

"Salim Advocates Bar Association T.N Case"

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Salim Advocate Bar Association T.N.

Vs.

Union of India¹

In this case a challenge was made to the constitutional validity of the amendment of 1993 and 2002.all the contention of the petitioner thereto where rejected by the hon'ble supreme court. In the very same judgment the supreme court ordered for the formation of a committee headed by the former judge of the court and chairman of law commission of India i.e. , justice m. Jaganardha rao. This was done by the apex court in order to ensure that the amendment were carried out more effectively and they result in better disposal of justice.

It was in this case that an amendment was made so as to give alternate dispute resolution a legal and a recognized status. The committee was ordered to prepare a report on the basic of the amendment made and bring out the lacunas in the amendment made.

¹ AIR 1 SCC 49,2003

The committee there after prepared a report and divided into 3 parts .but before dealing in the amendment placed in those reports it is important for us to understand that the code of civil procedure laws and it is under this code , that all the civil court procedure were regulated.

The amendment of 1999 and 2002 were mainly brought so as to regulate the judicial system by providing a speedy trial system and eliminating the delay in the disposal of the case. If we try to summarize then following are the major amendment made in 1999 and 2002 :-

- i. Summons should be delivered to the defendant within 30 days from the date of the filing of the suit.
- ii. The written statement should be filed within 30 days . The courts may extend this period up to 90 days.
- iii. The penalty for non appearance and default has been increased to Rs 5000/-.
- iv. In the case of decree for payment it is judgment debtor does not pay, he can be detained in civil prison, if the default is for payment up to Rs 2000/-, he will not be detained in prison.
- v. In case of attachment while executing a decree, the monthly salary up to rs1000/- and 2/3 of the remaining salary exceeding Rs 1000/- will not be attached.
- vi. The amendments passed the way to the new and efficient methods for settlement of disputes ,arbitration, conciliation ,and meditation . Lok Adalat is very good example for this.
- vii. There is a provision for the defendant to get compensation for the expenses incurred, less than of reputation caused to him because of his arrest or attachment of his property.
- viii. After the amendment, if the value of subject matter of the suit is below Rs 1000, such disputes cannot be appealed.
- ix. If the case is adjusted by a single judge of a high court whether in the original or appellate jurisdiction, no appeal will be entertained against the order of the single judge of the high court.
- x. There is no second appeal if the subject matter of the suit is for the recovery of the money not exceeding Rs 25000.
- xi. The court may adjourn the framing of issues for a period not exceeding 7 days while examining the witnesses or examining the documents presented before the courts
- xii. Any party to the suit will not be given more than 3 adjournment during the hearing of any suit.

- xiii. The court will pronounce the judgment once the trial is over. The court shall pronounce judgment within 30 days from the conclusion of hearing, but before 60 days from the conclusion of the hearing.²

Therefore we see that all the amendments made in 2002 were mainly done to make the judicial system more effective, to minimize the delay and to improve the trial procedure to a very great extent. We may classify the amendments made under three categories-

- I. Pre-trial proceeding
- II. Trial proceeding
- III. Settlement of disputes outside the court

I. Pre-Trial Proceeding

a) Institution Of Plaintiff, Along With Document To Be Referred

Order VI rule 17 of the court which dealt with the amendment of pleading was deleted by the amendment of 1999, but was again restarted by amendment of 2002, with an extra provision which was done to prevent application for amendment being allowed after the trial has commenced, unless the court finds sufficient cause that the party could not have raised the matter before the commencement of trial. This was the most important step which was taken in order to put an end to the false application which were filed only to delay the trials. The committee claimed that such an amendment was illegal as the party now could not put up with entire facts of the case and related issues as and when confronted the court held that there was no illegality in the provision.

b) Summon Of Opposite Party

In the amendment order V rule 9 permitted the service of summons by party or through courier. The provision is valid as far as the courier has been sent in normal procedure and defendant accepts the service. Earlier the defendant used to refuse to accept the summons which caused unnecessary delays. The court has now ordered that the courier report about the defendant's refusal to accept the summons would lead to serious malpractice and abuse. The committee in

