-Dr. Ajay Nathani

The Code of Civil Procedure
Changes required to avoid delay

Procedural Law is the machinery with the help of which the justice delivery system imparts justice. It is needless to say that the quantity and quantity of the product depends upon the quality of its machinery. The machinery of Indian judiciary is run by the machinery provisions of the Code of Civil Procedure for the trial of civil suits.

The Code of Civil Procedure was legislated in the year 1908. It was extensively amended by the amending Act of 1976. In spite of these amendments the Code of Civil Procedure remains main source of the delay in justice delivery of the civil cases.

Soon it was noticed that the drastic amendments in the Code of Civil Procedure in the year 1973 does not achieve the goal to impart speedy justice. Immediately after the above amendments need was felt for the drastic changes in the Code. At the desire of the litigants and jurists the Code of Civil Procedure was amended by the Act of 1999 and 2001 in quick succession. Purpose of these amendments could be better understood from its statement of object and reasons. Act of 1999 has following objects and reasons,

"Some of the important changes proposed to be made are as follows,

a) Any plaint to be filed shall be in duplicate and shall be accompanied by all the documents on which the plaintiff relies upon in support of his claim. It is also to be supported by an affidavit staling the genuineness of the claim of the plaintiff and of the documents on which he relies upon:

b) The written statement in duplicate shall be accompanied by all the documents and shall be filed within a period of thirty days from the date of service of summons. Written statement is also to be supported by an affidavit:

c) In order to obviate delay in service of summons. It is proposed that plaintiff shall take the summons from the Court and send it to in. parties, within two days of the receipt thereof. By post. , E-mail, speed post, courier service or by such other means as directed by the Court;

d) With a view to implement the 129th Report of the Law Commission of India and to make conciliation scheme effective. It is proposed to make it obligatory for the Court to refer the dispute after the issues are framed for settlement either by way of arbitration, conciliation, mediation, judicial settlement or through Lok Adalat. It Is only after the parties fall to get their disputes settled through any one of tile alternate dispute resolution methods that the suit shall proceed further in the Court In which It was filed,

e) As the maximum time is consumed in recording oral evidence by the Courts which cause delay in disposal of cases, it is proposed to reduce such delay be making provisions for filing of examination -in- chief of every witness in the form of an affidavit. For the cross-examination and re-examination of witnesses it is proposed that it shall be recorded by a Commissioner to be appointed by the Court and the evidence recorded by a Commissioner shall become part of the record of the suit;

f) With a view to implement the recommendations of the committee on Subordinate Legislations (11th LokSabha) relating to steps to reduce unnecessary adjournments, It

Is proposed to make it obligatory for a Judge to record reasons for adjournment of a case as well as award of actual or higher cost and not merely notional cost against the parties, seeking adjournment in favour of the opposite party. Further, It Is proposed to limit the number of adjournments to three only during the hearing of a case:

g) As the party in whose favour an Injunction as been granted usually causes delay on flimsy and unreasonable grounds. It is proposed that the party who applies for Injunction shall also furnish security so that at party may not adopt delaying tactics during the trial of the case.

h) in matters relating to property disputes, particularly in matter of unauthorized construction on the land of others. It has been found that, under the existing provisions of the Code of Civil Procedure, no application for Injunction can be moved unless the suit is filed first in the Court having competent jurisdiction With a view to obviate this hardship. It is proposed that a person may make an application to the court of competent Jurisdiction for appointment of a commission to ascertain the factual status of the property so that at the time of the filing of the regular suit the report is available to the Commissioner relating to the factual status of the property in dispute:

(i) With a view to Implement the recommendations of Justice V.S. Mallmath Committee, It Is proposed that no further appeal against the judgment of a single Judge shall lie even In a petition under Article 226 or 227 of the Constitution; and

(j) with a view to reduce delay .let is proposed that the Courts shall on the data of pronouncement of judgment simultaneously provide authenticated copies of the Judgment to the parties. Appeal shall be filed In the Court, which passes the decree, and notice shall be served on the advocates or the parties in the Court of first instance. 4. The Bill seeks to achieve the above objects. (Statement of Objects and reasons the Code of Civil Procedure (Amendment) Act 1999)

Procedure Codes are basically the machinery provisions through which the justice is processed, finished and delivered.

Lets consider the amendments and there expected effects on curbing of delay in justice delivery by the comparative study of existing provisions in the Code of 1908 and amended provisions in 1999 and 2002. Section 26 of the CPC provide for institutions of suit by the amendment Act 1999. Sub-section 2 is aided to section 26 provides that in every plaint, facts shall be proved by affidavit. This is a mandatory provision. This provision gives right to a party to adduce evidence by affidavit. This is a welcome provision, which relives the plaintiff from entering into witness box, bring the witnesses and keep them always present waiting for their turn to be examined by the court. This provision will definitely save the time of the court, which would have been utilized for recording evidence.

