

Bill No. 289 of 2022

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 2022

By

DR. SHRIKANT EKNATH SHINDE, M.P.

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BILL

further to amend the Code of Civil Procedure, 1908.

BE it enacted by Parliament in the Seventy-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Code of Civil Procedure (Amendment) Act, 2022.

Short title and commencement.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

5 of 1908.

2. In section 23 of the Code of Civil Procedure, 1908 (hereinafter referred to as the principal Act), sub-section (3) shall be omitted.

Amendment of Section 23.

Amendment of
section 35A.

3. In section 35A of the principal Act,—

(1) for the marginal heading, the following marginal heading shall be substituted, namely:—

“Additional and exemplary costs in respect of false or vexatious claims or defences”.

(2) in sub-section (1), for the words “of cost by way of compensation”, the words “of additional and exemplary costs” shall be substituted. 5

(3) after sub-section (1), following provisos shall be inserted, namely:—

“Provided that the court shall, while determining the additional and exemplary cost, take into consideration the party’s adverse socio-economic condition and the hardship that may be caused by imposing such costs: 10

Provided further that out of the costs so awarded, part of the costs shall be ordered to be paid to the party against whom the claim or defence of false or vexatious nature has been set up and part of it shall be ordered to be deposited in the Judicial Infrastructure Fund set up under section 149A.”

Amendment of
section 89.

Settlement of
disputes outside
the court.

4. For section 89 of the principal Act, the following section shall be substituted, namely:— 15

“89.(1) Where it appears to the court, having regard to the nature of the dispute involved in the suit or other proceeding that the dispute is fit to be settled by one of the non-adjudicatory alternative dispute resolution processes, namely, conciliation, judicial settlement, settlement through Lok Adalat or mediation the court shall, preferably before framing the issues, record its opinion and direct the parties to attempt the resolution of dispute through one of the said processes which the parties prefer or the court determines: 20

Provided that where the parties prefer conciliation, they shall furnish to the court the name or names of the conciliators and on obtaining his or their consent, the court may specify a time limit for the completion of conciliation and thereupon, the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996, as far as may be, shall apply *mutatis mutandis* and to this effect, the court shall inform the parties and a copy of the settlement agreement reached between the parties shall be sent to the court concerned: 25
26 of 1996.

Provided further that in the absence of the settlement, the conciliator shall send a brief report on the process of conciliation and the outcome thereof to the court. 30

(3) Where the dispute has been referred:—

(a) for judicial settlement, the court shall endeavour to effect a compromise between the parties and shall follow such procedure as may be prescribed;

(b) to Lok Adalat, the provisions of sub-section (3) to (7) of section 20, sections 21 and 22 of the Legal Services Authorities Act, 1987 shall apply in respect of the dispute so referred and the Lok Adalat shall send a copy of the award to the court concerned and in case no award is passed, send a brief report on the proceedings held and the outcome thereof; 35
39 of 1987.

(c) for mediation, the Court shall refer the dispute to a suitable institution or person or persons with appropriate directions such as time-limit for completion of mediation and reporting to the Court.

(4) The court shall on receipt of copy of the settlement agreement or the award of Lok Adalat, if it finds any inadvertent mistakes or obvious errors, it shall draw the attention of the conciliator or the Lok Adalat who shall take necessary steps to rectify the agreement or award suitably with the consent of parties.

26 of 1996.

(5) Without prejudice to section 8 of the Arbitration and Conciliation Act, 1996 and other provisions, the court may also refer the parties to arbitration if both parties enter into an arbitration agreement or file applications seeking reference to arbitration during the pendency of a suit or other civil proceeding and in such an event, the arbitration shall be governed, as far as may be, by the provisions of the Arbitration and Conciliation Act, 1996 and the suit or other proceeding shall be deemed to have been disposed off accordingly.”.

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26 of 1996.

