 of Order 13, otherwise it has to wait until it is proved. In actual practice the admission denial comes under the variant 'admitted', 'only signature admitted' .

Admission of the case differs from the **admission of documents**. Under R1 of OXII Any party to suit may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any party.

Either of the party can give notice to **admit documents** under R2, within seven days from the date of service of the notice , and in case of refusal or neglects to admit, after such notice, the cost of proving such shall be paid by the party so neglecting or refusing.

The court may notwithstanding that no notice to admit the document has been given under R2, at any stage of proceeding before it, of its own motion, call upon any party to admit any document and shall in such a case record whether the party admits or refuses or neglects to admit such document under R 3A.

The consequence of not specifically denying a document shall be deemed to be admitted under R 2A. Therefore every notice in writing calling upon the other party to admit facts must be carefully

replied and denied or not admitted, failing which the court may treat them as admitted, dispensing with their formal proof.

A notice to **admit any specific fact or facts** can also be served under R4 within nine days before the day fixed for the hearing. In case of refusal or neglect to admit the same within six days after service of such notice, the cost of proving such fact shall be on the party so refusing or neglecting.

The object of admission/ denial is to obviate the need for evidence to prove the documents or facts thereby reducing the total quantum of evidence in a case. By going through a proper procedure of admission/denial after discovery and inspection, need of formal proof of a very large volume of document can be dispensed with. This saving of time will reflect on the speed of disposal of cases.

What can Be Put For Admission/Denial?

Only the documents that have a bearing on the controversies emerging from the pleadings can be put for admission/denial. Only those documents about which the other party has knowledge ought to be put to him for admission/denial.

Chapter 13

AFFIDAVITS

An affidavit has been defined as a declaration on oath, reduced to writing affirmed or sworn to before some person who by law has authority to administer oaths. An affidavit is a voluntary statement and is always made without notice to the opposite party, i.e exparte. An affidavit has details of the persons swearing and usually has verification at the end. There are three kind of affidavits:

1. Affirming that the statements of fact made in an accompanying petition, application or reply are true to the knowledge of the deponent and nothing material has been concealed therefrom;
2. Making a solemn delclaration of some fact or state of affairs so that it may
3. Serving as mode of giving evidence before a court of law/tribunal

   2002 amendment provides that in every plaint, facts shall be proved by affidavit. Then subrule 4 of R 15 of Order 6 r/w Section 26 of CPC provides further that the person verifying the pleading shall also furnish an affidavit in support of the pleading.

What is the implication of the mandate of law to swear affidavit is that it can expose the person making false statement on oath to prosecution for perjury.

It has been held by Hon'ble The Apex Court in **Suo Motu proceeding against, R.Karuppan Advocate, in re 2001-5 SCC 289** *that an evidence is evidence within the meaning of Section 191 IPC and a person swearing to a false affidavit is guilty of perjury punishable under Section 193. IPC*

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Chapter 14

TIME LIMITS FOR DIFFERENT STAGES OF TRIAL AS PRESCRIBED UNDER CPC

1. O 7 R 9- Requisites for issuance of summons, to be filed within seven days of date of order of filing requisites.
2. O8 R1 – Written statement to be filed within **30 days** and can be extended by further **60 days** for reasons to be recorded in writing. **Section 148** CPC provides for further enlargement of time of not more than 30 days.

Hon'ble The Supreme Court in **Kailash Vs Nankhu 2005 SCC (4) 480** *held that though O8 R1 is directory but may not be understood as nullifying the entire force and impact, the entire life and vigor of the provision in its ammended form. Extension should not be granted as a matter of routine it can be granted only by way of exception and for reasons assigned by the defendant and recorded in writing by the court to its satisfaction, how so over brief they might be. Court has to spell out the reason for departure from the time schedule was because the circumstances were exceptional, occasioned by reasons beyond control of defendant and the extension was required in the interest of justice.*

Time For Filing Written Statement, Default And Consequences

Order 8 Rule 1 prescribes a 30 days time from the date of service of summon to present a written statement . The proviso provides that the court may extend the time of filing of the written statement beyond 30 days for reasons to be recorded in writing but it will not be later than 90 days. Rule 10 provides for the consequences upon default in filing the written statement within time.

Hon'ble the Supreme Court in **Kailash Vs. Nanhku AIR 2005 SC 2441** observed as under :

"The extension of time shall be only by way of exception and reasons to be recorded in writing, howsoever brief they may be, by the court. In no case the defendant shall be permitted to seek extension of time when the court is satisfied that a case of laxity or gross negligence on the part of the defendant or his counsel. The court may impose cost for dual purpose (1) to deter the defendant from seeking any extension of time just for the asking, (2) to compensate the plaintiff for the delay and inconvenience caused to him".

Vide **Letter No. 539 – 60 / (R&S), dated 2/7/2007** the Hon'ble Court has been pleased to communicate the resolution of Hon'ble The Chief Justices Conference of 2007 for implementation :**Time frame for filing W.S. under order 8 Rule 1 of C.P.C. should be strictly adhered to. Only in exceptional cases court should allow filing of W.S. beyond the upper time limit of ninety days.**

Hon'ble Jharkhand High Court in **Shibu Sahu Vs. Lacchan Devi AIR 2011 Jhar. 145** held that *where there is delay in filing the written statement and reasonable explanation was given by defendant for causing the delay in filing the written statement, it was held that the filing of written statement ought to have been allowed by trial court by imposing some cost upon defendant in the interest of justice.*

In **Salem Bar Association Vs. Union of India, AIR 2005 SC 3353** a three Judge bench of the Supreme Court explained the object behind the amendment of Order 8 Rule 1 and the manner in which it is to be construed. It has been held that the use of the word *'shall' in the provision by itself is not conclusive to determine whether the provision is mandatory or directory. The object which is required to be served by this provision and its design and context in which it is enacted have to be ascertained. The rule in question has advance the cause of justice and not to defeat it. On the failure of the defendant to file written statement the court has been given discretion to pronounce judgment or make such other orders in relation to the suit as it thinks fit under Order 8 Rule 10.*

With regard to the default judgment as contemplated under Order 8 Rule 10 the Supreme Court observed in **Modula India Vs. Kamakshya Singh Dev, 1988 (4) SCC 619** observed: *These rules are only permissive in nature. They enable the court in an appropriate case to pronounce a decree straight way on the basis of the plaint and averment contained therein. Though the present language of Rule 10 says that the court 'shall' pronounce judgment against him, it is obvious from the language of the rule that there is still an option with the court either to pronounce judgment on the basis of the plaint against the defendant or to make such other appropriate order as the court may think fit. Therefore, there is nothing in these rules which makes it mandatory for the court to pass a decree in favour of the plaintiff straight way because a written statement has not been filed.*

Going by the plain wording of Rule 10 Order 8, the first part says "the court shall pronounce judgment against him" while the second part says "or make such order in relation to the suit as it thinks fit". The wording thus leaves room for difficulty. To bring home the point, let us take two extreme illustrations. In case one the plaintiff brings a suit based on false allegations and forged documents but the defendant who got involved in problems is not able to file the written statement within the period allowed. In case two, the plaintiff files a suit based on a genuine claim to which there is not answer and in the period allowed, the defendant despite consulting any lawyers is unable to conjure up a defense and file a written statement. In the first case, to pass a decree would be wrong while in the second case, to refuse to pass a decree would be equally wrong. If, in the later case the judgment is not pronounced forthwith, there is incentive for application of procrastinating tactics. It, therefore, boils down to leaving discretion with the court on the basis of prima-facie satisfaction which the court derives.

The question remains where the defendant does not appear and file written statement the suit so decreed a consequence thereof is an exparte decree or one on default?

Absence of the defendant cannot be treated as admission. It should have something more on record before it proceeds to pass a decree. To rely on mere default as the foundation for the judgment is improper. The right approach here would to treat non filing of written statement not as an admission, but as absence of resistance to the claim.

Amendment Of Pleading

In the existing state of judicial pronouncement amendments are liberally granted despite the proviso to Order 6 Rule 17 that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that inspite of due diligence, the party court not have raised the matter before the commencement of trial. The leave to amend should be refused –

1. Where the amendment is not necessary for the purpose of determining the real question in controversy between the parties, as where it is
   (a) Merely technical, or
   (b) Useless and of no substance
2. Where the effect of the amendment would be to take away from the defendant a legal right which has accrued to him by lapse of time.
3. Where the amendment could introduce a totally different, new and inconsistent case and the application is made at a late stage of proceeding.
4. Where the application for amendment is not made in good faith.

In a way practically amendment of pleadings operates as an automatic injunction against the progress of the suit. Refusal of amendment means a civil revision and further delays. Amendment once allowed the matter proceeds afresh and some times when the date fixed for trial approaches, another application for amendment is filed.

No amendment should be allowed which amounts to or results in defeating a legal right accruing to the opposite party on account of lapse of time. Where a suit is filed for permanent injunction to restrain the defendant from alienating etc the suit property, the plaintiff cannot seek to add the relief of specific performance after seven years, when the relief is barred by limitation.

In exceptional cases, however, the court can allow amendments even if the claims are barred by limitation at that time. This was laid down by the Privy Council in **Charan Das Vs. Amir Khan Ind. app. 255**

The amendment order 6 Rule 17 (as it existed till June 2002) required the following factors to be considered while allowing or refusing prayer for amendment :

I. Whether the amendment sought could have been inserted in the original pleading?

II. If it relates to the subsequent event, what is the extent of time lapse between the occurrence of such subsequent event and prayer for amendment?

III. Whether the amendment sought is in any way malafide or unnecessary?

IV. Whether refusing amendment would cause injustice?

V. What costs should be imposed and directions given with regard to the mesne profit between the period of the original pleading and the amendment so that profitability from a non-bonafide prayer for amendment would be taken away?

VI. The stage at which the proceedings in the suit are and what would be the terms which would actually compensate for the delays.

VII. From what date the amendment should be allowed to operate and in what respect?

The main task before the court would be to distinguish between a genuine and bonafide oversight on the one hand and a lackadaisical and negligent approach on the other. There is also an intentional planning with amendments in view.

An amendment once allowed, ordinarily relates back to the date of suit. The general rule that this rule does not admit of exceptions is wrong. The court should in appropriate cases, make it operative from the date of application or if there have been delays attributable to the applicant, then from the date of order or even a subsequent date when the amended pleadings are filed in court. How amendments ought to be carried out and what are the rights of the adversary thereupon, is best explained by the full Bench decision of the Delhi High Court in **Kedar Nath Vs Ram Prakash 76(1998) Delhi Law times 755**.

For the Judicial system pleading is the medium through which the contention of both sides is placed before it. Unless there is purity of content, sufficiency of detail and clarity of expression that manifests itself in the pleadings, the trial cannot proceed with clarity and speed . Things have vastly changed and in the present context slipshod pleadings cannot be brushed aside on the 19th century authority of the Privy Council that the pleadings in India should not be considered from the standards of English solicitors. Pleadings being the communication between the parties, they need to be precise, firm and clear.

