

The Rule 3 under Order XIX says that affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications on which statements of his belief may be admitted.

Further the deponent deposes on oath and states in the affidavit which is administered by Magistrate under Section 139 of the amended CPC. Any Court may at any time for sufficient reasons order that **any particular facts or facts may be proved by affidavit** or that affidavit of any witness may be read at the hearing on such condition as the Court thinks reasonable.

It is therefore clear that the deponent of the affidavit need not be forced to answer questions **which are not relevant nor not within the knowledge of the deponent**. The same recommendation should have been considered for NI Act. There should not be any disparity.

Sections 151 and 152 of Indian Evidence Act come to the rescue of witness who is exposed to indecent and scandalous questions and to questions intended to insult or annoy the witness. This is generally noticed in the cross-examination of rape victims.

An extract of Sections 151 and 152 of Indian Evidence Act are reproduced below.

#### **Sec. 151: Indecent and scandalous questions:**

The Court may forbid any questions or inquiries which it regard as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

#### **Sec. 152: Questions intended to insult or annoy:**

The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

The amended portions of CPC and the NI Act categorically reiterate that the deponent of affidavit need not answer questions which are not relevant nor not within his knowledge.

In order to remove anomaly in Section 145(2) of NI Act, it is suggested that recommendation made for dispensing with preliminary evidence be implemented by an amendment or to restrict examination of witness **AS TO THE CONTENTS** of the affidavit filed by the witness and administered by the Magistrate and the Courts should not allow cross of witness beyond the purview of Section 145(2) of NI Act in the light of Sections 151 and 152 of Indian Evidence Act.

### **SECTION 21 OF THE LEGAL SERVICES AUTHORITIES ACT 1987 - AMENDMENT SUGGESTED**

*By*

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1. In terms of Section 21 of the Legal Services Authorities Act, 1987, Court fee once paid as a consequence of compromise or settlement arrived at by the Lok Adalats, shall be refunded in the manner provided under the Court Fees Act.

2. When the Court fee once paid is thus made refundable, judicial experience reaffirms my belief, that such a relief or benefit can be extended to the other categories, where the Court fee is to be payable in respect of suits instituted by

indigent persons, covered by Order 33 Civil Procedure Code.

3. It is therefore desirable and profitable, in the interest of litigant public to extend the spirit of the benefit of refund of Court fees to the category of suits covered by Order 33 Civil Procedure Code also to serve as a sort of impetus and a suitable amendment is suggested, bearing in mind to avoid several penal provisions of Order 33 Rules, 11, 11A, 12 and 14 Civil Procedure Code, especially Rules 10 and 11 of Order 33, explicitly reveals that those two rules deal with two different contingencies, Rule 10 dealing with the plaintiff suing as indigent person succeeding in the suit and Rule 11 dealing with his failure in the suit. These rules suggest the mode of recovery of the Court fee payable by the indigent persons.

4. Various High Courts in India have considered the question of payment of Court fee on dismissal of a suit filed *informa pauperis* or by indigent persons and uniformly held that the plaintiff suing in forma pauperis or as indigent person is liable to pay the Court fee if his suit is dismissed with or without contest.

5. Adverting to the position when the plaintiff partly succeeds and partly fails in a suit, the Andhra Pradesh High Court in the decision reported in AIR 1964 AP (*Subbalakshmi v. Collector*) a Single Judge of the High Court of the A.P. has held that there is no express provision made in the Code for the case of the plaintiff succeeding in part, and failing in part, the Court has to necessarily deal with the case by giving effect to both Rules 10 and 11 (Andhra Pradesh) and apportioning the liability for the Court fee between the plaintiff and the defendant upon the Success of each party.

6. The existing provision has to be interpreted harmoniously so as to achieve the benefit intended by the Legislature in favour of the indigent person in filing the suit, for exemption of Court fee consequent on the award of the Lok Adalat, even in the absence of a specific or express - provisions.

7. However in order to set at rest the controversy if any in the absence of specific provision, the Act is to be suitably amended to achieve the object of the Act, and to prevent discrimination and to promote equal opportunity to the indigent persons also.

### Section 21

#### *Award of Lok Adalat*

Existing	As Amended
1. Every Award of the Lok Adalat shall be deemed to be a Decree of Civil Court or, as the case may be an order of any other Court and where a compromise or settlement has been arrived at, by Lok Adalat in a case referred to it under sub-section (1) of Section 20, the Court fee paid in such cases shall be refunded in the manner provided under the Court Fees Act, 1870 (7 of 1870).	(Add after the words under the Court Fees Act, 1870 (7 of 1870) "and the Court fee would have been paid or payable may be exempted in respect of all suits or other categories instituted by indigent persons"