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# Critical Analysis of Provision for 'Cost' under CPC

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## ABSTRACT

*The Law regulating the procedure to be followed in civil court is governed by the Civil Procedure Code, 1908 and this Code is one of the most important branches of procedural law. The civil procedure code, 1908 is an adjective law, which deals with the administration of civil proceedings in India. This code is divided into two parts, the first part contains 158 sections, which is substantial in nature and the second part contains the first schedule, which has total 51 orders and rules, which is procedural in nature. If we examine, the first part is different from the other substantial law as other substantial laws provide some rights to the person or impose some restriction, as the case may be, but here, this only talks about the general principle relating to the jurisdiction of the court. The second part of this code i.e. orders and rules prescribe procedures and methods that govern civil proceedings in India. This article focuses on the provisions of cost. 'Costs' have been incorporated in sec. 35, 35-A, 35-B and sec. 95 of CPC for the purpose of acting as a deterrence against frivolous vexatious claims made. Dictionary meaning of the term Cost is "Cost is a pecuniary allowance made to the successful party for his expenses in prosecuting or defending a suit or a distinct proceeding with a suit". In further reading we will go in detail with the meaning of the term 'cost', Kinds, provisions and imposition of cost.*

## KEYWORDS

*Cost, Civil Procedure Code, Suit, Substantial Law.*

## INTRODUCTION

'Costs' are statutory allowance to a party to an action for his expenses incurred in the action. They are in the nature of

incidental damages allowed to the successful party to indemnify him against the expenses of asserting his rights in Court, when the necessity for so doing caused by the other's breach of legal duty Otherwise defined, costs the sums prescribed by law as charges for the services enumerated in the fee bill. They have reference only to the parties and the amounts paid to them, and only those expenditures which are by statute taxable and to be included in the judgement fall within the term 'costs' [1]. The general rule is that the successful party is entitled to costs unless he is guilty of misconduct, negligence or omission or unless there is some other good cause for not allowing costs. The same rule is expressed by the expression "Costs follow the event", i.e., costs follow the result of the suit. The drastic step of imposing costs must be taken and used very cautiously, sparingly and only in cases where the Court is certain that there is an absolutely false case of defence. To the Supreme Court it is clear that merely because a court does not accept a case or defence is no ground for granting high interest or costs. It must also be mentioned that the special courts Act provides that the Civil Procedure Code does not apply. Provision of costs have been incorporated in sec. 35, 35-A, 35-B and sec. 95 of CPC for the purpose of acting as a deterrence against frivolous vexatious claims made. But the working of the provision shows 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. In *Salem Advocates Bar Association v. Union of India* [2], the Supreme court held that the costs have to be actual and reasonable, 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.

## MEANING OF COST

According to Black's Law Dictionary "costs is a pecuniary allowance made to the successful party for his expenses in prosecuting or defending a suit or a distinct proceeding with a suit". Costs are an allowance to the party for expenses incurring in prosecuting or defending a suit, an incident to the judgment. In England the term is also used to designate the charges which an attorney or solicitor is entitled to make and recover from his client, as his remuneration for professional services, such as legal advice, attendances, drafting, conducting legal proceedings etc. Costs are at the discretion of the court. The said discretion must be exercised on sound legal principles and not by caprice, chance or humour. No hard and fast rules can be laid down and the discretion must be exercised considering the facts and circumstances of each case. Normally, costs to follow the event and the successful party are entitled to costs unless there are good grounds for

depriving him of that right <sup>[3]</sup>. To put it differently the loser pays costs to the winner. However it does not always depend on who wins and loses in the end. Even a successful party may be deprived of costs if he is guilty of misconduct or there are other reasons to do so <sup>[4]</sup>. sec. 35 (2) expressly provides that when the court orders that cost should not follow the event, it must record reasons for doing so <sup>[5]</sup>.

