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Justice Delayed Is Justice Denied – Judicial Interpretation Of Order 17 Of CPC

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Abstract

Indian judiciary is known around the world for upholding the rule of law for the defenseless. At the same time, it is also true that our judges are overburdened due to the large volume of cases they have to deal with. As a result, the Indian legal system is characterized by long running cases. There is a well-known saying that “Justice delayed is Justice denied.” To quote the figures there are 3.3 crore cases pending in various courts around the country. Out of which 2.84 crore cases are pending in the lower courts, 43 lakh cases are in the High Courts, while roughly 58,000 cases are in the Supreme Court. One of the major reasons for lengthy trials is the frequent adjournments. The power and procedure for adjournment of a civil case is given under order XVII of Code of Civil procedure, 1908. It also provides for circumstances under which court can order for adjournment and when it cannot. There is need to analyze the provisions of this order and look at the judicial opinion about the pendency and delay caused in disposing the cases.

The current paper will discuss the causes of judicial delays and critically analyze order XVII of CPC and further attempt to look at the possible solutions for overcoming the problem of judicial delays of civil cases.

Key Words: *Indian Judiciary, Judges, courts, pendency of cases, legal system.*

1. Introduction

An English politician E.W.Gladstone says, “Justice delayed is justice denied”, here he intends to say that if a judicial decision is not given within a reasonable amount of time than such decision has no value even if appropriate judgment is made at a later point of time. Time is of the essence in a judicial trial. Delay is said to have occurred when a court consumes more time to decide a case than what is reasonably expected from it. It is not contended that the judgment should be passed overnight. A legitimate amount of time should be spent on the case and justice should be served before it is too late. In India a person finds himself trapped in a civil litigation for his entire life and at times the case is carried on to the next generation as well. In such a long-lasting process a litigant not only faces harassment but also ends up spending all his savings. A major reason for long running civil case is the adjournments. A case gets adjourned so many times at various stages for different reasons that it takes many years to finally dispose it. Unnecessary adjournments extend the life of case to many years. Courts are empowered to adjourn the matter if there are reasonable grounds to do the same. However, most of the time the adjournment is on petty reasons.

Order XVII Rule 1 of Code of Civil procedure in India gives power to the civil courts to order adjournments which goes by the head “Court may grant time and adjourn hearing.”. Rule 1(1) of Order XVII states that “The Court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit”.

The above rule is very clear as it says that the court may order for adjournment only if there is sufficient cause shown by the parties favoring such adjournments. Also, it should be noted that it is a “may” provision which means that, unlike a “shall” provision, it gives wide discretion to the court in deciding whether to order for adjournments of the matter or not.

There is need to analyze Order XVII of CPC and understand the observations made by Indian judiciary about Adjournments which are ordered by virtue of power given to them under this order.

2. Reasons For Delay In Delivering Justice

The issue of delays is not new, in fact it predates the law itself. The issue of delayed justice has been discussed and argued in many sessions of parliament, legislature of state and has attracted wide media coverage. One of the grey areas in which our justice system has fallen short of the public's demands is the judiciary's failure to deliver justice quickly. The major reasons for delayed judgments are

3.1 Lack of Judges: The judge to case ratio in India is very low, each judge is burdened with so many cases which makes it difficult to dispose quickly. India has the lowest Judge-to-Population ratio in the world and there are many unfilled vacancies.

3.2 Absence of time limit on disposal: Civil procedure code do not give any explicit duration within which a case should be disposed. Hence, the courts end up taking their own sweet time to decide the case.

3.3 Delay in serving summons: Summons is a written order by court asking for appearance of the concerned person for the hearing. However, it is seen that many a times summons is served late and on other occasions the person so summoned evades the notice. This act as a major barrier in the path of speedy trial.

3.4 Delay in filing written statement: A standard period of 30 days is given to the respondents to file their written statement. However, this rule is not followed in true spirit. The party sometimes takes more time thus hindering the flow of the case.

3.5 Strike by lawyers: Though strike is not a right of a lawyer many a times lawyers indulge in strike and boycott the proceedings this is not only against the professional ethics to be followed by an advocate but also results in an unwarranted delay.

These *interalia* are the major reasons for delayed disposal of case in addition to the problem caused by adjournments.

3. Judiciary's Take On Delayed Justice

In many of the cases the courts have condemned the unnecessary delayed caused in a case and has in turn emphasized on the importance of providing speedy trial. For instance in the landmark case of **A.R.Antulay v. R.S.Nayak**¹ the constitution bench of supreme court observed that the right to speedy trial is a fundamental right under Article 21 of constitution. Subsequently in **Ranjan Dwivedi v. CBI**² the court reiterated that the expeditious trial is an integral part of right to life and liberty enshrined in Article 21 of the Indian Constitution.

4. Provision Relating To Adjourment In CPC

As mentioned above Rule 1 of order XVII empowers a civil judge to order for Adjourment of a case if he is satisfied that there is reasonable cause to do so. As a general rule Order XVII states that once the hearing of witness begins then it should happen on day-to-day basis until completion of examination of all the witnesses. However, an adjourment can be made if there are strong reasons to do so. Further other rules of the order talk about cost to be fixed when a matter is adjourned.

