LAXITY IN LAW TO WHAT EXTENT—MUST THE COURTS BE LIBERAL IN APPROACH?

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AUDI ALTERAM PARTEM: THE BASIS

While subscribing to the doctrine of separation of powers as propounded by French jurist and philosopher, Montesquieu, the framers of the Indian constitution were aware of the importance that each wing of the government has to play in the working of the constitution. Each wing of the Indian Government ie.; the executive, the legislature and the judiciary had their own defined areas of operations yet they were not disjointed from one another rather they worked as an organic whole keeping a check over one another.

The judiciary was primarily responsible for dispensation of justice to one and all without bias or discrimination. To bring transparency in the judicial process, detailed procedural laws have been formulated which were initially drafted during the British rule in India but subsequently after India attained independence these procedural laws have under gone with some modification by way of amendments. Over the years the judiciary works on the principle of *Audi alteram Partem*[1] which means that no man shall be condemned unheard—in the court of law. On this foundation, procedural laws like Civil Procedure Code, 1908 (CPC) and Criminal Procedure Code, 1973 (CrPC) have been made. The former deals with the procedure to be followed in respect of disputes primarily civil in nature and the latter deals with procedure in respect of offences dealt by criminal courts.

NEED FOR DETAILED PROCEDURAL LAW & ITS MISUSE

The primordial aim and intent of detailed CPC is to examine the points of dispute threadbare so as to finally arrive at logical conclusions within the ambit of laws. Therefore, to achieve

[1] BROOM'S LEGAL MAXIMS, (New 7th Edition) Pg 61.

this, ample opportunity is given to all the contesting parties to place their version. But over the years it is observed by various courts/fora/commissions, etc. that very often the opposite side uses dilatory tactics within the scope of law to either slow or stall the process of law and linger on the litigation for n-number of years. The most convenient tool to scuttle the pace of litigation is by either seeking adjournments at the drop of the hat or the opposite party knowingly avoids filing the reply to the averments made in the plaint which in legal parlance is called the written statement or the WS in short. The courts were liberal in allowing adjournments or taking WS much later than the fixed date in the larger interest of justice only after a nominal cost was paid to the aggrieved party or the plaintiff as the case may be. This resulted in delayed justice and on an average, it is said, that it took nearly a decade, if not more, in some cases, before the case was finally decided by the trial court i.e. the first court in a three-tier judicial system that we have. Gradually prospective litigants avoided coming to courts for redressal of their disputes on first call. The economically well-off and resourceful litigants evolved their own methods of settling disputes but a commoner who really needed justice was left in the lurch. The Apex Court of the country and various High Courts expressed their pain and anguish over snail pace movement of cases in the trial courts at the district level. The law commission also took cognizance of this style of functioning and therefore the cumulative effect of all this was that to further streamline the procedural law, as volumes of cases kept on piling, and to make the judicial system really function well, major changes were made in the CPC in 1999, 2002, 2012 and recently in 2016 with the objective to facilitate speedy disposal of civil suits and proceedings.[2]

LIBERAL INTERPRETATION OF LAW

One of the major controversies that is generated after the amendment to CPC in 2002 is in respect of time period to be given to the defendant after summons has been served on him to file his reply to the allegations made in the plaint. As per Order 8 rule 1, CPC, the defendant must file his reply i.e. WS within 30 days from the date of service of summons on him but in case he fails to file the same within said 30 days, he is given another 90 days to file his WS. Thus, beyond this time period, such a defendant is prohibited from filing his WS. The aim of giving a reasonable limited time to the defendant is that his side of the story must not go

[2] CIVIL PROCEDURE CODE, (13th Edition) Pg 3

unheard in the court of law. But however, there have been cases pertaining to civil litigation under special statutes where this mandate of law has been strictly followed and in some cases, on payment of cost, the WS of defendant has been taken on record much after the mandated period. Views of various High Courts/Fora/Commissions can be found on both sides and much to the chagrin of poor litigants, coordinate benches of equal strength of the Apex Court are divided in the interpretation of Order 8 Rule 1, CPC and the analogy drawn from it. One school of thought is that Order 8 Rule 1 is mandatory in nature, on the other hand, another school of thought views this order merely as directory. Thus, to get the right interpretation of the said order and rule, this matter will now be decided by a larger bench of 5 judges in the Supreme Court.

In Salem Advocate Bar Association T.N.[3], a three judge bench headed by the then CJI, Justice YK Sabharwal, while interpreting Order 8 Rule 1 opined that strict interpretation of said order and rule would be contrary to other provisions of CPC vis a vis rule 10 of the said order wherein liberty is given to the court to make order as it deems fit. While maintaining harmony with other provisions of CPC, the bench declared Order 8 Rule 1 to be directory in nature and not mandatory. It relied upon the judgment passed by constitution bench in Raza Bulund Sugar Co. Ltd.[4] where it was laid down that to decide the nature of provision the object of the statute in making out the provision is the determining factor. In Salem Advocate case (supra), the Apex Court also cautioned that when this power is exercised, the court has to be very cautious and only exceptional cases fall in this category. The bench also said that in respect of adjournments though in Order 17 Rule 1(1), more than 3 adjournments shall not be given, yet the same may be given a liberal connotation depending on facts and circumstances of each case as evident from Order 17 Rule 1(2).

A similar view had already been taken in respect of Order 8 Rule 1 CPC by a 3-judge bench of the Apex Court headed by the then CJI, Justice RC Lahoti in Kailash Vs Nanhku and Others in 2005[5].