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Chapter 15

INTEREST

CPC as well as other statutes make wholesome provisions providing for interest.

Section 34 provides that where a decree is for the payment of money, the court may,in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six percent per annum as the court deems reasonable on such principal sum, from the date of the decree to the date of the payment, or such earlier date as the court thinks fit.

The Ammendment Act, 1976 added a proviso and two explanations to sub-s (1). the proviso enables the court to award interest higher than six percent but not exceeding the contractual rate or the interest charged by the nationalized banks on the loans and advances in commercial transaction. Explanation I defines a nationalized bank and Explanation II defines a commercial transaction for the purpose of this Section.

It has been said by the Supreme Court in **AIR 1992 SC 732 Secretary Irrigation Department Govt of Orissa Vs GC Rai,** *"Where a person is deprived of the use of the money to which he is legitimately entitled has a right to be compensated for the deprivation call it by any name. It may be called interest compensation or damages. This basic consideration is as valid for the period of dispute is pending as it is for the period prior to the lis".*

The term interest though not defined in the code, means a charge that is paid by a borrower to the lender for the use of the lender's money. Interest can be best defined as the damages for the detention of money. Money has a time value generally expressed as 'interest'. Interest is the compensation fixed by party or allowed by law, for the use, detention, or forbearance of money or its equivalent. Interest can also be awarded by way of damages.

How by not awarding proper interest on the principal claimed amount works injustice to the party can be illustrated with one case.

Suppose A files a money suit for Rs 45000 in 1982 and the suit is decreed in his favour in the year 1992 with 6% interest . If the appeal is disposed of in favour of the plaintiff after say 5 years and then payment is made. In that circumstance he will be getting Rs 40,500 as interest . But if the same amount is invested by the defendant simply in fixed deposit at the rate of 8.5% the defendant shall be earning an interest of Rs1,15,319. Thus by merely avoiding the repayment by delaying the

litigation the defendant stands to make an unjust gain of Rs74,819.The plaintiff not only suffers financial losses, and the costs incurred in litigation, but also mental agony for being deprived of his legal dues.

Law of contract and commercial law has grown over the time to facilitate trade and commerce. In the present circumstance if the court processes are unable to enforce legal contracts in time and adequately compensate the parties who suffer on such counts, it will prove to be a stumbling block for the country's economic development. What is required is therefore to award such interest and impose such penalties which will remove the incentive for litigation by an unscrupulous litigant. Delays will automatically be cut short.

Now coming back to CPC, Section 34 Provides both for simple and commercial rate of interests. It confers wide discretion on the court to award interest in all the three circumstances given below.

1. **From any period prior to the institution of the suit**

   The law on the subject may be considered under the following two heads:

   (a) where there is a stipulation for the payment of interest at a fixed rate;

   (b) where there is no stipulation for the payment of interest.

   If there is a stipulation for the rate of interest, the court **must allow** the rate, however the court has the discretion to reduce the rate of interest if it considers the same to be excessive and the transaction to be substantially unfair.

   If there is no express stipulation for payment of interest, then the plaintiff is not entitled for ante-lis interest except under the following circumstances:

   - Existence of custom or usage
   - Statutory right to interest eg Interest Act
   - Implied agreement
   - In exceptional cases on the basis of equity.

2. **The date of the suit to the date of decree**

   The rate of interest from the date of the suit to date of decree is in the discretion of the court and this discretion is not excluded if there is any stipulation for any contractual rate of interest. However despite being discretionary the court should in exercise of the discretion award interest at the contract rate unless it will be inequitable to do so.

   Even if there is no prayer for interest, still exercising the power under O7 R7 the court can award interest.

3. **From the date of decree to the date of payment or any earlier date**

   In cases involving computation of interest from the date of decree to the date of payment or any earlier date there is a limit of 6%. It makes a distinction between a commercial and non-commercial transaction. In cases of commercial transactions interest can be payable on contractual rate. In the absence of contractual rate, the interest rate will be the lending rate of

nationalized bank for commercial transactions and for non-commercial transaction there is a ceiling of 6%.

The interest as per Section 34 is to be paid on principal sum adjudged.

What is this principal sum adjudged ? Is it the base amount claimed or some other amount?

It has been held in **Central Bank of India Vs Ravindra 2002(1) SCC 367** that *subject to the binding stipulation contained in a voluntary contract between the parties and/or an established practice or usage interest on loans and advances may be charged on periodical rests and also capitalized on remaining unpaid. The Principal sum actually advanced coupled with interest on periodical rests so capitalized is capable of being "adjudged as principal sum" on the date of the suit for the purpose of Section 34 of CPC.*

What is the purport of principal sum adjudged can be viewed to apply to three distinct stages. (1) Pre-suit or ante-lite (2) Pendente-lite (3) future or post decree . The decision in Ravindra case remedies the problem with pre-suit period, but for the other two stages the problem persists. That is to stay for period of the suit to its realization to the time of its actual recovery compound interest can not be charged and only simple interest is permissible.

Interest can not be compounded for the ante lite period unless there is an agreement between the party to that effect. The interest on the principal amount for the other two stages can not be compounded in any case in view of the specific wording of Section 34 CPC.

Inspite of these specific provisions in actual practice commercial rate of interest is seldom awarded except in MACT cases or Land acquisition case where high rate of interest is awarded.

The fall out of the above is that delay in litigation for money claims is an incentive for defendants, similarly delay in litigation of MACT and land acquisition is an incentive for the claimant/applicant. There is a need to strike a balance while awarding interest.

Whether awarding of interest at a higher rate from the date of decree amounts to imposition of penalty hit by Section 74 of the Contract Act? Or whether penal interest can be imposed?

What Section 74 Prohibits is a clause in a contract for penal interest . It nowhere prohibits the Court from awarding penal interest in any particular case. It is not that awarding of penal interest is illegal or void abinitio. The correct position is that if the agreement contains a penalty clause the court gets power to grant relief from the portion which is unreasonably or unfairly penal.

Chapter 16

COSTS

The term costs may be defined in a literal sense, as compensation or allowance to a successful party in a judicial action in order to reimburse him for expenses necessarily incurred in the assertion or defence of his rights in court. It is also in the nature of incidental damage to the successful party to indemnify him.

Compensatory costs in respect of **false claim or defence**-Section 35 A and 35B

The introduction of this provision was intended to deal with cases not covered under Section 35 or where use of Section 35 did not afford adequate compensation. Section 35 was intended to secure the expense incurred by the litigant in the process of litigation. While 35 A is a more stringent provision with penal consequences for false and vexatious claim or defence.

In the object and reason for introducing **Section 35 B** was to give the court a discretion to impose compensatory cost on parties who are responsible for delaying at any stage of litigation and such cost should be irrespective of ultimate outcome of litigation. The legislative intent was to avoid delay in the disposal of suits and payment of compensatory cost for causing delay should be a condition precedent to the further prosecution of the suit or the defence by the plaintiff or the defendant concerned. The power conferred is wide enough to award cost in appropriate cases even if the court concerned finds that it has no jurisdiction to try the suit.

As far as Section 35 and Section 35 A is concerned, the power is to be exercised at the conclusion of trial, but the cost can be awarded during pendency under Section 35 B.

Similar provision is there under O17 R 1(2) where there is a legislative mandate that the court **shall** make such orders as to **costs** occasioned by the adjournments or such **higher costs** as the court deems fit. It also provides that where the hearing of the suit has commenced it shall be continued from day to day until all the witness in attendance have been examined and that no adjournment shall be granted at the request of the party except that the circumstance are beyond the control of the party.

Legal provision apart in actual practice in none of the cases Section 35 A or B is used, inspite of the fact that there may exist sufficient ground for invoking this provision. The result is that the party who deliberately puts up a false and vexatious claim are not penalized despite the legislative mandate rather they are awarded in the form of delays on frivolous grounds which is their ultimate

purpose. If the trial of civil cases is to proceed at a speedy pace and to a meaningful conclusion the provisions of the CPC need to be strictly applied in this respect.

How this provision is to be invoked can be illustrated by few cases.

Hon'ble The Apex Court in **AIR 1994 SC 1673** observed that *normally if a respondent is into contesting the case cost would not be awarded but in a suitable case, cost should be awarded on persons that set the law in motion, had benefit thereof and remained obviously exparte.*

In **AIR 1977 SC 2421** has been held that bearing this Section in mind the court has to take deterrent action if it is satisfied that the litigation was altogether groundless.

It is to be kept in mind that these provision in no way fetters the power of court in appropriate cases to initiate a criminal proceeding under section 340 Cr.P.C. where there is manifest act on the part of any party affecting the administration of justice by filing false affidavits or using forged / false documents as genuine. In order to have quality justice in reasonable span of time the sanctity of the process is to be maintained at all costs. The court cannot be a mute spectator to the ongoing drama in a civil case. It has to take a proactive role towards curbing the attempt of creating flaws in the litigation.

This strategy takes into account the fact that a false or vexatious claim or defence not only causes wrong to the party but also consumes valuable court hours adding to the case loads of unscrupulous litigation. The justice dispensation system functions on public expense and no one has a right to take liberty with it. Unless or until such parties are made to bear the cost of causing wrong to the party concerned as well as the wrong to the system as a whole, we cannot have judicial system qualitatively different from the system we are at present having.

Let us explain the above contention. A tenant occupying a premises by virtue of a **registered lease** is called upon by the landlord to vacate the premises after the **expiry of the lease**. The tenant refuses to vacate. (this is a civil wrong committed by the tenant). On account of this refusal by the tenant landlord is compelled to institute a suit for eviction against the tenant. The law is set into motion. There is an addition of one case. Several judicial hours of the trial Judge, the appellate Judge and even the Hon'ble High Court is consumed. Personal expenses and fatigue of the landlord has also to be considered. Expenses incurred by the state in maintaining the judiciary is consumed because of this litigation. End result is the tenant is asked to quit but without any penalty.

Cost To The System

Sri Mohan in his book further pleads that the Courts are public institutions run by public money dispensing Justice. If all costs are taken into account and the average cost of operating a courtroom is worked out, the figure would exceed Rs 2000 per hour. As with any service rendered by the state , the citizen has a right to use it and not to misuse it. There is no reason why a litigant who foists a false claim, or does an act or omission which gives rise to litigation or refuses to settle a fair claim, and then, by his conduct during the litigation, deprives another of his time and money, putting a wholly unnecessary burden on the system, should not pay and compensate both the adversary and the system. Is it justifiable for the burden of a wrong litigation to be borne by the state exchequer through the Judicial system and then passed on to the taxpayer? The right thing to do would be to make wrongdoer pay for the Judicial time expended.

