

TRIAL PROCEDURE UNDER THE CODE OF CIVIL PROCEDURE, 1908: WITNESS SUMMONS, DOCUMENT SUMMONS, ADJOURNMENT, AND HEARING

AUTHOR – MAYANK KUMAR, STUDENT AT AMITY UNIVERSITY, PATNA

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Overview

Trial procedure under the Code of Civil Procedure, 1908 (CPC) is governed by specific Orders that prescribe the mechanisms for summoning witnesses and documents, managing adjournments, and conducting hearings. These procedures ensure the fair and efficient administration of civil justice while protecting the rights of all parties involved. The framework is built upon the principles of natural justice, particularly the doctrine of *audi alterum partem* (hear both sides).

Witness Summons

Legal Framework

Order XVI of the CPC governs the summoning and attendance of witnesses. The comprehensive provisions ensure that witnesses are properly brought before the court and their attendance is properly regulated.

Procedure for Issuing Witness Summons

Rule 1: List of Witnesses and Summons to Witnesses

Parties must present a list of witnesses within fifteen days after the issues are settled, specifying whether the witnesses are summoned to give evidence or produce documents or both purposes. A party seeking a summons must file an application in court stating the purpose for which the witness is proposed to be summoned. The summons must be obtained within five days of presenting the witness list.

The court has discretion to permit a party to call witnesses not mentioned in the original list, provided the party demonstrates sufficient cause for such omission. Notably, Rule 1-A permits any party to bring a witness without applying for summons, subject to certain conditions, when the party does not require the court's assistance in securing the witness's attendance.

Essentials of a Valid Summons

Rule 5: Time, Place and Purpose of Attendance

Every summons must specify:

- The time and place at which attendance is required

- Whether attendance is required for giving evidence, producing documents, or both purposes

- Any particular document to be produced, described with reasonable accuracy

The summons must bear the signature of the judge and seal of the court.

Payment of Witness Expenses

Rule 2: Expenses of Witness to be Paid into Court

The party applying for summons must pay into court, before the summons is granted and within seven days of making the application, a sum sufficient to defray travelling expenses and expenses for one day's attendance. The court determines this amount based on the witness's condition and all circumstances. For expert witnesses, the court may allow reasonable remuneration for time spent in giving evidence and performing expert work. Where the summons is served directly by a party on a witness, the expenses must be paid directly to the witness by the party or the party's agent.

Service of Summons

Rule 8: Mode of Service

Summons are served in the same manner as summons to a defendant, with the rules of Order V governing proof of service. Rule 7-A permits courts to authorize a party to effect service of summons directly, in which case the party delivers the summons personally to the witness.

Rule 9: Time for Serving Summons

Service must be made a sufficient time before the attendance date to allow the witness reasonable time for preparation and travel.

Duty and Attendance of Witnesses

Rule 15: Duty of Persons Summoned

Any person summoned to give evidence must attend at the time and place specified in the summons, and any person summoned to produce a document must either attend to produce it or cause it to be produced at the specified time and place. A summoned person must attend at each hearing until the suit is disposed of unless the court directs otherwise.

Non-Compliance with Summons

Rule 10: Procedure Where Witness Fails to Comply

If a witness fails to attend or produce documents in compliance with summons, the court must examine the serving officer on oath and, where the court believes the evidence is material and the witness has without lawful excuse failed to attend or intentionally avoided service, may issue a proclamation requiring attendance. The court may then issue a warrant for arrest, either with or without bail, and order attachment of the witness's property.

Rule 12: Fines for Failure to Appear

Where a person fails to appear or fails to satisfy the court regarding non-compliance, the court may impose a fine not exceeding five hundred rupees, having regard to the person's condition in life and circumstances.

Court's Own Motion Power

Rule 14: Court May Summon Witnesses of Its Own Accord

The court may, of its own motion, summon any person, including a party to the suit, if it deems their examination necessary, and may examine them or require production of documents.

Document Summons and Production of Documents

Legal Framework

Order XVI, Rule 6 specifically addresses the summons for document production, while other provisions under the CPC regulate document disclosure and production.

Summoning Documents

Rule 6: Summons to Produce Documents

Any person may be summoned to produce a document without being summoned to give evidence. A person summoned merely to produce a document is deemed to have complied with the summons if the document is produced instead of personal attendance.

Rule 7: Power to Require Persons Present in Court to Produce Documents

Any person present in court may be required by the court to give evidence or produce any document in their possession or power then and there.

Document Production Under the CPC

Documents relied upon by parties must be produced in accordance with the pleading rules. Order VI Rule 9 provides that the effect of documents material to the case must be stated in pleadings, though it is not mandatory to set out full contents unless necessary. Order VIII Rule 1 requires parties to produce documents that are referenced or relied upon in their pleadings. Failure to produce documents at the prescribed stages may result in restrictions on later production.

Proof of Document Contents

The Supreme Court established crucial principles regarding document proof through landmark cases:

Sait Tarajee Khimchand v. Yelamarti Satyam, (1972) 4 SCC 562

The Supreme Court held that mere marking of an exhibit does not dispense with proof of the document. The execution and contents of documents must be established through admissible evidence provided by persons who can testify to the truth of facts in issue.