² <http://blog.ipleader.in/indian-civil-procedure-code>

this regard requested the high court to make a provision for filing of affidavit setting out details of the entire scenario during the time of refusal of service so as to find out the correct and appropriate details of the issue of summon and its acceptance

The court decided that the summon shall be send by the officer of the court and the plaintiff now is required to only pay the delivery cost and provide for the no. Of copies required summons may also be delivered through facts emails etc. In case the defendant refuse to accept the summon the court may make declaration that the summon was duly served.

c) **Filling Of Defendants Written Statement**

As per the amendment of 1999, order VIII rule 1 provided that the defendant shall within 30 day from the date of service of summon on him, present a written statement of this defense. The strictness of this provision was reduced by the amendment of 2002 which extended the time for filling return statement on recording sufficient reason thereof. The time period was raised to limit of maximum 90 days.

The committee raised a question regarding the mandatory or directory nature of this order VIII rule 1.

The court in the case *Raja buland sugar co. Ltd. Rampur vs. the municipal board*³

Rampur the constitutional bench held that such a question cannot be resolved by laying down any general rule and it would depend upon the fact of each case for that purpose the object of the statute is making out the provision in the deterring factor. Thus we need to examine all the factor of the case in order to determine the nature of the provision, whether it is mandatory or directory.

II. **Trial Proceedings :-**

a) **Presentation Of Oral Documents**

Insertion of sub rule 3-d. In rule 2 under order XVIII in first schedule provided for a rule which states that the court may fix a time limit for oral argument during the trial of a case. This provision was one of the most useful one it is prevented parties from causing

³ AIR 1965 sc 895

unnecessary delays. This provision omitted by 1999 but was reinserted in amendment of 2002.

b) Examination In Chief Cross Examination By The Other Side Of Both Parties Witnesses

Prior to the insertion of the sub section 2 of section 26 and rule 15 (4) to order VI rule 15, there was no need of filling affidavit along with the pleadings. The new provision however required the parties to furnish an affidavit in support of the pleading. The committee argued that demand of affidavit was illegal and unnecessary. According to them it was an extra burden and additional responsibility on part of administration.

According to this amendment the examination in chief and cross examination of the witness shall be portrait on the affidavit. The court need that this was a step much needed so as to verify the statement made in the court by different parties.

c) Adjournment

Changes were made regarding the provision of adjournment XVII. Two measure amendment made, one of them was that no party shall be granted more than 3 adjournment and another was the cause related to cost adjournment there are certain cases as the court said that which are beyond the control of the parties and hence they had no control over the adjournment as well. In such cases it will be upon the discrimination the court. The court also has the power the impose certain cost adjournment. The committee said that such a rule would not be beneficial in order to render justice, the court however held that insertion of the rule aforesaid does not take away the inherent power of the court which allow it to give adjournment as it deems fit along with some cost.

d) Pronouncement Of Judgment And Decree And Order

In the cases of sales of defendant property in order to receive the claim awarded to the plaintiff , the amended provision now extended the time limit from 30 to 60 days. This amendment removed the difference between the code and limitation act. Where in 60 days are given to the defendant before making the sale absolute.

According to the court this amendment was necessary so as to provide the sufficient time to those defendant who could establish the claim from different source only if time given.

e) **Revision Of Lower Court Order**

The amendment as to section 115 brought a disadvantage to the party of suit. According to this amendment section a petition of revision of the order of the lower court can only be filed by the person. In whose favor the order has been passed . This was done by the court in order to prevent unnecessary delays in the trail. Therefore now for example if a plaintiff in a suit uses to make any change in the plaint and the trail court reject the application , the high court now cannot reverse the order except in the order has been in the favor of concerned plaintiff .

f) **Appeal**

Under the substituted section 102 the provisions of appeal where amended where the court held that no appeal shall lie from the judgment of single bench of high court and no second appeal in any suit whether from high court or lower court shall be allowed if the subject value of original suit is up to Rs 25000.⁴

III. **Settlement Of Dispute Outside The Court**

One of the major amendments made during the amendment of 2002 was the insertion of another means of setting dispute outside the court. In our research case this amendment was the major issue that was taken into consideration. Section 89 was inserted which dealt with the provision of setting dispute outside the court. Following are the method that were established in order to find an alternative to the setting of dispute:-

- i. Arbitration
- ii. Conciliation
- iii. Judicial settlement including settlement through Lok Adalat
- iv. Mediation

The committee raised several doubt as to the application of the section. Firstly it was disputed that the whether it would be extra burden on the parties another procedure to be followed

⁴ arvindadvocatesupremecourt.blogspot.in/0009/02/note-on-civil-procedure-code-amendment-html.

before the actual justice is rendered. Another major issue was of applicability of arbitral rules on the family court.

