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Inherent defects in the Civil Procedure Code

Code of Civil Procedure 1908 came in existence in 1859 it was amended in the year 1877, 1882. It was drastically in the year 1908 it was then exhaustively amended in the year 1976 against it is drastically amend in the year 1999 and 2002 even after of this amendments structure of the code remind as it is in fact information of the amendment of civil procedure court was made with a few to find out which provision of the code is responsible for delay nobody can deny that procedure codes are basically responsible in judicial delays let us looked into provision of the code of civil procedure responsible for delay and find out can be changes done to streamline this provision.

Section 9 of civil procedure court provides for jurisdiction of the court to try the civil suits the discretion is so wide that every dispute comes to the court and the civil court as to take cognizance of disputes because of section 9. For it provides that the court shall have to jurisdiction to have all suits of civil nature unless jurisdiction of the civil court his expressly or impliedly bared. The words that " the civil nature" and "implied bar" are the two ambiguous terms used in this provision, which bring every disputes to the civil court the party bring in litigation claims that is a disputes of civil nature and there is no express bar for take cognition. In the year 1908, when there were know tribunals to take cognition of particular kinds of disputes. Then it was already that all the disputes work referred to civil court by now when there are sub tribunals to deal with the cases of specification nature like administrative tribunals, debt recovery tribunals, Industrials tribunals, Co-operative Courts, Labor Courts, and Consumer Courts. These tribunals are basically made to reduce the burden of civil court, however because of ambiguous provision is section 9 every offshoot of the disputes before these tribunals creep in the civil court continue in the burden of civil court. It is therefore necessary to properly amend section 9 and restrict jurisdiction of civil court to the disputes for which remind is not available before in other form.

Section 10, the provision for stay of suit is misused by the parties, file multiple litigation staying in suit on the ground that earlier suit is pending between the parties among to keeping a load of one litigation in the court the provision stayed suit under section 10 in any courts may be a few, however number of all stay suit under section 10 in the courts all over the under may been one months. In this way used are carrying the burden of stead suits. This burden can be reduced if, instead of this provision of set there should be a provision to club this suits of similar nature together and try them simultaneously section 35-A, it was aided to the code by the amendment Act of 1922 provides for compensatory cost in respect of falls or vexatious claims or defenses the provision is very vague because of such nature of this section it is not same is the case with the provision under section 35-B it impose after duty of the court the past reasoned order for imposes cost when the party, which as to take a particular step on particular day falls that to takes, it is required to be presumed that the party has not performed its particular and therefore it is liable for cost. Here there number should not be in reason for the court to mention it on papers. However the provision under section 35-B to past reasoned order consume the time of the court for unnecessary things, which can be arithmetically calculated. Section 47 of the court civil procedure starts with the worlds "all institutions" these opening worlds. 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 same or other form enormously dealing execution of decree it is necessary to amend this provision and remove the hurdle in execution of decree.

Section 50 provides for prohibition of arrested on detention of women in execution of decree for many now men and women are equally good in mercantile business people made it this disadvantage of this provision by make in women in the family nominal head of business and avoid the liability to repay many even if decree is passed sub section 1, and section 91 pay limitation of institutions of suit for public niceness of other wrongful act affecting public. The sub section provided that such suit should be instated by one 1) Advocate general 2) with the live of court, two or more present sub section 2 of this section however removes this bar indirectly by providing that any present can file suit, whose right is independently affected by public nuisances. In this way sub 1 works for reducing the number of suits, were has sub section 2 provide excuse for filing such suit by present, who could not have receive the live of court or who could not be in category mention in sub section 1.

Like section 9 sections 92 also invite the litigants to file suit in the civil court. This Section is about suits in respect of public charities already the courts of charity commissioner are establish through out the country now it is necessary all questions relating to public charities should be looked into by the stay tribunals and not by the civil court it is now necessary to delete this provision from the code and reduce the number of litigations.