If the party seeking an adjournment, for whatever reason, is made to pay the proportionate cost of the system, the request for adjournment will be drastically reduced. There will be a certainty that hearing will take place therefore the party as well as the court would be fully prepared for proper hearing of the case.

Let us take an illustration.

An eviction suit on the ground of personal necessity alone, has been instituted. Summary proceeding of the Building Act is required to be followed. The suit has been decreed by the trial court. This order is revisable under Section 14(8) by the High Court. The tenant in order to continue in illegal occupation, despite order of eviction chooses to file an appeal before the District Judge instead of preferring revision before the Hon'ble Court on the ground of non-compliance of provisions of Section 14. When the appeal is to be taken up for hearing after several years an application is moved to withdraw the appeal to file a revision before the Hon'ble Court seeking protection under Section 14 of the Limitation Act. In this way the Judgment-debtors succeeds in his design in denying the fruits of decree.

here we as Court are at fault?

1. Trial Court failed to observe compliance of Section 14.
2. First Appellate Court either should not have admitted the appeal, observing therein that the order is revisable or if the order was appealable, should not have granted permission to withdraw the appeal.
3. It is an instance where a wrong forum has been deliberately chosen to cause delay at the appealable/revisable stage. The court needs to be at guard against such practices.

Can Court Award Penal Costs Or A Fine To The State?

As far as the wrong to the system is concerned it can not be compensated in the present system which does not have any provision for fine to be imposed on such parties. The concept of fine is foreign to civil suits although there are instances where exemplary costs have been imposed by the Hon'ble Court.

Term penal costs or exemplary costs have often been used in different Judgments . A full Bench of the Allahabad High Court in **Chandrasekhar Vs Manohar Lal AIR 1942 All 233** observed ," By the Indian statute costs are in the discretion of the court and .....some time they may be of penal nature". There is catena of decisions of the Hon'ble Court where exemplary costs have been imposed. The purpose is to send general message that the judicial system will not tolerate wrong. There is however no provision in the statute for penal or exemplary cost. Civil procedure Code nowhere uses these word at any place. Absence of any statutory provision has resulted in evolution of this nomenclature for these impositions, which are nothing but penalty imposed by the court. The source of these powers can be traced to the inherent power of court rather than Section 35 or 35 A of the code.

The concept of penalty was explained by the Supreme Court in **Organo Chemical Industries Vs UOI 1979-4-SCC 573**

" 'damages' as imposed by section 14-B (of EPF and MP Act), *includes a punitive sum quantified according to the circumstance of the case. In exemplary damage this aggravating element is prominent. Constitutionally speaking, such a penal levy included in damages is perfectly within the area of implied powers and the legislature may, while enforcing collections, legitimately and reasonably provide for recovery of additional sums in the shape of penalty so as to see that the avoidance is obviated.*

The Judge who is hearing the civil proceedings needs to, and can make summary imposts. There is no need to convert them into independent proceedings since that would defeat the purpose. Some orders may be made even without reasons, but for others, recording of detailed reasons should be a must. Similarly, imposts for certain wrongs may be made as the proceedings move, while for others, it will have to wait the end of the trial. It all depends upon the nature of the wrong or the cause for the penalty.

For instance, late filing of papers or upsetting of schedules can be done away with by a final imposition of penalty at that stage itself. However, penalty for filing of a false or irresponsible claim / defence shall have to await the end result before the impost or that account can be made. Furthermore, the imposition must be made with the culmination of the proceedings and no later or otherwise, it would cease to serve the purpose. Once the Courts begin to impose costs for what are wrongs before the judicial system, including lackadaisical conduct, a new sense of discipline will be brought about.

The purpose of a penalty is to punish and deter wrongdoer, and the quantum must be sufficient to attract the attention of others in order to assure that such wrongs doe not recur. The injury it causes to society is sought to be evened out by a fine payable to the State, the amount of the penalty being commensurate to the extent of the wrong. On the other hand, the amount should not be so excessive that it exceeds the level necessary to punish the wrongdoer properly and deter others.

Courts being concerned with fairness between the parties should not become a forum for inflicting vengeance, or penalties of a vindictive nature. Penalties may be imposed, not for retribution, but in good conscience, to bring a wrongdoer to account, and allowing such impositions only permits complete justice and resolution to litigation. It also helps in deterring potential wrongdoers from attempting to misuse the judicial system.

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Chapter 17

CAN A LAWYER BE PERSONALLY MADE LIABLE FOR THE WRONGS?

Traditionally, for what are wrongs before a Court of law, all blame and consequently Costs have been directed towards the party. However, at times, it is the lawyer for the party who is responsible for the wrong. It is often urged that while a party must pay for what is his wrong, the lawyer who commits a wrong should, by parity of reasoning, be equally liable. It therefore calls for debate whether costs ought to be leviable also upon the lawyer who acted for the party before the Court.

In **Vidya Varma Vs. Shiv Narain** AIR 1956 SC108, the lawyer was made to pay the costs personally. Similar was the order in **Rafiq Vs. Munshi Lal** 1981-2-SCC788.

It is not clear on what principle a lawyer may claim immunity from penalty for his wrong or for a failure on his part. True, it is his duty to represent a party's case before a Court of law, but while doing so he has not only to advise correctly, but he also has to try and filter out any wrong by a party. Failure to do so would be dereliction of duty. Then, conduct before the Court must be such so as to adhere to settled norms and a display of responsibility. It should aid and not obstruct the course of justice. Although he has to do his best to plead his case, it should not result in an abuse of the process.

In **Ramon Services Vs. Subhash Kapoor 2001-1-SCC 118** (a case relating to the lawyers' strike), the Supreme Court, after considering various aspects of a lawyer's duty and making observations in that regard, was pleased to Order:

... the appellant is permitted to realize half of the said amount of Rs. 5,000 from its advocates' firm or from any one of its partners. ...

The legal profession is put to notice that in future the advocate would also be answerable for the consequence suffered by the party ... ...

It is made clear that the same court has power to permit the party to realize the costs from the advocate concerned without driving such party to initiate another legal action against the advocate.

The failings or wrongs by a lawyer can assume various shades and hues and an attempt at definition would be doing beyond the scope of this work. However, broadly stated, they are of two types:

1. Causing avoidable waste of the Court's & the Adversary's time by :

a) Failing to appear at the hearing;

b) Absence of proper homework / preparation;

c) Failing to render proper assistance; and

2. Assisting a party in or himself doing a wrong, or otherwise by obstructing the course of justice.

In so far as the first is concerned, an award of Costs against the lawyer is merely making him pay compensation for the time wasted & expense incurred on account of his act /omission, whereas for the second type, an element of penalty is also added to what is mere compensation.

Take the simple example of an adjournment. If a lawyer wants an adjournment because his relative is getting married, he ought to be granted one, but should he not bear the costs incurred by the adversary and the system on account of the adjournment? It would be a different matter if there had been bereavement in his family and out of human consideration, the adversary (and the system) would not expect and ask for reimbursement of the costs occasioned.

Should a lawyer be allowed to absent himself – either by being busy elsewhere or , at times, by even feigning sickness – simply because delay is advantageous to his client? Similarly, if he leaves town – whether for a holiday or to attend to a more lucrative brief – should he at least not compensate the wasted time & expense of the other party as also the court time? Other instances would be of not filing papers, process fee, replies, delivery of copies, etc, which only contribute to delay, expense & harassment to the opponent and cause avoidable waste of court time & resources.

Slowly moving up the ladder, if without checking up that a statute has been repealed or what a precedent has been reversed, the lawyer moves on a course causing waste of time and energy, should he not compensate for the loss caused? Similarly, if a lawyer presents a pleading with improper grounding of facts or law, should he not be asked to explain? Moving further up, if there is negligence or wrong on the part of the lawyer which multiplies the litigation, it would be unfair to blame the party. Instead, it is the lawyer who should be held responsible. At the extreme end would be a case where ingenious wrongs and frauds upon the system are committed by the lawyer.

For the efficient working of any system, it is essential that when a case is presented or argued by a lawyer before the Court, the Judge receives it with a certain degree of confidence.

Stated differently, the court should be entitled to ask the lawyer to check & verify whether that which is being presented to court is really worth Court's consideration. In any case, in order to speed up the process, a greater degree of credence will have to be given to what the lawyer says, but if that confidence is let down, there should be an order for costs of the time & effort wasted and , if necessary, even an order for penalty. While disciplinary and other penal action should be taken for serious wrongs, for letter transgressions, a tool of costs against the lawyer personally is a must.

Likewise, arguing a case wrongly, confusingly, without preparation, not to the point, against the record or Statute or binding precedent or otherwise misleading the court should invite similar orders for each. Costs on the lawyer – which has the same two components Viz: reimbursement for consumption / waste and a penalty for improper conduct – is one, but in the future, lawyers may also find themselves at the receiving end vis-à-vis claims for compensation on account of professional negligence both in the civil Court and the Consumer Forum.

In **Krishna Rao Vs State of Orissa AIR 1955 Ori 65** it was held that the court has a discretion to award costs against a legal practitioner who has been found guilty for professional misconduct.

In **Rafiq Vs Munshilal AIR 1981 SC 1400** where an appeal was dismissed for the default of appellant's counsel, the Supreme Court , while setting aside the dismissal, directed costs to be paid by appellant's counsel who had absented himself.

A word of caution before the discussion on the topic 'costs' is concluded.

1. The lawyer do not swear an affidavit, nor do they verify the pleading, therefore they can not be personally held liable for the omissions and commissions committed at the behest of the parties. The law on this point is still to evolve imposing greater responsibility on the lawyers in conducting their cases.
2. Costs as penalty can not be imposed on the parties beyond the cost of the suit.
3. The expression 'costs of and incidents to suits' includes not only the cost of suits, but the costs of applications in suits. Section 35 provides that costs of the suits and applications shall be in the discretion of the court.
4. Costs shall follow the event- The general rule is that costs shall follow the event. This means that the successful party is entitled to costs unless he is guilty of misconduct or there is some good cause for for not awarding costs to him.
5. As regards costs the actual costs and not nominal costs should be imposed. This is also the requirement of S.35 CPC of the Act which requires costs to follow events. For award of cost the court has to take into account the value of the claim and the financial capacity of the parties.
6. A person wrongfully made party should get his cost.
7. Separate costs should not be allowed to the defendants if the defence is common to all if, or if the interests are the same. But if their interests are diverse they are entitled to appear by separate counsel and to costs so incurred.
8. Where a court has the jurisdiction to deal with the question of costs, no separate suit will lie to recover costs.
9. Under **Section 35A** compensatory costs in respect of false or vexatious claims or defences can not be awarded for more than three thousand rupees or exceeding the pecuniary limits of the jurisdiction of the court.
10. **Section 35 B read with O17 R1(2)-** Costs for causing delay-- If on any date fixed for the hearing of a suit or for taking any step therein, a party to the suit-
    i. fails to take the step which he was required by or under this code to take on the date or
    ii. obtains adjournment for taking such step or for producing evidence or on any other ground,

the court may for reasons to be recorded, make an order requiring such party to pay to the other party such costs as would , in the opinion of court, be reasonably sufficient to reimburse the other party in respect of the expenses incurred by him in attending the court on that date, and payment

of such costs, on the date next following the date of such order, shall be condition precedent to the further prosecution of--

a) the suit by the plaintiff, where the plaintiff was ordered to pay such costs'

b) the defence by the defendants where the defendants was ordered to pay costs

This section has been added to discourage parties to a litigation from causing undue or unnecessary delay in the prosecution of the suit at any of its stage and empowers the court to order compensatory costs.

