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**INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH**

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**CRITICAL ANALYSIS OF PROVISION FOR COST AND LIMITATION  
UNDER CPC**- Rahul Sodhi<sup>1</sup>**Abstract**

The civil procedure code is the most important code in the branches of procedural law as it deals with all aspects of matters that have been filed in the civil court. This code deals with the procedure of the administration of the civil proceedings and the various scenarios that have been faced by the parties have to be resolved through the medium of this code. The code is divided into two parts the first part of the code is substantial in nature and deals with the jurisdictions of the court and some rights of the person that has to be seen by the court during the proceedings. The second part is procedural in nature and deals with orders and rules of the court that has to be applied in the court of law in the civil proceedings. This paper will be focusing on the various provisions of "Cost" that has been covering under section 35, 35A and order XX of the code. The cost is the basic allowance that has been spent during the proceedings of the suit and the winning party is entitled to the cost that has been awarded by the court.

**Introduction**

In the present scenario the courts are burdened with huge number of cases and while seeing this problem the individuals hesitate to file the case in courts due to the time taken by the judiciary to resolve the dispute and the cost that has to be given after the whole proceedings and at which extent the award amount has to be given to the winning parties. The solution to this query is given under the Code of Civil Procedure if the suit is civil in nature. There are various provisions that have been given under this code to decide the cost and limitations of the court to decide an award in the different matters. The provisions are section 35, 35A and order 20A<sup>2</sup> of

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<sup>2</sup> Section 35 of Civil Procedure Code, 1908: Award of cost

the code which will be deciding the costs in the various matters that have to be decided by the court. The cost has been defined under the black law dictionary which states that cost is known as the pecuniary allowance which has been awarded to the successful party whether they are from the prosecuting or defending side or distinct proceedings from a suit. According to the general rule of law the cost has been entitled to the successful party unless the party has not done any misconduct or negligence in the court of law or during the proceedings. The entitlement of the cost follows by the events of the proceedings which means the cost is a result of the dispute so the imposition of cost should be done by the court very cautiously and in those cases where it has been felt by the court that the defense has false evidence then it should have to be assured before the imposition of the cost or award by the court. The award that has been imposed on the individuals has seen the discretion of the courts as the imposition of cost is based on the discretion of the court.

It has been stated in the provisions for the discretion that has been done by the court should be based on the facts and circumstances of the case and no hard and fast rules should be applied in the dispute to resolve the matter. Even it has not mentioned that the winning party has always been entitled to cost because sometimes there are instances when the party has been included in the gross negligence and misconduct of the individuals during the proceedings of the suit, so the winning party is also deprived of the cost. From these instances the section 25(2) <sup>3</sup>of the code provides that for the imposition of the cost to the parties the court should not look into the events but focus on the facts and circumstances of the case. In *Salem Advocates Bar Association V. Union of India*<sup>4</sup> the Supreme Court stated that the cost should be reasonable and it also includes the miscellaneous cost that has been given by the party which includes transportation, court fees and the court also directed the High court to examine various rules for the imposition of the cost by understanding various scenarios that have been faced by the parties during the trial.

## Provisions of Cost and Limitations under the Code

### 1. Provision of cost under section 35 of the code.

This section states that the cost that has been implemented by the court does not go beyond the

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Section 35A of Civil Procedure Code, 1908: Compensatory costs in respect of false or vexatious claims or defences.

Order XXA of Civil Procedure Code, 1908: Cost

<sup>3</sup> Section 35 of Civil Procedure Code, 1908: Power of the Supreme Court to transfer suits.