Section 27 is about service of summons to defendant. Amendment to this section by Act of 1999 imposed duty upon the court to fix a date for the appearance of the defendant within the prescribed time limit of thirty days. This provision stands for reducing the length of time for the appearance of defendant.

Section 32 is about penalty for disobedience of summons. Act of 1999 gives more teeth to the court by enhancing amount of penalty.

Section 37 of the Code provides for transfer of decree. This section is amended by the Act of 2002 by supplementing an explanatory provision. Newly aided sub-section 4 explains that the court passing decree is not authorized by any of the provision under section 37 to execute decree against any person or property outside the local limits of its jurisdiction.

Newly aided section 89 is a step forward to recognize compromises. However involvement of the courts or judges in deciding terms of settlement will create enormous problems. The past experience points out that the parties kill time by posing before the court that they are ready to compromise. Now one of them interested to delay trial will request the Court to decide terms of settlement and refer the matter for arbitration/ conciliation to Lok Adalat or for mediation as the case may be. As the party is interested to delay the outcome of whole process will obviously be negative. Valuable time of the court, which could have been used for dispensing justice and for conduction of judicial proceedings, will be wasted in the process of formulating terms of possible settlement for parties, who never wanted to settle their dispute. The work of finding out the chances of pre-trial settlement could better be left to parties and their advocates. Parties should be directed to file a suit only after making efforts for pre-trial settlement. It is better that the question of settlement should be segregated from the trial and responsibility for settlement should be shifted to the advocates to make positive efforts for pre trial settlement. In this way section 89 is misdirected approach to decrease causes of delay, on the contrary it add one more cause for delaying justice delivery.

Amendment to O 10 R-4 by the Act of 1999 prescribe time limit of 7 days for adjournment of matter for hearing of parties. In fact the complete O. 10 is redundant. When the parties are filing pleading in writing and they are having every right to participate in the process of framing issues, the stage of hearing parties before evidence is not at all useful. This provision is not under the use as far as State of Maharashtra is concerned. If this order would have been deleted, it would have served the purpose of deleting one of the causes to delay trial available in the procedure Code. Another such unrequited provision is discovery and inspection. This provision is not at all useful after amendment of O VII R-14 and OVIII R-1. These amendments make it compulsory for the parties to produce documents or copies there of along with the pleadings. As the amended provisions do not live any chance for the parties to withhold any documents, the provision for inspection of documents in a possession of rival party thus becomes redundant. In the similar way, delivery of interrogatories and asking its answer consume considerable time. Now the amended provision under s. 26 allows proof of pleading by affidavit. This provision already streamlines the process of adducing evidence. So it is necessary to drop the provision of interrogatories, which causes delay in the trial.

Act of 1999 reduces time for compliance of notice to admit documents. Act of 1999 removes second proviso of O.9 R-4. This proviso was giving discretion to the court to allow the party to amend or withdraw any admission any time during the trial. This proviso had made O 9 R-4 redundant. Deletion of this proviso certainly removes one of the causes of delay in the trial of a civil suit. O. 13 R-1 or 2 substituted by the Act of 1999 provide for production of original documents before statement of issues. Deletion of R-2 takes away discretion of the court to allow production of document at any later stage. This Deletion also reduces opportunity to create uncertainty with the use of discretion of the court.

Act of 1999 amends O. 14 R-4 by providing time limit for framing of issues. Act of 1999 omitted O. 14 R-5, which provided for amendment and striking out of issues. Unfortunately the said provision is reintroduced by the Act of 2002. Amending or framing issues after evidence is

adduced justify the demand of the parties to adduce further evidence. This justification delays the trial. It is unfortunate that the legislation don't repose faith in the work of framing issues done by a judicial officer with the assistance of two advocates. Now this is high time that we should live the practice of legislating laws to keep checks and counter checks on the officer of the court. British were doing this, because they were not having faith in the native officers. Now things have changed. We must put faith in the officers of the court may it be Judges or advocates and believe that the work done by them was honestly and correctly done. Omission of R-5 was the step in right direction; however restoration of R-5 reintroduced one more cause of delay in the Procedure Code.

O 16 R-1 as amended by Act of 1999 reduces the time for filing list of witness. Act of 1999 also reduces time for payment for expenses for calling the witnesses under order 16 R-2. Act of 1999 reduces the chances of adjournment to 3. Amendment under O.17 R.1 also enhances power of the court to impose costs, which may be higher than the costs occasioned. Act of 1999 deleted order 18 R-2 sub R-4 which provided discretion to the court to permit any party to examination any witness at in stage and there by removed the possibility of delay caused by the possible request and examination of any witness at any stage of the trial. Act of 2002 aided 4 sub rules to order 18 R-2. These are for submission of written arguments. Act of 2002 substitute the amended provision of O.18 R-4 by the Act of 1999. It provide for a modern facility to record evidence.

