

notwithstanding anything contained in any other law for the time being in force a fair and reasonable maintenance be paid to a divorced woman within the Iddat period by her former husband. Therefore the former husband is not liable to pay maintenance to the divorced wife beyond the Iddat period.

Section 3(2) provides that a divorced Muslim woman can submit an application to the Magistrate if the maintenance or dower is not paid to her or if the properties referred to in clause (d) of sub-section (1) are not delivered by the former husband. The Magistrate is empowered to grant the relief if he is satisfied as per Section 3(3).

Section 3 of the 1986 Act itself recognises the rights of divorced Muslim women, prescribes a forum for redress thereof, and prescribes the manner of execution of the order made in that behalf. This makes the Act complete in itself and does not depend for support on any other enactment. The Section begins with a non-obstante clause and it overrides all other provisions of the then existing laws. All provisions contrary to what is contained in Section 3 of 1986 Act, including the Family Courts Act of 1984, shall stand superseded by its provision. A

comparison of the provisions of 1984 and 1986 acts would also show the purpose and scope of the two acts is somewhat different. An application under Section 3 of 1986 Act can lie only before the Magistrate concerned and the Family Court established under the 1984 Act cannot exercise jurisdiction. AIR 1922 All 322 para 12 & 13; 1993 Cr.LJ 1118 (1112) DB (Ker).

After passing of the Act of 1986 a divorced Muslim woman cannot claim maintenance from her former husband under Section 125 Cr.PC - 1990 Cr.LJ 1364 FB (AP). The provisions of Sections 125 to 128 Cr.PC will have no application to the Act of 1986 except in case of option exercised by the parties under Section 5 of the Act to any such claim of maintenance made by a divorced Muslim woman under Section 125 Cr.PC - 1992 Cr.LJ 1823 (1825) (AP).

It is thus clear that a divorced Muslim woman is entitled to maintenance for the Iddat period only, that the Judicial First Class Magistrate alone is competent to entertain the application for maintenance, and that the Family Court has no jurisdiction to try maintenance cases pertaining to divorced Muslim women.

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## HOW TO REDUCE THE SPAN OF LITIGATION

*By*

—**MOHD. OSMAN SHAHEED,**  
Advocate, A.P. High Court

**Justice Delayed is Justice Denied:** Much has been spoken, written on this point. The Bar and the Bench both have expressed their concern on the delayed justice and put forth various suggestions to shorten the life of the litigation since the lengthy or delayed litigation not only over burden the litigants financially, cause them mental torture and agony but also force them to lose faith in the present system of administration of justice, which is of course a sad state of affairs.

That is the reason why Sri *J.S. Verma*, Ex-Chief Justice of India, addressing a function held on 27-9-1997 at Allahabad, while releasing a Book, said that the backlog of cases in the Courts has been engaging the attention for which it is felt that there cannot be an improvement in the justice delivery system till a remedy is found for speedy disposal of the case. He warned that when the disposal starts taking long, Society resorts to extrajudicial remedies which leads to

erosion of legal values and weakness the foundation of democracy.

My experience as a practicing lawyer since 26 years in trial Court and High Court is that the litigants, ordinary citizens, and even law enforcing authorities including Police Officers being fed up with the lengthy procedure of present system of administration of justice are fastly losing faith in our present system of judiciary and preferring to approach the hooligans and notorious elements to hire their services to seek instant and immediate justice and to settle their score with their adversaries.

The question is as to who is responsible to cause delay in the administration of Justice, the Bar, the Bench the litigants or the procedure.

The answer is that it is the “*Procedure*” which is the root cause of the delay in rendering justice.

The Civil Procedure Code, the Criminal Procedure Code are necessary to be applied while deciding a case on hand, by the Bar and the Bench equally, since all the Courts right from the Apex Court to Court of District Munsiff (Junior Judge) are bound to follow the CPC and Cr.PC while deciding a case on hand.

After carefully analysing the situation, I have carved out some suggestions in this article with a hope that the law makers would certainly give a serious thought to it and bring drastic changes in the procedure so as to achieve the object.

Let us first take up CP C and flaws therein. A litigation starts with filing of a plaint before a Court of Law under Order 7 Rule 1 of Section 26 of CPC.

No doubt every relief sought for in plaint is subject to law of limitation and if the plaint is not presented within the period as stipulated under the various provisions of Limitation Act, it is barred by limitation. At the same time there is no time fixed under

law of limitation or under the provisions of Order VIII of CPC to file written statement.

