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**LAW
COMMISSION
OF
INDIA**

Costs in Civil Litigation

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Dear Minister Salman Khurshid ji,

I am forwarding herewith the report of the Law Commission of India on the “Costs in Civil Litigation”. Pursuant to the observations made by the Supreme Court in three cases – Ashok Kumar Mittal (2009), Vinod Seth (2010) and Sanjeev Kumar Jain (2011), the Law Commission has taken an in-depth study and had interaction with the judicial officers and lawyers at the conference held in some of the States. The Rules of various High Courts governing taxation of costs and advocate’s fee have been pursued. Keeping in view the triple goals of (i) ensuring realistic and reasonable costs to the successful party, (ii) curbing false and frivolous litigation and (iii) discouraging unnecessary adjournments, the recommendations have been made. To felicitate expeditious realization of costs pending appeals, amendments to law has been suggested. As per the recommendations, certain legislative changes in CPC have been proposed. Amendments to Section 35A (compensatory costs for false and frivolous litigation), S. 95 (compensation for obtaining arrests, attachment, etc., on insufficient grounds), Order XXV (security for costs), Order LXI (appeals from original decrees), Order XX, Rule 6A (preparation of decree), have been suggested. The need to revisit and update the Rules framed by the High Courts in so far as they relate to costs and advocate’s fee and to develop best practices in the matter of award of adjournment costs, etc., has been pointed out. The observations of Supreme Court have been kept in view. The report is being sent to all the High Courts. Amendments to CPC on the lines suggested needs to be addressed without loss of time.

With regards and good wishes

Sd./

(P. V. REDDI)

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1. Introductory Remarks

1.1 The subject relating to award of costs in civil matters has been taken up by the Law Commission of India pursuant to the observations made by the Supreme Court that the legal provisions relating to costs needs to be revisited by the legislature and the Law Commission. The first case which it is relevant to mention in this context is that of *Ashok Kumar Mittal vs. Ram kumar Gupta*¹. The second is the case of *Vinod Seth Vs. Devinder Bajaj*². In another judgment rendered very recently³, the Supreme Court took note of various suggestions placed before the court by the Law Commission and Sri Arun Mohan (Sr. Advocate), and reiterated the need to consider appropriate changes in the relevant provisions including the rules of various High Courts.

1.2 This is what the Supreme Court said in *Ashok Kumar Mittal's* case:

“9. The present system of levying meagre costs in civil matters (or no costs in some matters), no doubt, is wholly unsatisfactory and does not act as a deterrent to vexatious or luxury litigation borne out of ego or greed, or resorted to as a “buying-time” tactic. More realistic approach relating to costs may be the need of the hour. Whether we should adopt suitably, the western models of awarding actual and more realistic costs is a matter that requires to be debated and should engage the urgent attention of the Law Commission of India.”

1.3 Similar views were echoed in *Vinod Seth's* case. The Supreme Court observed as under after discussing various aspects relating to costs:

“53. The lack of appropriate provisions relating to costs has resulted in a steady increase in malicious, vexatious, false, frivolous and

¹ (2009) 2 SCC 656

² (2010) 8 SCC 1

³ Sanjeev Kumar Jain Vs. Raghubir Saran Charitable Trust [JT 2011 (12) SC 435]

speculative suits, apart from rendering Section 89 of the Code ineffective. Any attempt to reduce the pendency or encourage alternative dispute resolution processes or to streamline the civil justice system will fail in the absence of appropriate provisions relating to costs. There is therefore an urgent need for the legislature and the Law Commission of India to revisit the provisions relating to costs and compensatory costs contained in Section 35 and 35-A of the Code.”

1.4 Accordingly, the Law Commission took up for consideration the subject relating to award of costs in civil litigation. While so, in yet another case, i.e., *Sanjeev Kumar Jain vs. Raghbir Saran Charitable Trust*⁴, the Supreme Court had to address the issues relating to costs. The Law Commission felt that it would be appropriate to present its views before the Supreme Court and to assist the Court in the matter. Accordingly, written submissions which, *inter alia*, contained specific suggestions were filed before the Supreme Court. One of the Part-time Members of the Commission – Shri A. Mariarputham (Sr. Advocate) – assisted the court. Dr. Arun Mohan (Sr. Advocate, who was appointed as *amicus curiae* in that case) also rendered considerable assistance to the court. The learned Judges of the Supreme Court extensively referred to the suggestions made by the Law Commission and the amicus, recorded their views broadly on the approach to be adopted in awarding costs or framing the rules governing costs and finally observed thus: “*We suggest appropriate changes in the provisions relating to costs contained as per paras 14-29 above to the Law Commission of India, the Parliament and the respective High Courts for making appropriate changes.*” It may be mentioned here that paras 14 to 22 deal with costs in civil litigation and the subsequent paras are about arbitration costs.

⁴ *ibid*

1.5 There is one more case decided by the Supreme Court recently i.e., the case of *Ramrameshwari Devi vs. Nirmala Devi*⁵ in which also certain principles relating to costs were set out.

1.6 The common thread running through all these cases is the reiteration of three salutary principles: (i) costs should ordinarily follow the event; (ii) realistic costs ought to be awarded keeping in view the ever increasing litigation expenses; and (iii) the cost should serve the purpose of curbing frivolous and vexatious litigation. It is worth quoting Justice Bowen in *Copper vs. Smith* (1884). He said: “I have found in my experience that there is one panacea which heals every sore in litigation and that is costs”.

2. ‘Costs’ – definition and governing principles

2.1 Before referring to the principles / guidelines in those decisions in some detail, it would be apposite to advert to the concept of ‘costs’ and the general principles governing the award of costs.

2.2 “Costs” signifies the sum of money which the court orders one party to pay another party in respect of the expenses of litigation incurred. Except where specifically provided by the statute or by rule of Court, the costs of proceedings are in the Court’s discretion.⁶

2.3 In *Johnstone v. The Law Society of Prince Edward Island*, 2 PEIR B-28 (1988) the Canadian Court of Appeal speaking through McQuaid, J described costs in the following words:

⁵ (2011) 8 SCC 249

⁶ Halsbury’s Laws of England, 4th Edn., Vol 12, P 414

“... the sum of money which the court orders one party to pay another party in an action as compensation for the expense of litigation incurred. The definition continues to the effect that costs are awarded as compensation (i.e. reimbursement); there is, unlike damages, no *restitutio in integrum*, that is to say, no concept in costs, as there exists in damages, that the injured person should be placed, in so far as money can do so, in the same position as he occupied before the injury was suffered”.

2.4 The principle underlying levy of costs was stated succinctly thus in *Manindra Chandra Nandi vs. Aswini Kumar Acharjya*, ILR(1921) 48 Cal 427 – a passage cited with approval by Supreme Court in Vinod Seth’s case:

“... We must remember that whatever the origin of costs might have been, they are now awarded, not as a punishment of the defeated party but as a recompense to the successful party for the expenses to which he had been subjected, or, as Lord Coke puts it, for whatever appears to the Court to be the legal expenses incurred by the party in prosecuting his suit or his defence. The theory on which costs are now awarded to a plaintiff is that default of the defendant made it necessary to sue him, and to a defendant is that the plaintiff sued him without cause; costs are thus in the nature of incidental damages allowed to indemnify a party against the expense of successfully vindicating his rights in court and consequently the party to blame pays costs to the party without fault. These principles apply, not merely in the award of costs, but also in the award of extra allowance or special costs. Courts are authorized to allow such special allowances, not to inflict a penalty on the unsuccessful party, but to indemnify the successful litigant for actual expenses necessarily or reasonably incurred in what are designated as important cases or difficult and extraordinary cases.”⁷

These observations were made at a time when S. 35-A of CPC was not there on the Statute book.

2.5 In P. Ramanatha Aiyar’s the Major Law Lexicon, 4th Edn. At p. 1571, costs have been described as follows:

“Costs are certain allowances authorized by statute to reimburse the successful party for expenses incurred in prosecuting or defending an action or special proceeding. They are in the

⁷ Passage cited with approval by Supreme Court in Vinod Seth’s case

nature of incidental damages allowed to indemnify a party against the expense of successfully asserting his rights in Court. The theory upon which they are allowed to a plaintiff is that the default of the defendant made it necessary to sue him, and to a defendant, that the plaintiff sued him without cause. Thus the party to blame pays costs to the party without a fault.”

2.6 The provision for costs is intended to achieve the following goals, as pointed out by the Supreme Court in *Vinod Seth vs. Devinder Bajaj*, supra

“(a) It should act as a deterrent to vexatious, frivolous and speculative litigations or defences. The spectre of being made liable to pay actual costs should be such, as to make every litigant think twice before putting forth a vexatious, frivolous or speculative claim or defence.

(b) Costs should ensure that the provisions of the Code, the Evidence Act and other laws governing procedure are scrupulously and strictly complied with and that parties do not adopt delaying tactics or mislead the court.

(c) Costs should provide adequate indemnity to the successful litigant for the expenditure incurred by him for the litigation. This necessitates the award of actual costs of litigation as contrasted from nominal or fixed or unrealistic costs.

(d) The provision for costs should be an incentive for each litigant to adopt alternative dispute resolution (ADR) processes and arrive at a settlement before the trial commences in most of the cases. In many other jurisdictions, in view of the existence of appropriate and adequate provisions for costs, the litigants are persuaded to settle nearly 90% of the civil suits before they come up to trial.

(e) The provisions relating to costs should not however obstruct access to courts and justice. Under no circumstances, the costs should be a deterrent, to a citizen with a genuine or bona fide claim, or to any person belonging to the weaker sections whose rights have been affected, from approaching the courts.”

2.7 Manitoba Law Reform Commission, in its Report on “Costs Awards in Civil Litigation” sets out six broad goals – not all mutually compatible – that costs rules should strive to achieve. The first goal is

indemnification: successful litigants ought to be at least partially indemnified against their legal costs. The second is deterrence: potential litigants should be encouraged to think carefully before engaging the civil justice system to achieve their goals and should also be encouraged to refrain from taking unnecessary steps within that system. The third goal is to make costs rules easy to understand and simple to apply. The fourth is to encourage early settlement of disputes, and the fifth is to facilitate access to justice. The sixth and final goal the Commission considered important is flexibility: the rules must allow judges to ensure that justice is done in particular cases”.

2.8 The award of costs is generally not considered to be a penalty but a method used to reimburse the other party the expenses of litigation. However, the costs imposed on a party for indulging in frivolous or vexatious litigation stand on a different footing. The general rule is that that the unsuccessful party would be ordered to pay the costs to the successful party. Thus, the rule has been coined to “costs follows the event”, which means that the court will usually order that the loser of the litigation pays the winner’s costs. However, the court has the discretion to award or not to award the costs. As stated in Halsbury’s Laws of England, “This discretion must be exercised judicially; it must not be exercised arbitrarily but in accordance with reason and justice”.⁸

2.9 Under the Federal Rules of Civil Proceeding (USA), “costs shall be allowed as of course to the prevailing party unless the court otherwise directs.” In most of the States in US, attorney’s fee is not allowed as litigation cost.

2.10 There could be final costs and interlocutory costs.

⁸ Para 15, Vol. 10, 4th Edn. (Reissue)

2.11 A bill of costs is a certified, itemized statement of the amount of the expenses incurred in bringing or defending a law suit/proceeding. The charges/expenses claimed are taxed by the Court or its officer according to the procedural rules and set norms.

2.12 The basis of assessment of costs in UK has been explained thus in Halsbury's Laws of England⁹:

“Where the court is to assess the amount of costs (whether by summary or detailed assessment) it will assess those costs on the standard basis or on the indemnity basis, but the court will not in either case allow costs which have been unreasonably incurred or are unreasonable in amount. Where the amount of costs is to be assessed on the standard basis, the court will only allow costs which are proportionate to the matters in issue and will resolve any doubt which it may have as to whether costs were reasonably incurred or reasonable and proportionate in amount in favour of the paying party. Where the amount of costs is to be assessed on the indemnity basis, the court will resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party. Where the court makes an order about costs without indicating the basis on which the costs are to be assessed, or makes an order for costs to be assessed on a basis other than the standard basis or the indemnity basis, the costs will be assessed on the standard basis.”

2.13 Part 44 of the Civil Procedure Rules (CPR) contains general rules about costs and entitlement to costs. The rules are supplemented by practice direction. However, part 44 does not apply to the assessment of costs to the extent different provisions exist, for eg, Access to Justice Act, 1999 and the Legal Aid Act, 1988. Further, the general rule that the unsuccessful party will be ordered to pay the costs of the successful party unless the court makes a different order does not apply to family proceedings.

⁹ Para 22, Vol. 10, 4th edn., re-issue

2.14 The circumstances to be taken into account when exercising the court's discretion have been narrated in Halsbury's Laws of England¹⁰ as follows:

“In deciding what order (if any) to make about costs, the court must have regard to all the circumstances, including:

- (i) The conduct of all the parties;
- (ii) Whether a party has succeeded on part of his case, even if he has not been wholly successful; and
- (iii) Any payment into court or admissible offer to settle made by a party which is drawn to the court's attention.

The conduct of the parties includes:

- (a) Conduct before, as well as during, the proceedings and in particular the extent to which the parties followed any relevant pre-action protocol;
- (b) Whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
- (c) The manner in which a party has pursued or defended his case or a particular allegation or issue; and
- (d) Whether a claimant who has succeeded in his claim, in whole or in part, exaggerated his claim”.