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5. In section 95 of the principal act, in sub-section (1), for the word “not exceeding fifty thousand rupees”, the word “not exceeding one lakh rupees” shall be substituted.

Amendment of section 95.

6. After section 149 of the principal Act, the following section shall be inserted, namely:—

Amendment of section 149.

“149A. The High Court shall set up and administer Judicial Infrastructure Fund for the purposes of development of infrastructure in subordinate courts under its jurisdiction.”

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7. In Order VII of the principle Act, in rule 14, sub-rule (4), for the word “plaintiff’s witness” the word “defendant’s witness” shall be substituted.

Amendment of Order VII.

8. In Order VIII of the principle Act, in rule 1A, in sub-rule (4), in clause (a), for the word “plaintiff’s witness” the word “defendant’s witness” shall be substituted.

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Amendment of Order VIII.

9. In Order X of the principal Act,—

Amendment of Order X.

(a) for rule 1A, the following rule shall be substituted, namely:—

“(1A). At the stage of framing issues or the first hearing of the suit, the Court shall direct the parties to opt either mode of the settlement outside the court as specified in sub-section (1) of section 89 and for this purpose may require the parties to be personally present and in case of non-attendance without substantial cause, follow the procedure for compelling the attendance of witness. The court shall fix the date of appearance before such forum or authority or persons as may be opted by the parties or chosen by the court.”;

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Direction of the court to opt for any one mode of alternative dispute resolution.

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(2) rule 1B shall be omitted; and

(3) for rule 1C, the following rule shall be substituted, namely:—

“(1C). Where a suit is referred under rule 1A and the presiding officer of conciliation forum or authority or the person to whom the matter has been referred is satisfied that it would not be proper in the interest of justice to proceed with the

Appearance before the court consequent upon the failure of efforts of conciliation.

matter further, in view of the stand taken by the respective.”.

Amendment of
Order XVII.

10. In Order XVII of the principal Act, in rule 1, the proviso shall be omitted.

Amendment of
Order XX.

11. In Order XX of the principal Act, in rule 6A, for the words, “fifteen days” the words, “thirty days” shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The Supreme Court in the case of *Durgesh Shamra vs. Jayshree* held that if two courts are subordinate to different High Courts, one High Court has no power, jurisdiction or authority to transfer a case pending in any court subordinate to that High Court to a Court subordinate to another High Court. It is only the Supreme Court (this Court) which may order the transfer. Thus, makes section 23(3) of the Code of Civil Procedure, 1908.

Section 89 of the Code which provides for settlement of disputes outside the court is inappropriately worded, as pointed out by the Supreme Court in the case of *Afcons Infrastructure Ltd. vs. Cherian Varkey Construction Co. (P) LTD.* The language adopted has created difficulty in giving effect to the provision. Section 89 should be recast as indicated above. Secondly, the allied provisions, namely, Order X, rules 1A to 1C had been recast in accordance with the provision of section 89. With an aim to make the 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. However, the procedure of section 89 is defeating the purpose of its enactment. Thus, firstly, the Supreme Court in the *Afcon Infrastructure* case and 19th Law Commission in its report no. 238 titled as “Amendment of Section 89 of the Code of Civil Procedure, 1908 and Allied Provisions” recommended certain changes which has been incorporated in this act.

In addition to it, various Judgments of the Supreme Court and High Courts had time and again emphasized that the lack of appropriate provisions relating to costs has resulted in a steady increase in malicious, vexatious, false, frivolous and speculative suits. Any attempt to reduce the pendency or encourage alternative dispute resolution processes or to streamline the civil justice system will fail in the absence of appropriate provisions relating to costs. The Supreme Court in the case of *Sanjeev Kumar Jain vs. Raghbir Saran Charitable Trust* addressed the issues relating to costs. Thus, in order to deal with the matter in depth the Law Commission in its report no. 240 titled as “costs in civil litigation” addressed this issue keeping in view the triple goals of (i) ensuring realistic and reasonable costs to the successful party, (ii) curbing false and frivolous litigation, and (iii) discouraging unnecessary adjournments.