### **KINDS OF COST**

The code provides for following types of cost:

1. General costs under sec. 35 of the code;
2. Miscellaneous costs-Order XX-A of the code;
3. Compensatory costs for false and vexatious claim or defences under sec. 35-A and
4. Costs for causing delay under sec. 35 of the code

### **IMPOSITION OF COSTS**

The costs may be justifiably made payable to the High Court Legal Services Committee or other Legal Services Authorities, where before the other side is served or represented, the Court wants to penalise a petitioner for lapses, omissions or delays, as for example, where the petitioner fails to pay the process fee for service of respondents, or fails to cure defects or comply with office objections, or where there is delay in refiling of petitions <sup>[6]</sup>. Once the other side is represented, the costs levied by reason of any attempt by a party to delay the proceedings should normally be for the benefit of the other party who has suffered due to such conduct.

Only where both the parties are at fault, costs may be ordered to be paid to the legal services authority. But this should be sparingly used. Normally it is at the discretion of the Court. When the Court, in the light of the facts before it, satisfied that the defendant wanted to delay the proceedings and ordered him to pay costs of the amount, it would not be appropriate to interfere with that part of the order <sup>[7]</sup>. **In the case of Banwarilal B. Purohit v. Vilas Muttemwar & ors** <sup>[8]</sup>, Where an election petition was filed on the ground of tampering of an electronic voting machine (EMS) but there was no substantive evidence in support of such allegation, the election petition was dismissed with costs. Unless and until loopholes in the security are at least suggestively proved, distinguishable from barely alleged, burden to disprove whatever, facts sought to be proved by the petitioner, did not shift on the respondents. Moreover, any such burden did never primarily rest on the returned candidate. As regards charge of non-compliance

with provisions of rules or orders made under representation of the People Act or hand book for Returning Officers, perusal of evidence and analysis reveals that testimony of petitioner has status of hearsay. Petitioner has named his son as an Election agent and attributes some knowledge to him, however he has not been examined nor has a single polling agent been examined to prove alleged lapses in following the provisions of hand book in conducting mock polls etc. The responsibility to prove the factual aspect about lack of security and failure to comply certain stages, did rest on the petitioner, which was very limited. The evidence that is within the power and control of the Election Petitioner has to be executed to come before the Court, present is not a case where the petitioner has pleaded any of the violations contemplated by clause (a) to (c) of sec. 100 (1) of the Representation of the People Act. His case also does not fall in sub-Clause (i), (ii) and (iii) of Clause (d) of sec. 100(1).

### **PROVISION OF COST UNDER SEC. 35, 'COSTS AS PENALTY'**

Whatever the origin of course might have been, they are not awarded, as a punishment for the defeated party but as a recompense to the successful party for the expenses to which he had been subjected. Far removed from the days when the plaintiff who failed, was punished in amercement pro falco calamore (pecuniary punishment for a false claim) and the defendant comma where the judgment was against him in misericordia cum expense litis (expenses incurred for unreasonable defense) for hey a just details on to the plaintiff's rights.

Costs cannot be imposed beyond the Costs of suit. it is not according to law to give to a party by way of damages, the cost as between attorney and client of the litigation in which the damages are recovered.' where a review application was misconceived but both the parties were at fault, exemplary costs were not awarded but normal cost were awarded [9]

In the case of *Harsh Wood Products v. State* [10], the assessor of Delhi Municipal Corporation determined the rental value and the rateable value of the property situated in Delhi and also determined the tax payable thereon. Thereafter the owner filed a suit in the court in the State of Uttar Pradesh for declaration that the assessment ordered passed by the assessor of Delhi Municipal Corporation was illegal, invalid and void ab initio and for prohibitory injunction against the attachment of the owners property. The decree for prohibitory injunction restraining Municipal Corporation from attachment of owner's property was passed ex parte. The fact that the appeal against the assessment order was pending, was deliberately suppressed.

Such practices of gross abuse of the processes of the court ought to be done with a stern hand so that similarly-minded others may desist from indulging in similar acts. Exemplary cost, in a sum of Rs 50,000 was awarded against the legal representative of the deceased owner.

### **DISCRETION OF THE COURT**

Costs to be awarded under this sec. are entirely in the discretion of the court. But like all other descriptions, discretion to avoid costs also should be exercised judicially, properly and on sound legal principles. No hard and fast rule can be laid down and exercise of discretion will depend upon the facts and circumstances of each case including the length of trying, questions on board in the preceding, conduct of the parties, before, during and after the suit, etc [11]. The court has also power to determine by whom, out of what property and to what extent costs are to be paid.

