

## **Code Of Civil Procedure (Amendment) Act, 2002**

**22 of 2002**

**[23 May 2002]**

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## **Code Of Civil Procedure (Amendment) Act, 2002**

**22 of 2002**

**[23 May 2002]**

An Act further to amend the Code of Civil Procedure, 1908 and to provide for matters connected therewith or incidental thereto. Be it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:-

### **1. Short Title And Commencement :-**

- (1) This Act may be called the Code of Civil Procedure (Amendment) Act, 2002.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and for

different States or for different parts thereof.

## **2. Amendment Of Section 39 :-**

In section 39 of the Code of Civil Procedure, 1908 (hereinafter referred to as the principal Act), after sub-section (3), the following sub-section shall be inserted, namely :-

"(4) Nothing in this section shall be deemed to authorise the Court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction."

## **3. Amendment Of Section 64 :-**

Section 64 of the principal Act shall be renumbered as sub-section (1) of that section and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely :-

"(2) Nothing in this section shall apply to any private transfer or delivery of the property attached or of any interest therein, made in pursuance of any contract for such transfer or delivery entered into and registered before the attachment."

## **4. Substitution Of New Section For Section 100A :-**

For section 100A of the principal Act [as substituted by section 10 of the Code of Civil Procedure (Amendment) Act, 1999], the following section shall be substituted, namely :-

"100A. No further appeal in certain cases. - Notwithstanding anything contained in any Letters Patent for any High Court or in any instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a High Court, no further appeal shall lie from the judgment and decree of such Single Judge."

## **5. Substitution Of New Section For Section 102 :-**

For section 102 of the principal Act [as substituted by section 11 of the Code of Civil Procedure (Amendment) Act, 1999], the following section shall be substituted, namely :-

"102. No second appeal in certain cases. - No second appeal shall lie from any decree, when the subject matter of the original suit is for recovery of money not exceeding twenty-five thousand rupees."

## **6. Amendment Of Order V :-**

In the First Schedule to the principal Act (hereinafter referred to as the First Schedule), in Order V, -

(i) in rule 1, for sub-rule (1) [as substituted by clause (i) of section 15 of the Code of Civil Procedure (Amendment) Act, 1999], the following sub-rule shall be substituted, namely :-

"(1) When a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, within thirty days from the date of service of summons on that defendant :

Provided that no such summons shall be issued when a defendant has appeared at the presentation of plaint and admitted the plaintiffs claim :

Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.";

(ii) for rule 9 [as substituted by clause (v) of section 15 of the Code of Civil Procedure (Amendment) Act, 1999], the following rules shall be substituted, namely :-

"9. Delivery of summons by Court. - (1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent either to the proper officer to be served by him or one of his subordinates or to such courier services as are approved by the Court.

(2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him in such manner as the Court may direct.

(3) The services of summons may be made by delivering or transmitting a copy thereof by registered post acknowledgment due, addressed to the defendant or his agent empowered to accept the service or by speed post or by such courier services as are approved by the High Court or by the Court referred to in sub-rule (1) or by any other means of transmission of documents (including fax message or electronic mail service) provided by the rules made by the High Court :

Provided that the service of summons under this sub-rule shall be

made at the expenses of the plaintiff.

(4) Notwithstanding anything contained in sub-rule (1), where a defendant resides outside the jurisdiction of the Court in which the suit is instituted, and the Court directs that the service of summons on that defendant may be made by such mode of service of summons as is referred to in sub-rule (3) (except by registered post acknowledgment due), the provisions of rule 21 shall not apply.

(5) When an acknowledgment or any other receipt purporting to be signed by the defendant or his agent is received by the Court or postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee or by

any person authorised by the courier service to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons or had refused to accept the summons by any other means specified in sub-rule (3) when tendered or transmitted to him, the Court issuing the summons shall declare that the summons had been duly served on the defendant :

Provided that where the summons was properly addressed, pre-paid and duly sent by registered post acknowledgment due, the declaration referred to in this sub-rule shall be made notwithstanding the fact that the acknowledgment having been lost or mislaid, or for any other reason, has not been received by the Court within thirty days from the date of issue of summons.

