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## Study On Delay Of Civil Suits: Bangladesh Perspective

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### ABSTRACT

Adversarial or accusatorial nature in the civil procedure is proficient in Bangladesh and delay is one of the major troubles in our civil suits. The major purpose of this study is to find out the causes of delay in civil suits and to recommend demonstrable remedies to resolve the problem. Where it must take one or two years for the clearance of a civil suit, but it takes five to ten years or even further. So, it is the high time to get correct steps to get remedy against such delay. An essential requirement of justice is that it should be dispensed as quickly as possible.

**Keywords:** *Civil suits, delay, causes, justice, Bangladesh*

### INTRODUCTION

The judicial system is the foundation of a democratic society, which guarantees the administration of justice fairly and impartially. In Bangladesh, the trial level Judiciary is crucial to maintaining the rule of law and protecting citizens' rights. Legal disputes are initially heard and resolved at the trial stage of the judicial system. It serves as the venue for the exchange of ideas, evidence, and conclusions. The trial courts are essential to the administration of justice because they uphold the concepts of justice, equality, and fairness.

The main purpose of civil justice system is to determine and uphold the various rights of the people. Civil courts of a country are established to settle the dispute of the litigating parties by applying the prevailing civil laws. In civil justice system the provisions of arrest, detention and imprisonment are not common as the aim of this system is to enforce the right of the party on the basis of the evidence presented before the court. But in some exceptional cases the civil courts have to resort to the provisions of arrest, detention and imprisonment specified in the civil procedural law.

A civil suit is to be filed within the period of limitation in the lowest grade of the civil court of the local area having jurisdiction in the matter according to the valuation of the suit or in the specified courts by presentation of a plaint duly stamped with the requisite amount of court fee as provided under the Court Fees Act, 1870 by the plaintiff or his engaged advocate accompanied by the copy of documents relied on by the plaintiff. The plant is to be drawn up complying with the provisions of Order 7 of the Code of Civil procedure 1908 and valued according to the provisions of the Suit Valuation ac.1887. When the valuation of the civil suit is up to tk. 2,00,000/- the plaint is to be presented in the court of the Assistant Judge of the local area. Where the valuation is above that amount but up to Tk. 4,00,000/- the plaint is to be presented in the court of the Senior Assistant Judge of the local area and when the valuation of the suit is above Tk. 4,00,000/- the plaint is to be presented in the court of Joint District Judge of the local area.

## OBJECTIVES OF THE STUDY

The objectives of the study are as follows:

1. To find out the causes of delay of civil Justice System in Bangladesh.
2. To identify the effects of delay of civil suits in the society of Bangladesh.

## Different Stages of Civil Suit

Bangladesh belongs to adversarial legal system and under this system in civil litigation the two parties are the plaintiff on one hand and the defendant on the other hand. In civil proceeding the standard of proof is the balance of probabilities namely more probably true than false. Thus if the plaintiff can establish a prima facie case before the court in favor of his claim and other parties does not adduce any evidence in his defense the court should deliver judgment in favor of plaintiff. The whole civil judicial proceeding in courts is regulated by the different provisions of the Code of Civil Procedure-1908 and the Civil Rules and Order (C. R. O).

The stages of civil proceeding may be broadly categorized into the following stages-

- (1) Pre-trial stage
- (2) Trial Stage
- (3) Post trial stage

### Pre-trial stage

#### Presentation of Plaintiff

If a proceeding does not commence on the presentation of plaintiff it is not a suit even if a judgment may be passed in such proceeding. Plaintiff is considered to be document by presentation of which in a civil court, a party seeks relief from such court.

#### Summon

Once the suit is filed successfully a summon is to be issued upon the defendant to appear on a date specified in the summon to appear and answer the claim.

#### Filing Written Statement

If the summon is duly served upon the defendant and a written statement containing the answer of the claim of plaintiff and his own claim is to be submitted to the court on the date fixed on the summon. Filing of written statement is obligatory and non-filing of written statement will be considered as of the facts by the defendants.

