

Workshop paper on the subject “Provisions in Civil Matters to curtail delay in trial”.

Since generations mankind is aspiring the quest for justice which has been ideal for him. Our constitution reflects this aspiration in the preamble itself which speaks about justice in all its forms: Social, economic and political. Justice is a constitutional mandate. Here, the glorious uncertainties of the law frustrated the aspiration for an equal predictable and affordable justice is also a question which crops up often in the mind of the people. While engaging ourselves in this justice delivery system we have to bear in mind that it has two equally important aspects, namely quality justice and speedy justice.

Importance of procedural laws :-

In every civilized society there are two sets of laws :

- (i) Substantive laws and
- (ii) Procedural Laws.

Substantive laws determine the rights and obligations of the citizen. Procedural laws prescribe the procedure for the enforcement of such rights and obligations, Of the two, substantive laws are no doubt the more important. But the efficiency of substantive laws, to a large extent, depends upon the quality of the procedural laws. Unless the procedure is simple, expeditious and inexpensive, the substantive laws, however good, are found to fail in their purpose and object. In this view, the Code of Civil procedure assumes considerable importance.

Purpose of Trial :-

In case of **A. Shanmugam Vs Sriya K.R.K.M.N.P. Sangam** in Civil Appeal No. 4012-4013 of 2012 Dtd. 27 April 2012. Hon'ble Apex Court has reiterated its observations in the case of **Ritesh**

Tiwari & another-Vrs- State of Uttar Pradesh & others (2010) SCC 677 which reproduced the quotation.

“Every trial is a voyage of discovery in which truth is the quest”

In the above said authority the Lordships have further observed that

“The entire journey of judge is to discern the truth from the pleadings, documents and arguments of the parties. Truth constitutes integral part of the justice delivery system. The truth should be the guiding star in the entire judicial process. Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth. That is their mandate, obligation and bounden duty.

Duty of a Judge :-

A judge in the Indian system has to be regarded as failing to exercise his jurisdiction and thereby discharging his judicial duty, if in the guise of remaining neutral, he opts to remain passive to the proceeding before him. He has to always keep in mind that every trial is a voyage of discovery in which the truth is the quest. In order to bring on record the relevant fact, he has to play an active role, no doubt within the bounds of the statutorily defined procedural law.

The procedural code relies on full disclosure by the parties. Managerial power of the judge has to be displayed to ensure that the scope of the factual contrary is minimized.

There are glaring provisions in the Code of Civil Procedure to cut short the delays at various levels.

The provisions can be discussed in two steps :

- A) Delay occurs at pre-trial stages,
- B) Delay occurs during trial

A) Delay occur at pre-trial stages,

I) Joinder of causes of action : Where it appears to the Court that the joinder of causes of action in one suit may embarrass or delay the trial, the Court may order separate trials or make such other orders in the interest of justice as per Order-2, Rule-6 of the Code of Civil Procedure. During the pendency of the matter notice may be served upon the advocate of the party. The Court will follow the provisions of Order-5 while effecting the service of summons upon the defendant.

II) Speedy service of summons :

Summons may be given to the parties for service :-

Order V Rule 9A :- Summons given to the plaintiff for service

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1) The Court may, in addition to the service of summons under rule 9, on the application of the plaintiff for the issue of summons for the appearances of defendant permit such plaintiff to effect service of such summons on such defendant and shall, in such a case, deliver the summons to such plaintiff for service.

III) RETURN OF PLAINT AND REJECTION OF PLAINT.

The Court will follow the provisions of Order-7, Rule 10 (a) of the Code of Civil Procedure and then the Court will return the suit for presenting the same in the Court in which the suit should have been instituted as per Order-7, Rule 10 of the Code of Civil Procedure. Court will also reject the plaint by considering the scope of Order-7, Rule 11 of the Code of Civil Procedure.

IV) Filing of Written Statement Order VIII Rule 1 :- The defendant shall present his written statement within 30 days from the date of service of summons on him. However, in view of the proviso, he

shall be allowed not later than 90 days, by the Court after recording reasons.