(6) The High Court or the District Judge, as the case may be, shall prepare a panel of courier agencies for the purposes of sub-rule (1).

9A. Summons given to the plaintiff for service. - (1) The Court may, in addition to the service of summons under rule 9, on the application of the plaintiff for the issue of a summons for the appearance of the defendant, permit such plaintiff to effect service of such summons on such defendant and shall, in such a case, deliver the summons to such plaintiff for service.

(2) The service of such summons shall be effected by or on behalf of such plaintiff by delivering or tendering to the defendant personally a copy thereof signed by the Judge or such officer of the Court as he may appoint in this behalf and sealed with the seal of the Court or by such mode of service as is referred to in sub-rule (3) of rule 9.

(3) The provisions of rules 16 and 18 shall apply to a summons

personally served under this rule as if the person effecting service were a serving officer.

(4) If such summons, when tendered, is refused or if the person served refuses to sign an acknowledgment of service or for any reason such summons cannot be served personally, the Court shall, on the application of the party, re-issue such summons to be served by the Court in the same manner as a summons to a defendant."

## **7. Amendment Of Order Vi :-**

In the First Schedule, in Order VI, for rules 17 and 18 [as they stood immediately before their omission by clause (iii) of section 16 of the Code of Civil Procedure (Amendment) Act, 1999], the following rules shall be substituted, namely :-

"17. Amendment of pleadings. - The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties : Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

18. Failure to amend after Order. - If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for

that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court."

## **8. Amendment Of Order Vii :-**

In the First Schedule, in Order VII -

(i) for rule 9 [as substituted by clause (i) of section 17 of the Code of Civil Procedure (Amendment) Act, 1999], the following rule shall be substituted, namely :-

"9. Procedure on admitting plaint. - Where the Court orders that the summons be served on the defendants in the manner provided in rule 9 of Order V, it will direct the plaintiff to present as many copies of the plaint on plain paper as there are defendants within

seven days from the date of such order along with requisite fee for service of summons on the defendants.";

(ii) in rule 11, for sub-clauses (f) and (g) [as inserted by clause (ii) of section 17 of the Code of Civil Procedure (Amendment) Act, 1999], the following sub-clause shall be substituted, namely :-

"(f) where the plaintiff fails to comply with the provisions of rule 9.";

(iii) in rule 14 [as substituted by clause (iii) of section 17 of the Code of Civil Procedure (Amendment) Act, 1999], for sub-rule (3), the following sub-rule shall be substituted, namely :-

"(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.";

(iv) rule 18 [as amended by clause (v) of section 17 of the Code of Civil Procedure (Amendment) Act, 1999] shall be omitted.

## **9. Amendment Of Order Viii :-**

In the First Schedule, in Order VIII, -

(i) for rule 1 [as substituted by clause (i) of section 18 of the Code of Civil Procedure (Amendment) Act, 1999], the following rule shall be substituted, namely :-

"1. Written statement. - The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence :

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.";

(ii) in rule 1A [as inserted by clause (ii) of section 18 of the Code of Civil Procedure (Amendment) Act, 1999], for sub-rule (3), the following sub-rule shall be substituted, namely :-

"(3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.";

(iii) for rules 9 and 10 [as they stood immediately before their omission by clause (iii) of section 18 of the Code of Civil Procedure (Amendment) Act, 1999], the following rules shall be substituted,

namely :-

"9. Subsequent pleadings. - No pleading subsequent to the written statement of a defendant other than by way of defence to set off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same.

10. Procedure when party fails to present written statement called for by Court. - Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up."

#### **10. Amendment Of Order IX :-**

In the First Schedule, in Order IX, for rule 2 [as substituted by clause (i) of section 19 of the Code of Civil Procedure (Amendment) Act, 1999], the following rule shall be substituted, namely :-

"2. Dismissal of suit where summons not served in consequence of plaintiff's failure to pay costs. - Where on the day so fixed it is found that the summons has not been served upon the defendant in consequence of the failure of the plaintiff to pay the court-fee or postal charges, if any, chargeable for such service, or failure to present copies of the plaint as required by rule 9 of Order VII, the Court may make an order that the suit be dismissed :

Provided that no such order shall be made, if notwithstanding such failure, the defendant attends in person or by agent when he is allowed to appear by agent on the day fixed for him to appear and answer."