The court held that this was the necessary step so as to ease the burden upon the court. It would further reduce delay and provide alternative remedy to those who do not wish to go through lengthy court proceedings. The person appointed to solve the dispute by either be government person, anybody appointment by the court or any other person as decided by the parties.

IV. Judgment

The supreme court however found no such provision which may be such as to challenge the constitutional validity or be state as illegal. The court and other various learned counsel like Mr. Vaidyanathan said that some classification maybe necessary but as such there are no such issues which are so frame as to challenge the constitutional validity of the code itself and therefore the petition was dismissed.

Critical Analysis Of The Case

The basic technicality of the case was that, that the major amendments were made in the procedure code regarding the proceeding in the trial court another major change in the court by inserting the concept of alternative dispute resolution.

Firstly, the concept of attesting affidavit in support of statement by the witnesses and also while dispensing the evidence attaching affidavit in support of the evidences by the opposite parties. It may prolong the time period of the trial. Another major change was to produce the evidence in the open court and not before the committee, accept in exceptional cases. To add on to the extra procedure and difficulties in the path of the litigation. The provision was to record the statement in the open court wherein there shall be a commissioner recording the statement and then furnishing there to the court. This increased the expenses and also caused troubles to the parties to the suit. Now if we practically analysis the situation me may see that judge does not has time to watch the recording of the statements for which the witnesses furnished an affidavit. According to the criminal procedure a watch over the body language of the witness and his manner of giving the statement also hold an important part of duties of the trial judge while recording the statement of evidence.

If it continues this way then we may assume the trial court to be the appellate court. Both of which neither see nor record the evidence either in chief or cross but shall be deciding the case on the basis of those evidence.

Now the cases can be listed in any manner and at any time of the day, the lawyers therefore need to remain in the court for entire day as they cannot miss such an important part of the case. This has no doubt reduced the pressure of the courts but has added on to the pressure of the lawyers.

Lastly the concept of alternative settlement of dispute added on to the worries of the litigants. The litigants after trying all the means appear to the court and the court have the power to refer the case to arbitration which acts as a barrier on the rights of the parties. Such a measure should only be adopted when both the parties agree to it.

Thus, in order to bring a convenience between the bench and bar, it is important to analyze the problem and find a solution thereto.

Conclusion And Suggestion

When the concept of the recording the statement in front of the commissioner was sort there was many criticisms popped up. This was due to, people feared the judicial system would lose its trustability. In fact, congress (1) member of Parliament Kapil Sibal sir said that, "the entire process any evidence is of great importance, and any omission in it would change the entire facts of the case" and this was the reason he said that he wanted that it should be the judge who would actually monitor the entire recording of the evidence. But after analyzing the entire research we may see that it was a necessary step so as to minimize the work load of the court and quicker rendering of justice.

Another major issue was concerning the appeals, which said that no appeals shall lay from the single bench to any higher court, however we cannot ignore the fact that the appeal option from the order of single bench remain open to the divisional bench and hence the litigants still have an option available.

Rest if we talk about time limit described then this would in no way cause injustice to the parties or would be declared to be illegal, because this was solely done to prevent unnecessary delays and prolong trials.

Secondly the provision regarding no second appeal in case where the subject matter of the original suit do not exceed Rs 25000, was corrected by the amendment of 2001 where the statement was changed to that no second appeal shall lie from any decree when the subject matter of the original suit is for the recovery of an amount not exceeding Rs 25000.

Thus to conclude we may say that all necessary efforts were made in order to make the judicial proceeding effective and the trials to be more speedy and worthy so as to render justice to the parties to the suit in the possible manner and in the minimum possibilities.