

# ANDHRA LEGAL DECISIONS

2003 (1)

JOURNAL

ALD

## AMENDMENTS EFFECTED IN CIVIL PROCEDURE CODE (ACT 46 OF 1999) A STEP TOWARDS PROGRESS

*By*

—**MOHD. IMTHIAZUDDIN**  
Senior Advocate,  
A.P. High Court

Amendments effected in Civil Procedure Code (Act 46 of 1999) raised alarming protest from Advocates and spread over like a Virus. To what extent the amendments introduce and if brought into force effects the professional handling of Advocate neither projected nor reflected in any Forum. If any Law or amended provision is bad the protest has to analyse by a comparative study of old and new Laws. Secondly the avowed object and duty of an Advocate is primarily to assist the Court. While doing so to defend the cause within the framework of Laws in force. Time and again on every platform whenever opportunity permits legal Luminaries and Jurists alike raised the voice against the Laws framed and brought in force in 1908 which are still continuing even after Independence. The Code of Civil Procedure of 1908 was introduced and enforced when the literacy among Indians was at the lowest ebb. At that point of time perhaps it was visualised that to achieve the object of dispensing justice, delay at every step in the Court should not be a consideration. If there is no march of law as per the changed circumstances, Law itself will become static. After Independence there is indisputably oceanic change in all directions. With the increase in population, there is a considerable awakening in men and women alike in approaching the problems of life on the basis of education and knowledge acquired. While discussing the delay in

obtaining justice from the Courts of Law invariably it is being attributed towards Advocates and Judges forgetting the fact that it is an ancient C.P.C framed in 1908 squarely responsible in bestowing the favour of keeping the file alive till the child born to an Advocate steps into the shoes of father's profession. Squarely I may say so that the provisions which are being used unreasonably in obtaining innumerable adjournments without any genuine cause is the root cause for sad reflections on keeping the cases pending. Even today the Advocates are not sure and certain for whose benefit and why we seek adjournments. Ultimately the cause of delay is conveniently shifted to Courts to bear the burden in silence.

A step towards progress in arresting the causes of delay has been necessitated long back. The amendments introduced by Act 46 of 1999 are nothing but a vision to dispense Justice as easy and as early as possible. Under Section 27 which deals with the issuance of Summons to answer the claim by the defendant, the period fixed is not beyond 30 days. With the insertion of new Section 89 wherever and whenever there exists an element of Settlement if the parties so accept, the Court is empowered to formulate the terms for the settlement of claims and refer to an Arbitrator, Conciliation, Judicial Settlement or Mediation. Section 100-A simply restricts

the Appeal to the Division Bench against a decision of a Single Judge of the High Court and Section 102 restricts Second Appeal if the value of claim does not exceed Rs.25,000-00. Most crucial and progressive march as per amendments are reflected in to Order 5 where the Defendant in the Suit has to file a Written Statement within 30 days from the date of institution of a Suit, Order 17 restricts the adjournment not more than three times by a party during hearing of the Suit and Order 18 Rule 4 gives a power to record the evidence by Commissioner. The cumulative effect of all these and such more amendments is based upon a ray of hope to gain confidence of the people that Justice shall not be delayed inordinately keeping the cases pending for 2 or 3 decades. The temple of Justice should not be treated as a cupboard to keep the files as pieces of decoration within the precincts of Courts but should be a temple, which redresses grievances of the aggrieved within the shortest possible time to enjoy the fruits of decree during the lifetime. Equally so the changes effected in restricting Revisions under Section 115 is not without reason. It is unfortunate that the litigant is being advised to climb the stairs of High Court against each and every order passed by the subordinate judiciary.

With the amendments enforced how are Advocates or Advocacy is effected. The

concept of engaging a Counsel by a Firm, Institution, individuals is to represent the Court on the basis of *Vakalathnama*. This engagement and the services rendered by an Advocate is not as a Charity but after charging the Fees (Service charges to be more appropriate). The delay emanates from an Advocate not only reprehensible but also unethical in as much as the delay will be detrimental to the client's cause and concern. In any given case, the client approaches the Advocate for speedy justice. To win or lose a case is certainly not in the hands of an Advocate. But certainly to seek innumerable adjournments is within the powers of the Advocate which will ultimately result in Justice virtually denied due to long pendency. But then the delay will not be shouldered by an Advocate, conveniently and convincingly the Courts will be prompted to shoulder the blame for the delay. As a matter of fact the Advocates and Bar Councils have to support such Rule of law, which were introduced aiming at dispensing quick and sure Justice. If at all public feels that quick dispensing of Justice is detrimental to their interest, it is for them to agitate by formulating their grievances by highlighting how they are effected. It is certainly not for Advocates to take up the cause since their job is not only to defend the case but primarily to assist the Court in coming to sound conclusion for dispensing Justice according to Law in force as early and as soon as possible.

## STUDY OF A.P. PROHIBITION ACT IN THE BACKDROP OF A.P. EXCISE ACT

*By*

—A. PARTHASARATHI, B.Sc., B.L.,  
Judl. Magistrate of 1st Class,  
Rajampet, Cuddapah Dist.

1. A.P. Excise Act, 1968, hereinafter referred to as the Excise Act, has been enacted with a view to integrate the Laws in force in Andhra and Telangana areas of the State of A.P. on the subject of Excise, prior

to passing of Excise Act, A.P. (Telangana Area) Abkari Act, 1316-F and A.P. (Telangana Area) Intoxicating Drugs Act, 1333-F were in force in Telangana Area. A.P. (Andhra Area) Abkari Act, 1886