

Bill No. XXXVI of 2018

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 2018

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further to amend the Code of Civil Procedure, 1908.

BE it enacted by Parliament in the Sixty-ninth year of the Republic of India as follows:—

1. (1) This Act may be called the Code of Civil Procedure (Amendment) Act, 2018.

Short, title and commencement.

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

5 of 1908. 5

2. For section 35A and section 35B in the Code of Civil Procedure, 1908, the following sections shall be substituted, namely—

A m e n d m e n t of sections 35A and 35B.

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"35A. (1) If in any suit or other proceedings, including an execution proceedings but excluding an appeal or a revision, any party objects to the claim or 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

Costs in respect of false or vexatious claims or defences.

thereafter, as against the objector, such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the Court, if it so thinks fit, may, after recording its reasons for holding such claim or defence to be false or vexatious, make an order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 such compensatory, punitive and prohibitive costs as appear to the Court to be in the interest of justice. 5

(2) In determining the amount of costs under sub-section (1), the court shall give due regard to the inconvenience faced by the objector against whom false or vexatious claims were made, the costs of litigation, the loss of reputation of the objector due to such claims and the loss of judicial time: 10

Provided that no Court shall make any such order for the payment of an amount exceeding the limits of its pecuniary jurisdiction.

(3) No person against whom an order has been made under this section shall, by reason thereof, be exempted from any criminal liability in respect of any claim or defence made by him. 15

(4) The amount of any compensation awarded under this section in respect of a false or vexatious claim or defence shall be taken into account in any subsequent suit for damages or compensation in respect of such claim or defence."

Costs for
causing delay.

"35.B (1) If, on any date fixed for the hearing of a suit or for taking any step therein, a party to the suit— 20

(a) fails to take the step which he was required by or under this Code to take on that date, or

(b) obtains an adjournment for taking such step or for producing evidence or on any other ground,

the Court shall make an order imposing such compensatory, punitive and prohibitive costs as appear to the Court to be in the interest of justice and payment of such costs, on the date next hearing following the date of such order, shall be a condition precedent to the further prosecution of— 25

(a) the suit by the plaintiff, where the plaintiff was ordered to pay such costs, 30

(b) the defence by the defendant, where the defendant was ordered to pay such costs.

Explanation.—Where separate defences have been raised by the defendant or groups of defendants, payment of such costs shall be a condition precedent to the further prosecution of the defence by such defendant or groups of defendants as have been ordered by the Court to pay such costs. 35

(2) In determining the amount of costs under sub-section (1), the court shall give due regard to the inconvenience faced by the other party due to delays caused by the delinquent party, the costs of litigation and the loss of judicial time:

Provided that no Court shall make any such order for the payment of an amount exceeding the limits of its pecuniary jurisdiction. 40

(3) The Court may, for reasons to be recorded, exempt invocation of clause (1) if it so deems, fit."

STATEMENT OF OBJECTS AND REASONS

The fact that our justice delivery system is in dire need of reform has been indisputable for years. The number of cases pending in our courts vouch for it. While the pendency of criminal cases has often been under focus, there has been little headway on the civil front. As per 2014 statistics, over 31 lakh civil cases were pending in High Courts. The corresponding figure for District and Subordinate Courts was a whopping 82 lakh. An even alarming aspect of this was that from amongst these cases, the cases that were pending for more than 10 years stood as 5,89,000 and 6,11,000 respectively for the High Courts and the subordinate courts respectively.

A major cause of prolonged judicial proceedings is the tendency among parties to litigation to seek adjournments on one excuse after the other. Moreover, many a time parties make unsubstantiated claims in judicial proceedings and employ it as a dilatory tactic to delay timely conclusion of the proceedings.

The Code of Civil Procedure, 1908 has had provisions to take care of such practices. However, these provisions have largely proved to be inadequate to address the malaise of prolonged judicial proceedings due to various reasons. Firstly, it is discretionary for the courts to impose costs for causing delays and courts have largely shown a disinclination to impose penalties. As a result, litigants often try to delay judicial proceedings and get away without any penalty.