2.15 An order for indemnity costs is intended to provide a party to litigation, when its costs are assessed, with recovery of all, or nearly all, its outlay in the litigation. Even the indemnity principle rests on the assumption that a winner cannot recover more than the costs he has incurred. Indemnity costs are simply a basis or formula for calculation of the actual costs. In the case of a standard order, the court will only allow costs which are proportionate to the matters and issues (vide R 44.2a). In an indemnity order, there is no requirement of proportionality at all. Usually, costs are awarded on indemnity basis, after one

¹⁰ 10th Vol. 4th Edn. at para 17

of the parties has behaved unreasonably e.g. in rejecting an offer of settlement or being dishonest, ignoring Court's orders and continuing with litigation despite the fact that the claim is clearly unjustified. In other words, indemnity costs are quite often awarded for unreasonable conduct or abuse of process by resorting to vexatious or unmeritorious proceedings.

2.16 Lord Scott observed in *Four -v- Le Roux* [2007] UKHL 1 that *“the difference between costs at the standard rate and costs on an indemnity basis is, according to the language of the relevant rules not very great.”* He proceeded to say: “According to CPR 44.5(1), where costs are assessed on the standard basis the payee can expect to recover costs “proportionately and reasonably incurred” or “proportionate and reasonable in amount”; and where costs are assessed on the indemnity basis, the payee can expect to recover all his costs except those that were “unreasonably incurred” or were “unreasonable in amount”. It is difficult to see much difference between the two sets of criteria, save that where costs have been ordered on an indemnity basis, the onus must lie on the payer to show any unreasonableness criterion. The concept of costs that were unreasonably but proportionately incurred or are unreasonable but proportionate in amount, or vice versa, is one that I find difficult to comprehend.”

2.17 Mr. Riyaz Jariwalla (Solicitor) explains: “Indemnity costs are penal in nature as they can be ordered to compensate one party following another party's wrongful conduct of proceedings. However, that compensation must never offend the spirit of the indemnity principle. The party recovering costs must never recover more than they have actually spent. It should be

recognized that 100% recovery of costs is rare but the indemnity basis of assessment will take a party nearer that percentage than the standard basis.”

3. **Principles laid down and points highlighted in the decisions of Supreme Court:**

3.1 Before we advert to the more recent decisions of the Supreme Court, it is appropriate to take note of the categorical observations made by a three Judge Bench of the Supreme Court in 2005 in the case of *Salem Advocate Bar Association T. N. Vs. Union of India*¹¹:

“Judicial notice can be taken of the fact that many unscrupulous parties take advantage of the fact that either the costs are not awarded or nominal costs are awarded on the unsuccessful party. Unfortunately, it has become a practice to direct parties to bear their own costs. In large number of cases, such an order is passed despite Section 35(2) of the Code. Such a practice also encourages filing of frivolous suits. It also leads to the taking up of frivolous defences. Further wherever costs are awarded, ordinarily the same are not realistic and are nominal. When Section 35(2) provides for cost to follow the event, it is implicit that the costs have to be those which are reasonably incurred by a successful party except in those cases where the Court in its discretion may direct otherwise by recording reason therefor. The costs have to be actual reasonable costs including the cost of the time spent by the successful party, the transportation and lodging, if any, or any other incidental cost besides the payment of the court fee, lawyer’s fee, typing and other cost in relation to the litigation. It is for the High Courts to examine these aspects and wherever necessary make requisite rules, regulations or practice direction so as to provide appropriate guidelines for the subordinate courts to follow.”

3.2 Not much of progress has been made in the revision of relevant rules and regulations in the light of the observations made by the apex court.

3.3 In the case of *Ashok Kumar Mittal* (supra), the Supreme Court pointed out that the present system of levying meagre costs in civil matters (or no costs) in some matters, no doubt is “wholly unsatisfactory and does not act as a deterrent to vexatious or luxury litigation” or ‘buying-time tactic’. The Court called for a more realistic approach vis-à-vis award of costs. The Supreme Court referred to

¹¹ (2005) 6 SCC 344

two competing views, to cite, (i) the provisions in Sections 35 and 35A CPC do not affect the wide discretion vested in the High Court in exercise of its inherent power to award costs in the interests of justice, and (ii) though award of costs is within the discretion of the Court, it is subject to such conditions and limitations as may be prescribed and subject to the provisions of any law in force and therefore, inherent powers contrary to the specific provisions of the Code viz. Section 35 and 35A etc., cannot be exercised. This latter view was considered to be a “more sound view”. Having said so, the following pertinent observations were made by the learned Judges:

“Further, the provisions of section 35A seem to suggest that even where a suit or litigation is vexatious, the outer limit of exemplary costs that can be awarded in addition to regular costs, shall not exceed Rs. 3000/-. It is also to be noted that huge costs of the order of Rs. Fifty thousand or Rs. One lakh, are normally awarded only in writ proceedings and public interest litigations, and not in civil litigation to which Sections 35 and 35A are applicable. The principles and practices relating to levy of costs in administrative law matters cannot be imported mechanically in relation to civil litigation governed by the Code.”

3.4 The view which was considered to be sound in the above case was reiterated by the Supreme Court in the latest case of *Sanjeev Kumar Jain*. Adverting to the prefacing phrase in section 35 – “subject to”, the Court laid down that (“if there are any conditions or limitations prescribed in the Code or in any Rules, the Court, obviously, cannot ignore them in awarding costs”). Further, in the same case of *Sanjeev Kumar Jain*, the Supreme Court, in keeping with what was said earlier in *Ashok Kumar Mittal*, stressed the need to develop the practice of awarding costs in accordance with section 35 i.e., costs following the event and also giving reasons for not awarding costs. Otherwise, it was pointed out, the object of the provisions for costs would be defeated. Then, it was said:

“Prosecution and defence of cases is a time consuming and costly process. A plaintiff/petitioner/appellant who is driven to the court, by the illegal acts of the defendant/respondent, or denial of a right to which he is entitled, if he succeeds, has to be reimbursed of his expenses in accordance with law. Similarly a defendant/respondent who is dragged to court unnecessarily or vexatiously, if he succeeds, should be reimbursed of his expenses

in accordance with law. Further, it is also well recognized that levy of costs and compensatory costs is one of the effective ways of curbing false or vexatious litigations.”

3.5 The next decision which deserves notice is the case of *Vinod Seth* (supra). The Court highlighted the deficiencies in the prevailing Rules and practices in regard to costs in civil matters:

“Section 35 of the Code vests the discretion to award costs in the property, and to what extent such costs are to be paid. Most of the costs taxing rules, including the rules in force in Delhi provide each party should file a bill of cost immediately after the judgment is delivered setting out: (a) the court fee paid; (b) process fee spent; (c) expenses of witnesses; (d) advocate’s fee; and (e) such courts. It provides that normally the costs should follow the event and court shall have full power to determine by whom or out of what other amount as may be allowable under the rules or as may be directed by the court as costs. We are informed that in Delhi, the advocate’s fee in regard to suits the value of which exceeds Rs. 5 lakhs is: Rs. 14,500/- plus 1% of the amount in excess of Rs. 5 lakhs subject to a ceiling of Rs. 50,000/-. The prevalent view among litigants and members of the bar is that the costs provided for in the Code and awarded by courts neither compensate nor indemnify the litigant fully in regard to the expenses incurred by him.”

3.6 The Supreme Court having noted that Section 35 of the Code does not impose any ceiling on the quantum of costs to be awarded, indicated that the object of Section 35 can be achieved by the following two measures: (i) Courts levying costs following the results in all cases (non-levy of costs should be supported by reasons); and (ii) appropriate amendments to Civil Rules of practice relating to taxation of costs to make it more realistic in commercial litigation.

3.7 Further, as regards Sections 35A and 35B, the Supreme Court made the following observations in *Vinod Seth*’s case:

“The provision relating to compensatory costs (section 35A of the Code) in respect of false or vexatious claims or defences has become virtually infructuous and ineffective, on account of inflation. Under the said Section, award of compensatory costs

inflation and vexatious litigation, is subject to a ceiling of Rs. 3,000/-. This requires a realistic revision keeping in view the observations in Salem Advocate Bar Association (II) (supra). Section 35B providing for costs for causing delay is seldom invoked. It should be regularly employed, to reduce delay.”

3.8 Now we shall refer to the latest decision in *Sanjeev Kumar Jain (2011)*. In that case, the Supreme Court was concerned with the question whether a sum of Rs. 45 lakhs awarded as costs by the High Court while dismissing an appeal preferred against an order vacating temporary injunction in an Injunction Suit was sustainable. The said Suit was in respect of some commercial litigation. The High Court took into account the Advocate’s fee said to have incurred in the Appeal by the Respondent. This order of the High Court was set aside by the Supreme Court and the Hon’ble Court ordered that “the Appellant shall pay the costs of the Appeal before the High Court as per Rules plus Rs. 3000/- as exemplary costs to the Respondent.” It is relevant to take stock of the principles laid down in the judgment and its ratio.

3.9 The Supreme Court held in the case of *Sanjeev Kumar Jain (2011)* that the order of the High Court awarding heavy costs was unsustainable in the light of the existing provisions of CPC read with the Delhi High Court Rules dealing with award of costs in Civil Suits. The Supreme Court referred to the relevant Rule that enjoins the Advocate fee to be taxed to the tune of an amount not exceeding the scale prescribed in the Schedule to Chapter XXIII. The Supreme Court then clarified the legal position as follows:

“Therefore, the Court could not have awarded costs exceeding the scale that was prescribed in the schedule to the Rules. Doing so would be contrary to the Rules. If it was contrary to the Rules, it was also contrary to Section 35 also which makes it subject to the conditions and limitations

as may be prescribed and the provisions of law for the time being in force. Therefore, we are of the view that merely by seeking a consent of the parties to award litigation expenses as costs, the High Court could not have adopted the procedure of awarding what it assumed to be the 'actual costs' nor could it proceed to award a sum of Rs.45,28,000/- as costs in an appeal relating to an interim order in a civil suit. While we would like to encourage award of realistic costs, that should be in accordance with law. If the law does not permit award of actual costs, obviously courts cannot award actual costs. When this Court observed that it is in favour of award of actual realistic costs, it means that the relevant Rules should be amended to provide for actual realistic costs. As the law presently stands, there is no provision for award of 'actual costs' and the award of costs will have to be within the limitation prescribed by Section 35."

3.10 The Supreme Court, while pointing out that the High Court misread the observations in *Salem Advocate Bar Association*, observed thus:

"All that this Court stated was that the actual reasonable cost has to be provided for in the rules by appropriate amendment. In fact, the very next sentence in para 37 of the decision of this Court is that the High Courts should examine these aspects and wherever necessary, make requisite rules, regulations or practice directions. What has been observed by this court about actual realistic costs is an observation requiring the High Courts to amend their rules and regulations to provide for actual realistic costs, where they are not so provided....The observation in Salem Advocates Bar Association is a direction to amend the rules so as to provide for actual realistic costs and not to ignore the existing rules. The decision in Salem Advocates Bar Association is therefore of no assistance to justify the award of such costs. The Rules permit costs to be awarded only as per the schedule."

3.11 The learned Judges of the Supreme Court then proceeded to explain the concept of 'actual realistic cost' in the following words:

"The actual realistic costs should have a correlation to costs which are realistic and practical. It cannot obviously refer to fanciful and whimsical expenditure by parties who have the luxury of engaging a battery of high-charging lawyers. If the logic adopted by the High Court is to be accepted, then the losing party should pay the costs, not with reference to the subject matter of the suit, but with reference to the fee paying capacity of the other side. Let us take the example of a suit for recovery of Rs.1 lakh. If a rich plaintiff wants to put forth his case more effectively, engages a counsel who... charges Rs.1 lakh merely because it

is a commercial dispute? In a matter relating to temporary injunction, merely because the court adjourns the matter several times and one side engages a counsel by paying more than a lakh per hearing, should the other side be made to bear such costs? The costs memo filed by the respondents show that Rs.45,28,000/- was paid to four counsels? If a rich litigant engages four counsels instead of one, should the defendant pay the fee of four counsels? Even if actual costs have to be awarded, it should be realistic which means what a “normal” advocate in a “normal” case of such nature would charge normally in such a case. Mechanically ordering the losing party to pay costs of Rs.45,28,000/- in an appeal against grant of a temporary injunction in a pending suit for permanent injunction was unwarranted and contrary to law. It cannot be sustained.”

3.12 The Supreme Court then referred to the Model Case-flow Management Rules and the observation of the Court in *Salem Advocate Bar Association* that the High Courts should consider making Rules particularly in terms of the said Model Rules.

3.13 The Supreme Court commented that the general impression that the court-fee relating to litigation is high is not correct. It was pointed out that except in the case of few categories of suits where court fee is *ad valorem*, in majority of the Suits/Petitions and Appeals arising therefrom, the court fee is a fixed nominal fee and that fixed fee prescribed decades ago has not undergone change. The Supreme Court pointed out the need for a periodical revision of fixed court fee and commented on the meager court fee payable in the matters before the Supreme Court. The Court observed that the costs should be commensurate with the time spent by the Courts atleast in commercial litigations. There is no reason why a nominal fixed fee should be collected in regard to the arbitration matters, company matters, tax matters, etc., which may involve huge amounts. Then it was observed:

“While we are not advocating an ad valorem fee with reference to value in such matters, at least the fixed fee should be sufficiently high to have some kind of quid pro-quo to the cost involved.”