<sup>4</sup> 2005 (6) SCC 344

cost of the suit as it should be according to the rule of law in which the damages of the party gets covered and also the cost that has been spent by the client for his attorney including the court fees and other miscellaneous fees that have been given to the court during the suit should be covered in the award. If the review application has been filed and it has been found by the court that both the parties are at fault then the court will not be awarding the exemplary cost and normal cost will be awarded. The cost is based on the entire discretion of the court and the discretion should be exercised by the court in a legal manner no hard and fast rules should be applied, the award should be given based on the legal principles and the court can also decide the extent of the amount that has to be given to the winning parties. In a normal scenario the cost is awarded on the basis of events and circumstances of the suit which means the party will be entitled to the cost only on the basis of good grounds which will be depriving their rights for the entitlement of the cost. It should not be depended on the successful measures of the party.

The conduct should be seen before giving the award and it is not necessary that only the successful party gets the entitlement sometimes they are not awarded because of gross negligence or misconduct during the suit or they remain absent or not called upon. The party to the proceedings are awarded by the cost but if there are two to three parties in the suit then it has to be mentioned to the court who will bear the cost so at the end no difficulty will be faced by the court at the end for giving the award and no review application has to be made against the court of law for the dividing of the award among the parties. There are scenarios when the cost was not given to the party as if the party gets the employment the cost is not allowed in their favor. Then the statement was raised before the Supreme Court due to these controversies as they were not free from ambiguity and they have to bear their own cost throughout the proceedings. The appeal against the award of the party will focus on the various directions in decree, an appealable and non-appealable order. The decree can appealable in the court of law but it may contain the necessary provisions such as the right of the parties and direction to the cost. The right of the parties and the appeal is falling under section 96<sup>5</sup> of the code and the cost that has been made to the winning parties are based on the discretion of the court. For the direction of appealable order means the direction of the order will lie in the direction of the cost which will be awarded to the parties. In the non-applicable order, it is non-appealable if the direction of the cost is made under the granting of adjournment of the cost. The imposition of the cost is made on the discretion and the cost is submitted to the legislative authority of the

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<sup>5</sup> Section 35 of Civil Procedure Code, 1908: Appeal from Original Decree.

High Court and if the petitioner delays the proceedings of the court for his own benefit then the cost will be submitted by the petitioner. In the case of *Banwarilal B. Purohit v. Vilas Muttemwar & Ors*<sup>6</sup> the petitioner has filed the petition against the election commission for the tampering of EVM's during the election and fair procedure has not been followed to conduct the voting. But due to no submission of evidence and any other thing which proves that tampering has been done by the defendants the cost has been implied on the petitioner for delaying the time of the court and for the polling. As not a single polling station has been examined by the petitioner for the tampering and he has violated section 100(1) (a) to (c)<sup>7</sup> of the representation of people act.

## 2. Provision of cost under section 35A of code

In any suit or proceedings, including an execution proceeding if any party claims that the claim has been made either by petitioner or by respondent is false or vexatious in nature then the court has to disallow the particular claim after inquiring it. If the court thinks fit after recoding the facts and circumstances that the particular claim is false then it has to be withdrawn and the cost has to be implied on any party as a compensation cost. The main reason to this provision is lying on the other party as they have to raise the objection during the proceedings for the false claims that have been mentioned by the other side. The claim that has been made by the party will be withdrawn or the compensation will be awarded to the party. The amount of compensation will be under thirty thousand rupees and it does not mean that the other party will be free from the criminal liability after awarding the compensation. The party will be held liable for the false claims and the appeal can be filed for the compensation cost that has been declared by the court but no appeal will be allowed against the order for refusing the award due to misconduct. The appellate court cannot grant the compensatory cost to the party who has given the wrong claims as only the trial court has the jurisdiction to grant the compensatory cost to the party. In *Manak Lal and others v. Mahendra Singh*<sup>8</sup> the same thing has happened as the additional district judge grants some amount of compensation cost to the defendants but granting of compensation amount is only in the hands of the trial court so the order that has been given by ADJ is illegal or not valid.

But the scenario has changed in another case of *Gian Chand Goel v. Inderjit Agarwal*<sup>9</sup> in

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<sup>6</sup> AIR 2006 (NOC) 917

<sup>7</sup> Section 100 of Representation of People Act, 1951: Grounds for declaring election to be void.