#### Alternative Dispute Resolution

By incorporating section 89A in the Code Alternative Dispute Resolution (ADR) was formally introduced in our legal system.

Incorporation of ADR in the civil proceeding is groundbreaking step taken by the Government of Bangladesh. At this stage the court takes an attempt to mediate the dispute between the parties avoiding the formal procedure of litigation.

#### First Hearing

If the ADR process fails the court shall proceed from the stage at which the suit stood before the decision of ADR. At this stage court will examine the pleadings of the parties and try to determine the core of dispute.

#### Framing Issues

At this stage the court will determine the issue of the suit. Issue arises when material proposition of fact and law is affirmed by one party and denied by the other party.

#### Step under Section 30

After framing issue the court may give order on application of the parties with regard to the delivery and answering of interrogatories, the admission of document and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence.

#### Settling Date (SD)

Now the court settles a date for pre-emptory hearing that is date for trial.

## **Trial Stage**

### **Opening the Case**

It is the right of the plaintiff to open the case and at this stage the plaintiff states the nature of the case, issue in the case, evidence of the witnesses.

### **Peremptory Hearing (PH)**

At this stage the plaintiff and defendant examine their own witness and cross-examine the witnesses of the other and may re-examine the witness.

### **Argument**

After hearing the evidence of the witness of both parties the respective Pleaders will be called upon to argue their case.

## **Post-trial stage**

### **Pronouncement of judgment**

Once the hearing is complete the court will pronounce judgment at once or reserve the judgment for future date. Every judgment contains (i) a concise statement of the case (ii) points for determination (iii) decision thereon (iv) reasons for decision.

### **Decree**

By the words of decree the court specifically determines and pronounces the rights of the parties in the present dispute.

### **Execution of decree**

This is the last stage of a civil proceeding and by application of the decree holder the court takes necessary step to execute the decree.

### **Arrest and Detention at or before Trial Stage**

The question of arrest and detention in the civil proceeding may come either at the trial stage or at the post trial stage. Apart from the two parties namely plaintiff and defendant in civil suit the existence of witness is indispensable for delivery of justice. So the plaintiff, defendant and witness are the role characters in a civil suit.

### **Arrest and Detention of Witness**

Generally it is the duty of the parties of the suit to bring their own witness at their own initiative. But for smooth operation of justice between the parties sometimes the court issues summons to the witness to appear before court to adduce evidence or to produce documents which is to be used as evidence in the present proceeding. If the witness fails to comply with the summons the court may order to arrest and detain him. Section 32 of the Code of Civil Procedure provides that the Court may compel the attendance of any person to whom a summons has been issued under section 30 and for that purpose may issue a warrant for his arrest. It is again provided in the Code that where the court see the reason to believe that the evidence of the person summoned or the production of document under the possession of that person is material and that such person has without lawful excuse failed to attend or to produce the document or has intentionally avoided the service it may issue a proclamation requiring him to attend to give evidence or to produce document and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides. In lieu of or at the time of issuing proclamation or at any time afterwards the court may in its discretion issue a warrant either with or without bail for the arrest of such person. The rule being highly penal, the court should construe the rule strictly and apply the rule only when the witness summoned neither appears nor gives any lawful excuse.

### **Arrest and Detention of Defendant**

The Code of Civil Procedure prescribes specific provision in this regard that where at any stage of the suit the court is satisfied by affidavit or otherwise that the defendant with the intent to delay the plaintiff or to avoid any process of the court or to obstruct or to delay the execution of any decree that may be passed against him (i) has absconded or left the local limit of the jurisdiction of the court or (ii) is about to abscond or leave the local limit of the jurisdiction of the court or (iii) has deposed of or removed from the local limit of the jurisdiction of the court his property or any part thereof the court may issue the warrant to arrest the

defendant and bring him before the court to show cause why he should not furnish security for his appearance.

