Report on

WEBINAR ON EXCELLENCE IN QUALITATIVE AND QUANTITATIVE JUSTICE IN CIVIL MATTERS

PART-II

Held on: 11th July 2020

Organised by: Rajasthan State Judicial Academy, Jodhpur
Hon'ble Resource Person: Shri Uma Shankar Vyas (District and Session Judge, Jaipur Metropolitan I)

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"Delaying justice and denying justice are considered as the same thing in the Magna Carta"
Justice John Willes of the English Court of King's Bench in the 1759 case *Whitham v. Hill*

- Objective of Rajasthan State Judicial Academy is to educate and sensitize its officers and other stake holders about the latest laws and procedure to achieve the constitutional mandate of securing the "Rule of Law".
- With the restrictions on physical gathering due to the spread of novel coronavirus, the innovations in technology have come to aid us in our ever going quest for knowledge. Through the use of softwares and advancement of computer technology it is possible to continue imparting knowledge through webinars. A novel solution indeed for a novel crisis.
- Making full use of the advances in the field of technology and keeping up with its constitutional mandate in mind, The Rajasthan State Judicial Academy on **11th July 2020** organized a **Webinar on 'Excellence in Qualitative and Quantitative Justice in Civil Matters' Part-II** at **11 am**, which was presided over by **Shri Uma Shankar Vyas (District and Sessions Judge, Jaipur Metropolitan I)**.
- **Hon'ble Mr. Justice Sandeep Mehta (Judge, Rajasthan High Court and Chairman, Rajasthan State Judicial Academy)** graced the webinar with his presence and provided valuable guidance on the subject of discussion.
- The webinar saw a participation of 35 Additional District Judges and 36 Additional Chief Judicial Magistrates and Senior Civil Judges across the various Judgeships of the State of Rajasthan.
- The Hon'ble Resource person addressed the various queries of the participants on various issues which result in delay of a civil suit and provided them valuable suggestions on how to overcome them, through the learning's from his immense and vast judicial experience.
- The following difficulties of the participants were addressed during the course of the webinar:
    I. Problem of service on Incorrect Registered Address
    II. Serving of notice to LRs after death of the party
    III. Issue of Production of Documents
    IV. Issue of presentation of affidavits
    V. Issue of pleading no-instruction
    VI. Issue related to interlocutory/interim order
    VII. Issue of service via electronic mode

<u>Problem of service on Incorrect Registered Address:</u>

- The courts normally face difficulties in service of summons due to incorrect registered address of the party which is provided to the court. The Hon'ble Resource Person advised that one may use Order V Rule 9A of the CPC as an enabling provision for service. Further, CPC provides for that the plaintiff at the time of filing of the suit and the defendant at the time of the written statement shall provide the court with the complete registered address, they may be further asked to be provided with an undertaking that the address shall be deemed to be a correct address with regards to service.
- The Civil Procedure Code further provides that if the plaintiff deliberately or negligently does not provide the correct address, then the suit may be stayed and appropriate costs may be imposed in case the error was deliberate. Also, with regards to the defendant, if the error with regards to providing of registered addressed was with dishonest intention then their defence should be struck off and in case the mistake was bonafide then any nominal costs or a reasonable condition may be imposed.
- Such measures will go a long way in reducing the burden of pendency over courts and cut short the duration of a trial.
- Under Order IX Rule 5, if process is unserved on the opposite party, then in 7 days the plaintiff should be made aware to request for summon to be issued again after payment of the

process fees, such should be the vigilant approach of the plaintiff and (s)he need not wait for the next date. The party by re attempting for serving the summon before the next date can thus save valuable time of the suit and if the party doesn't stay vigilant and stays negligent then the suit can be dismissed under Order IX Rule 5. Such dismissal can be set aside by imposing reasonable costs in the interest of justice. Thus, by taking help of the party and keeping them involved, the service time can be reduced to 1/4th of its current state. This can go a long way in reducing the length of a suit.

- Further, Pleadings as provided for in Order VI Rule 1 means Plaint and Written Statement. Plaint Performa in Appendix A includes the cause title. It was suggested by the Hon'ble Resource Person that until this cause title is amended, the process on the new address should not be issued. This is because if the cause title is not amended, the issue of process creates a problem.