Narbada Devi Gupta v. Birendra Kumar Jaiswal, (2003) 8 SCC 745

The Supreme Court clarified that mere production and exhibiting of a document shall not be sufficient and the content of such document shall be proved. However, when the signatory to the document admits to its contents, the requirement of additional evidence for proof does not survive.

Om Prakash Berlia v. Unit Trust of India, AIR 1983 Bom 1

The Bombay High Court held that the truth of what the document states must be separately established. Mere admissibility of the document does not prove the contents.

Document Production by Parties

Parties must list documents they intend to rely upon in their pleadings. Under Order V Rule VII, the court may issue summons ordering a defendant to produce documents in possession or power when the defendant has relied on such documents in support of the case. A party attempting to produce documents that were not properly disclosed may face restrictions, particularly during cross-examination, unless the court permits otherwise.

Adjournment of Proceedings

Legal Framework

Order XVII of the CPC governs the adjournment of proceedings, establishing a framework to balance the need for flexibility with the imperative of timely justice.

Rule 1: Court's Power to Grant Adjournment

Rule 1(1): Sufficient Cause Requirement

The court may, if sufficient cause is shown, at any stage of the suit, grant time to parties and adjourn the hearing for reasons to be recorded in writing.

Critically, the rule provides that no adjournment shall be granted more than three times to a party during the hearing of the suit, except where justifiable cause is demonstrated.

Rule 1(2): Costs Occasioned by Adjournment

The court must fix a day for further hearing and make orders regarding costs occasioned by the adjournment or such higher costs as it deems fit. This provision serves as a deterrent against frivolous requests for adjournment.

Judicial Interpretation: What Constitutes Sufficient Cause

M/s Shiv Cotex v. Tirgun Auto Plast P. Ltd., 2011 (9) SCC 678

The Supreme Court provided crucial guidance distinguishing between "sufficient cause" and "justifiable cause":

"Adjournments have grown like cancer corroding the entire body of justice delivery system. No litigant has a right to abuse the procedure provided in the CPC... When we say 'justifiable cause' what we mean to say is, a cause which is not only 'sufficient cause' as contemplated in sub-rule (1) of Order XVII CPC but a cause which makes the request for adjournment by a party during the hearing of the suit beyond three adjournments unavoidable and sort of a compelling

necessity like sudden illness of the litigant or the witness or the lawyer; death in the family of any one of them; natural calamity like floods, earthquake, etc. in the area where any of these persons reside; an accident involving the litigant or the witness or the lawyer on way to the court and such like cause."

The Court emphasized that the absence of a lawyer due to professional work in other courts, strike calls, change of lawyers, or continuous illness of the lawyer (without advance alternative arrangements) will not justify more than three adjournments.

Conditions for Granting Adjournment

Adjournments should not be granted at the request of a party except where circumstances are beyond the control of that party. The fact that a pleader is engaged in another court is not a sufficient ground for adjournment. If illness of a pleader is cited, the court must be satisfied that the party could not have engaged another pleader in time.

Rule 2: Non-Appearance on Adjourned Date

If a party fails to appear on the adjourned hearing date, the court may dispose of the suit under Order IX or make such other order as it deems fit. The explanation provides that where evidence or substantial portions have been recorded and a party fails to appear, the court may proceed as if such party were present.

Rule 3: Failure to Produce Evidence or Witnesses

When a party to whom time has been granted fails to produce evidence, secure witness attendance, or perform necessary acts, the court may proceed to decide the suit immediately if parties are present, or apply Rule 2 if parties are absent.

Comparative Case Law on Adjournments

Prafulla v. Govind, Bombay High Court

The Bombay High Court analyzed a series of adjournment applications, finding that despite repeated warnings and trial court directions, adjournments were granted repeatedly without credible justification. The court emphasized that the impugned order ignored settled legal principles and disregarded earlier directions to dismiss the suit upon failure to appear.

B.P. Moideen Sevamandir v. A.M. Kutty Hassan, (2009) 2 SCC 198

The Supreme Court held that when a counsel ready in the pre-lunch session seeks accommodation in

the post-lunch session due to sudden illness, the court cannot refuse a short accommodation and dismiss proceedings on such grounds.

Salem Advocate Bar Association v. Union of India, (2005) 6 SCC 344

The Court emphasized that while Order XVII Rule 1(1) restricts granting more than three adjournments, courts should not grant adjournments mechanically but must consider the legislative intent to minimize delays.

Hearing of the Suit and Examination of Witnesses

Legal Framework

Order XVIII of the CPC prescribes the procedure for hearing suits and examining witnesses, establishing a structured framework for presenting evidence and arguments.

Rule 1: Right to Begin

The plaintiff generally has the right to begin presenting the case unless the defendant admits all facts alleged by the plaintiff but contends that, either on legal grounds or based on additional facts, the plaintiff is not entitled to any relief sought. In such cases, the defendant has the right to begin.

