

JUDGMENT AND DECREE

Section 2 (9)- Judgment means the statement given by the judge of the grounds of decree or order.

ORDER XX JUDGMENT AND DECREE

1. Judgment when pronounced.-¹[(1) The Court, after the case has been heard, shall pronounce judgment in an open Court, either at once, or as soon thereafter as may be practicable and when the judgment is to be pronounced on some future day, the court shall fix a day for that purpose, of which due notice shall be given to the parties or their pleaders:

Provided that where the judgment is not pronounced at once, every endeavor shall be made by the Court to pronounce the judgment within thirty days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of the exceptional and extraordinary circumstances of the case, the Court shall fix a future day for the pronouncement of the judgment, and such day shall not ordinarily be a day beyond sixty days from the date on which the hearing of the case was concluded, and due notice of the day so fixed shall be given to the parties or their pleaders.]

2[(2) Where a written judgment is to be pronounced, it shall be sufficient if the findings of the Court on each issue and the final order passed in the case are read out and it shall not be necessary for the Court to read out the whole judgment.[***]3

(3) The judgment may be pronounced by dictation in open Court to a shorthand writer if the Judge is specially empowered by the High Court in this behalf:

Provided that, where the judgment is pronounced by dictation in open Court, the transcript of the judgment so pronounced shall, after making such correction therein as may be necessary, be signed by the Judge, bear the date on which it was pronounced, and form a part of the record].

*Case: 1. In Surendra Singh v. State of U.P. AIR 1954 SC 194.
Justice Vivian Bose defined a judgment as "the final decision of the court intimated to the parties and to the world at large by formal 'pronouncement' or 'delivery' in open court."*

2. Power to pronounce judgment written by Judge's predecessors.- [A judge shall]⁴ not pronounce a judgment written, but not pronounce by his predecessors.

3. Judgment to be signed.- The judgment shall be dated and signed by the Judge in open Court at time of pronouncing it and, when once signed, shall not afterwards be altered or added, to save as provided by section 152 or on review.

152. Amendment of judgments, decree or orders.- Clerical or arithmetical mistakes in judgments, decrees or orders or error arising therein from any accidental slip or omission may at any time be corrected by the court either of its own motion or on the application of any of the parties.

1. Subs. by Act 22 of 2002, Section 13, (w.e.f. 1-7-2002).

2. Ins. by Act 104 of 1976, Section 70 (w.e.f. 1-2-1977).

3. The words "but a copy of the whole judgment shall be made available for the perusal of the parties or the pleaders immediately after the judgment is pronounced" omitted by Act 46 of 1999, Section 28 (w.e.f. 1-7-2002).

4. Ins. by Act 104 of 1976, Section 70 (w.e.f. 1-2-1977).

Case: 1. Balgees Begum v. Govt. of A. P. AIR 1994 A.P. 316. A. P. High Court said that “From a joint reading of the provision of the rules 1, 2 and 3 of Order XX it appears to be clear that once the judgment is dictated and pronounced by the judge in open Court after hearing the argument in the presence of the Counsel, is a valid, effective and operative judgment even though the learned judge dies before signing the same.

4. Judgment of Small Cause Courts.- (1) Judgment of a Courts Small Causes need not contain more than the points for determination and the decision thereon.

(2) Judgments of other Courts.- Judgments of other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and reason for such decision.

Rule 4 deals with the contents of a judgment. The content of a judgment other than a Court of Small Causes must have the following:

- (i) *a concise statement of the case;*
- (ii) *the points for determination;*
- (iii) *the decision thereon; and*
- (iv) *the reason for such decision.*
- (v) *the relief granted*

A judgment of a court of Small. Causes should, however, not contain more than:

- (i) *points for determination and*
- (ii) *the decision thereon.*

Case: 1. Alok Kumar v. S.N. Sharma, AIR 1968 SC 453. a) Where a Judge is inclined to criticise other Judges or subordinate Court, the 'language to be used should be dignified' and restrained.

b) While deciding a case, it is not desirable on the part of the Judges to make remarks against the character of a person who is neither a party nor the witness in the proceedings before them.⁵

Case2. A. M. Mathur v. Pramod Kumar, AIR 1990 SC 1737. SC said, “ No disparaging or defamatory remarks must be made either against a party or against any other person.”