Serving of notice to LRs after death of the party:

- Another difficulty faced by the courts is serving of notice to the LRs of the party after the death of the party. It is very common to observe that Order XXII Rule 3 and Order XXII Rule 4 takes substantial time of the court and even more so in case of involvement of multiple parties.
- The High Court has therefore directed that the cases of senior citizens are to be disposed off on a priority basis to avoid the above issue.
- Further, the plaintiff should be more vigilant and move the application to bring the LRs of the defendant on record. As per the Limitation Act, this should be done within 90 days from the death and not from the knowledge of death.
- As per Order XXII Rule 10A, if any party dies during trial, the counsel should inform the court and the vakalatnama between the deceased and advocate shall be ineffective. The Court can only request the advocate for this information. The advocate is under no direction under the law to furnish the same. There exists no consequence under CPC for non-communication of death of the party. Under Order XXII Rule 4, it remains the duty of the plaintiff to remain alert and move the application in such an event.
- Under Order XXII Rule 4, the difficulty faced by the courts is that the notice on this application service, consumes time. After service, if the LRs do not contest the application, then they are to be taken on record.
- If the LRs don't turn up for the proceedings, and neither object to the same then they can be taken on record and the court can pass an ex-parte judgment. There is no requirement for fresh summons for suit to the LRs.This can curtail the length of the suit.
- The Hon'ble Rajasthan High Court in **Nirmal Kumar Dugar v. Bhanwar Lal alias Bhonri Lal 2008 (4) RLW 3601 (Raj.)** on the above issue has held that:

"With regards to C.P.C., Order 22 Rule 4 – Requirement of sending fresh summons – Summons sent earlier was served – Held – The language of notice sent to L.Rs. of the deceased defendant clearly shows that it was specifically mentioned in it that in case he fails to appear in Court, the suit itself will be heard and determined in his absence, therefore, it was a notice of the suit as well as application u/O. 22 R. 4 CPC both – No necessity to send fresh summon alongwith a copy of amended suit – Set aside – matter remanded back to first appellate Court."

Issue of Production of Documents:

- The discussion then moved on to the difficulty faced by the courts with regards to production of documents. The Hon'ble Resource Person stated that it is a common issue that documents are presented even during the course of the trial. Before the 2002 amendment, Order XIII Rule 2 had made it compulsory to present documents before the settlement of issues, there existed no provision for the document to be presented with plaint or written statement.
- However, after the 2002 amendment Order VII Rule 14 mandates it that if the plaintiff files a suit then the documents on which he relies and the documents on which the suit is based are

to be presented with the plaint. This provision is based on the principles of natural justice. Similarly, under Order VIII Rule 1-A there exists a duty on the defendant while filing written statement to present all such documents with the written statement.

- Order XIII provides for that the original of the document should be presented on which a party relies before the settlement of issues. Order XIII Rule 8 provides that those original documents should be presented whose copies have been filed with the plaint or the written statement. This is so that one cannot surprise the other party.
- It was by adopting the 3 measures of pleading, admission/denial and examination of parties, that the issues will be framed.

Issue of presentation of affidavits:

- It is fairly common to observe that when evidence begins, then the plaintiff or the defendant do not present their affidavits and those of their witnesses at the same time. This causes delay in a suit.
- In **Salem Advocate Bar Association v. Union of India 2003 (1) SCC 49**, the provision under Order XVIII Rule 4 was added by the case, via which the plaintiff and defendant may be directed to present 7 days before their respective evidences, a copy of affidavit to the other party so that the witness may be examined on the fixed date instead of seeking an adjournment. It was submitted to the court that O. XVIII, R.4 has been substituted and sub-r. (1) Provides that in every case examination-in-chief of the witnesses shall be on affidavits and copies thereof shall be supplied to the opposite parties by the party who calls them for evidence. It was held that:

  "Reading the provisions of 0.16 and 0.18 together, it appears to us that 0.18, R.4(1) will necessarily apply to a case contemplated by 0.16, R.1A, i.e. where any party to a suit, without applying for summoning under R.1 brings any witness to give evidence or produce any document. In such a case, examination-in-chief is not to be recorded in court but shall be in the form of an affidavit.