In a case of Kailas -Vrs-Nankhu and others in Appeal (Civil) 7000 of 2004 dtd. 06/04/2005, the Hon'ble Lordship of has observed that :

“Ordinarily, the time schedule prescribed by Order VIII, Rule 1 has to be honoured. The defendant should be vigilant. No sooner the writ of summons is served on him he should take steps for drafting his defence and filing the written statement on the appointed date of hearing without waiting for the arrival of the date appointed in the summons for his appearance in the Court. The extension of time sought for by the defendant from the court whether within 30 days or 90 days, as the case may be, should not be granted just as a matter of routine and merely and for asking more so, when the period of 90 days has expired. The extension of can be only by way of an an exception and for reasons assigned by the defendant and also recorded in writing by the Court to it's satisfaction. It must be spelled out that a departure from the time schedule prescribed by Order VIII, Rule 1 of the Code was being allowed to be made because the circumstances were exceptional, occasioned by reason beyond the control of the defendant and such extension was required in the interest of justice, and grave justice would be occasioned if the time was not extended.

Failure of defendant to file W.S.

Order VIII Rule 10- Procedure when party fails to present written statement called by Court.

If the defendant fails to file written-statement within the time permitted or fixed by the Court, then Court shall pronounce a judgment

against him as per Order-8, Rule 10 of the Code of Civil Procedure.

IV) Dismissal of suit due to non-appearance of plaintiff.

Where the defendant appears and plaintiff does not appear when the suit is called for hearing, the Court shall make an order that the suit be dismissed as per Order-9, Rule 8 of the Code of Civil Procedure. Where the suit is wholly or partly dismissed under Rule 8 the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. However, he may apply for an order to set the dismissal aside by showing a sufficient cause for his non appearance in the said suit on the date of hearing, then the Court shall make an order setting aside dismissal passed in the said matter as per Order-9, Rule-9.

V) Steps to be taken at the first hearing of the suit.

At the first hearing of the suit the Court shall ascertain from each party or his advocate whether he admits or denies such allegations of the fact as are made in the plaint or written-statement. The Court shall record such admissions and denials as per Order-10, Rule 1 of the Code of Civil Procedure.

Order X of Code of the Civil Procedure

Order X, Rule 1 of CPC empowers the Court to ascertain from each party whether it admits or denies allegation of fact as are made in the plaint or written statement. By exercising power conferred by this provision, issues can be minimized to considerable extent because it is general practice amongst plaintiff to exaggerate the pleading and amongst defendant to deny each and every fact in the plaint. After recording such admissions and denials, the Court shall direct the parties to opt for alternative dispute resolution mechanism by exercising power conferred by Rule 1-A of Order X of CPC. Then Court shall fix the date of

appearance before such a forum or authority as per the choice of parties as per amended provisions of Order-9, Rule 1 (a) of the Code of Civil Procedure.

VI) S.89 ADR methods and Lok-adalats:

Adjudication of dispute through the Court is one way of resolving the dispute. However, the Courts adjudicate and resolve the dispute by adversarial method. It takes a considerable time. It also leadsto win-lose situation. In ADR system there is a win win situation for both the parties. If the ADR method is successful, it brings about a satisfactory solution to the dispute quickly. Therefore, Amendment Act 1999 incorporated section 89 in C.P.C with a view to bring alternative systems in to the mainstream. Section 89 makes it obligatory for the Court to refer the dispute for settlement to any of ADR mechanism.

89. Settlement of disputes outside the Court. - Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement an give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for -

- a) arbitration ;
- b) conciliation ;
- c) judicial settlement including settlement through Lok Adalat; or
- d) mediation,

The challenge made to the constitutional validity of amendments made to the code of Civil Procedure by Amendments Act of 1999 and 2002 was rejected by Hon'ble Apex Court in Salem Advocates

Bar Association T.N.-Vs- Union of India (2003) 1 SCC 49 but it was noticed in the judgment that the modalities have to be formulated for the manner have to be formulated for the manner in which section 89 of the Code and for that matter, the other provisions which have been introduced by way of amendment, may have to be operated. For this purpose, a committee headed by a former Judge of Apex Court and Chairman, Law Commission of India (Justice M Jagannadha Rao) was constituted so as to ensure that the amendments become effective and result in quicker dispensation of justice. The committee submitted its report in three parts.