This flaw has often made the Defendant enable to cause unreasonable delay in taking up the suit for trial. This flaw has also compelled the trial Court often to jump his shoulder in utter disappointment showing his inability to gear up the machinery of law and to take up speedy trial. Above all, there are some decisions of Honourable High Supreme Court in which the Apex Court has directed the trial Court to accept the Written Statement even after two years (as reported in AIR 1990 SC P.1147) on awarding cost to compensate such delay. On one hand there is no weapon in the hands of trial Court to compel a defendant to file his written statement within a particular time. On the other hand, there are several decisions of Supreme Court under which the defendant could take shelter to explain his delay for failing to file his written statement at an early date and the trial Court is ultimately held reasonable in not giving speedy disposal of a suit.

No doubt a Court has to give a reasonable opportunity to other side to file his reply but what is reasonable time is not defined in CPC or in the rules made thereunder. Now it is the high time to amend CPC by way of inserting a mandatory provision in Order VIII Rule 1 to limit the time to file Written Statement and counter claim and at the same time cloth the trial Court with unfettered power to invoke Order VIII Rule 10 consequently to pronounce judgment subject to admissibility, maintainability and legality of a suit when a defendant fails to avail the time stipulated to answer a claim made against him.

This will save a lot of time of litigants and Bench both.

After *Written Statement* is filed, stage of framing of *issues* reaches. Let us make it a rule to direct the trial Court to frame issues within a week after receiving written statement of all parties concerned.

Trial Courts often take unreasonable time to frame issues due to overburden of work, increasing number of suits or for running short of time. Whatever be the reason, but after much awaiting for issues, issues that will be framed would be, whether the plaintiff is entitled for the relief sought for and to what relief?

After framing the issues, the Court gives time to the litigating parties to file their documents which were not filed along with their plaint or written statement and also fixes a date for trial, but within what time? It is very difficult to find a provision under CPC or under the law of limitation to fix a time to dispose of a case. No doubt every case has got its own peculiar nature of facts but broadly speaking, there are three types of civil cases viz; (1) Money Suits; (2) Title Suits; and (3) Matrimonial Suits.

#### **Money Suits :**

As far as money suits are concerned, they are often filed by the Banks, Chit Fund Companies, Money Lenders under hire purchase agreements and some times by landlords to recover arrears of rents.

No complicated question of fact or law would arise in such suits. No much time is required to decide controversy raised in the pleadings. These suits are, in my experience even after much show of serious contest, ends into passing a decree in favour of the Plaintiff and then comes a petition praying the Court to allow the Judgment Debtor to pay the decretal amount in installments.

So a time can easily be fixed to dispose of a money suit, say six months to one year, from the date of framing of the Issues. The provisions of Second Appeal as provided under Section 100 CPC should not be allowed to be invoked as far as money decrees are concerned under any circumstances irrespective of the stake involved in it.

My view or suggestions are fortified by a catena decisions of High Courts and

Supreme Court. Both the Courts have time and again laid down that a finding of fact based on evidence arrived at by a trial Court and appellate Court cannot be interfered with in a Second Appeal — 1947 PC P.172, 1994 (1) ALT P.93; 1982 SC 1502; 1980 SC 1754 and 1966 SC 902.

We will seldom find substantial questions of law in money suits. Then why all the litigants involved in such suits should be made to suffer for a third round of litigation (of second appeal) for which they will have to wait for a long time and incur heavy expenses to get their claim satisfied.

#### **Title Suits :**

All other suits involving questions of title, ownership, possession, partition, mortgage, lease *etc.*, shall be directed to be disposed off within a period of two years or three years from the date of framing of issues.

#### **Matrimonial Suits :**

The third category of litigation comprising of matrimonial suits shall be decided within a period of six months from the date of framing of issues. The provisions of Section 100 CPC under which an aggrieved party would file a second appeal setting up a substantial question of law may not be made applicable to suits of this nature as we seldom find a substantial question of law in the matrimonial suits also.

#### **Eviction Petition :**

In order to vacate a tenant from a building under Andhra Pradesh Rent (Lease, Rent and Eviction) Control Act, 1960 a landlord has to file a petition under the provisions of Section 10 of the said Act in the Court of Rent Controller. To vacate a tenant under present system of judiciary at least a minimum period of 3 years is required and at whatever rate of speed the trial Court takes up the trial.