Case 3. Atar Singh v. District Judge Jhansi AIR 1994 All 295. Allahbad H. C. said,”
Even an ex parte decree must satisfy the requirements of a judgment as provided in Order XX, Rule 4. Ex parte decree unsupported by reasons is not a judgment.

5. Court to state its decision on each issue.—In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefore, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

[5-A. Court to inform parties as to where an appeal lies in cases where parties are not represented by pleaders.—Except where both the parties are represented by pleaders, the Court shall, when it pronounces its judgment in a case subject to appeal, inform the parties present in Court as to the Court to which an appeal lies and the period of limitation for the filing of such appeal and place on record the information so given to the parties.]

Judgment and decree

33. Judgment and decree.—The Court, after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow.

Case 1. R.C. Sharma v. Union of India, AIR 1976 SC 2037 In order to avoid inordinate delay in the delivery of the judgments after the conclusion of the hearing of cases a time limit for the same has been fixed. If the judgment is not pronounced at once after the case has been heard, every effort is to be made by the court to pronounce the judgment within 30 days from the date on which the hearing of the case was concluded.

However, if it is not practicable to do so on the ground of "exceptional and extraordinary circumstances" of the case, the court shall fix a future day for the pronouncement of the judgment and such day shall not ordinarily be beyond sixty (60) days from the date on which the hearing of the case was concluded,

Case 2. In Vinod Kumar Singh v. Banaras Hindu University. AIR 1988 SC 371. In this case High Court of Allahabad pronounced a judgment in a writ petition in favour of the appellant but the judgment was not signed. Thereafter the case was posted for further hearing and finally dismissed. On the question of the legality of the dismissal the Supreme Court, setting aside the order laid down the following guidelines regarding correction in judgments:

- (i) Under Order 20, Rule 3 in a judgment which has not been signed alteration and additions can be made. Where it has been pronounced and signed alterations are permissible only under Sections 114, 151 and 152.
- (ii) But even under Order 20, Rule 3, the power should be exercised sparingly and for good reasons.
- (iii) When the judgment has been pronounced it becomes operative and signature is not necessary except in exceptional cases such as :
 - (a) where a judgment is dictated in court and counsel brings to the notice of the court some feature or where the court itself discovers such a feature from the record. In such a case, the court may direct the case to be reheard and that the judgment just delivered would not be effective;
 - (b) a court discovers a feature which should have been taken into account when the judgment is to be signed. In such a case also the court may set down the case for further hearing and the court shall give reasons why the judgment already delivered would be operative.

Case3. Where a Judge has vacated office after pronouncing and dictating the judgment but without signing it, the question is whether a successor Judge can sign it? The Bombay High Court answered this question in **Darayas Cawasji Balsara v. Shenaz Darayas Balsara AIR 1992 Born 175.** and held that a successor Judge is entitled to sign the judgment on behalf of the Judge who dictated it in open court and direct the Registrar to prepare the decree.

Case 4. Anil Rai v. State of Bihar AIR 2001 SC 3173. In this case after the conclusion of arguments by the counsels, the judgment was reserved by the court which was pronounced after two years. The court observed:

"In a country like ours where people consider the Judges, second to God, efforts are made to

strengthen that belief of the common man. Delay in disposal of cases facilitates the people to raise eyebrows, sometimes genuinely which, if not checked, may stake the confidence of the people in judicial system."

Case 5. The Supreme Court of India held in *Balraj Taneja v. Sunil Madan* AIR 1999 SC 3381 that

1. a Judge cannot merely say "suit decreed" or "suit dismissed". The whole process of reasoning has to be set out for deciding the case one way or the other.
2. A judgment must be based on the grounds and points in the pleadings and not outside the case put forward by the parties in their pleadings. Further, it should not decide any question which does not arise from the pleadings of the parties or is unnecessary.
3. Again, the language of the judgment should be dignified and restrained. It should not contain intemperate comments, undignified banter or scathing criticism of counsel, parties or witnesses.
4. It is a general principle of highest importance to the proper administration of justice that derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case.