### **COST SHALL FOLLOW**

Normally, costs should follow the event and the successful party is entitled to costs unless there are good grounds for depriving him of that right. However, it does not always depend on who wins and who loses in the end. A conduct or such other reasons, cost may be awarded to an unsuccessful litigant where he fails to get relief on some technical ground. Where the success is divided, the court may leave the parties to be there on costs. The court also does not award costs to the successful party if he has remained absent or is not called upon to argue.

The maxim 'the cost shall follow the event' means that the party who succeeds in the action is entitled to get the cost of the action. However, where the action is in the form of separate issues, the Term event should be read that distribution of any particular issues should go to the party if success on that issue comma with arising are the different cause of action or under the same cause of action [12].

### **BY WHOM COSTS ARE TO BE PAID?**

As a general rule, an order for costs can be made against a party to the proceeding. Where there is more than one Party before the court, it has to decide who shall bear the costs. But in exceptional cases strangers also can be made liable for the costs. Great care and caution, however, must be exercised before human power to avoid costing strangers [13].

Likewise, where a party to a litigation disease caused from a

stranger to the litigation, he must at an appropriate stage of the proceedings, raise the point before the court, so that the court, if it thinks proper to do so, implead The stranger as a party to the litigation and upon him an opportunity of hearing before passing an order. Cost can be awarded against incontinence things respondent if they are responsible for setting the law motion [14].

### **TO WHAT EXTENT COSTS ARE TO BE AWARDED?**

The court has power to determine the extent of costs in a suit or proceeding. Where it contains various reliefs, cost can be awarded to the plaintiff in proportional to success that is on the amount recovered and not on the amount claimed. In case of partial decree, costs may be awarded to both the party that is to the plaintiff as well as to the defendant in proportion unless they are reasons for not adopting such a course.

### **COSTS AGAINST GOVERNMENT**

The government, in an unsuccessful litigation, is liable to pay costs like any other unsuccessful party. Irreversible damage had occurred to the eyes of a patient, operated upon in an eye camp. Social organisations espoused the cause of unfortunate victims and prosecuted it with diligence. The state government was saddled with costs of the organisation, in the circumstances. The distribution of surplus land by the revenue authority was done with unjust and undue haste. The action performed on the part of was found to be mala- fide against the petitioner hence a cost of Rs 5000 was against the revenue authority [15]. While the state cannot be treated differently from any other litigant in the matter of condonation of delay, the court is 'bound' to take into consideration the following factors:

- (a) Red-tapism in government;
- (b) Delays in correspondence;
- (c) Habitual indifference of government officials or governments pleaders as distinct from the usual diligence of ordinary litigant or lawyers for private parties;
- (d) Collusion or negligence by government officers or government pleaders or fraud;
- (e) Damage to public interest or to public funds or interests of the state;
- (f) Institutional or bureaucratic procedure as well as delays arising thereon; and
- (g) Need to render substantial justice on merits.

In the circumstances, an application for condonation of delay under sec. 5 of the Limitation Act, 1963 was allowed subject to the cost of Rs 5,000 to be paid to the Legal Aid Board by the government initially and later fix the reasonability of delay on the concerned officers or employees and recover the same from them.

The petitioner has lost the best period of his life due to the callous and unjust attitude of the Calcutta University, hence, he should be adequately compensated. The case was pending for a period of seven years and on a number of occasions the case had to be adjourned, therefore, a cost of Rs 10,000 was imposed against the university [16]. The building of the petitioner company was unauthorisedly demolished by Regional Development Authority, hence, a cost of Rs50,000 was awarded by the court against the Regional Development Authority. The telephone connection of the petitioner, a doctor, was arbitrarily disconnected on account of non- payment of bills. In the facts and circumstance of the case, a cost of Rs. 20,000 was awarded in favour of the petitioner [17].

### **COST UPON ADVOCATE**

The sec. does not confer any disciplinary jurisdiction and a legal practitioner cannot be ordered personally to pay the costs of an application which is an abuse of the process of the court but a solicitor who purports to act for a non- existent party is personally liable to pay costs. Where an advocate filed a petition not maintainable and it appeared that the parties concerned not the Supreme Court ordered him to pay the costs personally. The court has a discretion to award costs against a legal practitioner who has been found guilty of professional misconduct [18].