Amendment to O. 18 R-4 is a revolutionary provision. It provides for submission of affidavit instead of examination in chief. It also provides that the cross examination and re-examination of the witness in attendance shall be taken either by the court or by the commissioner appointed by court. This provision also fixes a time limit for recording evidence by the commissioner and the procedure for recording evidence. This procedure of recording evidence will save the time of the court which is utilized for recording examination in chief and cross examination the court can utilize the time for passing orders and disposing other urgent work. However this procedure may still create one problem. When the courts record the evidence, court notices demeanors of a witness. The manner of recording examination chief and cross-examination and the atmosphere in which the evidence is recorded compel the witness to speak truth before the court. His veracity can be appropriately challenged before the trial court. All these advantages of examination of witness will vanish, one's the party and witness file affidavit of the examination in chief and get the cross examined through the commissioner. The judges are trained to record evidence by regular practice and training. This will not be true in case of commissioner. Recording of evidence is not a mechanical process. It is a step forward in the thinking process of a judge witch begins with framing of issues and continues till judgment is delivered. So the examination of the witness on affidavit and then by the court commissioner may frustrate the basic function of the court to get the truth revealed from the mouth of witnesses. As mentioned earlier the advantages of this provision are available to the cases in which appeal does not lie. Litigation of this class is very rare. So in majority of cases in spite creation of right to prove the facts in pleading by affidavit the party and his witnesses in most of the cases will have stood in queue on several dates for his turn for examination.

One more provision causing delay in justice delivery which lay under O.18 R-17-A and was about production of evidence not previously known or which could not be produced despite diligence is omitted by the Act of 1999. Act of 2002-increase time for pronouncement of judgment for 15 days to 30 days, which can further be extended to 60 days. There is no logic in

increasing time for pronouncement of judgment. Time of 15 days was enough. Amended Provisions of O.20 R-6-A and 6-B create a right in favour of parties to challenge order of the lower court on the basis of judgment if the decree is not made ready.

Some changes or made in O. 21 to speed up the execution. Amendment are however not sufficient to speed up execution. Act of 1999 provided explanation in O. 21 R-32 sub R-5 which explains that the provisions of order XXI R-32 equally apply to the execution of prohibitory and mandatory injunctions. Act of 1999 amended R-92 of O.21 by extending time limit of 30 days to 60 days for setting aside sale. Revolutionary changes were expected in order 21. It is a ground reality that one gets a decree but it is difficult to get the said decree executed. Provisions of order 21 are responsible for delay in execution of decrees. The provision of section 47 and order 21 R-97 to R-102 create hurdle to the execution proceedings making it next to impossible for the decree holder to get fruits of the decree. Unfortunately order XXI is left almost untouched by the Act of 1999 as well as 2002.

Act of 1999 amends order 39 R-1. The newly aided sub R-2 provide for asking security from the plaintiff. The provision is mandatory. It is compulsory for the court to direct the plaintiff to provide security while granting a temporary injunction or passing any other order under order 39. It appears that this provision is introduced to stop the litigants claiming injunction for trifle matters or when there was no need to ask for such relief. Newly aided provision lives wide discretion to the court to ask for security. There is every possibility of misuse of this provision. This provision may create delay by the challenge to the order of providing security made against the party in whose favor order of injunction is passed.

Amendment to order 41 R-1 by the Act of 1999 facilitates filing appeal on the basis of judgment when the decree is not ready. Amendment to O. 41 R-9 by Act of 1999 provide for registration of appeal before admission, however it does not provide such nomenclature to the register. Registration before the admission of appeal is required to be segregated from registration after admission under order 41 R-11. The provision of appeal is streamlined by amendment. Order 41 R-11 and R-12 is omitted. R-13, which required giving notice to the court from whose decree appeal, arose. Likewise R-15 and 18 are also omitted.

Act of 1999 and 2002 tried to reduce delay in the trial of suits however the aim of the legislation to increase pace of trial while effecting amendments to the Code is not appropriately reflected in the amended provisions. Many of the cause of the delays in the procedure Code are left is they are. Still there is a hope that the amended provision will certainly save some time of the court and allow it to utilize the time saved for dispensing justice.

In view of the above analytical study of the Amendments in civil Procedure Code it can be said that the amendments in the Code in the year 1999 and 2002 neither satisfy the aspiration of litigants nor serve the purpose of expediting the trials. It is the irony that the Amending Act of 2002 withdrew some of the welcome changes made in the Code of Civil Procedure by the Amending Act of 1999, which could have effectively assisted in reducing pendency. Reintroduction of provisions under O.VI R.17 is the glaring example in this regard. I am of the opinion that as the amending Acts are not drafted with sole object of expediting trials, the amendments do not touch the vital provisions of the Code of Civil Procedure, which require drastic change to reduce delay. I have therefore studied the provisions of the Code of Civil Procedure to identify the delay causing provisions and suggest suitable changes to reduce delay and curb pendency.