3.14 The need to revise the advocate’s fee provided in the Schedule to the Rules was stressed by the Supreme Court in the following words:

“Equally urgent is the need to revise the advocate’s fee provided in the Schedule to the Rules, most of which are outdated and have no correlation with the prevailing rates of fees. In regard to money suits, specific performance suits and other suits where ad valorem Court fee is payable, the advocate’s fee is also usually ad valorem. We are more concerned with the other matters, which constitute the majority of the litigation, where fixed advocates’ fees are prescribed. In Delhi, in regard to any proceedings (other than suits where the ad valorem court fee is payable), the maximum fee that could be awarded is stated to be Rs.2000/- and for appeals of the scale if that is payable to original suits.”
(sic)

3.15 The approach to be adopted in providing for actual, realistic cost was further clarified as follows:

“The object is to streamline the award of costs and simplify the process of assessment, while making the cost ‘actual and realistic’. While ascertainment of actuals is necessary in regard to expenditure incurred (as for example travel expenses of witnesses, cost of obtaining certified copies etc.), in so far as advocates’ fee is concerned, the emphasis should be on ‘realistic’ rather than ‘actual’. The courts are not concerned with the number of lawyers engaged or the high rate of day fee paid to them. For the present, the advocate fee should be a realistic normal single fee.”

3.16 The Supreme Court then made a significant observation that “the schemes/processes for assessment of costs in some of the western countries may not be appropriate with reference to Indian conditions”. It was then observed thus:

“The process of taxation of costs has developed into a detailed and complex procedure in developed countries and instances are not wanting where the costs awarded has been more than the amount involved in the litigation itself. Having regard to Indian conditions, it is not possible or practical to spend the amount of time that is required for determination of ‘actual costs’ as done in those countries, when we do not have time even to dispose of cases on merits. If the Courts have to set apart the time required for the elaborate procedure of assessment of costs, it may even lead to an increased in the pendency of cases.”

3.17 While stressing the need to provide for awarding realistic advocate’s fee by amending the relevant Rules periodically, a serious fall-out of not levying actual, realistic cost has been expressed in the following terms:

“A litigant, who starts the litigation, after some time, being unable to bear the delay and mounting costs, gives up and surrenders to the other side or agrees to settlement which is something akin to creditor who is not able to recover the debt, writing off the debt. This happens when the costs keep mounting and he realizes that even if he succeeds he will not get the actual costs. If this happens frequently, the citizens will lose confidence in the civil justice system.”

3.18 The Supreme Court quite elaborately dealt with ‘Costs in arbitration matters’ at paragraphs 23 to 29 of the judgment. However, we are not delving into this aspect as it is more relevant to the proposed amendments to Arbitration and Conciliation Act, 1996 being considered by the Law Ministry.

3.19 Then, the views expressed by the Supreme Court on Section 35A (‘compensatory costs’) need to be taken note of. The relevant passage in the judgment (*Sanjeev Kumar Jain vs. Raghubir Saran Charitable Trust*) is extracted hereunder:

“At present, the maximum that can be awarded as compensatory costs in regard to false and vexatious claims is Rs.3,000/-. Unless the compensatory costs is brought to a realistic level, the present provision authorizing levy of an absurdly small sum by present day standards may, instead of discouraging such litigation, encourage false and vexatious claims. At present Courts have virtually given up awarding any

compensatory costs as award of such a small sum of Rs.3,000/- would not make much difference. We are of the view that the ceiling in regard to compensatory costs should be at least Rs.1,00,000/-."

3.20 It may be noted at this juncture that in the written submissions made by the Law Commission before the Court, the Commission suggested the enhancement of ceiling to Rs. 1 lakh and also suggested certain other supplemental directives that could be appropriately given while awarding costs under Section 35A. We shall advert to those details hereinafter.

3.21 The other important observations of the Supreme Court vis-à-vis Section 35A are at paragraph 15:

15. We may also note that the description of the costs awardable under Section 35A "as compensatory costs" gives an indication that it is restitutive rather than punitive. The costs awarded for false or vexatious claims should be punitive and not merely compensatory. In fact, compensatory costs is something that is contemplated in Section 35B and Section 35 itself. Therefore, the Legislature may consider award of 'punitive costs' under section 35A.

3.22 Another recent case in which certain principles relating to award of costs have been laid down by the Supreme Court is that of *Ramrameshwari Devi vs. Nirmala Devi*¹². The relevant observations of the Supreme Court are given below:

52 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."

3.23 This is what the Supreme Court further said in *Ramrameswari Devi*'s case:

¹² (2011) 8 SCC 249

54. *While imposing costs we have to take into consideration pragmatic realities and be realistic what the defendants or the respondents had to actually incur in contesting the litigation before different courts. We have to also broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing, photocopying, court fee etc.*

55. *The other factor which should not be forgotten while imposing costs is for how long the defendants or respondents were compelled to contest and defend the litigation in various courts. The appellants in the instant case have harassed the respondents to the hilt for four decades in a totally frivolous and dishonest litigation in various courts. The appellants have also wasted judicial time of the various courts for the last 40 years.*

56. *On consideration of totality of the facts and circumstances of this case, we do not find any infirmity in the well reasoned impugned order/judgment. These appeals are consequently dismissed with costs, which we quantify as Rs.2,00,000/- (Rupees Two Lakhs only). We are imposing the costs not out of anguish but by following the fundamental principle that wrongdoers should not get benefit out of frivolous litigation.*

3.24 The solitary observation in the last sentence quoted above may not be construed as a *carte blanche* to the courts to award any amount of costs irrespective of Section 35-A of the CPC read with the High Court Rules in a case considered to be a frivolous litigation. The decision of the Supreme Court in *Sanjeev Kumar Jain* as well as *Vinod Seth's* case (supra) rules out the discretion of the civil courts to award costs even in a frivolous litigation without regard to the statutory provisions. However, as far as the Supreme Court is concerned, the power to award appropriate costs, even much higher than what is contemplated by the provisions of CPC, can be traced to the plenary powers vested in the Supreme Court. That is how the award of heavy costs by the Supreme Court in civil matters has been justified in *Sanjeev Kumar Jain's* case. The court clarified:

“This Court, of course, in several cases has directed payment of realistic costs. But this Court could do so, either because of the discretion vested under the Supreme Court Rules, 1966 or having regard to Article 142 of the Constitution under which this Court has the power to make such orders as are necessary to do complete justice between the parties”.

4. PROVISIONS RELATING TO COSTS UNDER THE CPC AND THE PREVALENT RULES AND PRACTICES AND THE SUGGESTED CHANGES

4.1 The core provisions concerning costs are to be found in Sections 35, 35A and 35B. Order XXA and Order XXV are the other allied provisions which deserve notice. We shall deal with them in seriatim:

4.2 SECTION 35 (“COSTS”)

(a) Costs under S.35 is aimed at reimbursement of reasonable litigation expenses to the successful party. The cost to be awarded under various heads should be realistic and a just equivalent of the expenditure supposed to have been incurred by a litigant.

(b) Section 35 lays down two principles (1) the costs of an incident to all suits shall be in the discretion of the court. The court shall have full power to determine by whom or out of property and to what extent such costs are to be paid. (2) where the court directs that the costs shall not follow the event, specific reasons must be recorded by the court.

(c) Section 35(1) provides that “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 and incident to all suits shall be in the discretion of the Court”. The sub-section further provides that the Court shall have full powers to determine by whom or out of what property and to what extent such costs are to be paid.

(d) The sub-section (2) lays down: *“Where the Court directs that any costs shall not follow the event, the Court shall state its reasons in writing”*.

Sub-section (2) is indicative of the legislative policy that ordinarily costs shall be awarded to the party who succeeds and if it is otherwise, the Parliament requires the court to record reasons for disallowing costs. Very often, the rule that costs should follow the event is observed in breach. Many of the cases are disposed of either by saying *“no order as to costs”* or *“parties to bear their own costs.”* When the Court, especially the superior courts, disallow costs or say *‘no order as to costs’*, reasons are seldom recorded. Such cryptic directives do not contain anything which indicate the mind of the Court as to why costs are being disallowed. There are also instances where the High Courts and the Supreme Court have been directing costs to be paid to a body other than a party to the proceeding, for e.g., a charitable organization or legal services authority, which practice is disapproved in some judgments while in others it is so done. Judgments of the Hon’ble Supreme Court wherein costs are awarded or not allowed, do not give any indication of any underlying principle and no guideline or rationale can be deduced therefrom. The illustrative cases which go to substantiate this contention are furnished in **Annexure-I**.

(e) Costs are intended to reasonably compensate a party to the litigation for the expenses incurred by him. A party resorting to litigation to vindicate his rights or seeking redressal of the wrong done by the other side **or** a party dragged to court unnecessarily should be able to recoup at least reasonable expenses incurred by him when he succeeds in the case. It implies that the quantum of costs awardable should be realistic and reasonably sufficient to cover the cost of litigation.

(f) The Supreme Court, in *Salem Advocate Bar Association vs. Union of India* [(2005 6 SCC 344)], noticed that “*unfortunately, it has become a practice to direct parties to bear their own costs*” and that wherever costs are awarded, ordinarily the same are not realistic and are nominal. While referring to Section 35(2), the Court expressed the view that “*when section 35(2) provides for costs to follow the event, it is implicit that the costs have to be those which are reasonably incurred by a successful party...[and that] costs have to be actual reasonable costs including cost of the time spent by the successful party, the transportation and lodging if any, or any other incidental costs besides the payment of court fee, lawyer’s fee, typing and other costs in relation to the litigation*. The Court observed that [...] the High Courts should examine these aspects and make requisite rules, regulations or practice directions so as to provide appropriate guidelines for the subordinate Courts to follow.”

(g) In the said judgment, the Court referred to Model Rules for costs prepared by a Committee headed by the then Chairman of Law Commission. The ‘Model Rules’ are in the nature of guiding principles. The relevant principle concerning the award of costs by trial Courts is as under:-

“8. Costs:- So far as awarding of costs at the time of judgment is concerned, awarding of costs must be treated generally as mandatory inasmuch as the liberal attitude of the courts in directing the parties to bear their own costs had led parties to file a number of frivolous cases in the courts or to raise frivolous and unnecessary issues. Costs should invariably follow the event. Where a party succeeds ultimately on one issue or point but loses on a number of other issues or points which were unnecessarily raised, costs must be appropriately apportioned. Special reasons must be assigned if costs are not being awarded. Costs should be assessed according to rules in force. If any of the parties has unreasonably protracted the proceedings, the Judge should consider exercising discretion to impose exemplary costs after taking into account the expenses incurred for the purpose of attendance on the adjourned dates.” (Page 396)

The 'model rule' relating to first Appellate Court is as under:-

“7. Costs. – Awarding of costs must be treated generally as mandatory inasmuch as it is the liberal attitude of the courts in not awarding costs that has led to frivolous points being raised in appeals or frivolous appeals being filed in the courts. Costs should invariably follow the event and reason must be assigned by the appellate court for not awarding costs. If any of the parties have unreasonably protracted the proceedings, the Judge shall have the discretion to impose exemplary costs after taking into account the costs that may have been imposed at the time of adjournments.” (Page 398)

(h) In *Vinod Seth vs. Devinder Bajaj* (2010) 8 SCC 1, the Supreme Court dealt with the need for reform in regard to costs. In paragraph 45, the Court expressed the view that the absence of effective provisions for costs has led to mushrooming of vexatious, frivolous and speculative civil litigation. This has been referred to in Para 48 (d) as one of the goals intended to be achieved by a proper provision for costs. This is reiterated again in Para 53 and the Court has expressed the view that the provisions for costs should be an incentive for each litigant to adopt Alternative Dispute Resolution (ADR) process and to arrive at a settlement even before the trial commences. The Supreme Court while indicating that cost should provide adequate indemnity to the successful litigant for the litigation expenditure incurred by him for the litigation, which necessitates the award of adequate costs of litigation as contrasted from nominal or unrealistic costs, has also entered a caution that provisions relating to costs should not however obstruct access to courts and justice and under no circumstances, the costs should be a deterrent to a citizen with a genuine or *bona fide* claim or to a person belonging to the weaker sections whose rights have been affected, from approaching the Courts. **This overriding consideration should always be kept in view.**

(i) In *Sanjeev Kumar Jain*'s case, the Supreme Court, at paragraph 8, held as under:

“8. Though, Section 35 does not impose a ceiling on the costs that could be levied and gives discretion to the Court in the matter, it should be noted that Section 35 starts with the words “subject to such conditions and limitations as may be prescribed, and to the provisions of law for the time being in force”. Therefore, if there are any conditions or limitations prescribed in the Code or in any rules, the Court, obviously, cannot ignore them in awarding costs.”

The Court in paragraph 9 observed that while award of realistic costs should be encouraged, it should be done in accordance with law. The Court said: *“as the law presently stands there is no provision for award of ‘actual costs’ and the award of costs will have to be within the limitation prescribed by Section 35”*. In para 10.1, the Court clarified that *“Section 35 does not impose a restriction on actual realistic costs. Such restriction is generally imposed by the Rules made by the High Court”*.

(j) Therefore, to ensure that actual/realistic costs are awarded, it is necessary to make the required changes in the rules framed by the High Courts. It is very important that the existing Rules are suitably revised to ensure the award of realistic costs in compliance with the observations of the Supreme Court in *Salem Advocates bar Association* case and the latest case of *Sanjeev Kumar Jain*. The outdated/inappropriate rules still hold the field in many States, though, after *Salem Advocate Bar Assn. case*, some High Courts did revise the rules. Further, the revised and pre-revised rules lack in clarity in many respects and they do not comprehensively address the relevant factors that ought to enter into ascertainment of costs. We shall deal with this aspect in more detail a little later. The Commission feels that there is scope for further refinement of rules especially in view of the principles laid down in *Sanjeev Kumar Jain*'s case.

Moreover, the revision of rules including those relating to Advocate's fee should be a regular and periodical exercise and due consultation with the members of Bar should be an integral part of such exercise.

