

Amendment in Section 35A of the Code of Civil Procedure, 1908

Report No. 99

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Amendment in section 35 A of the Code of Civil Procedure, 1908

A trend has developed that people have started filing false or vexatious suits/applications in the Courts with the object to get some benefits by exploitations of defendants or to scandalize, malign/blackmail the Government Authorities and general public. Such-like suits/applications are resulting a heavy pendency of cases in subordinate courts as well as in High Courts and Supreme Court. Under this situation, there is a dire need to discourage the tendency to resort to litigations based upon false or vexatious suits or applications just to get undue benefits. That such suits/applications may entail liability to pay special costs besides possibility of prosecution, for abuse of the process of the Court.

Section 35A of CPC provides the prescribes compensatory cost in respect of false or vexatious claims or defences. The section prescribes the maximum limit of the cost to be twenty-five thousand rupees.

Section 35A of CPC reads as follows:-

Sec. 35-A.- Compensatory cost in respect of false or vexatious claims or defences.- (1) If in any suit or other proceeding, (including an execution proceeding), not being an appeal, 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it has been put forward, and if thereafter, against the objector, such claim or defence is disallowed, abandoned or withdrawn in whole or in part the Court, If the objection has been taken at the earliest opportunity and if it is satisfied of the justice thereof, may, after recording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.

(2) No Court shall make any such order for the payment of an amount exceeding twenty five thousand rupees or exceeding the limits of its pecuniary jurisdiction, whichever amount is less:

Provided that where the pecuniary limits of the jurisdiction of any Court exercising the jurisdiction of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887, and not being a Court constituted under that Act, are less than two hundred and fifty rupees, the High Court may empower such Court to award as costs under this section any amount not exceeding two hundred and fifty rupees and not exceeding those limits by more than one hundred rupees:

Provided further, that the High Court may limit the amount which any Court or class of Courts is empowered to award as costs under this section.

(3) No person against whom an order has been made under this section shall, by reason thereof, be exempted from any criminal liability in respect of any claim or defence made by him.

(4) The amount of any compensation awarded under this section in respect of a false or vexatious claim or defence shall be taken into account in any subsequent suit or damages or compensation in respect of such claim or defence.

The main object of the section is to check the false or vexatious litigation, on account of which, not only the precious time and energy of the Courts are being wasted but also the public is dragged in the Courts, where they have to suffer for years together, without any justification. The section compensates the aggrieved party who is successful in assertion/defence of his rights and deter to put unnecessary litigation and harassment by filing of false or frivolous suits/applications.

Section 35 A debar the aggrieved parties to claim relief at the appellate stage. Rule 33, of Order XLI define the power of Court of Appeal which reads as follows:-

Rule 33.- Power of Court of Appeal: The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and these powers may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection:

Provided that the Appellate Court shall not make any order under Section 35A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.

Rule 33, Order XLI of the Code confers very wide discretion on the Appellate Court but this power has to be exercised firstly, when a party to the appeal is entitled to it. In other words, when there is a party who is dissatisfied or aggrieved by the order under appeal though it may not have appealed therefrom, and secondly-

- (i) to avoid contradictory and inconsistent decision on the same question in the same suit. In other words to obviate coming into existence of impossible, contradictory or unworkable orders of decisions;
- (iii) to adjust the rights of the parties in accordance with justice, equity and good conscience;
- (iii) to do complete justice between the parties;

the High Court has ample jurisdiction to impose costs upon any party who approaches the Courts with ulterior motives or conceal material facts or public functionaries who passed the orders against the citizens in violation of the procedure prescribed under the law.

The Lahore High Court in its judgment in the case of Muhammad Zia v/s Ch. Nazir (2002 CLC 59 Lahore) held that :-

“The provisions of Civil Procedure Code are applicable to the writ jurisdiction, yet under Article 199 of the Constitution, which is an extraordinary Constitutional Jurisdiction, the Court had ample power to do justice and to prevent the misuse or abuse of authority by the public functionary. Section 35A, C.P.C. in no way limits the Constitutional jurisdiction of the Court”

As such, to meet the ends of justice as well as to achieve the object the High Court of Sindh in a writ petition imposed special costs to the petitioners. The Court in its judgment (PLD 2001 Kar 442) held that:-

“ Appellate Court is empowered to do complete justice and can pass any decree or order and can interfere when it becomes necessary to adjust or readjust the right and interest of the parties or for settlement of mutual rights and obligations of the parties in accordance with the justice, equity and good conscience.”

