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THE PROCEDURE DEALING WITH CIVIL SUITS IN MYANMAR JUDICIARY

Daw Thin Thin Nwe

1. Introduction

In Myanmar judicial system, Courts are conferred with powers to try criminal cases and civil suits in both. Courts are following the Code of Criminal Procedure for criminal cases and the Code of Civil Procedure for civil suits.

The Code of Civil Procedure (CPC) is the procedural law which consists of the provisions from institution to execution of original civil suits, appeals from original decrees, reference and review etc. The original Code of Civil procedure is an India Act which had been enacted in 1895. The Code had been amended in 1877, 1882, 1909 and the present Civil Procedure Code is the Code which was adopted in 1909. The Code is divided into two parts: sections and orders. The sections laid down the general principles and the rules furnished machinery for applying those sections. In this presentation, the procedure deals with original civil suit will be mentioned and explained.

2. General Principles

Suits in general are detailed by the Civil Procedure Code. The Courts shall have jurisdiction to try all suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred. For example, a suit in which the right to property or to an offence is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies. (CPC, Sec.9)

No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in a previously instituted suit. But these suits must be between the same parties or parties under whom they or any of them claim, litigating under the same title, and where such suit is pending in the same Court or any other Court having jurisdiction. (CPC, Sec.10)

No court shall try any suit or issue in which the matter directly and substantially in issue has been directly in issue in a former suit between the same parties, litigating same title in the Court such issue has been heard and finally decided. (CPC, Sec.11)

Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit for such cause of action. (CPC, Sec.12)

3. Civil Jurisdiction

The jurisdiction of Courts is its authority to decide matters that are litigated before it. Generally, Myanmar Courts have jurisdiction to try all civil suits against all persons (whether local or foreign) within Myanmar, other than foreign sovereign. The appropriate Court in which commence proceedings in Myanmar is dependent upon the type and value of the claims and, perhaps, the location of the parties or the place the business is or act in question was carried on. Therefore, the Court firstly scrutinizes the place of suing whether it can be commenced under the jurisdiction of the Court or not.

Every suit shall be instituted in the Court of the lowest grade competent to try it and where subject matter situates. (CPC, Sec. 15)

Subject to the pecuniary or other limitations prescribed by any law, suits for immovable property shall be instituted where subject matter situated. (CPC, Sec.16) In case of immoveable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate (CPC, Sec. 17).

However, where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts any immoveable property is situate, any one of those

Courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon proceed to entertain and dispose of any suit relating to that property (CPC, Sec. 18).

Where a suit is for compensation for wrong done to the person or to moveable property, if the wrong was done within the local limits of the jurisdiction of one Court, and the defendant resides, or carries on business, or personally works for gain within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff on either or the said Courts (CPC, Sec.19).

Other suits shall be instituted in a Court where defendants reside or cause of action arises (CPC, Sec.20).

The Supreme Court of the Union confers the pecuniary jurisdiction to subordinate Courts from time to time by Directives. To solve the over-loading civil suits in High Courts and District Courts, the Supreme Court amended the pecuniary jurisdiction of the Courts in 2011. At present, the Township Courts are conferred jurisdiction to try the original civil suits of the value of not more than Ten million Kyats (Myanmar currency). Courts of Self-Administered Division or Zone and District Courts are conferred jurisdiction to try the original civil suits of the value of not more than five hundred million Kyats. However, the pecuniary jurisdiction of High Courts of Region or State is not limited and High Courts can try any original civil suits of the value more than five hundred million Kyats.

According to Union Judiciary Law, the Supreme Court has also original civil jurisdiction in matters arising out of bilateral treaties concluded by the Union, other disputes between the Union of Government and the Region or State Government, among the States, between the Region and the State and between the Union Territory and the Region or the State except the Constitutional problems, other disputes among the regions and cases prescribed by any law.

4. When Aliens or Foreign States may sue

Under the Civil Procedure Code, alien enemies residing in the Union of Myanmar

within the permission of the President of the Union of Myanmar, and alien friends, may sue on the Courts of the Union of Myanmar, as if they were citizens of the Union. And, no alien enemy residing in the Union of Myanmar without such permission, or residing in a foreign country, shall sue in any of such Courts (CPC, Sec. 83).

A foreign State may sue in any Court of the Union of Myanmar if such State has been recognized by the President of the Union (CPC, Sec. 84).