DECREE

Section 2(2).- Decree means the formal expression of an adjudication which so far regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within [***]¹ Section 144, but shall not include

- (a) any adjudication from which an appeal lies as an appeal from an order, or
- (b) any order of dismissal for default.

Explanation.—A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;

Section 2(3) "Decree-holder" means any person in whose favour a decree has been passed or an order capable of execution has been made;

Essential Elements of a Decree:

Following are the essential elements of a decree:

- (i) There must be an adjudication;
- (ii) Adjudication must be in a suit;
- (iii) It must have determined (decided) the right of the parties with respect to all or any of the matters in controversy. Such determination must be conclusive determination; and
- (v) There must be formal expression of the adjudication.

Case1.- *Adinarayan v. Narsimha*, AIR 1931 Mad. 471. The judicial determination (decision) of a court is either in the shape of a decree or an order. Whether a judicial determination amounts to a decree or order is a matter of substance. A judicial determination (decision) in order to be a decree must fulfill the conditions laid down under Section 2 (2) of the Civil Procedure Code.

Case2.- *Des Raj v. Om Prakash* AIR 1986 P & H 3. Said, "an order rejecting the memorandum of

appeal after dismissing an application under Section 5, Limitation Act, 1963 for condonation of delay is not a decree.”

Case 3.-Deep Chand v. Land Acquisition Officer, AIR 1994 SC 1901 said, “a decision of a Court amounts to a decree there must be an adjudication. In other words, if there is no judicial determination of the dispute between the parties, there cannot be a decree. Thus, for example an appeal dismissed in default, or an order dismissing a suit for non-appearance of the parties does not amount to a decree for there is no judicial determination of the matter in controversy.”

Case 4.-in the of *Hansraj v. Dehradun-Mussoorie Electric Tramways Co. Ltd AIR 1935 P. C.*, The term suit has not been defined in the Code. But their Lordship of the Privy Council have defined the term of suit in the following words :

"The word suit ordinarily means and apart from some context must be taken to mean, a civil proceeding instituted by the presentation of a plaint."

1. Thus, a contentions probate proceeding though begins by presentation of an application yet it amounts to a Civil suit.
2. a proceeding in which an application is made to file an agreement to refer to arbitration under Arbitration Act, 1940 may be treated as a civil suit.⁴
3. proceedings under Hindu Marriage Act, 1955⁵
4. Land Acquisition Act,⁶ may also be treated a civil suit.
5. *P. Mustafali v. N. Subair*, AIR 1992 Ker 295 A recent decision of the Kerala High Court says that proceedings under Section 110-A of Motor Vehicles Act (commenced by an application) is in the nature of a suit under the Code of Civil Procedure.
6. *Balram Singh v. Dudh Nath*, AIR 1949 All 100. So also a proceeding started on an application made under the U.P. Agriculturist Act was also treated as a suit.

These proceedings apart, no other proceeding in any other Act may be treated as civil suit and therefore, no adjudication made there under will amount to a decree within the meaning of Section 2 (2) of the Civil Procedure Code.

(iii) Right of Parties as to matters in controversy

a) The rights of the parties is referred to here are rights relating to status, limitation, jurisdiction, frame of the suit and accounts etc. Again such rights are substantive rights and not procedural rights.

b) But where the question is whether summons has been duly served on a particular party or not is a question not relating to substantive rights but procedural rights.

