IP LITIGATION – THE WAY TO GO

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Mr. Pravin Anand and **Ridhie Bajaj** argue in favour of fixed time slots for arguments and for leading evidence in IP litigation before Indian Courts.

The Commercial Courts Act 2015 has reduced the life span of litigation even in fully contested cases. A very large proportion of the remaining cases get resolved through settlements or successful mediation.

When one takes a closer look at the contested cases, they move rapidly forward from pleadings to issues and completion of evidence but get stuck at the final arguments stage. A look at the daily cause list on the Original Side would show how Final matters just would not reach their turn because:

1. Most of the time Judges (on the Original Side) of the Courts have upwards of 30 cases before them, sometimes even more;
2. Matters take a long time to be argued, as there is no rule which pushes a party to stick to specific time duration as a speaker would at a seminar;
3. There are many frivolous applications such as applications for return or rejection of plaint under Order 7 Rule 10 or Order 7 Rule 11 of the Code of Civil Procedure, 1908;
4. The whole day which is effectively 5 working hours goes away in short matters, about 3 or 4 of which are new cases before each Judge.

What about Final matters which technically are cases where evidence has concluded and all that remains are: (i) Final arguments and (ii) the much awaited Judgment.

These never reach. The day is over.

Some lawyers move applications for early hearing, some appear and shout their reasons elucidating urgency or at times a higher Court orders disposal within a definite number of days then the Judge will make a real hard effort and take up Final matters, usually at the end of the cause list, possibly dedicating an hour or two to the case.

If an hour or two could conclude the case or at least cover good ground then matters could rapidly move forward, but that is not what generally happens.

The parties seem to have no time limit. They keep arguing at length while the day comes to an end. The Judge tries to give a short date, may be for the next week or the week after. However, on the next date the case may or may not reach and again a date is given, and just like this days turn to weeks and weeks to months and before you know it, the roster changes and it is back to a re-hearing

as the Judge now hearing Writs or Appeals releases the part-heard matters despite loss of time, effort and money having been invested in the case.

How true is this? It happens. Much less now than before, but it happens. Our Judges are brilliant and try their best but the work load and the system is to blame.

If Finals were disposed of, just look at the advantages:

1. There would be more judgments to guide litigants on esoteric and gray areas of the law;
2. Cases would be concluded quickly which would be a much desired change;
3. There would be major cost savings. This is not only good for SME clients but even for large corporations who are burdened with the crushing cost of fighting cases, where numbers are directly proportional to the well-known-ness of their Trademarks or the popularity of their Patents, Designs or Copyrights.

In a post COVID-19 world, e-Courts have now turned to v-Courts i.e. you argue on a video-conferencing system like Cisco or Zoom. This can only work if arguments are taken up like appointments. So if my case is No. 3 and is slotted to start at 11:30 AM, the two previous matters must finish on time to enable the systems to be set up for good and effective functioning.

How does one ensure that matters finish on time? The answer lies in having time slots for cases. A typical time slot would be 10 minutes.

Let us say by way of example that injunction applications under Order 39 Rules 1 and 2, Code of Civil Procedure 1908 are given a default time limit of 2 slots i.e. 2 x 10 minutes or 20 minutes. The Defendant also gets 20 minutes and 10 minutes for reply. In less than one hour the hearing would be over. If a party wants more time, he would need to move an application before a hearing officer (like a time keeper) and convince him of the need for more time and seeing the record and its complexity, the hearing officer might permit four slots i.e. a duration of 40 minutes or double the default time.

Normal applications could be allotted a single slot of 10 minutes.

For recording evidence the Judge at the case management hearing might allot 18 to 24 slots for each witness i.e. 3 to 4 hours to conclude cross-examination.

For final arguments 30 slots each and 15 slots rebuttal i.e. 5 hours each side and 2.5 hours rebuttal.

This is the way to go. We need to start enforcing time limits with three clear understandings:

1. That with passage of time the habit to keep time will solidify;
2. Parties that do not complete on time would be encouraged to provide written arguments;

3. In exceptional cases, Courts would have the discretion to enlarge time.

Over the years, many techniques have been used to enforce time. One of our Judges would ask the lawyers to dictate their arguments in point form to his stenographer; so first the Plaintiff's arguments and then the Defendant's would be recorded. Before the parties knew it or realized what the Judge had done, the judgment would be half written and so there had to be a certain end to the matter rather than a simple adjustment when a party in a tight spot was trying to feign illness or convey the need to seek client instructions just to get out of the Judge's clutches.

Today, we are seeing a whole lot of time limits under the Commercial Courts Act regime, for instance:

1. Compliance under the proviso to Order 39 Rule 3 of the Code of Civil Procedure 1908 after an interim injunction is granted of all the relevant Court papers to the opponent and to file an affidavit within 24 hours. If not complied with, it threatens to vacate the interim injunction;
2. The Written Statement must be filed within 30 days and in any case, not exceeding 120 days from the service of summons. This has been interpreted to be a strict deadline closing the right of the party to defend its case;
3. An affidavit of admission/denial must be filed along with the Written Statement or with the Replication or else the pleading may not be taken on record; and
4. A strict deadline for filing the replication within 30 days of receipt of Written Statement with a maximum of 15 days extension. Similar deadlines exist for the filing of documents, preferring of Chamber Appeals and Appeals to the Division Bench.

There is thus a key realization that timely disposal of litigation matters alone can serve the ends of justice.

Given this background, we have no choice and limiting time through time slots is the only practical way forward for an efficient and successful system for dispensing justice.

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