Where the suit is for determination of the right to immovable property the court cannot pass an order of arrest of the defendant under Order XXXVIII Rule 1 or in exercise of inherent power. Again it is provided that where the defendant fails to show such cause the court shall order him to deposit either money or property or furnish security or surety for his appearance. The person who gives the surety for appearance of defendant may apply to the court to be discharged from his obligation and in that case court shall summon or issue warrant of arrest to the defendant to appear before court and furnish fresh security.

### **Arrest and Detention at Post Trial Stage**

As mentioned earlier that the last stage of a civil proceeding is the execution of the decree passed by the court. Apart from the other modes of execution of decree the court may on the application of the decree holder

The Code of Civil Procedure, Order XXXVIII Rule 1(a)

The Code of Civil Procedure, Order XXXVIII Rule 1(b)

The Code of Civil Procedure, Order XXXVIII Rule 2 and 3 order the execution of the decree by arrest and detention in prison. Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied-

- (a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,
- - (i) is likely to abscond or leave the local limits of the jurisdiction of the Court or
  - (ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property or
- (b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same or
- (c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account. The provision of execution of decree by arrest and detention in civil prison should be applied by the court as the last resort of execution of decree. Simple default by the judgment debtor in paying the decretal amount is not enough for ordering arrest rather it must be shown that the judgment debtor is having funds and he is purposely delaying payment. In case of decree to pay the money the judgment debtor must be given the opportunity to pay the amount by installments. Again it is provided that where an application is for the execution of a decree for the payment of money by the arrest and detention in the in the civil prison of judgment debtor who is liable to be arrested in pursuance of the application the court shall instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the court on the day to specified in the notice and show cause why he should not be committed to the civil prison.

Provided that such notice shall not be necessary if the court is satisfied that with the object or effect of delaying the execution of the decree, the judgment debtor is likely to abscond or leave the local limits of the jurisdiction of the court. Where appearance is not made in obedience to the Code of Civil Procedure of Section 51.

### **Procedure of arrest in civil proceeding**

A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall, as soon as practicable, be brought before the Court, and his detention may be in the civil prison of the district in which the Court ordering the detention is situate, or, where such civil prison does not afford suitable accommodation, in any other place which the Government may appoint for the detention of persons ordered by the Courts of such district to be detained:

Provided, firstly, that, for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset and before sunrise.

Provided, secondly, that no outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the officer authorized to make the arrest has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe the judgment-debtor is to be found.

Provided, thirdly, that, if the room is in the actual occupancy of a woman who is not the judgment-debtor and who according to the customs of the country does not appear in public, the officer authorized to make the arrest shall give notice to her that she is at liberty to withdraw, and, after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, may enter the room for the purpose of making the arrest.

Every warrant for the arrest of a judgment-debtor shall direct the officer entrusted with its execution to bring him before the court with all convenient speed unless the amount which he has been ordered to pay be sooner paid.

### **Period of Detention in Civil Prison**

Every person detained in the civil prison in execution of a decree shall be so detained,-

- (a) Where the decree is for the payment of a sum of money exceeding fifty Taka, for a period of six months, and,
- (b) any other case for a period of six weeks.

In case of arrest before pronouncing judgment no person shall be detained in prison neither for a longer period than six months nor for the longer period than six weeks when the amount or value of the subject matter of the suit does not exceed fifty taka. The court has no power to fix a shorter period than prescribed time.

