

GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH

THE LAW COMMISSION

-SUBJECT-

A FINAL REPORT ON A DRAFT BILL FOR PROPOSED
AMENDMENT OF THE SMALL CAUSE COURTS ACT, 1887
(ACT NO. IX OF 1887)

OFFICE OF THE LAW COMMISSION

OLD HIGH COURT BUILDING
DHAKA-1000

DECEMBER 20, 2005

Introduction

In 1887 the Government of India enacted the provincial Small Cause Courts Act, 1887 (Act No IX of 1887) hereinafter called the said Act, which was very much appreciated by the people of the country at that time. The working of the Courts established by this law has been highly conducive to the good of the people. The people started getting speedy, cheap and substantial justice from such courts in small causes. Originally the judges of the Small Cause Courts rendered easy, speedy and cheap legal redress to the people in the course of their ordinary transactions. People got an added benefit from the decisions of the Small Cause Courts cases as there was in majority cases no appeal.

After Independence of Bangladesh in 1971 the word “Provincial” was omitted from the said Act by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973) with effect from 26th March 1971. The law in the name of Small Cause Courts Act, 1887 (Act No IX of 1887) continued to remain in force. But gradually the law lost its efficacy due to enormous increase in the value of both moveable and immoveable properties. We have therefore taken up the matter to examine as to how to make the law as effective as before for the purpose of disposal of small cases speedily and with lesser cost.

It appears that formerly according to section 15 (2) of the said Act all suits of civil nature of which the value does not exceed Rs. 500/- were cognizable by a court of small causes. But this value was raised to Rs. 1,000/- by an amendment in 1962. Subsequently this value was raised to “two thousand five hundred taka” by the Law Reforms Ordinance, 1978 and then to “twelve thousand taka” by Ordinance No. III of 1983 and lastly to “twenty five thousand taka” by Act No. 47 of 1990. At present civil suits valued up to Taka 25,000/- are triable by Small Cause Courts under section 15 (2) of the Act.

Originally section 15 (3) provided that subject to the exception specified in the schedule the provincial Government could by an order direct that all suits of civil nature valued upto Rs. 1,000/- shall be triable by a court of Small Causes mentioned in the order. This amount was raised to Rs.

2,000/- by the above mentioned amendment of 1962. Subsequently this value was raised to “six thousand taka” by the Law Reforms Ordinance of 1978 and then to “fifteen thousand taka” by Ordinance No. III in 1983 and lastly to “thirty thousand taka” by Act No.47 of 1990.

In view of the increase in the monetary value of both moveable and immoveable properties during the last fifteen years, the above mentioned pecuniary jurisdiction of the Small Cause Courts is not adequate enough for the courts to attract the filing and trial of suits of small cases. In such a situation, we are of the opinion that the pecuniary jurisdiction of Small Cause Courts should be increased in proportion to the rise in the monetary value of properties.

We recommend, therefore, to increase the amount of “twenty five thousand taka” under section 15 (2) to “sixty thousand taka” to be cognizable by a court of small causes and to increase the amount of “thirty thousand taka” to “seventy thousand taka” to be triable by a Small Cause Court under section 15 (3) of the Act.

We further recommend to insert two new sections after section 17 as 17A and 17B. In 17A we recommend to make a provision for an out-of-court amicable settlement of the dispute of the parties to a suit. In section 17B, we recommend for applying the ADR procedure as laid down in section 89A of part V of the Code Of Civil Procedure in the disposal of the suits under this Act.

In view of the proposed increase of pecuniary jurisdiction of the Small Cause Courts from “twenty five thousand taka” to “sixty thousand taka” under section 15 (2) of the said Act and from “thirty thousand taka” to “seventy thousand taka” under section 15 (3), it has become necessary to similarly increase the amount of “twenty five thousand taka” and “thirty thousand taka” to “sixty thousand taka” and “seventy thousand taka” respectively under section 27 A of the said Act for the purpose of issuing a distress warrant. We therefore recommend an amendment of section 27 A accordingly.

In view of the increase of pecuniary jurisdiction of the Assistant Judge to try suits of civil nature from one lac to two lac taka by amendment of section 19 of the Civil Courts Act, 1887, (Act XII of 1887) by Act No. 49 of 2001 it has become necessary to similarly increase such amount of one lac

taka to two lacs taka under section 28 of the Small Cause Courts Act, 1887 (IX of 1887).

We accordingly recommend an amendment to section 28 of Act IX of 1887 by increasing one lac taka to two lac taka.

In the light of our discussions above, we are enclosing herewith a draft Small Cause Courts (amendment) bill, 2005 as Annexure- 'A' for convenience and ready reference.

A draft bill for proposed amendment of the Small Cause Courts Act, 1887 (Act No IX of 1887)

The Small Cause Courts (Amendment) Act, 2005

Bill No..... of 2005

Whereas for the purpose of achieving the objectives of the Small Cause Courts Act (Act No. IX of 1881), it is necessary and expedient to make some more amendments in Small Cause Courts Act, 1887 (Act IX of 1887);

Now, therefore it is hereby enacted as follows:

1. Short title and commencement. - (1) This Act may be called the Small Cause Courts (Amendment) Act, 2005.

(2) It shall come into force at once.

2. Amendment of section 15 of Act IX of 1887. - In section 15 of Small Cause Courts Act, 1887 (IX of 1887), hereinafter called the said Act. -

(a) In sub-section (2), for the words “twenty five thousand taka”, the words “sixty thousand taka” shall be substituted; and

(b) In sub-section (3), for the words “thirty thousand taka”, the words “seventy thousand taka” shall be substituted.

3. Insertion of two new sections 17A and 17B in Act IX of 1887. - After section 17 of the said Act, the following new sections 17A and 17B shall be inserted:-

17A. Amicable settlement. - (1) Where at any stage of the proceedings, it appears to the Court either on application of any party or otherwise that there exists a possibility of amicable settlement of the dispute between the parties, the court may persuade the parties to make an amicable, out-of-court settlement of their dispute with the help of their engaged lawyers.

(2) If no such settlement is reached between the parties under sub-section (1) within the time as may be fixed by the court, or such extended time as may

be granted by the court on showing good cause, the court shall proceed to record evidence of the case.

(3) If such a settlement is reached between the parties to the suit, a statement of compromise shall be prepared and the same shall be submitted to the court signed by both the parties as executants and their engaged lawyers as witnesses and the court shall then pass a decree accordingly.

17B. (1) The procedure as laid down in section 89A of part V of the Code of Civil Procedure, 1908 shall be additionally applicable in the disposal of suits under this Act.

(2) In the event of failure of a proceeding under section 89A the same court, notwithstanding what is contained in section 89A of the Code of Civil Procedure, 1908 shall proceed to dispose of the suit through the procedure provided in this Act ordinarily to be decided within sixty days.

4. Amendment of section 27A of Act IX of 1887. - In sub-section (1) of section 27A of the said Act, for the words “twenty five thousand taka” and “thirty thousand taka”, the words “sixty thousand taka” and “seventy thousand taka” respectively shall be substituted.

5. Amendment of section 28 of Act IX of 1887. - In sub-section (2) of section 28 of the said Act, for the words “one lac taka”, the words “two lac taka” shall be substituted.

(Dr. M. Enamul Hoque)
Member-2

(Justice Md. Sirajul Islam)
Member-1

(Justice Mustafa Kamal)
Chairman