The Government of the People's Republic of Bangladesh

The Law Commission

Report on
Recommendations for Expediting Civil Proceedings

Old High Court Building
Dhaka-1000

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Law Commission's Recommendations for Expediting Civil Proceedings

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The problem of delay and backlog in the disposal of civil suits and cases has become alarmingly perennial, resulting in unbearable cost and time, and posing serious threat to access of the people to justice. A fresh amending look at the Code of Civil Procedure, 1908, the Civil Rules and Orders and the Evidence Act, 1872, for the conduct of civil cases has become necessary.

The Code of Civil Procedure (Third Amendment) Act, 2003, introduced some mandatory provisions dealing with compensatory cost, revision, adjournments, revival of suits, fixation of suits in daily cause list and others with the purpose of restricting the scope of the parties to resort to dilatory tactics and requiring the courts to follow the provisions to expedite the civil proceedings. Unfortunately these provisions are not being properly followed. Under the circumstances, the Law Commission recommends to undertake the following measures, both legislative and administrative, to expedite the proceedings of civil suits.

1. Service of summons

1.1 Shortcomings of Order V Rule 15 of the CPC

Rule 15 of Order V says that in the absence of the defendant, service may be made on any adult male member of the family. Under this rule even the wife of the defendant cannot legally receive summons. However, the wife of the defendant or any adult female member is likely to be available at home when summons has to be served during working hours. The ineligibility of the female to receive summons delays the process of its service as the process server has to return the summons unserved, if the defendant or any adult male member of his family is not available. This rule is also discriminatory against women, and there is no reasonable ground for its existence to-day.

Recommendation

Rule 15 of Order V can be amended by deleting the word ‘male’, thereby including any adult member of the family who is permanently residing with the defendant to be eligible to receive summons. The words ‘member of the family’ needs clarification. There is already an ‘Explanation’ under the same provision which excludes the servant as member of the family. The existing note of explanation can be further clarified by inserting a specific definition of the member of a family, which will include any person residing permanently with the defendant except servants.

1.2 Service of summons introducing new method

Service by post includes only government institutions responsible for postal service. However, the courier service may be considered for inclusion as this kind of service has become popular and trustworthy. The District Judge of each district can be empowered by the law to make a list of agents of such courier service available in his particular district. The courier service can be approved as an alternative to government postal service.

The other alternative service may also be fax message or electronic mail (e-mail). This is very useful where the defendant is an employee/employer in a public or private organization or business enterprise or resides in places outside the jurisdiction of the court. The soft copies of plaint or petition can also be served along with the process in this way. Courier service and service through fax and e-mail has already been recognized in India by the Code of Civil Procedure (Amendment) Act of 2002.

The advantage of fax, e-mail and courier service is that these services will be made at the expense of the plaintiff and he will be responsible to make the service on his own initiative. Thus it will ease the workload of the process-servers as well as the courts, and will at the same time expedite the service. Another aspect is that it will reduce the scopes for malpractices in the service of summons.

Recommendation

A new rule can be inserted right after Rule 19B of Order V introducing the above alternative methods, or alternatively some changes can be made in Rule 19B of Order V

or Rule 9 of Order V. There should be clear provisions as to what kind of proof needs to be submitted to satisfy the court that the process has been duly served by the plaintiff; as to who will bear the expenses; and how long the court needs to wait to declare that the process has been served. The main emphasis must be on the satisfaction of the court that the summons has been served in one or any of the different modes, which would enable the court to take the next steps. It has to be made clear that these services will be alternative to the postal service.

A minor change should also be made in Rule 1 of Order IV, indicating that in case of alternative service a petition on behalf of the plaintiff stating that he wants to serve the summons through courier service or fax message or e-mail within the date mentioned by the court, is sufficient.

2. Amendment of pleadings

One of the causes for delay in civil suit is frequent amendment of pleadings even at the stage of argument. This kind of amendment at such belated stage sends back the case to its initial stage. To prevent such practice there should be some kind of restriction on amendment after the commencement of trial.

Recommendation

Rule 17 of Order VI can be amended by inclusion of a proviso stating that no application for amendment shall be allowed after the trial has commenced unless it can be proved that any subsequent event has occurred after the trial had commenced, and the court thinks that in spite of due diligence shown by the party the matter could not have been raised before the commencement of the trial.