Thereafter the tenant will approach the Appellate authority under the Act. Where another 3 years time will be consumed

to dispose off the Rent Appeal. If any interlocutory application is filed during the pendency of the eviction petition and if the same is dismissed, then the matter will be carried on in appeal or revision and it will take 2 to 3 year time for disposal. Likewise, if the tenant is bent upon to harass the landlord, he can easily protract the litigation for a period of 10 years. If the trial Court and appellate Court give finding concurrently then the matter comes up for Revision. It is healthy sign that now-a-days, the High Court has changed its trend and not at all entertaining a Revision Petition as against the concurrent finding and disposing off the Revision Petition by simply enlarging the time of eviction, but time consumed by the lower Court while giving disposal of the eviction petition is causing much harassment to the parties concerned, particularly in the Metropolis where there is a problem of houses. Landlord always wants a speedy trial in their cases filed against the tenant and at the same time the Tenants want to squat on the demise premises for a longer time because of non-availability of suitable accommodation in the city at a cheaper rate of rent, so it has become a matter of debate and controversy as to how the rent control proceedings should be cut short.

It will again suggest that an eviction petition should be directed to be compulsorily disposed off within a period of six months from the date of service of notice on the Respondent. Where a question of title is involved and if it is a *bona fide* dispute, the parties must be directed to approach a civil Court of law to settle the dispute without wasting much time in the Court of Rent Controller, since our High Court has held in several matters that the question of title is outside the purview of the Rent Control Act and beyond the powers of Rent Controller - *vide* 1983 (1) APLJ P.40. So also it was held that if a third party wants to set up his claim as against the demise premises, he must be directed to file a civil suit instead of impleading himself as party to the Rent Control Proceedings *vide* 1962 (1) An.WR 294, AIR 1953 Mad. 485.

All the above suggestions to time bound the litigation will not be feasible or practicable unless a time is also fixed for disposal of IAs (interlocutory applications) that are often filed during the course of trial of a case by the parties or their parties to the suit. Our experience shows that the parties often file petitions invoking the provisions of Order XIII Rule 2 to file documents at a belated stage *i.e.*, after framing of Issues beyond the time fixed by a Court or at the fag end of the trial. Next the IAs are filed under Order 1 Rule 10 Order 39 Rule 1 & 2; Order 6 Rule 17; Order 26 Rule 9; Order 16 Rule 1 and under several provisions of CPC from time to time. All such petitions are filed to advance the cause of justice.

First of all, office will take a long time to number these IAs. After IAs are numbered, notice will be ordered. After receiving notice the other side will take long time to file his counter. After counter is filed the Court will take long time to dispose of it. After the disposal of IA, the aggrieved party will approach the higher Court. While completing this cycle and the matter returns back to the Court (this way or that way) a considerable time will be consumed. For such purpose and to avoid such delay, period of disposal of IA should be fixed as one month only.

Let an affidavit be attested which is filed along with IA by the Counsel on record, Let other side to file his counter within a maximum period of two days after receiving the notice. Reply affidavit need not be insisted to be filed. Let IA be disposed off within a period of one month from the date of filing of petition as fixed under Order 39 Rule 3(A) CPC.

While resolving the controversy regarding amendment of pleadings the Supreme Court has laid down a ratio in the case of *Haridas v. Godrej*, AIR 1983 SC 319, that the Court should be extremely liberal in granting relief of amendment of pleadings.



The trial Courts also take considerable time to adjudicate upon the petition which is filed to bring the legal representatives of a deceased party to the suit on record. To avoid this delay, let there be a provision in the CPC directing the Plaintiff to file an affidavit along with the plaint as to let the Court know as to who shall be his LRs in case of his death during pendency of suit. If the Plaintiff happens to be a Muslim (contracts a second or third marriage) may be directed to file some time immediately after such marriage an additional affidavit naming his LRs so that the controversy of his LRs after his death may be decided expeditiously and in the same way the defendant may be directed to file an affidavit along with his Written Statement about his LRs. If any exigency arises such as if the wife or any child dies in the life time of the litigant party or a party contracts one more marriage or another child is born after filing such affidavit, such party may be directed to immediately file a memo informing the Court about the subsequent events.

All other miscellaneous petitions filed under different provisions and other statutes should be directed to be disposed off within a period of one month only.