Inherent defects in the Civil Procedure Code

The major factor, which concerns me, is the existence of the provisions on a particular point scattered in sections and orders. The provisions about institution of suit, issue of summons, discovery, drawing of decree, execution of decree and on all other procedural aspects are there in sections as well as orders. Provisions under section 47 and order 21 provide ample opportunities to the party, who want to prolong execution of decree. There are reported matters about non-execution of decree even after 20 years of its drawing. Major factor for the said delay is the liberty and flexibility of the provisions in s. 47 and Order 21, which provide sufficient opportunity to a party to keep the dispute alive for many more years after drawing the decree.

Many of such typical examples are there about the different provisions of civil Procedure Code. Section 9-An introduced by Maharashtra Amendment provides that an objection to the jurisdiction of the court shall be heard and disposed off by the court before deciding the application for interim relief under order XXXIX. This means, a full-fledged inquiry is required to be conducted in such matters. The section also requires that the issue shall be heard and determined. As the decision of the court on the controversy not only seriously affects the fate of the supplemental proceedings, but also will have serious effect on the trial of the suit, the issue is required to be framed. After hearing the parties the court has to pass a reasoned order whether it has jurisdiction or not. Though the section provides for an expeditious inquiry, the above-discussed requirements consume a lot of time. If the issue involve question of fact the magnitude of time required for inquiry is much more.

In most of the cases of seeking interim relief of injunction, relief is sought to preserve the status of the suit property as it is. Consumption of time in above inquiry may sometimes defeat the very purpose of interim relief. Suitable examples come from interim relief seeking restrainment to construction or to demolition. This is the curtain raiser of the analysis. The detail analysis is undertaken in following paras.

Code of Civil Procedure came in existence in 1859. It was initially amended in the year 1877 and 1882. It was drastically amended in the year 1908. It was then exhaustively amended in the year 1976 again. It is again drastically amended in the year 1999 and 2002. Even after all this amendments structure of the Code remains as it is. In fact before amending civil procedure Code was made with a view to find out which provisions of the code is responsible for delay. Nobody can deny that Procedure Codes are basically responsible in judicial delays. Let us look into provisions of the Code of Civil Procedure responsible for delay and find out what changes could be made to streamline these provisions.

Section 9 of Civil Procedure Code provides for jurisdiction of the Code to try all disputes of civil nature unless barred expressly. The discretion is so wide that every dispute comes to the civil court and the civil court has to take cognizance of disputes because of section 9. The words “civil nature” and “implied bar” are the two ambiguous terms used in this provision, which bring every dispute to the civil court the party bringing litigation claims it a dispute of civil nature and there is no express bar for taking cognizance. In the year 1908 when this section was incorporated there were no tribunals to take cognizance of specific type of disputes. Then it was appropriate that all the disputes were referred to civil court. After establishment of several tribunals to deal with the cases of specific nature like administrative tribunals, debt recovery tribunals, Industrials tribunals, Co-operative Courts, Labor Courts and Consumers Courts. These tribunals are basically made to reduce the burden of civil court,

however because of ambiguous provision under section 9 every dispute and its offshoot comes before the civil court. Litigants continue to file cases before tribunal as well as civil court and increase the burden of civil court. In some cases law laid down by the Supreme Court and High Courts distinguished the disputes in which the jurisdiction of the civil court is impliedly bared, but the unclassified areas are much more. It is therefore necessary to properly amend section 9 and restrict jurisdiction of civil court to the disputes for which no other forum is available.

Section 10 contains the provision for stay of suit. This provision is misused by the parties. An errant litigant expecting any legal action against him files a fake suit an after an action against him claims stay of suit on the ground that his earlier suit is pending between the parties. The court in such cases too has to grant stay if the things fit under s. 10 which does not provide safeguard for such misuse. Number of stayed suits under section 10 in the courts all over the country may be in thousands. In this way courts are carrying the burden of stayed suits. This burden can be reduced, if instead of this provision of stay there should be a provision to club such suits of similar nature together and try them simultaneously. Section 35-A aided to the Code by the amendment Act of 1922 provides for compensatory cost for filing false or vexatious claims or defences. The provision is very vague. Because of vague nature of this section it is not possible to make frequent use of it. Same is the case with the provision under section 35-B. This provision speaks for imposing cost upon a party, who fails to comply the order of the courts in stipulated time. While invoking section 35-B the court has to pass reasoned order which consume the time of the court which can be utilized for disposing the litigation. Section 47 of the Code of Civil Procedure starts with the worlds "all institutions" these opening words make it very clear that the provision is absorbing one. Provision brings in its arena all questions between the parties relating to execution, discharge or satisfaction of the decree. In view of this provision even after termination of the suits by decree litigation continues between the parties in some or other form. Enormous delay in execution of decree frustrates the cause of justice. It is necessary to amend this provision and remove the hurdle in execution of decree.

Section 56 provides for prohibition of arrest or detention of women in execution of decree. Now men and women are equally good in mercantile business. So such privilege is now unwanted and unnecessary. Litigants in order to take disadvantage of this provision make women in the family nominal head of business and avoid the liability to repay money even if decree is passed. The Judgment debtor thus succeeds in prolonging the proceeding with the help of this provision.