3. Compensatory cost in respect of false claim

Though the mandatory provision of awarding compensatory cost has been inserted under section 35A of the Code of Civil Procedure by way of amendment in 2003, the court has no power to impose such cost unless any party complains about false claim. The court can be empowered to award compensatory cost even in a case where there has been no

complaint made by the concerned party, if there is reasonable ground to believe that certain claim was false or vexatious.

Recommendation

Section 35A of the Code of Civil Procedure can be amended to increase the power of the court to award compensatory cost without any application from any party of the suit. However, there should also be a safeguard clause that the sheer non-proof of certain facts will not be sufficient to hold the claim false. There must be some reasonable ground on the face of the record which makes the court think that certain claim was false or vexatious. The amount of the compensatory cost also needs to be considerably increased. The increase must be in progressive gradation and in proportion with the value of the property or assets claimed.

4. Taking evidence in civil suits

Existing practice of taking evidence is time consuming. At the beginning of the trial, the plaintiff with the help of his lawyer states the whole plaint, which was written in accordance with his advice and submitted before the court. Similarly the defendant has to state whatever was written in his written statement. This oral repetition of what was already stated and submitted in written form can be dispensed with.

Recently (2002) amended relevant provision of Indian CPC says that examination-in-chief of a witness shall be on affidavit and either the court or the commissioner appointed by the court will take evidence only in cross-examination or re-examination. It also empowers the court to make an order as to the admissibility of documents filed along with affidavits. This kind of changes in taking evidence will save time of the court causing no harm to any party in any way.

Recommendation

Certain amendments can be made as regards Rule 4 of Order XVIII and Rule 1 of Order XIX of the Code of Civil Procedure and the Evidence Act, 1872 to effect the proposed changes in taking evidence in civil suits. It is already in Rule 1 of Order XIX that in exceptional circumstances, the court can order that any particular fact may be proved by affidavit. In that case no oral testimony is needed to prove the fact. By effecting some

changes in the said rules and relevant provisions of the Evidence Act, the statement in the plaint can be treated as evidence of the plaintiff, and similarly the statement in the written statement can be treated as evidence of the defendant. Courts need not write down the statement of plaint or written statement. The original documents necessary to prove one's own case may be required to be submitted along with an affidavit at the time of trial and those will be given exhibit mark in accordance with the provision of the Evidence Act.

At present the document which is less than thirty years old needs to be proved by the executant or the attesting witnesses who signed the document no matter whether other party raises any objection or not. The certified copies are to be proved after bringing the volume from the Sub-Registrar's office. And the party who is the holder of the document has to bear all the expenses of proving his document. Instead of this practice, any original deed and certified copies of original deed no matter how old it is can be taken as evidence directly unless an allegation of false personification is raised by any party. If any party raises specific allegation of false personification, only then the documents may be required to be proved, and all the costs of proving such document must be borne by the party who raises such objection. Relevant provisions of the Evidence Act need to be amended in this respect. This will not only prevent delay in proving documents but will also discourage the disputant parties to raise unnecessary objection against the genuineness of any document.

5. Execution cases

Presently parties need to file a separate execution case to execute a decree, although it is the continuation of the original suit. The decree-holder needs to obtain certified copy of the decree to file the execution case, and the court usually calls for the records of the original suit for the purpose of verification. All these cause delay in execution process and unnecessary burden on the litigants.

Recommendation

It is suggestible that a party be allowed to submit a petition in the original suit (as a part of it) to start an execution of a decree. There is no need to file a separate case in this respect and thereby there is no need to call for the records or submit any other document to start execution process. However, the other party must be duly informed about the

petition of the decree-holder and the start of the execution process. In order to introduce this process certain changes can be made in the relevant rules of the Order XXI of the Code and the Civil Rules and Orders.

6. Interlocutory matters relating to local investigation and inspection

Rules 9 and 10 of Order XXVI of the Code empower the court to issue commission for local investigation. Court can also issue commission for local inspection (Rule 7, Order XXXIX). In both cases it takes a long time to take decision on the report of the commissioners. In the meantime the whole process of the original suit gets stuck up.

Besides this, in case of local investigation, survey-knowing advocates are appointed. They are very reluctant to work taking very long time to submit their report, and the number of survey knowing advocates is also limited. Their neutrality is also often questioned.