5. Court Procedure for Original Civil Suits

5.1. Filing a original civil suit

Civil suits are filed in Courts having proper jurisdiction, that is to say, territorial or local, pecuniary, subject matter and personal jurisdiction. A civil suit is instituted by filing plaint in the Court of the lowest grade competent to try it.

The plaint must comply with the requirements set out under Order 6 and 7 of the Civil Procedure Code. Every plaint shall contain the name of Court, description and place of residence of the plaintiff and the defendant, the statement of where the plaintiff or defendant is a minor or a person of unsound mind, cause of action, jurisdiction, the relief claimed by plaintiff, (if any) set-off or relinquished amount, value of the subject-matter of the suit (CPC, Or.7, R.1).

In money suit, the plaint shall state the precise amount claimed (CPC, Or.7, R.2). Where the subject-matter of the suit is immovable property, a description of the property sufficient to identify shall be contained in the plaint (CPC, Or.7, R.3). Moreover, the plaint shall show interest of the plaintiff and defendant, grounds of exemption from limitation law, alternative relief, separate and distinct grounds for claims (if any) (CPC, Or.7, R.4, 5, 6, 7 and 8).

The Court shall return to be presented to the Court in which the suit should have been instituted (CPC, Or.7, R.10). The Court shall reject the plaint where it does not disclose a cause of action, the relief claimed is undervalued, insufficiently stamped plaint, statement to be barred by any law (CPC, Or.7, R.11).

Civil suit are instituted in the competent Court for the right of the one party which is

denied by the other. Therefore, the Court has to decide the relief of the plaintiff in accordance with the laws related to the claimant.

5.1.1. Court-fees

For institution of original civil suit, pay of sufficient Court-fees and litigation within the time of limitation are also essential. Subject- matter of the suit must be valued for Court-fees and sufficiently stamped. The Court-Fees Act provides fixed court-fees and Court-fee payable in suit value. All fees referred or chargeable under the Act shall be collected by stamps (The Court-Fees Act, Sec.25).

5.1.2. Limitation of actions

Prescriptive period of limitation for various actions and application is governed by the Limitation Act. For different types of suits and application, the period of limitation and time from which period begins to run are prescribed in the Act. Every suit instituted after the period of limitation prescribed in the Act shall be dismissed, although limitation has not been set up as a defence (The Limitation Act, Sec.3).

5.2. Filing written statement by defendants

When received the summons, the defendant shall come to the Court and file his written statement if he wants to deny the allegation made in the plaint or admit them.

The defendant may present a written statement of his defence at or before the first hearing or within such time as the Court permits (CPC, Or.8, R.1). The defendant must raise all matters which show the suit not to be maintainable and all grounds of defence (CPC, Or.8, R.2). Denial in written statement must be specific for each allegation of fact which he does not admit (CPC, Or.8, R.3).

Every allegation of fact in the plaint shall be taken to be admitted if the defendant does not deny specifically in the written statement (CPC, Or.8, R.5). In a suit for the recovery of money the defendant may claim to set-off against the plaintiff's demand any ascertained sum of money (CPC, Or.8, R.6).

When party fail to present written statement within the time fixed by the Court, the

Court may pronounce judgment against him or make an order as it think fit (CPC, Or.8, R.10).

5.3. Settlement of issues

At the first hearing of the suit, the Court shall, after reading the plaint and the written statement and shall there upon proceed to frame and record the issues on which the right decisions of the case appear to defend.

Issues are to be framed only in respect of those material propositions of fact or law is affirmed by the one party and denied by the other party (Or.14, R.3). In the same suit, issues both of law and fact may arise. The court is of opinion that the case or any part thereof may be disposed of on the issues of law only; it shall try those issues first and may postpone the settlement of the issues of fact until after the issues of law have been determined (Or.14, R.2). However when the issue of law is compound with the facts, the court may settle the issues both of law and fact after hearing the suit and examination of witnesses.

The Court may amend the issues or frame additional issued or strike out any issues as it think fit, at any time before passing a degree (Or.14, R.5).

The date of framing issues is the first hearing of a suit. Therefore non-appearance of the parties and non-production of documents at that date shall be effect to the suit. At first hearing, all documentary evidence in possession of the parties shall be produced and no documentary evidence shall be received at any subsequent stage of the proceeding unless good cause is shown to the satisfaction of the Court (Or.13, R.1 and 2). Where at the first hearing of a suit it appears that parties are not at issue on any question of law or fact, the court may at once pronounce judgment (Or.15, R.1).

