Technique of writing judgement- A different approach

Much is said about the technique and rules to write ideal judgment by proper appreciation of evidence, proper use of language and by reaching to proper conclusion on facts and law. In this article I will consider this subject with different aspect which will help the judges, arbitrators and authorities carrying quasi-judicial functions.

Requirements

The quality of final product i.e the judgment will depend on the material available from which it is required to be shaped, however it is not always possible that quality material for preparing a good judgment will be available. I am deliberately avoiding the words delivering the judgment, because in my opinion writing judgment involves application of mental skill and therefore, judgment is not a product which can be delivered from one place to another with little physical efforts. Comparing it with delivery of a baby may also not be very appropriate because mother delivering baby has no entire control on colour, looks and qualities of baby as it depends on genes the baby has got in her chromosomes. On the other hand two judges on the basis of same material placed before them may come up with two totally different judgments. We all know that pleadings of parties, evidence adduced by them, arguments, precedents relied and applicable is the material available with a judge before he prepares to craft a judgment. We have to skillfully use the material before us to prepare a good judgment. I am describing some of the materials and its use .

Pleadings

As we all observe, finding a proper pleading is now a days a rare phenomenon. In many Plaints and written Statements unnecessary facts are described at length. In many cases the facts ascertaining right or fortifying defence lack description. It is necessary to read the pleadings with reference of the documents supplied by the parties in support of their case. This will help in stating the facts of the case with clarity in Judgment. Pleading, may it be a plaint or written statement, is an example of craftsmanship of the advocate preparing it. The aim of the Advocate is to protect the interest of his clients and in order to get required relief for his client he may wrist the facts. Similarly in the return statement advocate will take various permissible and impermissible defences. First thing while framing the issues is to find out material proposition of facts from which the issues arise. If the judge framing issues and the judge deciding the case is the same then it becomes easy for him to take note of pleading forming material proposition and the pleading not useful for any purpose. Summary of the pleading is required to be incorporated in the judgement. While summarizing the pleading it is necessary for a judge to find out what is material pleading and mention it in the judgement. This will help to make up the mind to appreciate the evidence regarding material proposition of facts and apply law to the proved facts.

Contest

Good Judgment can only be written when there is a contest. If there is no contest then the matter will only be decided on the basis of admission of party by a formal judgment. Quality of judgment will obviously depend on degree of contest. If the defence is multi cornered and exhaustive, more material will be available for discussion in judgment. It is not that you cannot write a good judgement in absence of the defence. Sometimes the ex-parte proceedings give an opportunity to write a good judgement. There are ingenious litigants who place before the court fabricated facts asserting their rights, manage to keep the defendant away from the trial, get an *ex Parte* order and then if the judge is not alert and casual he grants *exparte* degree taking advantage of this situation. It is therefore necessary to be more cautious while granting *ex Parte* decree.

Evidence

Evidence, authenticity of which is checked by cross-examination, is an essential requirement for writing a good judgment. There are some disadvantages in the adversary legal system. One of them is examination and cross examination of witnesses which may lengthen the trial for months and years. If the witness is honest and his honesty forces him to speak against the party examining him then he is discredited by getting him declared hostile. Many a times to safe guard their interest parties do not introduce evidence of truth. The parties encourage outrageously partisan and often deliberately false testimony to be placed before the court. As far as possible these demerits can be avoided by keeping check and by taking recourse to all the powers enshrined in the judges by the Evidence Act at the time recording evidence,

Arguments

Many a times we think that it is only waste of time to hear lengthy arguments of advocates of the parties when we have all the material for writing judgment before us. It is not so. In my opinion arguments disclose the angle of approach advocate for respective parties towards the facts of the case and the law and precedents on the point, therefore, hearing of arguments is necessary before we proceed to write judgment. It is true that many a times the advocates submit lengthy arguments and repeat the submissions and go on reading evidence. However, if we are prepared by going through the evidence and display to the advocate our study of the we may succeed to restrict them. Similarly, when the advocates realise that the Judge is well versed with the precedents on the subject matter comes prepared with facts on the date of arguments then the advocates desist from submitting precedents not relevant and forward facts which are disproved or not proved. One more aspect about precedent is that some advocates without reading the entire judgment just refer to notes in the commentary or digest and come up with case laws from different High Courts. In fact the Judgments of Supreme Court by principle of stare-decesis and Judgments of the High Court under whomyou are working as court of Record are binding. Judgments of the other High Courts may be binding when Court of Record has no observation on the point dealt by other High Court. Ask the advocate to show that the Court of record has no judgment of the said point and he will not rely on judgments of other High Courts.

When to start

Normally the process of preparing judgment starts after hearing arguments. In my opinion it will be beneficial if we start the process from the date of filling of written Statement of the defendant. Even otherwise in view of S. 89 and order X of the Code of Civil Procedure the court has to apply its mind to the pleadings either to explore possibility of disposal by ADR or narrow the compass of controversy. On filling of the written Statement in view of O XIV the Court has to hear the advocates of both the parties on the point of framing issues. While doing so simultaneously mark the part of pleading of both the parties giving rise to question in controversy and essential to ascertain rights and liabilities of the parties. Properly framed issues are necessary for writing a good judgment. The above practice will give you opportunity to frame proper issues and the parties will also have no complain of framing improper issues or applying for framing necessary issues by the court. If the case comes to you at the stage of evidence, then the first thing is to verify whether the issues are properly framed or not, if not recast issues, frame additional issues or delete the unnecessary issues as the case may be.