In a case where the facts showed that litigants and his successors-in-interest tried all possible methods to outwit the law and, the process , stifled the justified cause for a period of 36 years, as also changed their stand, depending on their convenience from time to time and were undeterred even in concealing the proceeding in one court to another where they shifted their stand, it was held that they would earn the wrath of the court and asked to pay compensatory costs.--**Jawan Vs Mewa Singh 2001 (P & H) 344**.

Whether the provisions under this Section are mandatory or directory has been decided by Hon'ble the Apex Court in **Manohar Singh Vs D.S.Sharma AIR 2010 SC 508**, *wherein it has been held that the word further prosecution means further participation, but non-payment of the cost does not entail dismissal of the suit.*

This was case where on account of frequent adjournment taken by the defendant court imposed costs. When the cost was not paid the suit was dismissed. It was held that the proper course in such case should be to stop the concerned party from prosecuting the suit or putting up the defence for non-payment of costs. The concerned party could have been stopped from cross-examination.

It has been held in **Manik Lal Vs Mahinder Singh AIR 1987 Raj 14** that appellate court can award compensatory cost under this Section when the original court omitted or refused to do so even if the claim or defence raised by the party is false.

Chapter 18

APPRECIATION OF EVIDENCE

In any case the responsibility of bringing the Evidence on record is that of the parties. Role of Court is in appreciation of evidence. The principles of appreciation in civil and criminal cases are the same, but the evidence that is brought on record is invariably different both in civil and criminal cases. While in criminal cases primacy is normally given to the oral evidence, but in civil cases it is the documents which have preeminence character. Whether it is a money suit or a suit for specific performance of contract or a Title suit, in all these cases the crucial evidence are the documentary evidence. It is for this reason that O7 R 14 CPC provides that where a plaintiff sues upon a document or relies upon a document in his possession or power in support of his claim, he shall enter such documents in a list and present in the court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

In our present time there is a far greater volume of documents available. From Banking details, to Call Detail Reports(CDR), electric bills, income tax returns and so on documentary evidence are available touching all the fields of our life. A clear grip over the case of the parties from the pleadings and on the documentary evidence in a particular civil case, can decide the fate of half the case. Any one familiar with court proceedings know the degree of trust that can be placed on oral evidence. They are in many cases highly unreliable oral evidence who in civil suits and in civil suits have a tendency to support their respective sides. Witnesses may stumble. They may turn hostile , or won over either by money or muscle power. Documentary evidence if authentic, is far more reliable and worthy piece of evidence because there is no element of bias or concoction or twist which the oral testimony of a witness is often affected by. It is not only a positive evidence, but documents-both by their presence and equally by their absence—operate as valuable negative evidence. Their absence becomes conspicuous depending upon the facts and circumstance of a particular case. For example if the record of the persons entering in a particular room is maintained, the absence of name of any one of them will be a negative evidence.

The approach in civil case should be to first to look for documentary evidence and if they are not found sufficient only in that case the oral evidence should be looked into. The future will see extensive evidence by way of computer entries.

Judicial Notice Of Facts

Taking judicial notice of fact means that the court will bring to its aid, without proof or evidence of the facts, its own knowledge of the existence or non-existence of facts. Judicial notice is intended

to avoid the necessity of adducing formal evidence where the fact sough to be proved is so well known or can hardly be disputed. The two prerequisite of taking Judicial notice is, first, the matter must be of common knowledge, although it is not necessary to be universally known. Second the matter must be settled beyond doubt-- if there is any uncertainty in the matter evidence should be taken.

Chapter III of the Evidence Act refers to facts which need not be proved. Section 56 says that no fact of which the court will take judicial notice need be proved, while section 57 says that court will take judicial notice of facts detailed in clause 1 to 13 of this Section. Against the common notion that Judicial Notice of no other fact, other than those detailed in Section 57, can be taken, the Hon'ble Apex court in **Onkar Nath Vs Delhi Administration AIR 1977 SC 1108** has held that *the list of facts mentioned in Section 57 of which the court can take Judicial Notice is not exhaustive and indeed the purpose of this section is to provide that the court shall take Judicial Notice of certain facts, rather than exhaust the categories of facts of which the court may in appropriate cases take judicial notice. Recognition of facts without formal proof is a matter of expediency and no one has ever questioned the need and wisdom of accepting the existence of matters which are unquestionably within public knowledge. Shutting the Judicial eye to the existence of such facts and matters is in a sense an insult to common sense and would tend to reduce the Judicial process to a meaningless and wasteful ritual.*

Failure to exercise the doctrine of judicial notice tends to engulf trials with technicality and lengthen them out monstrously. Judicial notice ought not to be confined to matters within the actual knowledge of the individual Judge, and a judge may be empowered to rely upon material from encyclopedia, textbooks or other publications if there is nothing to the contrary or the facts is such that there can be hardly any dispute.

Whether The Proof Of A Document Proves Its Content ?

The general notion is that proof of a document may not prove its contents. But, the court while considering this aspect has to consider as to whether the genuineness of the contents of the documents have been denied or not. Hon'ble The Apex Court has observed that no one is expected to sign a document without knowing its content but if it is pleaded that the party who signed it did not know its contents then it may in certain circumstances be necessary for the party seeking to prove the document , be required to prove its contents. ---- **AIR 1971 SC 2548 Duttatraya Vs Ranganath Gopalrao Kwathekar**.

Similarly the Apex Court in **AIR 1981 SC 2085 Ramjee Dayawala and Sons Vs Invest Imports** has held that *if the truth of the document is in issue, mere proof of the handwriting and execution of the document would not furnish evidence of the truth of the facts or the contents of the document. The truth or otherwise of the facts or contents so stated has to be proved by admissible evidence.*

In **AIR 1972 SC 608 PC Purshottama Rediyar Vs S Perumal Apex** *has held that where a document is marked as exhibit in a case and is admitted into evidence, its contents are also admitted into evidence, though the evidence is not conclusive and can be proved to be wrong.*

What Is To Be Done By The Court ?

In order to bring a document on record and also to read its contents the court can appropriately apply the provisions with regards to interrogatories discoveries and admissions, all to be done

with affidavit. It may be pointed out that whenever a document is filed the court can ask the other party to admit or deny such document provided that party is a party to the said document or derives any interest through it or document is referred to in the pleading of that party.

Dispute As To Signature

A fair amount of difficulties and, therefore, delays arise because of disputes regarding the signature on a document. A document purported to be signed by a person is either signed by him or it is a case of fabrication/forgery. There are also cases where a signature though genuine was not affixed with the intention of authenticating/accepting the content or was affixed to a blank piece of paper.

The signature evidences that the person is bound by the instrument to which it is affixed. The entire legal system depends on signature as making the paper/document whose signature it bears as maker. Even the Judgment delivered by the court of law bears the signature of the Judge to signify that it is his Judgment.

A signature as a witness is different, for he puts his signature animo attestandi, that is , for the purpose of attesting that he had seen the executants sign. If a person signs the document for some other person e.g to certify that he is a scribe or an identifier or a Registering officer, he is not an attesting witness.

Forgery of signature over a document comes within the province of criminal law and should be accordingly dealt with. Filing of forged document is an offence, but prosecutions are rare. A false denial of signature is equally an offence , but prosecution for the same is unheard of. Then there is another problem where the party admits the signature but denies its content.

The signature on a document is neither a piece of decoration nor an empty formality. It is supposed to authenticate the document. Our entire social, legal and economic structure is based on it. The signature on a document can not be thrown aside by a convenient endorsement that I admit the document but not the content of it. Otherwise, there will be chaos. Every vendor will take the same plea of admitting the document but not its content.

Whether a wrong denial in admission can be a ground for prosecution?

Admissions are not made on oath, therefore a criminal prosecution can not be launched. This will be different if such wrong denials are made in course of evidence and the witness is confronted with any such document.

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Chapter 19

DELAY AT THE STAGE OF INTERLOCUTORY APPLICATIONS

My Lord Justice M.Y. Eqbal noted with concern while working as Chief Justice Madras High Court found that 66,000 applications for temporary injunctions were pending before the subordinate courts in Tamil Nadu. This prompted His Lordship to circulate one booklet on such applications published and circulated to see that cases are not unduly stuck at this stage.

The trial as well as appellate courts have therefore to be careful to the possibilities of interlocutory applications being disguised attempt to delay the trial. A relief for temporary injunction under O39 R1&2 is premised on three basic ingredients of:

1. Prima facie case
2. Balance of convenience
3. And irreparable injury

As far as the last two ingredients are concerned they have a time dynamics and if the party seeking injunction after filing the application is not pressing it for long, it loses much of its force. It reflects lack of urgency. The main object for filing such an application may be even to delay the trial by getting the case record called for in the appellate stage.

Further, if a case under R3 of O39 which is for ex parte hearing on account of urgency is made out, then the court should without default adhere for strict compliance of R 3 A which mandates for filing of an affidavit in respect of service of notice within 24 hours and hearing and disposal of the application within 30 days.

It will not be out of place to mention here that there are other interim applications like for appointment of pleader commissioner (O39 R7 and O26 R9….), addition and deletion of parties (o1R 10) , amendment of pleading O6 R17, rejection of plaint O7R11, adjudication on preliminary issues etc which are filed during the course of trial. The courts cannot permit the trial to be procrastinated due to pendency of these applications.

In **Ramameshwari Devi** referred to above, the Hon'ble Apex Court further observed in context of ad-interim injunction, *"the courts have to be extremely careful in granting ad-interm injunction ex-parte. If injunction has been granted on the basis of false pleadings or forged documents, then*

the concerned court must impose costs, grant realistic or actual profits and/ or order prosecution. This must be done to discourage the dishonest and unscrupulous litigants from abusing the Judicial system. In substance , we have to remove the incentive or profits for the wrongdoer. While granting ad-interim ex-parte injunction or stay order the court must record undertaking from the plaintiff or the petitioner that he will have to pay mesne profit at the market rate and costs in the event of dismissal of interim application and the suit..... It is also a matter of common experience that once an ad interim injunction is granted, the plaintiff or the petitioner would make all efforts to ensure that injunction continues indefinitely. The other appropriate order can be to limit the life of ex-parte injunction or stay order for a week or so because in such cases the usual tendency of unnecessarily prolonging the matters by the plaintiffs or the petitioner after obtaining ex-parte innjunction orders or stay orders may not find encouragement. We have to dispel the impression that a party by obtaining an injunction based on even false averments and forged documents will tire out the true owner and ultimately the true owner will have to give up to the wrongdoer his legitimate profit."