4.2 ORDER XXA

(a) Order XXA starts with the phrase “without prejudice to the generality of the provisions of the Code relating to costs”. Then, it proceeds to set out certain items which may be included in the costs to be awarded. The enumerated items are (i) expenditure (obviously, legal fees) for any notice required to be given by law or otherwise, prior to the institution of the suit; (ii) expenditure on typing or printing of pleadings; (iii) charges for inspection of court record; (iv) expenditure incurred by the party for producing witnesses, though not summoned through court; and (v) charges incurred for obtaining copies of judgments and decrees to be filed with the memorandum of appeal. As seen from the opening phrase – “without prejudice to the generality”, these items are by no means exhaustive. The items set out in Rule 1 of Order XXA are by and large those items which may escape the attention of the rule making authority or the taxation officer of the court. In *Salem Advocate Bar Association* case (supra), the Supreme Court adverted to certain items of costs including those set out in order XXA. The following passage deserves notice:

“The costs have to be actual reasonable costs including the cost of the time spent by the successful party, the transportation and lodging, if any, or any other incidental cost besides the payment of the court fee, lawyer's fee, typing and other cost in relation to the litigation. It is for the High Courts to examine these aspects and wherever necessary make requisite rules, regulations or practice direction so as to provide appropriate guidelines for the subordinate courts to follow.”

(b) Obviously, the expression “actual reasonable/realistic costs”, an expression used in Sanjeev Kumar Jain’s case, supra, is meant to convey the idea that the costs should be based on actuals in regard to certain items and secondly, the scale of costs awardable should be realistic, not fanciful or meagre. The word ‘actual’ ought to be read as a separate word and not descriptive of ‘realistic/reasonable costs’. Otherwise, it would not make proper sense. It may be mentioned that the same expression has been repeated in *Sanjeev Kumar Jain’s* case (supra). However, the Court explained that the “actual realistic costs should bear a correlation to costs which are realistic and practical.” Further, it was clarified: “even if actual costs have to be awarded, it should be realistic which means what a normal advocate in a case of such nature would charge normally in such a case”. The observation at paragraph 22 that “the object is to streamline the award of costs and simplify the process of assessment, while making the costs ‘**actual and realistic**’ ” gives an indication that the two words ‘actual’ and ‘realistic’ are to be read separately. For instance, it has been pointed out that as far as the advocates’ fee is concerned, the emphasis should be on ‘realistic’ rather than ‘actual’. This idea was further elaborated by stating thus at para 22. “While ascertainment of actuals is necessary in regard to expenditure incurred (as for example, travel expenses of witnesses, cost of obtaining certified copies, etc.), in so far as advocates’ fee is concerned, the emphasis should be on realistic rather than actual”.

5. The High Court Rules – an overview:

(a) In *Salem Advocates Bar Association* case (supra), the Court, while broadly indicating the items of costs, mentioned “the cost of the time spent by the successful party” as an item of costs. Presumably, taking clue from this observation, the Calcutta High Court amended rule 2 of Order XXA through a

notification dated 7.12.2006. The rule practically reproduces the broad indicators set out in *Salem Bar Case*. According to the substituted rule, the costs awarded shall be “actual reasonable costs”, “in getting a just relief or opposing a **frivolous** claim including the value of time spent by him.” This is in addition to court fee, lawyer’s fee and reasonable expenses incurred towards transportation and lodging of such party and his witnesses. Incidentally, it may be mentioned here that the use of the expression ‘frivolous’ is not quite clear. Is it only in cases of frivolous defence that the value of time spent should be quantified and not otherwise? The next sub-rule (b) casts an obligation on the Court to quantify these amounts while disposing of the suit “not only in favour of the successful party but also to specify the amount of costs the unsuccessful party had incurred”. The reason mentioned is that if the decree is reversed by the appellate court and costs are awarded in favour of the appellant, it will be convenient for the appellate court to make assessment of costs. The reason given, though plausible, casts avoidable burden on the Court/Taxation officer. In the year 2008, the Sikkim High Court framed the rule substantially similar to the new rule 2 framed by the Calcutta High Court. However, there is no provision similar to sub-rule (b) of rule 2 framed by the Calcutta High Court.

(b) We may also refer to the amendment made by the Karnataka State to Order XXA with effect from 29th December, 2006, based on High Court’s proposal. Sub-rule (g) was added according to which “the cost awarded under sub-rule (a) to (f) shall have to be actual or reasonable cost incurred by the successful party including the loss of income during effective days of hearing, conveyance charges and lodging charges, if any”.

(c) The fact remains that it is not too easy to ascertain the cost of the time spent on litigation or the loss of income in monetary terms. The process of quantifying such costs will be complex. As observed by the Supreme Court in *Sanjeev Kumar Jain’s* case (supra) at paragraph 12, having regard to the Indian conditions, it is not possible or practicable to spend the amount of time that is required for determination of actual costs as is being done in the western countries by specialized taxation officers. It was observed: “If the courts have to set apart the time required for the elaborate procedure of assessment of costs, it

may even lead to increase in the pendency of cases.” The need to simplify the procedure for assessing the cost has been emphasized. In fact, even if a provision is made to assess such costs, the claims will be made only in a few cases, that too on a rough and ready estimate. The investigation into genuineness of claim is fraught with difficulties and the matter will in all probability be placed before the court for determination. However, a party who wastes his time and money to come to the Court will not be left without any relief. If adjournment is sought on tenuous and unjustified grounds, the Court while granting adjournment, has the discretion and perhaps a duty to grant adequate costs, taking into account, inter alia, the valuable time spent by a party to attend the Court. So also, if the court comes to the conclusion that a party resorted to frivolous or vexatious litigation and unduly prolonged the litigation, the court has the discretion to award heavier costs (subject to the ceiling under section 35A). It is doubtful whether by means of the rules, the time spent for attending the Court or income lost could be quantified with reasonable certainty. In any case, as said earlier, it would be a long drawn process and a complex exercise which our overburdened courts cannot undertake. The purpose will be better served if during the progress of trial itself, the award of costs of substantial amount is resorted to if the party or his/her advocate seeks adjournments frequently or on feeble grounds. In doing so, the cost of travel and loss of daily earning if any can be taken into account.

Common features:

(d)The common features running through the various rules governing taxation of costs and Advocate’s Fees Rules are that – (i) some or most of the rules are outdated; (ii) they are couched in vague and complex language, lacking in clarity; and (iii) the scales of advocate’s fee as well as other elements of costs

are quite low judged by the present day standards. There is every need to undertake thorough revision of the rules by the High Courts. We have merely indicated certain aspects broadly for drawing the attention of Hon'ble High Courts as it is not proper to suggest uniform rules applicable to the entire country.

6. Advocate's Fee

6.1 The most important component of the cost is the advocate's fee. It is on this count, a party to the litigation is put to heavy expenditure which he will not be in a position to recover, if the *status quo* in regard to Advocates'/Legal Practitioners' Fee Rules is maintained.

6.2 The scale of Advocate's fee, as it presently stands, is quite low especially in regard to matters which do not admit of valuation or only notional valuation is shown for the purpose of court fee. To this category belongs injunction suits, declaration of status, matrimonial disputes including guardianship matters and so on. These matters involve high stakes and proceedings are long-drawn. Even then, the advocate's fee prescribed does not satisfy the reasonable standard criterion. Further, even when the suit is valued for the purpose of court fee (ad valorem) , the advocate's fee prescribed is not adequate and it needs to undergo upward revision in terms of percentage.

6.3 We may give certain illustrative examples of grossly low amount allowed under the head of "Fees of counsel" 'Advocate's fee' as well as apparent contradictions. As per the Delhi High Court Rules framed under the antiquated Legal Practitioners Act, 1879, the fee payable in the suit for recovery of property, money, breach of contract or damages, "if the amount of value of property, debt or damages decreed" is Rs. 1 lakh, it is Rs. 6500, and the fee is Rs. 14,500/-if the

amount or value is Rs.5 lakhs. The **maximum** fee payable is fixed at Rs.20,000/- (vide Rule 1 of Part B of the Rules made by the High Court under the Legal Practitioners' Act). The advocate's fee specified in the Schedule to Chapter XXIII, "Taxation of Costs" forming part of the Delhi High Court (Original Side) Rules, 1967 is the same for "defended suits". The same Rules stipulate that in appeals, the fee shall be calculated at half the scale as in the original suits. In suits for injuries to the person or character or where the pecuniary value of such injury or right cannot be exactly defined such as partition of joint property or other suits which cannot be satisfactorily valued, the maximum fee payable is Rs. 5,000/-, the minimum being Rs. 500/- (vide Rule 2 of part B of the Rules framed under the Legal Practitioners' Act). However, in Part (1) of the Chapter 6 of the Rules¹³ which bears the same heading "Fees of Counsel", the quantum of fee specified is different, though the description of suits is substantially the same. In miscellaneous proceedings, the fee prescribed is Rs.250/- in the Court of a District Judge and Rs.48/- in the court of a Subordinate Judge. In matrimonial proceedings, the maximum fee payable is Rs.1500/-. In regard to expenses on witnesses, there is a stipulation that unless the sum is paid through court, they cannot be included in the cost awarded. In appeals, half of the fee applicable to the original suits is payable. That means the maximum fee payable will be Rs.10,000/- irrespective of the value of the appeal. The Delhi High Court Rules contains an interesting provision that fee of advocate/vakeel who is known to have dealings with dalals or other persons frequenting the railway station/sarai or other place as tout, no fee shall be allowed to a party who has engaged such an

¹³ Rules relating to proceedings in the High Court of Delhi (volume V of High Court Rules and orders)

advocate. It appears that the High Court of Delhi is taking steps to revise the rules.

6.4 Reference may also be made to the Civil Court Rules framed by Jharkhand High Court. Rule 426(i) says that the Advocate's fee shall be in the discretion of Court. Instead of a fixed percentage, for various slabs ranging between Rs. 5,000/- and Rs. 50,000/- maximum and minimum percentages are prescribed, which makes the job of the Court difficult at times. The maximum advocate's fee allowable is Rs.1550/- if the amount or value of the claim decreed or dismissed as the case may be is Rs. Rs.50,000/- and if it exceeds Rs. 50,000/- it is half per cent to one per cent. That means if the value of the suit is Rs.10 lakhs, the fee payable works out to about Rs.11,050/. The minimum fee to be allowed to an advocate is specified as Rs.10/- in contested cases and Rs.5/- in uncontested cases. The maximum hearing fee in appeals from decrees is prescribed to be Rs.10,000/- and for drafting the grounds of appeal, the maximum fee is Rs.500/-. In appeals from orders and second appeals, the hearing fee is as low as Rs. 500/-. In a matrimonial suit (defended suit), the fee payable for first day of hearing is Rs.500/- and thereafter it is Rs.250/-. The process fee, copying charges, the witness allowance and the cost for obtaining the opinion of finger print expert are all prescribed at grossly low rates. The process fee is as low as Rs.3/- and 0.75 paise in the lowest court. . There is a rule which speaks of a salary of a Government servant being Rs.10/- per month. The diet allowance for a witness is prescribed as Rs. 30/- per diem. All this would disclose that even at the time of notifying the rules in 2001, the outdated/vintage rules governing costs including advocate's fee are retained.

6.5 In the year 2010, the Andhra Pradesh High Court amended the A.P. Advocate Fees Rules. Serious effort was made to update the said rules so as to make the advocate's fee in various categories of cases quite realistic and reasonable, though there is scope to further revisit some of the rules. A copy of the Rules is annexed to this report (**Annexure-II**).

6.6 The unfortunate litigants often wonder whether for the fee prescribed in some of the High Court Rules, a reasonably competent advocate can be engaged.

The Advocate's Fee Rules, barring a few amendments here and there have substantially remained the same for decades. While excessive scale of Advocate's fee based on actuals or otherwise should be avoided, the scales of fee presently in vogue need to be revisited so that a reasonable and realistic advocate's fees structure can be put in place. There is every need for periodical revision, once in five years or so, of advocate's fee in consultation with the stake holders. The standard of reasonably competent and fairly experienced advocate has to be applied while revisiting the rules governing the Advocate's fee.

6.7 The rules prevailing in some States allows a proportion of prescribed advocate's fee as Junior Counsel's fee. It is one-third or so of the main advocate's fee. If such provision is not there in some of the Rules, it is necessary that the High Courts while reformulating the Rules should keep this aspect in view.

6.8 As far as the Government Counsel's fee is concerned, if the advocate's fee payable by the Government or local authority or PSU under the agreement or rules or terms of appointment is less than the fee payable under the normal rules, the fee allowable ought to be **restricted** to the amount specified therein.

6.9 It is also necessary to prescribe reasonable advocate's fee for remanded cases and contested execution petitions as there are no such rules in some States. However, it is noted that in some of the rules, half the fee (payable in main suit) is prescribed for remanded cases and one-fourth fee in execution petitions. Even here, there is need to prescribe a minimum.

6.10 In cases where the value of the suit/appeal is only notional or incapable of valuation (such as injunction suit, suit for declaration of status) and in matrimonial proceedings, the quantum of advocate's fee which at present works out to a very low figure, has to be increased. A reasonable minimum fee has to be prescribed. Injunction suits for infringement of patents, trade marks, etc., call

for enhanced court-fee; especially, the minimum has to be specified having regard to complex nature of such cases.

6.11 Wherever fixed/maximum advocate's fee is prescribed in respect of certain categories of proceedings, the same needs to be enhanced suitably. In respect of advalorem fee, the percentage prescribed needs to be increased if the suit value exceeds say, Rupees three lakhs. Maximum should also be increased. This will take care of high value commercial and property litigation where high stakes are involved.