[3] Salem Advocate Bar Association T.N. Vs Union of India—2005 (6) SCC 344.
[4] Raza Buland Sugar Co Ltd Vs Municipal Board, Rampur—AIR 1965 SC 895.
[5] Kailash Vs Nanhku and Ors—2005 (4) SCC 480.

CONTRARY VIEWS IN CASES

However, in New India Assurance[6] case, the Supreme Court headed by 3 judge bench upheld the earlier decision of this court passed in JJ Merchant[7] case. Since this case pertained to a special statute where again a time cap had been placed for receiving reply of the opposite party and not beyond it, the Supreme Court refused to follow the analogy of liberal interpretation of Order 8 Rule 1.

In the face of two contradictory judgements of the Apex Court by benches of coequal strengths, the issue whether a court can receive the reply of WS of defendant/opposite party beyond the period mandated in law is now to be examined by a larger bench of five judges of Supreme Court.

COMPARATIVE PROVISIONS IN OTHER STATUTES

To understand the requirement of any provision of law one must go back in history of legislative enactment responsible for framing a special statute or any particular provision in it. As laws are legislated keeping in mind the need of the hour felt by the society at large to regulate the actions/transactions of individuals or any institution or organisation. There are plethora of special statutes in our country. To name a few: - The Negotiable Instruments Act, 1881; The Consumer Protection Act, 1986; The Hindu Marriage Act, 1955 et all. All these Acts have undergone amendments from time to time. If one were to read these Acts, one would find that there are specific provisions in these Acts which hammer on the expeditious disposal of cases. Thus, the legislature in its wisdom was aware of the fact that any dispute arising must be settled by courts of law as early as possible with adequate opportunity to both sides to place their respective cases. This by no stretch of imagination ever meant that any party that does not wish the case to move forward, because of the fear of getting an adverse order, may linger on the case for years together leading to frustration. With this outcome in mind, the legislature desired under section **21-B (1)** of **The Hindu Marriage Act**[8]:

[6] New India Assurance Co Ltd Vs Hilli Multipurpose Cold Storage—2014 AIOL 4615.
[7] Dr JJ Merchant and Ors Vs Shrinath Chaturvedi—2002 (6) SCC 635
[8] HINDU LAW (Edition 2011) Pg 18.

1. The trial of a petition under this Act shall, so far as is practicable consistently with the interest of justice in respect of the trial, be continued from day to day until its conclusion unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.
2. Every petition under this Act shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date of service of notice of the petition on the respondent.
3. Every appeal under this Act shall be heard as expeditiously as possible and endeavour shall be made to conclude the hearing within three months from the date of service of notice of appeal on the respondent.

Thus, it is clear that the legislature has laid down a time cap for proceedings to culminate both at the trial level and at the Appellate level.

Similar provisions can be seen in section **13 (1)** of **The Consumer Protection Act[9]:**

Refer a copy of the admitted complaint, within twenty-one days from the date of admission to the opposite party mentioned in the complaint directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum;
[This Act under sub clause (b) to (g) lays down different time caps for various other situations]

Under section **13 (3-A)** it is further said:

Every complaint shall be heard as expeditiously as possible and endeavour shall be made to decide the complaint within a period of three months from the date of receipt of notice by opposite party where the complaint does not require analysis or testing of commodities and within five months, if it requires analysis or testing of commodities.
Provided that no adjournment shall ordinarily be granted by the District Forum unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the Forum.

[9] CONSUMER PROTECTION ACT (Edition 2016) Pg 20.

To bring confidence in business in respect of monetary transactions and assurance of payments on time by cheque, **The Negotiable Instruments Act, 1881**[10] introduced a new chapter XVII in 1988 titled "Of Penalties in Case of Dishonour of Certain Cheques for Issuance of Funds in the Account.

Under section **143 (3)**, inserted in 2002 in the said Act, there is a legislative mandate that cases falling under section 138 of the Act must be decided in a given time framework. It reads:
Every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint.

CONCLUSION

An overall perspective of these three Acts leaves only one conclusion that the legislative aim and intent is that cases before the courts must be decided expeditiously as far as possible. Now to have a liberal connotation that the opposite party or the defendant must be given an opportunity to have his version on record of the case even beyond the specified time limit is stretching the law too much. In a country where the pendency of cases is more than 21.3 million[11], such a liberal interpretation of law amounts to gross abuse of the process of law getting a stamp of legitimacy from the courts.

It would therefore be not out of place to point out that contradictory views taken by the Supreme Court in respect of liberal interpretation versus strict interpretation to the time cap mandated by the legislature, parliament once again decided to take cognizance of the procedural law relating to CPC in the wake of Himalayan pendency of cases in Indian courts right from district level to the Apex level, by again bring in an amendment in 2016 with retrospective effect ie. 23.10.2015[12] in proviso to Order 8 Rule 1 which now reads as under:

[10] NEGOTIABLE INSTRUMENTS ACT (Edition 2003) Pg 35-38
[11] Brijesh Ranjan, *What Causes Judicial Delay?,* Times of India, 25th August 2016
[12] CODE OF CIVIL PROCEDURE (Supra) Pg 211.

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred and twenty days from the date of service of summons and on expiry of one hundred and twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record.

Herein we note that prior to the amendment of 2016 the period of 90 days to file the WS has now been enhanced to 120 days with a stringent bar that after the expiration of the said 120 days the defendant will '**forfeit the right to file the written statement**'. Thus, by virtue of this amended proviso, the legislature has set at rest a clear departure from earlier liberal view taken by the courts in respect of filling of WS. The position now is crystal clear that courts will always assist the person who uses his rights on time and will discourage those who sleep over their rights.