### **Who Cannot be Arrested**

Following persons is immunized against arrest, detention and imprisonment in civil prison:

- (i) The President of the Peoples Republic of Bangladesh.
- (ii) The Government may by notification in the official Gazette declare that any person or class of persons whose arrest might be attended with danger and inconvenience to the public shall not be liable to arrest in execution of a decree otherwise than in accordance with such procedure as may be prescribed by the-it Government in this behalf.
- (iii) Notwithstanding anything contained in the provisions arrest and detention in civil proceedings the executing court shall not order the arrest or detention in the civil prison of a woman in execution of a decree for payment of money.” But under Artho Rin Adalat Ain-2003 a woman can be arrested in execution of a decree for payment of money.
- (iv) In a suit against a public officer in respect of any act purporting to be done by him in his official capacity the defendant shall not be liable to arrest.
- (v) No judge, Magistrate or other judicial officers shall be liable to arrest under civil process while going to, presiding in or returning from his court.
- (vi) Where any matter is pending before a tribunal having jurisdiction therein or believing in good faith that it has jurisdiction the parties thereto, their pleaders, mukhters, revenue agents, and their witnesses acting in obedience in summons shall be exempted from the arrest under civil process.
- (vii) No persons shall be liable to arrest or detention in prison under civil process (a) if he is a Member of Parliament during the continuance of any meeting of Parliament and during the fourteen days before and after of such meeting . (B) If he is the member of any committee of Parliament during the-
  - The Constitution of Bangladesh, Article 51.
  - The Code of Civil Procedure, Section 55 (2)
  - The Code of Civil Procedure, Section 56.
  - The Code of Civil Procedure, Section 81.
  - The Code of Civil Procedure, Section 135(1)
  - The Code of Civil Procedure, Section 135(2).

## CONCLUSION

Generally the concept of arrest, detention, imprisonment and fine are available in case of criminal justice system and these are not resorted in civil matter. But in some exceptional civil cases the provisions of arrest, detention and imprisonment come into the scene for smooth administration of civil justice.

Delay in civil suits is a very big problem in our country. The main cause of delay is outdated laws, corruption, political cause, separation of judiciary, low quality of court staff, lack of indignation, ineffective law enforcement authority, shortage of manpower, lack of legal awareness, social acceptance of justice delivered, influence of money and power etc. We must recover from this problem law commission in Bangladesh can make report for avoid delay in civil suits. ADR can do a great role to avoid delay in Bangladesh. ADR can make a great role to avoid delay in civil suits. ADR means is a system of shalish or arbitration by which delay in civil suits can be removed. Delay in disposal of civil cases is not the problems of our judiciary alone but are common to administration of justice in many other countries of the world. For solving the problems of the judiciary in many countries law commission, committee etc. are regularly constituted for examining the suggestions of the judges, lawyers, jurists, research bodies etc. for reformation of the administration of justice and on the basis of the considered recommendations of such commission or committee necessary steps are taken and legislation is made for solving the problems of the judiciary. Management and assistance of efficient and dutiful lawyers is essential. So to make the administration of justice in Bangladesh more effective and fruitful judiciary should be completely separated from the executive branch of the Government; subordinate Judiciary should be brought under complete control of the Supreme Court; standard of legal education should be raised for creating efficient lawyers and judges; salary, allowances and privileges of the judges should be increased to attract competent persons in the service to be recruited through a Judicial Service Commission and training should be given to the newly recruited as well as existing judges to increase their efficiency in case management and disposal. So far as indulgence of justice is concerned the backlog of cases, as ever, comes to the forefront for discussion. It is not only a great problem in our country but also a global menace.

## RECOMMENDATION

Actually, delay in litigation is practiced in our judicial domain for many days. So, it can't be removed in a day. But, it is as much crucial an issue that our Government has to take immediate steps to diminish this problem. However, from my view, following steps can be adopted to change the current character of administration of justice:

1. More judges and justices should be appointed in the civil court.
2. Administration of civil justice should be separated.
3. An effective procedure for service of summons etc.
4. The atmosphere of judges and justices must be corruption free.
5. Judges' Promotion should be done as per rule.
6. Discipline of the judges and justices should be maintained in the subordinate civil courts.
7. Training should be provided for the judicial officers.
8. Judges and justices must be impartial
9. Case management should be done in the civil courts within least time.
10. Adjournment and speedy disposal of civil cases should be provided.
11. Extension of original jurisdiction of the High Court Division should be done.
12. Some measures should be taken for speedy enforcement of Arbitration Award.

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