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Amendments of 1999 and 2002 in the Civil procedure Code

Recent amendments of the CPC created much uproar. The amendment Act of 1999 for the first time shown the concern of legislature about the judicial delays. Procedure Codes are basically the machinery provisions through which the justice is processed, finished and delivered. To quicken the justice delivery it is first necessary to update these machinery provisions. This aspect appears to have been taken into consideration while amending CPC in 1999. In the year 2002 the concentration of 1999 amendment is some what diluted.

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 it 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 then 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 examination in chief.

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 39 to execute decree against any person of property outside the local limits of its jurisdiction.

Act of 1999 by amendment to section 58 make the execution more certain. Section 58 is about detention of judgment debtor in civil prison. The provision is however made beneficial to the judgment debtor and not to the decree holder. In fact execution of decree is a most difficult part of litigation. It would have been more appropriate if punishment had increased creating deterrent effect on the judgment debtor.

Section 60 is about property liable to attachment and sale in execution of decree. Previously 400 Rs. of the salary were exempt for attachment. This limit now raised to Rs. 1000/- the amendment is not in accordance with price index nor it was necessary. It will not have any effect to curtail delay in execution. Amendment to section 64 merely removes the ambiguity about transfer in accordance with agreements executed prior to filing of suit.

Newly aided section 89 is a step forward to recognize comprises. 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. Valuable time of the court, which could have been used for making judicial order 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 disputes. The work of finding out the chances of pretrial settlement could better be left to parties. Parties should be directed to file a suit only after making efforts for pretrial 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.

Section 95 provides for compensation for obtaining arrest, attachment or injunction on insufficient grounds. Previously the section provided for compensation for poultry amount of Rs.1000 by the Act of 1999 is increased this amount to 50,000Rs. Now in every suit in which injunction or other supplemental relief is sought by the defendant will seek compensation alleging that the plaintiff sought interim order on insufficient grounds. The court will have to inquire into this question in addition to the enquiry for providing cost of suit and compensatory cost. This inquiry will certainly increase the time required for trial. In this way the amended provision increase the chances of delay instead of decreasing it.

Section 96 is a welcome provision for the persons concerned about judicial delays. The provision bars appeal against the decree by the court of small cause for the amount less than Rs.10,000. So the appeal against decree of small cause court for the amount of Rs.10,000 or less will not come to the appellate court their by reducing institution of at least few appeals. However considering the present commercial scenario the amount of Rs.10000 is much less. In fact the businessman functioning in cities are now donot find it convenient to file suit for recovery of Rs.10000 or less. If suits are not filed for this amount, then there will be no decree and the there will not be any appeal. In this way the amendment is not keeping with the pace of time. It will not be helpful to reduce delay or quicken justice delivery.

Substituted sec 100-A in the year 2002 excludes loopholes to continue litigation by taking shelter of letter patents of the High Courts. Now their shall not be any appeal against the decree passed by a single judge and the High Court to the two judges bench. Substituted section 102 bars second appeal against the money decree for recovery of Rs.25000 or less. The enhancement however is too low. As I mention early mercantile transactions are now for lacs and crores of rupees. In the present age the amount of Rs.25000 is not worth anything for which party will think of filling second appeal. In this way the substituted provision is only a show peace.

The amendment in section 115 in the year 99 left untouched by the Act of 2002 prohibits the High Courts from interfering every orders of the subordinate court. Newly added sub section 3 clearifies that mere filling of revision does not operate as stay to the suit or proceeding unless the stay is granted by the High court. This provision is regulatory provision. It will reduce institution of revision proceedings in High Court. It will also reduce the chances of inordinate delay in the trial of suit or proceeding in the trial court made by the parties by challenging every order of the court in revision and thereby prolonging the matter.

Required restriction to the powers of the court for enlargement of time under section 148 is provided by the Act of 1999. Now no court will have the right to extend the time for more than thirty days in total. In fact this limit would have been further curtailed. Enlargement of time is sought generally by the advocates, who do not comply orders of the court within prescribed time and seek enlargement of time by providing concocted reasons.