#### **11. Amendment Of Order Xiv :-**

In the First Schedule, in Order XIV, for rule 5 [as it stood immediately before its omission by clause (ii) of section 24 of the Code of Civil Procedure (Amendment) Act, 1999], the following rule shall be substituted, namely :-

"5. Power to amend, and strike out, issues. - (1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for

determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced."

## **12. Amendment Of Order XVIII :-**

In the First Schedule, in Order XVIII,-

(a) in rule 2, after sub-rule (3), the following sub-rules shall be inserted, namely :-

"(3A) Any party may address oral arguments in a case, and shall, before he concludes the oral arguments, if any, submit if the Court so permits concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record.

(3B) A copy of such written arguments shall be simultaneously furnished to the opposite party.

(3C) No adjournment shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.

(3D) The Court shall fix such time-limits for the oral arguments by either of the parties in a case, as it thinks fit.";

(b) for rule 4 [as substituted by clause (ii) of section 27 of the Code of Civil Procedure (Amendment) Act, 1999], the following rule shall be substituted, namely :-

"4. Recording of evidence. - (1) In every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence :

Provided that where documents are filed and the parties rely upon the documents, the proof and admissibility of such documents which are filed along with affidavit shall be subject to the orders of the Court.

(2) The evidence (cross-examination and re-examination) of the witness in attendance, whose evidence (examination-in-chief) by affidavit has been furnished to the Court, shall be taken either by the Court or by the Commissioner appointed by it :

Provided that the Court may, while appointing a commission under this sub-rule, consider taking into account such relevant factors as it thinks fit.

(3) The Court or the Commissioner, as the case may be, shall

record evidence either in writing or mechanically in the presence of the Judge or of the Commissioner, as the case may be, and where such evidence is recorded by the Commissioner he shall return such evidence together with his report in writing signed by him to the Court appointing him and the evidence taken under it shall form part of the record of the suit.

(4) The Commissioner may record such remarks as it thinks material respecting the demeanour of any witness while under examination :

Provided that any objection raised during the recording of evidence before the Commissioner shall be recorded by him and decided by the Court at the stage of arguments.

(5) The report of the Commissioner shall be submitted to the Court appointing the commission within sixty days from the date of issue of the commission unless the Court for reasons to be recorded in writing extends the time.

(6) The High Court or the District Judge, as the case may be, shall prepare a panel of Commissioners to record the evidence under this rule.

(7) The Court may by general or special order fix the amount to be paid as remuneration for the services of the Commissioner.

(8) The provisions of rules 16, 16A, 17 and 18 of Order XXVI, insofar as they are applicable, shall apply to the issue, execution and return of such commission under this rule."

### **13. Amendment Of Order Xx :-**

In the First Schedule, in Order XX, in rule 1, for sub-rule (1), the following sub-rule shall be substituted, namely :-

"(1) The Court, after the case has been heard, shall pronounce judgment in an open Court, either at once, or as soon thereafter as may be practicable and

when the judgment is to be pronounced on some future day, the Court shall fix a day for that purpose, of which due notice shall be given to the parties or their pleaders :

Provided that where the judgment is not pronounced at once, every endeavour shall be made by the Court to pronounce the judgment within thirty days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of the exceptional and extraordinary circumstances of the case, the Court shall fix a future day for the pronouncement of the judgment, and such day shall not ordinarily be a day beyond sixty

days from the date on which the hearing of the case was concluded, and due notice of the day so fixed shall be given to the parties or their pleaders."