The Supreme Court in its judgment (1995 SCMR 435) also held that:-

“Rule 6 of Order XXXIII of the Supreme Court Rules, 1980, provides that nothing in the Rules would be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary in the ends of justice or to prevent the abuse of the process of the Court. To the same effect are the powers vested in an appellate Court under Order XLI, Rule 33 as well as under section 151 of the Code. Supreme Court could not refuse relief to the appellant on a mere technical ground, having regard to the facts and circumstances of the case.”

The compensatory cost provided under Section 35 A was enhanced in 1994 by the Civil Law Reforms Act, 1994 (XIV of 1994), on the recommendation of the Commission constituted for reform of Civil Laws. Due to increasing the tendency of false and vexatious litigations, and prevailing rate of inflation the cost as prescribed is inadequate and needs to be reasonably enhanced to discourage false or vexatious litigations.

It is pointed out that in the proviso to sub-section (2) of Section 35 A. The pecuniary limits of the jurisdiction of Court of Small Causes established under the Provincial Small Cause Courts Act, 1887, is defined. The Act of 1887 has been repealed by section 42 of the Small Claims and Minors Offences Courts Ordinance 2002, which also provides that the said Ordinance shall have overriding effect over other laws. The pecuniary limits of the above mentioned Courts as referred to in the proviso require to be omitted, because the provisions of CPC are not applicable of the Ordinance, 2002..

It is therefore suggested that:-

- i. The limit prescribed in sub-section (2) of Section 35 A CPC may be enhanced from twenty-five thousand rupees to fifty thousand rupees.
- ii. The first proviso to sub-section (2) of Section 35 A may be omitted;
- iii. In the second proviso to Section 35 A the commas and word “,further,” may be omitted;

COMPARATIVE CHART

Existing Provision	Proposed Provisions
<p>Sec. 35A.- Compensatory cost in respect of false or vexatious claims or defences.- (1) If in any suit or other proceeding, (including an execution proceeding), not being an appeal, 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, against the objector, such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the Court, if the objection has been taken at the earliest opportunity and if it is satisfied of the justice thereof, 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.</p> <p>(2) No Court shall make any such order for the payment of an amount exceeding twenty five thousand rupees or exceeding the limits of its pecuniary jurisdiction, whichever amount is less:</p> <p style="padding-left: 40px;">Provided that where the pecuniary limits of the jurisdiction of any Court exercising the jurisdiction of a Court of Small Cause under the Provincial Small Cause Courts Act, 1887, and not being a Court constituted under that Act, are less than two hundred and fifty rupees, the High Court may empower such Court to award as costs under this section any amount not exceeding two hundred</p>	<p style="text-align: center;">No change</p> <p>(2) No Court shall make any such order for the payment of an amount exceeding fifty thousand rupees or exceeding the limits of its pecuniary jurisdiction, whichever amount is less:</p> <p style="text-align: center;">Omitted.</p>

<p>and fifty five rupees and not exceeding those limits by more than one hundred rupees:</p> <p>Provided further, that the High Court may limit the amount which any Court or class of Courts is empowered to award as costs under this section.</p> <p>(3) No person against whom an order has been made under this section shall, by reason thereof, be exempted from any criminal liability in respect of any claim or defence made by him.</p> <p>(4) The amount of any compensation awarded under this section in respect of a false or vexatious claim or defence shall be taken into account in any subsequent suit or damages or compensation in respect of such claim or defence.</p>	<p>Provided that the High Court may limit the amount which any Court or class of Courts is empowered to award as costs under this section.</p> <p>No change</p> <p>No change</p>
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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 proposal of enhancement of the amount of compensatory cost in respect of false or frivolous claims under Section 35A of the Code of Civil Procedure in view of decrease in value of money by inflation. The Commission by agreeing to the proposal recommended the enhancement of cost to Rs.50000/- as against the present amount of Rs.25000/-. The Commission also considered the omission of first proviso of the said section referring the Court of Small Causes under the Provincial Small Cause Courts Act 1887 which has now been repealed by Small Claims and Minor Offences Ordinance 2002, and recommended the same along with omission of word further in the second proviso to the said section and renumbering it as first proviso.