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Chapter 20

SUBSTITUTION OF HEIR OF DECEASED PLAINTIFF/DEFENDANTS OXXII

Amongst the many causes for delays in courts, one is the problem relating to bringing on record the LRs of a deceased party. The greater the delay, the greater the frequency of the occurrence of the problem. The mandate of law is that the suit does not abate if the right to sue survives. But, where the right to sue does not survive and the legal representatives are not brought on record within 90 days (Article 120 of the Limitation Act) from the date of information or knowledge of the death, then the suit abates as against that party. Under Rule 10 A it is the duty of the advocate to give information of the death of the person whom he represents, if such person dies. There are certain exceptions, Rule 4(4) contemplates that where the defendant has failed to file WS, there is no necessity of substitution. Similarly Rule 6 provides that there shall be no abatement by reason of death of either party between the conclusion of hearing and pronouncement of Judgment.

There is an area of dispute as to whether the legal representative of the deceased can make independent defense. R4(2) prescribes that the legal representatives are at liberty to make any defense, but such defense should be appropriate to their character as LR of deceased defendant.

Consequence of Abatement: Rule 9(1) prohibits fresh suit on same cause of action if the original case has abated and dismissed thereof. Under Rule 9(2) there is a provision for setting aside of abatement.

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Chapter 21

EXPARTE JUDGMENT

Order 5 R 1 mandates that on the failure to appear on the date fixed and file written statement , the suit will be heard and **determined** ex parte. Thus it is apparently clear that merely because the suit has proceeded exparte the burden of proving the facts and the allegations made in the plaint is not dispensed with.

In the case of **Shiv Narayan Harlal Maheshwari Vs Kanhaya lal Devidin AIR 1948 Nagpur 168** *the court observed that where the defendant does not appear and the court requires the plaintiff to adduce prima facie evidence it would be necessary for the court to warn the plaintiff that such evidence which he has adduced will not be in the opinion of the court sufficient to establish a prima facie case unless it is adduced in a manner as if the case was a defended case.*

In **Ramesh Chand Ardawatiya Vs Anil Panjwani AIR 2003 SC 2508**, the Hon'ble Apex Court observed as under,

> *"Even if the suit proceeds ex parte and in the absence of a written statement, unless the applicability of order VIII R 10 of the CPC is attracted and the court acts there under, the necessity of proof by the plaintiff of his case to the satisfaction of the court can not be dispensed with. In the absence of denial of plaint averments the burden of proof on the plaintiff is not very heavy…….. in a case which proceeds ex parte the court is not bound to frame issues under order XIV and deliver Judgments on every issues as required by order 20 R 5. Yet the trial court will scrutinize the available pleadings and documents and consider the evidence adduced and would do well to frame the points for determination. Merely because the defendant is absent the court shall not admit evidence the admissibility whereof is excluded by law nor permit its decision being influenced by irrelevant or inadmissible evidence."*

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Chapter 22

PREPARATION OF DECREE AND EXECUTION

One area where years of painstaking efforts of a party comes to a naught is after the suit is decreed and the decree is put to execution. It is at this stage where the court should be cautious and sensitive to the plight of the decree-holder. Before signing the decree the court should ensure that in cases of immovable property the particulars of the property is fully given (O20 R9). Property should be identified completely by its plot no. survey numbers and boundary. Instead of becoming academic the court should also ensure that whether the description of the property clearly identifies the property or not and if not then other descriptions for clear identification should also be given. If the plaint is describing the property in some insufficient manner then the court can exercise jurisdiction to describe the property adequately on the basis of evidence on record.

Under O20 from rule 8 onwards the CPC provides the modes of preparing decree in different types of suits. The court at the time or preparation of decree must refer to these rules.

The Hon'ble Court in the **General letter no. 1 of 2006** emphasized the need to strictly follow Rules 105 to 115 of the Civil Court Rules to avoid defects while preparing decree. It was noted that the decree invariably suffers from defects such as names of the parties to be incorrect, parentage, suit valuation etc. It was directed that the presiding officers should verify the decree before putting his signature.

The civil court rules *interalia* provides that it should be drawn up in such a manner that , in order to the understand or for execution of the same, so that there may be no need to refer to any other document for this purpose. If there are maps prepared by the direction of the court or accepted by the court and the same is illustrative of the terms then it should be made part of the decree. It should also contain statement of interest if any allowed by the court and along with the period.

Even the executing court is under a authority and duty to find out the true effect of the decree. **Hon'ble Apex Court in AIR 1972 SC 1371 Bhavan Vaja Vs Solanki Hanuji Khodajee** *has held that although the executing court can not go behind the decree under execution but that does not mean that it has not duty to find out the true effect of that decree . For construing a decree it can and in appropriate case it ought to take into consideration the pleadings as well as the proceedings leading upto the decree. In order to find out the meaning of the words employed in a decree the court,*

often has to ascertain the circumstances under which those words came to be used. The omission to construe the decree is really an omission to exercise the jurisdiction vested in the courts.

Objections In Execution Cases

Every objection under section 47 of the C.P.C. in execution proceedings should be proceeded with a preliminary hearing before admitting them and registering them as a miscellaneous case. Vide **General Letter No. 3 of 1977** it was circulated referring to the judgment of the **Patna High Court AIR 1951 Pat. 372** as hereunder :

"There is no authority for the proposition that an application under section 47 should not be summarily dismissed. It is always open to a court to which a petition is presented to consider it on its merit at the time of the presentation. If it is clear that the contentions raised in the petitions have no merits, it is not right that public time and money should be wasted and the opposite party harasses and put to additional expense by deferring the passing of orders until both parties have been heard at length. It is necessary, however, that the party filing the application should have a full hearing on the points raised and where necessary should be given an opportunity of establishing them. So far as an objection concerns a pure matter of law, it is possible that the matter may be so clear that the court will have no difficulty in coming to a decision on the point at once. Where consideration of fact arise this will not generally be possible".

In a recent Judgment of Hon'ble the Jharkhand High Court reported in **2014 (3)JLJR 13 Jhr Nandlal Sharma Vs Rajkumar Sharma** it has been held that where there is no substance in the objection petition then after giving opportunity of hearing the court may dispose of the objection petition without registering it as a miscellaneous case in the execution proceeding.

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Chapter 23

APPEAL

Maintainability of appeal and admission or dismissal of appeal are not overlapping concepts. If the order or Judgment is appealable then its appeal is maintainable. But merely because the order is appealable that should not be a cause for its admission. If the appellate Court which has been entrusted with the responsibility of hearing appeals amidts the same and finally allows it there is no harm, but if the same is wrongly admitted and stay order is granted and finally the appeal is dismissed then there is a grave error. Primafacie the question as to whether the Judgment or order impugned requires reconsideration or not should be assessed at the stage of admission.

While granting stay the appellate court must pass a conditional order by getting an affidavited undertaking that the appellant shall conclude his hearing within a stipulated time frame. This is necessary because after getting the stay order the party concerned loses any interest in the pending appeal and at times deliberately avoids early hearing of the appeal. Therefore if the appellate court passes the stay order for only one month with a direction to come ready for final hearing then such a tendency to delay after getting the stay order will be to a large extent curbed. Generally the necessity of stay arises only where execution is proceeded with. There may be circumstances where the plaintiff respondent is pursuing the execution without putting appearance in the appeal. In such cases notice to the respondent of pendency of the appeal and for appearance can be given through the executing court. Preemptory orders for stay for a specified period can ensure appearance and early disposal of the appeal. If the respondent does not co-operate in the hearing of the appeal there is a valid justification for stay.

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Various Letter and Circulars of the Hon'ble High Court

GENERAL LETTER NO. 14 OF 1919

FROM
H . LI. L. ALLANSON, ESQ, I.C.S.,
REGISTRAR OF THE HIGH COURT OF JUDICATURE AT PATNA .

To
ALL DISTRICT AND SESSION JUDGES AND
THE JUDICIAL COMMISSIONER OF CHOTANAGPUR.

Dated Patna, the 12th December, 1919.

SIR,

I am directed to say that complaints have been brought to the notice of the Judges as to the great inconvenience and harassment which is unnecessarily occasioned to litigants and witnesses by the practice which prevails in some of the Subordinate Courts of adjourning cases for final hearing to a date when the Court has no chance of disposing of the case. Adjournments are in many cases made automatically from month to month, the parties being directed to attend with their witnesses on each-occasion when a little care taken in ascertaining the state of the file by the presiding officer would have made it apparent that there was no chance of the case being heard on the date fixed.

2. Whilst it is highly desirable that a case should be disposed of at the earliest possible date after it is ready for hearing, it is also of great importance that the parties should not be put to unnecessary expense and inconvenience by being ordered to attend with witnesses at a date when it is manifest that the case cannot be taken up.

3. One of the main causes of this practice appears to be that certain Judicial Officers fail to keep the arrangement of their files in their own hands and allow their peshkars to fix dates automatically. The result of such a practice is that cases are adjourned from month, to month, with orders for the attendance of witnesses on each occasion, and in addition, it frequently happens that large batches of cases are fixed for hearing on the same day.

4. Such a practice is clearly undesirable and discloses a lack of care and foresight on the part of the Judicial Officers responsible, which in the opinion of the Judges, is highly reprehensible.

5. No hard and fast, rules can conveniently be laid down for all cases, but the Judges desire to impress on all Judicial Officers that they should, as far as possible make themselves acquainted with the nature of the case and the time it is likely to occupy, and by consulting the file, fix a date for hearing at a time when the case has a reasonable chance of being heard. Enquiry from the pleaders would probably elicit information on these points if necessary. If it is not possible to fix a date, for hearing within a reasonable time, it may be advisable to adjourn the case for a certain time for the attendance of the pleaders without witnesses, by which date the Court will be in a better position to judge of the possibilities of the case being tried at some future date. The length of the adjournment must be a matter for the discretion of the presiding officer and it is most important, that such matters should be controlled by

the Presiding Officer, and not left, to the discretion of his subordinates, which in many cases appears to be exercised in a haphazard and perfunctory manner.

I have the honour to be,
Sir,
Your most obedient servant,
H . LI. L. ALLANSON, Registrar.

Memo. No. _____
XXX-8-19

Patna, the January, 1920.

Copy forwarded to the _____ District and Sessions Judge of Chotanagpur / Judicial Commissioner of

for information and guidance and for communication to and guidance of the Courts Subordinate to him.

By order of the High Court,
Assistant Registrar.

