

THE CODE OF CIVIL PROCEDURE (KERALA AMENDMENT) BILL, 2023

A

BILL

Further to amend the Code of Civil Procedure, 1908 in its application to the State of Kerala;

Preamble.-WHEREAS, it is expedient to amend the Code of Civil Procedure, 1908 in its application to the State of Kerala for the purposes hereinafter appearing;

BE it enacted in the seventy fourth year of the Republic of India as follows:

- 1. *Short title, extent and commencement* .- (1)This Act may be called the Code of Civil Procedure (Kerala Amendment)Act, 2023.**
(2) It extends to the whole of the State of Kerala.
(3) It shall come into force at once.
- 2. Amendment of section 10.-To section 10 of the Code of Civil Procedure, 1908 (Central Act 5 of 1908) , (hereinafter referred to as the Principal Act), the following proviso shall be inserted before the Explanation, namely:-**

“Provided that this section shall not preclude the Court from jointly trying both the suits, if such suits are pending before the same Court”

3. Amendment to section 11.- In section 11 of the Principal Act, the following proviso shall be inserted to Explanation IV, namely:-

“Provided that the defendant shall not be precluded from filing a fresh suit against the plaintiff where the former suit has been dismissed and no executable decree was passed on a matter which might and ought to have been made a ground of defense or attack in such former suit”.

4. In section 28 of the Principal Act,-

(1) In sub section (1) for the words “sent for service in another State to such Court and in such manner as may be prescribed by rules in force in the State”, the words “issued to the defendant to appear and answer the claim, where the defendant resides in another State” Shall be substituted.;

(2) for sub section (2) the following sub section shall be substituted, namely:-

“(2) The service of summons may be made by delivering or transmitting a copy thereof by registered post with acknowledgement due addressed to the defendant or his agent empowered to accept the service or by speed post or by such courier service as are approved by the Court or by fax message or by

electronic mail service or by any other means as may be approved by the High Court:

Provided that the service of summons under this sub section shall be made at the expense of the plaintiff.”

5. **Amendment of section 35A.-** In section 35A of the Principal Act,-
 - (1) in sub section (1), for the words “of costs by way of compensation” the words “ of such costs by way of compensation as would , in the opinion of the Court, be reasonable in the interest of Justice” shall be substituted;
 - (2) for sub section (2) and its provisos, the following sub- section and proviso shall be substituted, namely:-

“(2) In determining the amount of costs by way of compensation under sub-section (1), the Court shall give due regard to the inconveniences faced by the objector against whom false or vexatious claim or defense was made, the loss of reputation, if any, of the objector due to such claim or defense and the loss of valuable time of the Court:

Provided that no Court shall make any such order for the payment of an amount exceeding the limits of its pecuniary jurisdiction.”

6. **Amendment of section 46.-** In the proviso to sub section (2) of section 46 of the Principal Act , for the words “two months”, the words “six months” shall be substituted.
7. **Amendment of section 47.-** In section 47 of the Principal Act, after Explanation II, the following proviso shall be inserted, namely:-

“Provided that the purchaser of property at a sale in execution of a decree or his representative may file separate suit for possession of the property based on his title, in case he was prevented by sufficient cause in applying for delivery of possession during the period prescribed under Article 136 of the Indian Limitation Act, 1963 (Act 36 of 1963).”

8. Amendment of section 54.- For section 54 of the Principal Act, the following section shall be substituted, namely:-

“ 54. Partition of estate or separation of share.- Where the decree is for the partition of an undivided estates assessed to the payment of revenue to the Government, other than land tax or property tax or for the separate possession of a share of such an estate, the partition of the estate or the separation of the share shall be made by the Court in accordance with law , if any, for the time being in force relating to the partition or the separate possession of shares of such estates and if necessary upon a report of a Revenue Officer not below the rank of a Tahsildar or any other person appointed as a commissioner.”

9. Amendment of section 89.- For section 89 of the Principal Act, the following section shall be substituted, namely:-

“89. Settlement of disputes outside the Court.- (1) Where it appears to the Court , having regard to the nature of the dispute involved in the suit or other proceedings that the dispute is fit to be settled through one of the alternative dispute resolution processes namely Arbitration, conciliation, settlement through Lok Adalat or

mediation , the Court shall, after filing written statement in the suit or objection in other proceedings, record its opinion and direct the parties to appear for the resolution of dispute through any one of the afore said processes which the parties prefer or the court determines.

(2) Where all the parties prefer for settlement through Arbitration, the Court shall, after recording their consent thereto, refer such dispute to the Arbitrator as decided by the Court upon the consent of the parties and in such an event the provisions of the Arbitration and Conciliation Act, 1996 (Central Act 26 of 1996), as far as may be, shall apply and the suit or other proceedings shall be deemed to have been disposed of accordingly.