Record the evidence with a view that you have to prepare good judgment from the evidence. If you record evidence with this view, you will be in a position to avoid unnecessary evidence entering on record and you can exercise your power of questioning the witness if any fact is left by the parties to be brought on record regarding fact in issue. Again, at the time of arguments, if you are aware that this is a part of process of writing judgments, then you can extract views of both the parties regarding facts of the case, law on the subject and precedents supporting views of both the parties. If the matter is well

contested, then after arguments a situation will arise before you pointing out that both the parties have strong case and thorough reasonings are required to be given when deciding in support of your findings. The judgment prepared under these circumstances will be a well-reasoned judgment may or may not your findings are affirmed by the appellate court. Mind well merit of the judgment lies in the reasonings given by you.

Confusion at the conclusion of trial

As I mentioned earlier more the balancing case is placed before the judge more better judgement he can give. At the same time when rival parties have good case, there is a chaotic situation in the mind as to what should be findings. When you overcome this difficulty there is further confusion in arranging the evidence and argument to give it proper shape of reasoning supporting the findings and brushing aside the case of the party against whom the findings are given. When the mind is in this situation there is a possibility that we may resolve to following mental attitudes.

Ineffective way to handle

Withdrawal

Some of us used to withdraw themselves from decision making process just to avoid the mental exercise of defusing confusion. This practice results in causing inordinate delay in deciding the cases. The preparation, if any, made by such a judge as discussed above will automatically fade from his memory making it for the difficult to deliver good judgement at any period of time. Withdrawal from judgement shaping process will end up in writing a judgement which will not be up to Mark.

Postpone

This is also a sort of withdrawal, may not be because of confusion, but because of workload or improper management of dockets. Here the judge decides the case after adjourning it on multiple occasions, which leads to brushing up the previous preparations made at the time of hearing arguments by the mind of the Judge.

Speed Up

Some judges try to keep ahead of the confusion involved in decision making process by deciding the cases then and there. This is also a good technique to avoid allegations. This may be a good practice while deciding the cases in which there are fewer controversies or the cases out and out giving a clear picture of the findings or where there is nothing much to assimilate through thought process. In the cases, which give rise to the confusing state of mind, it is necessary to give your mind time to adopt thought process and sequencionalise proved facts, settled law and satisfaction of norms to use discretion, if the case in hand requires such use, as in the case of specific performance. Even if we compare our mind with computer, it requires time to collect and compare the data feed in it. In some cases, speeding up the process to deliver the judgment denies opportunity to mind to involve in thinking process in shaping and assigning reasons and thereby prepare a best judgment. The gap between hearing arguments and delivery of the judgment shall however not be too long to bring the mind in the state of confusion and judgment be written when the thought process which has triggered up on hearing arguments continues without hindrance.

Effective ways to handle confusion and to reach proper conclusion

Books are the only friends of the judges. Take the help of commentary books to enlighten yourself on the subject matter of the confusion. Find out the precedents on the point and go through them. This will help you a lot in defusing the confusion. One more method is to ask ourselves as why to believe

each of the parties and engage the mind in evaluating the case of each party to derive an answer. More meticulous method is to prepare a chart of material supporting either side with the help of evidence on record, precedents and law on subject and compare the material. First read evidence and mark out proved facts. This you can do while hearing arguments. Compare proved facts of each side and select the most believable possibility supported by evidence. Apply law to the proved facts affirmed by you to determine whether right asserted by plaintiff is established or defence raised by defendant negates such right. This process will bring you to proper conclusion and address your confusion and also evolve reasons in support of conclusion. If this habit is adopted during the initial period of judgeship then with the experience the judge will master the art of reaching to conclusion within no time and assemble the reasons supporting his conclusion at the fastest speed making him capable to deliver judgement then and there.

Directions in the Codes and manuals

It is appropriate to write that the provisions of the Civil Procedure Code and Civil Manual in respect of judgements in civil suits and orders on interlocutory applications in civil suits and the provisions of the Code Of Criminal Procedure and Criminal Manual in case of writing judgements in criminal cases and deciding other applications in criminal cases be scrupulously followed while preparing judgments. Judgments of the High Courts and Supreme Court also guide us regarding the methodical approach required while writing judgments. Knowledge of language also plays its own role in preparation of judgments, may it be English or vernacular, however write the judgment in the language in which you think or learn to think. In my opinion the language of judgment should be simple and clear to communicate your views expressed in judgment to the reader of judgment. The experience of different human feelings and knowledge of its expression will also help a lot in preparation of good judgment.

Mental precedents

Just as the decisions of the Supreme court and the High Courts are reported in the journals, our mind also records the previous conclusions taken by us in previously decided cases. We often encounter with the same set of facts in different cases. While deciding such case we can take the help of pre-recorded data in our mind regarding the reasons for answering the questions under same set of facts. This will save our time and energy, however don't resort to cut paste formula as it may sometimes lead to disasters. Once I came across a judgment of a Civil Judge in which facts of one case and reasons of other case were clubbed because of inadvertent cut paste formula.

Conclusion

Best pleadings, well framed issues, elaborated evidence, logical and affirmative arguments in support of interest of respective clients by the advocates give a best opportunity to a Judge to write best of his judgment. The methodology given by me helps to assimilate mentally all these ingredients and write a well-reasoned judgment. As the Judge matures in experience by adopting the above process, he may not even need buffer time to initiate thought process and assimilate the material. His power to identify the crux will become sharp, he will be master of facts and law and guide the court business to his stride, extract from the advocates only the useful assistance on facts and law and dictate a well-reasoned judgment no sooner the arguments are completed.