Power of the appellate court power of the appellate court to the remands the court is very objectionable power the stay appear existence in section 107 without in litigation. Remand of a case means giving new lease of life to the case one can find several civil suits remanded by the appellate courts after 10 of its institutions for re trial. Though presidents are there be restriction on the power of remand of case but the president do not cover every other circumstances. A party who want to delay the trial of the suit request the appellate the court to remands the cases. The gives comes the trial court. Again it continues to be tried in the trial court and again an appellate is preferred. 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 for appearance in fact there are several stages of suits in which present of parties is not at all necessary the parties however come into the court, stay in the court of 11 a.m. to 5 p.m. setting ideally, take there date and return there to home in this way human ours of lot of people are every day vested because of attended the court when the there present in not at all necessary before the court so the exemption should be extended to by the litigants till there present is necessary.

Section 151 provides for inherent powers of court the provision is made to provision abuse of the process of the court however the provision itself is much abuse in fact every provision in civil procedure court provided, discretion to the court to have a room the while passing judicial order. Instead situation there is no need for granting inherent powers to the court. The clever advocates misused this provision for deleing the suit or for rejuvenating there suits or appeals, which are dismissed.

Order III R-1 requires appearance in person or agent or by pleader as permitted by the court. in the person age, when the time 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 order 5. Now courier can serve summons, fax and E-mail. 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 judge to go through all these pages. It is necessary to provide some provisions in order 6 to limit the length of pleading. provision for amendment to pleading in R17 was deleted by Act of 1909. the provision is reintroduced by the Act of 2002. The said Act introduced a proviso to R 17 that 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 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. It can be said that the suits, which could have been completed in an year, will take another year because of amendment.

Order IX R-13 is the provision is about setting aside exparte decree. the provision is neither flexible nor rigid. The provision creates a cause for institution of new proceedings. 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 matter. A discretion provided of this rule is practically used in favor of the judgment debtor. In this way after going through the rigor of the proceeding under order IX R-13 the decree holder has to again fight his suit against defendant. In some of the cases the decree is passed against defendant because of his neglegence 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 amends 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 all 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 started by affidavit, the court can easily ascertain admission of denial from the allegations. Let us presume that the code wants to simplify expectance of admission or denial by parties under their signature, then the parties can be asked to file purses 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 is concerned order X is not followed in any of the trial court in the Maharashtra in the any of the court in Maharashtra and other many states. Even otherwise the provision is only time consume is does not serve in real purpose to isolate litigable pleading from the rest. So the provision is 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 length the proceeding will not be used it the delay the 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 there are the parties rely, there is no under to come a liberty to a party to again apply for discovery by interrogatories the inspection of the documents. The parties are liberty to examine in number of witness and cross-examine the witnesses of rival parties. They can discover the facts during evidence. Further the rules of evidence about presumption of not adduce best available evidence goes against the party hiding the evidence. In the light of this provision under order XI become redundant so also the provision under order XIII about production of document also become redundant provision in is order XIII. Provision under order XVI require radical change the person procedure required that of witness should be produce in the court and court issues consumes to the witnesses of this process causes of delays a save days or save months in such situations it is necessary to make it obligatory on the parties to keep their present witnesses some of the parties certainly take recourse to this facility when directed by the court, but same of the parties submitted before the court that witness not ready to come before the court without consumes. May be same of the persons are reactant to come before the court and in some cases the party who do not want to proceed with the case delays the proceedings by recourse in the court but issue consumes to the witness, create all sort of hurdle in service of consumes to witness and there be delay the trial of the suits this disadvantage of the statutory provision can be available day by allowing the advocates the issue consumes under name of the court like in quantinenttle system it can be positively said that such radical changes in order XVI may remove many of the cases of the delay.