Report 1 contains the consideration of the various grievances relating to the amendment to the Code and the recommendations of the Committee. Report 2 contains the consideration with draft rules for A.D.R and mediation as envisaged by section 89 of the Code read with Order X rule 1A, 1B and 1C. It also contains a model rules. Report 3 contains a conceptual appraisal of case management. It also contains the model rules of case management. These reports are considered by Hon'ble Apex Court in case of **Salem Advocates Bar Association -Vrs- Union of India** in writ petition (Civil) 496 of 2002 on 2nd August 2005 (2005) 6 SCC 344.

This case is a landmark case in the history of Indian Judiciary. This set of two cases former one laying down amendments and the latter one providing a report on the amendments feasibility have laid down the foundations of providing, quick, financially accessible and proper justice. This basically intends to reduce the number of suits filed in the Court every year. The case has been referred to in numerous cases of Civil nature after the amendments by the Act of 1999 and 2002. Moreover, the model provided to be followed by the trial court is an

easily practicable model and bestow the 'bright light of proper justice in the darkness of innumerable cases'. The rules provided in the model are appropriate for the system of Indian Judiciary and hence should be properly followed.

VII) Procedure to be adopted before framing of issues :

Importance of pleadings :-

For effective and speedy trial, the Court has to frame issue, but before framing the issues the court may ensure whether there are sufficient pleadings.

In a case of **A Shanmugam Vs Sriya K.R.K.M.N.P. Sangam in Civil Appeal No. 4012-4013 of 2012** Dtd. 27 April 2012.

Hon'ble Apex Court has observed that

“On vague pleadings, no issue arises. Only when he so establishes, does the question of framing an issue arise. Framing of issues is an extremely important stage in a civil trial. Judges are expected to carefully examine the pleadings and documents before framing of issues in a given case”.

The Court must ensure the pleadings of case must contains sufficient particulars insistence on details reduces the ability to put forward a nonexistent or false claim or defence. In dealing with a civil case, pleadings, title documents and relevant record play a vital role and that would ordinarily decide the fate of the case. Discovery and production of documents and answers to interrogatories, together with an approach of considering what in ordinary course of human affairs is more likely to have been the probability, will prevent many a false claims or defences from sailing beyond the stage of issues. If the pleadings do not give sufficient details, they will not raise an issue and the court can reject the claim or pass a decree on admission.

VIII) *Discovery, inspection,interrogatories (order XI), production of documents (order XIII), admissions (order XII) :*

In the above said authority of A. Shanmugam the Hon'ble Lordship of Apex Court has observed that ;

“ A Judge should not remain silent spectators under the guise of remaining neutral, he opts to remain passive to the proceedings before him. He has to always keep in mind that every trial is a voyage of discovery in which truth is the quest. In order to bring on record the relevant fact, he has to pay an active role, no doubt within the bounds of the statutorily defined procedural law. In civil cases adherence to Section 30 CPC would also help in ascertaining the truth. It seems that this provision which ought to be frequently used is rarely pressed in service by our judicial officers and judges.

Section 30 CPC. reads as under :-

30. Power to under discovery and the like.

“Subject to such conditions and limitations as may be prescribed. The court may at any time either of its own motion or on the application of any party.

(a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inception, production, impounding and return of documents or other material objects producible as evidence ;

(b)issue summons to person whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid ;

c) Order any fact to be proved by affidavit.

“The pleadings must set-forth sufficient factual details to the extent that it reduces the ability to put-forward a false or exaggerated claim or defence. The pleadings must inspire confidence and credibility. If false averments, evasive denials or false denials are introduced, then the court must carefully look into it while deciding a case and insist that those who approach the court must approach it with clean hands.

It is imperative that judges must have complete grip of the facts before they start dealing with the case that would avoid unnecessary delay in disposal of the cases.

Ensuring discovery and production of documents and a proper admission/denial is imperative for deciding civil cases in a proper perspective. In relevant cases, the Courts should encourage interrogatories to be administered.