Hence this Bill.

NEW DELHI;

23 November, 2022

SHRIKANT EKNATH SHINDE

ANNEXURE

EXTRACTS FROM THE CODE OF CIVIL PROCEDURE, 1908

(ACT NO. 5 OF 1908)

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Compensatory costs in respect of false or vexatious claims or defences.

35A. (1) If any suit or other proceedings including an execution proceedings but excluding an appeal or a revision any party objects to the claim of defence on the ground that the claim or defence or any part of it is, as against the objector, false or vexatious to the knowledge of the party by whom it has been put forward, and if thereafter, as against the objector, such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the Court if it so thinks fit, may, after recording its reasons for holding such claim or defence to be false or vexatious, make an order for the payment to the object or by the party by whom such claim or defence has been put forward, of cost by way of compensation.

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Settlement of disputes outside the Court.

89. (1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for:—

- (a) arbitration;
- (b) conciliation;
- (c) judicial settlement including settlement through Lok Adalat; or
- (d) mediation.

(2) Where a dispute has been referred—

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;

(b) to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

(c) for judicial settlement, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(d) for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

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95. Where, in any suit in which an arrest or attachment has been effected or a temporary injunction granted under the last preceding section,—

Compensation for obtaining arrest, attachment or injunction on insufficient grounds.

(a) it appears to the Court that such arrest, attachment or injunction was applied for on insufficient grounds, or

(b) the suit of the plaintiff fails and it appears to the Court that there was no reasonable or probable grounds for instituting the same, the defendant may apply to the Court, and the Court may, upon such application, award against the plaintiff by its order such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury (including injury to reputation) caused to him:

Provided that a Court shall not award, under this section, an amount exceeding the limits of its peculiar jurisdiction.

(2) An order determining any such application shall bar any suit for compensation in respect of such arrest, attachment or injunction.

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ORDER VII

14. (1)*	*	*	*	Production of document on which plaintiff sues or relies.
(2) *	*	*	*	
(3) *	*	*	*	

(4) Nothing in this rule shall apply to document produced for the cross-examination of the plaintiffs witnesses, or handed over to a witness merely to refresh his memory.

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ORDER VIII

1A. (1) *	*	*	*	Evasive-denial.
(2) *	*	*	*	
(3)*	*	*	*	

(4) Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

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ORDER X

1A. After recording the admissions and denials, the court shall direct the parties to the suit to opt either mode of the settlement outside the court as specified in sub-section (1) of section 89. On the option of the parties, the court shall fix the date of appearance before such forum or authority as may be opted by the parties.

Direction of the court to opt for any one mode of alternative dispute resolution.

1B. Appearance before the conciliatory forum or authority.— Where a suit is referred under rule 1A, the parties shall appear before such forum or authority for conciliation of the suit.

1C. Appearance before the court consequent to the failure of efforts of conciliation.— Where a suit is referred under rule 1A, and the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then, it shall refer the matter again to the court and direct the parties to appear before the court on the date fixed by it.

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ORDER XVII

Court may grant time and adjourn hearing.

1. The court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three time to a party during hearing of the suit.

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ORDER XX

Preparation of decree.

6A. (1) Every endeavour shall be made to ensure that the decree is drawn up as expeditiously as possible and, in any case, within fifteen days from the date on which the judgment is pronounced.

(2) An appeal may be preferred against the decree without filing a copy of the decree and in such a case the copy made available to the party by the court shall for the purposes of rule 1 of Order XLI be treated as the decree. But as soon as the decree is drawn, the judgment shall cease to have the effect of a decree for the purposes of execution or for any other purpose.

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LOK SABHA

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BILL

further to amend the Code of Civil Procedure, 1908.

(Dr. Shrikant Eknath Shinde, M.P.)