In order to streamline the procedure of institution of plaint and reduce the delay O. IV R-1 is amended by the Act of 1999 by making it compulsory that plant should be filed in duplicate in the court and Rules about pleading and plant under O.VI & VII are complied with. This is a machinery provision made to enhance efficiency of the procedure. Amendment by the Act of 1999 to O. 5 R-1 limits the powers of the court to adjourn the case for more than 30 days. Amendment in O.5 R-2 omits right of the plaintiff to supply concise statement instead of copy of plant. This provision will also make it impossible for the defendant to seek adjournment saying that he had not received copy of the plant. Amendment in O.5 R-6 is not very material. Amendment in O.5 R-7 by the Act of 1999 makes it obligatory for the defendant to produce all the documents in his possession or power on which he relies. This provision certainly will remove one of the causes of delay. If the document are not got produced by the parties at the time of institutions of suit or while filing written statements, the parties delay the proceeding by requesting the court to procure the documents. Amendment in O. 5 R-9 by the Act of 2002 recognises modern ways for service of summons. Proviso to sub rule 5 create a presumption about service of summons in case of services of summons by R.P.A.D. Service of summons by courier service is approved under sub-rule 1 to the defendant who resides within the jurisdiction of the court. Sub-rule 3 however also allows service of summons by fax or E-mail. provision under sub-rule 4 make it clear that service of summons to the defendant residing out side the jurisdiction of the court may be made by fax or E-mail. It is left to the High Court to make the rules for selecting agencies for providing courier service, E-mail service and fax service. If the High Court selects proper agencies, then the pace of service of summons and notices will certainly enhance to greater extend. Anybody will accept that getting done the task of service of summons or notice through the officers of the court is a very difficult task. Most of the times the officers of the court do not find the addressee. Much time and manpower is lost in allotment of work to these beliefs of the court, keep watch on their work and regulate their services . In my opinion courier service, postal service and Net provides viable and efficient alternative to service of summons and notices through officers of court. The provision for service of summons or notices through the officers of the court should have been deleted from O.5 R-9.

Newly aided O.5 R-9-A make a provision for simultaneous service of summons by the court. Newly inserted rule is amended again in 2002 it is renamed as service of summons through the plaintiff it provides for service of summons to the defendant by plaintiff. Infact the courts are already using this procedure by providing summons or notices to the parties to serve by hand. In view of the amendment in O.5 R-9. R-19-A become redundant. It is omitted by the Act of 1999. Amendment of order 5 R-21 provides for adoption of modern ways for service of summons to the defendant residing within the jurisdiction of another court. Service of summons to the another court is allowed by courier, fax or E-mail. utility of the provision will only be possible when every court will have E-mail facility and judiciary will allow access to their E-mail address to the public at large. Other wise said provision will become redundant. Similarl amendment to O 5 R-24 and O 5 R-25 provides the facility of modern communication facilities for service of summons to the defendant in prison or residing out side India.

The welcome provision is introduced of Act of 1999 by deleting O. 6 R-5. The provision about better particulars was basic cause of prolong delay in the trial of civil suits. In every trial at the first appearance the defendant use to file an application seeking better particulars poising before the court without this particulars it will not be possible at him to file return statements. On filing the application the court will ask for the say of plaintiff, then here the parties and decide the matter in affirmative or negative. The order will certainly provide a chance to the party in a mood to prolong the matter to file a revision. Revision against the order would certainly take 4 to 5 years, putting the trial of the suit at hault. Deletion of this provision is therefore a best remedy to remove one of the causes of delay in civil disputes.

Similar bolt step was taken by the Act of 1999 by diliting O.6 R-17 about the amendment of pleading. It is however unfortunate that O.6 R-17 is restored by the Act of 2002. A proviso is aided to O.6 R-17 by the Act of 2002. The proviso limits right of the parties to amend the pleading after commencement of trial, however this proviso also leaves discretion to the court to allow amendment to the pleading even after commencement of the trial. Thus the provision is as ambiguous as it was before. So the amendment of O. VI R-17 will not serve any purpose to reduce the delay. In fact in India when the parties are availing help of advocates to file pleading, it is not excepted that there should be any inherent lacuna in pleading, non-rectification of which will cause enormous damage to the party to justify the order of amendment of pleading in his favour. Even if the parties suffer because of the wrong, insufficient or incorrect pleadings by his advocates, the litigant can have recourse of recovering damage from the advocate by filing petition against him under Consumers Protection Act. Because of these reasons provision of amendment of pleading, which causes infamous delay, is unrequired provision in the procedure law.

Amendment to O.7 R-14 brings in inflexibility. It Provides bar for the production of documents which the plaintiff failed to produce at the time of filing plant. It leaves discretion to court to allow plaintiff to produce the document if he succeeds to satisfy the court about his incapability to produce the same at the time of filing suit. In my opinion such inflexibility create a hurdle in the pace of trial. My experience says that liberty to the parties to provide all possible evidence during the trial help the court to dispose of the matter quickly.