IX) Framing of issues (Order XIV)

Framing of issues is a very important stage of a civil trial. It is imperative for a judge to critically examine the pleadings of the parties before framing of issues. Rule 2 of Order X CPC enables the Court, in its search for the truth, to go to the core of the matter and narrow down, or even eliminate the controversy. **Rule 2 of Order X reads as under:-**

2. Oral examination of party, or companion of party.

(1) At the first hearing of the suit, the Court -(a) shall, with a view to elucidating matters in controversy in the suit, examine orally such of the parties to the suit appearing in person or present in Court, as it deems fit; and (b) may orally examine any person, able to answer any material question relating to the suit,

by whom any party appearing in person or present in Court or his pleader is accompanied.

It is a useful procedural device and must be regularly pressed into service. As per Rule 2 (3) of Order X CPC, the Court may if it thinks fit, put in the course of such examination questions suggested by either party.

If issues are properly framed, the controversy in the case can be clearly focused and documents can be properly appreciated in that light. The relevant evidence can also be carefully examined. Careful framing of issues also helps in proper examination and cross-examination of witnesses and final arguments in the case.

X) Order XIV R-2 – Determination of preliminary issue :

Under rule-1 of order-XIV the Court may on the basis of pleadings frame issues of fact and law. Rule-2 directs the Court to pronounce the judgment on all issues. However, Sub-rule-2 of rule-2 carves out an exception to the rule-1 and rule-2. It permits the Court to determine the issue relating to jurisdiction of the Court and bar to the suit created by any law, as preliminary issues. The object of this rule is to avoid the piecemeal trial and protracted litigation and to save the courts time when the suit can be disposed of on one issue.

XI) Order 15 Disposal of the suit at the first hearing :- Court is competent to pronounce judgment at once:- Under this provision, "Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or fact, the court may at once pronounce judgment at once under Order 15 Rule 1. Procedure under Order 20 need

not be followed in such a case.

Provisions under which the Court can pronounce the judgment without framing the issues :

There are certain provisions in C.P.C which permits the Court to pronounce the judgment before the stage of framing of issues. If the said provisions are properly invoked at appropriate stage There will be speedy disposal of the matter.

i) O.8 R.10 - Where any party from whom written statement is required fails to present the same within the time permitted or fix by the Court, the Court shall pronounce the judgment against him.

ii) O.9 R.8 - Where a defendant admits the claim or part thereof, the Court shall pass a decree against the defendant upon such admission.

iii) O.X R.4 - Where Court has ordered party or pleader to answer any material question relating to the suit and if such party or pleader fails without lawful excuse to appear in person to answer the said question, the Court may pronounced judgment against him.

iii) O.12 R.5- Where admission of fact have been made either in the pleading or otherwise whether orally or in writing the Court may at any stage of the suit without waiting for the determination of any other question between the parties make such order or give such judgment having regard to such admissions.

iv)O.15 R.1 - Where at the first hearing of the suit it appears that the

parties are not at issue on any question of law or of fact, the Court may at once pronounce the judgment.

v) O.15 R.2 - Where there are more defendants than one, and any one of the defendant is not at issue with the plaintiff on any question of law or fact, the Court may at once pronounce the judgment for or against such defendant and the suit shall proceed only against other defendants.

vi) O.15 R.4 - Where the summons has been issued for the final disposal of the suit and either party fails without sufficient cause to produce the evidence on which he relies, the Court may at once pronounce the judgment.

XII) Adjournments (Order XVII) :

In a case of M/S Shiv Cotex vs Tirgun Auto Plast P.Ltd.& Ors on 30 August, 2011 in Civil Appeal No. 7532 of 2011 reported in 2011 AIR SCW page 5789 : 2012 Mh. L. J. 439 Hon'ble Lordships of our Apex Court have observed that,

Adjournments at the drop of the hat. In the cases where the judges are little pro-active and refuse to accede to the requests of unnecessary adjournments, the litigants deploy all sorts of methods in protracting the litigation. It is not surprising that civil disputes drag on and on.