5.4. Hearing of the suit

For settlement of issues of the fact, the Court shall proceed to hearing of the suit and examination of witnesses.

For attendance of witness, the parties may obtain, on application to the Court, summonses to persons who attendance is required either to give evidence or to produce

documents at any time after the suit is instituted (Or.16, R.1). The expenses of witness shall be paid into the Court by the party applying for summons (Or.16, R.2). If witness fails to appear the Court may impose fine and may order his property to be attached and sold, having regard to his condition in life and all circumstances of the case (Or.16, R.12).

5.4.1. Production of evidence

The party on whom the burden of proof lies should begin the examination. Generally the plaintiff has the right to begin (Or.18, R.1). On the day fixed for the hearing of the suit on any other adjourned day, the party shall state his case and produce his evidence, documentary as well as oral in support of the issues which he is bound to prove. The other party shall then state his case and produce his evidence (if any) in the manner aforesaid (Or.18, R.2).

5.4.2. Examination of witnesses

The evidence of the witnesses in attendance shall be taken orally in open Court in the presence and under the personal direction and superintendence of the judge (Or.18, R.4). The evidence of witness shall be taken down in writing in the language of the Court or in English (Or.18, R.5). After Myanmar language is stated as official language, the language used in Court became Myanmar language.

5.4.3. Order of Examination

The order in which witnesses are produced and examined shall be regulated by the Evidence Act and Civil Procedure (Evidence Act Sec.135). Admissibility of evidence shall be decided by judge in accordance with the Evidence Act (Evidence Act Sec.136). As the order of examination, witnesses shall be first examined-in-chief by the party who calls him. Then witnesses shall be cross-examined if the adverse party so desires and re-examined if the party calling him so desires (Evidence Act Sec.137). The examination-in-chief and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his

examination-in-chief (Evidence Act Sec.138).

5.5. Judgment and Decree

After hearing the suit and final argument by both of parties or their pleaders (if any), the Court shall pronounce judgment in open Court either at once or some future day of which due notice shall be given to the parties or the pleaders. On such judgment a decree shall follow (CPC, Sec.33 and Or.20, R.1).

Decrees may differ according to the nature of the suits. There are also different judgments passed under different conditions like: judgment on admission by party, judgment by consent, declaratory judgment and judgment by default.

Judgment is the statement given by the judge of the grounds of a decree or order (CPC, Sec. 2 (9)). Decree means formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question arising between the parties. But any adjudication from which an appeal lies as an appeal from an order and any order of dismissal for default (CPC, Sec. 2 (2)).

Therefore judgment shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision (CPC, Or.20. R.4 (2)).

The decree shall agree with the judgment and shall contain the number of suit, the names and descriptions of the parties, and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit. It shall also state the amount of costs incurred in the suit, and by whom or out of what property and in what portions such costs are to be paid. The court may direct that the costs payable to one party by the other shall be set off any sum which is admitted or found to be due from the former to the latter (CPC, Or.20, R.6).

6. Temporary Injunctions and Interlocutory orders

6.1. Temporary injunctions

According to the Civil Procedure, temporary injunction may be granted during the process of the suit. For temporary injunction the party who applies, is necessary to prove by affidavit or otherwise that any property in dispute is in danger of being wasted, damaged or alienated by any party to the suit, or the defendant threatens, or intends to remove or dispose of his property with a view to defraud his creditors. The court may grant a temporary injunction to restrain such act until the disposal of the suit or until further orders for the purpose of prevention (CPC, Or.39, R.1).

6.2. Interlocutory orders

Before judgment the Court has power to order interim sale on application of any party to a suit. The Court may order the sale of any moveable property which is subject-matter of the suit and which is subject to speedy and natural decay, or which for any other just and sufficient cause it may be desirable to have sold at once (CPC, Or.39, R.6).

7. Withdrawal and Adjustment of Suits

7.1. Withdrawal of the suit

At any time after the institution of a suit the plaintiff may, as against all or any of the defendants, withdraw his suit or abandon part of his claim. Where the Court is satisfied that a suit must be failed by reason of some formal defect, or that there are other sufficient grounds, it may grant the plaintiff permission to withdraw. Where the plaintiff withdraws or abandonment without the permission of the Court, he shall be precluded from instituting any fresh suit in respect of such subject-matter or claim (CPC, Or.23, R.1).