Following have been held to be decrees :

- (i) Order of abatement of suit.
- (ii) Compromise or consent decree.¹
- (iii) Holding a particular defendant liable for *mesne* profits.
- (iv) Dismissal of appeal as time barred.
- (v) Dismissal of appeal for deficiency in Court-fee.
- (vi) Rejection of plaint for non-payment of extra Court-fee.
- (vii) Dismissal of suit or appeal for want of evidence or proof.
- (viii) Order dissolving partnership.
- (ix) Order directing surety to pay debt of judgment debtor.
- (x) Refusing or granting instalment.
- (xi) Admission of execution application.
- (xii) Modification of scheme under Section 92 of C.P.C.
- (xiii) Order under Section 25 of Hindu Marriage Act.

- (xiv) Remand order conclusively determining the rights of the parties.
- (xv) Order rejecting plaint in pre-emption suit.
- (xvi) In a suit against two sets of defendants in alternative, finding that since one set was liable and other set was not liable, the finding is indivisible finding and amounted to decree?
- (xvii) An award by a Court under amended Section 28 (2) of Land Acquisition Act, 1894.3

Following have been held not to be decrees:

- (i) Order permitting withdrawal of suit.
- (ii) Appeal dismissed for default.
- (iii) Appointment of Commissioner to take accounts.
- (iv) Order on *res judicata* and limitation.
- (v) Order directing decree to be drawn up.
- (vi) Order of remand for framing additional issues by Appellate Court.
- (vii) Order granting interim relief under Section 24, Hindu Marriage Act, 1955.
- (viii) Order refusing stay of sale.
- (ix) Dismissal of suit as withdrawn under Order 23, Rule 1.
- (x) Any determination under Section 49, Land Acquisition Act, 1894.4
- (xi) Order rejecting memorandum of appeal under Order 41, Rule 3.
- (xii) Dismissal of application under Order 34, Rule 8.
- (xiii) Rejection of appeal for insufficient Court-fee.
- (xiv) Order refusing to windup a company.
- (xv) Order of dismissal for default.
- (xvi) Return of plaint for presentation to proper court.
- (xvii) An award under Motor Vehicles Act.1
- (xviii) Award rendered under the provisions of Arbitration and Conciliation Act, 1996 is not 'decree' for the purpose of Section 9 (2) of Presidency Towns Insolvency Act, (1909). *Kandapazha Nadar v. Chitraganiammal*, AIR 2007 SC 1575.
- (xix) Withdrawal of suit without liberty to file a fresh suit and without any adjudication order allowing withdrawal is not a decree.

Classes of Decrees

- (i) Preliminary decree.
- (ii) Final decree.
- (iii) Decree partly final and partly preliminary.
- (iv) Order rejecting plaint.
- (v) Decision of a question under Section 144.

(i) Preliminary decree

a) A preliminary decree is a decree which does not completely dispose of the suit and further proceedings are still required in the matter. An adjudication which finally decides the rights of the parties but does not completely dispose of the suit is a preliminary decree. *Venkata Reddy v. Peethi Reddy*, AIR 1963 SC 992.

b) It is only a stage in the working out the rights of the parties which are finally adjudicated by the final decree.⁵ Till then the suit continues. *Shankar v. Chandrakant*, AIR 1995 SC 1211.

In other words, a preliminary decree is one which determines the rights and liabilities of the parties leaving the actual result to be worked out in further proceedings.

The Code contemplates passing of preliminary decree in the following cases:

1. Suit for possession of immovable property and for rent or *mesne profits*-Order 20, Rule 12.
2. Administration suits-Order 20, Rule 13.

3. Suit for pre-emption-Order 20, Rule 14.
4. Suit for dissolution of Partnership-Order 20, Rule 15.
5. Suit for accounts between Principal and Agent-Order 20, Rule 16.
6. Suit for partition of property or separate possession therein-Order 20, Rule 18.
7. Suit for foreclosure of a mortgage-Order 34, Rules 2 and 3.

INTEREST

Section 34. Interest.- (1) Where and in is far as a decree is for the payment of money, the Court may, in the decree, order interest as such rate as the court deemed reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit [with further interest at such rate not exceeding six per cent per annum as the court deems reasonable on such principal sum], *Subs. by Act 66 of 1956, Section 2, for certain words.* from the date of the decree to the date of payment, or to such earlier date as the court thinks fit :

²[Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by Nationalized Banks in relation to commercial transactions.

