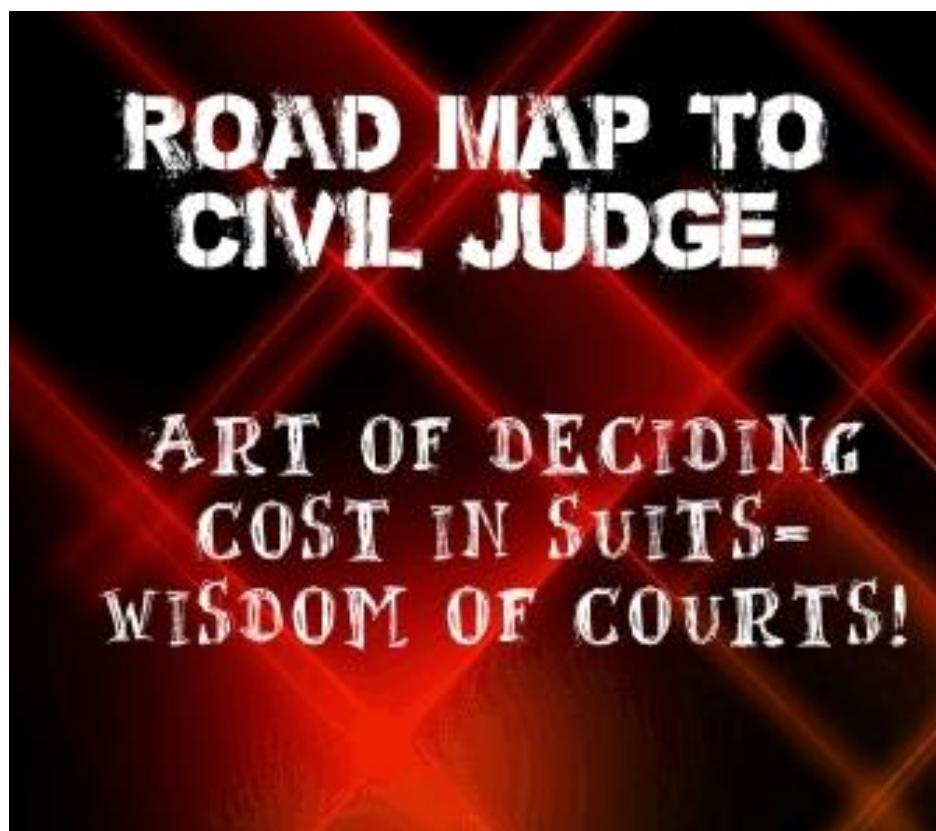


LAWXPERTS.

WHY YOU SHOULD STUDY THIS ?

1. HIGH QUALITY.
2. BASED ON STANDARD SOURCES
3. POSSIBILITY OF DIRECT QUESTIONS
4. COMPLETELY SYLLABUS-ORIENTED.



This is a copyrighted material of lawxperts. This material shall not be modified, copied, distributed, repackaged, shared, displayed, revealed, extracted, emailed, transmitted, sold or otherwise transferred, conveyed or used, in a manner inconsistent with the Agreement, or rights of the copyright owner. You shall not redistribute, repackage, transmit, assign, sell, broadcast, rent, share, lend, modify, extract, reveal, adapt, edit, sub-license or otherwise transfer the Content. You are not granted any synchronization, public performance, promotional use, commercial sale, resale, and reproduction or distribution rights for the Content.

ART OF DECIDING COST IN SUITS- WISDOM OF COURTS!

GENERAL RULE : “The costs shall follow the event “ : Successful party must get his costs and losing party should pay to the other.

WHY SHOULD THE COURT GIVE THE COSTS ? To secure the aggrieved party the cost incurred in the institution of this suit, not profit, and not to punish the other. When both the parties are guilty of acts of bad faith, both may be deprived of their costs. This means that the successful party is entitled to costs unless he is guilty of misconduct or there is some good cause for not awarding costs to him.¹

Kinds of costs: (i) General Costs (Section 35), (ii) Miscellaneous Costs (Order 20-A), (iii) Compensatory Costs (Section 35-A), (iv) Costs for Causing Delay (Section 35-B).

I. General Costs: Section 35

The court can order in its discretion =by whom, out of what property and the costs are to be paid.

5 ESSENTIAL PRINCIPLES OF COSTS : *Vinod Seth v. Devinder Bajaj* = the Supreme Court

1. It should act as a deterrent to vexatious, frivolous and speculative litigations or defences.
2. Laws such as - CPC, Evidence Act and other laws governing procedure are scrupulously and strictly complied with and that parties do not adopt delaying tactics or mislead the court.
3. Costs should provide adequate indemnity to the successful litigant for the expenditure incurred by him for the litigation
4. It should be an incentive for each litigant to adopt alternative dispute resolution (ADR) processes and arrive at a settlement before the trial commences in most of the cases.
5. The provisions relating to costs should not however obstruct access to Courts and justice.

BRAIN TICKLE ! – Can a Court without jurisdiction award cost ? Yes ! as per sec 35 – the fact that the court has no jurisdiction to try the suit shall be no bar to exercise the power of awarding cost.

#Salem Advocate Bar Association v. Union of India = the Supreme Court =there is no upper limit in respect of the costs awardable under Section 35 of the Code of Civil Procedure.

- II. **Miscellaneous Costs:** Order 20-A Order 20-A139 of the Code makes specific provision with regard to the power of the court to award costs in respect of certain expenses incurred
- ✓ in giving notices,
 - ✓ typing charges,
 - ✓ inspection of records,
 - ✓ obtaining copies and
 - ✓ producing witnesses.

III. Compensatory Costs: Section 35-A :

If the court is satisfied that the litigation was inspired by vexatious motive and was altogether groundless, it can take deterrent action. This order is appealable. S.104.

¹Jugra Singh v. Jaswant Singh, (1970) 2 SCC 386: (1971) 73 PLR 314.

Maximum amount : 3000 rs.

#Ashok Kumar Mittal v. Ram Kumar Gupta : Both parties lied to the Court. Court imposed a heavy penalty of 1LAKH on both of them.

BRAIN TICKLE ! Can compensatory cost be imposed in execution proceeding? Yes! As per sec:35 A for vexatious claim / defence compensatory cost can be imposed.
BRAIN TICKLE ! Can Compensatory Cost be imposed in appeal or revision? No! A fresh compensatory cost cannot be imposed in appeal and revision as per sec:35A.

IV. Costs for Causing delay :

Section 35-B of the Code deals with the law relating to costs levied for causing delay. Court can impose compensatory costs on parties who are responsible for causing delay at any state of the litigation.

#Manohar Singh v. D.S. Sharma : Non-payment of money under Sec. 35-B : The court may dismiss the suit.

IMPORTANCE OF THIS CHAPTER:

- 1) In judgment writing – candidates will be expected to draw decision on imposing cost # every judgment in civil must contain decision as to cost.
- 2) Area most concentrated for descriptive type and objective type questions.

Attention: for comprehensive understanding with apt case laws refer our notes!

THE END

FOR MORE PRIMERS: <http://www.lawxpertsmv.com/primers-notes>