#### **14. Amendment Of Order Xxi :-**

In the First Schedule, in Order XXI, -

(a) in rule 32, in sub-rule (5), the following Explanation shall be inserted, namely :-

"Explanation. - For the removal of doubts, it is hereby declared that the expression "the act required to be done" covers prohibitory as well as mandatory injunctions.";

(b) in rule 92, in sub-rule (2), -

(i) for the words "thirty days", the words "sixty days" shall be substituted;

(ii) after the first proviso, the following proviso shall be inserted, namely :-

"Provided further that the deposit under this sub-rule may be made within sixty days in all such cases where the period of thirty days, within which the deposit had to be made, has not expired before the commencement of the Code of Civil Procedure (Amendment) Act, 2002."

#### **15. Amendment Of The Code Of Civil Procedure (Amendment) Act, 1999 :-**

In the Code of Civil Procedure (Amendment) Act, 1999, -

(a) section 30 shall be omitted;

(b) in section 32, in sub-section (2),-

(i) clauses (g) and (h) shall be omitted;

(ii) for clause (j), the following clause shall be substituted, namely :-

"(j) the provisions of rules 1, 2, 6, 7, 9, 9A, 19A, 21, 24 and 25 of Order V of the First Schedule as amended or, as the case may be, substituted or omitted by section 15 of this Act, and by section 6 of the Code of Civil Procedure (Amendment) Act, 2002, shall not apply to in respect of any proceedings pending before the commencement of section 15 of this Act and section 6 of the Code of Civil Procedure (Amendment) Act, 2002;"

(iii) for clause (k), the following clause shall be substituted, namely :-

"(k) the provisions of rules 9, 11, 14, 15 and 18 of Order VII of the First Schedule as amended or, as the case may be, substituted or

omitted by section 17 of this Act and by section 8 of the Code of Civil Procedure (Amendment) Act, 2002, shall not apply to in respect of any proceedings pending before the commencement of section 17 of this Act and section 8 of the Code of Civil Procedure (Amendment) Act, 2002;"

(iv) for clause (l), the following clause shall be substituted, namely :-

"(l) the provisions of rules 1, 1A, 8A, 9 and 10 of Order VIII of the First Schedule as substituted or, as the case may be, inserted or omitted by section 18 of this Act and by section 9 of the Code of Civil Procedure (Amendment) Act, 2002, shall not apply to a written statement filed and presented before the commencement of section 18 of this Act and section 9 of the Code of Civil Procedure (Amendment) Act, 2002;"

(v) for clause (q), the following clause shall be substituted, namely :-

"(q) the provisions of rules 4 and 5 of Order XIV of the First Schedule as amended or, as the case may be, substituted by section 24 of this Act and section 11 of the Code of Civil Procedure (Amendment) Act, 2002, shall not affect any order made by the Court adjourning the framing of the issues and amending and striking out issues before the commencement of section 24 of this Act and section 11 of the Code of Civil Procedure (Amendment) Act, 2002;"

(vi) in clause (s), for the figures "25", at both the places, the figures "26" shall be substituted;

(vii) clause (u) shall be omitted.

## **16. Repeal And Savings :-**

(1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or High Court before the commencement of this Act shall, except insofar as such amendment or provisions are consistent with the principal Act as amended by this Act, stand repealed.

(2) Notwithstanding that the provisions of this Act have come into force or repeal under sub-section (1) has taken effect, and without prejudice to the generality of the provisions of section 6 of the General Clauses Act, 1897, -

(a) the provisions of section 102 of the principal Act as substituted by section 5 of this Act, shall not apply to or affect any appeal which had been admitted before the commencement of section 5;

and every such appeal shall be disposed of as if section 5 had not come into force;

(b) the provisions of rules 5, 15, 17 and 18 of Order VI of the First Schedule as omitted or, as the case may be, inserted or substituted by section 16 of the Code of Civil Procedure (Amendment) Act, 1999 and by section 7 of this Act shall not apply to in respect of any pleading filed before the commencement of section 16 of the Code of Civil Procedure (Amendment) Act, 1999 and section 7 of this Act;

(c) the provisions of rule 1 of Order XX of the First Schedule as amended by section 13 of this Act shall not apply to a case where the hearing of the case had concluded before the commencement of section 13 of this Act.