### **COSTS WERE NOT ALLOWED**

Where the successful parties were ordered to get back to the employment, the costs were not allowed in their favour. Where the controversy arose because relevant provisions were not free from ambiguity, the parties may be directed to bear their own costs throughout. Where an appeal in the Supreme Court is allowed but the appellant had not appeared before the High Court to assist the Court. There will be no order as to costs to the appeal in the Supreme Court. No order was passed as to costs on dismissal of application in view of personal appearance of the applicant.

### **APPEAL AGAINST COSTS**

The question of appeal ability of an order as to costs can be discussed under three heads:

1. Where the direction is in a decree.
2. Where the direction is in an appealable order;
3. Where the direction is in a non-appealable order.

- ***Direction in decree***

Every decree is appealable, but a decree may contain

1. A decision on the rights of the parties and;
2. A direction as to costs.

In respect of cases falling in the first category and an appeal will be competent under sec. 96 of the code. Regarding the second category, however, the position is different. It is settled law that the award of costs is entirely within the discretion of the court and, hence, ordinarily no appeal lies unless or as to payment of course is a matter of principle. Generally, an appeal against an order of costs lies on the following grounds:

1. Where there has been no real exercise of discretion by the court in making an order as to costs e.g a successful party is deprived of cost without a valid reason or an unsuccessful party has been awarded costs or
2. Where there is abuse of discretion by the court in passing an order as to costs e.g awarding costs in violation of statutory provision (o. 34 rule 7 and 10) or granting cost to the plaintiff even though a major portion of his claim is dismissed, etc. In such cases, the order as to costs involves a matter of principle
3. Where the order is based on a misapprehension of fact or law.

- ***Direction in appealable order***

Certain orders are applicable. Where the direction is in an order which is appealable, an appeal may lie from that part of the order which relates to cost <sup>[19]</sup>.

- ***Discretion in non-appealable order***

All others except those referred to above are non-appealable. The order itself being non-appealable, a direction as to costs contained therein is also not appealable. Thus, no appeal lies against a direction as to costs made in an order granting adjournment. Similarly, an order as to costs passed in an

application for transfer under sec. 34 is not applicable.

## **PROVISION OF COST UNDER SEC. 35-A**

### **History of this sec.**

This sec. was added into the Code by Act 9 of 1922, and by sec. 7 of the Code of Civil Procedure (Amendment) Act, 1951, in the first proviso to sub- sec. (2) the words and letter or under a corresponding law in force in a Part B State' were inserted after the figures '1887' and the words 'under such Acts or law were substituted for the words 'under that Act'. The sec. did not come into operation until the local government, with the previous sanction of the Governor-General in Council, by notification in the local Official Gazette, directed that the Act shall come into force in the province on such date as may be specified in the notification. But, now, by sec. 19 of the Code of Civil Procedure (Amendment) Act, 1951, this sec., together with other amendments made by the said Act IX of 1922, has been extended to the whole of India except a few states specified in sec. 1, sub-sec. (3) of the Code. By the CPC Amendment Act, 1956, in sub-clause (1) the words 'including an execution proceeding but excluding' were substituted for the words not being and the words 'if it so thinks fit' were substituted for the words 'if the objection has been taken at the earliest opportunity and if it is satisfied of the justice thereof'. In sub-clause (2) the words 'in any part of India to which the said Act does not extend' were substituted for 'a Part B State' by the Adaptation of Laws 2 of 1956. The Amendment Act, 1976, has further amended sub-sec. 1 to exclude from its operation revision proceedings. By substituting for the words 'one thousand rupees' the words 'three thousand rupees' the legislature has as a deterrent to false or vexatious claims and defences, authorised the courts to award a higher amount by way of compensation [20]

### **Compensatory costs in respect of false or vexatious defences**

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

### **The compensatory costs under sec. 35A**

C.P.C. can be awarded only by a Trial Court and not by a court sitting in an appeal or revision. The appellate court has no jurisdiction to grant or impose compensatory costs even if the claim or defence raised by the parties is false, vexatious or frivolous. The award of compensatory costs is in the exclusive realm of the Trial Court. In the case of *Manak Lal and others v. Mahendra Singh and anr.* [21] The impugned order of the Additional District Judge, by which he directed the appellants to pay a sum Rs. 2000/- as compensatory costs. to the respondent (defendants) cannot be maintained. The imposition of compensatory costs on the appellants by the Additional District Judge in appeals is wholly erroneous and illegal.