5.1 When adjourment cannot be granted

Proviso to rule 2 gives interalia talks about circumstances which do not qualify as valid ground for adjourment. For an adjourment to be valid the situation should be beyond the control of the parties. There should be any possibility of arranging another pleader in case a party seeks for adjourment based on fact that their advocate is unavailable due to illness or other serious problem. If an adjourment is asked for on the reason that advocate is busy in another case, then it shall be strictly refused by the court.

5.2 Judicial Interpretation of order XVII

In the case of **Anita Bhandari v. UOI**³ it was observed that "A civil suit should be decided at the earliest and in any case within one year from the date of its institution". But the words used under order XVII gives wide scope for judicial discretion to grant adjourment, because of which the

¹ A.R.Antulay v. R.S.Nayak, [1984] 2 S.C.R. 495.

² Ranjan Dwivedi v. CBI, CrI. Rev. pet. 107 of 2007.

³ Anita Bhandari v. UOI, 2003 (2) Guj LR 1093.

adjournment powers are discretionary in nature it becomes hard to have a straight jacket formula for ordering of adjournment. It is thus equally hard to have guidelines to determine the validity of adjournment made by the court.

In the well-known case of **SK Makbul v. SK Sidik and ors**⁴, the court made an observation that the advocates often seek adjournment in order to delay the hearing of the case and to get time to come up with the strategy for the case. Such Unnecessary and repeated adjournments will not only delay in providing justice but also make people lose faith in the judiciary. There is no doubt that the adjournments give time to both the parties to prepare for their case effectively. But many a times the provision is misused by advocates by asking for adjournment on silly grounds to deliberately delay the case. It was strongly pointed out by Madras High court in the case of **Unit Traders v. Commissioner of Customs**⁵ that when party remains absent to hearing deliberately and no representation is made on their behalf then the case can be heard ex-parte and same would not amount to violation of natural justice.

5.3 Effect of Adjournment

Adjournment if made on unreasonable ground has a negative impact on the entire justice delivery system. The main ill effect of Adjournment is that it causes significant delay in deciding the cases. As it is known that the Civil Procedure code and Indian Evidence Act lay down strict rules with respect to procedure to be followed during the trial, thus already making the process of judiciary a lengthy affair. An unwarranted and unreasonable delay in addition to the already existing procedure will further prolongate the disposal of a case. Adjournment as clear from the words of order XVII is a discretion of the court, hence it cannot be claimed by party as a matter of right⁶. However, courts often end up giving adjournments on various instances which contribute to hardship, inconvenience and expense to the parties and the witnesses. The witness has no stake in the case and comes to assist the court to dispense justice. He sacrifices his time and convenience for this. Hence an unreasonable adjournment is a disrespect to the time of the witnesses.

⁴ Sk Makbul v. SK Sidik and ors, AIR 1966 Ori 41.

⁵ Unit Traders v. Commissioner of Customs, 2012(281) ELT659 (Mad).

⁶ Chandra Prakash Ojha v. District Judge Barielly, AIR 2004 All 204.

An article published by IIM Calcutta says that, there is a huge delay due to the processes of court functioning during the trial stage for reasons namely non-attendance of witnesses, non-appearance of lawyers, lengthy oral arguments, arbitrary adjournments and delayed judgments. More than 60% of court's time is spent on other reasons instead of court's functioning. Adjournment for even passing judgment took an average nine weeks, while court holidays and strikes consumed about five weeks⁷. Thus, an adjournment is adding on to the already existing problems in the judicial system.

The lawyers must not forget, that by seeking unnecessary adjournments, they are frustrating the legitimate right of one of the litigating parties and thus by adopting dilatory tactics, they are creating a situation, where the litigating party may lose its faith in the judiciary. It is the duty of the courts to decide the matters as early as possible, and if the lawyers refuse to co-operate with the courts, then a time has come, where the court would be left with no option but to decide the matters on its own, by going through the record, and this situation would never help the litigating party.⁸

5. Various Committees To Deal With The Delay

Time and again various committees have been setup to study the cause of delay in disposal of cases and to recommend solutions. In the year 1924 Rankin committee was setup

To investigate on delay in civil cases lower courts as well as in High Courts. Later Justice S.R.Das headed a committee in 1949 which was called the High Court Arrears Committee. Subsequently In the year 1969, under chairmanship of CJ Hidayatulla a committee was established to investigate the problem of pendency of cases in study all its nuances. Later on, Justice Shah was appointed the Chairman of the Committee. The Committee was known as High Courts Arrears Committee, 1972.

However, the path breaking report was given by the committee formed under Justice Malimath. It aimed at speedy disposal of cases. Based on the recommendations of Malimath Committee amendments were made in 1999 and 2002. The suggestions of the committee and resulting amendments thereto are as follows: -

⁷ Pradeep Thakur, *what delays the delivery of justice in lower courts? IIM study finds out* | India News - Times of India (May 15, 2022 05:30 PM), <https://timesofindia.indiatimes.com/india/what-delays-delivery-of-justice-in-lower-courts-iim-study-finds-out/articleshow/71679266.cms>.