6.12 The advocate's fee allowed in appeals against orders (AAOs, CMAs or whatever name called) such as the arbitration matters, matrimonial disputes, etc., should also be suitably enhanced.

6.13 It is desirable that a separate fee for drafting of pleadings including appeal memorandum should be prescribed/increased.

6.14 It is common knowledge that every litigant makes payment to advocate's clerk. Some times, the clerkage amount is collected along with the advocate's fee. Excepting in few States, clerkage is not specified as a component of costs. It is just and proper that **clerkage** should be included as an element of costs and the allowable amount towards that item is spelt out in the rules or a guiding principle is evolved in this behalf.

FEE CERTIFICATE:

6.15 There are two problems which the Commission would like to point out in connection with the filing of fee certificate. In most of the rules, the fee certificate is required to be filed within one week of the termination of the case as

the decree has to be drawn up within 15 days from the date of the judgment as enjoined by Rule 6A of Order XX. Rule 6 lays down that the Decree shall also state the amount of costs incurred in the suit and by whom or out of what property and in what proportions such costs are to be paid. Rule 1 of Order XLI (dealing with appeals from original decrees) requires the memorandum of appeal to be accompanied by a copy of the judgment. The earlier requirement was that a copy of decree should be annexed to the memorandum of appeal. The Law Commission in its 124th Report expressed the view that Order LXI, Rule 1 should be amended so as to dispense with the requirement of annexing certified copy of the decree and the appeal be allowed to be filed by producing the operative part of the judgment along with the memorandum of appeal. Presently, there is no bar to filing the appeal without the decree in which the costs have to be specified. If so, the prescription of 15 days time under Rule 6A of Order XX needs to be revisited. Accordingly, **in rule 6A, the words ‘15 days’ may be substituted by the words ‘30 days’.** The reason is that it is common experience that the fee certificate is not filed in time or the bill of costs specifying the various expenses incurred by the party concerned is not filed promptly. Quite often, the advocate for the party does not turn up before the taxing officer. Delays in the filing of bill of costs with all the requisite details including the fee certificate has become a common occurrence. Quite often, applications are filed seeking condonation of delay in filing fee certificate or other proof. To tackle this problem, apart from extending the time for drafting the decree (as indicated above), it is desirable that High Courts frame a rule to the effect that the fee certificate shall be filed by both the advocates before the conclusion of arguments. The Court should cause a verification to be done as regards the filing of fee certificate at that stage.

However, if any practical difficulty is pointed out by the learned advocate for complying with the rule, the court may allow the certificate to be filed within 15 days from the date of judgment. It is also necessary to prescribe in the rule that the fee certificate should, *inter alia*, contain the Permanent Account Number of the advocate.

6.16 In this context, we may refer to section 118 of CPC which lays down that if the High Court considers it necessary that a decree passed in the exercise of original civil jurisdiction should be executed before the amount of the costs incurred in the suit can be ascertained by taxation, the Court may order that the decree shall be executed forthwith and that the decree so far as it relates to costs shall be executed as soon as the amount of costs are ascertained by taxation.

7. COSTS IN REVISIONS:

A number of revision petitions against interlocutory orders, etc., are being filed in the High Courts either under Article 227 of the Constitution or Section 115 CPC quite often to delay the proceedings. Ordinarily, the costs awarded, if any, in such cases are quite nominal. The rules in most of the States do not provide for assessment of costs in revision petitions. It is necessary to prescribe appropriate guidelines for fixing the costs (including advocate's fee) coupled with the prescription of minimum costs which can only be waived in exceptional circumstances.

8. Section 35-A

8.1 Section 35-A of the Code which was introduced in the year 1922, bears the heading “Compensatory costs in respect of false *or vexatious claims or defence*”. It provides that if any party objects to any claim or a defence, on the ground that it is false or vexatious, to the knowledge of the party by whom it has been put forward, and if such claim is disallowed or abandoned or withdrawn, the Court may impose costs by way of compensation after recording reasons for its conclusion. Clause (2) of the said Section places a limitation to the effect that compensatory costs so imposed shall not exceed Rs. 3,000/-. The earlier limit of Rs.1000/- was enhanced to Rs.3000/- by an amendment made in the year 1976 w.e.f. 01.02.1977. The second limitation placed is that the quantum of costs awarded under the Section shall not exceed the limits of pecuniary jurisdiction of the Court concerned. The first proviso to sub-section (2) places further restriction on the amount that could be awarded by way of compensatory costs by a Court of Small Causes etc. The second proviso further empowers the High Court to limit the amount which any Court or class of Courts is empowered to award as compensatory costs under this Section.

8.2 As observed by Delhi High Court in National Textile Corporation Vs. Kunj Behri Lal (AIR 2010, Del. 199), frivolous litigation clogs the wheels of justice making it difficult for the courts to provide speedy justice to the genuine litigants.

8.3 Section 35-A can be invoked in any suit or proceeding (including execution proceeding). However, by an exclusionary clause, it is made inapplicable to an appeal or revision.

8.4 In the case of ***Shiv Kumar Sharma vs. Santosh Kumari 2007 (8) SCC 600*** involving disputes relating to an agreement to sell, the Supreme Court invoked Section 35-A and directed payment of Rs. 50,000/- by way of cost. The Court declared - *In exercise of our discretionary jurisdiction under Article 142 of the Constitution of India and having regard to the conduct of the defendant, we direct that the cost shall be payable by the appellant in favour of the respondent in terms of Section 35-A of the Code, besides the costs already directed to be paid by the learned trial Judge as also by the High Court. We direct the appellant to pay a sum of Rs. 50,000/- by way of cost to the respondent.*”

8.5 The reference to Section 35A is not clear as S.35-A does not, going by its plain language, empower the Court to award more than Rs.3,000/-. There are some instances in which the High Courts directed ‘exemplary costs’ of more than the ceiling set out in Section 35 A even in civil proceedings.

8.6 In the case of ***T. Arivanandam vs. T. V. Sathyapal 1977 (4) SCC 467*** relating to eviction proceedings, the Supreme Court adverted to Section 35-A and observed as under *“The trial court in this case will remind itself of Section 35-A CPC and take deterrent action if it is satisfied that the litigation was inspired by vexatious motives and altogether groundless” (Para 6)*. In this case there were a number of proceedings at the instance of the tenant in an effort to remain in possession of the tenanted shop, even though there was an earlier order of the

Court directing his eviction. Whatever may be position in 1977, at the present juncture, S.35-A with its ceiling limit of three thousand rupees can no longer be considered a deterrent against frivolous litigation.

8.7 *The Hon'ble Supreme Court in Ashok Kumar Mittal Vs. Ram Kumar Gupta 2009 (2) SCC 656* dealing with a case where the High Court imposed an exemplary cost of Rs. 1 lakh on the petitioner and Rs. 1 lakh on the respondent, on a finding by the High Court that both the sides were guilty of having lied on oath, observed that the limit prescribed under Section 35-A should be kept in view by the Courts. In the said case, the Supreme Court also adversely commented upon the practice of directing costs to be paid to Legal Services Committee etc. or to some non party Charitable Organisation. The Court also made an observation that the principles and practices relating to levy of cost in administrative law matters cannot be imported mechanically into civil litigations governed by the Code of Civil Procedure.

8.8 In spite of the above, in *Direct Tax Practitioner Association vs. R.K. Jain 2010 (8) SCC 281*, the Court taking a view that the petition before it was frivolous in nature imposed a cost of Rs. 2 lakhs and while directing that out of the same, Rs. 1 lakh shall be paid to the respondent, and Rs. 1 lakh shall be deposited with the Supreme Court Legal Services Committee.

8.9 Earlier also in *Mahendra Babu Rao Mahadik & Ors. vs. Subash Krishna Kanitkar & Ors. 2005 (4) SCC 99* the Supreme Court dismissed the appeal quantifying the costs at Rs. 50,000/- and directed that the same shall be deposited with the National Legal Services Authority. There are other such similar instances.

The above two cases, however, arise out of Writ Petition(s).

8.10 In the matter of costs, the Courts dealing with civil suits, are bound by the provisions of the Code of Civil Procedure and may not have any discretion to award costs other than in terms of the provisions of the Code. Whether a High Court in exercise of its inherent powers could impose costs outside the provisions of the Code of Civil Procedure, even in matters arising out of civil suits, is not completely free from doubt. However, the Supreme Court in *Ashok Kumar Mittal vs. Ram Kumar Gupta & Anr. 2009 (2) SCC 656* observed that even though one view is that provisions of Section 35 and 35-A of the Code would not affect the wide discretion vested in the High Court in exercise of its inherent power to award costs in the interests of justice in appropriate cases, the more sound view, however, is that the discretion of the Court to award costs is subject to such conditions or limitations as may be prescribed and subject to the provisions of any law for the time being in force and, therefore, where the principles relating to cost are governed and regulated by Section 35 and 35-A of the Code, there is no question of exercising inherent powers contrary to the specific provisions of the Code.

8.11 In **Sanjeev Kumar Jain's** case also, the Supreme court noticed in para 8 that Section 35 starts with the words "*subject to such conditions and limitations as may be prescribed, and to the provisions of law for the time being in force*" and then observed: "*Therefore, if there are any conditions or limitations prescribed in the Code or in any rules, the Court, obviously, cannot ignore them in awarding costs.*"

8.12 The amount that could be awarded to a party to the litigation under Section 35-A has no particular relation to the actual expenses incurred by that party. The expression “compensatory” is not, in fact, appropriate. These costs are related to the false and frivolous nature of the plea raised in the proceeding by a party. In effect, it penalizes the conduct of the party who has set up a false or frivolous claim/plea and awards an additional amount under the head of costs. Viewed from another angle, the amount so awarded partakes the character of non-pecuniary damages as it provides some recompense for the time and energy spent and mental agony suffered by the party who is dragged to the Court unnecessarily. In that sense, it could be said that the costs are compensatory. However, costs contemplated by Sec. 35-A are of greater amplitude. It would, therefore, be more appropriate to describe the costs under Section 35-A as ‘exemplary costs’ – an expression used by Supreme Court in *Sanjiv Jain’s case*. Punitive costs is another expression that can be used in view of the amendments we are suggesting. It may be stated that in the context of damages, the expressions “punitive damages” and “exemplary damages” are used as synonymous terms. Punitive damages are damages over and above such sums as will compensate a person for his actual loss. On the same analogy, punitive or exemplary costs are not to be correlated to the expenses incurred by a party to litigation. In fact, costs are considered to be in the nature of incidental damages allowed to the successful party to indemnify him against the litigation expenses incurred. In that sense, it would be apposite to borrow the descriptive terminology applied to damages.

8.13 At this juncture, we may reiterate the pertinent observations of Supreme Court in *Sanjeev Kumar Jain’s case* at para 15:

“We may also note that the description of the costs awardable under Section 35A ‘as compensatory costs’ gives an indication that it is restitutive rather than punitive. The costs awarded for false or vexatious claims should be punitive and not merely compensatory. In fact, compensatory costs is something that is contemplated in Section 35B and Section 35 itself. Therefore,

the Legislature may consider award of 'punitive costs' under section 35A."

8.14 Apart from awarding additional costs in the nature of exemplary costs to the party succeeding, the Courts should also be empowered to impose punitive costs for wasting court's time and resources by filing a frivolous or vexatious suit/proceeding or taking up a defence of the same character. The amount so realized should appropriately go to "Judicial Infrastructure Fund" to be created for this purpose. Thus while raising the ceiling limit under section 35A, there shall be a combination of two factors, that is to say, the punitive element and the compensatory element in awarding costs subject to the overall ceiling prescribed. Accordingly, the Commission suggests the recasting of Section-35A.

8.15 The Supreme Court, in *Vinod Seth vs. Devinder Bajaj 2010 (8) SCC 1*, observed in paragraph 52 that the ceiling of Rs. 3,000/- requires a realistic revision. The reason obviously is that the said amount would hardly act as a deterrent against false and vexations suits and defences. The ceiling amount prescribed more than three decades back has lost its relevance and purpose. In *Sanjeev Kumar Jain*, the Supreme Court observed that the ceiling of Rupees one lakh appears to be reasonable. In the written submissions of Law Commission of India filed before the Court in that case, the same suggestion was made and the Hon'ble Court has apparently endorsed it. This suggestion, therefore, deserves to be acted upon and section 35-A has to be suitably amended. Curbing frivolous litigation by imposition of heavy

costs is a well-recognized norm and there should be adequate legislative support for it.

8.16 It may be mentioned that at the conference of Judl. Officers and lawyers held at various places, the subject of costs also came up for discussion. There was unanimous opinion that the ceiling prescribed by S,35-A has to be raised substantially and further the quantum of costs should be realistic.

8.17 As the Section stands at present, compensatory costs under Section 35-A is awardable only if a party raises an objection that the claim or defence or any part of it, is false and vexatious to the knowledge of the party, after recording its reasons. The provision needs to be suitably amended to additionally empower the Court on its own to award exemplary costs if the Court is satisfied that the claim or defence is false or vexatious to the knowledge of the party, irrespective of the other party making a specific claim in this regard.