Secondly, section 35A of the Code of Civil Procedure provides for only compensatory costs in respect of false or vexatious claims or defences and disregards the need to impose punitive costs on delinquent parties so as to prohibit them from making false or vexatious claims or defences.

Thirdly, the said section lays down an upper limit of a mere three thousand rupees for compensatory costs and that too is seldom invoked. Though the Supreme Court and the High Courts have plenary powers under their writ jurisdiction to award higher costs, the exercise of power to impose costs by the lower courts is largely fettered by the monetary ceiling laid down under section 35A.

Sections 35A and 35B, therefore, need to be revisited to make them effective in addressing delays in courts.

With the above objects in view, the Bill seeks to propose the following amendments in the Code of Civil Procedure:—

(a) to make it mandatory for courts to impose costs for causing delays. However, the courts may dispense with the requirement to impose such costs in certain exceptional cases.

(b) to provide that punitive costs shall be imposed on delinquent parties which try to make false or vexatious claims or defences in order to deter them from resorting to such practices;

(c) to remove the maximum ceiling of three thousand rupees on costs which can be imposed under section 35A of the Code;

(d) to provide that the factors such as inconvenience faced by the aggrieved party, costs of litigation and loss of judicial time shall be taken into account by the courts while imposing costs on delinquent parties so that the costs imposed are prohibitive.

The Bill seeks to achieve the above objects.

Hence, this Bill.

NARAYAN LAL PANCHARIYA

ANNEXURE

EXTRACTS FROM THE CODE OF CIVIL PROCEDURE, 1908

(5 OF 1908)

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35A. Compensatory costs in respect of false or vexatious claims or defences.—(1) If any suit or other proceedings including an execution proceedings but [excluding an appeal or a revision] any party objects to the claim or 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.

(2) No Court shall make any such order for the payment of an amount exceeding three thousand rupees or exceeding the limits of its pecuniary jurisdiction, whichever amount is less:

Provided that where the pecuniary limits of the jurisdiction of any Court exercising the jurisdiction of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887 or under a corresponding law in force in any part of India to which the said Act does not extend and not being a Court constituted under such Act or law, are less than two hundred and fifty rupees, the High Court may empower such Court to award as costs under this section any amount not exceeding two hundred and fifty rupees and not exceeding those limits by more than one hundred rupees: 9 of 1887.

Provided further that the High Court may limit the amount or class of Courts is empowered to award as costs under this Section.

(3) No person against whom an order has been made under this section shall, by reason thereof, be exempted from any criminal liability in respect of any claim or defence made by him.

(4) The amount of any compensation awarded under this section in respect of a false or vexatious claim or defence shall be taken into account in any subsequent suit for damages or compensation in respect of such claim or defence.

35B. Costs for causing delay.—(1) If, on any date fixed for the hearing of a suit or for taking any step therein, a party to the suit—

(a) fails to take the step which he was required by or under this Code to take on that date, or

(b) obtains an adjournment for taking such step or for producing evidence or on any other ground,

the court may, for reasons to be recorded, make an order requiring such party to pay to the other party such costs as would, in the opinion of the Court, be reasonably sufficient to reimburse the other party in respect of the expenses incurred by him in attending the Court on that date, and payment of such costs, on the date next following the date of such order, shall be a condition precedent to the further prosecution of—

(a) the suit by the plaintiff, where the plaintiff was ordered to pay such costs,

(b) the defence by the defendant, where the defendant was ordered to pay such costs.

Explanation.—Where separate defences have been raised by the defendant or groups of defendants, payment of such costs shall be a condition precedent to the further prosecution of the defence by such defendant or groups of defendants as have been ordered by the Court to pay such costs.

(2) The costs, ordered to be paid under sub-section (1) shall not, if paid, be included in the costs awarded in the decree passed in the suit; but, if such costs are not paid, a separate order shall be drawn up indicating the amount of such costs and the names and addresses of the persons by whom such costs are payable and the order so drawn up shall be executable against such persons.

RAJYA SABHA

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further to amend the Code of Civil Procedure, 1908.

(Shri Narayan Lal Panchariya, M.P.)