Rule 2: Statement and Production of Evidence

Sub-rule (1): Party Beginning Presents Case and Evidence

On the hearing date or any adjourned date, the party having the right to begin must state their case and produce evidence supporting the issues they are bound to prove.

Sub-rule (2): Other Party Presents Case and Arguments

The other party then states their case, produces their evidence (if any), and may address the court on the whole case.

Sub-rule (3): Right of Reply

The party beginning may then reply generally on the whole case.

Sub-rules (3-A) to (3-D): Written Arguments

Any party may address oral arguments and, before concluding, may submit concise written arguments with distinct headings to the court, if permitted. Written arguments must be simultaneously furnished to the opposing party. The court may not grant adjournments for filing written arguments unless it considers it necessary for recorded reasons. The

court fixes time limits for oral arguments as it deems fit.

Rule 3: Multiple Issues

Where several issues exist and burden of proof lies on the other party, the party beginning may either produce evidence on those issues or reserve it as an answer to the other party's evidence. When evidence is reserved, the other party produces all its evidence first, and the party beginning may then produce evidence on the reserved issues. The other party may reply specially on such evidence, and the party beginning maintains the right to reply generally on the whole case.

Rule 3-A: Party as Witness

Where a party wishes to appear as a witness, they must appear before other witnesses on their behalf are examined, unless the court, for recorded reasons, permits later appearance.

Evidence Recording Requirements

Rule 4: Recording of Evidence

Examination-in-chief must be on affidavit in every case, with copies supplied to the opposing party. Cross-examination and re-examination are recorded by the court or a commissioner appointed by it. Evidence is recorded in writing or mechanically in the judge's or commissioner's presence, and mechanically recorded evidence is returned with the commissioner's report to the court. The commissioner may record remarks about witness demeanor.

Rule 5: Evidence in Appealable Cases

In cases where appeal is allowed, evidence must be taken down in the court's language, either in writing by or under the judge's direction, or directly on typewriter from the judge's dictation, or mechanically recorded in the court's language with judge present.

Rule 12: Remarks on Witness Demeanor

The court may record remarks it deems material concerning any witness's demeanor during examination.

Rule 17: Court's Power to Recall and Re-examine Witnesses

K.K. Velusamy v. N. Palanisamy, (2011) 11 SCC 275

The Supreme Court clarified Order XVIII Rule 17, stating that:

"The power to recall any witness under Order 18 Rule 17 can be exercised by the court either on its own

motion or on an application filed by any of the parties to the suit requesting the court to exercise the said power. The power is discretionary and should be used sparingly in appropriate cases to enable the court to clarify any doubts it may have in regard to the evidence led by the parties. The said power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined."

This power is available at any stage of a suit.

Examination of Witnesses

Section 143 of the BSA, 2023

Witnesses are examined in a structured sequence: first examined-in-chief, then cross-examined (if the adverse party desires), and then re-examined (if the party calling them desires). Both examination-in-chief and cross-examination must relate to relevant facts, but cross-examination need not be confined to facts testified during examination-in-chief.

Section 144 (Re-examination)

Re-examination must be directed to explaining matters referred to in cross-examination, and new matters may only be introduced with court permission, in which case the adverse party may further cross-examine on those matters.

Important Case Law on Hearing Procedure

Rasiklal Manikchand Dhariwal v. M.S.S. Food Products, (2012) 2 SCC 196

The Supreme Court clarified that expressions "state his case," "produce his evidence," and "address the court generally on the whole case" in Order XVIII Rule 2 have distinct meanings and connotations:

"By use of the expression 'state his case', the party before production of his evidence is accorded an opportunity to give general outlines of the case and also indicate generally the nature of evidence likely to be let in by him to prove his case... After the evidence has been produced by all the parties, a right is given to the parties to make oral arguments and also submit written submissions, if they so desire... The scheme of the Code enables the successor Judge to deliver the judgment without oral arguments where one party has already lost his right of making oral arguments and the other party does not insist on it."

Cross-Examination Standards

Sukhwant Singh v. State of Punjab, AIR 1995 SC 1601

The Supreme Court held that tendering a witness for cross-examination without examination-in-chief is not permissible.

Salagram v. Emperor, AIR 1937 All 171

The court held that examination-in-chief and cross-examination must relate to relevant facts, but cross-examination need not be confined to the matters testified by the witness in examination-in-chief.

Rule 15: Succession of Judge

Where a judge is prevented by death, transfer, or other cause from concluding the trial, the successor may deal with evidence or memoranda taken by the predecessor as if they had been taken by the successor, and may proceed from the stage where the predecessor left off.

Intersection of Procedures: A Comprehensive Framework

The procedures governing witness summons, document production, adjournment, and hearing work in concert to achieve fair and efficient justice delivery. Parties must prepare witness lists within prescribed timeframes, ensure proper payment of witness expenses, and comply with document production requirements. Courts exercise careful control over adjournments to prevent abuse while ensuring fairness. Evidence is recorded systematically during the hearing, with precise rules governing witness examination, cross-examination, and re-examination. The comprehensive framework reflects the Indian legal system's commitment to natural justice while maintaining efficiency in civil litigation.

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