It is high time that courts become sensitive to delays in justice delivery system and realize that adjournments do dent the efficacy of judicial process and if this menace is not controlled adequately, the litigant public may lose faith in the system sooner than later. The courts, particularly trial courts, must ensure that on every date of hearing, effective progress takes place in the suit.(para 15)

No litigant has a right to abuse the procedure provided in the CPC. Adjournments have grown like cancer corroding the entire body of justice delivery system. It is true that cap on adjournments to a party during the hearing of the suit

provided in proviso to Order XVII Rule 1 CPC is not mandatory and in a suitable case, on justifiable cause, the court may grant more than three adjournments to a party for its evidence but ordinarily the cap provided in the proviso to Order XVII Rule 1 CPC should be maintained. When we say 'justifiable cause' what we mean to say is, a cause which is not only 'sufficient cause' as contemplated in sub-rule (1) of Order XVII CPC but a cause which makes the request for adjournment by a party during the hearing of the suit beyond three adjournments unavoidable and sort of a compelling necessity like sudden illness of the litigant or the witness or the lawyer; death in the family of any one of them; natural calamity like floods, earthquake, etc. in the area where any of these persons reside; an accident involving the litigant or the witness or the lawyer on way to the court and such like cause.

The list is only illustrative and not exhaustive. However, the absence of the lawyer or his non-availability because of professional work in other court or elsewhere or on the ground of strike call or the change of a lawyer or the continuous illness of the lawyer (the party whom he represents must then make alternative arrangement well in advance) or similar grounds will not justify more than three adjournments to a party during the hearing of the suit. The past conduct of a party in the conduct of the proceedings is an important circumstance which the courts must keep in view whenever a request for adjournment is made. A party to the suit is not at liberty to proceed with the trial at its leisure and pleasure and has no right to determine when the evidence would be let in by it or the matter should be heard. The parties to a suit - whether plaintiff or defendant - must cooperate with the court in ensuring the effective work on the date of hearing for which the matter has been fixed. If they don't, they do so at their own peril. Insofar as present case is concerned, if the stakes were high, the plaintiff ought to have been more serious and vigilant in prosecuting the suit and producing its evidence.(para 16)

B) Delay occur during trial :

a) Recoding of evidence :

The Court is required to record the evidence of the parties by way of affidavit by following a provisions of Order-18, Rules 4 and 5 of the Code of Civil Procedure. The Court would also follow the provisions of Order-

19 while recording evidence of the parties by way of affidavit.

The object of amending Order-18 Rule-4 of the Code of Civil Procedure is to subserve the larger purpose of cutting down in the disposal time of recording evidence, thereby reducing the period of disposal of the cases by dispensing with the lengthy procedure of the Court recording evidence of every witness produced before it. The above principles have been laid down in a case of “*Shamrao Vishnu Kunjir V/s. Suresh Vishnu Kunjir and others, reported in 2005 (3) Mh. L. J. 1071*”.

In M/s Bagai Constructions Vs. M/s

Gupta Building Material, AIR 2013 SC 1849, Supreme Court held that “it

is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time”.

b) Exhibiting the documents, deciding objections and stage of taking objection and deciding objections :

It is general experience that many a times objections regarding admissibility of documents, exhibiting the documents and mode of proof are taken. After it's decision those are challenged in appeal which caused tremendous delay to to proceed with the case. So in order to avoid such inordinate our own High Court has laid down guidelines. In a case of **Mr.Hemendra Rasiklal Ghia.**

vs Subodh Mody.Writ petition no. **623 of 2005** on 16th October 2008, Hon'ble Lordships of Full Bench of our own High Court have observed that :

(i) objection to the document sought to be produced relating to the deficiency of stamp duty must be taken when the document is tendered in evidence and such objection must be judicially determined before it is marked as exhibit;

(ii) Objection relating to the proof of the document of which admissibility is not in dispute must be taken and judicially determined when it is marked as exhibit;

(iii) Objection to the document which in itself is inadmissible in evidence can be at any stage of the suit admitted reserving decision on question until final judgment in the case.