⁸ SANJAY PINTO, 'Time' for adjournments running out? Deccan Chronicle (2019), (May 15, 2022 05:30 PM), <https://www.deccanchronicle.com/nation/in-other-news/160219/time-for-adjournments-running-out.html>.

1. Time Limit for filing written statement, amendments of pleading, issuing summons etc., must be prescribed. It was withdrawn due to pressure from lawyers/advocates.
2. So far as possible parties must try to decide or settle the cases outside the court. A new section, Section 89, was introduced.
3. To record the evidences by issuing the commission instead by presence before the court of law. Commission for collecting evidences can be issued now under section 75 of CPC.
4. Time frame need to be provided for oral argument before the court of law.
5. Restriction on right to appeal.

6. Amendment To Order XVII Of CPC

Based on the recommendation of Malimath Committee a much-needed amendment to the adjournment provisions of CPC was brought by the Amendment Act of 1999 which came into effect from 20002. First and the foremost change was that it imposed the duty on the court to record the reasons for adjournment of the matter. This was to ensure that the judges do not order for adjournment on flimsy and silly reasons. Secondly, the amendment restricted the number of adjournments which can be granted to both parties to the suit. It was now said that the court can only order for three adjournments during the hearing of the suit. Though, it has almost been two decades for this amendment the civil courts have not been abiding by it seriously. More than three adjournments are giving every now and then and an explicit provision of law is broken on day-to-day basis.

This provision was challenged in the case of **Salem Advocate Bar Assoc. v. Union of India**⁹ the provision limiting adjournments cannot be held to be ultra vires or unconstitutional in some extreme case it may become necessary to grant adjournment despite the fact of three adjournments have already been granted like the example of Bhopal gas tragedy, riots and other extremely serious matter then Court can grant an adjournment. Even in an ongoing case before the Bombay High court, the court has observed that Rules of procedure (in this case provision of seeking adjournments under Order XVII Rule 1 CPC) are indeed "handmaids of justice" and are meant to advance ends of justice and not to thwart or obstruct the same¹⁰.

⁹ Salem Advocate Bar Assoc. v. Union of India, AIR 2005 SC 3353.

¹⁰ Live law, <https://www.livelaw.in/news-updates/bombay-high-court-order-xvii-rule-1-cpc-adjournment-rule-of-procedure-not-mandatory-196455?infinitemscroll=1> (May 15, 6:30 PM).

Hence, it is clear that the courts do not want to encourage unnecessary adjournments, however, they end up doing it due to one or the other reason.

7. Provisions To Avoid Adjournment

CPC under Order XVII itself provides alternatives which can be taken instead of adjournment in case of default by any of the parties. Rule 2 of the order says that in case if parties fail to appear on a fixed day for the hearing the court can proceed to dispose the case in any of the mode given under order IX of CPC or make any order which it deems fit. Further Rule 3 of Order XVII says that if any party in spite of providing sufficient time fails to appear before court or produce the witness or evidence then the court can go on to decide the case without taking into consideration such witness or evidence and

in case the party is absent then it can dispose the matter as provided under rule 2 of the same order.

Hence, it is clear that the CPC gives alternate ways to deal with the case in situation where it feels that the parties are deliberately remaining absent to the hearing or deliberately causing delay to the matter.

8. Practical Solution To Problem Of Delay In Justice

By looking at the major problems which act as hurdle in the path of speedy trial it is easy to come up with recommendation to solve the problem of delayed justice. Changes which are necessary in order to reduce the prolongation of disposal of cases are:

- Increase the number of judges and fill the vacancies in judiciary
- Improve the infrastructure of the courts especially in rural and semi urban areas
- To reduce the burden on judges by allowing them to work on shifts
- Modernisation and computerisation of court rooms
- Ensuring Effective implementation of 1999 Amendment of order XVII
- Encouraging use of ADR mechanisms instead of approaching court etc.

Conclusion

Indian Judiciary is the busiest in the world, with huge number of cases piling up each day. The complex yet comprehensive Indian judiciary is well equipped to deal with all the kinds of the case. However, it suffers from various problems which acts as a hurdle in the way of speedy trial and effective delivery of justice. Courts resorting Unnecessary adjournments during pendency of a suit is a major reason behind delayed justice. Order XVII of the CPC empowers civil courts to grant adjournments however the same law also puts restriction on ordering of adjournment which are not found on sensible grounds. The 1999 Amendment to CPC is a welcoming change which restricts the number of adjournments during a hearing to three, but the courts are not following it. Delayed justice is a major problem in India and civil cases are not immune to it. Supreme Court as well as various High courts have taken a stand against the misuse of provision of Order XVII and have condemned the unnecessary delays caused by adjournments granted on silly reasons. The courts should see to it that they follow the provisions of law not just in letter but also in spirit. The ultimate aim of the judiciary should be to facilitate speedy trial and provide timely justice.