Sub section 1 and section 91 provides restrictions on institution of suit for public nuisance or other wrongful act affecting public. The sub section provides that such suit should be instituted by,

1. Advocate general,
2. with the live of court, two or more persons.

Sub section 2 of this section however removes this bar indirectly by providing that any person can file suit, whose rights are independently affected by public nuisances. In this way sub section 1 works for reducing the number of suits, where as sub section 2 provide excuse for filing such suit by any person, who could not have received the leave of court or who could not be in the category mention in sub section 1. In this way section 91 does not act as a filter to reduce institution of suits, though it appears to have been enacted for the said purpose.

Like section 9, section 92 also invites the litigants to file suits in the civil court. This Section is about suits in respect of public charities. The courts of charity commissioner are established through out the country. Now it is not necessary any question relating to public charities should be looked into by the civil court. It is now necessary to delete this provision from the code and reduce the number of litigations coming to the civil courts.

Power of the appellate court to remand a case is very questionable power. Exercise of this power brings the suit to some earlier stage washing out all the subsequent trial and thus wasting the time utilized for such part of the trial. The power appear to be absolute but for few restrictions. Remand of a case means giving new lease of life to a case. One can find several civil suits remanded by the appellate courts after 10 years of its institutions for re-trial. Though precedents are there providing certain restrictions on the power of remand of a case. But the precedent doesn't cover every other circumstance. A party who is sure to loose and who wants to delay the trial of the suit request the appellate court to remand the case by raising a ground that either the issues are not properly framed or some evidence was not adduced. In this way power of appellate court to remand a case is a basic tool to delay the trial of a suit.

Section 132 and section 133 provides for exemption of parties from appearance. In fact there are several stages of suits in which presence of parties is not at all necessary. The parties however come into the court, stay in the court from 11 a.m. to 5 p.m. sitting ideally, take there date and return their home. In this way lot of human hours of thousand of people are lost every day because of attendance of court by the litigants when their presence is not at all necessary before the court. So the exemption should be extended to by the litigants till there presence before the court is necessary.

Section 151 embodies inherent powers. The provision is made to prevent abuse of the process of the court however the provision itself is much abused. In fact many of the provision in Civil Procedure Code provide discretion to the court to have a room while passing judicial order. In this situation there is no need for granting inherent powers to the courts. The clever advocates misuse this provision for delaying the suit or for rejuvenating there suits or appeals, which are dismissed.

Order III R-1 requires appearance in person or through agent or by pleader as permitted by the court. In the present age when the time has achieved enormous importance, appearance in person should not be insisted. Personal appearance is the cause of wastage of manpower, which can be avoided by permitting appearance through pleader or advocate. Personal appearance of the party should be insisted only when it is inevitably necessary.

Welcome changes are made in O. 5. Now courier can serve summons. Fax and E-mail, the electronic media advantages, can be used for service of summons.

Order 6 is about pleadings. The provisions in order 6 do not impose any condition for preciseness. It is necessary to limit the length of the pleadings. Presently Pleadings run into enormous pages. It is quite difficult for the judges to go through all these pages. A lengthy pleading is the cause of consuming the court hours. It is necessary to provide some provision in O. 6 to limit the length of pleading. Provisions for specific denial should be dropped from the Code. Provision for amendment of pleading in R17 was deleted by the Act of 1999. The provision is reintroduced by the Act of 2002. The said Act introduced a proviso to R 17. In view of this proviso now amendment after beginning of the trial can only be allowed if the party shows sufficient reasons. When any act is left to the discretion of the court, then in almost all

cases the discretion is used in favour of the party seeking relief and not against it. In view of this experience it cannot be expected that there will be any check to the habit seeking frequent amendments in the pleadings because of the by Act of 2002. Seeking amendment of the pleading at any stage of trial brings the suits again to the stage of framing issues. So the court will again have to hold trial of the suit by framing issues in the light of amendment after allowing the other party to amend his/their pleading accordingly. Then allow both the parties to adduce further evidence. In this way the matter is delayed for several months or even for a year. It can be said that the suits, which could have been completed in a year, will take another year because of amendment.

Order IX R-13 is about setting aside exparte decree. The provision is neither flexible nor rigid. The provision creates a cause for institution of new proceeding. For this new proceeding all the procedure for the trial of the suit in the Code of Civil Procedure is applied. Inquiry is required to the held and then only the court can decide the matter. Discretion provided in this rule is practically used in favour of the defaulting party. In this way after going through the rigor of the proceeding under order IX R-13 the plaintiff has to again fight his suit against defendant. In some of the cases the decree is passed against defendant because of his negligence and in some cases the defendant purposefully remains absent and let the decree pass against him. Then he resist the decree by filing proceeding under order IX R-13 and get the decree set aside by filing medical certificate or giving any another plausible reason. In this way because of the existence of this provision the tactful defendant can prolong the suit for several months or years. It is necessary to amend this provision in such a way that it can be used in the cases in which the defendant can have a real and immediate cause for remaining absent on the day of hearing.