Expl. I.—In this sub-section, "Nationalized Bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).

Expl. II.—For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.]

(2) Where such a decree is silent with respect to the payment of further interest ³[on such principal sum] from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have refused such interest, and a separate suit therefore shall not lie.

JUDICIAL DEALINEATION

Case 1.- Ashish Handa v. District Manager, Telephones, Chandigarh, AIR 1992, P & H 123. The provisions of Section 34 apply only when the decree is for the payment of money. The expression "decree for the payment of money" as used in the section includes a claim to unliquidated damages also.

Case 2.- Sovintorq (India) Ltd. v. State Bank of India, New Delhi, AIR 1999 SC 2963. General provisions under Section 34 are based upon justice, equity and good conscience.

Case 3.- Alok Shanker Pandey v. Union of India, AIR 2007 SC 1198. It is not a penalty or punishment; it is normal accretion on principal.

Division of Interest

According to the period for which interest may be allowed, it can be divided into following three categories: *Secretary, Irrigation Department, Government of Orissa v. G.C. Roy, AIR 1992 SC 732*

(i) Interest prior to the institution of suit:

Lordships of the Supreme Court of India opined in *Mahabir Prasad v. Durga Datta AIR 1961 SC 990* "Interest for a period prior to the commencement of the suit is claimable either under an agreement or under a statutory provision or under the Interest Act, 1978 for a sum certain where notice is given. Interest is also awarded in some cases by courts of Equity."

Arbitration Proceedings:

Section 34 applies to arbitration in suits and has no application to arbitration without the intervention of the court.⁶ In cases to which the Interest Act, applies the award of interest by the arbitrator prior to the proceedings is not open to the question.? In other words, an arbitrator can award interest for the period prior to the commencement of the arbitration proceedings.⁸ But interest pendente lite cannot be awarded by an arbitrator as he is not "court" within the meaning of Section 34 of the Code.⁹

But the Supreme Court of India held in *Jugal Kishore v. Vijayendra, AIR 1993 SC 864* that where the reference to arbitration is not only of all the disputes (in connection with dissolution of a firm) in the suits pending between the partners but also of all the disputes arising out of the deed of dissolution and the deed of dissolution envisages the payment of interest and also specifies the point of time from which interest is payable the arbitrator is competent to grant interest payable under the award that is *pendente lite*. However, arbitrator appointed in the suit can award such interest, the interest for the future period from the date of the award till payment can be granted by the

court.

ii) Interest from the date of the suit to the date of decree:

Case 1.- *Bank of India v. Mary George, AIR 1992 Ker 125.* The discretion of the court is not excluded even if there is a contractual fixed rate. The court has the discretion to determine reasonable rate of interest irrespective of contract rate.

Case 2.- *Union Bank of India v. M/s Narendra Plastics, AIR 1991 Guj 67.* In commercial transactions, ordinarily contractual rate of interest should be the rule and departure a rare exception.

Case 3.- *Appa Rao v. Varadraj, AIR 1981 Mad 94* The parties seeking variation in the rate of interest agreed to be paid should show by cogent evidence that the rate agreed to be paid is spurious excessive or unreasonable.

Award of Interim Interest

Case 1.- *Vijaya Bank v. Art Trend Exporters, AIR 1992 Cal 12.* i) The grant of interim interest is a matter entirely within the discretion of the court and is not limited to rate or amount of interest, the court can totally decline to grant interest. However, the discretion has to be exercised judicially.

ii) The grant of interim interest at rate agreed between parties is not binding on court. Court should not, however, deprive creditor of agreed rate unless equity warrants otherwise.

iii) If the court chooses to grant interim interest at rate lesser than agreed rate or particular rate, it must give reasons.

(iii) Interest from the date of decree to the date of payment:

Case 1.- *L.I.C. of India v. Gangadhar, AIR 1990 SC 185.* Grant of interest from the date of the decree to the date of payment is also entirely within the discretion of the Court.