(3) Where all the parties prefer for conciliation, they shall furnish to the Court the name or names of the conciliators and on obtaining his or their consent the Court may refer such dispute to the conciliator and specify a time limit for completion of the conciliation and in such an event provisions of the Arbitration and Conciliation Act, 1996 (Central Act 26 of 1996), as far as may be, shall apply. A copy of the conciliation agreement signed by all the parties shall be sent to the Court concerned and the suit or other proceedings shall be disposed of accordingly. In case the conciliation fails the conciliation officer shall return the case to the Court which referred the dispute along with a brief report on the process of conciliation and the court shall proceed with the case accordingly.

(4) Where the dispute has been referred to Lok Adalat, the provisions of the Legal Services Authorities Act, 1987 (Central Act 39

of 1987) shall apply in respect of the dispute so referred and the Lok Adalat shall send a copy of the award to the Court concerned and the suit or other proceedings shall be deemed to have been disposed of accordingly. In case no settlement is arrived at between the parties, the suit or other proceedings shall be returned to the Court concerned as provided under the Legal Services Authorities Act, 1987.

(5) Where the dispute has been referred for settlement through mediation, the Court shall, after recording the consent of the parties, refer the matter to a mediator with appropriate direction such as to the appearance of the parties before the mediator, the time limit for completion of mediation and filing report to the Court concerned. Where the suit or other proceedings referred as above is not settled in mediation, the mediator shall file a report on the process of mediation and the outcome thereof and direct the parties to appear before the Court concerned on the date fixed for the same."

10. In section 95 of the Principal Act,-

(1) in sub section (1),-

- (i) for the words and symbols "the defendant may apply to the Court and the Court may, upon such application," the words "the Court may either on its own motion or on the application of the defendant" shall be substituted;
- (ii) the proviso shall be omitted.

(2) in sub section (2), for the words “determining any such application”, the words, symbols and figures “under sub section (1)” shall be substituted

11. **Amendment of section 96.-** In section 96 of the Principal Act, after sub-section (2), the following sub-section shall be inserted, namely:-

“(2A) An appeal may lie from an adverse finding passed by any Court exercising original jurisdiction, although the decree is in his favor.”

12. **Amendment of section 102.-** In section 102 of the Principal Act, for the words “twenty five thousand rupees”, the words “two lakhs fifty thousand rupees” shall be substituted.

13. **Amendment to Section 148 A.-** In Section 148 A of the Principal Act,-
(1) to Sub Section (2), the following proviso shall be inserted, namely:-

“Provided that the caveat shall not be taken on file unless the caveator has filed an affidavit stating that he has sent a notice of the caveat by registered post with acknowledgment due on the person by whom the application has been or if expected to be, made under sub section (1) and also on the production of such postal receipt along with the affidavit;

(2) in sub section (4), the words “at the caveator’s expense” shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The procedure of functioning of Civil Courts in our State is being regulated by the Code of Civil Procedure, 1908 as amended from time to time. The Code of Civil Procedure is intended to impart substantive justice and equity. Common people are approaching courts as a last resort for redressal of their grievances. As a matter of fact and procedure there is inordinate delay in disposal of cases. Also after passing of a decree, there are so many stumbling blocks during the course of execution of the same. As of now the poor litigants are not getting the fruits of their decrees even after proceeding with their cases for decades.

In the execution of a decree, cumbersome procedure and complexities during execution have contributed a lot in this regard. The Apex Court as well as the Parliament has made various measures and alternate dispute resolution systems so as to tackle these issues. But all these measures have not resulted in achieving the intended objects.

Hence with a view to enable the Court of Equity to deliver justice within a reasonable time frame by avoiding inordinate delay, adequate amendments seem necessary in the Code of Civil Procedure,

1908. Moreover, in Alcon Infrastructure Limited Vs. Cherian Varkey Construction Company (P) Ltd, the Hon'ble Supreme Court reported some anomaly in the mix-up of definition in the terms Judicial Settlement and Mediation provided in Section 89 of Civil Procedure Code. Also in Pavankumar Gupta Vs. Ruchiram Nag Deo, the Hon'ble Supreme Court held that appeal can be filed against a finding although the decree is in favor of that party. Various amendment proposals are also proposed from various judicial forums regarding the service of summons and notice, determination of cost by way of compensation, service of notice in the case of caveat etc.

In these circumstances the Commission has considered the relevant provisions of the Code of Civil Procedure, 1908 with a view to impart substantive justice to the common people especially by making the execution proceedings as a continuation of the decree passed in a suit. The Commission after making deliberations and elaborate discussions with the forums concerned and the experts in this field, came to a conclusion that the following Sections namely 10, 11, 28, 35A, 46, 47, 54, 89, 95, 96, 102 and 148 A need amendment. Therefore the Commission has prepared the Kerala Amendment Bill to the Code of Civil Procedure, 1908 as "The Code of Civil Procedure (Kerala Amendment) Bill-2023" and forwarded the same to the Government for its consideration.

Hence Government have decided to make amendments to the provisions of the Civil Procedure Code, 1908 in its application to the State of Kerala.

The Bill seeks to achieve the above object.