In *Gian Chand Goel v. Inderjit Agarwal* [22], it was contended that compensatory costs could be awarded by the appellate authority as sec. 35A was not applicable to the proceedings under Rent Act. It was found that as a matter of fact the compensatory costs were awarded by the learned judge because of the conduct of the judgement-debtor. This conduct of the judgement-debtor is quite apparent even now when he filed a separate suit for declaration challenging the said orders of the Rent Controller as well as the Appellate Authority. As a matter of fact it was inherent in the jurisdiction of the appellate authority toward compensatory costs if it found that the conduct of a party was not above board., In this case admittedly the objector is an advocate and it has rightly been observed by the appellate authority that his conduct was not becoming that of an advocate. In these circumstances the executing court rightly came to the conclusion that it could not go behind the order and was bound to execute the same as such.

When a suit for recovery of money was filed against the Secretary of Society for shortage of stock, there was nothing in the minutes or any other valid evidence to show that secretary had any hand in the shortage rather it was found that he was not at all present during relevant days.

### **POWERS OF THE COURT**

Cost is awarded in a civil or quasi criminal action to compensate the winning party for the expenses incurred in that action. For a case of vexatious nature, there is a provision in the Code of Civil Procedure for award of costs by way of compensation. The cost so allowed is to be taken into account in any suit for damages in respect of such vexatious claim. But in awarding cost no account is taken of any injury to property rights. A person suffering injury to property rights cannot be left without any remedy. A person,

who is deprived of exercising the acts of ownership over his property by a direct act of another Person or through a motion in a law court at his instance, is certainly entitled to such damages as are necessary and proximate result thereof. When such an act of that other person was intentional it is of no avail to him to urge that he acted bona fide for which he had reasonable ground. It is not necessary for the person injured to prove any malice or want of reasonable or probable cause. Any person should not be allowed to suffer for an intentional act of another. All these are based upon sound principles of equity and justice." In this case reference to a Privy Council decision in *Mohd. Amin v. Jogendra Kumar Banerjee* [23], is also made. In that case, the Privy Council was dealing with an action for malicious prosecution and not for an action arising out of a civil suit for damages for filing a false and vexatious civil suit.

It is clear that the observations made by the Privy Council as to non-maintainability of an action for falsely and maliciously prosecuting an ordinary civil action were actually not of the Judges deciding *Mohd. Amin's* case was from a decision of Bowen L.J. *Quariz Hill Consolidated Gold Mining Co. v. Eyre* [24]. Discussing the arguments in favour and against the question of maintainability of the action assuming that a civil suit did not lie for recovering damages for false and vexatious civil proceedings the Privy Council observed that the reason why the action does not lie for falsely and maliciously prosecuting an ordinary civil action is that such a does not necessarily and naturally involve damage to party sued.

### **PROVISION OF COST UNDER SEC. 35B OF THE CODE COSTS DELAY**

As per sec. 35 of the code, If, on any date fixed for the hearing of a suit or for taking any step therein, a party to the suit—

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

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

- (a) The suit by the plaintiff, where the plaintiff was ordered to pay such costs,
- (b) The defence by the defendant, where the defendant was ordered to pay such costs. Explanation: Where separate defences have been raised by the defendants or groups of defendants, payment of such costs shall be a condition precedent to the further prosecution of the defence by such defendants or groups of defendants as have been ordered by the court to pay such costs.

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

### **HISTORY OF THE SECTION**

Sec. 35B was inserted for the first time by Amendment Act of 1976, giving discretion to the court to impose compensatory costs on the parties responsible for delaying the proceedings of the case to come to a correct finding it would be useful to note as to why sec. 35-B found place in the code. As is apparent from the heading of the sec., it was thought proper that some costs should be awarded for causing delay. This matter received the attention of the Law Commission and it recommended that a new sec., namely, sec. 35-B be added to the Code. Before giving its recommendations, the Commission solicited views by issuing a questionnaire. After having gone through the replies, the recommendation of the commission was as below [25]:

"We have taken into consideration the opinions expressed and we have come to the conclusion that while it may not be wise to have a rigid provision, it would be useful to give a discretion to the court to take into account such delay. This should at least have the utility of focussing attention on this aspect".