Order XVII is about adjournment Act of 1999 and Act of 2000 curtailed time of adjournment however the amended provision or not sufficient to curtail the delay by adjournments grounds of the adjournments provided in order XVII R-2 or not justifiable illness of the party and pleader are frequently forwarded as the cause of delay it is not possible for the court to refuse adjournment of such grounds the illness agree bats depending open the requirement of the party to delay the trial of the suit at many cases of the suit persons of party is not required. At though stages adjournment should be statutorily it's allowed on the ground of illness of party. Advocate is professional person. It is his duty to keep himself fee for the youngagement or appointments he is given in the pass. In cases he is not able to keep himself present as per his past agreement, then he the make arrangements of any another lawyer to discharge said agreement in this way there is no need to allow adjournment of the ground of illness of the lawyer so the adjournment of the suit because of illness of lawyer should be statutorily bared the heading of order XVII, which reflect that it is the order made for the provisions for adjournment shows that statutory sanction is given to adjournment this title itself should be changed such changes in order XVII will certainly reduced chances of adjournment in the trial of suit.

Radically changes in order XVIII about recording of evidence are made by Act of 1999 and Act of 2002 new the examination chiefs will be the affidavits by the party and his witness. This will make task of cross-examination of easier. This will save time of the court to take down examination in chief. Cross-examination by the commissioner however may create

difficult 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 ridicules 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 return application in this way then redundant provision should be dropped from these statute books.

Like section 47 provisions under order XXI R-101 to 105 keeps the suits of re litigation in the statute the judgment debtor in resist decree come 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 help provided by order XXI R-101 to 104 and section 47 order 26 is about commission to examine witness commission to examine witnesses not approachable to the court name 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 the experts like advocates and the other experts in the respectively their fields or appointed the hold these investigation, their evidence is again recorded by the court to assess authenticity their work of commission. This is very unfortunate situation. One as believe in the worlds of the experts the presumption is required to be created to expect the evidence collected by commission. 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 need the provisions of order XVIII. Same analogy should be adopted in case of commission under order XXVI this it is necessary to amend order XXVI creating presumption that the commissions that the commissioner have collected a appropriate evidence and save the time of the court which is utilize for recording evidence of commissioners.

Order 33 provides a lengthy procedure for the suit by the indigenes person. In view of the provisions under legal service authority Act all the provision under order 33 become redundant. Now under legal service authority Act a party can get assistance from the states in the form of funds to perches court fees for filing the suits. So it not necessary for even and indigent person to take records order 33. Even if the provision is to remind their, it is required to be simplifies. It is necessary that without folding in lengthy inquiry indigent person to allowed to file the suits on the basis of documentary evidence of his indigence. If during the trial of the suit if it is found that the plaintiff is not indigence, then he may be directed to provide 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 Bombay High Court, Aurangabad bench find that a application filed by indigence person in the year 1962 was not decided till the year 2001. This shows how much delay can be there cause existence of order 33.

Order 38 is about arrest and attachment before judgment when the defendant in order to defeat the advantage of decree expect against things either tries to remove himself from the jurisdiction of the court or try to take away property, the plaintiff by taking recourse to this order can stop the defendant from devoting the ends of justice the provision are very important in nature however the provisions are the procedure it may completed it is necessary to simplify

the set procedure so that the person trying to take this advantage of the delay in justice delivery should be stopped from doing so when the defendant will not succeed in any of his malafied aim he will certainly assess the court to dispose of his cases quickly.

Order 39 is about grant of temporary mention now days 17 per cent of the civil procedure are the relief of declaration and injunction. In every such suit temporary injunction in claim mostly by the plaintiff in any many cases by the defendant too. Certainly it is necessary to preserved the status of the property, as it is still the disposal of the suit, however litigants stage disadvantage of the order temporarily mention. By passing order by temporary injunction the party puts one of the litigated party in the advantageous position to the other person so please them 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 as advantageous position, who achieve this position because of the prompt delivery of the justice by the court now tries to frustrate the every attempt of the court to dispose of the matter quickly. In this way the provision grant of temporary injunction becomes cause of delay in justice delivery.

This problem can be solve by providing temporary mention for particular period or by imposing a difficult on the party in whose favor order to temporary many in granted to dispose of the suit within particular period. If the party did not succeed to do so them injunction granted in this favor should automatically racket. Such order cannot be made unless there is statutory provision in this regard so it is necessary to amend order 39 and remove cause of delay in this set procedure.