Note : *Related instruction at G. L. No. 3 of 1922, G. L. No. 1 of 1954*

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GENERAL LETTER NO. 3 OF 1922

From
T. S. MAC PHERSON, ESQ., C.I.E., I. C. S.,
REGISTRAR OF THE HIGH COURT OF JUDICATURE AT PATNA .

To
ALL DISTRICT JUDGES AND THE JUDICIAL COMMISSIONER OF CHOTANAGPUR.

Dated Patna, the 25th April, 1922

Sir,

It has come to the notice of the Judges that the instructions contained in the Court's General Letter no. 14, dated the 12th December. 1919, on the subject of adjournments of cases have been misunderstood with the result that instead of a case being made ready for trial in the ordinary course and then a date on which hearing is possible, being fixed, Courts are giving a long adjournment for the purpose of getting the case ready. I am, therefore, directed to say that by the instructions referred to, it was by no means intended to encourage the Courts to give long adjournments for interlocutory matters in the course of preparing the case for hearing-nor indeed long adjournment at all unless the state of the file requires it. The purpose of the instructions was to avoid the expense and inconvenience entailed upon the parties by directions to be present with witnesses at frequent intervals when there was no chance of the case being heard. I am to suggest, therefore, that short dates be fixed for interlocutory matters, such as the following (one or more)-calling for records, serving interrogatories, issue of commissions, filing list of witnesses and payment of costs of summons: and after these have been accomplished, the date for hearing should on a consideration of the state of the file be fixed for the earliest date on which the trial can in all probability be taken up.

I have the honour to be,
Sir,
Your most obedient servant,
T. S. MACPHERSON, Registrar.

Memo. No. _____
IX 1-1922.

Patna, the May, 1922.

Copy forwarded to the _____ District Judge of Chotanagpur / Judicial Commissioner of

for information and guidance and for favour of communication to the Court subordinate to him.

By order of the High Court,
High Court, English Department
(Civil) Assistant Registrar,

Note : *Related instruction at G. L. No. 14 of 1919, G. L. No. 1 of 1954*

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GENERAL LETTER NO. 9 OF 1923

FROM
A . E. SCROOPE, ESQR., I.C.S.
REGISTRAR OF THE HIGH COURT OF JUDICATURE AT PATNA

To
ALL DISTRICT JUDGES, AND
THE JUDICIAL COMMISSIONER OF CHOTANAGPUR.

Dated Patna. the 8th, December, 1923.

SIR,

The attention of the Court has been drawn to many cases where an appeal against an interlocutory order holds up the trial of the original suit for a considerable time in the subordinate civil courts on account of the entire record having been sent to the High Court.

I am, therefore, directed to say that the trial of a suit should not be held up by reason of an appeal or an application for revision having been filed against an interlocutory order, unless the High Court expressly orders it, and to invite attention to the provision of Order 41, Rule 5, clause (1), Code of Civil Procedure, in this connection.

I am instructed further to state that the entire record, unless specially called, for, should not be forwarded to this Court in connection with a Miscellaneous Appeal or an application for revision arising from an interlocutory order passed in suit or a proceeding. The material papers connected with the order appealed against or sought to be revised should only be sent, and when it is not practicable to send the relevant portion of the order sheet, an attested copy thereof should be submitted.

I have the honour to be,
Sir,
Your most obedient servant,
A . E. SCROOPE, Registrar.

Memo. No. _____
IX 1-1922.

Patna, the January, 1924.

Copy forwarded to the _____ of Chotanagpur
District Judge / Judicial Commissioner

for information and guidance and for favour of communication to the Court subordinate to him.

By order of the High Court,
Assistant Registrar.

High Court, English Department (Civil)

❑❑❑

GENERAL LETTER NO. 3 OF 1929

FROM
J. A. SAUNDER S, ESQ., I.C.S.
REGISTRAR OF THE HIGH COURT OF JUDICATURE AT PATNA .

To
ALL DISTRICT JUDGES AND
THE JUDICIAL COMMISSIONER OF CHOTANAGPUR

Dated Patna, the 15th May, 1929.

SIR,

I am directed to say that it appears from the copies of decrees that are filed with appeals and applications in the Court that decrees are often not drawn up in the subordinate courts with the care that the importance of the document demands. One defect of very frequent occurrence is an incorrect, or incomplete statement in the decree of the names and description of the parties which is probably due to the omission to incorporate in the plaint or memorandum, of appeal additions and alterations ordered by the court to be made therein after the institution of the, suit or appeal. Instances of failure to follow carefully the instruction's given in rule 4, Chapter V Part I, General Rules and Circular Orders, Volume I, Civil- page 25, in the preparation of decrees are also not uncommon, especially in respect of the omission to embody in decrees maps necessary for illustration, of the terms of the order. I am therefore to request, that you will be so good as to take effective measures to ensure that decrees are drawn up correctly and according to the rules in your own court as well as in the courts subordinate to you.

2. I am further to draw your attention to the frequent omission of the lower courts to return at the conclusion of the trial unexhibited documents. Courts sometimes note that the parties refused to take back the documents, disregarding or in ignorance of, the provisions of rule 32, Chapter II, Part in, General Rules and Circular Orders, Volume I, Civil, page 68. The rule provides that unless the court makes a direction to the contrary it shall return unexhibited documents at the conclusion of the trial if not returned earlier, and that the pleader is bound to take back any such documents produced by his client and sign the receipt for them.

3. I am also to ask that when issuing a certified copy of an order from the order-sheet, the description of the court as well as the number and year of the case should always be mentioned at the top of the copy.

I have the honour to be,
Sir,
Your most obedient servant,
J. A. SAUNDER S, Registrar..

Memo. No. _____
XLIXD-7-1929

Patna, the June, 1929.

Copy forwarded to the _____ of Chotanagpur
District Judge
Judicial Commissioner

for information and for favour of communication to the Court subordinate to him.

By order of the High Court,
High Court, English Department
(Civil)
Assistant Registrar.

❑❑❑

GENERAL LETTER NO. 1 OF 1954

(CIVIL)

FROM
NASIRUDDIN KHAN, ESQR, D.L.
REGISTRAR OF THE HIGH COURT OF JUDICATURE AT PATNA .

To
ALL DISTRICT JUDGES IN BIHAR AND
THE JUDICIAL COMMISSIONER OF CHOTANAGPUR.

Dated Patna, the 3rd January, 1954.

SIR,

I am directed to say that it has come to the notice of the Court that litigants in the subordinate courts experience great inconvenience owing to the unintelligent and very often unmethodical way in which cases are fixed for hearing. Short adjournments are given and larger number of cases are fixed for hearing en each court day without any reasonable possibility of their being taken up on that day. Thus, the parties and their pleaders have to come prepared from dale to date for cases which are actually taken up for hearing after a large number of such adjournments. At times it so happens that when a case is taken up suddenly because the one higher up the list unexpectedly breaks down, parties are taken unawares; but for fear that the case may go by default, they are compelled to do the best they can with the evidence available and are consequently very much prejudiced. It appears that instructions repeatedly given by the Hon'ble Judges of the Court during their inspections of subordinate courts that long adjournments should be given and a large number of cases should not be fixed for hearing on the same date, have not produced the desired effect. It has been noticed also that the rules at pages 22-23 of the Court's General Rules and Circular Orders. Civil, Volume I, which deal with adjournment of Cases are seldom observed and the instructions laid down in General Letters No. 6 of 1945 (Civil) and No. 8 of 1949 (Civil) are not strictly followed.

I am, therefore, directed to draw your attention to the undesirable state of affairs that is prevailing, and to request you to see that the rules prescribed by the Court in the matter and the instructions issued by them from time to time are strictly followed in all subordinate courts in your judgeship. I am also to request you scrutinise the diaries of the subordinate judicial officers and meet them periodically in order to see that the rules and instructions are actually followed. The judicial officers should further be directed that they should themselves arrange their diaries methodically and carefully, and should not leave the work to their peshkar's.

Yours faithfully,
NASIRUDDIN KHAN
Registrar.

Memo. No. _____
XLIXD-1-1954

Patna, the February, 1954.

Copy forwarded-to the _____ of
District Judge
Judicial Commissioner
_____
Deputy Commissioner

for information and guidance and for favour of communication to and guidance of the courts subordinate to him.

High Court, English Department (Civil)

By order of the High Court.
J. NARAYAN ,
1st Assistant Registrar.

Note : *Related instruction at Pg - G. L. No. 14 of 1919, G. L. No. 3 of 1922*

❑❑❑

GENERAL LETTER NO. 4 OF 1960

(Civil)

From
SARJU PRASAD SINGH, Esq., B.A., B.L.,
REGISTRAR OF THE HIGH COURT OF JUDICATURE AT PATNA .

To
ALL DISTRICT AND SESSIONS JUDGES IN BIHAR INCLUDING
THE JUDICIAL COMMISSIONER OF CHOTANAGPUR, RANCHI

31st Bhadra, 1882
Patna, the _____
22nd September, 1960.

Sir,

I am directed to say that the Law Commission of India has observed in paragraph 35, at pages 318-319, Chapter 14, Vol. I of the Fourteenth Report on Reform of Judicial Administration, that in many cases the Presiding Officers do not decide the question as to admissibility and relevancy of documents as and when they arise, and they are in the habit of reserving the decision on the relevancy or admissibility of a document sought to be tendered in evidence till the stage of judgment. Sometimes it so happens that the case is eventually decided without decision upon the point of admissibility of the documents and occasionally even without a reference at all to the documentary evidence. The Commission is of the view that the above practice should cease and that the Presiding Officers should decide questions as to the admissibility and relevancy of documents -as and when they arise.

The Court after due consideration, have approved of the recommendation of the Law Commission and direct that it may be strictly followed by all concerned.

Yours faithfully,
S. P. SINGH,
Registrar.

Memo No. _____
XLIXD-19-60

Patna the _____ *March, 1961*

Copy forwarded to the _____ of
District and Sessions Judge
Judicial Commissioner
_____
D eputy Commissioner

for information and guidance and for favour of communication to and guidance of the courts subordinate to him.

High Court, English, Department, (Civil).

By order of the High Court,
C . N. TIWARY,
First Assistant Registrar.

❑❑❑

GENERAL LETTER NO. 7 OF 1961

(Civil)

FROM
SRI SHAMBHU PRASAD SINGH, B.L.,
REGISTRAR OF THE HIGH COURT OF JUDICATURE AT PATNA

To
ALL DISTRICT AND SESSIONS JUDGES OF BIHAR, AND
THE JUDICIAL COMMISSIONER OF CHOTANAGPUR, RANCHI.

Patna, the 30th, Agrahayana, 1883/21st, December, 1961.

SUBJECT.—Problems of arrears and delay in disposal of cases—Methods to avoid them.