Recommendation

In the above circumstances, we propose to make specific provision to dispose of these interlocutory matters during the trial of original suit. The court can easily dispose of these matters at trial stage if the court thinks appropriate. However, if the commission report is rejected, only then the court can issue an order for reinvestigation or re-inspection postponing the proceedings of original suit.

Secondly, in order to stop delay in submitting commissioner's report in case of local investigation, the surveyors appointed by the government in local land office can be engaged. As government employees, they are subject to more accountability, and disciplinary measures can be taken against them, if necessary.

7. Orders X to XIV of the CPC

Unfortunately, Orders X to XIV which are immensely important for proper case-management, clarification and simplification of cases are not properly used by our courts. These Orders which relate to admissions and denials, interrogatories, discovery,

inspection, framing of issues etc. can be greatly used by a prudent and initiative taking judge to involve the parties and the lawyers to narrow down the disputed issues, to identify whether a particular case is complex or simple, and to determine what treatment a particular case would require. This is the stage where the mediation-worthiness of the case can be determined. Proper handling of these issues would greatly help life-spanning or scheduling of the case. By making good and judicious use of Order X, the presiding judge may make proper inquiries of the parties to determine their positions on the issues in dispute, classify the case as routine or complex, and even finally dispose of many frivolous and false cases.

For preparing a case for trial particular attention should be paid to the proper use of the rules relating to discovery, inspection and admission in orders XI and XII of the CPC. It is mainly with regard to these matters that the practice of the subordinate courts and lawyers is not sound. Many cases are allowed to go to trial without any preliminary preparation with the result that time and money is wasted.

It is suggested proper training of the judges and lawyers, and monitoring be arranged for the application of the provisions of the above Orders.

8. Transfer of Suit, Remand, Plaint/WS without Basic Documents & Decree with Costs

a. Abuse of the provision of the Section 24 of the CPC by some unscrupulous litigants and lawyers by inserting unfounded statements in the petition under affidavit regarding the P.O. to obtain *mala fide* transfer of the suit from one court to another court especially to cause delay needs to be dealt with severely with penal provision. The superior court allowing the transfer ought to take adequate care, and be subject to monitoring and accountability.
b. Tendency of some judges to dispose of appeal by sending it back for retrial must be strictly monitored, and any such remand on flimsy ground ought to be accounted for.

c. In case of failure to produce any basic document in support of the Plaint or the Written Statement at the time of their submission, a maximum period of three months can be allowed to so produce the documents. Only on further application of any party explaining convincingly any extra-ordinary circumstances which prevent them from submitting the documents, the above period can be extended by the court.
d. No defeated party should be immune from paying cost without showing sufficient reasons. In most cases the trial judge gives decree without cost, not showing reasons for it, which he is under obligation to do. Decree with adequate cost is likely to reduce the number of false and frivolous cases.

9. Administrative measures for balanced distribution of cases and judges

Suits are filed in accordance with the rules of territorial and pecuniary jurisdiction of a particular district. Sometimes it is found that a particular Upazila, usually the Sadar Upazila, is over-burdened with many cases whereas the Upazila in a remote area of a district has fewer number of cases. In such cases the judge in charge of Sadar Upazila will be overburdened and the judge in charge of remote Upazila will be less-burdened. The district judge has power to withdraw cases from any court as well as to send those cases to another court. However, this power is not always exercised.

In order to solve this problem, a circular can be issued from the concerned authorities that every three months, the district judge will take stock of the number of the cases in each court and will distribute the cases equally as far as possible.

Besides, the authorities need to ensure that more judges are posted in the districts where there are comparatively more cases. Maintenance of balance and proportionality, as far as possible, between the number of judges and number of cases in different districts can be one of the ways to ease pressure on the over-burdened courts and optimize the work of less-burdened courts.

10. Training for the judges and lawyers

To transact regular functions of the courts and especially to implement and enforce the above recommended measures, it is suggested proper training and motivational works be organized for the judges as well as for the lawyers. Unless proper training and motivational works are done, any reform efforts are fated to failure. Judicial Administration Training Institute (JATI) can be reformed, reorganized and its mandate expanded to make a strong institutional framework to provide such training and motivation on a regular basis.

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