8.18 In light of the foregoing discussion, the Commission is of the view that Section 35-A has to be amended to provide for the following:

- (1) Ceiling limit of Rs. 3,000/- prescribed in the year 1976 needs to be enhanced to Rs. 1,00,000/-.
- (2) Out of the costs awarded under Section 35-A (maximum being Rs. 1,00,000/-), part of the costs should be allowed in favour of the party who has been subjected to frivolous or vexatious litigation and a part of the amount of costs should be directed to be deposited in the Judicial Infrastructure Fund to be created by each High Court;

- (3) The expression ‘exemplary’ should be substituted for the word ‘compensatory’ wherever it occurs in Section 35-A.
- (4) Every Court, on its own, even without an application from one of the parties, shall be empowered to award exemplary costs under section 35-A if the Court is satisfied that the claim or defence is false or vexatious to the knowledge of the party. However, before passing such order, opportunity of hearing shall be given to the party against whom such order is proposed to be passed on the date of pronouncement of judgment.

8.19 Accordingly, Section 35-A to be recast as follows:

- (i) In the title portion, the word ‘compensatory’ to be substituted by the words ‘additional and exemplary’. The last words in sub-section (1) i.e., “by way of compensation” to be deleted and instead, the words “additional and exemplary costs subject to the limit specified in sub-clause (2)” to be substituted;
- (ii) The following Sub-sections to be added after sub-section(1)
- 1-A:** The Court, irrespective of any objection taken or application made by the party may, subject to the same conditions as laid down in sub-section (1) and after giving an opportunity of hearing to the party affected, pass an order awarding additional and exemplary costs subject to the ceiling specified in the sub-section (2),

Provided that the party's adverse socio-economic condition and the hardship that may be caused by imposing the costs under this sub-section should be taken into account by the Court while determining the quantum of costs.

1-B: Out of the costs so awarded, part of the costs shall be ordered to be paid to the party against whom the claim or defence of false or vexatious nature has been set up and part of it shall be ordered to be deposited in the Judicial Infrastructure Fund created under the orders of the High Court;

1-C: High Courts may frame Rules for the creation and administration of Judicial Infrastructure Fund and notwithstanding that such Fund is not created, the Court may award costs under sub-section (1) to the party subject to frivolous or vexatious claim or defence.

- (iii) Instead of "three thousand rupees" in sub-section(2) "rupees one lakh" to be substituted.
- (iv) The first Proviso to sub-section may be omitted as it is no longer necessary.
- (v) In Sub-section (4), for the expression 'compensation', the word 'costs' to be substituted.

9. SECTION 95

9.1 Section 95 of the Code provides that where, in any suit, an arrest or attachment has been effected or a temporary injunction has been granted under

Section 94(c), if the Court is satisfied that the arrest, attachment or injunction was applied for on insufficient grounds or there were no reasonable or probable grounds for instituting the suit, on an application made by the defendant, the Court could award a reasonable compensation to the defendant but not exceeding an amount of Rs. 50,000/- or exceeding the limits of its pecuniary jurisdiction. Prior to the amendment by Act 46 of 1999, w.e.f. 1.7.2002, the amount that could be awarded under this provision was “not exceeding Rs. 1,000/-”. Sub-section (2) of Section 95 imposes a bar on any suit for compensation in respect of such arrest, attachment or injunction, if the provisions of Section 95 are invoked by the defendant and an order is passed by the Court. The Supreme Court in *Bank of India Vs. Lekhimoni Das* 2000 (3) SCC 640 had an occasion to consider the scope of Section 95 and held that the scope of the said provision is very limited and is in the nature of summary proceeding and that it is alternative to a suit; that what would be required to be established in a suit would be quite different from adjudication of an application under Section 95; that if a party avails of remedies under Section 95, the amount that could be awarded would be limited to the amount specified in the Section.

9.2 To subserve the purpose of this provision, it is necessary to enhance the limit further by substituting the figure of Rs. 1,00,000/- in place of Rs. 50,000/-. In this connection, it may be recalled that the Commission has recommended supra that the ceiling under section 35A (costs for frivolous or vexatious litigation) should be enhanced to Rs. 1,00,000/-. By parity of reasoning, it is just and proper to increase the ceiling under section 95 prescribed a decade back, to Rs. 1,00,000/-

10. SECTION 35-B: (“COSTS FOR CAUSING DELAY”)

10.1 In its 54th Report (1973), the Law Commission of India recommended the insertion of Section 35-B as follows:

“35-B. The Court may, while passing an order for costs, make the party responsible for delay with reference to any step in the litigation, pay the costs proportionate to that delay, whatever may be the ultimate event of the suit”.

10.2 By the Civil Procedure Code (Amendment) Act of 1976, Section 35-B was introduced which is substantially the same as suggested by the Commission. However, the ambit of S. 35 has been widened to include costs for obtaining adjournment for any reason.

10.3 Section 35-B of CPC empowers the Court to make an order requiring a party who is causing delay in the proceedings to pay to the other party cost which “in the opinion of the Court be reasonably sufficient to reimburse the other party in respect of expenses incurred by him in attending the Court on that date fixed.” Section 35-B which is narrower than Section 35-A covers two situations: one is where the party to the suit fails to take the step which was required to be taken under the Code on the date fixed, for e.g. not filing an application for bringing LRs on record, not filing written statement, not doing the needful to cause the service of summons or notice etc., not filing the documents ordered to be filed, not answering the interrogatories and so on. Seeking an adjournment for taking such steps is a part of the first contingency. The second one is obtaining an adjournment for producing evidence or “on any other ground”. In either event, costs can be ordered by the Court. Section 35-B requires reasons to be recorded for making such an order and further the cost should be such as would cover the

expenses incurred for attending the Court. Sub-section (1) of Section 35-B also contains an important provision which says that the payment of such cost on the date next following the date of such order shall be a “condition precedent” to the further prosecution of the suit or the defence as the case may be. This provision laying down an embargo on the further prosecution of the suit etc. has been construed by the Supreme Court in *Manohar Singh Vs. B.S. Sharma* (2010 1 SCC 53). In that case, the Supreme Court was dealing with an order in a suit dismissing the suit for failure to pay the cost of Rs.5000/- by invoking Section 35-B of the Code. The High Court had taken the view that the provisions of Section 35-B were mandatory and if the costs levied were not paid “*the only course open to the Court is to disallow the prosecution of the suit*”, However, the Supreme Court interpreted the words “*further prosecution of the suit*” and “*further prosecution of the defence*” to only mean that if the cost levied was not paid, such defaulting party is prohibited from any further participation in the suit and it cannot be construed as one requiring dismissal of the suit as an automatic consequence of non payment of cost by the plaintiff. Taking the said view, the Court restored the suit and directed however that the plaintiff’s right to cross examine the defence witness concerned shall stand forfeited. The Court, at the same time, added a rider that “*if the appellant-plaintiff tenders the costs with an appropriate application under Section 148 CPC, the trial court may consider his request in accordance with law. Even if the Court extends the time for deposit, permits the plaintiff to pay the costs and prosecute the suit further, that will not entitle the plaintiff to cross examine DW-2*” (vide para 13 (iii)). This judgment clarifies that the embargo laid down in Section 35-B is not absolute and it is subject to Section 148 which provides for enlargement of time up to 30 days in

total. The rigour of embargo laid down in Section 35-B has thus been softened. We are not here concerned with the larger question whether in the interests of speedy disposal of suit, Section 148 should be allowed to be invoked. Suffice it to state at this juncture, that the Court even while exercising its discretionary power under Section 148 is not powerless to impose costs or such other conditions as may act as a check against further defaults. Logically, the cost to be imposed while passing an order under Section 148 should be heavy cost.

11. ORDER XVII (ADJOURNMENTS):

11.1 Closely allied to Section 35-B is Order XVII, Rule (2) of CPC which bears the heading “Costs of adjournment” we may quote sub-rules (1) and (2).

1. **Court may grant time and adjourn hearing** - (1) 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 for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during the hearing of the suits.

(2) **Cost of adjournment** – In every such case the Court shall fix a day for the further hearing of the suit, and shall make such orders as to costs occasioned by the adjournment or such higher costs as the Court deems fit.

11.2 This is a general provision governing adjournments and it is complementary to section 35-B. The costs contemplated under this provision need not necessarily be confined to the expenses incurred by the party for attending the court. The expression “such higher costs as the Court deems fit” is

significant. The quantum of costs under Order XVII, Rule 2, can be so fixed as to include advocate's fee to a reasonable extent. If a party is seeking repeated adjournments, naturally, heavy costs can be awarded depending on the various relevant factors such as the over-all conduct of the party, the stakes involved and so on.

11.3 It is common knowledge and in fact it has come to the notice of the Commission through the inputs received at various conferences that the quantum of costs awarded by the Courts against a party seeking unnecessary adjournments are by and large meagre. It may be couple of hundreds or even less in some parts of the country.

11.4 By awarding such meagre costs, the desired objective of discouraging adjournments is stultified. It is desirable that the High Courts should issue circular instructions to the judicial officers to stop the practice of awarding minimal or meagre costs for adjournments and to award reasonable costs adequate enough to reimburse the expenditure that would have been incurred by the other party and it may, in appropriate cases, include an estimated amount of advocate's fee. The District Judges shall be instructed to evolve certain guidelines in this regard, if necessary after consulting the members of the Bar. In the alternative, the High Courts while framing/revising the Rules may specify the minimum amount payable by the parties seeking adjournments. If the request for adjournment is repeated, the costs should be higher than the minimum. If both parties seek adjournments which could have been avoided by exercising reasonable diligence and care, the costs should be directed to be credited to Judicial Infrastructure Fund or to the District/Taluka/Mandal/Legal Aid Centres.

11.5 Further, it must be ensured that the costs are actually paid by the party seeking adjournments. The receipt evidencing payment should be filed in the court or the costs should be paid to the other party (if present) in the court hall itself. The feasibility of costs being deposited in the Court may also be considered. The modalities can be prescribed by the Rules framed by the High Courts or by evolving uniform practices. The Commission is advertent to this aspect for the reason that reports have been received from the judicial officers and even from the members of the Bar that reporting the payment of costs has become a farce and quite often representation is made to the court that costs awarded have been received, though not actually received.

12. ORDER XXV (SECURITY FOR COSTS)

12.1 Sub-rule (1) and (2) to the extent relevant are extracted hereunder:

1. ***When security for costs may be required from plaintiff.*** –

(1) At any stage of a suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff, for reasons to be recorded, to give within the time fixed by it security for the payment of all costs incurred and likely to be incurred by any defendant:

Provided that such an order shall be made in all cases in which it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are, residing out of India and that such plaintiff does not possess or that no one of such plaintiffs possesses any sufficient immovable property within India other than the property in suit.

(2).....

12.2 The effect of failure to furnish security is laid down in Rule 2: The scope and ambit of the Provision has been widened in the year 1956 by substituting new Rule 1 for the old rule. The proviso to the present rule was the previous rule. Some States have amended this provision to cover cases in which the plaintiff is being financed by a non-party to the suit. It is not clear why only the plaintiff is required to furnish security for costs. The rationale behind the exclusion of defendant is not demonstrable. Probably it was based on the then existing situation. The distinction between plaintiff and defendant is irrational at the present juncture. Having regard to the present pattern of litigation, there is no reason why the security for costs should not be required to be furnished by either the plaintiff or the defendant if the circumstances exist for requiring such security. Hence, suitable amendment of Order XXV to include the defendant within the net of that Order XXV is desirable. So also, the Proviso should be suitably amended to include the defendant therein.

12.3 The allied rule relating to furnishing of security is Order XLI, rule (10).

13. Summary of Recommendations:

(1) Costs in civil suits/proceedings should be such as to curb false and frivolous litigation and to discourage adjournments on feeble grounds or for ulterior purpose. Further, the costs to be awarded to a successful party should be realistic and reasonable and to this effect the rules in vogue should be revisited by the High Courts.

(2) The principle that costs should follow the event which finds statutory recognition in Section 35 of CPC ought to be given effect to by the Courts with all seriousness and the deviations should be rare. The recent decision of Supreme Court in *Sanjeev Kumar Jain* (2011, JT (12), 435) has laid stress on this aspect.

However, the award of costs should not cause undue hardship to the parties who by virtue of their socio-economic circumstances may not have paying capacity.

(3) a) The rules framed by the High Courts in relation to costs **especially** the advocate's fee should be thoroughly revised so as to accord with the principle of realistic and adequate costs [The aspects on which the Committee of the High Courts should focus their attention while revising the rules in this regard are discussed at various places, especially paras 4.2, 4.3, 5 and 6.

b) The rules must be updated and language to be made simpler so as to impart clarity. Unnecessary and outdated rules ought to be weeded out.

The format of bill of costs needs to be revised. The procedure for filing fees certificate also needs a change.

(4) Adjournment costs should be sufficiently high and with a view to ensure this, the High Courts may, by virtue of practice directives or circulars, lay down guiding principles. Uniformity in approach on the part of the trial judges in granting costs for adjournments ought to be developed.

(5) The following legislative amendments in CPC are suggested:

(i) Section 35A (Compensatory costs for false or vexatious claim/defence) should be recast as set out in paragraph 8.19 to have a better check against false and frivolous litigation. The thrust of the proposed amendment is to raise the ceiling from Rupees three thousand to Rupees One lakh and creation of Judicial Infrastructure Fund into which part of the costs shall be ordered to be deposited;

(ii) Amendment of Section 95 (compensation for obtaining arrest, attachment etc. on insufficient grounds) in order to raise the ceiling limit of Rupees fifty thousand to Rupees One lakh vide paragraph 9.2.

(iii) Order XXV of CPC (Security for costs) should be so amended as to include the defendant within its purview;

(iii) In order to facilitate easy recovery of costs, Order LXI has to be amended so as to make it obligatory to file proof of payment of costs before the appeal is entertained subject to the discretion vested in the appellate Court to dispense with payment to the extent of half the costs for special reasons.

(v) In Oder XX, Rule 6A(preparation of decree), the words ‘30 days’ may be substituted for the words “15 days” so that sufficient time is given to the parties to claim all the admissible items of costs and the Costs Taxation Officer will be able to ascertain costs more satisfactorily.