Amendment in to O. 8 R-1 fixes time limit of 30 days for filing of written statements the proviso to the amended rules provide a large margin of 90 days for the court to extend. This period of extension is much large. As I have mentioned earlier the professionals assist the litigants in India. In the present era of Information Technology enlargement of this much time is unnecessary. In fact the the Act of 1999 should have provided that after service of summons the defendant should come up with his pleadings. Amendment of 1999 inserted R-1-A about production of documents. Sub R-3 of the Act of 1999 provided a complete bar for introduction of a document, which was not produced with written statements however amendment Act of 2002 made this provision mild. It left the discretion of allowing the defendant to introduce the document in evidence with the court. The discretion of the court is always widely or loosely utilised. Whether it is properly applied or not becomes a litigable question between the parties. The discretion is the loophole from which the germs of delay percolate. Act of 1999 sealed this loophole, however Act of 2002 again opened it. O.8 R-9 about introduction of subsequent pleadings was omitted by the Act 1999, however the provision was reintroduced by the Act 2002 this provision allows the parties to delay the trial of the suit. Omission of this provision

was appropriate steps to curb delays but reintroduction of this provision again introduces one of the causes of delay in the procedure code.

Provisions under O.8 R-5 and R-10 for Judgment for not filing WS are in fact misguiding provisions. O. 8 R-10 was omitted by Act of 1999 but the provisions were reintroduced by the Act of 2002. Amendment of 1999 made welcome change in O. 9 R-2 about dismissal of suit for failure to serve summons to defendant because of fault on the part of plaintiff. Unfortunately the Act of 2002 reintroduced the earlier provision. Act of 1999 reduced the time of one month provided to the plaintiff to take steps for the service of the summons under order 9 R-5 to 7 days. This provision will increase the pace of pre trial compliances.

Order 10 of the code of civil procedure about examination of the parties is itself an unwanted and redundant provision. Amendment of this provision by the Act of 1999 provides that the court shall direct the parties to opt for settlement out side the court as provided under sub section 1 of section 89. The other newly introduced provisions produce for appearance of the parties before the different forums for conciliation or arbitration as I have mentioned earlier the party who want to delay trial will take benefit of this provisions, get the matter referred for conciliation and after killing lot of time bring the trial with the assistance of the judicial order.

Amendment to order X R-4 by the Act of 1999 prescribe time limit of 7 days for adjournment of matter for hearing of parties. In fact the total provisions under order X are 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 had 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 allow 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.IX R-4. This proviso was giving discretion to the court to allow the party to amend or withdraw any admission at any time during the trial. This proviso had made O XI R-4 a mockery. Deletion of this proviso certainly removes one of the causes of delay in the trial of civil suit. O. XIII 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 uncertainty created by the use to discretion of the court.

Act of 1999 amends O. XIV R-4 by providing time limit for framing of issues. Act of 1999 omitted order XIV 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 legislation 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 and believe that the work done by them was honestly and correctly done the omission of R-5 was the step in right direction, however restoration of R-5 brought one more cause of delay in the Procedure Pode.

Order XVI 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 XVI R-2 Act of 1999 reduces the chances of adjournment to 3. Amendment in O.XVII R.1 also enhances power of the court to impose costs, which may be higher than the costs occasioned. Act of 1999 deleted order XVIII 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 delay caused by the possible request and examination of any witness at anystage of the trial. Act of 2002 aided 4 sub rules to order XVIII R-2. these are for submission of written arguments. Act of 2002 substitute the amended provision of order XVIII R-4 by the Act of 1999. It provide for a modern facility to record evidence.

Amendment to order XVIII R-4 is a revolutionary provision. It provides for submission of affidavit instead of examination in chief. it also provide 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 fix 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 challenge before the trial court. All these aspects of examination of witness will vanish, one's the party and witness file affidavit of the examination in chief and get the other also 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. 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.

One more provision causing delay in justice delivery in form of order XVIII R-17-A 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 order XX 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 decrees not made ready.

Some changes or made in order XXI to speed up the execution. Amendment are however not sufficient to speed up execution. Act of 1999 provided explanation in O. XXXI R-32 sub R-5 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 order XXI by extending time limit of 30 days to 60 days for setting of aside sale. revolutionary changes were expected in order XXI. It is a ground reality that one get a decree but it is difficult to get the said decree executed. Provisions of order XXI 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 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 other relief. the newly aided provision lives wide discretion to the court to ask 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 inunction in 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 order 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 while effecting amendments to the Code was not appropriately directed to reduce the delay. Many of the cause of the delays in the procedure get 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.

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