

Amendment in Section 95 of the Code of Civil Procedure, 1908

Report No. 98

( - )

## **Amendment in Section 95 of the Code of Civil Procedure, 1908**

Compensation for obtaining arrest, attachment or injunction on insufficient grounds provided under Section 95 of CPC was enhanced from one thousand rupees to ten thousand rupees by Civil Law Reform Act XIV of 1994 on the recommendation of Commission constituted for reformation of Civil Laws:

Section 95 reads as follows:-

**Section 95.- Compensation for obtaining arrest, attachment or injunction on insufficient grounds:** (1) Where, in any suit in which an arrest or attachment has been effected or a temporary injunction granted under the last preceding section—

- (a) It appears to the Court that such arrest, attachment or injunction was applied for on insufficient grounds; or
- (b) The suit of the plaintiff fails and it appears to the Court that there was no reasonable or probable ground for instituting the same.

The defendant may apply to the Court, and the Court may, upon such application, award against the plaintiff by its order such amount, not exceeding ten thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him:

Provided that a Court shall not award, under this section, an amount exceeding the limits of its pecuniary jurisdiction.

(2) An order determining any such application shall bar any suit for compensation in respect of such arrest, attachment or injunction.

Compensation for false frivolous or vexatious accusation granted under section 95 of the Code precludes a separate suit. The section provides for compensation to the defendant in the following situation.

- (1) (i) Where an arrest or attachment before judgment has been effected or a temporary injunction has been granted under Orders XXXVIII and XXXIX of CPC and
  - (ii) Such arrest, attachment or injunction was applied for on insufficient grounds.
- (2) (i) Where an arrest or attachment before judgment has been effected a temporary injunction has been granted;
  - (ii) the plaintiff fails in the suit; and
- (iii) there was no reasonable or probable ground for instituting the suit.

Due to increasing of inflation rate the amount of compensation is inadequate and needs to be reasonably enhanced with a view to discourage the tendency of false frivolous or vexatious accusation by obtaining arrest or seeking benefit from Court by obtaining injunction on insufficient grounds.

It is proposed to enhance the compensation amount from ten thousand rupees to twenty thousand rupees.

Comparative table containing the existing provision and the proposed amendment is as under:-

### Comparative Table

Existing Provision	Proposed Provision
<p><b>Section 95.- Compensation for obtaining arrest, attachment or injunction on insufficient grounds:</b></p> <p>(1) Where, in any suit in which an arrest or attachment has been effected or a temporary injunction granted under the last preceding section –</p> <p style="padding-left: 40px;">(a) It appears to the Court that such arrest, attachment or injunction was applied for on insufficient grounds; or</p> <p style="padding-left: 40px;">(b) The suit of the plaintiff fails and it appears to the Court that there was no reasonable of probable ground for instituting the same.</p> <p>The defendant may apply to the Court, and the Court may, upon such application, award against the plaintiff by its order such amount, not exceeding <b>ten thousand rupees</b>, as it deems a reasonable compensation to the defendant for the expense or injury caused to him:</p> <p>Provided that a Court shall not award, under this section, an amount exceeding the limit of its pecuniary jurisdiction.</p> <p>(2) An order determining any such application shall bar any suit for compensation in respect of such arrest, attachment or injunction.</p>	<p><b>Section 95.- Compensation for obtaining arrest, attachment or injunction on insufficient grounds:</b></p> <p>(1) Where, in any suit in which an arrest or attachment has been effected or a temporary injunction granted under the last preceding section –</p> <p style="padding-left: 40px;">(a) It appears to the Court that such arrest, attachment or injunction was applied for on insufficient grounds; or</p> <p style="padding-left: 40px;">(b) The suit of the plaintiff fails and it appears to the Court that there was no reasonable of probable ground for instituting the same.</p> <p>The defendant may apply to the Court, and the Court may, upon such application, award against the plaintiff by its order such amount, not exceeding <b>twenty thousand rupees</b>, as it deems a reasonable compensation to the defendant for the expense or injury caused to him:</p> <p>Provided that a Court shall not award, under this section, an amount exceeding the limit of its pecuniary jurisdiction.</p> <p>(2) An order determining any such application shall bar any suit for compensation in respect of such arrest, attachment or injunction.</p>

### **Commission's deliberations**

The working paper was considered by the Commission in its meeting held on 27.7.2007 and the following are the deliberations:-

The Commission considered the amount of compensation provided in Section 95 of the Code of Civil Procedure to be awarded to a party on the arrest, attachment or injunction obtained by the other party on insufficient grounds or on failure of the suit on appearing to the Court having no reasonable ground for initiating the action of filing of suit. The Secretary, Ministry of Law & Justice informed that a proposal of enhancement of amount of compensation has already been in the Law Reform Bill pending with the Mediation Committee in the Parliament. The Chief Justice, Federal Shariat Court observed that section 95 of the CPC bars any civil suit for the purpose. The Chairman observed that it only bars the claim in the form of compensation and not the claim for damages. The Chief Justice, Peshawar High Court observed that compensation should be awarded on application of the defendant. The Chief Justice, High Court of Sindh observed that the existing power of awarding compensation is also subject to the condition of not exceeding pecuniary jurisdiction of the Court. However, the Commission, in view of proposal being taken care of in the Law Reforms Bill in the Parliament, desired that the Secretary, Ministry of Law, Justice and Human Rights may take care of the proposal. On the pointation of Chief Justice, Peshawar High Court, the Commission recommended suitable amendment to section 298 of the PPC for substituting the word "wounding" with the word "hurting".