The commission therefore recommended insertion of sec. 35-B while introducing the Code of Civil Procedure (Amendment) Bill, the recommendation was somewhat modified as the relevant clause inserted in the Bill read as below:

"35B. While making an order for costs in a suit or proceeding, the court may, for reasons to be recorded, require the party to the suit or proceeding, to pay such costs, commensurate with the delay so caused, as it thinks fit, and the costs so required to be paid shall not be included in the costs awarded in the decree

or order which is ultimately made in the suit or proceedings"

Statement in the notes on clause about this insertion was as below-

*"Sometimes, a party, though successful in the litigation, is responsible for causing undue delay in respect of particular stages of the litigation. It is fair that such delay should be taken into account while awarding costs. More often than not, solvent parties resort to dilatory tactics to cripple the opposite party. Instances are also not rare where a party with a bad case tries to delay the matter. In some other cases, the litigation is aimed at delaying the relief to which the opposite party is entitled. New sec. 35B is, therefore, being inserted to give to the court a discretion to impose compensatory costs on parties who are responsible for delaying any stage of litigation and such" [26].*

### **MISCELLANEOUS UNDER ORDER XX-A**

Order XX-A provides for payment of costs in special circumstances. These special circumstances as mentioned under Rule 1 are as follows-

- (a) Expenditure on notices required to be issued under the law by the parties.
- (b) Expenditure on notices not required to be issued under the law by the parties.
- (c) Expenditure incurred on typing, writing, printing, etc. of pleadings.
- (d) Charges paid by parties for inspection of documents.
- (e) Expenditures on witnesses even though not summoned through the court.
- (f) In case of appeals, expenses incurred by parties for obtaining any copies of the pleadings, judgment, decrees, etc.

Rule 2 provides that costs under this provision shall be paid in accordance with rules made by the High Court.

In *Salem Advocate Bar Association case* [27], the Supreme Court adverted 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 costs 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." Obviously, the expression "actual reasonable or realistic costs", an expression used in *Sanjeev Kumar Jain's case*, 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 or 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*. 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 "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'. "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".

### **COST OF ADJOURNMENT**

As per order XVII rule 1 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. This is a general provision governing adjournments and it is complementary to sec. 35-B. The costs contemplated under this provision need not necessarily be confined to the expenses incurred by the party for attending the court.

### **SECURITY OF COST**

As per Order XXV of the code 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

## CONCLUSION

“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 [28]. In *Johnstone v. The Law Society of Prince Edward Island* [29], the Canadian Court of Appeal speaking through McQuoid, J described costs in the following words:

*“... 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”.*

Following are the goals for imposing cost on civil litigation. The first goal is indemnification: successful litigants ought to be at least partially indemnified against their legal costs. The second goal 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 cost rules easy to understand and simple to apply. The fourth goal is to encourage early settlement of disputes, and The fifth goal 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”.

Costs under S.35 are paid for general expenses incurred by the litigants and depend upon the discretion of the court. S. 35-A further provides for compensatory costs in cases where the claims of the other party are false or vexatious.

1. The following conditions must be satisfied under this sec., namely-The claim or defence must have been false or vexatious.
2. Objections must be made by the other party that the party making the claim or defence had knowledge of the fact that such claim or defence was false or vexatious.

3. Such claim or defence must have been disallowed or abandoned or withdrawn in whole or in part.

S.35-B deals with costs for delay. It states that where a party did not take a step which it should have under the code or obtained an adjournment as regards the same, he will have to pay such costs to the other party so as to reimburse him for attending court on the designated date. Unless such costs are paid, the plaintiff shall not be allowed to proceed with his suit, if he should have paid the costs and the defendant shall not be allowed to proceed with the defence if he was liable to pay such costs. If however, a party is unable to pay costs due to circumstances beyond his control, the court may extend such time. Order XX-A provides for payment of costs in special circumstances. There are some special circumstances as mentioned under Rule 1, where Rule 2 provides that costs under this provision shall be paid in accordance with rules made by the High Court [30].

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