<sup>8</sup> AIR 1987

<sup>9</sup> AIR 1985

which it has been stated that compensatory cost has to be awarded by the appellate authority in the code but it cannot be provided under the Rent control act. It was found out by the court that the judge has awarded the cost due to the conduct of the judgement debtor. As the concept of the judgement debtor was apparent because when the individual file the separate suit one before the rent tribunal and another under appellate authority then it has to be granted the award. Then it has been observed by the court that it could not go beyond the order under such circumstances and they were bound to execute the same in separate filings also. The cost that has been awarded under criminal or civil suits is to compensate the expenses that have been done by the parties during the proceedings. But this does not mean when the person is suffering from the injury he will not be compensated by the court such as the person suffering from the property dispute cannot be left without any compensation. It is not necessary for the individual who has been injured from the suit due to false claims of the petitioner to prove himself from a reasonable clause when it is been seen by the court. These scenarios are based on the principles of equity and justice which give justice to the party who has been suffered. *Mohd. Amin v. Jogendra Kumar Banerjee*<sup>10</sup> in this case the privy council was dealing with the false prosecution claims and the actions were not arising for the civil suit due to raising of the false claims in the proceedings but due to the arguments that has been raised by the party were in the favor of it and it have been observed by the council that the maintainability of the suit on the issues that have been raised will not involve the recovery of damages by false claims and the actions of the party does not lie for falsely and maliciously and the while involving the parties to the suit will naturally involve the damages to those individuals who have been involved.

### **3. Miscellaneous cost under order XX- A of the code.**

This order deals with the special circumstances of the cost as under this order rule 1 it has been mentioned that the cost should be awarded under the special circumstances such as the expenditure that has been done by the parties in the whole proceedings which includes the small charges like stamp paper charge notary and all other things have to be compensated or awarded. The court should award the amount in such a way that it would recover the damages and the extent of the cost that has been given by the petitioner. But in these scenarios the award or the cost should not go beyond the amount of suit it has to be decided to a limited extent. Under rule 2 of the order it has been mentioned the cost shall be paid in accordance with the rules of the

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<sup>10</sup> AIR 1947

high court. In *Salem Advocate Bar Association case*<sup>11</sup> the court has noticed the various items that have to be included in the cost or covered by the cost during the course of the award. The cost should be actual and reasonable in nature which will be including the smaller fees that have been incurred by the petitioner in the proceedings and the advocate fees should be normal in these types of award. There are various other aspects that have to be seen by the regulatory authority of the High court and also the court has to examine these aspects and make some rules and regulations in regarding these scenarios. The cost should be actual and realistic in nature and keeping these lines in the actual scenario would make the assessment in a simplify way and the procedure relating to this will be simpler rather than being more difficult. If some rules and regulations relating to the compensation cost or award will be changed or modified in relation to the practical aspect of the court then it will beneficial for the court and for the parties that have been appearing before the court of law to seek justice.

## Conclusion

The aspect of the cost has played an important rule under the code to award or to compensate the other party as these provisions have changed the system to inquire about the facts and circumstances of the cases and made a decision on the extent of the case. Basically the cost means the amount of money that has to be paid to the winning party covered the expenses that have been done by them during the proceedings. The court has made very important points in various judgments relating to the matter of the cost so that no party would suffer injustice from the court of law. The amount that has been awarded by the court has no ceiling limits but it has also mentioned under the code that the cost would be awarded to a reasonable extent and should not go beyond the amount of the suit that has been filed before the court. The court has to ensure that both the prosecution and defendants will get justice from the proceedings and from the cost that has been awarded by the court there should not be any discrimination in awarding the cost, and the cost should not be awarded to the petitioner or defendant on the gross misconduct or negligence.

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<sup>11</sup> 2005 (6) SCC 344