Sd/
(Justice P. V. Reddi)
Chairman

Sd/
(Justice Shiv Kumar Sharma)
Member

Sd/
(Amarjit Singh)
Member

Annexure-I

Costs in Civil litigation - Some illustrative cases of Supreme Court

Even though the Code of Civil Procedure contemplates award of costs as a rule, and if costs are not awarded, reasons should be recorded, no consistent principles could be seen from the judgments of the Supreme Court as to when cost could be denied to a party. Even in cases where the court felt that exemplary costs are called for, the quantification of costs seems to be ad hoc and does not furnish any guidance. There are situations where the Court felt that the conduct of the parties to the suit in fact called for award of exemplary costs but actually did not impose any exemplary cost; even cost ordinary allowable was not awarded.

For instance, see *Amarendra Komalam Vs. Usha Sinha & Anr. , (2005) 11 SCC 251*, “For the forgoing reasons, the appeal succeeds. Though it is eminently a fit case for awarding exemplary cost, we refrain from doing so. No costs.”

Similarly in *Gayatri De vs. Mousumi Cooperative Housing Society Ltd. & Ors. (2004) 5 SCC 90*, even though the Court was of the view that it was a fit case for award of exemplary costs, eventually it did not even

allow the cost which ordinarily the petitioner would have been entitled to, holding as under:- *“The appeal stands allowed. Though this case is eminently a fit case to award exemplary cost, we, by taking a lenient view of the matter say no cost”*.

Again, in ***Sumer vs. State of U. P. (2005) 7 SCC 220***, the Supreme Court held *“Ordinarily a curative petition of this nature deserves dismissal by imposing exemplary cost on the petitioner, but in the present case, we refrain from imposing cost, considering that the petition arises out of a criminal appeal”*.

In ***Dattaraj Nathuji Thaware vs. State of Maharashtra & Ors. (2005) 1 SCC 590***, even though the Court felt exemplary cost should be imposed, eventually refrained from imposing any cost, in so far as proceedings before the Supreme Court is concerned, observing as under:

“We would have imposed exemplary cost in this regard but taking note of the fact that the High Court had already imposed cost of Rs. 25,000/-, we do not propose to impose any further cost.”

Similarly in ***Rajender Singh vs. Lt. Governor Andaman & Nicobar Island & Ors. (2005) 13 SCC 289***, the Court noticed that the petitioner had been unnecessarily harassed by the authorities, but however noticing that the High Court had imposed a cost of Rs. 25,000/- did not even allow the costs before it and disposed of the matter with an order, *“No costs”*.

In ***Ravinder Kaur vs. Ashok Kumar & Anr. (2003) 8 SCC 289*** relating to disputes between land lord and tenant where the Court felt that the dispute raised by the tenant in regard to the identity of suit schedule property was only a bogey to delay the eviction, imposed an exemplary cost of Rs. 25,000/-.

In ***State of Kerala vs. Thressia & Anr. 1995 supplement (2) SCC 449***, a matter arising out of a dispute between the landlord and tenant the Court felt that exemplary cost should be imposed on the State Government and imposed a cost of Rs. 10,000/- with a direction that it shall be collected

from the officer concerned and the counsel who recommended filing of the Special Leave Petition.

In *Ram Awatar Agarwal & Ors. Vs. Corporation of Calcutta & Ors. (1999) 6 SCC 532* the Court, noticing that various proceedings, title suit etc. were filed by a party with a view to frustrate an order for demolition made by the Corporation, took the view that the proceedings by the appellant is an abuse of the process of the Court and in these circumstances quantified the cost as Rs. 1 lakh.

In *Kabari Pvt. Ltd. Vs. Shivnath Shroff and Ors. (1996) 1 SCC 690*, in relation to a suit which commenced in the year 1981 and was eventually decided finally by the Supreme Court in the year 1996 after giving through the hierarchy of courts, the Court while awarding costs quantified the cost at Rs. 10,000/- in each appeal. It is not clear whether if costs as per provisions of CPC were to be claimed by the party succeeding, the said party would have been entitled to the amount of costs so quantified.

In *Bhupinder Pal Singh vs. Director General of Civil Aviation & Ors. (2003) 3 SCC 633*, in a service dispute decided by a Single Judge and Division Bench of the High Court, the Supreme Court while allowing the appeal, quantified the cost at Rs. 10,000/-.

In *Union of India & Ors. vs. Shaik Ali 1989 supplement (2) SCC 717* involving a dispute relating to premature retirement, while setting aside the same, the Court quantified the cost as Rs. 3000/- even though the matter involved adjudication initially by the Central Administrative Tribunal and thereafter by the Supreme Court.

In *Srinivasa Cooperative House Building Society Ltd. Vs. Madam Gurumurthy Sastry & Ors. (1994) 4 SCC 675* involving a dispute concerning land acquisition, while holding that the Section 6 declaration was a colourable exercise of power, quantified the cost at Rs. 10,000/- even though the matter involved adjudication by the Single Judge, the Division Bench of the High Court and thereafter by the Supreme Court.

In *Life Insurance Corporation of India vs. Shanta (2004) 13 SCC 748*, in a dispute relating to insurance, while dismissing the appeal filed by LIC, the Court directed cost to the respondent and quantified the litigation cost at Rs.25,000/-.

In *Oriental Insurance Company Ltd. Vs. Ozma Shipping Company & Anr. (2009) 9 SCC 159*, in a dispute relating to Marine Insurance of the value of Rs. 21.50 lakhs which culminated in proceedings in National Commission under the Consumer Protection Act and thereafter before the Supreme Court, while dismissing the appeal of the Insurance Company, the Court quantified the cost at Rs. 25,000/-.

In *P.H. Dayanand vs. S. Venugopal Naidu & Ors. (2009) 2 SCC 323*, arising out of a suit relating to title, while dismissing the appeal taking note of the fact that the appellant had been prolonging the hearing of the suit, the Court observed that “*he must pay and bear the cost of 1st respondent. Counsel’s fee assessed at Rs. 75,000/-*”

In *Mohinder Singh vs. State of Punjab & Ors. (2007) 10 SCC 724*, in a matter involving redemption of mortgage the Court dismissed the appeal with costs and provided, “*counsel’s fee is assessed at Rs. 25,000/-*”.

In *Udyami Evam Khadi Gramodyog Welfare Sanstha Vs. State of U.P & Ors. (2008) 1 SCC 560*, taking a view that the appellant has resorted to legal proceedings over and over again, which amounted to abuse of the process of law while dismissing the appeal with cost, quantified counsel’s fee at Rs. 50,000/-.

In *Mumbai International Airport Pvt. Ltd. vs. Golden Chariot Airport and Anr. (2010) 10 SCC 422*, relating to proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, which proceedings were pursued initially before the Estate Officer and thereafter before the City Civil Court, Mumbai etc. the Court noticed that the contesting respondent had taken inconsistent stands and prolonged several proceedings for more than a decade and imposed “*cost assessed at Rs.*

5,00,000/- (Five Lakhs)” and directed that it shall be paid to the Supreme Court Mediation Centre.

It may be recalled that the Hon’ble Supreme Court in *Ashok Kumar Mittal vs. Ram Kumar Gupta & Anr. (2009) 2 SCC 656*, had expressed its displeasure about giving directions to deposit amounts with State Legal Services Authority, NGOs etc.

In *Ali Jawad Ameerhanan Rizvi vs. Indo-French Biotech Enterprises Ltd. & Ors. (2000) 9 SCC 373*, in a proceeding challenging an order of the High Court whereby the High Court imposed a cost of Rs. 1 lakh while dismissing the writ petition, the Court noticed that on the findings arrived at by the High Court, there cannot be any doubt that the Court was justified in awarding the cost, but, however, reduced the same from Rs. 1 lakh to Rs. 50,000/- while maintaining the order of the High Court that the same shall be paid to the National Association for the Blind, who was not a party to the proceedings, a practice adversely commented upon in (2009) 2 SCC 656 (supra).

In *Haryana Urban Development Authority vs. K.C. Kad (2005) 9 SCC 469*, in a dispute under the Consumer Protection Act relating to allotment of plots, the Court while awarding the cost before the Supreme Court quantified the same at a meager amount of Rs. 500/- and directed that the same shall be paid to the Legal Aid Society of the Supreme Court. This was a matter involving adjudication at various Consumer Fora.

In *Associated Construction vs. Pawan Hans Helicopters Ltd. (2008) 16 SCC 128*, involving arbitration proceedings where the Court felt that Pawan Hans had taken advantage of a beleaguered contractor and therefore the contractor is entitled to cost, however, quantified the same only at Rs. 10,000/-.

In *India Cements Ltd. vs. Collector of Central Excise 1989 (2) SCR 715*, a matter under the Central Excise Act involving adjudication at the level of Appellate Collector, Appellate Tribunal and thereafter the Supreme

Court, where cost was directed to be paid, it was quantified at Rs. 10,000/-.

In *Delhi Electricity Supply Undertaking vs. Basanti Devi and Anr (1999) 8 SCC 229*, noticing that there was a lapse on the part of Delhi Electricity Supply Undertaking in remitting the LIC premium on account of which the respondent had suffered, the Court while allowing the appeal with cost, quantified the same at Rs. 25,000/- whereas the amount which was to be paid by LIC to the respondent was specified as Rs. 50,000/- with interest.

In *Burn Standard Company Ltd. vs. McDeromott International Inc. & Anr. (1991) 2 SCC 669*, dealing with Technical Collaboration Agreement and arbitration agreement, the Supreme Court taking the view that the conduct of the appellant was such as to tarnish the image and credibility of our entrepreneurs abroad, while dismissing the appeal with cost, quantified the cost at Rs. 5,000/-.

In *Smt. Lata Kamat vs. Vilas (1989) 2 SCC 613* involving a matrimonial dispute, the Court quantified the cost as Rs. 2500/-.

In *M.S. Patil (Dr.) vs. Gulbarga University (2010) 10 SCC 63*, covering appointment of the petitioner as a Reader in the University, the Court dismissed the appeal with cost and quantified the same at Rs. 50,000/-. A perusal of the judgment would show that the Court felt strongly about the manner in which interim orders were obtained and the petitioner continued in the post for about 17 years even though he was not entitled to the post.

In *Union of India vs. R. Padmanabhan (2003) 7 SCC 270* involving dispute under the Rent Control Act, when appeal was dismissed, cost was quantified at Rs. 15,000/-.

In *Bonder & Anr. vs. Hem Singh & Ors. (2009) 12 SCC 310*, on finding that the defendant did not have any case, either in law or equity, the Court allowed the appeal and quantified the cost to be paid by the defendant at Rs. 50,000/-.

In *Oswal Fats & Oils Ltd. vs. Additional Commissioner, (Administration), Bareilly (2010) 4 SCC 728* the Court taking the view that the appellant had not approached the Quasi Judicial and Judicial Forums, the High Court and the Supreme Court with clean hands and succeeded in securing interim orders, directed payment of cost quantifying the same at Rs. 2 lakhs.

In *Sita Ram Bhandar Society, New Delhi vs. Lt. Governor, Government of NCT, Delhi (2009) 10 SCC 501*, dealing with Land Acquisition Proceedings, the Court taking a view that the pleas raised were frivolous in nature and meant to frustrate and delay an acquisition which is in public interest, dismissed the appeals with costs which was determined at Rs. 2 lakhs.

In *N.V. Srinivasa Murthy vs. Mariyamma (2005) 5 SCC 548*, the Court not only directed “*cost incurred throughout by the respondents to be paid by the appellants*” and in addition directed that a further cost in the sum of Rs, 10,000/- to be paid by the appellant to the respondent “*for prosecuting and prolonging litigation upto this Court in a hopelessly barred suit*”.

In *Indian Council for Enviro-Legal Action & Ors. V. Union of India & Ors (1996)3 SCC 212*, in a litigation involving a matter of public interest and spread over a period of six years, the court awarded a sum of Rs. 50,000/-.

However, in **Mohammad Mahibulla & Anr. V. Seth Chaman Lal & Ors. (1991) 4 SCC 529** where the litigation was dragged on and prolonged for ten years, the cost imposed was only Rs. 1000/-.

“We are inclined to agree with counsel for the respondents that this is a case of negligence on the part of the appellants and, therefore, the respondents who have been dragged in these proceedings for about 10 years should be compensated. We direct that the restoration of the appeal in the appellate court on payment of appropriate court-fee shall be subject to the further condition of payment by way of cost of Rs. 1000” (para 7)

In **Union of India v. R.Padmanabhan (2003) 7 SCC 270**, the Court while finding that the Government has been unreasonable directed as under:

“The respondent has been driven to unnecessary litigation by completely denying anything initially for all his efforts and had to face proceedings in this Court also. The Appellant will pay Rs. 15,000 for the costs of the respondent, while bearing their own costs.”

In **State of Punjab & Ors. V. Bhajan Singh & Anr. (2001) 3 SCC 565**, on giving a finding that the conduct of the official concerned was responsible for the situation complained of, the Court directed the officer involved to personally pay the cost pr Rs. 25,000/-.

In **Comptroller & Auditor General of India v. K.S.Jagannathan (1986) 2 SCR 17** the Court directed:-

“For the purpose of this appeal the Respondents have been compelled to come to New Delhi to appear before this Court time and again and also had to spend money on their board and lodging. The Appellants will therefore will pay to each of the Respondents a sum of Rs.1500/- by way of cost of this appeal.” This was a case involving weaker sections of society and interpretation of certain constitutional provisions.

