FOCUS ON ORDER 18, RULE 4 UNDER AMENDED ACT 22/2002 TO CIVIL PROCEDURE CODE

By

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We find a lot of change in the society and metamorphosis in Civilisation. We find growth in all sciences and there are incessant of efforts to glorify the legal field and regain the confidence of litigant public which had its deterioration. In achieving this goal, the Hi-tech Society in which we are living are loosing sight of kindled thoughts raking to the legislative up-gradation. In this regard, I would like to remind the saying of Justice, *Mahamood*, according to whom 'Justice, Hurried is Justice, Buried'. It is so with our legislative amendments in Act 22/ 2002. I feel the amendments are made more hurriedly, without calling for the opinion of the professed scholars in the trail Courts *i.e.*, the Senior Advocates who had been always burning Midnight oil, in 'pickoxing' the pearls of legal classics.

My focus is mainly centering on Order 18, Rule 4 of C.P.C., which is the main tissue for processing the stem of speedy disposal. I feel that instead of activating the speedy trial, the amended provision is an hindrance for trials. I do not find that the said provision is instrumental for rendering justice to the public litigant. The said provision hampers trials. The said amendment which is procedural, takes away the substantial rights under substantial laws. Order 18, Rule 4, encourageous filing of affidavits substituting recording of chief-examination. Mostly the affidavit would nothing but a replica of the plaint or the written statement. The settled law is, that the affidavit is not an evidence and the said amendment runs counter to said proposition of law. Secondly, the appointment of Commissioner for Examination of a witness and the time period given for execution of warrant is 60 days. It is nowhere stated that is it for recording the entire evidence of the suit or for a single witness? What is the effect, in case the Commissioner is not going to complete the evidence within 60 days. Can it be said such a kind of legislation will lead to speedy disposal of cases ?

Nextly, can it be said that an advocate who is untinctured with experience on civil side can conduct trial, record demeanour of witness while under examination.

Another fallacy, I found that objections raised by the parties during the course of taking evidence shall be recorded by the Commissioner and such objections should be presented to the Court and the Court to hear the same at the time of arguments. Mostly, the objections will be taken for admissibility or inadmissibility of the documents. Without deciding the admissibility, there can't be cross-examination on such a document. If the evidence is to be recorded with regard to an inadmissible document, the question of impounding the document doesn't arise. So also, with regard to Section 65 of Indian Evidence Act relating to certified copies of documents. Various intricacies of Law may involve, such as bar under Section 92 of Indian Evidence Act, Section 36 of Indian Stamp Act and also Section 17 of Registration Act. Unless or otherwise, the objections are ruled out there can't be proper examination of witness and after marking documents postponing the decision of admissibility, leads the entire evidence to be otiose.

In this regard, I would like to bring your attention to a decision reported in 1998 (1)

ALT 663, wherein their Lordship clinchingly held that party seeking to adduce secondary evidence in relation to a document under Section 65(b) of Indian Evidence Act *i.e.*, for producing the certified copy of the Original lost, foundation is a condition precedent; what is that foundation? Such a kind of foundation should be pleaded and evidence is to be let in after satisfying the Court in evidence that the original is lost. Foundation once again mean, that it should be pleaded as to under what circumstances the original is lost, the contents of the document, the author of the document, witnesses and the descriptive particulars of the scribe also.

If the evidence being allowed on such a certified copy postponing the decision, the entire cross-examination again becomes *otiose*. If the objection is heard at the final disposal of the case, there is no chance for the party to seek for lying foundation as contemplated under Section 65(b) of the Indian Evidence Act. There is a lot of case law had been flown to the effect that the objection should be heard and decided at first instance itself.

The Legislators or the Law Commission did not focus their attention for the anomalies that are going to take place by such a kind of amendment. There could have been a lot of debate between the Juries, Judges and Advocates before the Law Commission putting its motion for the bill.

There are a lot of changes to be made in CPC, but ignoring those aspects which are settled at naught by number of precedents, unworthy amendments are brought in. The said amendment as discussed above, have got more negative aspects rather than positive. The same is a negative approach which is not for progress in law. I apprehend every danger of injustice being caused to the litigant public. After all it is my opinion and one may accept or negative it.

LAW ON COURT-FEES AND SUITS-VALUATION IN A NUTSHELL

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INTRODUCTION:

Levy of Court fees is unknown to ancient India. Tracing to the history, during Moghul rule and the period prior to that, there was no fees even on the administration of civil justice since administration of justice was totally free. Before the advent of British rule in India, the administration of justice was considered to be the basic function of the-Ruler as guardian of the people without levy of any charge on the party approaching for redress of his grievance. It was only after the British rule that regulations imposing Court fees were brought into existence in or about 1795. In the beginning the imposition of fees was nominal but, in the course of time, it was enhanced gradually under the impression that it would prevent the institution of frivolous and groundless litigation and as an effective deterrent to the abuse of process of Courts, without causing impediment to the institution of just claims. It is from that background the Central Court Fees Act, 1870 was enacted - See AIR1996 SC 676 at Para 6.

The Central Court Fees Act, 1870 consists of 36 Sections in 6 chapters, out of it