(iv) The objection to the admissibility or relevancy of evidence contained in the affidavit of evidence filed under XVIII Rule 4 of C.P.C. can be admitted at any stage reserving its resolution until final judgment as held in Ameer Trading Corpn. Ltd. v. Shapoorji

c) *Order XX : Judgment*

We should inculcate art of writing short and precise judgment to save precious time. While writing judgments we should state the facts in precise. We should write a terse and precise judgment so as to enable Appellate Court to understand the crux of the matter, our decision thereon and reasons therefore. We should avoid complex sentence which create confusion in the mind of reader. We should also avoid writing lengthy judgments.

As per Order XX of CPC we have to pronounce the judgment within 30 days from the date on which hearing of the case was concluded. Where, it is not practicable to pronounce the judgment within 30 days then after recording reasons another day can be fixed. However, such

period should not be beyond 60 days from the date on which the case was heard.

d) *Interlocutory applications :-*

Simultaneously with institution of civil litigation, the process of filing interlocutory applications commences, which continues till the judgment is pronounced. A lot of judicial time is spent on hearing and disposal of such applications. The Courts need discourage, frivolous and unnecessary applications by dismissing them with exemplary costs. As far as possible, such applications should be heard and disposed of on the very first hearing, so that an unscrupulous litigant is not able to gain time and cause delay, which is the primary aim behind filing many such applications.

e) *Amendment of pleadings (Order-VI R-17) :*

Order VI Rule 17 of the Code deals with amendment of pleadings. It was felt that frequent use of this provision delays the trial. Therefore, by Amendment Act 46 of 1999, this provision was deleted. It has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The proviso, to some extent, curtails absolute discretion of Court to allow amendment at any stage. The object of the provision is to prevent frivolous applications which are filed to delay trial.

f) *Grant or refusal of injunction :* Experience has shown that once an injunction is granted, getting it vacated would become a

nightmare for the defendant.

In Maria Margarida Sequeria Fernandes and others de Sequeria (Dead) through L.Rs. (2012) 3 SCALE 550 Court examined the importance of grant or refusal of an injunction in paras 86 to 89 which read as under:-

“Grant or refusal of an injunction in a civil suit is the most important stage in the civil trial. Due care, caution, diligence and attention must be bestowed by the judicial officers and judges while granting or refusing injunction. In most cases, the fate of the case is decided by grant or refusal of an injunction. Experience has shown that once an injunction is granted, getting it vacated would become a nightmare for the defendant. In order to grant or refuse injunction, the judicial officer or the judge must carefully examine the entire pleadings and documents with utmost care and seriousness.

The safe and better course is to give short notice on injunction application and pass an appropriate order after hearing both the sides. In case of grave urgency, if it becomes imperative to grant an ex-parte ad interim injunction, it should be granted for a specified period, such as, for two weeks. In those cases, the plaintiff will have no inherent interest in delaying disposal of injunction application after obtaining an ex-parte ad interim injunction. The Court, in order to avoid abuse of the process of law may also record in the injunction order that if the suit is eventually dismissed, the plaintiff undertakes to pay restitution, actual or realistic costs. While passing the order, the Court must take into consideration the pragmatic realities and pass proper order for mesne profits. The Court must make serious endeavour to ensure that even-handed justice is given to both the parties.

g) Court to encourage settlement :

Duty of Court to assist parties and make efforts. :-

A) *In suits by or against Government or Public Officers in their official capacity :*

Order 27 rule 5-B : Duty of Court in suit against the Government or a Public Officer to assist in arriving at a settlement

(1) in every suit or proceeding to which Government or Public Officer acting in his official capacity, is a party, it shall be the duty of the Court to make, in the first instance, every endeavour, where it is possible to do so consistently with the nature and circumstances at the case, to assist the parties in arriving a a settlement in respect of the subject matter of the suit.

2) If, any such suit or proceeding, at any stage, it appears to the Court that there is a reasonable possibility of a settlement between the parties the court may adjourn the proceeding for such period as it thinks fit, to enable attempts to be made to effect such a settlement.

B) Suit relating to matters concerning the family.

Order XXXII A rule 3 : - (1) In every suit or proceeding to which this order applies an endeavour shall be made by the Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist the parties in arriving at a settlement in respect of the subject matter of the suit.

h) Jurisdiction of the Court in execution proceeding if defendant resides outside the local jurisdiction.