The above judgments which are merely a representative sample dealing with different situations and different subject matters ranging from family disputes, eviction proceedings, service disputes to commercial disputes, tax disputes, land acquisitions, etc., would show that there are no discernible norms in regard to award of costs or quantification of costs and it so even in regard to exemplary costs. There are also instances where cost is directed to be paid to a person other than a party to the proceeding whereas in some judgments, the Court has deprecated and cautioned against such practice. Judgments of the Court seen with reference to cost being imposed or cost not being imposed, do not give any indication of any underlying principle and no guidelines or norms can be s deduced therefrom. Representative sample of judgments of apex Courts only reinforce the belief that at present award of costs and

quantum are a matter entirely in the discretion of the Court and that such discretion is being exercised without any discernible principles.

ANNEXURE - II

A.P. ADVOCATES' FEE RULES, 2010

[ROC No. 1004/S0/2007]

In exercise of the powers conferred by Article 227 of the Constitution of India and Section 34(1A) of the Advocates Act, 1961 the High Court of Andhra Pradesh makes the following:

RULES

1. These rules may be called the Advocates' Fee Rules, 2010.
2. These Rules shall govern the fees payable as costs by any party in respect of the fees of his adversary's Advocate, upon all proceedings in the High Court or any Court subordinate thereto.
3. In these Rules unless the context otherwise requires:
 - (i) "*Advocate*" includes a Pleader authorized to practice in Courts within the meaning of Advocates Act;
 - (ii) "*District Court*" means and includes the highest Court in the district and any other Court equivalent to such Court within the meaning of the Civil Courts Act and includes the Courts of the Chief Judge, Additional Chief Judge of the City Civil Court and the Chief Judge and the Additional Chief Judge of the City Small Causes Court within the City of Hyderabad;
 - (iii) "*Senior Civil Judge Court*" includes the Courts of the Additional Senior Civil judge in the districts and in the City of Hyderabad includes the Courts of the Additional Judges, *City* Small Causes Court;
 - (iv) "*Civil Judge (Junior Division) Court*" includes the Courts of the additional Civil judge (Junior Division) in the district and Assistant Judges in the City Civil Court.

PART - I SUBORDINATE COURTS

In Small Causes Suits

4. In all suits triable by Court of Small Causes, the fee shall be 10% of the amount claimed subject to a minimum of Rs. 300/.
5. In all money suits, the fee shall be calculated at the rate of 10% of the claim involved in such suits when it does not exceed Rs.10,000/-.

6, In all such suits, referred to above when the claim involved exceeds Rs. 10,000/-, the fee payable shall be calculated at the rate of 10% of *the claim* involved on the first Rs. 10,000/- and on the next Rs. 10,000/- at the rate of 7% and when the 'claim exceeds Rs. 20,000/- as above and on the *next Rs. 30,000/-* at the rate of 5% and on the balance at the rate of 3% of the claim on the balance:

Provided, however, that in all suits which are tried in batches of four suits or more and where evidence is recorded is common and the suits are disposed of by a common judgment, the fee *payable* shall be 1/3rd of the fee admissible under this rule in each suit.

7. In all suits where any declaration of title to any property is involved along with any other consequential relief such as possession or injunction, the fee shall be fixed at the rate 10% of the total value of the property taken as the value for the purpose of Courts Fee and Suits Valuation Act, 1956 or any such Act for the time being in force, subject to a minimum of Rs. 2,000/- in the court of Civil Judges (Junior Division) and a minimum of Rs. 4,000/- in other Courts subject to a maximum of Rs. 1,50,000/-.

8. In all suits for recovery of movable property or its value and in all suits for maintenance and annuities, the fee payable shall be fixed in the same manner as in the suits for money subject to a minimum of Rs. 1,000/-.

9. In all suits for bare injunction, the fee shall be fixed as in money suits subject to a minimum of Rs. 3,000/

10. In all suits for enforcement of an agreement of sale or any other relief under the Specific Relief Act, 1877, the fee shall be fixed as in suits for declaration of title to immovable property mentioned in Rule 7 and any other suit for recovery of possession under a contract of sale or otherwise or for the recovery of money under such a contract shall be treated likewise.

11. In all suits relating to easement, whether any compensation is sought or not, the fee shall be fixed at 10% of the value of the claim mentioned in the plaint subject to a minimum of Rs. 2,000/- and, a maximum of Rs. 20,000-.

12. All suits for recovery of money based upon accounts shall be treated as suits for the recovery of money for the purpose of these rules and the fee shall be fixed as provided for such suits herein.

13. In all suits for dissolution of partnership and for partition of joint family properties or administration suits, fee shall be fixed by the Court

at 7% of the valuation subject to a maximum of Rs. 25,000/- irrespective of the other reliefs claimed therein.

14. In all other suits including suits relating to Trust property or property endowed and any other suit which was filed as an original petition initially but was subsequently converted into a suit as under the provisions of the Succession Act or Petitions filed for the grant of Probate of Letters of Administration, on such conversion into a suit, the fee shall be fixed at 7% of the value of the property involved or the Estate subject to a maximum of Rs. 25,000/-.

15. In all other original petitions relating to matrimonial causes, Land Acquisition matters, claims regarding Motor Vehicle Accidents, Claims under the Arbitration Act and grant of Succession Certificate or Letter of Probate the fee shall be fixed by the Court at not less than Rs. 1,500/- and not more than Rs. 25,000/- at its discretion subject to the provision of Rule 18 below.

16. In all the above matters where the suit claims or petitions including original petitions mentioned above are settled out of Court or adjusted at any time before the judgment is pronounced or otherwise disposed of without contest, half of the fee shall be allowed.

17. All suits or other proceedings of a substantive nature which are dismissed for default shall be treated as money suits and the Court shall fix the fee payable to the other party at half the fee payable on contest.

18. In all original petitions whether it is matrimonial cause, or under the Succession Act or a claim under the Land Acquisition Act or under the Arbitration Act, if the said proceeding or petition is not contested, half of the fee payable otherwise shall be paid as fee under these rules.

19. Whenever any suit is re-heard on review, the successful party shall be entitled to half of the fee taxable according to these rules in such suit and the same shall apply to any original petition named above.

20. In all appeals against any judgment, order or decree filed in any District Court, the fee shall be fixed in the same manner as in the trial Court as provided above. For the purpose of this rule, in a civil miscellaneous appeal, fee shall be calculated as in Rule 22 below.

21. In all execution petitions filed for the first time, the Court shall fix a fee which is of $\frac{1}{2}$ the fee allowed in the suit or proceeding as the case may be under the above rules in case of contest and $\frac{1}{4}$ th in cases where there is no contest.

22. In all interlocutory applications filed in any suit or other proceedings including petitions filed by third parties and petitions for withdrawal of money deposited in Court either by any party to the suit or proceeding or by third party who is entitled to such withdrawal (including the Income-tax Department) the Court shall fix a fee of not less than Rs. 250/- subject to a maximum of Rs. 3,000/-.

23. In the following special cases the fee shall be as noted below:

(a) (i) In Inter-pleader suits the fee to be given to the advocate for original plaintiff shall be one-fourth of the fee prescribed under Rule 5, subject to a maximum of Rs.1,500/-.

(ii) In suits under Order XXXVI and XXXVII of the First Schedule to the Code of Civil Procedure where leave to defend has not been granted the fee shall be half the fee prescribed under Rule 5, subject to maximum of Rs.1,500/-.

(b) (i) In declaratory suit where the subject matter in respect of which relief claimed is capable of valuation, the fee shall be according to the scale prescribed in Rule (5), where it is not so capable of valuation, the Court shall fix a fee subject to a minimum of Rs. 1,500/- in the Court of Civil Judges (Junior Division) and a maximum of Rs. 3,000/- and Rs. 2,000/- as the minimum and Rs. 5,000/- in a Court of Senior Civil Judge or District Court.

24. In suit under Section 77 of the Indian Registration Act, the Court shall at its discretion fix a fee having or regard to the time taken in the case a minimum of Rs. 1,000/- and a maximum of Rs. 3,000/-

25. In all proceedings under the Insolvency Act, if the proceedings are contested, the fee shall be fixed not at less than Rs. 1,500/- and in case there is a contest the Court shall fix a fee of Rs750/-.

26. in all applications under the Andhra Pradesh Buildings (L.R and E) Control Act, and the appeals arising from any order thereupon the fee Shall be fixed at not less than Rs. 2,000/- and not more than Rs. 5,000/-

27. In all election petitions, filed 'in Subordinate Court under any Act, the fee shall be fixed at not less than Rs. 2,000/- and not more than Rs. 10,000/-.

28. In all suits not otherwise provided for and of whatever nature, the Court shall fix a fee of not less than Rs. 1,000/- and not more than Z 5,000/-.

29. In all other cases the Court shall fix a fees of not less than Rs. 1,000/- and not more than Rs. 5,000/-.

30. In all other proceedings under any Act and in any suit when any sum is claimed as damages, the Court shall fix the fee as in a money suit.

31. In all cases where the value of the claim exceeds Rs. 5,000/- and in all cases where an Advocate with standing of more than 15 years at the Bar is assisted by a Junior Advocate appealing along with him from the stage of pleadings, an additional fee calculated at 1/3rd of the fee allowable according to these Rules shall be fixed by the Court.

32. Where any suit is remanded on appeal and heard afresh in a Court subordinate to the High Court, half of the fee prescribed under these rules for the suit of the said nature shall be fixed.

33. The Court of Civil Judge (Junior Division) or any Court of equivalent rank may grant adjournment on such teens as to costs not exceeding Rs. 200/- on any one occasion.

34. The Court of the Senior Civil judge or any Court of equivalent rank may grant adjournment subject to such terms as it may think fit regarding costs not exceeding Rs. 300/- on any one occasion.

35. The Court of the District judge or any Court of equivalent rank may grant adjournment on such terms as it thinks fit regarding casts which shall not exceed Rs. 500/- on any one occasion.

36. In all matters tried by the Family Court under the Family Courts Act, no fee shall be fixed, provided however, that the Court may if it is of the opinion that any party had been put to great hardship before or during the pendency of the proceedings, direct the other party to pay costs of not less than Rs.1,000/- and not more than Rs. 5,000/- depending upon its discretion.

PART - II HIGH COURT

37. The Rules framed as under shall regulate the fee payable to the Advocates appearing in the High Court of Andhra Pradesh.

38. In all appeals arising out of suits for money or any other suit or other proceedings decided by a Court subordinate to the High Court (including appeals under Clause 15 of the Letters Patents) the fee shall be fixed at the same rate as in the trial Court.

39. The fee shall be fixed at half the amount if the appeal is uncontested at the time of the hearing or if the appeal is withdrawn before or during the hearing thereof or if the appeal is disposed of as infructuous, in all cases where costs are granted.
40. In all civil miscellaneous appeals filed in the High Court, the fee shall be fixed as in the lower Court in the proceedings from out of which such civil miscellaneous appeals arise.
41. In all civil miscellaneous petitions in the appeal or other proceedings the Court shall fix the fee payable to the successful party at a minimum of Rs. 500/- whenever costs are directed to be paid in such petitions.
42. Whenever a Counsel of more than 15 years standing at the Bar is assisted by a junior Counsel from the time when appearance is entered, an additional fee amounting to 1/3rd of the fee payable to the Senior Counsel shall be fixed by the Court subject to a minimum of Rs. 1,000/-.
43. In all petitions under Articles 226 and 227 of the Constitution of India and in all appeals arising therefrom under Clause 15 of the Letters Patent, the Court shall fix such fees as it considers to be just, and proper and irrespective of whether the petition or appeal as the case may be, is allowed, dismissed or disposed of.
44. For the purpose of these rules, whether relating to the fee to be fixed in the Courts subordinate to High Court, or in the High Court, the amount of valuation of the claim shall be as set out in the plaint or Memorandum of Appeal or Cross Objections and in applications under Articles 226 and 227 of the Constitution of India, it shall not be necessary to set forth such valuation.
45. In all election petitions, filed in the High Court, fee shall be fixed at not less than Rs. 10,000/- for each contesting respondent.
46. In all civil revision petitions and second appeals, fee shall be at not less than Rs.1,000/-.
47. In all proceedings not otherwise provided for, the costs shall be at the discretion of the court.
48. The fee- payable in all cases shall be rounded off to the nearest ten rupees, four rupees or less being neglected and five rupees or more being shown as ten rupees.

49. The Court shall order separate sets of fee only in cases where the parties advance or succeed on substantially independent grounds separate and specific to the party succeeding thereupon and only to the extent of the value of the property or the amount covered thereby provided, however, the Court shall be at liberty to apportion amongst the parties the fee payable in case of each contesting party whenever it is considered desirable and in all such cases it shall not be necessary that the total amount of fee so granted may or may not aggregate to the fee payable if the matter had been decided as if one set of fee was to be fixed.

50. In matters not provided for herein, the fee payable shall be in the discretion of the High Court and nothing in these shall be deemed to reduce the jurisdiction of the High Court to grant exemplary costs.

51. Every Advocate shall produce a certificate that he has received the fee claimed in the suit or appeal within two weeks from the date of the judgment.

52. The rules relating to the fee payable in the High Court shall be deemed to be the fee payable according to the Appellate Side Rules of the High Court of judicature, Andhra Pradesh.

53. In all original side matters and Company Petitions and Applications and any other matters which may be brought up and tried, by the High Court as a suit, the fee shall be not less than the fee prescribed for a suit of similar nature in the trial Court and in all company petitions or other applications, the fee shall be not less than Rs. 5,000/- and not more than Rs. 25,000/-.

54. The Advocates' Fee Rules, 1990 are hereby repealed.