Case 2.- *Vijaya Bank v. Art Trend Exporters, AIR 1992 Cal 12.* Such discretion is to be exercised judicially upon considerations of facts and circumstances of each case. This would include conduct of the parties both before and after the suit. The discretion must be exercised on sound principles. It must be reasonable and fair. No universal rule can be laid down governing all cases.

Case 3.- High Court of Punjab & Haryana held in *Taria v. Amar Singh AIR 1991 P & H 187* that the decree was rendered null & void as interest at rate higher than 6% could not be granted for period subsequent to passing of decree.

Case 4.- *Vijaya Bank v. Art Trend Exporters, AIR 1992 Cal 12.* i) In case of a commercial transaction it may exceed 6% per annum but must not exceed contractual rate.

ii) Where there is no contractual rate it must not exceed the rate at which the moneys are lent and advanced by Nationalised Bank in relation to commercial transactions. This is an indication that in case of commercial transaction the agreed rate and when there is no agreed rate, the rates charged by Nationalised Banks are to be taken into consideration.

(iv) Principal Sum (Amount):

Case 1.- *Punjab National Bank v. Surinder Singh Mandyal, AIR 1996 HP 1* the "principal sum adjudged" used in Section 34 means, the original amount and without the addition thereto of any interest whatsoever.

Controlling Authority under Payment of Gratuity Act, 1972: Whether a Court?

It was held by the Supreme Court of India in *Charan Singh v. Birla Textiles AIR 1988 SC 2022* that the Controlling Authority under the Payment of Gratuity Act, 1972 is not

a court for the purposes of Section 34 of the Code.

(v) Decree silent as to Interest:

Section 34 Clause (2) deals with above point. Where the decree does not provide for interest from the date of the decree to the date of payment or their earlier date, the court shall be deemed to have refused such interest and a separate suit for that purpose shall not lie.

COSTS

35. Costs.—(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of an incident to all suits shall be in the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the Court has no jurisdiction to try the suit shall be no bar to the exercise of such powers.

(2) Where the Court directs that any costs shall not follow the event, the Court shall state its reason in writing.

Judicial delineations:

Section 35 deals with the power of the court to award cost. It provides that:

1. the cost and incident to all suits shall be in the discretion of the Court;
2. the court shall have full power to determine by whom or out of what property and to what extent costs are to be paid; and
3. where costs are not to follow the event, the court shall state its reasons in writing.

Case 1.- Peddanna v. Srinivasayya AIR194SC 26. The object of awarding cost to a party is to indemnify him against the expenses incurred in successfully vindicating his rights. Cost cannot be imposed by way of penalty to opposite party. It does not enable a party to make profits out of it. Cost is an indemnity, and no more than indemnity.

Main Rules as to Award of Cost:

(i) As already pointed out award of cost is within the discretion of the court. But the discretion must be exercised judicially and on the basis of well established legal principles. *Shephard v. Union of India, AIR 1988 SC 686*. It must not be exercised by chance, med lay, or by caprice or in temper.

(ii) The normal rule is that costs shall follow the event that is, cost follow the result of the suit. Where a departure is to be made from the said rule, there must be good reasons. *Shephard v. Union of India, AIR 1988 SC 686*. Even a successful party may not be awarded with costs for good reasons. He may also be deprived of the cost if he is guilty of misconduct.

(iii) Cost is allowed even in public interest litigation. Thus, where in an eye camp irreversible damage was done to the eyes of patients operated upon and a social organisation expressed the cause of unfortunate victim and prosecuted it with diligence, there the Supreme Court of India held in *A.S. Mittal v. State of U.P. AIR 1989 SC 1570* that petitioner espousing the cause of victims is entitled to costs.

(iv) Under this section the court can direct that the cost shall be paid by the defendant, that whole of the cost of the suit shall be borne by both plaintiff & defendant in equal shares, that both parties shall bear their own costs. Doctrine of merger is not applicable in the matter of realisation of costs in a suit.