Order X is mandatory provision for examination of parties by the court to ascertain admission or denial in the allegations in pleadings. It requires oral examination of party or counsel of party. It provides documentation of examination. When the parties are filing written pleadings supported by affidavit, the court can easily ascertain admission or denial from the allegations in plaint and contention in written statement. Even if the Court wants to make sure of admission or denial by parties under their signature, then the parties can be asked to file pursis (information under signature) about their admission or denial of rival pleadings. The oral examination of the parties and getting down their deposition certainly consumes lot of time of the court. As per my experience O. X is not followed in any of the civil courts in the Maharashtra as well as Civil Courts in other many states. Even otherwise the provision is only time consuming. It does not serve any purpose to isolate litigable pleading from the rest. So all the provisions under O. 10 are redundant and time consuming. It is necessary that the whole order should be dropped from the Code of Civil Procedure so that the party trying to lengthen the proceeding will not be successful to delay justice delivery.

Provision under order XI about inspection of the documents and discovery by interrogatories was introduced to reduce the evidence but in practice the provision only extend the length of trial and delays justice delivery now the Act of 2002 make it compulsory to produce all the documents or copies thereof on which the parties rely. Now there is no need to give liberty to any of the party to again apply for discovery by interrogatories or for inspection of the documents. The parties are at liberty to examine the number of witness and cross-examine the witnesses of rival parties. They can discover the facts during evidence. The rule of evidence to adduce best available evidence goes against the party hiding the evidence. In the light of

this rule of evidence provisions under order XI becomes redundant. So also the provision under O. XIII about production of documents also becomes redundant.

Provisions under O. XVI require radical changes. Procedure laid down under this rule requires that the court should issue summons to the witnesses and procure presence of the witnesses for the parties. There is cumbersome procedure for procuring presence of witnesses. The party has to pay process fee and allowance. Then only the work of service is allotted to the bailiff. Bailiff should be available for service then only the summons comes out of the court for service. If this step is achieved then the bailiff should get the witness in place then only the summons is served otherwise it bounces back to the court. Then again another round of exercise starts. This process causes delay. It is necessary to make it obligatory on the parties to keep their witnesses present as they are fighting their own cause. Only in exceptional circumstances assistance of the court should be made available for the service of summons. Some of the parties certainly take recourse to this facility when directed by the court, but some of the parties, especially who wants to delay the trial come up with false pretension before the court that witnesses are not ready to come before the court without courts intervention. Some persons are really reluctant to be reluctant to come before the court. In such cases the court should intervene only when party discloses the efforts taken by it for the service of summons to the said witness. To achieve this end a procedure like giving powers to the advocates to issue subpoena should be given to the advocates. In the present process there are chances that a person who don't want to proceed with trial creates all sort of hurdle in service of summons to witness and there by delays the trial of the suit. It can be positively said that such radical changes in order XVI may remove basic cause of delay.

Order XVII is about adjournments. Act of 1999 and Act of 2000 curtailed adjournments however the amended provision are not sufficient to curtail the delay by adjournments. Grounds of the adjournments provided in order XVII R-1 and1 (2) are not justifiable. Illness of the party and pleader are frequently forwarded as the cause of adjournment. It is not possible for any court to refuse adjournment on the ground of illness of party, his dependant such as parent or children or illness of an advocate. Such grounds delay the proceeding affecting the interest of one party adversely. The delay aggravates the suffering of the party depending upon the requirement of the party to any urgent relief in the suit. Even if adjournment is given statutory recognition and it is allowed on the ground of illness of party, it should not be allowed for the illness of an advocate. Advocate is a professional. It is his duty to keep himself fit for the engagements he promised or appointments he has given. In case he is not able to keep himself present as per his past agreement, then he should have to make necessary arrangements by appointing another lawyer to discharge said agreement. This is the appropriate arrangement to discharge contractual liability. There is reason to make some different rules for the advocates. Therefore there is no need to allow adjournment on the ground of illness of the lawyer. So the adjournment of the trial of suit because of illness of lawyer should be statutorily bared. The heading of order XVII reflects that it is the order to facilitate adjournments. This heading reflects that statutory sanction is given to adjournment. This title itself should be changed. Such changes in order XVII will certainly reduce chances of adjournment in the trial of suit.

Radical changes in order XVIII about recording of evidence are made by Act of 1999 and Act of 2002. Now the examination in chief in non appellable suits will be the affidavits by the party and his witnesses. This will make task of cross-examination easier. This will save time of the court to take down examination in chief. Cross-examination by the

commissioner however may create difficulty in proper assessment of the evidence. So the provision about cross-examination may save the time of the court, however it will reflect adversely on the quality of justice delivery.