SIR,

I am directed to say that the question of liquidating the arrears and of bringing down the number of explanatary cases to the minimum has been engaging the attention of the Court for some time past. The enormous explanations which are being submitted in respect of such cases indicate that some planned arrangement is absolutely necessary.

One of the reasons why old cases remain undisposed of, appears to be that the officers are generally lukewarm in taking up old cases because such cases usually flake longer time for disposal. A general idea also appears to prevail among most of the judicial officers that quantity alone would overweight other considerations. New cases are taken up in preference to old cases as such cases can be disposed of in comparatively larger numbers in the same period as can be utilised for the disposal of old cases. Cases of complicated nature involving lengthy arguments, recalcitrant witnesses voluminous documents and intricate law points are shelved till they become explanatory and are taken only when it becomes an absolute must under directions of the High Court or that of the District Judge. The officers are probably under the impression that even if they dispose of old suits and cases, they cannot earn appreciation because the quantity of disposal would be very small. The Court' would like to impress upon them that while passing remarks on their outturns, these facts are also taken into account, and due consideration is given to the disposal of old and complicated cases. All officers must, therefore, fay to dispose of old cases first and should take up new cases only after the old cases have been disposed of unless they are prevented from doing so for reasons mentioned in the penultimate paragraph of this letter or other unavoidable reasons to be recorded in writing in the order-sheet of the case. The Court have, after due consideration of all aspects of the question decided that the following procedure should, in future, be followed by all concerned:

(a) Best efforts should be made by all the officer to bring down the arrears in all categories of cases as soon as possible;

(b) The District and Sessions Judges should instruct all officers to do their proper share of work and see that they follow his instructions;

(c) The District and Sessions Judges should call for and examine the diaries of subordinate courts and point out the defects. At Sadar, the diaries should be examined at short intervals;

(d) The District and Sessions Judges should give proper guidance to all the magistrates working under them and see that they handle the cases properly;

(e) Criminal cases, no doubt, deserve speedy disposal but this does not mean that the Courts should not pay due attention to civil cases. It is desirable that the officers should devote an appreciable part of their time in disposal of civil cases also. The District and Sessions Judges and the Additional District and Sessions Judges should, therefore, set apart at least one-fifth of the working days in a quarter for this work;

(f) At the beginning of each quarter all officers should draw up a plan for disposal of old suits and cases chronologically and send a copy thereof to the District and Sessions Judge to enable him to see at the time of inspection of diaries and when scrutinising the returns, whether the programme was adhered to and, if not, whether reasons for departure were sufficient;

(g) A ttempt should be made to shorten interlocutory matters such as objection to commissioner's reports, substitution matters etc. and personal attention should be given for their quick disposal. Final decree proceedings should also receive proper attention with a view to their disposal, as early as possible;

(h) The subordinate judicial officers should indicate in their quarterly returns the number of cases done by them of the categories mentioned below:—

   (i) Cases in which parties are under some restraint by gran of injunction or stay and continuance of which would put one party in a position of vantage over the other;

   (ii) Miscellaneous Judicial cases and 'Small Cause Court cases which are explanatory and,

   (iii) Explanatory three-year old suits.

(i) The subordinate courts should dispose of the cases categorised above giving top priority over, other cases of the same class, while submitting their monthly returns to the respective District Judges, the subordinate Judicial officers should append a certificate that no preference was given by them to new cases over the old ones and if new cases are taken up there should be an explanation forthcoming from them as to why the old cases were ignored.

   Situation may arise when an old case might not be ready and hence, a new case would have to be taken up but this should not be matter of repeated occurrence if the diary is planned with a little imagination and alertness regarding old cases, Sometimes older cases have to be adjourned as the lawyers do not come ready and pray for time. In order to avoid such contingencies, the Court should inform the lawyers in advance that it is going to take up those cases on a particular date when they must come prepared; and

(j) A djournments in old and explanatory cases should not be granted as a matter of routine. Every such prayer for adjournment should be properly examined on merits before it is allowed.

The above instructions should be strictly followed.

Yours faithfully,
S. E SINGH, Registrar.

Memo. No. _____
XLVA-17-1961

Patna, the *April 1962*

Copy forwarded to the _____ of
District and Session Judge
Judicial Commissioner
_____
District Magistrate
_____
Deputy Commissioner

for information and guidance and for guidance of the courts subordinate to him.

High Court;, Administrative Department, (Civil).

By order of the High Court,
MADAN MOHAN SAHAI,
Second Assistant Registrar.

❑❑❑

GENERAL LETTER NO. 11 OF 1962.

(CIVIL)

From
SHRI SHAMBHU PRASAD SINGH, ESQ., B. L.,
REGISTRAR OF THE HIGH COURT OF JUDICATURE AT PATNA .

To
ALL THE DISTRICT JUDGES IN BIHAR AND
THE JUDICIAL COMMISSIONER OF CHOTANAGPUR, RANCH!.

Dated Patna, the 20th August, 1962 / 29th Sravana, 1884.

Sir,

I am directed to say that suggestions came for the consideration of the Court that (i) Judges should fix dates of hearing in open Court, and (ii) they should pass interlocutory orders in open Court, with a view to eradicate corruption in the Civil Courts. The suggestions have been carefully examined by the Court and they are of the view that in cases which are ready for hearing or for important interlocutory matters, the Presiding Officer himself should fix the date and announce it in open Court. In cases which are not ready for hearing or which are put before the Court for mere Pairvi, the dates may be fixed as they are being fixed at present and may not be announced in Court. The Court feel that it may not be possible to pass orders in open Court in all interlocutory matters, but direct that as soon as interlocutory orders are passed, they should be made known to the parties or their lawyers, so that they may not feel any difficulty in knowing what orders have been passed.

The above instructions should be followed strictly by all concerned.

Yours faithfully,
S.P. SINGH,
Registrar.

Memo No. _____
XLIX-54-61.

Patna, the December, 1962

Copy forwarded to the _____ of
District Judge
Judicial Commissioner
_____
Deputy Commissioner

for information and guidance and for communication to and guidance of the Courts subordinate to him.

High Court, English Department, (Civil).

By order of the High Court
VISHWANATH MISHRA
First Assistant Registrar.

❑❑❑

GENERAL LETTER NO. 3 OF 1963.

(CIVIL)

FROM
SHAMBHU PRASAD SINGH, ESQR., B.L.,
REGISTRAR OF THE HIGH COURT OF JUDICATURE AT PATNA .

To
ALL THE DISTRICT JUDGES IN BIHAR,
AND
THE JUDICIAL COMMISSIONER OF CHOTANAGPUR, RANCHI.

Dated Patna, the 25th Chaitra, 1885/15 April, 1963.

SUBJECT.— Long adjournments granted by Courts for stay orders either from the High Court or from other superior courts

Sir,

I am directed to say that while considering the quarterly statements in Form(S)23, it has been noticed that long adjournments are granted by many courts anticipating stay orders either from the High Court or from other superior courts as a result of which the disposal of cases is greatly delayed and unscrupulous litigants who are interested in delaying the disposal of cases, find the tactics fairly handy in furtherance of their scheme of things. The Court are aware that once the parties express their desire to move higher courts for stay of proceedings, the subordinate courts feel helpless and have to grant adjournments. Such adjournments may be granted but not indefinitely and certainly not in a way which would operate advantageously for an unscrupulous litigant.

To obviate these difficulties the Court direct that when a party moves a subordinate court for granting an adjournment for bringing stay order from a superior court, ordinarily, clear 15 days time excluding holidays may be granted for the purpose. In the exceptional cases, and on filing of affidavits, the period of adjournment may be extended for week further. If no stay order is secured within that period, the case should proceed on. If it would be found that the party had sought for frivolous adjournment not intending to move in revision or appeal, the subordinate courts should in their discretion saddle the offending party with reasonable cost to be given to the other party.

The above instruction should be strictly followed by all concerned so as to put a check to the delaying tactics and or smooth working of the Subordinate courts.

Yours faithfully,
S. P. SINGH.
Registrar

MEMO. No. _____
XLVA-2-63

Patna, the _____ *September, 1962*

Copy forwarded to the _____ of
District Judge
Judicial Commissioner
_____
Deputy Commissioner

for information and guidance and for guidance of the courts subordinate to him.

High Court, English Department, (Civil).

By order of the High Court,
M . M. SAHAI,
Second Assistant Registrar.

Note : *Related instruction at No. 12836-52, G. L. No. 7 of 1981*

❑❑❑

No. 12836-52

FROM
CHANDRA NARAIN TIWARY , ESQ.,
THE REGISTRAR OF THE HIGH COURT OF JUDICATURE AT PATNA .

To
THE DISTRICT JUDGE, THE JUDICIAL COMMISSIONER OF CHOTANAGPUR, RANCHI

Dated Patna, the 14th September, 1971.

SUBJECT,— Long adjournments granted by Courts for stay orders either from the High Court or from other superior Courts.

SIR,

I am directed to invite a reference to the Court's General Letter no. 3 of 1963 (Civil) on the subject mentioned above, and to request you to impress upon the Subordinate Judicial Officers the necessity of following strictly the instructions contained therein. Unless they are satisfied about the bonafide of the party concerned, the period of first adjournment of clear 15 days should not be extended by a week and they should invariably consider the desirability of saddling the offending party with reasonable cost to be given to the other party.

Further, the officers may be told that, if in their opinion the order from which a civil revision is proposed to be filed is not such as would be revisable by the High Court, they should, in their discription, refuse adjournments, for they are not bound to grant repeated adjournments, if they, feel that the purpose is merely to delay the matter.

The above instructions should be strictly followed by all concerned with a view to putting a check to the delaying tactics and for smooth working of the Subordinate Courts.

Yours faithfully,
CHANDRA NARAIN TIWARY ,
Registrar.

Note : *Related instruction at G. L. No. 3 of 1963, G. L. No. 7 of 1981*

❑❑❑

GENERAL LETTER NO. 1 OF 1977

(Civil and Criminal)

From
MANORANJAN PRASAD,
REGISTRAR OF THE HIGH COURT OF JUDICATURE AT PATNA

To
ALL THE DISTRICT AND SESSIONS JUDGES IN BIHAR INCLUDING
THE JUDICIAL COMMISSIONER OF CHOTANA GPUR, RANCHI. AND
ALL THE DISTRICT MAGISTRATES AND DEPUTY COMMISSIONERS IN BIHAR.

Dated Patna., the 24th Chaitra, 1899 / 14th April, 1977.

Sir,

I am directed to say that the question of liquidating the arrears in the Subordinate Courts has been engaging the attention of the Court since long. The rules framed by the. Court and instucrions issued from time to time on the subject are good enough for proper and quick administration of Justice in the subordinate Courts, yet in the light of the suggestions made by Hon'ble the Chief Justice of India in the Chief Justices' Conference 1976, the Court for the purposes of clearing the arrears in the Subordinate Courts reemphasise the following :-

(1) The cause lists of Courts should be prepared with a practical and in view i.e. that the parties may not have to go back on the dates fixed, without their cases being heard and the witnesses are examined on the dates they are summoned.