(v) *Salem Advocates Bar Association v. Union of India, AIR 2005 SC 3353*. Practice of awarding no cost or nominal cost encourages filing of frivolous suits and defences. Realistic cost should be awarded.

APPEALS TO COSTS

The law is settled on the point that where costs are awarded by means of a decree an appeal lies on cost only in the following cases:

1. when a question of principles is involved;
2. when the order proceeds upon a misapprehension of fact or law;
3. when there has been no exercise of discretion in making the order as to costs; or
4. when the order is erroneous in law and improper.

Express provision for costs has been made under the following rules:

Cost of interrogatories.- Order 11 Rule 3

Costs of proving any document.-Order 12 Rule 2

Cost for setting aside sale where decree holder purchases property without the permission of the court.- Order 21, Rule 72 (3)

Costs relating to appointment of guardian *ad litem* (guardian for the suit).-Order 32, Rule 1 (3)

Cost relating to suit for mortgages. - Order 34

Costs relating to inter pleader suit.- Order 35 rule 3

Costs relating to suit by indigent persons.- Order 33, Rules 10, 11, and 16

Order 20(A)- Under this order the court has power to award costs in respect of certain matters, *viz.*, cost of notice; cost for typing, writing and printing of pleadings; costs for inspection of records of the court; cost for producing witnesses; cost for obtaining copy of judgments & decrees etc.

COST REALISABLE BY ADVOCATE

Even in some cases cost can be realised from the Advocate. Thus, where an ex-parte decree was passed due to absence of Advocate pursuant to a strike call of the Advocates, the same was set aside subject to payment of cost by party, there the Supreme Court of India held in *Ramon Services Pvt. Ltd. v. Subhash Kapoor AIR 2001 SC 207*. that the party may realise cost from the Advocate for setting aside the ex-parte decree.

35-A. Compensatory costs in respect of false or vexatious claims or defences.—(1) If in any suit or other proceedings including an execution proceeding but excluding an appeal or a revision any party objects to the claim or defence on the ground that the claim or defence or any part of it is, as against the objector, false or vexatious to the knowledge of the party by whom it has been put forward, and if thereafter, as against the objector, such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the court, if it so thinks fit may, after recording its reasons for holding such claim or defence to be false or vexatious, make an order for the payment to the objector by the party by whom such claim or defence has been put forward, of cost by way of compensation.

(2) No Court shall make any such order for the payment of an amount exceeding three thousand rupees or exceeding the limits of its pecuniary jurisdiction, whichever amount is less:

Provided that where the pecuniary limits of the jurisdiction of any Court exercising the jurisdiction of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887 (9 of 1887) or under a corresponding law in force in any part of India to which said Act does not extend and not being a Court constituted under such Act or law, are less than two hundred and fifty rupees, the High Court may empower such Court to award as costs under this section any amount not exceeding two hundred and fifty rupees and not exceeding those limits by more than one hundred rupees:

Provided further, that the High Court may limit the amount which any Court or class of Courts is empowered to award as costs under this section.

(3) No person against whom an order has been made under this section shall, by reason thereof, be exempted from any criminal liability in respect of any claim or defence made by him.

(4) The amount of any compensation awarded under this section in respect of a false or vexatious claim or defence shall be taken into account in any subsequent suit for damages or compensation in respect of such claim or defence.

Judicial delineations:

Case 1.- *State of Kerala v. Thressi, AIR 1994 SC 1488*. It is further required that the claim must have been disallowed or withdrawn or abandoned in whole or in part. Even exemplary cost may be awarded under this section where there is misuse of the process of the court that leads to vexatious litigation.

Case 2.- Applying the principles of Section 35-A of the Code, the High Court of Allahabad held in *Suraj Kumasi v. Distt. Judge, Mirzapur AIR 1991 ALL 75* that a person who approaches High Court under Article 226 of the Constitution must do so stating all the facts in his knowledge which are necessary for invoking the extra ordinary jurisdiction of the court and should not try to mislead the court by making a false statement, or circumventing or concealing the necessary facts and if the High Court finds that either a false statement has been made by the petitioner or he has come with unclear hands *i.e.* by suppressing the material facts, the High Court should suitably penalise such a person. Accordingly, the court awarded a compensatory cost of Rs. 2000/-.