Order XXI R-11 provides for oral application for execution. The provision is absurd and ridiculous. It is not possible to entertain oral application for execution. Even if the decree holder makes oral application the court will have to get it scribed. So it will be a written application. Because of these reasons this redundant provision should be dropped from the statute book.

Like section 47 provisions under order XXI R-101 to 105 keep the litigation alive. The judgment debtor, who certainly do not want the execution of decree, in order to resist decree comes before the court with some vague questions in execution proceedings and insist for its decision before execution of the decree. So even after passing decree the decree holder does not get the fruits of the decree unless he fights out another litigation in the execution proceeding created by the judgment debtor because of the statutory assistance provided by order XXI R-101 to 104 and section 47.

O. 26 is about commission to examine witness who cannot be brought to the court for some distinct reasons. It also provides for appointment of commissioner for collection of evidence by local inspections or investigation, which could not be conveniently done by the court and commission for scientific investigation and examine accounts. In fact advocates or experts in the respective fields are appointed to hold these investigations. The court to assess authenticity of their work of commission again records their evidence. This is very unfortunate situation. One has to believe in the worlds of the experts. A presumption is required to be enacted to make the evidence collected by commission directly admissible in evidence. In fact by the amendment to order XVIII now evidence of party and witness is going to be recorded by the commissioner. So the court is going to believe in the commissioners because of the statutory provision under order XVIII. Same analogy should be adopted in case of commission under order XXVI. Thus it is necessary to amend order XXVI creating presumption that the evidence collected or recorded by the commission shall be admissible evidence. This will save the time of the court which it can utilize for disposal of pending cases.

Order 33 provides a lengthy procedure for the suit by the indigent person. In view of the provisions under the Legal Services Authority Act to provide legal aid to indigent person at state expenses all the provisions under order 33 now became redundant. Now under the Legal Service Authority Act a person having income of Rs. 25000/- per annum can seek legal assistance from the State authority. The State on compliance of few simple conditions provides aid in the form of funds to purchase court fees for filing the suits and provide him legal assistance of a lawyer. So now an indigent person defined under O. 33 do not have to under go a rigorous and cumbersome procedure laid down in this part of the statute. Even if the provision is to remain there, procedure therein is required to be simplified. It is necessary that without holding lengthy inquiry a person claiming he to be indigent be allowed to file a suit on the basis of documentary evidence of his indigence. If during the trial of the suit it is found that the plaintiff is not indigent, then he may be directed to pay the court fees. Simplification of this order will save delay in justice delivery. It will not be out of the place to mention here that recently High Court of judicature Bombay, Aurangabad bench in Civil revision appl. No. 125/2000 found that an application filed by indigent person in the year 1962 was not decided till the year 2000. This shows how much delay can be there because of

existence of order 33 in the statute book when an alternative remedy is made available by another statute to facilitate immediate legal assistance.

O. 38 is about arrest and attachment before judgment. When the defendant in order to defeat the advantage of decree expects adverse verdict he either tries to remove himself from the jurisdiction of the court or try to take away property from there in order to defeat the expected decree. The plaintiff by taking recourse to this provision can stop the defendant from defeating the ends of justice. The provision is very important in nature; however the provision prescribes lengthy and outdated procedure. In order to streamline the provision it is necessary to simplify the procedure so that the person trying to take disadvantage of the delay in justice delivery should be stopped from doing so. When the defendant because of effective application of this section will not succeed in his malafied aim, he will certainly be constrained to assist the court to dispose of his litigation quickly or will seat across the table with the plaintiff and will resolve the dispute and thus put an end to litigation.

O. 39 is about grant of temporary injunctions. Now a day about 70% of the civil litigations are to claim relief of declaration and injunction. In every such suit temporary injunction is claimed mostly by the plaintiff and in any some of the cases by the defendant. Certainly it is necessary to preserve the status of the property during the pendency of the suit, because rights of the parties to deal with property are under challenge in the suit. By passing order of temporary injunction the court puts one of the litigating parties in the advantageous position to the other party. The party so placed in advantageous position is now not ready to proceed with the trial and take the risk of loosing advantageous position. Because of this reason the person with advantageous position, who achieved this position because of the prompt delivery of the justice by the court now tries to frustrate every attempt of the court to dispose of the matter quickly. In this way the provision to grant temporary injunction becomes cause of delay in justice delivery.

This problem can be solved by providing temporary injunction for particular period or by imposing a condition on the party in whose favor order of temporary is granted to dispose of the suit within particular period. If the party did not cooperate to do so or it is found that the suit is dragged purposefully by the party in whose favour order of injunction stands, then injunction granted in his favour should automatically stand vacated. Such order cannot be made unless there is statutory provision in this regard. So it is necessary to amend order 39 and remove the shortcomings which delays justice delivery.