7.2. Compromise of suits

Where the suit has been adjusted wholly or in any part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff, the Court shall order such agreement, compromise or satisfaction to be recorded and shall pass a decree in accordance therewith. Otherwise, the Court may order to stay the proceedings upon the terms of the agreement, compromise or satisfaction with liberty to the parties to apply for the purpose of carrying the same into effect (CPC, Or.23, R.3).

Withdrawal and compromise of suits under the Civil Procedure shall not apply to any proceedings in execution of a decree or order (CPC, Or.23, R.4).

8. Procedure in Execution

Any person in whose favour a decree has been passed or an order capable of execution has been made, can make application to the Court which passed the decree for enforcement of the decree or order. Execution may be effected either against the person or property or both, of the judgment debtor. The Court having jurisdiction is that situates at the place where the person resides or where the property situates. The only exception is when a Court issues a percept to another court having jurisdiction over the property to be attached.

The court may order execution of the decree by delivery of any property specially decreed; by attachment and sale or sale without attachment of any property; by arrest and detention in prison; by appointing a receiver; or in such other manner as the nature of the relief granted may require (CPC, Sec.51).

In execution of decree, judgment-debtor shall be detained, where the decree is for the payment of money, for a period of six months. He shall be released from such detention before the expiration of period on the decree against him being fully satisfaction. A judgment-debtor release from detention shall not merely by reason of his release be discharge from his debt, but he shall not be liable to be re-arrested under the decree in execution of which he was detained in civil prison (CPC, Sec.58).

Before issuing a warrant of arrest, the Court shall issue a notice calling upon judg-

ment-debtor to appear before the Court and show cause why he should not be committed to the civil prison. However, such notice shall not necessary if the Court is satisfied that he is likely to abscond or leave the local limits of the jurisdiction of the Court with the object or effect of delaying the execution of the decree (CPC, Or.21, R.37).

Ordinarily, the Civil Procedure Code had been prohibited the arrest or detention in a civil prison of a woman in execution of a decree for the payment of money. But this provision was deleted by the Law Amending the Code of Civil Procedure in 2000. The procedure in arrest and detention can be now applicable to every judgment-debtor.

9. Types of Civil Suits and Laws relating to Civil Suits

9.1. Types of Civil Suits

In Myanmar, some types of civil suit are usually instituted. They are suit for money (including suit for remedies), divorce, suit for possession of movable property or immoveable property, suit for partition of property or separate possession of a share therein, administration suit (including suit for dissolution of partnership and suit for administration of the property of deceased person), declaratory suit, suit for specific performance of contract, suit for recovery of possession etc.

9.2. Laws relating to Civil Suits

There is no comprehensive Civil Code which covers all types of civil suits in Myanmar. Myanmar Codes (Volume-1 to 13) codified the laws like Contract Act, Transfer of Property Act, Specific Relief Act, Succession Act, Guardian and Wards Act, Company Act, promulgated before 1954.

Under the Myanmar Laws Act, 1898, questions regarding succession, inheritance, marriage, caste, or any religious usage or institution are to be decided to Myanmar Customary Law where parties are Myanmar Buddhists; according to Mohammedan Law in case of Mohammedans and by the Hindu Law in case of Hindus.

Thus, people living in Myanmar are governed by different customary laws. A man carries his customary or personal law wherever he goes. From the time of Myanmar

King personal matters of Myanmar Buddhist people are decided by age-old Myanmar Customary Law formally known as Burmese Buddhist Law. It is composed of Myanmar Dhammasats essentially based on Myanmar customs, enacted laws and judicial precedents or rulings of the highest Courts in Myanmar.

Where there is no statute regulating a particular matter, the Courts are to apply Myanmar's general law, which is based on English common law as adopted by Myanmar case law and which embodies the rules of equity, justice and good conscience.

10. Conclusion

The Civil Procedure Code is a form of law code which aims to achieve the ends of justice and to prevent it from being defeated. Therefore, the Code continued to be in force even after Myanmar gained independence and remained in operation although some provisions were amended in 2000 and 2008. Now the Supreme Court of the Union is going to review the Code to be consistence with the current situation of civil litigation in Myanmar.