



Imposition of Cost: A Way to Reduce Frivolous Cases

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Our civil courts are overburdened with great number of cases. Justice delayed justice denied, a popular concept, has no value anymore in relation to our civil justice system as delay is the norm not an exception here. Unless concrete measures are taken real soon, entire civil justice system will be a total failure to secure justice.

Litigants who have ulterior purposes are encouraged to file civil suits knowing that there are no adverse consequences for their action even if they eventually fail. They can easily take advantage of our overburdened courts and age old civil justice system. It is a common knowledge that majority of civil cases are filed for ulterior purposes. Some of the relevant ulterior purposes are as follows:

- a. Many civil cases, specially relating to land, are filed just to create some kind of dispute so that innocent party cannot enjoy their right free from hassle and eventually give up their genuine right just to avoid litigation and its costs.
- b. Despite knowing that eventually the case will not sustain many civil cases are filed just to get an interim order, e.g. injunction or status quo. Due to the slowness of the court process, once the initial interim order is secured, it can be dragged on for ages which will pave the way to achieve their ill-motivated purpose.
- c. Knowingly or without conducting sufficient research many lawyers file cases that have no merits. Once a lawyer forcefully advises to file a case without disclosing the truth, not many clients can act against it or have any choice but to follow it.
- d. Many litigants take chances by filing cases knowing that they don't have to pay anything to the other party if they lose. This kind of litigants deliberately makes the innocent party suffer financially as cost of litigation is generally burdensome on many.

Our civil justice system requires complete shake up and drastic reform to meet up the modern demand is long overdue. Although a thorough review is required for analysing such reform this article only focuses on the importance of imposing cost and its effect on reduction of frivolous cases which will eventually ease down the work load of our courts. Although sporadic provisions are made in many Orders under CPC and in many special laws for specific purposes, basic provision relating to imposition of cost can be found in s.35 of CPC 1908. By virtue of s.35 of CPC 1908 imposition of cost in all suits shall be at the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid. S.35A of CPC 1908 has been inserted in 2003 and empowers the court to impose compensatory cost where it has found that an unsuccessful claim or defence, or any part of it, is false or vexatious. However, such award cannot exceed more than twenty thousand taka.

Theoretically as a general principle costs shall follow the event. It means a successful litigant is entitled to costs unless there are compelling reasons otherwise. However, in practice, there is hardly any case where successful party is awarded actual cost of his case. It seems that courts, as a matter of practice, apply their discretionary power under s.35 of CPC 1908 to the effect that each party bears their respective costs.

Similar practice can also be seen in relation to matters dealt with in the High Court Division or Appellate Division of the Supreme Court. There is hardly any appeal or writ petition etc. where actual cost of litigation is awarded to the successful party.

In most of the countries, especially in western world, time and again it has been proved that fear of cost of litigation acted as a strong deterrent and encouraged the parties to settle their matter outside court. Two questions a client first ask a lawyer before considering filing a case in the western world- how much it will cost me and how much I will have to pay if I lose.

In our country little change of law and minor adjustment of attitude of the judges and lawyers regarding imposition of cost can make a lot of difference and will drastically reduce number of cases. As far as law is concerned, s.35 of CPC 1908 should be changed whereby instead of a discretion it should be an obligation on the judge to impose cost on the unsuccessful party with some exceptions such as if an unsuccessful party can prove that despite being unsuccessful his claim was not frivolous or unjust or he has compelling reason to file the suit.

On the other hand, even if law is not changed, judges must not monotonously deal with the issue of cost. Their discretion must be exercised with caution and serious consideration needs to be given whether cost should be imposed or not. Unless unsuccessful party can justify their action, successful party, especially if it is the defendant, should be awarded full cost of the litigation.

If cost is awarded to the successful party, it will not only act as deterrent for filing frivolous suits, it will also help the government to earn more revenue. As except some companies, majority of the litigants pays their lawyers in cash. As a result, in substantial cases lawyers' fees are not shown as cost though lawyers' fee is the single most expense of a litigant. If successful party is awarded full cost, he/she would be able to recover their cost including lawyers' fee from the unsuccessful party. As a result, lawyers' fees will be officially recorded and those lawyers who do not disclose their income will be encouraged to pay more taxes.

Law cannot stop anyone from filing cases and initial filtration process to detect frivolous cases is not effective under the present law. However, law can make it expensive to file frivolous suits so that anyone who wishes to abuse the judicial process for their ulterior purpose thinks twice before filing such frivolous suit. Cost is a great tool to serve justice as innocent party get their reward through indemnification of their expenses and on the other hand make the abusive party pay eventually or deter him/her from filing frivolous suits in the first place.