Section 39(4) provides that “Nothing in this section shall be deemed to authorize the court which passed the decree against any person or property outside the local limits of it's jurisdiction.

Section 39(1) says that if the court has to execute the decree against person or property outside it's jurisdiction it has to be transferred to the Court within whose jurisdiction the property is located or the person is carrying business . So section 39(4) is introduced to clarify the legal position under sub section 39(1). There are two exception to those

provisions. Under Order 21 Rule (3) where there is a decree against an estate or tenure, execution can be taken by court in regard to that part of the estate or tenure which is outside its jurisdiction. Likewise, under Order 21 Rule 48, attachment of salary of a Government servant, railway servant or servant of local authority can be made if the employee or the disbursing authority is outside the court's jurisdiction so dealing carefully with these provisions will certainly speed up with the trial.

CASE MANAGEMENT :

Hon'ble Supreme Court in the matter of ***Ramrameshwari Devi v/s. Nirmala Devi (2011 (8) SCC 249 : 2011 (6) Scale 677*** after observing the prolonged trial in the matter laid down the following guide line for speedy trial :-

- A.** Pleadings are foundation of the claims of parties. Civil litigation is largely based on documents. It is the bounden duty and obligation of the trial judge to carefully scrutinize, check and verify the pleadings and the documents filed by the parties. This must be done immediately after civil suits are filed.
- B.** The Court should resort to discovery and production of documents and interrogatories at the earliest according to the object of the Act. If this exercise is carefully carried out, it would focus the controversies involved in the case and help the court in arriving at truth of the matter and doing substantial justice.
- C.** Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.
- D.** The Court must adopt realistic and pragmatic approach in granting mesne profits. The Court must carefully keep in view the ground realities while granting mesne profits.
- E.** The courts should be extremely careful and cautious in granting ex-parte ad interim injunctions or stay orders. Ordinarily short notice

should be issued to the defendants or respondents and only after hearing concerned parties appropriate orders should be passed.

F. Litigants who obtained ex-parte ad interim injunction on the strength of false pleadings and forged documents should be adequately punished. No one should be allowed to abuse the process of the court.

G. The principle of restitution be fully applied in a pragmatic manner in order to do real and substantial justice.

H. Every case emanates from a human or a commercial problem and the Court must make serious endeavor to resolve the problem within the framework of law and in accordance with the well settled principles of law and justice.

I. If in a given case, ex parte injunction is granted, then the said application for grant of injunction should be disposed of on merits, after hearing both sides as expeditiously as may be possible on a priority basis and undue adjournments should be avoided.

J. *At the time of filing of the plaint, the trial court should prepare complete schedule and fix dates for all the stages of the suit, right from filing of the written statement till pronouncement of judgment and the courts should strictly adhere to the said dates and the said time table as far as possible.* If any interlocutory application is filed then the same be disposed of in between the said dates of hearings fixed in the said suit itself so that the date fixed for the main suit may not be disturbed.

Conclusion :

It is a matter of satisfaction that the public at large continues to hold our judicial institution in high esteem, despite there short comings and handicaps. We can rightly take pride for the quality and effectiveness of our judicial system. Yet, delay in judicial system results in loss of public confidence on the concept of justice. If people loose faith in justice, entire democratic set up may crumbled down. To retain trust and confidence of people in system, there should be quick and expensive justice. Justice Warran Burger, former Chief Justice of the American Supreme Court observed in the American context that the notion- that ordinary people want black-robed judges, well dressed lawyers, fine paneled courtrooms

as the setting to resolve their disputes, is not correct. People with legal problems, like people with pain, want relief and they want it as quickly and inexpensively, as possible. I would like to conclude by quoting the words of Hon'ble Justice K.T.Thomas, former Judge Supreme Court of India.

Hon'ble Justice said

“A time has now reached when speed is an important requirement in litigation. But unfortunately, we have speed only for motor Vehicles in busy urban roads wherein it is not advisable and it is not permitted also. Where the speed is really required we are very slow. The malady of delay in disposing of the cases country wide can be resolved to a great extent if the Judicial Officers speed up the Court process”.

I feel that the adherence to the above said provisions will definitely help the Court to administer fair and speedy justice.