

PART C. —AWARD OF COSTS IN CIVIL SUITS.

1. The general rule as to the award of costs in civil suits is that costs follow the event of the action; that is, the costs of the successful party are to be paid by the party who is unsuccessful. General rule.

2. A wide discretion, however, is given to the Court to grant or withhold or apportion costs as it thinks fit. This discretion is to be exercised judiciously, e.g.:- When costs may be disallowed.

Costs or a portion thereof may be disallowed to a successful party and he may even be liable to be burdened with costs in the following cases: —

(a) Where a party has without just cause resorted to litigation;

(b) where a party has raised an unsuccessful plea or answer to a plea (such as fraud limitation, minority, etc.) without sufficient grounds;

(c) in cases mentioned in Order 24, rule 4, when a defendant deposits money in satisfaction of the claim;

(d) whenever the demand, whether of debt or damages or property claimed, is excessive or is only successful to a small extent; and

(e) in cases where notice to admit facts or documents has not been given (See Chapter 1-F, paragraphs 13 and 14 of this volume).

When notice to admit documents or facts has been given under Order XII, rules 2 and 4 of the Code of Civil Procedure to a party and it has withheld its admission without sufficient cause it must bear the costs incurred by the other party in proving the documents or facts whatever the result of the suit may be.

3. Costs shall be disallowed :

(a) In a suit or proceeding relating to a loan where the Court finds that the creditor has failed to regularly record and maintain an account as required by section 3 (1) (a) of the Punjab Regulation of Accounts Act, 1930. (See section 4 of the Act);

When costs shall be disallowed.

(b) When a creditor sues for recovery of a debt in respect of which a certificate has been granted by the Debt Conciliation Board (*vide*

Section 20 (2) of the Punjab Relief of Indebtedness Act of 1934);

- (c) as against a minor or a person of unsound mind, where a person has not been represented by a next friend or guardian. [Order 32, rules 2,5, (2) and 15 of the Civil Procedure Code.] In such cases pleaders may under certain circumstances be made personally liable for Costs.

Reasons for dis-allowing costs to be recorded.

4. Whenever the Court orders that costs shall not follow the event, it must record its reasons. [Section 35(2) Civil Procedure Code.]

Costs of applications.

5. In disposing of applications made under the Civil Procedure Code the Court may award costs at once to either party or may postpone its consideration to a later stage.

Expenses included in costs.

6. The Code of Civil Procedure is silent as to what expenses are to be considered, as included in the term "costs". Such expenses ordinarily fall under the following heads : —

(a) Court-fee stamps on all necessary petitions.

(b) Process-fees.

(c) Expenses of proving and filing copies of necessary documents.

(d) Pleadings' fees.

(e) Charges incurred in procuring the attendance of witness, whether such witnesses were summoned through the Court or not.

(f) Expenses of Arbitrators and Commissioners. Pleadings' fees are regulated by the rules contained in Chapter 16 of this Volume "Legal Practitioners".

Note.—1. Charges incurred on inspection of records (for one inspection only) may be included in costs.

Note.—2. Charges incurred in procuring the attendance of witnesses may be included as costs even though the witnesses were not actually examined if the court is of the opinion that the party bringing or summoning them was reasonably expected to procure their attendance for that hearing and the fact that the witnesses were not examined was not due to any fault of that party or was not for showing accommodation to that party.

Compensatory costs for false or vexatious Claims or pleas

7. Under S.35-A of the Code Compensatory costs for false or vexatious claims and pleas may be awarded under certain circumstances. It is no longer necessary

that an objection should have been taken by the party affected at an early stage of the trial.

The mere failure of a party to prove the claim or pleas should not be taken to justify an order under this section. The court should be satisfied that the plea or claim was put forward by a party with the knowledge that it was false or vexatious and the court should record the reasons for its opinion. Under the powers conferred by the second proviso to sub-section (2) of section 35-A of the code of Civil Procedure, the High Court has directed that the amount which any Court or class of Courts is empowered to award as costs by way of compensation shall be limited as follows:

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- (i) Courts of subordinate Judges of the fourth class Rs. 100/-;
 - (ii) Courts of Subordinate Judges of the third class Rs. 200/-;
 - (iii) Courts of Subordinate Judges of the second class Rs. 500/-;
 - (iv) Courts of Subordinate Judges of the first class shall be guided by the provisions of sub-section (2) of section 35-A of the Code.