  In cases where the summons have to be issued under 0.16, R.1, the stringent provision of 0.18, R.4 may not apply. When summons are issued, the court can give an option to the witness summoned either to file an affidavit by way of examination-in-chief or to be present in court for his examination. In appropriate cases, the court can direct the summoned witness to file an affidavit by way of examination-in-chief. In other words, with regard to the summoned witnesses, the principle incorporated in 0.18, R.4 can be waived. Whether a witness shall be directed to file affidavit or be required to be present in court for recording of his evidence is a matter to be decided by the court in its discretion having regard to the facts of each case."
- In this manner the party would be better prepared for the cross-examination. If this direction is not complied with and it leads to adjournment, then the responsibility for the adjournment shall lie on the non-complying party.
- As per Order XVII Rule 1, only 3 adjournments are permissible now. However, the Hon'ble Supreme Court has stated that the same is neither mandatory nor directory. But, the purpose of this enactment would be however defeated if this is not complied with in spirit.
- The Hon'ble Bombay High Court in **Cesar Rego Fernandes & Ors. v. Angela Ninette Oliveira Fernandes &Ors. 2008 (3) AIR(Bom)(R) 310,** while dealing with striking out paras from affidavit-in-examination which is filed as examination-in-chief by the parties, held that:

"It would not be correct to strike out paras in the affidavit itself. If, there is any statement in the affidavit which according to the opposing party is beyond the pleadings, then it is always open to such a party to put this to the witness in his cross-examination. It is also open to the Court to consider the relevance and weightage to be given to any such statement in the examination-in-chief when there is no foundation laid in the pleadings. It would, however, not be correct to strike out paras in the affidavit itself."

Issue of pleading no-instruction:

- It is a common practice to lengthen the suit by pleading no instruction and then asking for another date as no notice was received.
- The Hon'ble Delhi High Court has held that in case of no instruction why the other party should be made to suffer. There is no rule under the CPC to give notice.
- Further, The Hon'ble Rajasthan High Court in **Chhitar Mal Saini v. Basanti and another 2014 0 AIR(CC) 379,** on a plea of no instruction held that,
  "Though it was sought to be submitted by the learned counsel for the appellant that there was negligence on the concerned lawyer, the said submission cannot be accepted for the simple reason that the appellant has not taken any action against the concerned lawyer for remaining negligent. Hence; the only conclusion, which could be drawn, would be that appellant himself had remained negligent in attending the suit proceedings. There being no sufficient cause for setting aside the decree in question, the Trial Court has rightly dismissed the application of the appellant under Order 9, Rule 13 of CPC. The order impugned being just and proper, the Court is not inclined to interfere with the same."
- Also, the Hon'ble Punjab and Haryana High Court relying on 2 judgments of the Hon'ble Supreme Court; held in **Jagdeep Kaur v. Manohar 2012 (3) Current Civil Cases 65 (P&H),** that notice is not necessary for "no instruction". There is no provision under CPC for the issuance of such a notice.

Issue related to interlocutory/interim order:

- The participants had put forth a query regarding how to proceed with a suit against an interlocutory/interim stay order as this further delays the suit.
- The Hon'ble Supreme Court in **Asian Resurfacing of Road Agency Pvt. Ltd. & Anr. v. CBI (2018) 16 SCC 299** has held that:
  "Stay should not exceed six months, unless extension is granted by a specific speaking order – In all pending matters where stay of proceedings in a pending trial is operating, stay will automatically lapse after six months from today – Trial courts may, on expiry of above period, resume proceedings without waiting for any other intimation unless express order extending stay is produced."
- Further, The Hon'ble Rajasthan High Court in **Bhan Khan v. Bhawani Shankar SB Civil Revision 260/93**, wherein the opposite party was aggrieved due to a stay imposed. It was held that, the lower court will not put a trial on hold till the High Court passes an order to stay or ask for the records.

Issue of service via electronic mode:

- The Resource Person brought to the attention of the participants the judgment of the Hon'ble Supreme Court in **Suo Moto v. RBI and others on 10 July 2020** which allowed service of summons & notices through instant tele-messenger services like Whatsapp as well as via email & fax. It held:
  "It has been brought to our notice that it was not possible to visit post offices for services of notices, summons, pleadings. Such service of all the above may be done through email, fax and other instant messenger services like Whatsapp and other telephone messenger services"
  A bench of Hon'ble Chief Justice of India Sh. SA Bobde, Hon'ble Mr. Justice AS Bopanna & Hon'ble Mr. Justice Subhash Reddy clarified that all methods are to be employed to prove a valid service on a party.
- The webinar concluded with a vote of thanks by **Sh. Sanuj Kulshrestha (Deputy Director, Academic RSJA)** thanking **Hon'ble Mr. Justice Sandeep Mehta (Judge, Rajasthan High Court and Chairman, Rajasthan State Judicial Academy)** and the Resource Person for imparting their valuable knowledge with regards to qualitative and quantitative justice in civil matters.