(2) Courts should avoid granting easy adjournments.

(3) Special attention should be paid for prompt service of processes and notices and delinquent process-servers should be properly dealt with.

(4) Copies of judgments etc. should be promptly issued. The above instructions should be strictly followed in future by all concerned.

Yours faithfully,
MANORANJAN PRASAD,
Registrar.

Memo No. _____
XLIXD-2-77

Patna, the *1977*

Copy, forwarded to the District and Sessions Judges / Judicial Commissioner / District Magistrate / Deputy Commissioner for information and guidance and for communication to and guidance of the Courts subordinate to him.

High Court, Administrative Department, (Civil/Criminal)

By order of the High Court,
R . N, BHATTACHARJEE,
Assistant Registrar.

❑❑❑

GENERAL LETTER NO. 3 OF 1977

(Civil)

FROM
BINODANAND SINGH, ESQ.,
REGISTRAR OF THE HIGH COURT OF JUDICATURE AT PATNA

To
ALL THE DISTRICT AND SESSIONS JUDGES IN BIHAR AND
THE JUDICIAL COMMISSIONER OF CHOTANAGPUR, RANCHI.

Dated Patna, the 11th Asvina, 1898/3rd, October, 1977.

SIR,

I am directed to say that it has come to the notice of the Court that petitions for objection to Execution cases under section 47 of the Code of Civil Procedure are registered as Miscellaneous cases without a preliminary hearing, and that to many frevolous petitions are filed resulting in delay in disposal of Execution cases.

After careful consideration of the matter the Court have decided to invite your attention to the observation made in paragraph 18 of a decision of this Court reported in A.I.R. 1951 Patna 372 (Dasrath Rai Chaudhary vs. Kali Charan Ghose) the relevant portion of which runs as follows:

"There is no authority for the proposition that an application under section 47 should not be summarily dismissed. It is always open to a Court to which a. petition is presented to consider it on its merits at the time of the presentation. If it is clear that the contentions raised in the petition have no merits, it is not right that public, time and money should be wasted and the opposite party harassed and put to additional expense by deferring the passing of orders until both parties have been heard at length. It is necessary, however, that the party filing the application should have a full hearing on the points raised and where necessary should be given an opportunity of establishing them. So far as an objection concerns a pure matter of law, it is possible that the matter may be so clear that the Court will have no difficulty in coming to a decision on the point at once. Where considerations of fact arise, this will not generally be possible."

You are, therefore, requested to impress upon the officers subordinate to you to make a preliminary hearing of all petitions filed under section 47 of the Code of Civil Procedure in Execution proceedings before admission and before registering them as miscellaneous cases.

Yours faithfully,
BINODANAND SINGH,
Registrar.

Memo. No. _____
XLIXD-9-77

Patna, the.....

Copy forwarded to the District and Session Judge / Judicial Commissioner _____ of _____

for information and guidance and for communication to and guidance of the courts subordinate to him.

High Court;, Administrative Department, (Civil).

By order of the High Court,
A . K. PRASAD
Deputy Registrar.

❑❑❑

GENERAL LETTER NO. 7 OF 1981

(CIVIL)

FROM
RAM NARAYAN LAL, ESQR., MA. B.L.,
SPECIAL OFFICER OF THE
HIGH COURT OF JUDICATURE AT PATNA

To,
ALL THE DISTRICT JUDGES IN BIHAR AND
THE JUDICIAL COMMISSIONER DEPUTY COMMISSIONERS OF,
CHOTANAGPUR, RANCHI.

Dated Patna, the 1st December, 1981.

SUBJECT.— Long adjournments granted by courts for stay orders either from the High Court or from other Superior Courts.

Sir,

I am directed to say that in General Letter no. 3 of 1963 the Court had issued instructions that when a party moves a Subordinate Court for granting an adjournment for bringing stay order from a superior court, ordinarily, clear 15 days time excluding holidays may be granted for the purpose. In exceptional' cases, and on filing, of affidavits, the period of adjournment may be extended for a week further. If no stay order is secured, within that period, the case should proceed on. If it would be found that the party has sought for frivolous adjournment not intending to move in revision or appeal, the Subordinate Courts should in their discretion, saddle the offending party 'with reasonable cost to be given to other party.

It has come to the notice of the court that those instructions have not been strictly followed as a result of which the hearing of cases is delayed by one of the parties on-the plea that he or they are going to the High Court to bring stay order. At times this takes several months also and adjournments are granted on that plea including the production of certificates of some advocates of this court.

In order to avoid adjournment of cases on such plea, the court emphatically direct that instructions contained, in General Letter no. 3 of 1963 must be strictly followed at the title of granting adjournments.

Y ours faithfully,
R . N. LAL,
Special Officer, Special Cell,
High Court, Patna,

Memo. No. _____
VI-8-81

Patna, the 1st December 1981.

Copy forwarded to the of District and Sessions Judge _____
Judicial Commissioner
_____
Deputy Commissioner

for information and guidance and for communication to and guidance of the courts subordinate to him.

High Court, Administrative Department, (Civil).

By order of the High Court,
A . G. DUTTA,
Sub Judge, Special Cell, P.H.C.

Note : *Related instruction at Pg - G. L. No. 3 of 1963, No. 12836-52*

❑❑❑

General Letter No. 01 of 2006

From
Rakesh Ranjan Prasad, Registrar General of the High Court of Jharkhand, Ranchi

To
All the District & Sessions Judges of the State of Jharkhand
including the Judicial Commissioner, Ranchi

Dated : Ranchi, the 16th February, 2006

Sir

It is being noticed that the certified copy of the decree filed in this Court invariably suffers from defects such as the names of the parties happen to be incorrect, parentage of the parties, valuation of the suit and appeal are being not given as a result of which certified copy of the decree is to be sent back to the court concerned for its rectification and it takes a considerable time in getting the defects rectified.

In this regard it be stated that Rule 105 to 115 as incorporated in Civil Court Rules are required to be followed by the person who prepare the decree and the Presiding Officer is also supposed to verify the same before putting his signature.

I am, therefore, directed to request you to impress upon the Presiding Officer of the Courts doing Civil Cases to follow strictly the Rule 105 to 115 of the Civil Court Rules as well as the relevant Rules as envisgaged in C.P.C. relating to preparation of Decree and also to follow the instructions as contained in General Letter Nos. 4/1917, 3/1929, 6/1944, 1/1945 and Letter No. 4629-44/XLIXD-27-64 (copies are being enclosed herewith).

I am further directed to request you to impress upon the Motor Vehicles Accident Claim Tribunal/Concerned Court dealing with Claim Cases under the Motor Vehicles Act to follow the direction contained in an order passed in M.A. No. 172/2004 (copy enclosed).

Yours faithfully
Registrar General

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No. 382-403/Apptt.

Dated : 12th January 2007

From
Shri Krishna Murari, Registrar General
High Court of Jharkhand, Ranchi

To
All the District & Sessions Judges of Jharkhand State,
including the Judicial Commissioner, Ranchi

Sir

In enclosing herewith a copy of letter no. T 4410/14/2006 dated 22nd December 2006 received from the Joint Secretary (Consular), Ministry of External Affairs, New Delhi, I am directed to say that requests have been made by the indenting Ministry to route all requests for seeking assistance from a foreign country, including service of all kinds of judicial proceses or other documents, directly to the Ministry of Home Affairs, Government of India, New Delhi in criminal law matters and to the Ministry of Law & Justice, Government of India, New Delhi in civil and commercial matters.

This may kindly be brought to the notice of all the officers posted in your Judgeship for information and needful.

Encl. : As above (02 sheets)

Yours faithfully,

Registrar General

❑❑❑

No. 539-60/(R&S)

Dated : 02.07.2007

From
S.K. Murari, Registrar General
High Court of Jharkhand, Ranchi

To
All the District and Sessions Judges of the State of Jharkhand
including the Judicial Commissioner, Ranchi

Sir,

I am directed to say that it has been resolved in Chief Justices conference, held on April 06-17, 2007, that

(a) The time frame relating to filing of written statement under Order VIII Rule 1 of Code of Civil Procedure should be strictly adhered to and only in exceptional cases the Courts should permit filing of written statement beyond the upper time limit of 90 days.

(b) The cost has to be actual reasonable cost including the cost of time spent by successful party, cost of transportation and lodging, if any, and other incidental cost besides Court fee, lawyers fee, typing charges etc. The High Court should immediately make Rules so as to provide appropriate guidelines for Sub-ordinate Courts in this regard, as mandated by the Supreme Court in Salem bar Association Case, wherever it has already not been done.

(c) The provisions relating to (i) examination of parties (Order X Rule 2 of CPC) (ii) Discovery and inspection (Order XI of CPC) (iii) ISSUES (Order IVX Rule 2 of CPC) and (iv) Ex-parte injuctions (Order XXXIX Rule 3 and 3A of CPC) should be strictly implemented.

(d) It has been experienced that the entire pleadings of the parties are almost reproduced in the affidavits of witnesses instead of confining them to the facts required to be proved by the witnesses. The Court should carefully scrutinize the affidavits before serving copy on the opposite parties and wherever it is found that the scope of the affidavits have been unnecessarily enlarged, such affidavits should be rejected with heavy costs.

(d) As far as service of summons in concerned the Court should resort to the amended provisions of CPC providing service of summons through courier, Fax, E-mail, etc.

(e) Frequent adjournments be avoided.

I am, therefore, to request you to inform all the Judicial Officers posted in your judgeship for the impementation of the aforesaid Resolution.

Yours faithfully,

Registrar General

❑❑❑

Order

Every communication from the Subordinate Courts in relation to the interim order and its continuation and its vacating by the High Court in any matter, the Assistant Registrar (Judicial) shall be the authorised person, who shall reply to any query coming from the Subordinate Courts by e-mail in the e-mail account of the Court as well as by fax.

Such reply should be forthwith and must be within a period of 15 (fifteen) days from the date of receipt of the query from the Subordinate Courts.

For entertaining queries of the Subordinate Courts, the Assistant Registrar (Judicial) shall have separate e-mail account which shall be informed to ail the Subordinate Courts.

In case any communication is not answered by the Assistant Registrar (Judicial) within 15 (fifteen) days, then the Subordinate Courts may immediately address the issue to the Registrar General, Jharkhand High Court by e-mail or fax, which shall be looked into by the Registrar General and matter will be brought to the knowledge of the Assistant Registrar (Judicial) and the issue will be resolved within 7 (seven) days thereafter.

Chief Justice

Dated, the 20th of September, 2011

❑❑❑

"If you have six hours to chop a tree, spend four hours in sharpening the axe"

Abraham Lincoln

JUDICIAL ACADEMY JHARKHAND

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