The provisions under O. 40 are proposed in accordance with the principle of natural justice to protect the property from being wasted during the pendency of litigation. Considering the scheme of this order it can be said that the legislature while introduced the concept of appointment of receiver never considered pros and cons of this concept, specially its utility and applicability in Indian atmosphere. In India where a civil litigation runs for about 20 years it is not possible to expect preservation or development of the property by the receiver for such a long period. It is also difficult to get appropriate person to discharge the duty as a receiver. My experience shows that the properties given in custody of advocates are not appropriately preserved. These persons unwillingly accept the job of receiver. In this way the provision which is enacted for the preservation of the property is more responsible for wastage of property.

In the developing country like India the estate changes its value and utility within of short span of time because of this reason when a party is robbed of the possession of property to keep it in a possession of receiver, the party ultimately succeeding in litigation has to

sustain a huge loss for want of bringing appropriate changes in the utility of the property during the pendency of litigation so as tap profits from the property to its maximum potency. On the other hand the prices of the properties in India and profits earned from it are so dismal that it is not possible to appoint a professional as a receiver. In this way principle of putting the property in possession of receiver can not be suitably implemented in the developing country like India.

This principle can be appropriately substituted by existing provision of O.20 R.12 of the Code. At the time of final decision of the suit if the party loosing suit is found to have continued in possession of property during the litigation, such party should be directed to provide the profits received from the property or which he ought to have received with due diligence to the winning party. If the winning party continues in possession of property then there is no question of appropriation of means profits. Similarly the party in possession can be directed to deposit particular profits periodically in the court and order refund of these deposited profits to the wining party. In view of these reasons it is better to drop order 40 from the statute book.

Order 41 deals with appeals from original decrees. In any legal system right to appeal is certainly incorporated in Procedure Code. Denial of appeal will make trial Courts supreme. It is quiet reasonable and judicious that the litigants should have a chance to raise question about the judgment of the trial court at least before one forum. However considering the denouncing value of currency, nature of business transactions, increasing cost of litigation and acumen ship of trial courts it is necessary to impose limitations on the kinds of litigations in which first appeal should be allowed. This will reduce number of appeals and provide time to the appellate courts to dispose of the pending litigation.

It is however seen that the litigants who want to delay the final fate of the trial prefer appeal against the order of dismissal and if the court grants stay, then he prolongs hearing of appeal. In order to stop such tendency there should be some statutory provision about vacation of stay granted in favour of such errant litigants so that both the parties to the appeal should be vigilant enough to co-operate the court to dispose of civil appeal. Considering huge pendency of civil appeals it is necessary to appoint special judges to dispose of the civil appeals. It is pertinent to note that presently the civil appeals are heard by the judges who are designated as Additional District and Session Judges. These Judges are burdened with disposal of sessions cases of under trial prisoners. In view of the various decisions of Apex court declaring right to speedy trial of an under trial prisoners a fundamental right, these courts have to take up hearing of under trial prisoner with priority. The judges therefore get very less time to concentrate on disposal of civil appeal. It is therefore necessary to appoint judges to work of independently on civil side at least for few years and get the pendency of civil appeals reduced.

Order 42 deals with appeal from appellate decree. Appropriate restrictions are placed so that right to appeal should not be available from every decree by first appellate court.

O. 43 deals with appeals from orders. Restrictive provisions are enacted disallowing against all the orders. When right to appeals denied the litigants choose to prefer revision against the orders which are not included under order 43. Recent amendment in the Code put stringent restrictions on the discretion of the court to entertain revision. This will certainly help to reduce entry of revisions. This provision will also seal the loophole in the Procedure Code.

O. 44 is about filling appeal by indigent person. Now the provisions under the Legal Services Authority Act simplify the procedure for providing free legal aid. The indigent can very well take benefit of those provisions. The procedure laid down in order 44 is cumbersome. The judicial scrutiny under order 44 makes it difficult to get a decision on the application quickly. As I mentioned earlier it has been noticed that one application by indigent person filed in the year 1962 was not disposed of in the year 2000. Considering this situation it will be appropriate to drop order 44 from the Code.

Order 47 deals with the provision for review. It is pertinent to note that the concept of review is not incorporated in the Code of Civil Procedure. It is pertinent to note that the judgments of the Civil Codes involve the question of life and liberty of a person. If the absence of concept of review of such questions does not create any hurdle in the working of Criminal Justice system then why the concept of review should be there in the code of Civil Procedure which only deals with the rights of property. As we have discussed earlier the Code provides opportunity to challenge the judgment and orders in appeal and revision. Any mistake of the trial court can be corrected by the upper court in judicial hierarchy. The provision of review with whatever limitations provides an opportunity to the litigant to drag litigation for considerable period. It is therefore necessary to remove this concept from the Code of Civil Procedure.

If the Code of Civil Procedure is amended appropriately keeping in view the above said analysis, there is a hope of cutting down the time required for the trial of civil suit. The analysis will also guide the legislature to streamline the Code by dropping the redundant and useless provisions. It will also help to delete the provisions in respect of which better laws are legislated.

***