Case 3.- Similarly, where a writ petition under public interest litigation was found to be vexatious, there the High Court of Punjab and Haryana in *H.K. Chopra v. P.G.I. of Medical Education and Research AIR 1992 P&H 30*, imposed a punitive cost of Rs. 5000/- on the petitioner. In this case respondent was registered as Medical Practitioner under a Punjab Act and consequently appointed to the post of Associate Professor in Post Graduate Institute of Medical Education and Research at Chandigarh. His registration as well as holding of post was challenged by means of a writ petition (under Public Interest Litigation) with a view to help the interest of his rivals by H.K. Chopra.

Case 4.- *Kotturuswami v. Virawa, AIR 1952 Mad 60* It should however, be borne in mind that a suit involving arguable and complicated questions of facts and law cannot be held to be "frivolous and vexatious" so as to warrant the awarding of compensatory costs.

Case 5.- *K. Shivamurthy v. Andhra University, AIR 1966 AP 170*. If the claim is untenable but not false the section does not apply. Also the section does not apply to witnesses. The provisions of the section do not apply to appeal or a revision.

35-B. Costs for causing delay.—(1) If, on any date fixed for the hearing of a suit or for taking any step therein, a party to the suit--

- (a) fails to take the step which he was required by or under this Code to take on that date, or
- (b) obtains an adjournment for taking such step or for producing evidence or on any other ground,

the Court may, for reasons to be recorded, make an order requiring such party to pay to the other party such costs as would, in the opinion of the Court, be reasonably sufficient to reimburse the other party in respect of the expenses incurred by him in attending the Court on that date, and payment of such costs, on the date next following the date of such order, shall be a condition precedent to the further prosecution of-

- (a) the suit by the plaintiff, where the plaintiff was ordered to pay such costs,
- (b) the defence by the defendant, where the defendant was ordered to pay such costs.

Explanation.—Where separate defences have been raised by the defendants or groups of defendants, payment of such costs shall be a condition precedent to the further prosecution of the defence by such defendants or groups of defendants as have been ordered by the Court to pay such costs.

(2) The costs, ordered to be paid under sub-section (1), shall not, if paid, be included in the costs awarded in the decree passed in the suit; but, if such costs are not paid, a separate order shall be drawn up indicating the amount of such costs and the names and addresses of the persons by whom such costs are payable and the order so drawn up shall be executable against such persons.

Judicial delineations:

1. Even in case of abuse of the process of the court exemplary cost can be imposed under this section. Accordingly, in an eviction case where the landlady obtained the possession of the demised premises on the prescribed condition of demolishing and reconstructing it, which she did not do, the court allowed the tenant to do reconstruction work and at this stage, the Municipality and the State Government geared up the machinery to stall the reconstruction at the behest of the Municipal Councillor, son of the landlady, the State Government's plea, to implead itself as a party to the matter was rejected by the High Court, there the Supreme Court of India held in *State of Kerala v. Thressia, AIR 1994 SC 1888* that the rejection by the High Court was proper and the abuse of the process was established. In the circumstances, the Supreme Court directed that Government official at whose command the appeal was filed should pay exemplary cost of Rs. 10,000/-.

2. But as an exception and in suitable case cost should be awarded on persons that set the law in motion, had benefit thereof and remained obviously ex-parte. Applying above principle the Supreme Court of India

awarded in *R.G. Shinde v. State of Maharashtra*, an exemplary cost of Rs. 20,000/- on non-contesting defendants.

In this case the Chairman of a Co-operative Society colluded with two members and fraudulently obtained consent order from the court for avoiding mandate of the statutory provisions in the matter of holding election of the society. The consent order was challenged by other members of the society and the Chairman and two members were arrayed as respondents in appeal before the Supreme Court and remained ex-parte.