My views are based on decided cases in which the High Courts and Supreme Court have taken a view consistently directing the lower Judiciary to tender substantial justice and not technical justice. The technical justice is no justice. Substantial justice is essentially required to be rendered to make Rule of Law powerful and more powerful. The Court should overlook the technicalities and should not decide the matters or thwarted out merely on the basis of technicalities *vide* AIR 1997 SC P.1315. While deciding petition filed under Section 5 of Limitation Act to condone the delay, the Apex Court of India in its judgment AIR 1987 SC 1353 directed the lower Court to be liberal in condoning the delay. Taking advantage of the decision of the Apex Court, the lower Court should strictly adhere to the principles of leniency in

deciding such matters but still our Courts are harping upon the technicalities.

The trial Court may be directed to strictly follow to dispose off injunction petition within the time prescribed, or else amend CPC so that in case the injunction petition is not disposed off within 30 days from the date of the order granted on such petition, will stand cancelled.

The Apex Court time and again has directed the lower Courts to give time to file petitions to get the matters settled once for all on merits. Under such decision, the petitions filed to set aside the ex-parte decree, ex-parte order and restoration of suits must be allowed without wasting much time, or on terms, within a short time to let the parties have a decision on merits and finality in their litigation.

As far as cases under the Labour Law and Industrial Disputes Act are concerned, same formulae of item bound litigation should be applied by way of prescribing time to dispose off the cases filed under the above statutes.

### **Criminal Cases :**

We are grateful to the Apex Court of India that they have expressed great concern on the delay in disposal of the criminal cases and to cut short the life of criminal cases pronounced a judgment, reported in AIR 1996 SC P.1619, according to which the Supreme Court has laid down a ratio for disposal of criminal cases and also various guidelines under which a criminal case has to be speedily disposed off or else the accused be discharged taking into consideration that speedy trial is the fundamental right of the accused under Article 21 of the Constitution of India. Section 364 of the Criminal Procedure Code is also a very important provision in the amended Cr.PC under which certain period is prescribed for taking cognizance of the cases by the Court concerned.

This is the high time to fix limitation to file charge-sheet by the Police in order

to save the accused from mental torture and humiliation, and harassment, as we have experienced that due to non-filing of a charge-sheet accused suffers unbearable mental torture apart from sustaining disturbance in his normal life and avocation.

The judiciary no doubt strongly reacted against delay in filing charge-sheet or in prosecuting a criminal case by the Police,

treated it as offending the right of speedy trial Quashed the proceedings, on this score alone *vide* 1994 II APLJ SC (1), 1978 (1) ALT (DB) 178 but still procedural safe guard is required by amending CR.PC.

It is high time we have to check the pulse of administration of justice and take necessary steps to check the delay in rendering justice, otherwise the dooms day of judiciary is not far off.

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### JUSTICE DELAYED IS JUSTICE DENIED

*By*

—SIVA, Advocate  
High Court of A.P.

AND

**Dr. G. KAMESWARI**, Lecturer  
Osmania University

#### INTRODUCTION:

Judiciary holds an important place in any system of Government because it determines the rights of the citizens *inter se* as also their rights *vis-a-vis* the State. People approach Courts believing that relief would be granted to them at a reasonably early date. The inability of the Courts to deliver quick and substantial justice to the needy therefore, erodes the faith of the people in the dignity of the Court and in the majesty of law.

The reasons for delay in delivering justice are many. There are several parties to the litigation who contribute to the law's delays, *viz.*, the litigant himself, the lawyer who conducts the case, the Judge who hears and decides it, the prosecuting agency in a criminal trial and last but not the least, the state's Bureaucracy who are the respondents in most of the Writ Petitions in the High Courts. There is no an average 8-9 years gap between the institution and disposal of cases. Civil suits drag on for several generations; fruits of a decree are not being enjoyed in the Party's life time; in a trial in which man's freedom is involved there are cases where

the accused (under trial) was imprisoned for 5-6 years and ultimately acquitted; service matter sometimes come up for hearing after retirement; specially directed matters, where specific dates are fixed for hearing in view of the special circumstances of the case are not being heard because of the heavy work-load in the Courts. Fruits of litigation are not always available in one's own life time.

Delays such as these bring the judicial administration into disrepute and shake the confidence that public have in the judiciary. The habit of challenging every legislations; every constitutional amendment, every rule, regulation, order or project mostly by upper economic class and the stay that follows makes the Court a dilatory agency. Though law's delays have been in existence from very early days, they cannot be looked upon with complacency.

#### *Causes :*

The various factors contributing to the delay in dispensation of justice are as follows: